

DEPARTMENT OF TAXATION

Amendments to Chapter 18-237
Hawaii Administrative Rules

November 30, 1998

SUMMARY

1. A new section 18-237-13(6)-01 is added.
2. A new section 18-237-13(6)-02 is added.
3. A new section 18-237-13(6)-03 is added.
4. A new section 18-237-13(6)-04 is added.
5. A new section 18-237-13(6)-05 is added.
6. A new section 18-237-13(6)-06 is added.
7. A new section 18-237-13(6)-07 is added.
8. A new section 18-237-13(6)-08 is added.
9. A new section 18-237-13(6)-09 is added.

§ 18-237-13(6)-01 One-half per cent intermediary services rate, in general. (a) Section 237-13(6), HRS, provides that where any person engaging or continuing within the State in any service business or calling not otherwise specifically taxed under chapter 237 renders such services upon or at the request of another taxpayer who is engaged in the service business and who, in fact, acts as or acts in the nature of an intermediary between the person rendering such services and the ultimate recipient of the benefits of such services, so much of the gross income as is received by the person rendering the services shall be subject to tax at the rate of one-half of one per cent and all of the gross income received by the intermediary from the principal shall be subject to tax at the rate of four per cent.

(b) This provision has been interpreted very strictly by the courts in all three reported cases addressing this issue. In re Tax Appeal Busk Enter., 53 Haw. 518 (1972); In re Tax Appeal Pacific Laundry, T.A. No. 1864, affirmed 65 Haw. 678 (1982); and In re Tax Appeal McDonald's Restaurants, T.A. No. 2232 (1985). The Department has been guided by these cases in applying the intermediary services rate and drafting these rules. These cases require a "clear analogue to the wholesaler-retailer-customer transaction of goods" and the intermediary must be a "mere conduit." While few states tax services as extensively as Hawaii does, the Department has searched the statutes, rules, and case law of other states for legal tests relating to the resale of property or services, the wholesale sale of property or services, the consumption or use of property or services, and the recipient of property or services. The authorities that discuss services use the same terms that are used in the area of property - use, consumption, recipient, resale. Others reach a conclusion without articulating a clear reason for the conclusion, e.g., the "primary objective" of the parties was to resell the service. This may be attributable to the ephemeral nature of a service, as opposed to the sale of property which can be tracked at each level of sale. [Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-02 Summary of the rules. The intermediary services rate of one-half per cent is applicable to the gross income received or derived when:

- (1) A service business provides services ("Service Provider");
- (2) Upon the request or order of another service business which acts as an "Intermediary" between the Service Provider and the ultimate recipient of the services ("Customer");
- (3) Both Service Provider and Intermediary are licensed persons in this State;
- (4) There are at least three parties (Service Provider, Intermediary, and Customer); and
- (5) The gross income received from Customer by Intermediary is subject to the general excise tax at the four per cent rate on all the gross income received for or derived from those services. [Eff **JAN.22.1999**]
(Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-03 Definitions; generally. For purposes of sections 18-237-13(6)-01 to 18-237-13(6)-09:

"Customer" means the person who is the ultimate recipient of the services of Service Provider. The term "Customer" is used regardless of whether the payment received by Service Provider qualifies for the intermediary services rate.

"Intermediary" is defined in section 18-237-13(6)-06. The term "Intermediary" is used regardless of whether the payment received by Service Provider qualifies for the intermediary services rate.

"Service Provider" means the taxpayer claiming the one-half per cent intermediary services rate who provides the services to Customer. The term "Service Provider" is used regardless of whether the payment received qualifies for the intermediary services rate. [Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-04 "Service business," defined.

(a) "Service business" means a person who engages in a service business or calling, as defined in section 237-7, HRS. A service business or calling is defined in section 237-7, HRS, as "all activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property or the production and sale of tangible property."

Example 1: Intermediary, a photographic studio, contracts with Customers to provide photographic services at Customers' wedding in Hawaii. Intermediary contracts with Service Provider, another photographic studio, to provide the photographic services at the wedding. Service Provider provides the photographic services at the wedding and bills Intermediary. Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Both Service Provider and Intermediary are engaged in service businesses because photography is a service business or calling as defined in section 237-7, HRS.

Example 2: Intermediary, a corporation organized to render professional medical services, contracts to provide medical services to Customers (Intermediary's patients). Intermediary contracts with Service Providers to provide the medical services. Service Providers provide the medical services and bill Intermediary. Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Providers.

