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Hawaii Department of Taxation Pursuing Aggressive Enforcement of Potential Transient Accommodation and General Excise Tax Violations

At a recent seminar for tax professionals, Hawaii Department of Taxation representatives confirmed that the Department is aggressively pursuing enforcement action against potential violations of Hawaii's Transient Accommodation and General Excise Tax laws. The enforcement effort is a direct result of agreements reached between the Hawaii Department of Taxation and vacation rental platforms, such as Airbnb, for the release of certain information regarding vacation rental bookings and income.

There are two categories of target letters being sent out: (A) potential non-filers, in which case the Department will typically request copies of 3 years of past tax returns and other documentation regarding potential rental income, and (B) accounts that seem compliant from a tax perspective except that they have not posted registration numbers in vacation rental advertisements.

For the second category, taxpayers will typically receive **ONLY ONE** written warning before fines are assessed (although a warning is not required before the Department can assess fines). Non-filers or under-reporters may not receive any warnings.

Taxpayers are strongly advised that they should **NOT IGNORE** any notice received from a taxing authority. It is highly probable that the Department will pursue further enforcement action if an owner does not respond appropriately to a notice.

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How can an attorney help?

A common refrain in the field of tax controversy is, “don't turn a civil matter into a criminal matter.” Under certain circumstances, it is entirely possible that taxing authorities may pursue criminal or civil fraud or tax evasion charges in circumstances of willful or negligent non-compliance. Accordingly, non-compliant taxpayers should take appropriate actions to protect their interests where there exists the possibility for civil or criminal charges.



There is no “accountant-client privilege” in the State of Hawaii. This means that an accountant can be compelled to testify against a taxpayer and reveal information that a taxpayer provided to the accountant, even if it is incriminating. However, there is an exception to this general rule in the case of a *Kovel* arrangement (named for the court case in which it was first employed). Under a *Kovel* arrangement, a taxpayer’s attorney hires the accountant on the taxpayer’s behalf. A proper *Kovel* arrangement between an attorney and an accountant can extend the attorney-client privilege to certain communications made to an accountant that would otherwise incriminate the taxpayer.

In addition, in appropriate circumstances, an attorney may be able to assist a taxpayer with negotiating a payment plan for any balance due, or a reduction of interest and penalties assessed as a result of non-compliance.

Outcomes are dependent on each taxpayer’s individual circumstances, and taxpayers are cautioned to consult with their own tax professional about their own individual situation. The information contained in this notice is not intended to constitute legal or tax advice or to create an attorney-client relationship.

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