

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237,
Hawaii Administrative Rules

March 29, 2018

1. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-01 Definitions. As used in sections 18-237-29.53-01 to 18-237-29.53-13:

"Collection actions" means all actions taken to enforce a money judgment or collect a debt.

"Commissioned agent" means an agent that:

(1) sells, buys, leases, or procures property;

(2) sells, buys, or procures services; or

(3) sells, books, or arranges transient

accommodations or travel-related bookings

on behalf of a principal, with the principal's assent, for a predetermined fee. When a commissioned agent enters into a sales transaction with a third party on behalf of a principal, the total price of the sale is controlled by the principal; the total price cannot be unilaterally determined by the agent.

"Customer" means the person personally receiving the service.

"Noncommissioned negotiated contract rates" means the rates specified in a negotiated contract between a travel agent or tour packager and operator of a transient accommodation or operator of a travel-related booking that the operator of a transient accommodation or operator of a travel-related booking will receive for a transaction booked by the travel agent or tour packager. When transient accommodations are furnished or travel-related bookings are made through arrangements made by a travel agent or tour packager at noncommissioned negotiated contract rates, the travel agent or tour packager may unilaterally determine the mark-up of the noncommissioned negotiated contract rate and the total price charged

to the customer; the operator of the transient accommodation or the operator of the travel-related booking has no control over the mark-up or the total price.

"Transient accommodation" means the same as the term is defined in section 237D-1, HRS.

"Travel-related booking" includes tours, excursions, transportation, rental vehicles, shows, dining, spa services, and any other reservation or booking made by a travel agent or tour packager.

Example 1:

World Travel Inc. enters into a contract with Gold Hotel whereby World Travel Inc. may sell the right to occupy rooms in Gold Hotel at \$100 per room per night. The contract further provides that World Travel Inc. will receive a fee of ten per cent for each sale. World Travel Inc. is a commissioned agent of Gold Hotel.

Example 2:

Assume the same facts as in Example 1, except that the contract between World Travel Inc. and Gold Hotel provides that World Travel Inc. will receive a fee of eight per cent if total sales for the month are less than \$10,000 or ten per cent if total sales for the month are \$10,000 or more. World Travel Inc. is a commissioned agent of Gold Hotel.

Example 3:

Island Planner Co. enters into a contract with Silver Hotel whereby Island Planner Co. may sell the right to occupy rooms in Silver Hotel. For each booking made by Island Planner Co., Silver Hotel will receive \$100 per room per night.

Island Planner Co. may unilaterally determine the mark-up and set the total price charged to the customer. Island Planner Co. is arranging transient accommodations at noncommissioned negotiated contract rates.

Example 4:

Assume the same facts as in Example 3, except that, for each booking made by Island Planner Co., Silver Hotel will receive ninety per cent of the net rate, the best available rate offered by Silver Hotel to the public at the time of the transaction. Island Planner Co. may unilaterally determine the mark-up of the net rate and set the total price charged to the customer. Island Planner Co. is arranging transient accommodations at noncommissioned negotiated contract rates.

Example 5:

Hawaii's Best Inc., a travel agent, enters into a contract with Oceanside Spa to sell massage and facial treatments. For each massage or facial sold by Hawaii's Best Inc., Oceanside Spa will receive \$80. Hawaii's Best Inc. may unilaterally determine the mark-up and set the total price charged to the customer. Hawaii's Best Inc. is making travel-related bookings at noncommissioned negotiated contract rates." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

2. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-02 Exemption for contracting and services exported out of state, in general. (a)

Absent bad faith, all of the value or gross income derived from contracting or services performed by a person engaged in a service business or calling are exempt from general excise tax if the contracting or services are used or consumed outside of the State; provided that services performed for a purchaser who resells the services are exempt from general excise tax only if the purchaser resells all of the services for use or consumption outside the State.

