

DEPARTMENT OF TAXATION

Amendment to Section 18-235-61-03
Hawaii Administrative Rules

May 27, 1999

SUMMARY

1. § 18-235-61-03(b) is amended.

§18-235-61-03 Wages subject to withholding. ***

- (b) Exceptions.
- (1) An employer shall not withhold tax from income which is excluded from gross income pursuant to sections 235-2.3 and 235-7, HRS. For example, an employer shall not withhold tax from:
- (A) The rights, benefits, and other income, received under the state retirement system, exempted pursuant to section 88-91, HRS, or any comparable rights, benefits, and other income received under any other public retirement system.
 - (B) Any compensation received in the form of a pension for past services rendered.
 - (C) Remuneration paid to a patient affected with Hansen's disease, employed by the State, in any hospital, settlement, or place for the treatment of Hansen's disease.
 - (D) The first \$1750 received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty. Compensation in excess of \$1750 shall be subject to withholding and shall be reported on the income tax return of the recipient.

With respect to payments which are excluded from income pursuant to section 235-7(a)(1), (5), and (6), HRS, the employer shall withhold tax from the payments to the employee unless the employer or employee presents evidence regarding the exclusion and obtains a ruling from the department exempting the income from the withholding requirements of section 235-61, HRS, and sections 18-235-61-01 to 18-235-61-14.

- (2) Additionally, the director finds withholding from the following payments to be unduly onerous or impracticable of enforcement. Therefore, an employer shall not withhold tax from the following payments:

- (A) Compensation paid as a weekly benefit for unemployment up to but not in excess of the amount provided by the federal Employment Security Law. Limitations applicable to payments from federal or state treasury funds or accounts shall apply to payments by an employer, trust, or other means provided by an employer. Although not subject to withholding, unemployment benefits shall be reported on the income tax return of the recipient.
- (B) Payments to or on behalf of an employee or the employee's beneficiary, or from or to a trust created pursuant to section 401, IRC, (qualified pension, profit-sharing, and stock bonus plans), except where the payment is made to an employee of the trust as remuneration for services rendered as an employee and not as a beneficiary of the trust. Additionally, payments to or on behalf of an employee or the employee's beneficiary, under or to an annuity plan as described in section 403(a), IRC, shall not be subject to withholding. Although not subject to withholding, payments subject to this paragraph shall be reported on the income tax return of the recipient.
- (C) The fair market value of meals and lodging furnished to an employee, provided, the lodging is required as a condition of employment. Although not subject to withholding, the fair market value of meals and lodging subject to this paragraph shall be reported on the income tax return of the recipient.
- (D) Wages paid to the estate or beneficiary of a deceased employee, who dies before the date for payment of wages. Wage payments, however, are includable in the income tax return of the estate or beneficiary who acquires the right to receive the wage payments due to the employee's death, unless the payments are wages includable in the

- income tax return of the decedent.
- (E) Amounts paid to a person who is blind, deaf, or totally disabled, whose disability has been certified to as set forth in section 235-1, HRS. This paragraph applies to the first payroll period ending, or first payment of wages made without regard to a payroll period, on or after the date the certificate is presented to the employer. Thereafter, the exemption applies to all payroll periods and payments unless re-examination shows that the taxpayer no longer qualifies as a person who is blind, deaf, or totally disabled. If the taxpayer no longer qualifies for the exclusion under this paragraph, the existing certificate allowing for the exclusion from withholding shall be treated in the following manner:
- (i) If the date of the re-examination is after June 30 and before January 1, withholding is not required for the entire calendar year in which the re-examination occurred; or
 - (ii) If the date of the re-examination is between January 1 but before July 1, withholding is required as of July 1. Although withholding is not required upon the wages of a person who is blind, deaf, or totally disabled, if the conditions set forth in this paragraph are met, the employer must provide the employee and the director or designee a Form HW-2 showing the total wages and other required information.
- The employer shall report the information in the same manner as in the case of an employee whose withholding exemptions exceed the amount of wages subject to withholding. Additionally, the wages of a person who is blind, deaf, or totally disabled must be included on Forms HW-14 and HW-3 filed by the employer. Although not subject to withholding, payments subject to

