TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7, HAWAII REVISED STATUTES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON JUL 21 2011.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON JAN 21 2013.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

DEPARTMENT OF TAXATION

Repeal of the Temporary Rules of the Department of Taxation Relating to Cash Economy Enforcement; Citations and Adoption of Temporary Rules of the Department of Taxation Relating to Cash Economy Enforcement; Citations, §18-231-91-01T through §18-231-100-01T Hawaii Administrative Rules

June 22, 2011

SUMMARY

1. Temporary Rules of the Department of Taxation, Relating to Cash Economy Enforcement; Citations, §18-231-91-01T through §18-231-91-13T, adopted on December 16, 2009, are repealed.

2. Temporary Rules of the Department of Taxation, Relating to Cash Economy Enforcement; Citations, §18-231-91-01T through §18-231-91-100T, are adopted.

HAWAII ADMINISTRATIVE RULES

TITLE 18

DEPARTMENT OF TAXATION

CHAPTER 231

ADMINISTRATION OF TAXES
CASH ECONOMY ENFORCEMENT; CITATIONS

§18-231-91-01T	Procedures; scope and purpose
§18-231-91-02T	Definitions
§18-231-91-03T	Cease and desist citation; requirements
§18-231-91-04T	Issuance of a cease and desist citation
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§18-231-91-14T	Evidence
§18-231-92-01T	[Reserved]
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§18-231-94-01T	Fine for failure to produce license
§18-231-95-01T	Fine for failure to keep adequate books and records
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§18-231-97-01T	[Reserved]
§18-231-98-01T	Fine for tax avoidance price fixing
§18-231-99-01T	[Reserved]
§18-231-100-01T	Fine for interference with a tax official

CASH ECONOMY ENFORCEMENT; CITATIONS PROCEDURES

§18-231-91-01T Procedures; scope and purpose. (a) Sections 18-231-91-01T to 18-231-100-01T, implement section 231-91, HRS through section 231-100, HRS relating to Cash Economy Enforcement; Citations, and apply notwithstanding any contrary provision in title 14, HRS, and the rules adopted thereunder relating to the enforcement of taxes.

(b) Pursuant to section 231-91, HRS, the Special Enforcement Section may issue cease and desist citations to any person if the special enforcement section has cause to believe the person has violated, is violating, or is about to violate any provision of title 14, HRS, or any of the administrative rules adopted thereunder. The following infractions of title 14, HRS, also include the possibility of a monetary fine, as set forth under these rules:

(1) Failure to produce license upon demand, section 231-94, HRS;
(2) Failure to keep adequate books and records, section 231-95, HRS;
(3) Failure to record transaction, section 231-96, HRS;
(4) [Reserved];
(5) Tax avoidance price fixing, section 231-98, HRS;
(6) Possession of currency for tax avoidance purposes, section 231-99, HRS;
(7) Interference with a tax official, section 231-100, HRS;

(c) Because of the difficulty in ascertaining when possession of currency is for the purpose of tax avoidance, no rules are being promulgated at this time concerning this section and accordingly, no citation shall issue for such violation. The department may in the future, subject to all applicable rules, promulgate rules concerning this section.

(d) The administrative rules contained herein govern the practice and procedure in all cease and desist citations issued by the special enforcement section, including the imposition of any monetary fines, and any subsequent rights of review.

(e) Disputes regarding cease and desist citations shall be resolved by a contested case hearing.

(f) A cease and desist citation is a civil matter. A monetary fine accompanying a citation is not a tax.

(g) The administrative rules contained in sections 18-231-91-1-01T through 18-231-91-100-01T shall be construed to secure the just and speedy determination of every cease and desist citation issued.

(h) Should any section, paragraph, sentence, clause, phrase, or application of this subchapter be declared unconstitutional or invalid for any reason, the remainder of any other application of said chapter shall not be affected thereby. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-02T Definitions. As used in sections 18-231-91-1-01T through 18-231-91-100-01T:

"Department" means the department of taxation.

"Director" means the director of taxation.

"Employee" means an employee of the department.

"Person" includes one or more individuals, a company, corporation, a partnership, an association, or any other type of legal entity, and also includes an officer or employee of a corporation, a partner or employee of a partnership, a trustee of a trust, a fiduciary of an estate, or a member, employee, or principal of any other entity, who as such officer, employee, partner, trustee, fiduciary, member, or principal is under a duty to perform and is principally responsible for performing the act. Notice or contact to an employee, representative, or agent of the person shall be notice or contact to the person.