(b) If contracting or services are used or consumed both in and outside of the State, all of the value or gross income will be subject to general excise tax in proportion to the benefit received in the State. Any reasonable method of apportioning all of the value or gross income may be used; provided that the method is consistently used by the taxpayer and supported by verifiable data that reasonably quantifies the proportionate benefit received in the State." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

3. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-03 Contracting. Contracting is used or consumed where the real property to which the contracting activity pertains is located.

Example 1:

General LLC, a general contractor based in Hawaii, is hired by Developer LLC, a Hawaii developer, for a construction project located in Guam. Employees of General LLC and Developer LLC meet in Hawaii on a weekly basis throughout the duration of the construction project to discuss plans, progress, and other matters related to the project. All of the value or gross income

that General LLC receives for the construction project is exempt under section 237-29.53, HRS, because the contracting is used or consumed in Guam, where the real property is located.

Example 2:

Second Hawaiian Bank, a bank with its headquarters in Hawaii, hires General LLC, a general contractor based in Hawaii, to build two new branches, one in Guam and one in Hawaii. All of the value or gross income that General LLC receives for the Guam branch is exempt under section 237-29.53, HRS, because the contracting is used or consumed in Guam, where the real property is located. All of the value or gross income that General LLC receives for the Hawaii branch is not exempt under section 237-29.53, HRS, because the contracting is used or consumed in Hawaii, where the real property is located." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

4. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-04 Services related to real property. Services related to real property are used or consumed where the real property is located. Services related to real property include, but are not limited to, property management, real estate sales, real estate inspections, and real estate appraisals.

Example 1:

RPM Co., a Hawaii real property management company, is hired by RE Investor Inc., a Hawaii corporation, to manage a

California property. All of the value or gross income that RPM Co. receives from RE Investor Inc. to manage the California property is exempt under section 237-29.53, HRS, because the property management services are used or consumed in California, where the real property is located.

Example 2:

CPM LLC, a California real property management company, is hired by Irene Investor, a California resident who owns real property in Hawaii, to manage her property. All of the value or gross income that CPM LLC receives to manage the Hawaii property is not exempt under section 237-29.53, HRS, because the property management services are used or consumed in Hawaii, where the real property is located.

Example 3:

The Hawaii office of Legal Services LLP, a law firm with offices throughout the United States, is hired by Lisa Landlord, a Hawaii resident, to draft lease agreements for her rental properties in Hawaii, Arizona, and Nevada. Legal Services LLP charges Lisa Landlord \$200 each for the Hawaii lease, Arizona lease, and Nevada lease, for a total fee of \$600. Legal Services LLP shall report \$600 in gross income on its general excise tax return and may claim two-thirds, or \$400, as exempt under section 237-29.53, HRS, because two-thirds of the services relate to real property located outside Hawaii and are therefore used or consumed outside Hawaii."
[Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

5. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-05 Services related to tangible personal property. Services related to tangible personal property are used or consumed where the tangible personal property is delivered after the services are performed. Services related to tangible personal property include, but are not limited to, inspection, appraisal, testing, and repair of tangible personal property. Services related to tangible personal property do not include services performed by commissioned agents.

Example 1:

Tom Tourist, a resident of Montana vacationing in Hawaii, takes his broken mobile phone to Fixer LLC, an electronic repair shop in Hawaii. After Fixer LLC repairs the mobile phone, Tom Tourist picks it up from Fixer LLC's shop in Hawaii. All of the value or gross income that Fixer LLC receives is not exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Hawaii, where the property was delivered after the service was performed.

Example 2:

Assume the same facts as in Example 1, except that Fixer LLC, upon Tom Tourist's request, ships the mobile phone to Tom Tourist's home in Montana after completing the repair. All of the value or gross income that Fixer LLC receives is exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Montana, where the property was delivered after the service was performed.

Example 3:

Assume the same facts as in Example 1, except that Fixer LLC is unable to repair Tom Tourist's mobile phone at its shop in Hawaii. Fixer LLC sends the phone to its warehouse in Arizona, where the repair is completed. The mobile phone is shipped back to Fixer LLC's shop in Hawaii, where Tom Tourist picks it up. All of the value or gross income that Fixer LLC receives is not exempt under section 237-29.53, HRS, because Fixer LLC's service is used or consumed in Hawaii, where the property was delivered after the service was performed.

