

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,
Hawaii Administrative Rules

March 29, 2018

SUMMARY

1. §§18-237-8.6-01 to 18-237-8.6-03 are amended.
2. §18-237-8.6-04 is repealed.
3. §§18-237-8.6-05 to 18-237-8.6-06 are amended.
4. §18-237-8.6-07 is repealed.
5. §§18-237-8.6-08 to 18-237-8.6-10 are amended.

§18-237-8.6-01 Definitions. As used in sections 18-237-8.6-01 to 18-237-8.6-10, unless the context otherwise requires:

"Control" means to exercise restraining or directing influence over.

"Hawaii district" means the taxation district for the county of Hawaii.

"Intangible property" means, but is not limited to, franchises, patent, copyright, formula, process, design, pattern, know how, format, or other similar items.

"Kauai district" means the taxation district for the county of Kauai.

"Maui district" means the taxation district for the counties of Maui and Kalawao, which includes the islands of Maui, Molokai, and Lanai.

"Oahu district" means the taxation district for the city and county of Honolulu.

"Tangible personal property" is generally property that may be touched or felt.

"Taxation district" means the Kauai district, Hawaii district, Maui district, or Oahu district, as those districts are defined in this section. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

18-237-8.6-02 Allocation of gross income and gross proceeds from sales of tangible personal property. Except as provided in this section, the gross income and gross proceeds of sale derived from a taxpayer's sale of tangible personal property shall be allocated to the taxation district where the property is delivered, regardless of where the title to the property passes.

Example 1:

Taxpayer, a retailer located in the Oahu district, receives an order for products from Purchaser. Taxpayer accepts the order and delivers the products to the

Maui district. Taxpayer shall allocate the gross income from the sale to the Maui district, where the products were delivered.

Example 2:

Taxpayer, a retailer located in the Maui district, sells products to Purchaser located in the Oahu district. Pursuant to Purchaser's instructions, Taxpayer directs Taxpayer's product manufacturer, who is located in the Kauai district, to deliver the products to Purchaser's office in the Maui district. Taxpayer shall allocate the gross income from the sale to the Maui district, where the products were delivered.

Example 3:

Retailer, located out of state, sells and delivers products to Purchaser in the Oahu district. Retailer shall allocate the gross income from the sale to the Oahu district, where the products were delivered.
[Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-03 Allocation of gross income from contracting and services. (a) Gross income from contracting or services performed by a taxpayer engaged in a service business or calling shall be allocated to the taxation district where the services are used or consumed, as provided in sections 18-237-29.53-03 to 18-237-29.53-13.

(b) If services are used or consumed in more than one taxation district, gross income shall be allocated using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received by each

taxation district. [Eff 12/7/06; am 3/17/2018]
(Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-04 Repealed. [R 3/17/2018]

§18-237-8.6-05 Allocation of gross income from the rental, lease, or license of tangible and intangible personal property. (a) Except as provided in this section, gross income from the rental, lease, or license of tangible and intangible personal property shall be allocated to the taxation district where the property is used.

Example 1:

Taxpayer is engaged in the business of renting motor vehicles in each of the four taxation districts. Taxpayer rents a vehicle to a customer in the Maui district. Taxpayer shall allocate the gross income received from the rental to the Maui district, where the vehicle is used.

Example 2:

Taxpayer, located in the Oahu district, is engaged in the business of renting equipment. Taxpayer rents equipment to XYZ, located in the Maui district, for a job in the Kauai district. Taxpayer shall allocate the gross income from this rental to the Kauai district, where the property is used.

Example 3:

Taxpayer, located in the Oahu district, wrote and copyrighted a song. A musician pays Taxpayer a royalty to perform that song for profit in a hotel in the Maui district. Taxpayer shall allocate the gross income

from the license of the copyright to the Maui district where the property is used.

(b) Where a taxpayer rents or leases tangible personal property or licenses or receives a royalty from intangible personal property that is used in more than one taxation district, gross income shall be allocated using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received by each taxation district. This rule also applies to property that is constantly in transit between taxation districts, such as barges, containers, and aircrafts without home ports or bases.