"Special enforcement section" means the unit created within the department to carry out the functions set forth in section 231-81, HRS. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-03T Cease and desist citation; requirements. (a) A cease and desist citation must be issued on the forms prescribed by the department. There may be field citations, as well as office citations that may differ in form and size; however either must include the content as required by this section.

(b) A cease and desist citation shall include the following in its contents:

(1) The name and address of the person to whom the cease and desist citation is being served;

(2) The location of where the offense is about to occur, is occurring, or has occurred. If the location is a vehicle, the vehicle must be specifically identified, including its location at the time of the infraction;

(3) The specific alleged violation or violations of Title 14 or the administrative rules adopted thereunder which constitute cause for the issuance of the cease and desist citation, including (if applicable) any allegation that the person is a cash-based business as defined in section 231-93, HRS;

(4) A signature of the employee authorized to issue the citation. By signing the cease and desist citation, the issuer certifies that the statements contained in the citation are true and correct, to the best of his/her knowledge. A citation that has not been signed by a duly authorized employee of the special enforcement section shall be void *ab initio;*

(5) If applicable, the amount of the monetary fine imposed against the person;

(6) A space for the person to acknowledge receipt of the citation. If the person refuses to sign, the citation may indicate "refused to sign," "unavailable," or "no signature for safety reasons." The lack of the signature of the person cited shall not affect the validity of the citation;

(7) Information regarding how the respondent of the citation may appeal the citation, time deadlines and appeal rights, including the requirement that the citation must be returned to the special enforcement section within 30 days from the date of the citation, a right to a hearing before the director or the director's designee; and contact information for where the person may obtain further information. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-04T Issuance of a cease and desist citation. (a) A cease and desist citation is both a notice of violation and an offer to settle an administrative case involving any violation of Title 14 or

any of the administrative rules adopted thereunder and may include a monetary fine where permitted under these rules.

(b) Any duly authorized employee of the department who is assigned to the special enforcement section may issue a cease and desist citation to a person if there is cause to believe the person has violated, is violating, or is about to violate any provision of title 14, HRS, or any administrative rule adopted thereunder.

(c) A cease and desist citation may be served as follows:

(1) By personally serving the citation on the respondent by physically delivering the citation to the person cited. A refusal of the person to acknowledge receipt of the citation shall not cause the citation to fail for lack of service;

(2) If the location of the business of the person is not transitory, by placing the citation in the United States mail, postage prepaid, and properly addressed to such business address;

(3) By placing the citation in the United States mail, postage prepaid, and properly addressed to the residence address of the person to whom the citation is intended;

(4) If the citation is served by mail, a statement that the citation was deposited in the United States mail, postage prepaid, and has not been returned by the United States Postal Service shall constitute proper service;

Section 18-231-91-04T(c)(2) is illustrated by the following example:

EXAMPLE: Shorty's Drug Store is a chain of drug and sundry stores throughout Hawaii. There are over 50 locations. During an investigation of one of Shorty's locations located in Kona Town on the Big Island, it was observed by the special enforcement section that this one location was failing to record sales transactions by receipt. A cease and desist citation will be properly issued if the citation identifies Shorty's Drug Store's corporate office in Honolulu as the person, as well as an identification of the Kona Town location as where the offense occurred.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-05T Response to Cease and Desist Citation. (a) A person who has been served with a cease and desist citation must respond within thirty days from the date of its issuance:

(1) By paying the stated amount of the monetary fine. Such payment shall constitute acknowledgement of the violation and a waiver of further rights of review, provided that if the tendered payment is dishonored for any reason not the fault of the department, the person cited will be deemed not to have answered the citation; or

(2) By contesting the determination that a violation of title 14, HRS, has occurred by requesting a contested case hearing in accordance with these rules.

(b) If the person cited in the cease and desist citation fails to answer within thirty days from the date the citation is issued, the failure shall be treated as an acknowledgement that the allegations contained in the citation are true, and that the relief sought in the citation, including any monetary fines, is appropriate, and that a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law.