In order for Service Providers to be eligible for the intermediary services rate, both Service Providers and Intermediary must be engaged in service businesses. Both Service Providers and Intermediary are engaged in service businesses because professional medical services is a service business or calling as defined in section 237-7, HRS.

(b) "Service business" does not include a person who is not engaged in a service business or calling as defined in section 237-7, HRS.

- (1) "Service business" does not include a person subject to tax under section 237-13(3), HRS, relating to the taxation of contracting.

Example 3: Intermediary, a general contractor, enters into a contract with Customer to construct a building. Intermediary subcontracts with Service Provider, a solar company, to install solar heating and another Service Provider, an electrician, to install the wiring in the building. Both Service Providers bill Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Providers.

In order for Service Providers to be eligible for the intermediary services rate, both Service Providers and Intermediary must be engaged in service businesses. Service Providers and Intermediary are not engaged in a service business because they are engaged in contracting activities subject to tax under section 237-13(3), HRS. The intermediary services rate is not applicable to the payments that Service Providers receive from Intermediary. Service Providers are subject to the general excise tax at the rate of four per cent on the payments received from Intermediary. Intermediary may be allowed a subcontract deduction for the payments to Service Providers if Intermediary

fulfills the requirements of section 237-13(3)(B), HRS.

- (2) "Service business" does not include a person subject to tax under section 237-(13)(5), HRS, relating to the taxation of a sales representative receiving commissions.

Example 4: Intermediary, a manufacturer's sales representative, receives commissions from Customer, a manufacturer, for sales of goods. Intermediary contracts with Service Provider, another sales representative, to assist Intermediary in selling the goods. Customer pays Intermediary commissions and Intermediary pays the commissions to Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Both Service Provider and Intermediary are not engaged in service businesses because they are sales representatives and their commission income is subject to tax under section 237-13(5), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (3) "Service business" does not include a person subject to tax under section 237-13(10), HRS, relating to the taxation of other business, such as a licensing business.

Example 5: Intermediary, through licensing agreements, franchises fast-food restaurants in Hawaii to Customers. The licensing agreements provide that Customers shall have the right, license, and privilege

to use Intermediary's system at restaurants and that Intermediary shall provide management services. Intermediary and Service Provider enter into an agreement which specifies that Service Provider will provide the management services to Customers. Service Provider bills Intermediary and Intermediary bills Customers. Customers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Intermediary is not a service business because Intermediary is engaged in a licensing business subject to tax as other business under section 237-13(10), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (4) Service business" does not include a person subject to tax under section 237-13(10), HRS, relating to the taxation of other business, such as rental activity.

Example 6: Intermediary enters into an agreement with Customer to rent Intermediary's ballroom. Intermediary then contracts with Service Provider, an audio visual company, to provide the audio visual services required by Customer. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both

Service Provider and Intermediary must be engaged in service businesses. Intermediary is not engaged in a service business because Intermediary is engaged in a rental business subject to tax under section 237-13(10), HRS. The intermediary services rate is not applicable to the payment that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the payment received from Intermediary.

- (5) "Service business" does not include a person subject to tax under chapter 239, HRS, relating to the public service company tax.

Example 7: Intermediary, a moving and storage company licensed by the Public Utilities Commission, enters into an agreement with Customer to transport goods. To complete the job, Intermediary obtains laborers through Service Provider, an employee leasing company. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be engaged in service businesses. Service Provider is a service business. Intermediary, however, is not a service business because Intermediary is engaged in a public service company business subject to the public service company tax under chapter 239, HRS. The intermediary services rate is not applicable to the payments that Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the total payments received from Intermediary.
[Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9),

§ 18-237-13(6)-04

237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-05 "Licensed person in this State, defined." (a) "Licensed person in this State" means a person subject to the taxing jurisdiction of the State and licensed under chapter 237, HRS;

(b) "Licensed person in this State" does not include a person who is not subject to the taxing jurisdiction of the State.

