

INSTRUCTIONS FOR SCHEDULES O AND P (FORM N-30) ALLOCATION AND APPORTIONMENT OF INCOME

Corporations who qualify and elect to report and pay income tax on the basis of a percentage of gross sales made during the tax year, as provided in Article III, section 2 of the Multistate Tax Compact, Chapter 255, Hawaii Revised Statutes (HRS), and section 235-71(e), HRS, Hawaii Income Tax Law, need not use Schedules O and P but must use and file Short Form N-310, copies of which may be obtained by contacting the Department of Taxation, or at tax.hawaii.gov.

GENERAL INSTRUCTIONS

Corporations which must file Allocation and Apportionment of Income Schedules O and P, Form N-30:

Every corporation carrying on a business within and without Hawaii must file Allocation and Apportionment of Income Schedules O and P, Form N-30, unless the corporation qualifies and elects to use Short Form N-310. See Part II Uniform Division of Income for Tax Purposes, Chapter 235, HRS, and Subchapter 2, Title 18, Chapter 235, Hawaii Administrative Rules.

A foreign corporation carrying on a trade or business within Hawaii and subject to tax will be entitled to exclude from the measure of the tax that portion of its income less related expenses which is attributable to sources without Hawaii. A domestic corporation will exclude from the measure of the tax that portion of its income and related expenses attributable to sources in another jurisdiction provided that such income is subjected to an income tax by such other jurisdiction. A foreign corporation shall be deemed to be carrying on a trade or business within Hawaii if its net income is subject to the taxing jurisdiction of Hawaii by reason of its engaging in activities in Hawaii, or causing transactions to be conducted in Hawaii with the object of gain, profit, or economic benefit, whether or not such activities or transactions are in, or connected with, interstate or foreign commerce.

Only those entities which are located in any of the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States shall be considered and included as part of the unitary business. Accordingly, only the business income of those domestic entities shall be considered and included in the apportionment of income. Where a business is deemed to be unitary, the taxpayer shall be required to file a combined return and the combined income shall be apportioned to the State of Hawaii based upon the factors of property, payroll and sales. See Tax Information Release No. 97-2 (Revised) for more information.

A unitary business is a business carried on by a group of entities that includes the taxpayer where there are flows of value among the entities resulting from (1) functional integration, (2) centralization of management, or (3) economies of scale. Generally, if the operation of a business within Hawaii is integrated with, is dependent on, or contributes to the operation of the business outside Hawaii, the entire business is unitary in character. A unitary group is a group of entities carrying on a unitary business, but does **not** include (1) any foreign affiliate of the taxpayer; or (2) any entity that is not related to the taxpayer within the meaning of IRC section 267(b) and (c). A foreign affiliate of a taxpayer is a person, other than the taxpayer, if no part of the business income of the person is subject to federal income tax under the Internal Revenue Code of 1986, as amended, whether or not the person and the

taxpayer are owned or controlled directly or indirectly by the same interests.

The following instructions set forth in general the adjustments to be made to arrive at the taxable income of a corporation carrying on a unitary business within and without Hawaii. They do not purport to set forth each and every adjustment to be made. Specific questions should be submitted in writing for rulings.

DIRECTIONS FOR COMPLETING SCHEDULE O ADJUSTMENTS FOR HAWAII TAXABLE INCOME

Question (e). Explain with references to the laws or regulations of another state any inconsistencies in the determination of non-business income and in the denominators of the factors due to a difference in state laws or regulations. Show the amount of inconsistency on a state-by-state basis. Corporations that change the way the following items were treated in prior year tax returns must disclose the nature and extent of these changes on a separate sheet as an attachment to Schedule O. Disclose any changes to:

- classification of income as business or non-business income;
- valuation of property or inclusion of property in the property factor;
- determination of the amount of compensation paid used in the payroll factor; or
- inclusion of gross receipts in the sales factor.

Disclose only inconsistencies in the denominators of the three factors that materially affect the apportionment percentage.

Line 1. Enter here the amount of taxable income shown on Hawaii Form N-30, Schedule J, line 1.

Line 2. Enter here the dividends from N-30, Schedule C, line 11.

