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July 25, 1997

TAX INFORMATION RELEASE NO. 97-2 (REVISED)

RE: Filing Of A Combined Hawaii Income Tax Return By A Unitary Business As Part Of A Unitary Group

Tax Information Release (TIR) No. 97-2, issued May 7, 1997 is re-issued to clarify the first sentence in the third paragraph of the original TIR. The sentence reads: "A combined income tax return means a single tax return that is filed to reflect the income of the unitary business, i.e., all entities in the unitary group with sufficient nexus requiring the filing of a return, but does not mean a consolidated tax return." This sentence may be misinterpreted to mean that only unitary corporations with nexus with Hawaii will be included in a Hawaii combined income tax return. This TIR as revised clarifies that if any corporation in the unitary group has sufficient nexus with Hawaii, the combined income tax return must include the income and apportionment factors of all corporations of the unitary group.

The text of the TIR as issued May 7, 1997 follows without revision except in the citation format to the Hawaii Revised Statutes and Hawaii Administrative Rules.

This Tax Information Release (TIR) reiterates the requirement that a corporate taxpayer engaged in a unitary business as part of a unitary group must file a combined Hawaii income tax return. This requirement is effective for tax years beginning after December 31, 1994.

For each taxable year, an income tax return shall be made by every corporate taxpayer having gross income subject to tax under Chapter 235, Hawaii Revised Statutes (HRS). Haw. Rev. Stat. § 235-92(2) (1993). A corporate taxpayer that is engaged in a unitary business as part of a unitary group doing business in Hawaii is required to file a combined income tax return for tax years beginning after December 31, 1994. The combined unitary income shall be apportioned to Hawaii based upon factors of property, payroll, and sales. The taxpayer must file Hawaii Form N-30, Corporation Income Tax Return, Form N-30, Schedule O, Allocation and Apportionment of Income, and Form N-30, Schedule P, Apportionment Formula. For further information, refer to sections 235-21 to 235-39, HRS, and sections 18-235-21 to 18-235-38.5, Hawaii Administrative Rules (HAR).

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A combined income tax return means a single tax return that is filed to reflect the income of the unitary business, i.e., all entities in the unitary group with sufficient nexus requiring the filing of a return, but does not mean a consolidated tax return. A consolidated Hawaii income tax return only can be filed by a group of corporations in which all affiliated members are corporations organized under the laws of Hawaii. Haw. Rev. Stat. § 235-92(2) (1993).

A unitary business means a business carried on by a group of entities that includes the taxpayer and where there are flows of value among the entities resulting from: (1) functional integration, (2) centralization of management, and (3) economies of scale. Generally, if the operation of a business within Hawaii is integrated with, dependent on, or contributes to the operation of the business outside Hawaii, the entire business is unitary in character. Haw. Admin. Rules § 18-235-22-01 (1994).

A unitary group means a group of entities carrying on a unitary business but does not include: (1) a foreign affiliate of a taxpayer in which no part of the foreign affiliate's business income is subject to federal income tax under the Internal Revenue Code (IRC) of 1986, as amended, whether or not the foreign affiliate is owned or controlled directly or indirectly by the same interests or (2) any entity that is not related to the taxpayer within the meaning of IRC section 267(b) and (c), with respect to the disallowance of deductions for transactions between related taxpayers. Haw. Admin. Rules § 18-235-22-01 (1994).



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HRS Sections Explained: HRS Section 235-92

HAR Sections Explained: HAR Sections 18-235-22-01

TIR No. 97-2, issued May 7, 1997 is revised in part.