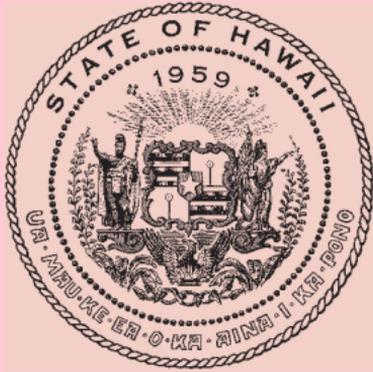


An Introduction to Withholding State Income Tax By Employers



**State of Hawaii
Department of Taxation**

**David Y. Ige
Governor**

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Director of Taxation**

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Overview

This brochure provides basic information on the withholding of state income tax by employers.

For more information, please refer to “Booklet A – Employer’s Tax Guide.”

If you have any questions, please call or email us. Our contact information is provided at the back of this brochure.

Note: This brochure provides general information and is not a substitute for legal or other professional advice. The information provided in this brochure does not cover every situation and is not intended to replace the law or change its meaning. If there is a conflict between the text in this brochure and the law, then the application of tax will be based on the law and not on this brochure.

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General Information

1. What is the withholding tax?

The withholding tax is Hawaii state income tax owed by your employees that you are required to withhold from their wages and remit to the Department of Taxation (Department).

2. If the withholding tax is income tax deducted from my employees' wages and not a tax on my income, who is liable for this tax?

Under the Income Tax Law, you are required to withhold state income tax from your employees' wages in trust for the State. You are liable for this tax if you fail, neglect, or refuse to withhold the amount of tax required from your employees' wages, or if you fail to remit the amount required to the Department.

Note: If the employer is a corporation, then any person or corporate officer whose duty it is to withhold or remit the tax and who fails to do so will be personally liable for the tax, even if the corporation dissolves. (See question 44.)

3. Are businesses the only taxpayers who have to withhold income tax from their employees?

No, government agencies, nonprofit groups, and individuals not doing business in Hawaii are also required to withhold Hawaii income tax from their employees' wages.

Individuals who hire domestic employees to work in their homes (for example, babysitters, maids, or companions) must withhold Hawaii income tax from their employees' wages.

4. Who is an employee?

An employee is someone who performs services for an employer. In general, if someone is told what to do, when to do it, and how to do it, or if the services are performed at the employer's place of business with equipment and supplies furnished by the employer, then an employer-employee relationship exists, and the employer will be required to withhold tax.

5. If I do not want to hire someone as an employee, can I choose to hire the person as an independent contractor?

Yes. However, if an employer-employee relationship exists, the person must be treated as an employee rather

than an independent contractor, and the payments are wages subject to the withholding tax.

6. Are all wages and other types of compensation paid to an employee subject to the withholding tax?

No, a list of what is not subject to the withholding tax is found in section 11 of Booklet A - Employer's Tax Guide.

Is Withholding Required?

7. If I hire only part-time employees, do I have to withhold state income tax from their wages?

Yes. Wages paid to part-time employees are subject to the withholding tax.

8. If I hire employees only in the summer, must I withhold state income tax from their wages?

Yes. Wages paid to seasonal workers are subject to the withholding tax.

9. Am I required to withhold Hawaii income tax from my employees' wages while they are temporarily working on Johnston Island for three months?

Yes. Because your employees' normal place of employment is in Hawaii and their wages are paid out of an office located in Hawaii (or a field office whose main office is in Hawaii), Hawaii income tax must be withheld.

10. Am I required to withhold Hawaii income tax on the wages earned by a nonresident employee?

Yes. Wages earned by a nonresident of Hawaii are subject to the withholding tax in the same manner as wages earned by a Hawaii resident. However, there are three exceptions to this general rule. (See questions 11, 12, and 13.)

11. How should I treat wages paid to nonresidents who are on short term assignments in Hawaii?

Withholding is not required for wages paid to a nonresident employee if:

- (1) The employee is performing services in Hawaii for 60 days or less during the calendar year;
- (2) The employee's regular place of employment is not in Hawaii;
- (3) The employee is paid from an office located outside Hawaii; and

- (4) The employer reasonably expects the employee to be in Hawaii for 60 days or less during the year.