Example 4:

Derrick Driver, a resident of Hawaii, calls Aloha Auto Finder, LLC, a car broker located in Hawaii, and hires it to find and negotiate a purchase price for a green classic car. Derrick Driver provides Aloha Auto Finder, LLC with a list of specifications that the car must have and the total amount he is willing to pay for the car. Derrick Driver and Aloha Auto Finder, LLC agree that Aloha Auto Finder, LLC will be paid a flat fee of \$500. Aloha Auto Finder, LLC finds a green classic car in Michigan and negotiates a purchase price on behalf of Derrick Driver. Derrick Driver purchases the car and instructs the seller to ship the car from Michigan to Derrick Driver's second home in Rhode Island. Section 237-29.53-05 does not apply because Aloha Auto Finder, LLC is a commissioned agent. Instead, section 237-29.53-10 applies. Under that rule, all of the value or gross income that Aloha Auto Finder, LLC receives is not exempt under section 237-29.53, HRS, because Aloha Auto Finder, LLC's

services are used or consumed in Hawaii, where Aloha Auto Finder, LLC is located."
[Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

6. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-06 Services provided by a travel agency or tour packager at noncommissioned negotiated contract rates. (a) When transient accommodations are furnished through arrangements made by a travel agency or tour packager at noncommissioned negotiated contract rates, the travel agency's or tour packager's service is used or consumed where the transient accommodation is located.

(b) When travel-related bookings other than transient accommodations are made or sold by a travel agency or tour packager at noncommissioned negotiated contract rates, the travel agency's or tour packager's service is used or consumed where the travel-related booking is located.

Example 1:

Travel Services Corporation ("TSC") sells a five-night stay at Luau Loft, a hotel in Hawaii, to Tammy Traveler, a resident of New Jersey. TSC arranges the transient accommodation at noncommissioned negotiated contract rates. The contract between TSC and Luau Loft provides that Luau Loft will receive ninety per cent of the net rate, the best available rate offered by Luau Loft to the public at the time of the transaction, and that TSC may unilaterally determine the mark-up of the net rate and set the total price charged to the customer. TSC charges Tammy Traveler \$600 for the booking. The net rate at the time of TSC's sale to Tammy Traveler is \$100 per night, or

\$500 for five nights. TSC unilaterally sets the mark-up for the booking and the final price of \$600. All of the value or gross income that TSC receives is not exempt under section 237-29.53, HRS. TSC's service is used or consumed in Hawaii, where the transient accommodation is located, because the transient accommodation was furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates.

Example 2:

Assume the same facts as in Example 1, except that TSC books a five-day rental of a vehicle in Hawaii for Tammy Traveler. TSC arranges the travel-related booking at noncommissioned negotiated contract rates. The contract between TSC and the rental vehicle company provides that the rental vehicle company will receive \$50 per day for each vehicle rented and that TSC may unilaterally determine the mark-up and set the total price charged to the customer. TSC charges Tammy Traveler \$300 for the booking. All of the value or gross income that TSC receives is not exempt under section 237-29.53, HRS. TSC's service is used or consumed in Hawaii, where the travel-related booking is located. The travel-related booking was made by a travel agency at noncommissioned negotiated contract rates.

Example 3:

Alex Adventurer, a resident of Hawaii, visits the office of Maui Travel Agency ("MTA"), a travel agency located in Hawaii, to plan a vacation to Alaska. MTA sells a seven-night stay at Glacier Hotel, a hotel

in Alaska, to Alex Adventurer. MTA arranges the transient accommodation at noncommissioned negotiated contract rates. The contract between MTA and Glacier Hotel provides that Glacier Hotel will receive \$100 per room per night and that MTA may independently determine the mark-up and set the total price charged to the customer. MTA charges Alex Adventurer \$1,000 for the booking, unilaterally determining to charge a mark-up of \$300. All of the value or gross income that MTA receives is exempt under section 237-29.53, HRS. MTA's service is used or consumed in Alaska, where the transient accommodation is located. The transient accommodation was furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates.

