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TAX INFORMATION RELEASE NO. 2022-01

RE: State Tax Benefits Available to Individuals Who are Blind, Deaf, or Totally Disabled

The purpose of this Tax Information Release (TIR) is to centralize information concerning tax benefits available to individuals that who are “blind,” “deaf,” or “totally disabled,” as these terms are defined under Hawaii Revised Statutes (HRS) section 235-1 (hereinafter “qualifying taxpayers”). This TIR supersedes any previous guidance issued by the Department of Taxation (Department).

Net Income Tax

Under HRS section 235-54(d), in lieu of the \$1,144 personal exemption deduction, a qualifying taxpayer is allowed to deduct \$7,000. If a joint return is filed and both spouses qualify for the exemption, the qualifying taxpayers are allowed \$14,000. If a joint return is filed and only one spouse qualifies for the exemption, the deduction is \$7,000.

General Excise Tax (GET)

There are two GET benefits available to qualifying taxpayers who are engaged in business in the State and subject to GET law. The availability of these benefits are not mutually exclusive; thus, a qualifying taxpayer is eligible for both GET benefits as explained below.

1. \$2,000 Gross Income Exemption

Qualifying taxpayers who are engaged in business and subject to GET may claim an exemption up to \$2,000 per taxable year. Qualifying taxpayers who are engaged in business in the form of an entity may also qualify for this exemption as follows:

- Corporations - All outstanding shares must be owned by a qualifying taxpayer;
- General, limited, or limited liability partnerships - All partners must be qualifying taxpayers; and
- Limited liability companies - All members must be qualifying taxpayers.

2. Wholesale GET Rate

In addition to the \$2,000 a year gross income exemption discussed above, HRS section 237-17 imposes GET on qualifying taxpayers at the wholesale rate of one-half of one percent.

Qualifications

The categories of “blind,” “deaf,” and “person totally disabled” discussed in this part are completely separate from each other and have independent requirements. The concepts and rules discussed in each section only apply to section in which they are discussed.

1. Blind

As it relates to the tax benefits described above, the term “blind” means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no great than twenty degrees.¹

2. Deaf

As it relates to the tax benefits described above, the term “deaf” means a person whose average loss in the speech frequencies (500-2000 hertz) in the better ear is eighty-two decibels, A.S.A., or worse.²

3. Person Totally Disabled

As it relates to the tax benefits described above, the term “person totally disabled” means a person who is totally and permanently disabled, either physically or mentally, which results in the person’s inability to engage in any substantial gainful business or occupation.³ 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.⁴ 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 are among the factors to consider.⁵

““Permanent disability” means a disability that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. The twelve-month requirement is inapplicable when the disability is determined to be a terminal state or where it does actually result in death.”⁶

1 Hawaii Revised Statutes (HRS) §235-1.

2 HRS §235-1.

3 HRS §235-1.

4 Hawaii Administrative Rules (HAR) §18-235-1.11(b).

5 HAR §18-235-1.11(b).

6 HAR §18-235-1.13.

““Substantial gainful business or occupation” means a business or occupation that is both substantial and gainful. It is substantial if it involves significant physical or mental activity even if the individual works on a part-time basis, does less work, is paid less, or has fewer responsibilities than when the individual worked prior to the disability. The business or occupation is gainful if it is done for monetary consideration or profit.”⁷ If an individual has \$30,000 or more of earned income in a year, it will be presumed that the individual is engaged in substantial gainful business or occupation.⁸

“Earned income” includes wages, salaries, tips, business interest income, other employment compensation, and gross earnings from self-employment for the taxable year unless gross earnings for the taxable year are less than \$60,000, in which case all net earnings from self-employment are included in earned income in lieu of gross income⁹ from self-employment. For purposes of this analysis, all business entities, such as corporations, partnerships, and limited liability companies, are deemed disregarded. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.¹⁰ When a joint return is filed and only one of the spouses is disabled, only the disabled spouse’s earned income is measured.¹¹

As stated above, the terms “permanent disability,” “substantial gainful business or occupation,” and “earned income” only apply to the category of “person totally disabled.” For examples that illustrate the rules regarding “substantial gainful business or occupation” and “earned income,” please see HAR section 18-235-1.14.

