

DEPARTMENT OF TAXATION

Amendment to Chapter 18-235  
Administrative Rules

December 15, 1997

SUMMARY

1. Section 18-235-98 is amended.

**§18-235-98 Returns; form, verification and authentication, time of filing.** (a) Automatic extension of time for filing income tax returns; in general. The director of taxation may grant a reasonable extension of time for filing any return, declaration, statement, or other document required under chapter 235, HRS, provided that no extension shall be for more than six months.

(b) Automatic extension of time for filing individual, partnership or entity classified as a partnership, estate, trust, or real estate mortgage investment conduit income tax return. Any individual taxpayer required to file an income tax return under chapter 235, HRS, may apply for an automatic four month extension to file the tax return after the date prescribed for filing. A partnership or entity classified as a partnership, estate, trust, or real estate mortgage investment conduit may apply for an automatic three month extension. All extensions shall be subject to the following conditions:

- (1) On or before the due date prescribed by the statute, an application for automatic extension of time to file a Hawaii income tax return must be submitted to the taxation district office where the income tax return is required to be filed. If a payment accompanies the application for the extension, the amount of the payment shall be shown on the application.
- (2) The application for automatic extension must show the full amount properly estimated as the tax liability for the taxable year. A properly estimated tax liability means the taxpayer made a bona fide and reasonable attempt at the time the extension was submitted to locate and gather all of the necessary information to make a proper

estimate of tax liability for the taxable year.

- (3) The tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax to the extent not already paid.
- (4) An automatic extension of time for filing a partnership return, trust return, or real estate mortgage investment conduit return under this section does not operate to extend the time for filing an income tax return for any partner, or member of an entity classified as a partnership, any beneficiary of the trust, or a residual or regular interest holder of a real estate mortgage investment conduit.

(c) Automatic extension of time for filing corporation income tax returns or corporation income tax returns for entities classified as a corporation.

- (1) In general. A corporation or entity classified as a corporation shall be allowed an automatic six month extension of time to file its income tax return. The application for an automatic extension (Form N-301) must be filed on or before the date prescribed for the filing of the return and shall be granted subject to the following conditions:
  - (A) On or before the due date of the return prescribed by the statute, there shall have been paid, through estimated tax payments or a payment accompanying the application for the extension, an amount equal to the properly estimated tax liability for the taxable year. A properly estimated tax liability means the taxpayer made a bona fide and reasonable attempt at the time the extension was submitted to locate and gather all of the necessary information to make a proper estimate of tax liability for the taxable year. If a payment accompanies the application for the extension, the amount of the payment

- shall be shown on the application.
- (B) The income tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax to the extent not already paid.
- (2) Consolidated returns. If a consolidated return is to be filed under section 235-92(2), HRS, a parent corporation or parent entity classified as a corporation may request an automatic extension for its subsidiaries. In this case, the name, address, and employer identification number of each member of the affiliated group, for which the extension is desired, must be listed. The filing of an application for extension of time by a parent corporation or parent entity classified as a corporation is not considered an exercise of the privilege of filing a consolidated return. If the privilege of filing a consolidated return is not exercised, the parent corporation or parent entity classified as a corporation and members of the affiliated group shall attach a copy of the application for extension to their completed separate income tax returns.
- (3) Signature. The application for extension shall be authorized by the signature of the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other duly authorized officer permitted to act on behalf of the corporation, or by the signature of any partner, manager or member of an entity classified as a corporation, or an entity that is a partner or member of the entity classified as a corporation provided the individual or entity is permitted to act on behalf of the entity.
- (d) Tax payment not extended. The automatic extension to file income tax returns granted under section 235-98, HRS, shall not extend the time for payment of any tax due on the return.

(e) The appropriate income tax return shall be filed within the time specified by the automatic extension and shall be accompanied by payment of the tax to the extent not already paid. If the appropriate income tax return cannot be filed on or before the end of the applicable automatic 3-month or 4-month extension period and an additional extension as described in subsection (g) is necessary, the filing of the application for the additional extension shall be accompanied by payment of the full amount properly estimated as tax to the extent not already paid.

(1) If the return is not filed or the tax liability is not properly estimated, the failure to file penalty under section 231-39(b)(1), HRS and interest shall be assessed on the amount of tax owed, as if no extension had been granted (i.e., the computation of penalty and interest shall relate back to the due date prescribed by the statute).

(2) Even if the tax liability is properly estimated, the Department may add to the tax due a failure to pay penalty under section 231-39(b)(3), HRS, of .5 per cent of the tax due if the taxpayer fails to pay the tax for not more than one month or fraction thereof with an additional .5 per cent of the tax due for each additional month or fraction thereof during which such failure continues, not exceeding twenty per cent, unless the failure to pay the tax is due to reasonable cause and not due to willful neglect. Reasonable cause will be presumed, for purposes of this paragraph, if the balance due is less than 10 per cent of the amount of tax shown on the income tax return and any balance due on the income tax return is remitted with the return.

(f) Termination. The director of taxation may terminate the automatic extension at any time by mailing a notice of termination to the taxpayer. In the case of a corporation or entity classified as a corporation, notice of termination shall be mailed to the corporation or entity classified as a corporation,

or to the person who requested the extension for the corporation. The notice shall be mailed at least ten days prior to the termination date designated in the notice.

(g) Additional extension of time to file return.

- (1) Individual, partnership or entity classified as a partnership, or real estate mortgage investment conduit. A taxpayer may submit an application for an additional extension of time to file an income tax return prior to the expiration of any automatic extension previously received. On the application, the taxpayer must show reasonable cause why additional time is needed to file the income tax return. However, except for persons who are outside the United States, the aggregate extension of time to file a return shall not exceed six months, computed from the original due date of the return. The application for the additional extension of time shall be submitted on or before the expiration of any previous extension of time for filing the return.
- (2) Estate and trust. The fiduciary of an estate or trust may submit an application for an additional extension of time to file an income tax return prior to the expiration of any automatic extension previously received. On the application, the fiduciary must show reasonable cause why additional time is needed to file the income tax return. However, the aggregate extension of time to file a return shall not exceed six months, computed from the original due date of the return. The application for the additional extension of time shall be submitted on or before the expiration of any previous extension of time for filing the return.
- (3) Corporation or entity classified as a corporation. No additional extension of time to file shall be granted to a corporation or entity classified as a corporation beyond the automatic six month extension. [Eff 2/16/82; am 6/28/93, 1/1/94, 10/13/94, 12/15/97 (Auth: HRS §§ 231-3(9), 235-98, 235-118) (Imp: HRS §235-98)

DEPARTMENT OF TAXATION

Amendments to chapter 18-235, Hawaii Administrative Rules, on the summary page dated December 15, 1997, were adopted on December 11, 1997, after public notice was published in The Honolulu Advertiser, the Honolulu Star-Bulletin, The Garden Island, The Maui News, and the Hawaii Tribune-Herald on November 10, 1997.

These amendments shall take effect ten days after filing

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Ray K. Kamikawa  
Director of Taxation

APPROVED:

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Benjamin J. Cayetano  
Governor  
State of Hawaii

Date: \_\_\_\_\_

APPROVED AS TO FORM:

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Deputy Attorney General

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Filed