Example 4:

Assume the same facts as in Example 3, except that the contract between MTA and Glacier Hotel provides that MTA may book rooms at Glacier Hotel for \$125 per room per night and that, for each booking, MTA will receive ten per cent of the sale. MTA does not have the authority to mark up or unilaterally change the total price charged to the customer. Section 18-237-29.53-06 does not apply because transient accommodations are not being furnished through arrangements made by a travel agency at noncommissioned negotiated contract rates. Instead, MTA is a commissioned agent and section 18-237-29.53-10 applies. Under that rule, all of the value or gross income that MTA receives is not exempt because MTA is in Hawaii and the booking occurred in Hawaii." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

7. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-07 Legal services in an action or proceeding. Legal services provided to a party in a judicial action or proceeding, administrative proceeding, arbitration, mediation, or other method of dispute resolution are used or consumed where the case or matter is filed. For purposes of this section, "party" means a party in an action or proceeding, including but not limited to, a plaintiff, defendant, petitioner, respondent, appellant, appellee, or real party in interest.

Example 1:

Annie Attorney, an attorney based in Hawaii, is hired by Aaron Appellant, a Hawaii resident, to represent him in an appeal pending in the Court of Appeals in California. Annie Attorney drafts the briefs in her office in Hawaii and attends the hearing in California. All of the value or gross income that Annie Attorney receives from Aaron Appellant is exempt under section 237-29.53, HRS, because Annie Attorney's services are used or consumed in California, where the case was filed.

Example 2:

Annie Attorney, an attorney based in Hawaii, is hired by Daniel Defendant, an Oregon resident, to represent him in a lawsuit filed against him in Hawaii. All of the value or gross income that Annie Attorney receives from Daniel Defendant is not exempt under section 237-29.53, HRS, because Annie Attorney's services are used

or consumed in Hawaii, where the case was filed.

Example 3:

XYZ, a multistate business, hires Legal Services LLP, a law firm with offices throughout the United States, including California and Hawaii, to represent it in a lawsuit filed in the United States District Court in Hawaii. The California office of Legal Services LLP performed eighty hours of work on the case and the Hawaii office of Legal Services LLP performed twenty hours of work on the case. All of the value or gross income that Legal Services LLP receives for its work performed in the California and Hawaii offices is not exempt under section 237-29.53, HRS, because Legal Services LLP's services are used or consumed in Hawaii, where the case was filed.

Example 4:

Chris Client, a Hawaii resident, hires Legal Services LLP, a law firm with offices throughout the United States, to represent him in a personal injury case in California. Legal Services LLP drafts a complaint to be filed in California. Before the complaint is filed, however, Legal Services LLP settles the dispute. Because the complaint was not filed, section 18-237-29.53-07 does not apply. Instead, section 18-237-29.53-11 will apply." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

8. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-08 Debt collection services.

Debt collection services are used or consumed where the collection actions take place. This section does not apply to businesses that engage in collection actions to recover their own debts.

Example 1:

Irene Investor, a California resident, hires Repo LLC to enforce a civil judgment against David Debtor, a Hawaii resident. Repo LLC performs the work necessary to levy David Debtor's bank accounts and garnish David Debtor's wages in Hawaii. All of the value or gross income that Repo LLC receives is not exempt under section 237-29.53, HRS, because Repo LLC's services are used or consumed in Hawaii, where the collection actions took place.

Example 2:

Sam Spender, a California resident, has an outstanding debt owed to Credit Card Company. Cash Collectors Inc., a corporation located in Hawaii, purchases David Debtor's debt from Credit Card Company and takes actions to recover the debt from Sam Spender. Section 237-29.53, HRS, does not apply because Cash Collectors Inc., in attempting to recover its own debt, is not engaging in a service business or calling." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

9. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-09 Services requiring customer to be physically present. Except as provided in sections 18-237-29.53-03 to 18-237-29.53-08, services that require the customer to be physically present at the time the service is performed are used or consumed where the service is performed.

