

A Bill for an Act Relating to Taxation.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 235-61, Hawaii Revised Statutes, is amended to read:

**“§235-61. Withholding of tax on wages.** (a) As used in this section:

- (1) “Wages” means wages, commissions, fees, salaries, bonuses, and every and all other kinds of remuneration for, or compensation attributable to, services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash and the cost-of-living allowances and other payments included in gross income by section 235-7(b), but excluding income excluded from gross income by section 235-7 or other provisions of this chapter;
- (2) “Employee” includes an officer or elected official, or any other employee;
- (3) “Employer” means (A) the person or government for whom an individual performs or performed any service, of whatever nature, as the employee of such person or government, and (B) the person having control of the payment of the wages if the “employer” as heretofore defined does not have control thereof, and (C) any person subject to the jurisdiction of the State and paying wages on behalf of an “employer” as heretofore defined if the employer is not subject to the jurisdiction of the State; provided that the term “employer” shall not include any government that is not subject to the laws of the State except as, and to the extent that, it consents to the application of sections 235-61 to 235-67 to it.

(b) Every employer, as defined herein, making payment of wages, as herein defined, to employees, shall deduct and withhold from such wages an amount of tax determined as provided in this section.

(c) For each withholding period (whether weekly, bi-weekly, monthly, or otherwise) the amount of tax to be withheld under this section shall be at a rate which, for the taxable year, will yield the tax imposed by section 235-51 upon each employee’s annual wage, as estimated from his current wage in any withholding period, but (for the purposes of this subsection) of the rates provided by section 235-51 the maximum to be taken into consideration shall be eight per cent. The tax for the taxable year shall be calculated upon the following assumptions:

- (1) That the employee's annual wage, as estimated from his current wage in the withholding period, will be his sole income for the taxable year;
- (2) That there will be no deductions therefrom in determining adjusted gross income;
- (3) That in determining taxable income there will be deductions in the amount of ten per cent of the estimated annual wage;
- (4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and
- (5) If it appears from the certificate filed pursuant to subsection (f) that the employee is, under section 235-93, entitled to make a joint return, that he and his spouse will so elect.

(d) Alternatively, at the election of the employer, he may deduct and withhold from each employee an amount of tax determined on the basis of tables to be prepared and furnished by the department of taxation, which amount of tax shall be substantially equivalent to the amount of tax provided by subsection (c) hereof.

(e) The department, by regulation, may require the deduction and withholding of tax from any remuneration or compensation paid for or attributable to services that are not subject to the general excise tax imposed by chapter 237, whether or not such withholding is provided for hereinabove. Every person so required to deduct and withhold tax, or from whom tax is required to be deducted and withheld, shall be subject to sections 235-61 to 235-67, and every person so required to deduct and withhold tax shall be deemed an employer for the purposes of this chapter.

The department, by regulation, may exempt any employer from the requirement of deduction and withholding of taxes, even though such requirement is imposed by this section, if and to the extent that the department finds such requirement unduly onerous or impracticable of enforcement.

(f) On or before the date of the commencement of employment with an employer, the employee shall furnish the employer with a signed certificate relating to the amount of exemptions which he claims, which shall in no event exceed the amount to which he is entitled on the basis of the existing facts, and also showing whether he is married and is, under section 235-93, entitled to make a joint return. The certificate shall be in such form and contain such information as may be prescribed by the department.

If, on any day during the calendar year, there is a change in the employee's marital status and he no longer is entitled to make a joint return, or the amount of exemptions to which the employee is entitled is less than the amount of exemptions claimed by the employee on the certificate then in effect with respect to him, the employee shall within ten days thereafter furnish the employer with a new certificate showing his present marital status, or relating to the amount of exemptions which the employee then claims, which shall in no event exceed the amount to which he is entitled on the basis of the existing facts. If, on any day during the calendar year, there is a change in the employee's marital status and though previously not entitled to make a joint return he now is so entitled, or the amount of exemptions to which he is entitled is greater than the amount of exemptions claimed, the employee may

furnish the employer with a new certificate showing his present marital status, or relating to the amount of exemptions which the employee then claims, which shall in no event exceed the amount to which he is entitled on the basis of the existing facts.

Such certificate shall take effect at the times set forth in the Internal Revenue Code.