Line 3. Enter deductions taken for federal tax purposes but not allowable or allowable only in part, for Hawaii tax purposes.

Line 4. Enter here the deduction for charitable contributions included on line 1. The Hawaii deduction for charitable contributions will be taken on line 35.

Line 5. Other adjustments. List all other additions here.

Line 7. Enter here the amount of dividends received included on Form N-30, page 1, line 8.

Line 8. Enter here any interest received on obligations of the United States included on Form N-30, page 1, line 8.

Line 9. Enter here other deductions or adjustments.

ADJUSTMENTS TO ARRIVE AT UNITARY BUSINESS INCOME SUBJECT TO TAX

After Hawaii adjustments, the following deductions or exclusions must be made to arrive

at unitary business income. Dividends, interest, royalties, nonunitary business income, rents, and capital gains and losses which are not an integral part of the unitary operations, are to be allocated specifically according to location or situs of property or according to the domicile of the taxpayer.

Line 12. Enter here the non-business or non-unitary dividends included on Form N-30, page 1, line 8, and included on line 2 above.

Lines 13, 14, and 15. Enter the net amount from interest, royalties, and nonunitary business income (including rentals). If the related expenses exceed the total of each such income, no deduction may be claimed.

Line 20. Enter here the net loss from business, other than unitary business, including rentals.

Line 21. Enter here the net loss, other than those from sales of depreciable property, resulting from the sale or exchange of assets not connected with unitary business. Losses on sales of depreciable property are considered to be part of the unitary business.

Line 24. From Schedule P (Apportionment Formula) line 5, enter the average percent and multiply the amount shown on line 23 by this average percent. This is the apportioned income from the unitary business subject to Hawaii income tax.

Line 26. Enter the portion of line 24, if any, that is net capital gain attributable to the unitary business. Also, enter the amount on line 26, if any, on Form N-30, page 2, Schedule J, line 13.

INCOME WHOLLY ATTRIBUTABLE TO HAWAII

Foreign and domestic corporations must allocate to Hawaii all gains (or losses) resulting from the sale or exchange of real estate and other tangible assets which have a tax situs in Hawaii. The amount of net capital gain as shown on Schedule O, page 2, line 31(b) is taxed at the rate of 4%. Income from nonunitary business activities conducted within Hawaii, royalties and rentals from property owned within Hawaii, and intangibles having a business situs in Hawaii must be allocated to Hawaii.

Allocation of capital gains and losses. Capital gains and losses from the sales of real property located in Hawaii are allocable to Hawaii.

Capital gains and losses from the sales of tangible personal property are allocable to Hawaii if: (1) The property had a situs in Hawaii at the time of the sale; or (2) The taxpayer's commercial domicile is in Hawaii and the taxpayer is not taxable in the state in which the property had a situs.

Except in the case of the sale of a partnership interest, capital gains and losses from the sales of intangible property are allocable to Hawaii if the taxpayer's commercial domicile is in Hawaii.

Gain or loss from the sale of a partnership interest is allocable to Hawaii in the ratio of the original cost of the partnership tangible personal property in Hawaii to the original cost of partnership tangible personal property everywhere, determined at the time of the sale. If more than fifty percent of the value of a partnership's assets consists of intangibles, gain or loss from the sale of the partnership interest shall be allocated to Hawaii in accordance with the sales factor of the partnership for its first full tax period immediately preceding its tax period during which the partnership interest was sold.

Line 28. Enter here the gain (or loss) from the sale of real estate and other tangible assets not connected with the unitary business.

Line 29. Enter here royalties from property not used in the unitary business.

Line 30. Enter here the net profit (or loss) from business other than the unitary business (including rental property) operated on a separate accounting basis.

Line 31(b). Enter the amount of net capital gain wholly attributable to Hawaii. Also, enter the total of lines 31(b) and 26, on Form N-30, page 2, Schedule J, line 13.

Line 32. Enter here income from intangible personal property. Add back Hawaii allocated, non-business or nonunitary income and dividends.

Line 35. The Hawaii contribution deduction is computed by multiplying the total contributions by the Hawaii allocation percentage determined on Schedule P. The amount of the deduction is limited to 10% of the Hawaii taxable income on line 38 of Schedule O as adjusted per IRC section 170(b)(2), i.e., net operating losses, capital losses, contributions, dividend deduction, etc.