Example 1:

Fiona Facial, an esthetician in Hawaii, sells a spa package consisting of a facial and manicure to Carol Colorado, a Colorado resident. Carol Colorado purchases the spa package online as a gift for her mother for an upcoming vacation to Hawaii. Carol Colorado's mother travels to Hawaii, where she receives the facial and manicure from Fiona Facial. All of the value or gross income that Fiona Facial receives is not exempt under section 237-29.53, HRS, because Fiona Facial's services are used or consumed in Hawaii. Carol Colorado's mother, the customer, must be physically present in Hawaii at the time the service is performed.

Example 2:

ABC Company, an Arizona corporation, holds a corporate retreat in Hawaii. ABC Company hires Sue Speaker, a motivational speaker who resides in New Mexico, to fly to Hawaii and speak to ABC Company and its employees at the corporate retreat. All of the value or gross income that Sue Speaker receives from ABC Company is not exempt under section 237-29.53, HRS, because ABC Company must be physically present (through the presence of its employees) in Hawaii at the time the service is performed.

Example 3:

Assume the same facts as in Example 2 except that some employees of ABC Company are unable to attend the corporate retreat in Hawaii. Sue Speaker's presentation is live-streamed to ABC Company's office in Arizona for the employees in Arizona to view. All of the value or gross income that Sue Speaker receives from ABC Company is not exempt under section 237-29.53, HRS, because ABC Company must be physically present (through the presence of its employees) in Hawaii at the time the service is performed, notwithstanding the fact that some of its employees are not required to be physically present.

Example 4:

ABC Company, an Arizona corporation, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The live-stream is accessed solely from ABC Company's office in Arizona. Paul Presenter's service does not require ABC Company to be physically present where the service is performed. Accordingly, section 18-237-29.53-09 does not apply. Instead, section 18-237-29.53-11 will apply." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

10. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-10 Services performed by commissioned agents. (a) Except as provided in section 18-237-29.53-04, services performed by a

commissioned agent are used or consumed where the agent is located at the time the agent's services are performed; provided that:

- (1) when property is sold, purchased, leased, or procured online through a commissioned agent, the agent's service is used or consumed where the property is delivered;
- (2) when services are sold, purchased, or procured online through a commissioned agent, the agent's service is used or consumed where the transacted services are performed;
- (3) when transient accommodations or travel-related bookings are sold, purchased, or arranged online through a commissioned agent, the agent's service is used or consumed where the transient accommodation or travel-related booking is located.

(b) For purposes of this section, "online" means that the transaction occurs exclusively through a website or web application without any in-person contact.

Example 1:

Alex Adventurer, a resident of Hawaii, visits the office of Maui Travel Agency ("MTA"), a travel agency located in Hawaii, to plan a vacation to Alaska. MTA sells a seven-night stay at Glacier Hotel, a hotel in Alaska, to Alex Adventurer. The contract between MTA and Glacier Hotel provides that MTA may book rooms at Glacier Hotel for \$125 per room per night and that, for each booking, MTA will receive ten per cent of the sale. MTA does not have the authority to mark up or unilaterally change the total price charged to the customer. All of the value or gross income that MTA receives is not exempt under section 237-29.53, HRS, because MTA is a commissioned agent and its

services are used or consumed in Hawaii, where MTA is located.

Example 2:

Assume the same facts as in Example 1, except that Alex Adventurer books the stay at Glacier Hotel online through MTA's website and does not visit MTA's office. All of the value or gross income that MTA receives is exempt under section 237-29.53, HRS. MTA's service is used or consumed in Alaska, where the transient accommodation is located, because the transient accommodation was booked online through MTA, a commissioned agent.