- this paragraph shall be reported on the income tax return of the recipient.
- (F) Fees paid by persons other than the government or a government agency, and to public officials for the performance of their duties (such as fees paid to notaries and sheriffs). Although not subject to withholding, fees subject to this paragraph shall be reported on the income tax return of the recipient.
 - (G) Per diem amounts, mileage reimbursements, or fees paid to jurors and witnesses, or to public officials providing a temporary and nonrecurring service or who serve not more than once a year (i.e., election officials). Although not subject to withholding, fees subject to this paragraph shall be reported on the income tax return of the recipient.
 - (H) Remuneration for services performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, excluding delivery or distribution to a place for subsequent delivery or distribution. Although not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return of the recipient.
 - (I) Remuneration for services performed by an individual in and at the time of the sale of newspapers or magazines to consumers, where compensation is based on the retention of the balance of the fixed price at which the newspapers are sold less the cost of the newspapers or magazines to the individual (whether or not the individual is guaranteed a minimum amount of compensation or is credited for any unsold newspapers or magazines returned). Although not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return of the recipient.
 - (J) Tips or gratuities in any medium other than cash, or cash tips of less than \$20 in any

calendar month, received by an employee in the course of employment by an employer. If an employee receives tips or gratuities of \$20 or more in any calendar month and the employee is required to furnish the employer a statement of tips or gratuities received under section 6053 of the IRC (with respect to reporting of tips), withholding shall be required. Whether or not withholding is required on tips or gratuities under this paragraph, all tips or gratuities shall be reported on the income tax return of the recipient.

- (K) Cash remuneration for casual services not in the course of an employer's trade or business, including domestic services, of less than \$50 per calendar quarter.

If an individual, who is regularly employed by an employer, also performs casual services not in the course of trade or business and is paid \$50 or more per calendar quarter for the services, then the remuneration shall be subject to withholding. Whether or not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return of the recipient.

For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

- (i) On each of some twenty-four days during the quarter, the employee performs services for the employer which are not in the course of the employer's trade or business during some portion of the day; or
- (ii) The employee is regularly employed by the employer in the performance of the service during the preceding calendar quarter.
- (L) Remuneration for services performed by an

officer or member of the crew aboard a vessel engaged in foreign, interstate, intercoastal, coastwide, or noncontiguous trade, including an officer or member of the crew of an airplane traveling between points in the State and points outside the State. An officer or member of a crew on a vessel in the coastwide trade between ports within the State, however, may reach a voluntary agreement with the employer to have tax withheld. Although not subject to withholding, remuneration for services performed by officers and crew members shall be reported on the recipient's respective state income tax return subject to section 235-7(a)(8), HRS.

- (M) Noncash remuneration not in the course of trade or business. Remuneration for services not in the course of an employer's trade or business, including domestic services, to the extent paid in any medium other than cash. Unless otherwise provided in this section, the fair market value of the remuneration shall be stated separately on Form HW-2 or forms prescribed by the department. Although not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return of the recipient.
- (N) Expense, allowances, etc.. Amounts paid, either as advances or reimbursements, for traveling or other bona fide ordinary and necessary expenses incurred or reasonably expected to be incurred in the business of the employer. To be excluded from withholding under sections 18-235-61-01 to 18-235-61-14, the traveling and other reimbursed expenses shall be identified as a separate payment, or shall be identified as separate amounts of ordinary wages and expense allowances which are combined into a single payment. Advances and reimbursements shall be separately stated on Form HW-2 or forms prescribed by the department, unless

the employer requires an accounting by the employee showing that the amount does not exceed the ordinary and necessary expenses incurred in the business of the employer. Although not subject to withholding, payments subject to this paragraph shall be reported on the income tax return of the recipient.

- (O) Noncash remuneration, retail salesperson. Noncash remuneration for services performed by a retail salesperson, where the services are ordinarily performed for commissions in cash. The employer must separately state the fair market value of this remuneration on Form HW-2 or forms prescribed by the department. Although not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return of the recipient.
- (P) Remuneration for services performed as an employee by a duly ordained, commissioned, or licensed minister of a church in the exercise of the employee's ministry or by a member of a religious order in the exercise of duties required by the order. Although not subject to withholding, remuneration subject to this paragraph shall be reported on the income tax return as income of the recipient. For purposes of this paragraph, the term religious order is defined in Internal Revenue Service Procedure 91-20, 1991-1 CB 524.

[Eff 2/16/82; am and ren §18-235-61-03 10/13/94;
am **JUN 24 1999**] (Auth: HRS §§231-3(9),
235-61, 235-118) (Imp: HRS §§235-61 to 235-67)

§18-235-61-03

DEPARTMENT OF TAXATION

The amendment to section 18-235-61-03, Hawaii Administrative Rules, on the Summary page dated May 27, 1999, was adopted on May 27, 1999, following a public hearing held on May 27, 1999, after public notice was published by RFD Publications Inc. in the Hawaii State and County Public Notices on April 26, 1999.

The amendment 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

06/10/99

Date: _____

APPROVED AS TO FORM:

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Deputy Attorney General

JUN 14 1999

Filed