Example 1:

Taxpayer rents equipment to XYZ to be used in the Maui district and the Oahu district. The equipment will be used in the Maui district for six months and in the Oahu district for six months. Taxpayer shall allocate fifty per cent of the gross income from the rental of the equipment to the Maui district and fifty per cent to the Oahu district. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-06 Allocation of gross income from the rental or lease of real property. Gross income from a taxpayer's rental or lease of real property in the State shall be allocated to the taxation district where the real property is located.

Example 1:

Taxpayer rents condominium units located in each of the four taxation districts. Taxpayer shall allocate the

gross income from the rental of each unit to the taxation district where the condominium unit is located. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-07 Repealed. [R 3/17/2018]

§18-237-8.6-08 Allocation of gross income from interest. (a) The gross income from a taxpayer's investment interest shall be allocated to the taxation district where the investment is controlled. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and is supported by verifiable data that reasonably reflects the benefit received by the taxation district.

Example 1:

Taxpayer has retail locations in all taxation districts and has corporate offices located in the Oahu district. Taxpayer has a central cash management account controlled by the corporate office located in the Oahu district that places the gross receipts from all retail locations into one interest bearing bank account. Taxpayer shall allocate the interest received from this bank account to the Oahu district because the account is controlled by the corporate office located in the Oahu district.

Example 2:

Assume the same facts as in example 1, except that a separate bank account is created for the Maui district retail locations. The money deposited into that bank account is used for improvements to the

Maui district stores and controlled by the Maui district retail locations. Interest on this bank account shall be allocated to the Maui district.

(b) When interest is earned from the sale of tangible personal property on a deferred or installment payment plan, the interest shall be allocated to the taxation district where the tangible personal property is delivered. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district.

Example 1:

Taxpayer, located in the Hawaii district, sells equipment to Purchaser, located in the Kauai district, on an installment payment plan. Taxpayer delivers the equipment to Purchaser in the Kauai district. Every month for twelve months, Taxpayer receives a payment from Purchaser, which includes principal and interest. Taxpayer shall allocate the interest received from each payment to the Kauai district.

(c) When interest is earned from the sale of real property on a deferred payment plan, the gross income from the interest shall be allocated to the taxation district where the real property is located.

Example 1:

Taxpayer sells real estate located in the Oahu district pursuant to an agreement of sale, which provides for deferred payments of the sales price and an interest charge. Taxpayer shall allocate the

interest received to the Oahu district because the real estate that is the subject of the agreement of sale is located in the Oahu district. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-09 Allocation of gross income of theaters, amusements, etc. The gross income from the business of operating a theater, opera house, moving picture show, vaudeville, amusement park, dance hall, skating rink, or any other place where amusements are offered to the public shall be allocated to the taxation district where the event takes place. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

§18-237-8.6-10 All others. If sections 18-237-8.6-02 to 18-237-8.6-09 do not apply, gross income shall be allocated to a taxation district based upon the rules for allocating gross income which are the most relevant to the taxpayer's particular business activity. Alternatively, the taxpayer may allocate the gross income by using any reasonable method; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably reflects the benefit received by the taxation district. [Eff 12/7/06; am 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-8.6)

DEPARTMENT OF TAXATION

Chapter 18-237, Hawaii Administrative Rules, on the Summary Page dated March 29, 2018, was adopted on December 21, 2018, following public hearings held on October 17 and December 11, 2017 after public notice was given in the Honolulu Star Advertiser, the Garden Isle, the Maui News, West Hawaii Today, and the Hawaii Tribune-Herald on September 7, 2017 and November 6, 2017, respectively.

These amendments to chapter 18-237 shall take effect ten days after filing with the Office of the Lieutenant Governor.

/s/Linda Chu Takayama/s/
LINDA CHU TAKAYAMA
Director of Taxation

APPROVED:

/s/David Y. Ige/s/
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Dated: 03-07-2018

APPROVED AS TO FORM:

/s/Gary Sukanuma/s/
Deputy Attorney General