

TAX FOUNDATION

O F H A W A I I

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April 12, 2016

Rules Office
Hawaii Department of Taxation
830 Punchbowl Street, Room 221
Honolulu, HI 96813

Re: **Comments on Proposed and Temporary HAR §§ 18-231-3-14.17, Relating to Abandonment of General Excise Tax Licenses**
Public Hearing: None

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Ladies and Gentlemen:

Thank you very much for providing this important guidance to taxpayers.

It should first be noted that although only subsection (d) is being published, the other subsections of the existing rule are to remain in effect. Specifically, subsection (c) states that a license shall be deemed abandoned if the licensee has failed to file both periodic and annual returns for a period not less than five years, excluding any periods in which the department has permitted the license to be inactive. Licenses cannot be revoked under this rule unless they meet those criteria.

The effect of the rule change is to eliminate the requirement that a notice of intention to revoke the license be mailed to the licensee at the licensee's last known address, and that such notice of intent be published in a newspaper of general circulation in the State. Instead, the *only* notice given is publication on the Department's website.

Unless provision is made for notice by mail when the Department has a valid mailing address on file, this procedure raises constitutional concerns that the license, which can be thought of as property of the licensee, is being taken away without due process of law. *Jones v. Flowers*, 547 U.S. 220 (2006); *Walker v. City of Hutchinson*, 352 U.S. 112 (1956); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Therefore, we suggest that the Department retain existing paragraph (d)(1). This requirement easily can be satisfied by language inserted in compliance inquiry notices asking about non-filed returns.

Thank you for the opportunity to submit comments.

Very truly yours,



Thomas Yamachika
President