For example, Mr. X, a California resident, lives and works in California. Mr. X's employer sends him to Hawaii for one week to provide training. The wages paid to Mr. X for services provided in Hawaii are exempt from the withholding tax. However, if Mr. X is sent to Hawaii for three months instead of one week, the wages paid to him for the services provided in Hawaii will be subject to the withholding tax.

However, withholding is required on wages earned by nonresident employees of a construction company working in Hawaii. In other words, even if all of the requirements listed above have been met, if the employee is working on a construction project in Hawaii for a contractor, the employer must withhold income tax on the nonresident employee's wages.

Note: The wages earned in Hawaii by a nonresident employee are subject to Hawaii's income tax, even if exempt from withholding, and a Hawaii income tax return may need to be filed by the nonresident employee.

12. What if a nonresident performs part of the work outside of Hawaii?

An exemption from the withholding tax is allowed for wages paid to an employee who is not a Hawaii resident if the services are provided outside of Hawaii and the employee is paid for services from an office located outside the state.

For example, Ms. A, a resident of Maryland, is temporarily transferred to Hawaii by her employer for two years. At the end of the two years, she will return to Maryland. While assigned to Hawaii, she is sent to Guam for three months to help establish a new office there. The wages paid to Ms. A for services provided in Hawaii are subject to the withholding tax. However, the wages paid to Ms. A for services provided in Guam are exempt from the withholding tax.

13. Is compensation received by a servicemember's civilian spouse for services performed by the servicemember's spouse in Hawaii as an employee subject to the withholding tax?

The Federal Military Spouses Residency Relief Act provides that wages, salaries, tips, commissions, and other compensation received by a servicemember's civilian spouse for services performed by the servicemember's

spouse in Hawaii as an employee are **not** subject to Hawaii's withholding tax if **all** of the following conditions are met:

- The servicemember is present in Hawaii solely in compliance with military or naval orders;
- The spouse is in Hawaii solely to be with the servicemember; and
- The spouse and the servicemember are domiciled in the same state and that state is not Hawaii.

See Tax Information Release (TIR) No.2010-01, "Military Spouses Residency Relief Act," for more information.

14. What must be done in order for a nonresident employee's wages to be exempt from the withholding tax?

If your nonresident employee is exempt from the withholding tax, the employee must complete Form HW-6, Employee's Statement to Employer Concerning Nonresidence in the State of Hawaii.

If withholding is not required on a nonresident employee's wages, you must file Form HW-7, Exemption From Withholding on Nonresident Employee's Wages, **and** the original Form HW-6 with the Department. Keep a copy of your employee's Form HW-6 for your records.

If withholding is not required on a nonresident employee's wages for services performed outside the state, you do not have to file Form HW-7 with the Department. Withholding is not required on your employee's wages. Keep your employee's Form HW-6 for your records.

You may treat the Form HW-6 as effective (1) on or after the date that you file Forms HW-7 and HW-6 with the Department, if withholding is not required on an employee's wages for services performed in the state, or (2) on or after the date that an employee files a Form HW-6 with you, if withholding is not required on an employee's wages for services performed outside the state. However, if you are later notified that the employee's nonresident status has been rejected or is under investigation, the employee's wages will be subject to the withholding tax.

15. What should I do if I am notified that my employee's nonresident status has been rejected or is under investigation?

The withholding tax is not retroactively applied but withholding should begin 30 days after the notification is made.

Although you are not liable for collecting any taxes on prior wages paid to your employee, your employee will be required to reconcile and pay the difference when the employee later files a Hawaii individual income tax return. (See question 39 for Form HW-2 reporting requirements.)

16. I am self-employed. Do I withhold Hawaii income tax from myself?

No, as a self-employed individual, you do not earn wages. However, you may be required to pay estimated income tax on any income your business earns. See the instructions for Form N-1, Declaration of Estimated Income Tax for Individuals, for further information.

17. I incorporated my business and own 100% of the shares. Do I withhold income tax from myself or do I pay estimated income tax?

You must make estimated income tax payments on all of your income except payments you receive as an employee of the corporation. The corporation must withhold Hawaii income from payments you receive as an employee of the corporation. For example, wages you receive as a corporate officer are subject to the withholding tax.