Example 3:

Vacation Rentals Online ("VRO") operates a website that allows guests to book transient accommodations listed for rent by owners. Ryan Renter, a resident of Florida, uses VRO's website to book a two-night stay at Olivia Owner's unit in Hawaii for \$100 per night. The contract between VRO and Olivia Owner provides that for each booking of Olivia Owner's unit made through VRO's website, VRO will receive ten per cent of the rental price, which is determined solely by Olivia Owner. VRO also charges Ryan Renter a fee of five per cent of the rental price. All of the value or gross income that VRO receives is not exempt under section 237-29.53, HRS. VRO's service is used or consumed in Hawaii, where the transient accommodation is located, because the transient accommodation was booked online through VRO, a commissioned agent.

Example 4:

Errand Runner Inc. operates a website through which users can request or offer the performance of short-term services, such as picking up dry cleaning, dog walking, and grocery shopping. Carrie Consumer, a resident of Virginia, uses Errand Runner Inc. to hire Andy Assistant, a resident of Hawaii, to stand in line at the Hanauma Bay State Park in Hawaii, where the first one hundred persons to enter the park will receive a collectible item. The terms of service between Errand Runner Inc. and Andy Assistant provides that Errand Runner Inc. will receive ten per cent of the income Andy Assistant receives for services booked through Errand Runner Inc. The amount charged for Andy Assistant's services are determined solely by Andy Assistant. Errand Runner Inc. also charges Carrie Consumer a fee of ten dollars for using its website to book the service. All of the value or gross income that Errand Runner Inc. receives is not exempt under section 237-29.53, HRS. Errand Runner Inc.'s service is used or consumed in Hawaii, where Andy Assistant's service was performed, because Andy Assistant's service was booked online through Errand Runner Inc., a commissioned agent.

Example 5:

Derrick Driver, a resident of Hawaii, calls Aloha Auto Finder, LLC, a car broker located in Hawaii, and hires it to find and negotiate a purchase price for a green classic car. Derrick Driver provides Aloha Auto Finder, LLC with a list of specifications that the car must have and the total amount he is willing to pay for

the car. Derrick Driver and Aloha Auto Finder, LLC agree that Aloha Auto Finder, LLC will be paid a flat fee of \$500. Aloha Auto Finder, LLC finds a green classic car in Michigan and negotiates a purchase price on behalf of Derrick Driver. Derrick Driver purchases the car and instructs the seller to ship the car from Michigan to Derrick Driver's second home in Rhode Island. All of the value or gross income that Aloha Auto Finder, LLC receives is not exempt under section 237-29.53, HRS, because Aloha Auto Finder, LLC is a commissioned agent and its services are used or consumed in Hawaii, where Aloha Auto Finder, LLC is located."
[Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

11. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-11 Other services. (a) Except as provided in sections 18-237-29.53-03 to 18-237-29.53-10:

- (1) If the customer is a business and the service relates to the customer's business activities, the service is used or consumed where the related business activities occur;
- (2) If the customer is a business and the service is unrelated to the customer's business activities, the service is used or consumed where the customer's principal place of business is located;
- (3) If the customer is an individual, the service is used or consumed where the individual resides; or
- (4) If the customer is the military or federal, state, or local government, the service is used or consumed where the benefit of the service is received.

(b) For purposes of this section, "business activities" means the transactions and activities engaged in the regular course of trade or business for the ultimate purpose of obtaining gains or profits, or if the business is a tax-exempt organization, also includes the transactions and activities that further the exempt purpose of the organization.

Example 1:

Chris Client, a Hawaii resident, hires Legal Services LLP, a law firm with offices throughout the United States, including Hawaii, to represent him in a personal injury case in California. Legal Services LLP drafts a complaint to be filed in California. Before the complaint is filed, however, Legal Services LLP settles the dispute. All of the value or gross income that Legal Services LLP receives is not exempt under section 237-29.53, HRS, because Legal Services LLP's services are used or consumed in Hawaii, where Chris Client resides, pursuant to section 18-237-29.53-11(a)(3).

Example 2:

ABC Company, an Arizona corporation with its principal place of business in Arizona, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The motivational speech is a personal benefit that ABC Company provides to its employees and is not related to its business activities. The live-stream is accessed solely from ABC Company's office in Arizona. All of the value or gross income that Paul Presenter receives is exempt under section 237-29.53, HRS, because Paul Presenter's

service is used or consumed in Arizona, where ABC Company's principal place of business is located, pursuant to section 18-237-29.53-11(a) (2).