Example 1: Intermediary, a consulting company located in California, enters into an agreement with Customer. Intermediary contracts with Service Provider, located in Hawaii, to perform services in Hawaii for Customer. Intermediary, however, does not perform any services in Hawaii. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, both Service Provider and Intermediary must be licensed persons in this State. Intermediary, however, is not a licensed person in this State because Intermediary is not subject to the taxing jurisdiction of the State. The intermediary services rate is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the total payments received from Intermediary. [Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-06 "Intermediary" between Service Provider and Customer. In order for Service Provider to be eligible for the intermediary services rate, the person requesting or ordering the service from Service Provider must act as or act in the nature of an Intermediary between Service Provider and the ultimate recipient of the benefits of such services (Customer). The person requesting or ordering the service from the Service Provider acts as or acts in the nature of an Intermediary when there is a direct flow of services from Service Provider through Intermediary (or Intermediaries) and then to Customer. As a mere conduit for the services en route to Customer, Intermediary does not alter, use, or otherwise consume the services provided by Service Provider. Service Provider's services are altered, used or consumed if the services constitute a portion of the total services performed by Intermediary for Customer, or Service Provider's services are incorporated into services performed by other persons for Customer.

Example 1: Intermediary provides salon services. Customer requests a facial. Intermediary contracts with Service Provider to provide Customer with the facial. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is a direct flow of services because the total services requested by Customer were performed by Service Provider; Service Provider's services were not incorporated in other services performed for Customer.

Example 2: Intermediary is a magician. Customer requests the performance of Intermediary. Intermediary contracts with Service Provider, another magician, to perform for Customer. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is a direct flow of services because the total services requested by Customer were performed by Service Provider; Service Provider's services were not incorporated in other services performed for Customer.

However, if Intermediary contracted to put on a gala event which includes a piano performance by Service Provider, there would not be a direct flow of services because Service Provider's services would be incorporated in other services performed for Customer. Service Provider would be subject to the general excise tax at the rate of four per cent.

Example 3: Intermediary, an automobile dealer, sells an automobile to Customer. Intermediary contracts with Service Provider to perform cleaning, repairing, and restoring services on the automobile. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits. There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider's services were incorporated as part of the sale of the automobile to Customer. Moreover, Intermediary, is engaged in the sale of goods

(automobiles), rather than a service business. The intermediary services rate of one-half per cent is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

Example 4: Intermediary, a graphic design firm, contracts with Customer to develop an advertisement. Intermediary contracts with Service Provider to provide illustrations. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits, or another person who acts as or acts in the nature of an Intermediary. There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider's services were incorporated in the advertisement with other services performed for Customer. The intermediary services rate of one-half per cent is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

Example 5: Intermediary, a management consultant, enters into a contract with Customer to study the reason for Customer's declining sales. Intermediary contracts with Service Provider, a marketing company, to do part of the study. Service Provider bills Intermediary. Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be a direct flow of services from Service Provider to Customer, the ultimate recipient of the benefits, or another person who acts as or acts in the nature of an Intermediary.

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There is no direct flow of services from Service Provider to Customer because the total services requested by Customer were not performed by Service Provider; rather, Service Provider's services were incorporated in the study with other services performed for Customer. The intermediary services rate of one-half per cent is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent. [Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-07 Three parties required. (a)

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties - Service Provider, Intermediary, and Customer (the ultimate recipient of the services).

Example 1: Intermediary, an auto body and fender shop, enters into an agreement with Customer to paint Customer's car. Intermediary contracts with Service Provider, an auto paint shop, to paint Customer's car. Service Provider bills Intermediary and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. There are three parties in this example: Service Provider, Intermediary, and Customer.

(b) There are at least three parties when there is a direct flow of services from Service Provider through Intermediary (or Intermediaries) and then to Customer, the ultimate recipient of the benefits, regardless of the number of Intermediaries. Both Service Provider and each Intermediary, except for the Intermediary providing the final services to the Customer, may qualify for the one-half per cent intermediary services rate.

Example 2: Q, a provider of parking services, contracts with Customer to provide those services at an event. Q contracts with R to provide the parking services. R then contracts with S to provide the parking services. S bills R, R bills Q, and Q bills Customer. Customer pays Q. Q pays R and R pays S.

In order for a Service Provider to be eligible for the intermediary services rate, there must be at least three parties. With respect to R's eligibility for the intermediary services rate, there are three parties: R (the Service Provider); Q (intermediary); and Customer.

With respect to S's eligibility for the intermediary

services rate, there are four parties: S (the Service Provider); R (intermediary); Q (intermediary); and Customer.

(c) Service Provider is eligible for the intermediary services rate when Service Provider receives payment from a third-party payer, rather than Customer.

