



DEPARTMENT OF TAXATION
STATE OF HAWAII

December 23, 1975

TAX INFORMATION RELEASE No. 47-75

RE: GUIDELINES FOR ESTABLISHING STATUS OF INDIVIDUAL INSURANCE
SOLICITORS AS EMPLOYEES OR INDEPENDENT CONTRACTORS

This Tax Information Release is being issued in compliance with House Resolution No. 682 of the 1975 Legislature requesting the Department of Taxation and the Insurance Commissioner to formulate and publish guidelines regarding conditions of employment which establish the employment status of individual insurance solicitors as employees or independent contractors.

Section 237-13(7) of the General Excise Tax Law provides as follows:

"Upon every person engaged as a licensed solicitor pursuant to Chapter 431, there is hereby levied and shall be assessed and collected a tax equal to two percent of the commissions due to such activity."

Section 431-363 of the Hawaii Insurance Law defines a solicitor as:

"(a)--any individual appointed by a general agent or by a subagent or by a domestic insurer upon compliance with section 431-361(d), to perform the following acts in this State:

- (1) Solicit applications for insurance;
- (2) Collect premiums in connection therewith;
- (3) Any other lawful acts pursuant to this chapter.

"(b) A solicitor shall not have power to countersign insurance contracts.

"(c) An individual, who is employed by such principal and devotes full time to clerical work with incidental taking of insurance applications and receiving premiums in the office of the principal, is not deemed to be a solicitor if his compensation neither includes a commission on such business nor is related to the volume of such applications, insurances, or premiums." (Underscoring added)

To provide for uniform application of the general excise tax with respect to the income received by insurance solicitors, the provisions of the contract between the individual insurance solicitor and the insurance company or agent shall be controlling for the purpose of determining whether such income represents wages received by an employee or commissions received by an independent contractor. Commissions so received by an independent contractor shall be subject to the general excise tax at the rate of two percent as provided under Section 237-13(7), HRS.

In the absence of such contract, the Department of Taxation shall be guided by the following facts present in a situation or the actual relationship between such parties for purposes of determining whether the insurance solicitor is an independent contractor:

1. he is authorized to sell on a commission basis,
2. he is free to exercise his own judgment as to persons from whom he could solicit applications for insurance and the time and place of solicitation,
3. the method or mode of traveling is left to his discretion,
4. the company does not furnish transportation or pay for his travel expenses,
5. he is not required to work within certain hours of the day,
6. he can spend as much or as little time selling as he wished, or
7. he can exercise his own discretion as to when he would be at his desk and what clients he would serve.

In the event the individual solicitor is deemed an employee, the gross commission received by the general agent employing-such solicitor shall be subject to the general excise tax at the rate of four percent without any deduction on account of the wages paid to the individual solicitor-employee. Furthermore, the general agent or the insurance company, as employer, shall be subject to all applicable employer-related taxes, including the Hawaii withholding taxes.

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