Example 3:

Annie Attorney, a Hawaii attorney, is hired by Wendy Wyoming, a Wyoming resident who owns stock and partnership interests in various enterprises, as well as Hawaii real property, to prepare her estate plan. All of the value or gross income that Annie Attorney receives to prepare Wendy Wyoming's estate plan is exempt under section 237-29.53, HRS, because Annie Attorney's services are used or consumed in Wyoming, where Wendy Wyoming resides, pursuant to section 18-237-29.53-11(a) (3).

Example 4:

XYZ, a multistate business, hires Legal Services LLP, a law firm with offices throughout the United States, including Hawaii, to represent it in a contract dispute relating to business activities in Hawaii. Legal Services LLP settles the case before a lawsuit is filed and charges XYZ \$30,000 in legal fees. Attorneys from Legal Services LLP's Hawaii office performed twenty per cent of the work and attorneys from Legal Services LLP's California office performed the remaining eighty per cent of work. All of the value or gross income that Legal Services LLP receives is not exempt under section 237-29.53, HRS, because the legal services are used or consumed in Hawaii, where the business activities relating to the legal services occurred, pursuant to section 18-237-29.53-11(a) (1).

Example 5:

Arnold Accountant, an accountant located in Hawaii, is hired by Mary Mover, a California resident, in 2017 to prepare her 2016 federal and state tax returns. Mary Mover must file state tax returns in California, where she resided for the first half of 2016, and Hawaii, where she currently resides. All of the value or gross income that Arnold Accountant receives from Mary Mover is not exempt under section 237-29.53, HRS, because Arnold Accountant's services are used or consumed in Hawaii, where Mary Mover resides, pursuant to section 18-237-29.53-11(a) (3).

Example 6:

XYZ, a multistate business, hires Accounting Services LLP, a Hawaii accounting firm, to perform accounting services related to XYZ's business activities in Hawaii. All of the value or gross income that Accounting Services LLP receives from XYZ is not exempt under section 237-29.53, HRS, because Accounting Services LLP's services are used or consumed in Hawaii, where XYZ's business activities related to the accounting services occur, pursuant to section 18-237-29.53-11(a) (1).

Example 7:

SP LLC, a software programmer located in Hawaii, is hired by MedServ, Inc., a medical service provider doing business in several states, including Hawaii, to create a customized and integrated patient file and billing program for use at all of its medical offices for a fee of \$70,000. MedServ, Inc. has two of its seven medical

offices in Hawaii. SP LLC's services are used or consumed where MedServ, Inc.'s business activities relating to SP LLC's services occurred, pursuant to section 18-237-29.53-11(a)(1). Because SP LLC's service is used or consumed both in and outside of the State, SP LLC shall apportion its income pursuant to section 18-237-29.53-02(b). In this case, it is reasonable for SP LLC to apportion two-sevenths of its gross income to Hawaii. SP LLC shall report \$70,000 in gross income on its general excise tax return and may claim \$50,000 as exempt under section 237-29.53, HRS.

Example 8:

Honolulu Hut, a Hawaii retailer, hires GD Company, a graphic design company in California, to design a company logo that will be used on Honolulu Hut's merchandise sold in Hawaii and in marketing materials distributed in Hawaii. GD Company contracts with Ashley Artist, a Hawaii resident, to create a digital image, which GD Company will incorporate into the logo it designs for Honolulu Hut. All of the value or gross income that GD Company receives from Honolulu Hut is not exempt under section 237-29.53, HRS, because GD Company's services are used or consumed in Hawaii, where Honolulu Hut's business activities related to the design services occur, pursuant to section 18-237-29.53-11(a)(1). All of the value or gross income that Ashley Artist receives is also not exempt under section 237-29.53, HRS, because Ashley Artist's services are resold by GD Company for use or consumption in Hawaii. Pursuant to section 18-237-29.53-02, services performed for a purchaser who resells the services are exempt from general excise tax

only if the purchaser resells all of the services for use or consumption outside the State.