Line 36. Enter here any net operating loss as determined in accordance with section 235-7(d), HRS, and/or any net operating loss purchased from a qualified high technology business.

DIRECTIONS FOR COMPLETING SCHEDULE P APPORTIONMENT FORMULA

In filing this schedule, include only items related to, or connected with, the income reported on Schedule O, line 23. Thus, since this line does not include income or losses from intangible personal property, and rental of, sale or other disposition of property not connected with the unitary business, such property should not be included in the property factor of the formula, and income therefrom should not be included in the sales factor. Likewise, salaries, wages, or other compensation of officers and employees, whose services were not performed in producing the income reported on Schedule O, line 23, should not be included.

If this is a return for a combined group of corporations, compute the factors on this schedule for the combined group and attach a worksheet showing the requested information for each member in the group. If this is a separate return for a member of a combined group, enter the group's factor information in column (a) and the member's Hawaii factor information in column (b). Attach a worksheet showing the requested information for each member in the group. Also attach a list of the names, addresses and the Federal Employer Identification Numbers for all entities included in the combined group.

PROPERTY FACTOR

The property factor is a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and used in Hawaii during the tax period and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the tax period. Property owned by the corporation is valued at its original cost. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period. The use of monthly values may be required if necessary, to properly reflect the average value of the corporation's property.

Real property situated, and tangible personal property permanently located, in Hawaii on the last day of the taxable year if actually used in the unitary business, should be listed as within Hawaii. In determining the situs of movables, such as equipment used in Hawaii part of the year and in another jurisdiction part of the year, the value of such property shall be assigned to a location within and without Hawaii on the basis of approximate average time of such usage. In the case of properties leased or rented, the value of the leasehold interest or rented property shall be included in the property factor. The values of leasehold interests and other leased or rented properties are obtained by multiplying the net annual rent paid by 8. Where property is rented for less than a twelve-month period, the rent paid for the actual period of rental shall constitute the annual rental rate for the tax period.

PAYROLL FACTOR

Salaries, wages, commissions, and other compensation for personal services paid during the taxable year to officers and employees in connection with the unitary business should be entered as within Hawaii if the services are actually performed here, regardless of where payment is made or control exercised.

SALES FACTOR

Gross sales or receipts attributable to and derived from the taxpayer's unitary business operations shall be the gross sales or gross re-

ceipts less returns and allowances. In the case of tangible personal property there shall be attributable to Hawaii all sales of such property:

- (A) delivered to a purchaser at a point within Hawaii regardless of the f.o.b. point or where the sale was consummated,
- (B) shipped to a purchaser situated at a point within Hawaii regardless of the f.o.b. point or where the sale was consummated, and
- (C) delivered to a purchaser at a point outside Hawaii or shipped to a purchaser at a point outside Hawaii, if such point is located in a jurisdiction in which the taxpayer is not doing business and the sale was made on an order secured or received by an office or branch in Hawaii or a representative residing or stationed in Hawaii.

In the case of sales of other than tangible personal property, there shall be included, in addition to amounts includible under rules prescribed on the sale of tangible personal property above, all sales or receipts from:

- (A) property located, services furnished, and contracts performed in Hawaii, irrespective of the place where the contract is made,
- (B) communications transmitted from a point in Hawaii,
- (C) all other activities engaged in or transactions conducted in Hawaii.

USE OF FACTORS

All business income shall be apportioned to this State by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three (sections 235-29 and 255-1, HRS). If the denominator of the property factor, payroll factor, or sales factor is zero, the denominator of the fraction in section 235-29, HRS, is reduced by the number of factors with a zero denominator, and the numerator of that fraction shall not include any factor with a zero denominator.

MODIFICATION OF FACTORS FOR CERTAIN LINES OF BUSINESS

A taxpayer carrying on the business of air or sea transportation service, construction contracting, publishing, and radio or television broadcasting may derive income partly from sources within and partly from sources without Hawaii. Such a taxpayer is required to use the factors as modified under Department of Taxation Administrative Rules, section 18-235-38-06.