(c) A contested case hearing on a cease and desist citation shall be limited solely to the allegations contained in the citation. No other matter may be considered, including (but not limited to), any disputes relating to any tax liability. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-06T Venue. Venue is proper in the taxation district in which the alleged violation is said to have occurred, or such other location as the parties may mutually agree. Any party may participate in the hearing by telephonic means, provided that the presiding officer is given at least five days notice of such intent. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-07T Hearing; scheduling; prehearing conferences. (a) Upon determination that a contested case

hearing on a cease and desist citation is required, the special enforcement section shall notify the director of the request and the director shall appoint a presiding officer to conduct such hearing. A hearing on whether the violation(s) alleged in the citation has/have been committed shall be set for not less than fourteen days and not more than ninety days from the date of receipt of the request for a hearing.

(b) For good cause shown, the presiding officer may continue a scheduled hearing upon motion made by the department or the respondent of the citation.

(c) The director is authorized to docket hearings on a single day in each month, provided that the timing requirements of subsection (a) are satisfied. For example, the director is authorized to set hearings on all cease and desist citations on the last Friday of every month.

(d) After the presiding officer has scheduled a hearing, written notice of the date and time of the hearing shall be provided to the special enforcement section and the respondent of not less than ten calendar days before the date of the hearing. Written notice may be sent electronically, by facsimile transmission, or by depositing the notice, postage prepaid in the United States mail, or any combination thereof.

(e) A person contesting a cease and desist citation may appear in person or by a duly authorized representative. Any person appearing in a representative capacity shall submit a notice of appearance and a power of attorney at least seven days prior to the date of the hearing.

(f) Failure to appear. If any party should fail to appear at a duly scheduled hearing, the non-appearing party is deemed to have waived such appearance. If the department has failed to appear, a default shall be issued against the department and the citation shall be dismissed with prejudice. If the respondent has failed to appear, a default shall be issued against the respondent and the allegations contained in the citation shall be deemed admitted and any relief sought in the citation, including any monetary fines, shall be granted, and a final decision shall issue in favor of the department without the need for findings of facts and conclusions of law. If both parties fail to appear, the citation shall be dismissed without prejudice.

(g) The presiding officer may conduct pre-hearing conferences for the purpose of formulating or simplifying issues, scheduling the hearing, and setting deadlines for

the submission of exhibits, the naming and exchange of witnesses and the submission of hearing briefs and memoranda. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-08T Presiding officer. (a) The presiding officer shall conduct the hearing and present a recommended decision to the director, which recommended decision shall include proposed findings of fact and conclusions of law. If the presiding officer's recommended decision is adverse to any party other than the department, the recommended decision shall be served on the person contesting the citation by mail. The person contesting the citation shall thereafter have ten calendar days from the date the recommended decision is mailed to file exceptions to the recommended decision and to present arguments to the director in writing. The director shall then render a final decision in writing containing findings of fact and conclusions of law, and shall issue such orders and take such further action as may be required.

(b) The presiding officer shall be disqualified if he/she:

(1) Has a substantial financial interest, as defined in section 84-3, HRS, in a business or other undertaking that will be directly affected by the decision of the contested case;

(2) Is related within the third degree by blood or marriage to any party to the proceeding or any party's representative or attorney;

(3) Has materially participated in the investigation preceding the institution of the contested case proceedings or has participated in the development of the evidence to be introduced in the hearing; or

(4) Has a personal bias or prejudice concerning a party that will prevent a fair and impartial decision involving that party.

Any alleged conflict may be raised and argued upon motion by either party, and the presiding officer shall rule upon such motion. Conflicts under this section may be waived if both parties approve.

(c) If a director's designee is absent or otherwise unable to serve as the presiding officer, the director may designate another representative as a substitute presiding officer without abatement of the proceedings.

(d) In contested case hearings, the presiding officer shall have the power to give notice of the hearing, arrange for the administration of oaths, examine witnesses, certify official acts, rule on offers of proof, receive relevant evidence, regulate the course and conduct of the hearing, including regulating the manner of any examination of a witness to prevent harassment or intimidation and ordering the removal of disruptive individuals, and perform such other duties necessary for the proper conduct of the hearing.