Specific Information

18. How do I figure out how much to withhold from my employees' wages?

On or before an employee's first day of work, the employee must complete and sign Form HW-4, Employee's Withholding Allowance and Status Certificate, and return it to you. You should keep the Form HW-4 on file as part of your payroll records. This form tells you how many exemptions each employee is claiming for withholding purposes and the employee's marital status.

The amount to be withheld is computed using the information from the Form HW-4 and the annualized withholding tax schedule, the alternate withholding tax schedules, or the withholding tax tables. You will find the

withholding tax schedules and tax tables in the Appendix of Booklet A - Employer's Tax Guide.

19. What is the maximum number of exemptions an employee can claim for withholding purposes?

The maximum number of exemptions an employee can claim is based on a number of factors including marital status, age, number of dependents, amount of tax credits, and amount of itemized deductions. A worksheet to calculate the proper number of exemptions to claim is provided on page 2 of the Form HW-4.

Note: An employee may claim less than the employee's maximum allowable exemptions but may not claim more than the maximum allowed.

If an employee is claiming more than 10 exemptions, or if you believe that an employee has claimed an excess number of exemptions according to the employee's situation or has misstated their marital status, notify the Tax Assessor by sending the HW-4 and an explanation to the Department.

20. Are employees required to complete a new Form HW-4 every year?

No, a new Form HW-4 needs to be filed only when there is a change in the employee's marital status or in the number of exemptions being claimed.

A new Form HW-4 should be filed as soon as possible if a change in the employee's marital status means that a married filing joint tax return can now be filed where one could not have been before, or if the maximum number of exemptions the employee can claim increases.

A new Form HW-4 must be filed within 10 days if a change in the employee's marital status means that the employee who previously filed a joint tax return no longer can, or if the maximum number of exemptions the employee can claim is less than the number currently being claimed.

A new Form HW-4 must be filed by December 1 for changes which occur during the year if the change will not affect the amount of tax to be withheld until the following year. The new Form HW-4 must be filed within 10 days if the change occurs in December. An example of this type of change is a decrease in the maximum number of exemptions allowed due to the death of a dependent.

21. Can federal Form W-4 be substituted for Hawaii Form HW-4?

No, you must use the Hawaii Form HW-4.

22. What should I do if an employee refuses to complete a Form HW-4 and give it to me?

If you do not receive a Form HW-4 from an employee, you must withhold the tax as if the employee is single and claiming zero (0) exemptions.

23. Must I accept a Form HW-4 that an employee has written “exempt”?

No, Hawaii’s withholding law does not allow an employee to claim complete exemption from withholding by simply writing “exempt” on Form HW-4. The employee must indicate the number of withholding exemptions the employee is claiming. If an employee refuses to properly complete a Form HW-4, you must withhold the tax as if the employee is single and claiming zero (0) exemptions.

For further information, see TIR No. 95-4, “Employee Withholding Certificates.”

Registration & Licensing

24. How do I register for a withholding tax license?

Complete Form BB-1, State of Hawaii Basic Business Application, and select “Withholding” to register for a withholding tax license. This form is available online at: **tax.hawaii.gov** or may be picked up from any district tax office.

Your application may be submitted by mail, in person at any district tax office, or online through our website at: **hitax.hawaii.gov** or through the Hawaii Business Express website at: **hbe.ehawaii.gov**.

You may also file your application with any of the Department of Commerce and Consumer Affairs’ Business Action Centers.

25. Is there a registration fee?

No. There is no fee for a withholding tax license.

26. If I already have a general excise tax (GET) license, will I be issued separate identification numbers for the GET and withholding tax license?

We will assign a separate Hawaii Tax Identification (ID) Number to you for the GET and the withholding tax.

27. If I am currently registered for the GET, how do I register for the withholding tax license?

Complete a new Form BB-1 to add the withholding tax not applied for on your previously filed Form BB-1. This form may be submitted by mail, in person at any district tax

office, or online through our website at: hitax.hawaii.gov or through the Hawaii Business Express website at: hbe.ehawaii.gov .

28. After sending in my application, what will I receive from the Department?

Approximately three to four weeks after sending in your application, you will receive a letter informing you of your Hawaii Withholding Tax ID Number.

