

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 January 10, 2018.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON July 10, 2019.

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

Amendments to Chapter 18-235,
Hawaii Administrative Rules

1. Section 18-235-98, Hawaii Administrative Rules, is amended to read as follows:

"§18-235-98 Returns; form, verification and authentication, time of filing. (a) [~~Extensions of time for filing income tax returns; in general.~~] The director of taxation may grant a reasonable extension of time for filing any return, declaration, statement, or other document required under chapter 235, HRS[~~7~~] ; provided that no extension shall be for more than six months, except as otherwise provided by statute for cases in which exceptional circumstances require additional time, including cases of persons who are outside the United States.

(b) An extension only applies to the requesting taxpayer. Unless otherwise stated in the statutes, these rules, or the extension itself, an extension to file a return only applies to the taxpayer who submitted the application. For example, an extension of time for filing a partnership, estate, trust, or real estate mortgage investment conduit return or other document does not operate to extend the time for filing a return or other document for, as the case may be, any partner, or member of an entity classified as a partnership, any beneficiary of the estate or trust, or a residual or regular interest holder of a real estate mortgage investment conduit.

(c) Automatic extension of time for filing individual income tax return. Any individual taxpayer required to file an income tax return, declaration, statement, or other document under chapter 235, HRS, is granted an automatic six-month extension to file the tax return after the date prescribed for filing. The taxpayer need not file an application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department. ~~[No signature is required on the application.]~~ Automatic extensions for individual taxpayers shall be granted subject to the following conditions:

- (1) On or before the due date prescribed by the statute for the filing of a return, there shall have been paid, through estimated tax payments or a payment accompanying an application for the extension, an amount equal to the properly estimated tax liability for the taxable year;
- (2) The tax return shall be filed within the time granted by the automatic extension and shall be accompanied by payment of tax shown as due on the return to the extent not already paid; and
- (3) ~~[The taxpayer is not bound by a court order]~~ A court has not ordered the taxpayer to file the tax return, declaration, statement, or

other document to be extended on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no automatic extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

(d) Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits. A partnership or entity classified as a partnership, estate, trust, or real estate mortgage investment conduit ~~[may obtain]~~ is granted an automatic six-month extension[-] to file the tax return after the date prescribed for filing. ~~[An application for an automatic extension on the form prescribed by the department must be filed on or before the date prescribed for the filing of the return. No signature is required on the application.]~~ The taxpayer need not file an application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department. Automatic extensions for partnerships, estates, trusts, or real estate mortgage investment conduits shall be granted subject to the following conditions:

- (1) On or before the due date prescribed by the statute for the filing of a return, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year~~[-. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application];~~

- (2) The tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax shown as due on the return to the extent not already paid; and
- (3) ~~[The taxpayer is not bound by a court order]~~
A court has not ordered the taxpayer to file a tax return, declaration, statement, or other document to be extended on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b)(1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b)(1), HRS, and interest under section 231-39(b)(4), HRS, shall relate back to the due date prescribed by the statute).

(e) Automatic extension of time for filing corporate income tax returns or corporate income tax returns for entities classified as a corporation.

~~[(1) In general.]~~ A corporation or entity classified as a corporation shall be ~~[allowed]~~ granted an automatic six-month extension of time to file its income tax return, declaration, statement, or other document. ~~[An application for an automatic extension on the form prescribed by the department must be filed on or before the date prescribed for the filing of the return. No signature is required on the application.]~~ The taxpayer need not file an application form to request an extension. However, if the taxpayer makes a payment of tax, the payment shall be submitted with the form prescribed by the department.

Automatic extensions for corporations shall be granted subject to the following conditions:

~~[(A)]~~ (1) On or before the due date of the return prescribed by the statute, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year~~[-~~. ~~If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application];~~

~~[(B)]~~ (2) The income tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax shown as due on the return to the extent not already paid; and

~~[(C) The taxpayer is not bound by a court order]~~ (3) A court has not ordered the taxpayer to file a tax return, declaration, statement, or other document to be extended on or before the prescribed due date.

The failure to file a tax return penalty under section 231-39(b) (1), HRS, shall not be imposed on any return filed on or before the extended due date if these conditions are met. However, if the stated conditions are not met, the automatic extension shall be deemed invalid and penalties and interest shall be assessed on the amount of tax owed as if no extension had been granted (i.e., the computation of penalties under section 231-39(b) (1), HRS, and interest under section 231-39(b) (4), HRS, shall relate back to the due date prescribed by the statute).

~~[(2) Consolidated returns. If a consolidated return is to be filed under section 235-92(2), HRS, a parent corporation or parent entity classified as a corporation may request an automatic extension for its~~

~~subsidiaries. In this case, the name, address, and employer identification number of each member of the affiliated group, for which the extension is desired, must be listed. The filing of an application for extension of time by a parent corporation or parent entity classified as a corporation is not considered an exercise of the privilege of filing a consolidated return. If the privilege of filing a consolidated return is not exercised, the parent corporation or parent entity classified as a corporation and members of the affiliated group shall attach a copy of the application for extension to their completed separate income tax returns.]~~

(f) Termination. The director of taxation may terminate the automatic extension at any time by mailing a notice of termination to the taxpayer. [~~In the case of a corporation or entity classified as a corporation, notice of termination shall be mailed to the corporation or entity classified as a corporation, or to the person who requested the extension for the corporation.~~] The notice shall be mailed at least ten days prior to the termination date designated in the notice.

(g) Properly estimated tax liability; safe harbor. For purposes of this section, "properly estimated tax liability" means the taxpayer made a bona fide and reasonable attempt at the time the extension was submitted to locate and gather all of the necessary information to make a proper estimate of tax liability for the taxable year. Payment of properly estimated tax liability will be presumed if the tax still owing after the due date prescribed by the statute for the filing of a return (determined without regard to any extension) is [~~10 percent~~] ten per cent or less of the total tax shown as due on the return.

(h) Time for payment of tax not extended by extensions. Any extension to file an income tax return under section 235-98, HRS, shall not extend the

time for payment of any tax due on the return, but shall only extend the time to file the return. Interest under section 231-39(b)(4), HRS, shall be assessed on any amount of tax that is not paid on or before the prescribed due date." [Eff 2/16/82; am 6/28/93; 1/1/94; 10/13/94; 1/5/98; am 6/4/05; am 10/06/07; am 1/10/2018] (Auth: HRS §§231-3(9), 231-39, 235-98, 235-118) (Imp: HRS §§231-39 and 235-98)

2. Material to be repealed is bracketed and stricken. New material is underscored.

3. These amendments to chapter 18-235, Hawaii 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, and are effective for eighteen months.

4. The foregoing copy of the rules, drafted in the Ramseyer format, is provided for reference only.