Example 9:

California Surf Co., a retail store in California, hires Hawaii Designs LLC, a Hawaii graphic design company, to design a logo that will be used on California Surf Co.'s merchandise sold in California and in marketing materials distributed in California. Hawaii Designs LLC hires Ashley Artist, a Hawaii resident, to design a digital image, which Hawaii Designs LLC incorporates into the logo it designs for California Surf Co. All of the value or gross income that Hawaii Designs LLC receives is exempt under section 237-29.53, HRS, because Hawaii Designs LLC's services are used or consumed in California, where California Surf Co.'s business activities related to the design services occur, pursuant to section 18-237-29.53-11(a)(1). All of the value or gross income that Ashley Artist receives is also exempt under section 237-29.53, HRS, because Ashley Artist's services are resold for use or consumption in California. Pursuant to section 18-237-29.53-02, services performed for a purchaser who resells the services are exempt from general excise tax if the purchaser resells all of the services for use or consumption outside the State.

Example 10:

Data Inc., a company located in Hawaii, is paid \$10,000 by the United States Navy to analyze data and prepare reports that will be used by Naval Base Guam. Naval Base Guam is the only naval base that will benefit

from Data Inc.'s services. All of the value or gross income that Data Inc. receives is exempt under section 237-29.53, HRS, because the services are used or consumed by the military in Guam, where the benefit of the service is received, pursuant to section 18-237-29.53-11(a) (4).

Example 11:

Data Inc., a company located in Hawaii, is paid \$10,000 by the United States Navy to analyze data and prepare reports that will be used by the United States Pacific Fleet. Data Inc.'s reports will be used by and benefit the United States Pacific Fleet in Hawaii, where its headquarters is located, as well as in other locations in the United States and abroad. Because Data Inc.'s service is used or consumed both in and outside of the State, Data Inc. shall apportion its income pursuant to section 18-237-29.53-02(b). Data Inc. shall report \$10,000 in gross income on its general excise tax return and may claim an exemption under section 237-29.53, HRS, for the portion of income attributable to services used or consumed outside of the State.

Example 12:

Remodelers Hawaii LLC, a general contractor, is hired by the United States Army to renovate a building at Schofield Barracks in Hawaii. Section 18-237-29.53-11 does not apply because Remodelers Hawaii LLC is performing contracting work, which is governed by section 18-237-29.53-03. Under that rule, all of the value or gross income that Remodelers Hawaii LLC receives is not exempt because the contracting is used or consumed in Hawaii, where the real property

is located." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

12. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-12 Cancellation and forfeiture charges. Section 237-29.53, HRS, shall not apply where all of the value or gross income is derived from cancellation fees, forfeited deposits, or other charges resulting from the cancellation or nonperformance of services.

Example 1:

ABC Company, an Arizona corporation with its principal place of business in Arizona, hires Paul Presenter, a motivational speaker who resides in Hawaii, to speak to ABC Company and its employees via live-stream from Hawaii. The live-stream will be accessed solely from ABC Company's office in Arizona. Two days before the live-stream event, ABC Company cancels the event. Paul Presenter charges ABC Company a cancellation fee pursuant to their contract. The gross income that Paul Presenter receives for the cancellation fee is not exempt under section 237-29.53, HRS." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

13. Chapter 18-237, Hawaii Administrative Rules, is amended by adding a new section to read as follows:

"§18-237-29.53-13 Telecommunication services. Sections 18-237-29.53-01 to 18-237-29.53-12 shall not apply to interstate or foreign common carrier telecommunication services." [Eff 3/17/2018] (Auth: HRS §§231-3(9), 237-8) (Imp: HRS §237-29.53)

14. New material is underscored.

15. These amendments to Chapter 18-237, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on October 9, 1981, and filed with the Office of the Lieutenant Governor.

/s/Linda Chu Takayama/s/
Director
Department of Taxation

APPROVED AS TO FORM:

/s/Gary Sukanuma/s/
Deputy Attorney General