Certification Requirements

1. Blind

A qualified ophthalmologist or qualified optometrist must certify on Form N-172 that the individual was examined and that they meet the definition of “blind” under HRS section 235-1.

2. Deaf

A qualified otolaryngologist or a licensed audiologist under HRS chapter 468E must certify on Form N-172 that the individual was examined and that they meet the definition of “deaf” under HRS section 235-1.

3. Person Totally Disabled

Certification that an individual is a “person totally disabled” as the term is defined under HRS section 235-1 must be performed by a:

7 HAR §18-235-1.14(a).

8 HAR §18-235-1.14(b).

9 HRS §235-1.

10 HAR §18-235-1.14(c).

11 HAR §18-235-1.14(d).

- Physician or osteopathic physician licensed under HRS chapter 453;
- Qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides; or
- Commissioned medical officer in the United States Army, Navy Marine Corps, or Public Health Service, engaged in the discharge of the officer's official duty.

This certification requires a medical determination that the individual is totally disabled (physically or mentally), that the disability is permanent, and that the total and permanent disability results in the individual being unable to engage in any substantial gainful business or occupation.¹²

Submission of Certification (Form N-172)

The original Form N-172 and one copy must be filed with the Department prior to filing any tax return on which one of the tax benefits discussed in this TIR may be claimed. Corporations, partnerships, or limited liability companies, all of whose shareholders, partners, or members are qualifying taxpayers, are to submit all Forms N-172 at one time. Please see the Instructions to Form N-172 for detailed submission information,

Should there be any questions regarding the benefits discussed in this TIR, please contact the Technical Section by telephone at (808) 587-1577 or by email at tax.rules.office@hawaii.gov.

ISAAC W. CHOY
Director of Taxation

Attachment: HAR §§18-235-1.11 to 1.15

¹² HAR §18-235-1.12(a).

HAWAII ADMINISTRATIVE RULES SECTIONS 18-235-1.11 TO 1.15

- §18-235-1.11** "Person totally disabled", defined. (a)
"Person totally disabled" means:
- (1) A person who is totally and permanently disabled, either physically or mentally; and
 - (2) Is unable to engage in any substantial gainful business or occupation because of that disability.
- (b) 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:
- (1) The nature and severity of the disability;
 - (2) The person's education, training, and work experience; and
 - (3) Whether social security benefits have been granted or denied. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.11 8/28/98] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))

- §18-235-1.12** "Person totally disabled", certification of.
- (a) The disability of a person claiming to be totally disabled must be certified in a three-step process:
- (1) There must be a medical determination that the person is totally disabled, either physically or mentally;
 - (2) The disability must be permanent; and
 - (3) 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.
- (b) The disability shall be certified by:
- (1) A physician licensed under chapters 453, HRS;
 - (2) A qualified out-of-state physician who is currently licensed to practice in the state in which the physician resides; or
 - (3) A commissioned medical officer with the United States Army, Navy, Marine Corps, or Public Health Service, engaged in the discharge of one's official duty.
- (c) Certification shall be on form N-172, as prescribed by the department of taxation. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.12 8/28/98] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))

§18-235-1.13 "Permanent disability", defined. "Permanent disability" means a disability that can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than twelve months. The twelve-month requirement is inapplicable when the disability is determined to be a terminal state or where it does actually result in death. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.13 8/28/98] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))

§18-235-1.14 "Substantial gainful business or occupation", defined. (a) As used in this chapter, "substantial gainful business or occupation" means a business or occupation that is both substantial and gainful. It is substantial if it involves significant physical or mental activity even if the individual works on a part-time basis, does less work, is paid less, or has fewer responsibilities than when the individual worked prior to the disability. The business or occupation is gainful if it is done for monetary consideration or profit.

(b) It shall be presumed that an individual whose earned income is greater than \$30,000 for the taxable year is engaged in a substantial gainful business or occupation.

Example 1: Taxpayer retires from employment on disability that is total and permanent. After retirement, Taxpayer accepts another job and Taxpayer's earned income is greater than \$30,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year.

Example 2: Taxpayer retires as a teacher on disability that is total and permanent. Taxpayer begins babysitting children and selling items. Taxpayer's earned income from these two businesses is greater than \$30,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year.

(c) In the case of husband and wife filing a return jointly and only one of the spouses is disabled, only the disabled spouse's earned income is measured.

