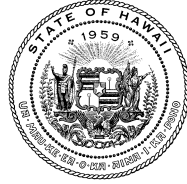


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## **TAX INFORMATION RELEASE NO. 2007-03**

RE: Imposition of Hawaii State Income Tax on Income Earned by Nonresident Merchant Seamen and Withholding Obligations of Employers of Nonresident Merchant Seamen

This Tax Information Release (TIR) discusses the imposition of state income tax on income earned by nonresident merchant seamen and the income tax withholding obligations of the employers of such seamen.

### **I. Imposition of State Income Tax on Income Earned by Nonresident Merchant Seamen**

#### **A. General Requirements for State Tax Exemption Under the Transportation Employee Fair Taxation Act.**

Nonresidents, as defined under § 235-1, Hawaii Revised Statutes (HRS), are subject to state income tax on income earned in Hawaii. However, the Transportation Employee Fair Taxation Act codified at 46 U.S.C. § 11108, prohibits Hawaii from imposing its state income tax on income earned in Hawaii by certain nonresident seamen. The purpose of this Act was to prevent merchant mariners who perform duties on the navigable waters of multiple states from being taxed in multiple jurisdictions. In order for income to be exempt under § 11108(b) from Hawaii income tax, the income must be earned by a nonresident in exchange for performing “regularly-assigned duties while engaged as a master, officer, or crewman on a vessel operating on the navigable waters of more than one State”. Such income is not subject to Hawaii tax but may be subject to tax by the state in which the individual resides.

#### **Example 1**

Taxpayer is a resident of New York. Taxpayer is employed as a crewmember aboard a cruise ship. Taxpayer performed regularly-assigned duties aboard the ship while it traveled from a port in California to a port in Hawaii during the tax year. Taxpayer earned income in exchange for performing regularly-assigned duties as a crewmember aboard a vessel while it operated on the navigable waters of more than one State. Therefore, Taxpayer is not subject to Hawaii income tax on this income. Taxpayer may be subject to New York state income tax.

**A. Income Earned by Taxpayer Working on Vessel that only made Inter-Island Trips is Subject to Hawaii Tax.**

If a nonresident taxpayer earned income from performing regularly-assigned duties on a vessel only while the vessel traveled between the various Hawaiian islands, then the taxpayer is not eligible for the tax exemption of § 11108(b). All of this income is taxable by Hawaii because it was not earned while the vessel traveled on the waters of more than one state, therefore, there is no risk of multiple taxation. The State may impose income tax on income earned by a nonresident taxpayer working on a vessel that travels between the Hawaiian islands despite the fact that some of the work is taking place in international waters. The services performed by the taxpayer do not involve interstate commerce or foreign commerce. The taxpayer has engaged only in intrastate commerce as far as state income tax issues are concerned and therefore 100 percent of the income that the taxpayer earns while performing duties aboard this vessel is taxable by Hawaii.

**Example 2**

Nonresident Taxpayer performs regularly-assigned duties as a crewmember aboard a vessel that transports freight from Oahu to the neighboring Hawaiian islands. The vessel only travels between the Hawaiian islands. Taxpayer earned income aboard a vessel that only traveled the waters of one state. Taxpayer must pay Hawaii income tax on all of this income.

**B. Income Earned by Taxpayer Working on Vessel that only made Trips from Hawaii to a Foreign Nation is Subject to Hawaii Tax.**

If a nonresident taxpayer earned income from performing regularly-assigned duties on a vessel only while the vessel traveled between Hawaii and a foreign nation, then the taxpayer is not eligible for the tax exemption of § 11108(b) because the income was not earned while the vessel traveled on the waters of more than one state. The portion of this income that is attributable to Hawaii sources is taxable by Hawaii. An apportionment formula must be used to determine the portion of the income that is subject to Hawaii tax. This formula involves dividing the number of days the vessel spends in Hawaii ports during the tax year by the total number of days the vessel spends in all ports during the tax year and then multiplying this figure by the gross annual income the taxpayer earns from working on board the vessel.

**Example 3**

Nonresident Taxpayer performs regularly-assigned duties as a crewman aboard a vessel that travels from Hawaii to Fanning Island in the Republic of Kiribati. The vessel spends 75 days in Hawaii ports during the tax year and 25 days in Fanning Island ports during the tax year. Taxpayer earns \$62,000 gross annual income for performing duties aboard the vessel. The amount of income that is subject to Hawaii state income tax is \$46,500 (calculation: 75 days in Hawaii ports divided by 100 days in all ports multiplied by \$62,000 in income).

**C. Nonresident Taxpayer must have Performed Regularly-Assigned Duties while the Vessel Operated on Navigable Waters of more than one State.**

In order for a taxpayer to be eligible for the state income tax exemption under § 11108, it is not enough that the vessel aboard which taxpayer performed regularly-assigned duties traveled on the navigable waters of more than one state at sometime during the tax year. The nonresident taxpayer must have been engaged to perform regularly-assigned duties as a master, officer, or crewman on the vessel while the vessel was operating on navigable waters of multiple states.

**Example 4**

During the first three months of the tax year, a cruise ship transported passengers between a port in California to a port in Hawaii. During the remaining nine months of the tax year, the cruise ship only operated in the state of Hawaii, transporting passengers between the various islands of Hawaii. Nonresident Taxpayer did not begin working as a crew member on the cruise ship until the last six months of the tax year. Taxpayer therefore performed regularly-assigned duties as a crewman on the vessel while it operated only on the navigable waters of one state – Hawaii. Taxpayer is subject to Hawaii income tax on income he earned as a crewman on board this cruise ship.

**II. Income Tax Withholding Obligations of Employers of Nonresident Merchant Seamen**

The exemption from the withholding obligations of the employers of merchant seamen imposed by HRS § 235-61 is broader than the individual merchant seamen's exemption from Hawaii income tax. Therefore, a merchant seaman may be subject to Hawaii income tax even though his or her employer is not required to withhold income tax on those wages.

Remuneration for services performed as an officer or member of the crew aboard a vessel engaged in foreign, interstate, intercoastal, coastwide or noncontiguous trade is not subject to withholding. However, taxes may be withheld from the wages of a seaman who is employed in the coastwide trade between ports in the State if the withholding is pursuant to a voluntary agreement between the seaman and his employer. See Hawaii Administrative Rules § 18-235-61-03(b)(2)(L).

As discussed above, although not subject to withholding, officers and crew members who are residents of the State must include their entire wages in their income tax returns. Nonresidents must include their wages for services performed in the State in their income tax returns.

For more information on this Tax Information Release, please contact the Technical Section of the Rules Office at (808) 587-1577.



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