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TAX INFORMATION RELEASE NO. 95-4

RE: Employee Withholding Certificates

This Tax Information Release reiterates the requirements relating to Form HW-4, Employee's Withholding Allowance and Status Certificate.

Section 235-61, Hawaii Revised Statutes (HRS), provides that on or before the date of the commencement of employment with an employer, the employee shall furnish to the employer a completed and signed certificate (Form HW-4) showing the total number of withholding allowances being claimed. The number of withholding allowances, based on the personal exemption(s) and the standard deduction allowance or itemized deductions the employee claims, shall not exceed the total number to which the employee is entitled to claim on the basis of the existing facts. An employee may choose to claim fewer, but not more, withholding allowances than the employee is entitled to claim.

There is no provision in Hawaii's Income Tax Law for an employee to claim an exempt status for State income tax withholding notwithstanding the employee's residency status. If an employee submits a Form HW-4 claiming to be exempt from State income tax withholding, the employer is to take the following action:

1. Advise the employee that the Income Tax Law does not provide an exempt status for Hawaii income tax withholding and that a Form HW-4 claiming exemption from withholding is not valid and that a copy of the invalid Form HW-4 will be sent to the Department of Taxation.
2. Advise the employee that State income taxes will be withheld from the employee's salary or wages on the basis of a single filing status with no withholding allowances.
3. Advise the employee that he or she maybe subject to the criminal penalties enacted by Act 92, Session Laws of Hawaii (SLH) 1995, for the failure to make or supply a valid Form HW-4 as required or for submitting a false and fraudulent Form HW-4.

Act 92, SLH 1995, provides that a person shall be guilty of a misdemeanor and, upon conviction, be fined up to \$25,000 or imprisoned for up to one year, or both, for wilfully failing to make a report, supply information required by law, or supply the information at the time required by law.


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Act 92, SLH 1995, also provides that a person shall be guilty of a class C felony and, upon conviction, be subject to a fine of up to \$100,000 or imprisoned for not more than three years, or both, for willfully making a false and fraudulent statement under a tax law. Any person who wilfully aids or assists in, procures, counsels or advises the preparation or presentation of a false or fraudulent affidavit or other document, regardless or whether the falsity or fraud is with or without the knowledge or consent of the person required to present the document, may be subject to a fine of \$100,000 or imprisoned for not more than three years, or both.

4. A copy of this Tax Information Release may be provided to the employee.
5. Send a copy of the employee's invalid Form HW-4 claiming exemption from income tax withholding to the Tax Assessor in the Taxation District in which the employer is located.
6. If an employee is claiming on Form HW-4 more than 10 exemptions or the number of exemptions claimed is not warranted under the circumstances and it appears to be a means of having no income tax withheld from wages or salary, the employer is to send a copy of the employee's HW-4 to the Tax Assessor in the Taxation District in which the employer is located.

It also has come to our attention that certain employees are improperly claiming to be non-employees. Generally, an employee is an individual under any contract for hire, express or implied, oral or written, in which the employer has the power or right to control and direct the employee in the material details of how the work is to be performed. An employee includes a person working for a salary or wages, and an officer of a corporation. Under Internal Revenue Code Section 3401, relating to definitions for Federal income tax withholding, which Hawaii follows, the term "employee" also includes an officer, employee, or elected official of the United States, a state or any political subdivision, or any agency or instrumentality thereof.

Employers of individuals claiming non-employee status shall advise the individual whether he or she is classified as an employee for Hawaii income tax withholding purposes and, if appropriate, the employer shall follow the procedures outlined above in numbers 2 and 3.


RAY K. KAMIKAWA
Director of Taxation

HRS Sections explained: HRS Sections 235-61, 231-34, 231-35.

Hawaii Administrative Rule (HAR) explained: HAR 18-235-61-09.