(g) In determining the deduction allowed by subsection (c)(4) an employee shall be entitled to withholding allowances under this subsection with respect to a payment of wages equal to the number determined by dividing by \$1,000 the excess of the employee's estimated itemized deductions over an amount equal to ten per cent of the employee's estimated wages. For the purposes of this subsection a fractional number shall not be taken into account.

(1) As used in this subsection, unless the context otherwise requires:

(A) "Estimated itemized deductions" means the aggregate amount which the employee reasonably expects will be allowed as deductions under sections 235-2.3 and 235-7, other than the deductions referred to in Internal Revenue Code section 151 and those deductions required to be taken into account in determining adjusted gross income under Internal Revenue Code section 62 (with the exception of paragraph 13 thereof) for the estimation year. In no case shall such aggregate amount be greater than the sum of:

(i) The amount of such deductions (or the zero bracket amount (within the meaning of section 235-2.3)) reflected in the employee's net income tax return for the taxable year preceding the estimation year or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year, or

(ii) The ten per cent standard deduction reflected in the employee's net income tax return for the taxable year preceding the estimation year or (if such a return has not been filed for such preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year, and the amount of the employee's determinable additional deductions for the estimation year.

(B) "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year.

(C) "Determinable additional deductions" means those estimated itemized deductions which:

(i) Are in excess of the deductions referred to in subparagraph (A) (or the zero bracket amount) reflected on the employee's net income tax return for the taxable year preceding the estimation year; and

(ii) Are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of

such deductions on the net income tax return for the estimation year.

(D) "Estimation year", in the case of an employee who files the employee's return on the basis of a calendar year, means the calendar year in which the wages are paid; provided that in the case of an employee who files the employee's return on a basis other than the calendar year, the employee's estimation year, and the amounts deducted and withheld to be governed by such estimation year, shall be determined under rules prescribed by the director of taxation.

(2) Under this subsection, the following special rules shall apply:

(A) Married individuals. The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year.

(B) Limitation. In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exceptions) to offset the liability for tax under this chapter with respect to the wages from which such amounts are deducted and withheld, the director may by rule reduce the withholding allowances to which such employees would, but for this subparagraph, be entitled under this subsection.

(C) Treatment of allowances. For purposes of this chapter, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.

(3) The director may prescribe tables by rule under chapter 91 pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection.

(h) Any individual required to supply information to his employer under this section who wilfully supplies false or fraudulent information, or who wilfully fails to supply information under this section which would require an increase in the tax to be withheld, shall be fined not more than \$500, or imprisoned not more than six months, or both."

SECTION 2. Section 235-62, Hawaii Revised Statutes, is amended to read:

**"§235-62 Return and payment of withheld taxes.** Every employer required by this chapter to withhold taxes on wages paid in any month shall make return of such wages to the department of taxation on or before the fifteenth day of the calendar month following the month for which the taxes have been withheld. The return shall be in such form, including computer printouts and the like, and contain such information as may be prescribed by the director of taxation. The return shall be filed with the collector of the taxation district in which the employer has his principal place of business or with the director at Honolulu if the employer has no place of business in the State. Every return under this section shall be accompanied by a

remission of the complete amount of tax withheld, as reported in the return; provided that the director may, if he believes such action necessary where collection of the tax may be in jeopardy, require any person required to make a return under this section to make such return and pay such tax at any time; provided further that the director may grant permission to employers, whose liability to pay over the taxes withheld as heretofore provided shall not exceed \$1,000 a year, to make returns and payments thereon on a quarterly basis during the calendar year, such returns and payments to be made on or before the fifteenth day of the calendar month after the close of each quarter, to wit on or before April 15, July 15, October 15, and January 15; and provided further that the director may grant permission to employers to make monthly payments based on an estimated quarterly liability, provided that the employer file a reconciliation return on or before the fifteenth day of the calendar month after the close of each quarter during the calendar year as heretofore provided. The director, for good cause, may extend the time for making returns and payments, but not beyond the fifteenth day of the second month next succeeding the regular due date thereof as provided herein. With respect to wages paid out of public moneys, the director in his discretion may prescribe special forms for, and different procedures and times for the filing of, such returns by employers paying such wages, or may, upon such conditions and subject to such rules as he may prescribe from time to time, waive the filing of any such returns."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.\*

SECTION 4. This Act shall take effect upon its approval.

(Approved June 12, 1981.)

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\*The text has been edited pursuant to HRS §23G-16.5, authorizing omission of the brackets, bracketed material, and underscoring.