Example 3: Intermediary, an auto body and fender shop, enters into an agreement to paint Customer's car. Customer is insured by Insurance Company. Intermediary contracts with Service Provider, an auto paint shop, to paint Customer's car. Service Provider bills Intermediary and Intermediary bills Insurance Company. Insurance Company pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider is eligible for the intermediary services rate when Intermediary receives payment from a third-party payer, rather than Customer. There are four parties: Service Provider, Intermediary, Insurance Company (the third-party payer who pays Intermediary for the services furnished to Customer), and Customer.

(d) The intermediary services rate is not applicable when there are only two parties.

(1) There are two parties when Intermediary is an agent of Service Provider.

Example 4: Intermediaries, which are various hotels, provide laundry services to Customers, who are guests at the hotels. Service Provider is engaged in the business of providing laundry services. Intermediaries enter into agreements with Service Provider to provide those services. The agreements expressly state that Intermediaries shall be agents of Service Provider. Customers fill out laundry slips

and turn over the slips along with the laundry to Intermediaries which turn them over to Service Provider. Service Provider does the laundry, returns it to Intermediaries, and bills Intermediaries for its services. Intermediaries collect from Customers and remit the amounts billed by Service Provider, retaining 35 per cent of the billing as commission. Other than for negligence of Intermediaries or its employees, Intermediaries are neither liable nor responsible to Customers for any loss or damage to Customers' laundry. All claims for losses or damages and questions regarding charges are directed to Service Provider. All uncollectible amounts are charged to Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Intermediaries in this example are agents for Service Provider because they act on behalf of and subject to the control of Service Provider. Therefore, there are only two parties in this example (1) Service Provider and (2) Customers and the intermediary services rate is not applicable to the payments Service Provider receive from Intermediaries. Service Provider is subject to the general excise tax at the rate of four per cent on the total amounts billed by Intermediaries to Customers.

- (2) There are two parties when Service Provider is an agent of Intermediary.

Example 5: Intermediary, through licensing agreements, franchises fast-food restaurants in Hawaii to Customers. The licensing agreements provide that Customers shall have the right, license, and privilege to use Intermediary's system at restaurants

and that Intermediary shall provide management services. Intermediary and Service Provider, a subsidiary company, enter into an agreement which specifies that Service Provider will provide the management services to Customers. Intermediary, however, is engaged in a licensing business rather than a service business. Service Provider bills Intermediary and Intermediary bills Customers.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider in this example is an agent for Intermediary because Service Provider acts on behalf of and subject to the control of Intermediary. Under the contract Customers are looking to Intermediary only to provide the services. Intermediary provides the services to Customers through Service Provider, a subsidiary company of Intermediary. Intermediary would never entrust its management system to an independent third party, especially in the highly competitive fast-food industry. Therefore, there are only two parties in this example: (1) Intermediary; and (2) Customers. The intermediary services rate is not applicable to the payment Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent on the amounts received from Intermediary.

- (3) There are two parties when Service Provider is an employee of the "intermediary."

Example 6: Intermediary, an insurance adjusting company, adjusts claims for Customer, an insurance company. Intermediary enters into a contract with Service Provider, an insurance adjuster, to adjust claims. The

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contract provides that Service Provider is controlled or directed by Intermediary as to the means and manner of performance, has fixed time schedules, a fixed salary or rates, and is furnished an office and supplies. Service Provider bills Intermediary, and Intermediary bills Customer. Customer pays Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, there must be at least three parties. Service Provider in this example is an employee of Intermediary because Service Provider acts on behalf of and subject to the control of Intermediary. See, Chapter 233, HRS, relating to Tax Classification of Certain Business Relationships. Therefore, there are only two parties in this example: (1) Intermediary and (2) Customer. The intermediary services rate is not applicable to the payments Service Provider receives from Intermediary. Service Provider's salaries and wages, however, are exempt from the general excise tax under section 237-24(6), HRS. Intermediary is subject to the general excise tax at the rate of four per cent on the total amounts received from Customer. [Eff **JAN.22.1999**] (Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-08 Gross income received from Customer by Intermediary subject to general excise tax at the four per cent rate. (a) In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services.

Example 1: Intermediary, a service station, enters into an agreement with Customer to recap Customer's tires. Intermediary contracts with Service Provider to recap Customer's tires. Service Provider bills Intermediary for recapping the tires and Intermediary bills Customer. Customer pays Intermediary, which is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. Here, Intermediary is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services furnished to Customer.

Example 2: Assume the same facts as in Example 20 above, except that Service Provider arranges for W to recap the tire. W bills Service Provider, Service Provider bills Intermediary, and Intermediary bills Customer. Customer pays Intermediary. Intermediary pays Service Provider and Service Provider pays W.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all

the gross income received for or derived from those services.

