

ACT 206

H.B. NO. 765

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 235-4, Hawaii Revised Statutes, is amended to read:

“§235-4 Income taxes by the State; residents, non-residents, [corporation,] corporations, estates, and trusts. (a) Residents. The tax imposed by this chapter applies to the entire income of a resident, computed without regard to source in the State.

(b) Nonresidents. In the case of a nonresident, the tax applies to the income received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State.

In the case of a nonresident spouse filing a joint return with a resident spouse, the tax applies to the entire income of the nonresident spouse computed without regard to source in the State.

(c) [When] Change of status. Except where a joint return is filed, when the status of a taxpayer changes during the taxable year from resident to nonresident, or from nonresident to resident, the tax imposed by this chapter applies to the entire income earned during the period of residence in the manner provided in subsection (a) of this section and during the period of nonresidence the tax shall apply upon the income received or derived as a nonresident in the manner provided in subsection (b) of this section; provided that, if it cannot be determined whether income was received or derived during the period of residence or during the period of nonresidence, there shall be attributed to the State such portion of the income as is determined by applying to such income for the whole taxable year the ratio which the period of residence in the State bears to the whole taxable year, unless the taxpayer shows to the satisfaction of the department of taxation that the result is to attribute to the state income, dependent upon residence, received or derived during the period of nonresidence, in which event the amount of income as to which such showing is made shall be excluded.

The apportionment of income provided by this subsection shall not apply where one spouse is a resident of this State and a joint return is filed with the nonresident spouse in which event the tax shall be computed on their aggregate income in the manner provided in section 235-52 without regard to source in the State. Where, however, both spouses change their status from resident to nonresident or from nonresident to resident, their income shall be apportioned in the manner provided in this subsection.

(d) A corporation, foreign or domestic, is taxable upon the income received or derived from property owned, trade or business carried on, and any and every other source in the State. In addition thereto a domestic corporation is taxable upon its income from property owned, trade or business carried on, and any and every other source outside the State, unless subjected to income tax thereon in any other jurisdiction. Subjection to federal tax does not constitute subjection to income tax in another jurisdiction. "Corporation" includes any professional corporation incorporated pursuant to part VIII of chapter 416.

- (e) (1) The income of a resident estate or trust shall be computed without regard to source in the State. The income of a nonresident estate or trust shall be that received or derived from sources in the State.
- (2) A beneficiary of an estate or trust, or person treated as the owner of any portion of a trust, who is taxable upon income thereof under the Internal Revenue Code, shall be taxed thereon as herein provided, irrespective of the taxability of the estate or trust or whether it is required to make a fiduciary return under this chapter. If all such income consists of income which would be taxable under this chapter if received directly by the beneficiary or person, he shall be taxed upon

all of it. If some of it consists of income which would not be taxable if received directly by the beneficiary or person, then unless the trust instrument provides otherwise the income of each such beneficiary or person shall be conclusively presumed to have been received or derived out of each class of income of the estate or trust, and he shall be taxed upon such part of it as would be taxable if received directly by him.

- (3) Each estate or trust shall include in its return all of the information necessary to determine the taxability of the income of the estate or trust, regardless of source. Only in the case of a nonresident estate or trust of which all the beneficiaries are nonresidents and no part of which is treated as owned by a resident shall the return be confined to income from sources in the State. This paragraph shall not cause income to be taxed to an estate or trust that otherwise would not have been so taxed."

SECTION 2. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (f) to read:

"(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] number of exemptions which he claims, which shall in no event exceed the [amount] number 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] number of exemptions to which the employee is entitled is less than the [amount] number 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] number of exemptions which the employee then claims, which shall in no event exceed the [amount] number 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] number of exemptions to which he is entitled is greater than the [amount] number of exemptions claimed, the employee may furnish the employer with a new certificate showing his present marital status, or relating to the [amount] number of exemptions which the employee then claims, which shall in no event exceed the [amount] number 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."

SECTION 3. Section 237-7, Hawaii Revised Statutes, is amended to read:

"§237-7 **"Service business or calling", defined.** "Service business or calling" includes all [nonprofessional] activities engaged in for other persons for a consideration which involve the rendering of a service as distinguished from the sale of tangible property or the production and sale of tangible property. "Service

business or calling” does not include the services rendered by an employee to his employer.”

SECTION 4. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 5. This Act upon its approval shall apply to taxable years beginning after December 31, 1982.

(Approved June 7, 1983.)