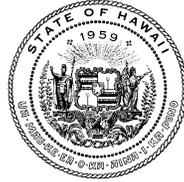


DAVID Y. IGE  
GOVERNOR

JOSH GREEN, M.D.  
LT. GOVERNOR



ISAAC W. CHOY  
DIRECTOR OF TAXATION

STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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July 26, 2021

**Letter Ruling No. 2021-01**

[Redacted Text]  
[Redacted Text]  
[Redacted Text]  
[Redacted Text]

Re: Letter Ruling Request to [Redacted Text]

Dear Mr. Lamprecht:

This letter responds to a letter ruling dated June 10, 2021, submitted on behalf of [Redacted Text] (hereinafter "Taxpayer"), requesting confirmation that Taxpayer will not be considered a resident of Hawaii even though Taxpayer spent more than 200 days in this State, and for a determination as to whether income earned is subject to Hawaii income tax. Unless otherwise noted, references in this letter are to the Hawaii Revised Statutes (HRS) and the applicable rules and regulations.

**FACTUAL REPRESENTATIONS**

In 2016, Taxpayer purchased a vacation home in Hawaii. In each of the years 2017-2019, Taxpayer spent time in Hawaii ranging from 3 to 4 months, typically beginning at the end of December, and ending in early April. Before their trip at the beginning of 2020, Taxpayer spent the following periods at the vacation home: April 4, 2016-April 19, 2016; December 30, 2016-April 11, 2017; December 29, 2017-April 28, 2018; January 2, 2019-April 19, 2019. During this period, Taxpayer made some short trips back to the mainland for work purposes but returned to Hawaii after completion of the work.

Other than the noted periods in Hawaii, Taxpayer lived primarily in their [Redacted Text] home and occasionally traveled to a [Redacted Text] state residence. Taxpayer did not travel during Hawaii during these periods.

In late December of 2019, Taxpayer traveled to Hawaii, intending to spend time in the same manner as previous trips. Taxpayer's trip back to [Redacted Text] was scheduled for April 23, 2020, and had Taxpayer returned as schedule, the stay in Hawaii would have been 117 days.

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As the COVID-19 pandemic began to spread throughout the United States, Taxpayer changed the return flight to leave Hawaii on March 25, 2020. However, on March 23, 2020, Governor David Y. Ige issued the first statewide Stay at Home Order, which was to go into effect on March 25, 2020. Out of concern for health and safety, Taxpayer chose to remain in Hawaii due to the stay-at-home order, and because of the rapid virus spread in [Redacted Text] and [Redacted Text], where the other homes are located. Taxpayer received a full refund from the airline for the March 25, 2020 flight and subsequently-booked flights for July 1st and 3rd of the same year were cancelled by the airline.

During 2020, Taxpayer served on the board of directors for three companies and performed independent advisory work for another. All companies are based outside of Hawaii. The 2020 work amounted to about 171 hours, of which 22 hours were spent in-person, prior to the COVID-19 pandemic outside of the state of Hawaii. The remaining 149 hours were performed via video conference and phone calls with management and other board members. Taxpayer is not an employee of any of these companies, and the services performed in these rolls are that of an independent contractor. Income from these services is reported as business income on Schedule C of Taxpayer's federal income tax return.

Taxpayer asserts that [Redacted Text] is the tax domicile, as Taxpayer owns homes and vehicles in [Redacted Text], holds licenses issued by the state of [Redacted Text], pays [Redacted Text] state income tax, and is registered to vote and in fact does vote in [Redacted Text], including the 2020 election.

## LAW AND ANALYSIS

### Residency

HRS section 235-1 states, ““Resident” means every: (1) Individual domiciled in the State; and (2) Other individual, whether domiciled in the State or not, who resides in the State. To “reside” in the State means to be in the State for other than a temporary or transitory purpose. Every individual who is in the State more than two hundred days of the taxable year in the aggregate shall be presumed to be a resident of the State. This presumption may be overcome by evidence satisfactory to the department of taxation that the individual maintains a permanent place of abode outside of the State and is in the State for a temporary or transitory purpose. No person shall be deemed to have gained or lost a residence simply because of the person's presence or absence in compliance with military or naval orders of the United States, or while engaged in aviation or navigation, or while a student at any institution of learning. HRS section 235-1 defines, “Nonresident” to mean “every individual other than a resident.”