W is eligible for the intermediary services rate because Intermediary is subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services furnished to Customer, notwithstanding that Service Provider also is subject to the one-half per cent intermediary services rate.

(b) Service Provider is not eligible for the intermediary services rate if there are only three parties and Intermediary is not subject to the general excise tax.

Example 3: Intermediary, a tax-exempt hospital under section 237-23(a)(6), HRS, contracts with Service Provider to provide counseling services to Customers (Intermediary's patients). Service Provider provides the counseling services and bills Intermediary. Intermediary bills the Customer's insurers. The insurers pay Intermediary and Intermediary pays Service Provider.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. The gross income received from Customer is not subject to the general excise tax at the rate of four per cent because Intermediary is exempt from the general excise tax. The intermediary services rate is not applicable to the payments Service Provider receives from Intermediary. Service Provider is subject to the general excise tax at the rate of four per cent.

(c) The Service Provider is not eligible for the intermediary services rate if income is divided between the Service Provider and another person under section 237-18, HRS.

Example 4: Intermediary, a Realtor, enters into an agreement with Customer to sell Customer's real estate. Service Provider, a licensed real estate agent with Intermediary, sells the real estate. The income received by Intermediary is divided between Intermediary and Service Provider, pursuant to section 237-18, HRS.

In order for Service Provider to be eligible for the intermediary services rate, the gross income received from Customer by Intermediary must be subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services. The gross income received from Customer is not subject to the general excise tax at the rate of four per cent on all the gross income received for or derived from those services because Intermediary, pursuant to section 237-18, HRS, has split its income with Service Provider. The intermediary services rate is not applicable to the payment Service Provider receives. Service Provider is subject to the general excise tax at the rate of four per cent on Service Provider's share of the income. [Eff **JAN.22.1999**]
(Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

§ 18-237-13(6)-09 Burden of proof on Service

Provider. (a) Service Provider has the burden of providing evidence satisfactory to the Department that Service Provider qualifies for the intermediary services rate of one-half per cent. Whether Service Provider qualifies for the intermediary services rate is determined by all the factual circumstances; no single factor is controlling.

(b) Some of the relevant factors include the following:

- (1) Whether there is a written contract identifying the customer for whom Intermediary is purchasing Service Provider's services, the services performed by the Intermediary for Customer, and the services performed by Service Provider at the request of Intermediary;
- (2) Whether there has been a separate charge or bill by Intermediary for Service Provider's services; and
- (3) Whether Intermediary has executed a certificate on a form prescribed by the Department that states that Intermediary will not alter, use, or otherwise consume Service Provider's services. Intermediary may execute a certificate which is applicable to every purchase of services from Service Provider, unless it is specified in writing that the certificate does not apply or until the certificate is revoked by notice in writing.

Example 1: Intermediary provides salon services. Customer requests hair styling services. Intermediary contracts with Service Provider to provide Customer with the hair styling; a written contract identifies Customer and the services performed by Service Provider. Intermediary executes the certificate that states that Intermediary will not alter, use, or otherwise consume Service Provider's services. Service

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Provider bills Intermediary. Intermediary bills Customer and includes a separate charge for the services of Service Provider. Intermediary is subject to the general excise tax at the four per cent rate. Customer pays Intermediary and Intermediary pays Service Provider.

Service Provider has the burden of providing evidence satisfactory to the Department that Service Provider qualifies for the intermediary services rate of one-half per cent. The written contract identifying Customer and the services performed by Service Provider, the separate billing by Intermediary, and the executed certificate are among the relevant factors that the Department will consider in determining whether Service Provider qualifies for the intermediary services rate.

[Eff **JAN.22.1999**] Auth: HRS §§ 231-3(9), 237-8) (Imp: HRS § 237-13)

DEPARTMENT OF TAXATION

Amendments to chapter 18-237, Hawaii Administrative Rules, on the Summary page dated November 30, 1998, were adopted at a public hearing on November 30, 1998, after public notice was given in the Honolulu Advertiser, the Honolulu Star-Bulletin, the Hawaii Tribune-Herald, the Maui News, and the Garden Island News, on October 30, 1998.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

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RAY K. KAMIKAWA
Director of Taxation

APPROVED:

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BENJAMIN J. CAYETANO
Governor
State of Hawaii

1/7/99

Dated: _____

JAN 11 1999

Filed