29. Is there a way that I can get my Hawaii Withholding Tax ID Number sooner?

Yes. If you apply in person at a district tax office, your Hawaii Withholding Tax ID Number will be assigned on the same day.

Important: Applications that are dropped off will be treated as if they had been mailed in.

Tax Forms & Filing Requirements

30. How often do I need to file withholding tax returns?

Withholding tax returns are always filed on a calendar year basis even if your tax year does not end on December 31. Beginning January 1, 2018, whether you file electronically or by paper, all employers are required to file Form HW-14, the periodic tax return, quarterly (every three months) only. Filing monthly is no longer allowed.

31. When do I remit withholding taxes to the state?

Note: The new quarterly filing requirement has no effect on the frequency of when you are to remit withholding taxes to the state.

Your annual state withholding tax liability determines when you remit the taxes to the state:

- If your annual state withholding tax liability is less than \$5,000:
 - Remit taxes quarterly by the 15th day of the month following the close of the previous quarterly period.

- If your annual state withholding tax liability is \$5,000 - \$40,000:
 - Remit taxes monthly by the 15th day of the month following the close of the previous

monthly period.

- If your annual state withholding tax liability exceeds \$40,000 or if you are required to deposit your federal withholding taxes using the Internal Revenue Service's semi-weekly deposit schedule:
 - Remit taxes semiweekly. See TIR No. 2004-01, "Act 113, Session Laws of Hawaii 2004, Relating to Income Tax Withholding," for more information.

Taxpayers whose state withholding tax liability exceeds \$40,000 or who are required to pay federal withholding taxes by electronic funds transfer (EFT) are required to pay state withholding taxes by EFT on a semi-weekly basis. For more information on paying taxes by EFT, see TIR No. 95-6, "Questions and Answers on Paying Taxes by Electronic Funds Transfer," TIR No. 99-1, "Filing of Tax Returns Required by Taxpayers Who Pay Taxes by Electronic Funds Transfer (EFT)," and TIR No. 2004-01, "Act 113, Session Laws of Hawaii 2004, Relating to Income Tax Withholding."

32. What forms do I file to report the taxes withheld?

The quarterly filed Form HW-14 is now used to report the wages paid and the tax withheld for the quarter, and, if applicable, to remit your payment of the tax withheld. (Note: If you are just remitting a payment, remit your payment with a voucher, Form VP-1. There is no need to also send in a Form HW-14 with the payment.)

Form HW-3, the annual tax return and reconciliation, is a summary return of all your withholding tax activity for the year.

33. Must I file a periodic tax return if I had no employees or withheld no taxes during a quarterly period?

A periodic tax return must be filed even if you do not have any employees during a quarterly period or do not have any tax withheld to report for a quarterly period. In either case, enter "0.00" on the line for "total taxes withheld" and on the line for "amount of payment."

34. When are my periodic tax returns due?

Periodic tax returns are due on the 15th day of the month following the close of the quarterly period. For example, the tax return for the quarter of January through March must be filed by April 15.

A return is considered timely filed if it is dropped off at the Department or postmarked by the due date of the return.

A two-month extension of time to file periodic withholding tax returns and to make payment of the tax withheld may be granted by the Department for good reason. The extension may be requested by submitting a letter stating the reasons for the request at least 10 days before the due date of the return or payment. The letter also must include the taxpayer's name, Hawaii Withholding Tax ID Number, and your signature or that of an authorized individual. You will be notified by letter of the Department's decision to permit or reject your request.

35. What is the annual tax return?

Form HW-3, annual withholding tax return, has three main functions.

First, it is a summary of your withholding tax activity for the entire year. There will be no additional tax due if the tax withheld was accurately reported on the periodic tax returns and paid in full.

Second, the annual tax return may also be used to make corrections to the total wages, tax withheld, and tax paid which were previously reported. For example, if you mistakenly reported the wages paid and the tax withheld for one of your employees twice, you may adjust the total wages paid and the amount of tax withheld on the annual return. Doing so will lower the tax due for the year and result in a refund.

Third, the annual tax return is used to transmit Copy A of the Form HW-2, Statement of Hawaii Income Tax Withheld and Wages Paid, for each employee. Copy 1 of federal Form W-2 may be substituted for Copy A of Form HW-2.