(e) No person shall communicate with the presiding officer regarding matters to be decided by the presiding officer with the intent, or the appearance of intent, to influence the decision of the agent, unless all of the parties to the proceedings are given notice of the communication and an opportunity to also communicate. The presiding officer shall disclose any ex parte communications or attempts at ex parte communications on the record and allow all parties the opportunity to respond, refute, or comment on any such communication.

(f) The presiding officer shall have the power to subpoena witnesses and books and records as authorized under section 231-7, HRS. Any person's disobedience relating to a subpoena issued by the presiding officer may be enforced upon application to the circuit court.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-09T Proceedings. (a) The procedure for all contested hearings shall be as described in this section.

(b) The standard of proof applied shall be preponderance of the evidence.

(c) The burden of proof as to whether or not a violation has occurred shall be on the department. The burden of proof for establishing any defense or mitigating circumstances surrounding an alleged violation shall be on the person asserting the defense or mitigating circumstance.

(d) Any party to a contested case hearing may make a motion requesting the presiding officer to make a determination on any matter relevant to the hearing. A motion made in writing shall be served upon the presiding officer and the opposing party not less than five (5) days

prior to the scheduled hearing date. A motion may be made orally at the hearing without prior notice.

(e) The presiding officer shall take a verbatim record of the evidence presented at any hearing by any reasonable means within the presiding officer's discretion, including an audio recording. At the request of a party, the presiding officer may engage the services of a stenographer, or someone similarly skilled, to take a verbatim record of evidence presented at any hearing. Any party may request a certified transcript of the proceedings. The party making the request for the services of a stenographer or certified copies of the hearing shall be responsible for the relevant costs.

(f) The presiding officer may consider evidence of whether there were mitigating circumstances surrounding the commission of an alleged violation. If the presiding officer accepts mitigating circumstances into evidence, there shall be a finding that a violation has occurred and the presiding officer may abate any amount of a monetary fine imposed within the presiding officer's discretion.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-10T Decision. The department shall transmit any recommended decisions, final orders, opinions, or rulings entered in a contested case hearing to the parties and participants. Documents may be sent electronically, by facsimile transmission, or by depositing the same, postage prepaid in the United States mail, or any combination thereof.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-11T Enforcement and stay. (a) Unless otherwise stated in a final decision, all monetary fines and non-monetary sanctions shall be due and payable within thirty days of the service of the final decision imposing such fines and sanctions, provided that if any party appeals such final decision to the circuit court, such monetary fines and non-monetary sanctions shall be due and payable only upon entrance of an order by a court of competent jurisdiction that is final and non-appealable.

(b) The department is authorized to collect any overdue monetary fines and to enforce any overdue non-monetary sanctions imposed under any final decision, by referral of the matter to the attorney general for such action as it may deem necessary. In the director's discretion, any uncollected monetary fine may be referred to third parties, including a collection agency, or may be offset against any amounts owed by the department to the person. Any third party service fees incurred for the collection of any monetary fine, including collection agency fees, shall be the responsibility of the person against which the monetary fine was assessed.

(c) Any party may appeal the decision to the circuit court within thirty days after the date of the written order of the presiding officer pursuant to section 232-16, HRS. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-12T Computation of time. In computing any time period under these rules, the day of the act, event, or default from which the period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday, or government furlough day. Intermediate Saturdays, Sundays, legal holidays, or government furlough days shall be included. Whenever an act required to be performed under these rules may be accomplished by mail, the act shall be deemed to have been performed on the date of the postmark on the mailed article. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-13T Filing of documents. (a) All pleadings, submittals, reports, exceptions, briefs, memorandums, and other papers required to be filed in any contested hearings shall be filed with the director or as instructed by the director. Such papers may be sent electronically, by facsimile transmission, by United States mail, postage prepaid, or by hand-delivery to the department, within the time limit, if any, as set forth in any statute or rule, for such filing. Other than delivery by United States mail, the date on which the papers are actually received by the department or at the hearing shall

be deemed to be the date of filing. Delivery by United States mail shall be deemed to have occurred on the date of the postmark.

(b) All papers filed with the department shall be written in ink, typewritten, or printed, shall be plainly legible, shall be on strong durable paper, not larger than 8-1/2 by 11 inches in size except that tables, maps, charts, and other documents may be larger, but shall be folded to the size of the documents to which they are attached.

