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TAX INFORMATION RELEASE No. 89-3

Re: State Tax Benefits Available to Persons with Impaired Sight, Impaired Hearing, or Who are Totally Disabled.

Certain tax benefits are available under the income tax and general excise tax laws to persons with impaired sight, impaired hearing, or who are totally disabled. This Tax Information Release ("TIR") summarizes those benefits and the procedures for qualifying for those benefits. The department would urge all taxpayers, however, to review the statutes or to consult with their tax advisors as the summary provided in this TIR is issued solely as a guide and is not intended to be complete.

For information regarding a real property exemption, taxpayers should contact the real property division of the county in which the property is located.

I. Income Tax Law

A person with impaired sight, impaired hearing, or who is totally disabled, as defined in the statute and this TIR, may claim a personal exemption of $7,000 under section 235-54(c), Hawaii Revised Statutes ("HRS"), on that person's state income tax return. This exemption is in lieu of the regular personal exemption of $1,040 and the additional exemption for a person over 65. A taxpayer who is claimed as a dependent on another taxpayer's return, however, may not claim either this exemption or the regular personal exemption.

If a joint return is filed and both spouses qualify for the exemption, the deduction for personal exemptions is $14,000. If a joint return is filed and one spouse qualifies for the exemption, the deduction for personal exemptions is $7,000 plus a regular deduction of $1,040 for the other spouse, and an additional regular deduction if the other spouse is over age 65. When the $7,000 exemption is claimed by either spouse on a joint return or on a separate return, additional exemptions for the taxpayers' children or other dependents are not allowed.

Another benefit is available to taxpayers when calculating whether a totally disabled person qualifies as a dependent. To claim an exemption for a dependent, the dependent, among other things, must have less than $1,900 of income for the taxable year. For purposes of this income limitation, section 151(c)(5) of the Internal Revenue Code, which has been adopted by the State, exempts up to $1,080 of the income earned by a person who is permanently and totally disabled for services performed in a sheltered workshop if the availability of medical care of the workshop is the principal reason for the person's presence there and the income producing activity is an incident of medical care.

II. General Excise Tax Law

A person with impaired sight, impaired hearing, or who is totally disabled engaging, or continuing, in any business, trade, activity, occupation, or calling within the State, may exempt from the general excise tax an amount not exceeding $2,000 under section 237-24(13), HRS.

Additionally, section 237-17, HRS, allows an individual with impaired sight, impaired hearing, or who is totally disabled, or a corporation, all of whose outstanding shares are owned by individuals with impaired sight, impaired hearing, or who are totally disabled, to be subject to the general excise tax at the rate of one-half per cent on the proceeds, sales, income, or other receipts of their business or other activities.

The exemption and the one-half per cent rate are not applicable to a partnership. Similarly, a trust, notwithstanding that the revenues therefrom are distributed to a beneficiary or settlor who is certified under any of the three categories, is not eligible for the exemption or the one-half per cent rate.

III. Certification of Visual Impairment, Hearing Impairment, or Permanent Total Disability

Effective January 1, 1989, Act 81, Session Laws of Hawaii 1988, amended sections 235-1 and 237-17, HRS, by changing the procedure for qualifying for these state tax benefits. Previously, the visual impairment, hearing impairment, and the totally disabled were certified to by the State Department of Health or by any state, county, or city and county medical officer duly authorized by the State Department of Health for that purpose.

A. Certification of Visual Impairment

Under the law, as amended by Act 81, a person's visual impairment must be certified to by a qualified opthamologist or qualified optometrist on forms prescribed by the Department of Taxation on the basis of a written report on an examination. The opthamolgist or optometrist must conclude that the central visual acuity of the person claiming the impairment does not exceed 20/200 in the better eye with correcting lenses. Alternatively, the widest diameter of the visual field must subtend an angle no greater than twenty degrees if the person's visual acuity is greater that 20/200.

B. <u>Certification of Hearing Impairment</u>

A hearing impairment must be certified to by a qualified otolaryngologist on forms prescribed by the Department of Taxation. There must be a finding that the person claiming the impairment has an average loss in the speech frequencies (500-2000 Hertz) in the better ear of eighty-two decibels, A.S.A., or worse.

C. <u>Certification of Total Disability</u>

The disability of a person claiming to be totally disabled must be certified to in a three step process by a physician licensed under chapters 453 or 460, HRS. First, there must be a medical determination that the person is totally disabled, either physically or mentally. Second, the disability must be permanent. This means that at the time of certification the disability can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months. The 12 month requirement is inapplicable when the disability is determined to be a terminal state or where it does actually result in death. Third, there must be a determination that the permanent and total disability results in the person's inability to engage in any substantial gainful business or occupation. Substantial gainful business or occupation means a business or occupation that is both substantial and gainful. It is substantial if it involves doing significant physical or mental activities even if the person works on a part-time basis, does less work, is paid less, or has less responsibilities then when the person worked before. The business or occupation is gainful if it is done for pay or profit, whether or not a profit is realized. It is presumed that a person whose gross income and/or gross receipts, before deductions and exemptions, exceeds $10,000 per year is engaged in a substantial gainful business or occupation. This dollar amount is for the administrative convenience of both taxpayers and the Department and is based upon a long standing departmental practice.

Whether a person is totally and permanently disabled and whether the disability results in the person's inability to engage in any substantial gainful business or occupation is determined by reference to all the factual circumstances. Among the factors considered are the nature and severity of the disability; the person's education, training, and work experience; and whether social security benefits have been granted or denied. The following are examples of permanent and total disabilities which would ordinarily be considered as preventing any substantial gainful business or occupation: (1) a person who lost or is born without both feet at or before the ankle; (2) a person who lost or is born without both hands at or above the wrist; (3) a person who lost or is born without one hand and one foot; (4) a person who has an injury or defect resulting in permanent and complete paralysis of both legs or both arms or one leg and one arm; and (5) a person who has an injury or defect resulting in incurable imbecility or mental illness.

D. Submission of the Certification

A taxpayer claiming the tax benefits under the income tax or general excise tax laws must submit the original certification of visual impairment, hearing impairment, or permanent total disability to the Department of Taxation. The taxpayer, including a taxpayer whose sight impairment, hearing impairment, or total disability was certified to by the Department of Health prior to the passage of Act 81, must retain a copy of the certification in the taxpayer's records and may continue to claim the exemption by attaching a copy of the original certification to the taxpayer's income tax return and annual excise tax return in subsequent years.

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