36. Can I skip the periodic tax returns and just file the annual tax return?

No. You must file both the periodic and annual tax returns.

37. When is the annual tax return due?

The annual tax return must be filed by the last day of February following the close of the calendar year. However, if your business terminates or permanently stops paying wages, then the annual return is due at the same time you file the final periodic return (Form HW-14).

Reminder: Do not attach your annual withholding tax return to your income tax or GET forms.

38. Can I get an extension of time to file my annual withholding tax return if I cannot file it on time?

A two-month extension of time to file the annual withholding tax return and the accompanying Forms HW-2 (or Federal Forms W-2) may be granted by the Department for good reason. The extension may be requested by submitting Form HW-26, Application for Extension of Time to File the Employer's Return and Reconciliation of Hawaii Income Tax Withheld from Wages, by the due date of the annual return. You will be notified by letter of the Department's decision to permit or reject your request. A copy of the approval letter must be attached to the Form HW-3.

Note: This extension does **not** provide you with additional time to transmit copies of the Form HW-2 to your employees. You must still give your employees copies of their Form HW-2 (or federal Form W-2) by January 31. (See question 39.)

39. Do I have to give my employees a copy of the Form HW-2? If so, by what date?

Employees must be given two copies (Copies B and C) of Form HW-2 by January 31. One copy is for the employees' records and the other is for filing with their Hawaii individual income tax returns. Copies C and 2 of federal Form W-2 may be substituted for Copies B and C of Hawaii Form HW-2.

Note: Be sure that the information on the Form HW-2 for a nonresident employee whose exemption from the withholding tax was denied (see question 14) includes all wages paid during the year and not just the wages from which tax was withheld.

40. My employee lost the copy of Form HW-2 that I had issued earlier and has asked for another copy. Do I have to furnish the copy?

If an HW-2 form is lost or destroyed, an employer **must** furnish a substitute copy to an employee. The reissued form should be clearly marked, "Reissued by Employer."

41. If one of my employees quits in the middle of the year, may I wait until January 31 of the following calendar year to give the employee the HW-2 form or do I have to give the form sooner?

You may wait until January 31 of the following calendar year.

If the employee is not expected to return to work within the current year, you must give the employee the HW-2 (or federal W-2) statement within 30 days of the date you receive a written request for those statements from the employee.

42. Where do I file my tax returns?

Your completed periodic and annual tax returns must be signed, dated, and submitted with any payments to:

Hawaii Department of Taxation
P.O. Box 3827
Honolulu, HI 96812-3827

You may also file your tax return and pay the tax using Hawaii Tax Online, which you may access at **hitax.hawaii.gov**. You must register and create a new Hawaii Tax Online account before using the service for the first time, but there is no fee for paying through this site.

43. What happens if I do not pay my withholding tax on time?

Penalties and interest are assessed on tax not paid by the payment due date. Any payment you make will be applied first to recover any collection costs incurred by the Department, then to any interest owed, then penalty, and finally, the tax.

If the tax return is filed after the due date, a penalty is assessed at the rate of 5% per month, or part of a month, up to a maximum rate of 25%.

If the tax return is filed on time but no payment or insufficient payment is received, a penalty of 20% of the unpaid balance will be assessed if it is not paid within 60 days of the due date of the tax return.

Interest is assessed at the rate of 2/3 of 1% per month on the entire unpaid tax and penalty.

If a taxpayer who is required to make payments by EFT fails to timely pay by EFT, a penalty of 2% of the tax due will be assessed.

44. What will happen if I do not file any withholding tax returns or pay over any tax withheld?

Employers who willfully fail to file withholding tax returns or supply required information are guilty of a misdemeanor punishable by a fine of up to \$25,000 and/or imprisonment of up to one year. If the employer is a corporation, the corporation may be fined up to \$100,000.

Employers required to collect, account for, and pay over any withholding tax, who willfully fail to collect or account for the tax or its payment shall be guilty of a class C felony punishable by a fine of not more than \$100,000, imprisonment for not more than five years, probation, or any combination; provided that a corporation shall not be fined more than \$500,000.