(c) All papers must be signed in ink by the party or a duly authorized agent or attorney. The signature shall constitute a certification that the party in interest has read the document; that to the best of the party's knowledge, information, and belief every statement contained in the document is true and no such statements are misleading; and that the document is not interposed for delay. If the papers are delivered electronically or by facsimile transmission, submission of the papers shall serve as certification, notwithstanding the lack of an original signature.

(d) Unless otherwise specifically provided by a particular rule or order of the department, an original and two copies of all papers shall be filed. Documents sent electronically shall not require any copies.

(e) The initial document filed by any person in any proceeding shall state on the document's first page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-91-14T Evidence. (a) Evidence shall consist of the cease and desist citation, any applicable reports, or other written statements submitted by either party. The presiding officer shall not be bound by rules of evidence, except as to provisions relating to privileged communications.

(b) The presiding officer shall rule on the admissibility of all evidence. The presiding officer may exercise discretion in the admission or rejection of evidence and the exclusion of immaterial, irrelevant, or unduly repetitious evidence as provided by law with a view to doing substantial justice.

(c) When objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly. Formal exceptions to rulings are unnecessary and need not be taken.

(d) With the approval of the presiding officer, a witness may read testimony into the record. Before any prepared testimony is read, the witness shall deliver copies thereof to the presiding officer and all counsel parties unless excused by the presiding officer. If the presiding officer deems that substantial savings in time will result, a copy of the prepared testimony may be received in evidence without reading.

(e) If any matter contained in a document on file as a public record with the department is offered in evidence, unless directed otherwise by the presiding officer, the document need not be produced and may be received in evidence by reference.

(f) Official notice may be taken of such matters as may be judicially noticed by the courts of the State of Hawaii. Official notice may also be taken of generally recognized technical or scientific facts when parties are given notice either before or during the hearing of the material so noticed and afforded the opportunity to contest the facts so noticed.

(g) At the hearing, the presiding officer may require the production of further evidence upon any issue. Upon agreement of the parties, the presiding officer may authorize the filing of specific documentary evidence as a part of the record within a fixed time.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-91)

§18-231-92-01T. [Reserved]

§18-231-93-01T. [Reserved]

§18-231-94-01T. Fine for failure to produce license. (a) A person required to be licensed or permitted under title 14 (whether or not so licensed or permitted) and who fails to produce the license or permit upon demand by the special enforcement section shall be fined as follows:

(1) For a first offense, a fine of $250, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;

(2) For second and subsequent offenses, a fine of $500; provided that if the person is a cash-based business, the fine shall be $1,000.

(b) A person may produce the original of the license or permit, a copy of the license or permit, a print out from the department showing that such person holds a license or permit, a completed application to the department for a license or permit along with proof of payment of any applicable license or permit fees, or a tax return not older than one year along with evidence of payment of any taxes shown on such return, provided that a return that shows no taxes owing shall not be acceptable.

(c) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation.

(d) For purposes of this section, a person who sells at a swap meet, flea market, garage sale, farmers market, open market, trade show, or similar event shall be deemed to be engaging in business if the person sells goods and/or services of any kind in the State for more than three separate events in any taxable year, regardless of the location or amount of the sales activity. Each day that a person sells at a swap meet, flea market, garage sale, farmers market, open market or similar event shall be considered as a separate event.

(e) It is an absolute defense to this section if the person produces a license or permit number on file with the department and the department confirms that the person is associated with that number. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-94)

§18-231-95-01T. Fine for failure to keep adequate books and records. (a) A person required to keep adequate books and records but who fails to produce such books and records upon demand by the special enforcement section shall be fined as follows:

(1) For the first offense, a fine of $500, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;

(2) For second and subsequent offenses, a fine of $1,000; provided that if the person is a cash-based business, the fine shall be $2,000.

(b) A person shall not be required to keep books and records in any particular format, provided that the books and records fairly reflect the financial matters of the business, including (but not limited to) the revenue and expenses of the business.

(c) A person shall have fourteen days to produce the books and records after demand by the special enforcement section, unless otherwise agreed in writing.

(d) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-95)

§18-231-96-01T. Fine for failure to record transaction. (a) A person who conducts more than ten taxable business transactions per day in cash and who fails to offer a receipt or other record of the transaction and who fails to maintain a contemporaneously generated record of all business transactions conducted each day, shall be fined as follows:

(1) For a first offense, a fine of $500, provided that if the person had not previously been contacted by the special enforcement section, no fine shall be imposed;

(2) For second and subsequent offenses, a fine of $1,000; provided that if the person is a cash-based business, the fine shall be $2,000.