Hawaii Administrative Rule (HAR) section 18-235-1.02(b) provides that whether an individual is “a resident or nonresident is determined by all of the factual circumstances”. Domicile is generally considered to be the place of the individual's true, fixed, permanent home to which the taxpayer has shown an intent of returning to whenever the individual is absent. See

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HAR §18-235-1.03. Because Taxpayer has shown the requisite intent to return to [Redacted Text], the Department finds that Taxpayer is not domiciled in Hawaii.

Although Taxpayer is not domiciled in Hawaii, Taxpayer could nonetheless be a resident of Hawaii, if the individual is in Hawaii for other than a temporary or transitory purpose. HAR section 18-235-1.07(b) provides that in determining whether an individual's presence in Hawaii is considered temporary or transitory depends upon the facts and circumstances of each particular case.

Where an individual has remained in Hawaii longer than 200 days, the presumption of being a resident may be overcome if the individual presents evidence satisfactory to the Department that the individual maintains a permanent place of abode outside of Hawaii and is in Hawaii only for a temporary or transitory purpose. See HAR §18-235-1.07(e).

On March 23, 2020, Hawaii Governor David Y. Ige signed the Third Supplementary Proclamation, putting in place the first statewide Stay at Home Order for the state of Hawaii. Under this Order, individuals were mandated to remain in their homes or places of residence, with exceptions only for essential travel. While this order was originally set to expire April 30, 2020, it was subsequently been renewed several times. There can be no doubt that the COVID-19 pandemic disrupted the lives and plans of many people, including Taxpayer. The ease and rate at which COVID-19 spreads, and the potentially fatal result of an infection cannot be ignored. The Department finds that prudence dictated that Taxpayer remain in Hawaii until it was safe for Taxpayer to return to [Redacted Text]. Accordingly, the Department finds that Taxpayer was in Hawaii for a temporary or transitory purpose, despite being physically present in Hawaii for more than 200 days.

### Income Tax Liability

HAR section 18-235-1.02(a) provides that a nonresident is subject to the net income tax imposed by chapter 235, HRS, only on the income from sources within Hawaii. For Hawaii income tax purposes, income earned from purely personal services performed is sourced to where the services were performed. See HAR §18-235-4-03.

Like the majority of states, Hawaii apportions a non-resident's employment income based on where the taxpayer performs the services. Because of its geographic isolation, Hawaii has not had issues with a taxpayer residing in one state but working in a different state, and Hawaii has not adopted the convenience of the employer test, whereby a telecommuter's income is apportioned entirely to the state in which the taxpayer's employer is located.

The Department recognizes that the advent of faster internet connections coupled with the technological advancement computer equipment, and the ability to meet others through video conferencing has developed telecommuting into a viable and widely used work arrangement. However, any changes to tax policy and/or existing statutes regarding sourcing of income can only be accomplished through legislative action. The Department does not have authority to unilaterally change existing law. Consequently, income earned for personal services performed

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by Taxpayer while in Hawaii is subject to Hawaii income tax. Taxpayer may use any reasonable method to allocate income earned in Hawaii and other jurisdictions.

The Department neither express nor imply any opinion concerning the tax consequences of any other aspect of any transaction or item discussed or referenced in this letter. The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this the Department has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. This ruling is directed only to the taxpayer requesting it and may not be used or cited as precedent.

If you have any further questions regarding this matter, please email me at [mark.j.yee@hawaii.gov](mailto:mark.j.yee@hawaii.gov).

Very truly yours,

MARK J.C. YEE  
Administrative Rules Specialist