45. What other forms might I use?

Form GEW-TA-RV-1, Notification of Cancellation of Tax Licenses and Tax Permits - File this form if you no longer need an employer's withholding tax license. If you do not cancel your withholding tax license and simply stop filing your tax returns, the Department will not automatically cancel your account.

Form BB-1 - File this form again to make changes to your registration information other than address changes. Examples include: adding, deleting, or changing the partners or corporate officers.

Form ITPS-COA, Change of Address Form - File this form to change your address.

46. What should I do if I made a mistake on my tax return?

If you file your periodic tax return (Form HW-14) and later become aware that there was an error, you may file an amended return on Form HW-14 to change the Form HW-14 you already filed. Make sure to check off the "Amended Return" box on the Form HW-14. An amended periodic tax return may be used only if the annual tax return for that calendar year has not yet been filed.

If correcting the error results in a tax credit, the credit will be refunded to you. Any additional tax due should be paid with a check attached to your amended periodic tax return.

If you file your annual return (Form HW-3) and later become aware that there was an error, you may file an amended return on Form HW-3 to change the Form HW-3 you already filed. Make sure to check off the "Amended

Return” box on the Form HW-3. Any credit timely claimed will be refunded to you; you may not carry the credit forward to a subsequent calendar year. Any additional tax due should be paid with a check attached to your amended annual tax return.

47. What should I do if an error was made on the Form HW-2 submitted?

Complete a new Form HW-2 making sure you place an “x” in the box to the left of the word “Corrected.” Federal Form W-2C may be substituted for the corrected Form HW-2.

Copies B and C of Form HW-2 (or Copies C and 2 of federal Form W-2C) are given to the employee. Copy A of Form HW-2 (or Copy 1 of federal Form W-2C) is submitted with an amended annual tax return (Form HW-3). The amended Form HW-3 must be completed and submitted with the corrected Form HW-2 or federal Form W-2C even if there is no change to the original annual return filed.

Where to Get More Information

48. Where can I get additional information about the withholding tax?

Additional information is available on our website at tax.hawaii.gov.

Detailed information regarding the withholding tax is found in the Department’s publication entitled, Booklet A - Employer’s Tax Guide.

Finally, you may call or email any district tax office for information and forms. Our contact information is provided to you at the end of this brochure.

**For More Information, Forms,
Publications, & Assistance**

Website: tax.hawaii.gov

OAHU DISTRICT OFFICE

Princess Ruth Keelikolani Building P.O. Box 259
830 Punchbowl Street Honolulu, HI 96809-0259
Honolulu, HI 96813-5094

Taxpayer Services Branch

Telephone: 808-587-4242
Toll-Free: 1-800-222-3229

Telephone for the hearing impaired
Telephone: 808-587-1418
Toll-Free: 1-800-887-8974

Fax: 808-587-1488

Email:

Taxpayer.Services@hawaii.gov

Compliance Division

Telephone: 808-587-1611

Office Audit Branch

Telephone: 808-587-1644

Fax: 808-587-1633

Collections Branch

Telephone: 808-587-1600

Fax: 808-587-1720

MAUI DISTRICT OFFICE

State Office Building
54 S. High Street, #208
Wailuku, HI 96793-2198

Telephone: 808-984-8500

Fax: 808-984-8522

Email: Tax.Maui.Office@hawaii.gov

Molokai
35 Ala Malama Street, Room 101
Kaunakakai, HI 96748

Telephone: 808-553-5541

Fax: 808-553-9878

HAWAII DISTRICT OFFICE

State Office Building
75 Aupuni Street, #101
Hilo, HI 96720-4245

Telephone: 808-974-6321

Fax: 808-974-6300

Email: Tax.Hilo.Office@hawaii.gov

State Office Building
82-6130 Mamalahoa Hwy., #8
Captain Cook, HI 96704

Telephone: 808-323-4597

Fax: 808-323-4599

KAUAI DISTRICT OFFICE

State Office Building
3060 Eiwa Street, #105
Lihue, HI 96766-1889

Email: Tax.Kauai.Office@hawaii.gov

Telephone: 808-274-3456

Fax: 808-274-3461

Regular office hours are from 7:45 A.M. to 4:30 P.M. Monday through Friday, except state holidays.