Example 1: A and B file a joint income tax return. Only A is disabled. A's earned income is less than \$25,000 for the taxable year. B's earned income is greater than

\$30,000 for the taxable year. For purposes of determining whether an individual is engaged in a "substantial gainful business or occupation," only the disabled spouse's earned income is measured when a joint tax return is filed. A is not engaged in a substantial gainful business or occupation because A's earned income is less than \$30,000 for the taxable year.

(d) For purposes of this section, earned income includes wages, salaries, tips, business interest income, other employment compensation, and gross earnings from self-employment for the taxable year unless gross earnings for the taxable year are less than \$60,000, in which case all net earnings from self-employment are included in earned income in lieu of gross earnings from self-employment. For purposes of this subsection, all entities shall be disregarded. Earned income does not include interest, dividends, capital gains, pensions, or deferred compensation.

Example 1: Taxpayer retires on disability that is total and permanent and receives an insurance settlement. Taxpayer does not engage in any other employment. The insurance settlement is invested and Taxpayer receives \$35,000 in interest, dividends, and capital gains during the taxable year. Taxpayer is not engaged in a substantial gainful business or occupation because earned income does not include interest, dividends, and capital gains.

Example 2: Taxpayer works for wages and receives \$20,000 in wages for the taxable year. Taxpayer also has net earnings from self-employment of \$8,000 and gross earnings from self-employment of \$75,000 for the taxable year. Taxpayer has earned income of \$95,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$20,000 in wages and \$75,000 of gross earnings from self-employment.

Example 3: Taxpayer has gross earnings from self-employment of \$60,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because earned income includes the \$60,000 of gross earnings from self-employment.

Example 4: Taxpayer has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$30,000 for the taxable year. Taxpayer has earned income

of \$30,000 for the taxable year and is not engaged in a substantial gainful business or occupation. Taxpayer's earned income includes net earnings from self-employment because gross earnings from self-employment are less than \$60,000 for the taxable year.

Example 5: Taxpayer works for wages and receives \$10,000 in wages for the taxable year. Taxpayer also has gross earnings from self-employment of \$59,999 and net earnings from self-employment of \$25,000 for the taxable year. Taxpayer has earned income of \$35,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$10,000 of wages and the \$25,000 of net earnings from self-employment.

Example 6: Taxpayer has structured her business as a C corporation for which she is sole shareholder. The corporation has gross earnings of \$75,000 for the taxable year. Taxpayer earns no wages, but the corporation pays taxpayer a dividend of \$25,000 for the taxable year. Taxpayer has earned income of \$75,000 for the taxable year and is engaged in a substantial gainful business or occupation because earned income includes the \$75,000 of gross income earned by her corporation. Entities such as corporations are disregarded for purposes of determining Taxpayer's earned income. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.14 8/28/98; am 4/20/19] (Auth: HRS §231-3(9) (Imp: HRS §235-1))

(e) The presumption with respect to the \$30,000 earned income limitation set forth in subsection (b) is applicable to all totally and permanently disabled persons, including the following:

- (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; or
- (5) A person who has an injury or defect resulting in incurable imbecility or mental illness.

Example 1: Taxpayer retires on disability that is total and permanent because Taxpayer loses both feet at the ankles in an accident. After retirement, Taxpayer accepts another job and Taxpayer's earned income from that job is greater than \$30,000 for the taxable year. Taxpayer is engaged in a substantial gainful business or occupation because Taxpayer's earned income is greater than \$30,000 for the taxable year. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.14 8/28/98] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))

§18-235-1.15 Permanent total disability; submission of certification. (a) An individual claiming the tax benefits under the tax laws shall attach to the individual's income tax return the original certification of permanent total disability, Form N-172.

(b) The individual shall retain a copy of the certification in the individual's records and may continue to claim the exemption by attaching a copy of the original certification to the tax return in subsequent years.

(c) Where the statutory requirements are not met or in appropriate circumstances, the department may request additional information or deny the claim for exemption in the first year or subsequent years. [Eff 2/16/82; am 9/3/94; am and ren §18-235-1.15 8/28/98] (Auth: HRS §§231-3(9), 235-118) (Imp: HRS §§235-1, 237-17, 237-24(13))