

DEPARTMENT OF TAXATION

Amendments to Section 18-235-61-04
Hawaii Administrative Rules

December 24, 1998

SUMMARY

1. § 18-235-61-04 is amended.

§18-235-61-04 Services performed by employees within and without the State. (a) Resident employee. Wages earned by resident employees are subject to Hawaii income tax and are subject to withholding pursuant to section 235-61, HRS, and sections 18-235-61-01 to 18-235-61-14 regardless of where the services are performed. Therefore, even if the employee performs services out-of-state or for an employer which has an office in-state but is headquartered out-of-state, wages earned by a resident employee are subject to Hawaii income tax and withholding.

If wages earned by a resident employee also are taxed by another jurisdiction, a tax credit may be available under section 235-55, HRS.

(b) Nonresident employee.

(1) In general. Wages paid to a qualifying nonresident employee for services performed in the State are not subject to withholding. The wages, however, may be subject to Hawaii income tax as imposed by section 235-4, HRS.

An employee is a qualifying nonresident employee for purposes of section 235-61, HRS, and this section if:

- (A) The employee is performing services in the State for an aggregate of not more than sixty days during the calendar year;
 - (B) The employee is a nonresident as set forth in section 235-1, HRS, or the employer reasonably believes the employee is a nonresident;
 - (C) The employee is paid for services performed from an office located outside the State;
 - (D) The employee's regular place of employment (where the employee regularly performs services for the employer) is outside the State; and
 - (E) The employer does not reasonably expect the employee to perform services in the State an aggregate of more than sixty days during the calendar year.
- (2) Statement of nonresidency. To qualify for the exemption from withholding on wages as set forth in section 235-61, HRS, and this section, nonresident employees shall file a statement of nonresidency on forms prescribed by the department.

- (A) Filing requirement. All nonresident employees may file a signed statement of nonresidency with their employer. The employer then shall file the original statement of nonresidency with the director or designee in the taxation district in which the employer's principal place of business is located or where services are principally performed. A copy of the form shall be retained in the records of the employer.
- (B) Effective date. The employer shall cease withholding taxes from a nonresident employee's wages on or after the first payroll period or the first payment of wages after the statement of nonresidency is filed with the department.
- (C) Investigation of nonresidency status. An employer, however, shall withhold taxes from the wages of a nonresident if the employer is notified by the department of an investigation into the nonresidency status of the employee. Notice of the investigation and the department's determination shall be sent to both the employer and the employee. The investigation into an employee's residency status shall be completed within a reasonable time. The department shall notify both the employee and the employer of the department's determination.

A notice of the department's determination shall be effective for the first payment of wages made on or after the first day of the calendar month which is at least thirty days after notice from the department is received. At the option of the employer, the department's determination may go into effect at an earlier payroll period.
- (D) Change of status. If at anytime the employee's residency status changes, the employee shall notify the employer of the change in status within ten days. The employer then shall notify the department of the change in the employee's residency status. The change

in status shall go into effect for the first payment of wages on or after the first day of the calendar month which commences at least thirty days after the department is notified. At the option of the employer, however, the change in residency status may go into effect at an earlier payroll period if the employee is notified of the change.

[Eff. 2/16/82; am and ren §18-235-61-04
10/13/94; am **JAN 29 1999**] (Auth:
HRS §§231-3(9), 235-61, 235-118) (Imp:
HRS §§235-61 to 235-67)

DEPARTMENT OF TAXATION

Amendments to section 18-235-61-04, Hawaii Administrative Rules, on the Summary page dated December 24, 1998, were adopted on December 24, 1998, following a public hearing held on December 24, 1998 after public notice was given in the Honolulu Advertiser, the Honolulu Star-Bulletin, the Hawaii Tribune-Herald, and the Maui News, on November 18, 1998.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

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RAY K. KAMIKAWA
Director of Taxation

APPROVED:

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BENJAMIN J. CAYETANO
Governor
State of Hawaii

1/19/99
Dated: _____

JAN 19 1999

Filed