(b) For purposes of this section, a transaction is presumed to be a business transaction if the activity of the person would require the person to hold a license or permit in accordance with any provision of Title 14 or the rules adopted thereunder.

(c) For purposes of this section, the following methods will satisfy the requirements of this section:

(1) Cash register receipt (either by a manually operated register or by an electronic register), provided that the cash register tabulates and maintains records of total daily sales;

(2) Point of sale, scanner, or other computerized method, provided that the system tabulates and maintains records of total daily sales;

(3) Pre-numbered receipt book with at least an original and copy, provided that the receipts are used in numerical order, the receipt numbers are not reused, and at least one copy of all receipts are retained; or

(4) Contemporaneous log maintained by the person setting forth a general description of the goods and/or services sold, as well as the total gross proceeds of each transaction, as well as a statement advising the customer of the right to obtain a receipt. For purposes of this subsection, a prominently displayed sign in the immediate vicinity of where the goods and/or services are paid for noting that a receipt will be given upon request shall suffice to satisfy such notice requirement, provided that such sign is clearly legible and visible.

(d) If the person is otherwise in compliance with title 14 at the time the citation was issued, the fine imposed on the person under this section shall be abated as follows:

(1) For the first citation issued, one hundred percent

(2) For the second citation issued, seventy-five percent;

(3) For the third citation issued, fifty percent;

(4) For the fourth citation issued, twenty-five percent; and

(5) For the fifth and subsequent citations issued, no abatement shall be allowed.

(e) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(f) For purposes of this section, a transaction is deemed to have occurred at the time that a customer pays for the goods and/or services and the person accepts the payment, notwithstanding any rights of return or refund that the customer may have.

(g) Only one citation may be issued to the person in any twenty-four hour period. Every citation issued under this section shall be considered as a separate violation. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-96)

§18-231-97-01T [Reserved]

§18-231-98-01T. Fine for tax avoidance price fixing. (a) A person who sells, offers to sell, or otherwise conducts business offering a lower price to complete the transaction when paid for in cash than by any other payment means shall be fined $2,000; provided that if the person is a cash-based business, the fine shall be $3,000.

(b) No citation shall issue if the person can establish a legitimate business purpose for such differentiation. For example, a legitimate business purpose exists if some fee or cost that is associated with the alternative means of payment (including, but not limited to credit or debit card merchant fees) is not present when payment is made in cash, provided that the discount offered does not exceed the amount of such fee or cost.

(c) In any proceeding under this section, the person shall have the burden of showing a legitimate business purpose for the price differentiation and the department shall have the burden of showing that the person offered a lower price if the transaction was consummated in cash than if consummated otherwise.

(d) For purposes of this section, "cash" shall include legal tender of any country, currency in whatever form, and negotiable instruments in whatever form, but shall not include charge card or debit card payments.

(e) Only one citation may be issued to the person in any thirty day period. Every citation issued under this section shall be considered as a separate violation. [Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-98)

§18-231-99-01T [Reserved]

§18-231-100-01T Fine for interference with a tax official. (a) A person who intentionally interferes with, hinders, obstructs, prevents, or impedes any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other

information or property rightfully entitled to the department shall be subject to a fine of $2,000.

(b) No citation shall issue for any conduct that is constitutionally protected.

(c) In any proceeding under this section, it shall be an absolute defense that the person acted with good cause. The person shall have the burden of proof on this issue, and the department shall have the burden of showing that the person intentionally interfered with, hindered, obstructed, prevented, or impeded any investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property to which the department was rightfully entitled to.

(d) A citation may be issued to the person for each incident that constitutes intentional interference with, hindering, obstruction, prevention, or impediment of any investigator, auditor, collector, or other employee of the department which prevents such investigator, auditor, collector, or other employee of the department from obtaining license information, books, records, articles, or items of business transacted, or other information or property to which the department was rightfully entitled to. Every citation issued under this section shall be considered as a separate violation.

[Eff] (Auth: HRS §§231-3(9), 231-10.7) (Imp: HRS §231-100)