

STATE OF HAWAII — DEPARTMENT OF TAXATION
**EXEMPTION FROM WITHHOLDING ON NONRESIDENT
EMPLOYEE'S WAGES**
(To be filed by the employer.)
(Attach Form HW-6 to this form.)

**Year
2012**

Employer's Name, including DBA name (if applicable)
Employer's Address (Street, city, state, and Postal/ZIP Code)
Employer's Hawaii Tax I.D. No. W _____ - _____

1. Employee's name _____
2. Are your employee's services being performed in Hawaii? Yes ☐ No ☐
If you checked "No," where are the services being performed? _____
3. State the approximate number of days, in the aggregate, you expect your employee to perform services in Hawaii during calendar year 2012. _____
4. Is your employee paid for the employee's services in Hawaii from an office outside Hawaii? Yes ☐ No ☐
5. Is your employee's regular place of employment (where your employee regularly performs services for you) outside Hawaii? Yes ☐ No ☐
6. Are you a contractor as defined in section 237-6(1), Hawaii Revised Statutes (HRS)? (Section 237-6(1), HRS, defines a contractor as every person engaging in the business of contracting to erect, construct, repair, or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements.) Yes ☐ No ☐
If you checked "Yes," is your employee performing work for a construction project located in Hawaii? Yes ☐ No ☐
7. Is your employee claiming exemption from withholding under the Military Spouses Residency Relief Act which mandates that income received by a servicemember's nonresident civilian spouse for services performed in Hawaii as an employee is not subject to Hawaii's income tax? Yes ☐ No ☐

I declare under the penalties of section 231-36 of the Hawaii Revised Statutes, that I have answered all the above questions and that my answers are true and correct.

Employer's Signature: _____

Title: _____

Date: _____

FOR TAX OFFICE USE ONLY

Withholding of income tax is:

- ☐ Required because the employee is a Hawaii resident.
- ☐ Required because the employee performs services in Hawaii an aggregate of more than 60 days during the calendar year.
- ☐ Required because the employee is paid for services performed in Hawaii from an office in Hawaii.
- ☐ Required because the employee's regular place of employment for services for the employer is in Hawaii.
- ☐ Required because you are a contractor as defined in section 237-6(1), HRS, and your employee is performing work for a construction project located in Hawaii.

Income Tax Assessor/Assistant Assessor: _____

Date: _____

General Information

Purpose of Form

If your employee is a nonresident employee and withholding is not required on your employee's wages under items (a) or (b) of "When Withholding is Not Required" (see below), **you must file Form HW-7**, along with the Form HW-6 completed by your employee, with the Department of Taxation in order to qualify for the exemption from withholding on your employee's wages.

Note: If your employee is a nonresident employee and withholding is not required on your employee's wages under item (c) of "When Withholding is Not Required" (see below), you do not have to file Form HW-7 with the Department of Taxation. Withholding is not required on your employee's wages. Keep your employee's Form HW-6 for your records.

When Withholding is Required

Withholding is required on:

- (a) Wages for services performed **in** Hawaii, and
- (b) Wages for services performed **outside** Hawaii if:
 - The services are performed by an employee whose regular place of employment for services for the employer is in Hawaii, **or**
 - The wages are paid out of an office in Hawaii, or the field office of an employer whose head office is in Hawaii.

When Withholding is Not Required

(Note: Employers and employees who are exempt from the withholding provisions are not necessarily exempt from the Hawaii Income Tax Law.)

Withholding is not required on:

- (a) Wages for services performed **in** Hawaii, if **all** of the following conditions are met:
 - The employee establishes that the employee is a nonresident,
 - The employee is performing services in the State for an aggregate of not more than 60 days during the calendar year,
 - The employee is paid for the employee's services in the State from an office outside the State,
 - The employee's regular place of employment (where the employee regularly performs services for the employer) is outside the State, **and**
 - The employer does not reasonably expect the employee to perform services in the State an aggregate of more than 60 days during the calendar year.

If all of the above conditions are met, except for the 60-day requirement, and if the Director of Taxation finds that the withholding requirement is unduly onerous or impracticable of enforcement, the Director may grant permission to an employer for exception from the withholding requirement. However, a nonresident employee performing services for a contractor as defined in section 237-6(1), HRS, will not qualify for a withholding exemption when the contractor is performing work for a construction project located in Hawaii.

- (b) Wages, salaries, tips, commissions, and other compensation received on or after January 1, 2009, by a servicemember's civilian spouse for services performed by the servicemember's spouse in Hawaii as an employee, if **all** of the following conditions are met:

- The servicemember (as defined in 10 U.S.C. section 101(a)(5)) is present in Hawaii solely in compliance with military or naval orders,
- The spouse is in Hawaii solely to be with the servicemember, **and**
- The spouse and servicemember are domiciled in the same state and that state is not Hawaii.

For more information see Tax Information Release No. 2010-01, "Military Spouses Residency Relief Act".

- (c) Wages for services performed **outside** Hawaii if the employee establishes that the employee is a nonresident.

The following examples should help to illustrate when withholding is or is not required:

Employee, a resident of Oregon, is engaged to teach in Hawaii for one summer. Though *Employee* is a nonresident, withholding is required on the *Employee's* wages.

Employee, a resident of Hawaii, is sent to the mainland for special training. Withholding is required on the *Employee's* entire wages.

Employee, a resident of Hawaii, is a promotional sales representative for a mainland manufacturer. The *Employee* has a home in Honolulu and covers all of the islands. From time to time the *Employee* goes to the mainland to attend sales conferences. Withholding is required on the *Employee's* entire wages.

Employee, a resident of California, is brought to the State by a firm having a contract to conduct a survey for a local company. The work commences in February and is not completed until June. During this time, the *Employee* makes a trip back to the mainland for consultations. Withholding is required on the wages for the period of service in the State, but is not required on the wages for the period the *Employee* is outside the State, if the *Employee* is a nonresident of the State.

Employee, a resident of Washington, is hired on the mainland by a local company having a construction contract for work on a Pacific island not part of the State. All of the *Employee's* services are performed on that island. Withholding is not required on the *Employee's* wages if the *Employee* is a nonresident of the State. On the other hand, withholding is required on the wages of employees performing like services for this company who are Hawaii residents or do not make the required showing of nonresidence.

Employee, a resident of Nevada, is hired on the mainland by a construction industry contractor to work in Hawaii on a federal contract. All of *Employee's* services are performed in Hawaii during a period that is less than 60 days in the aggregate for the calendar year. Withholding is required on **any** employee of a construction industry contractor engaged in contracting work in Hawaii regardless of the employee's state of residency or how long the employee is in Hawaii.

Line-by-line Instructions

At the top of the form:

- (1) Enter your name, including any business or trade name (if applicable).
- (2) Enter your current mailing address.
- (3) Enter your Hawaii Tax I.D. number.

Line 1. Enter your employee's name.

Line 2. Check "Yes" if your employee's services are performed in Hawaii. Also check "Yes" if your employee's services are performed on a cruise ship or research vessel. Interisland voyages are considered to be completely within Hawaii and, therefore, all wages earned are subject to withholding.

Line 3. Enter the total number of days you expect your employee to perform services within Hawaii during 2012.

Lines 4 to 7. Answer all the questions.

Signature & Date. Sign and date your form. It is not considered a valid form unless you sign it.

Filing the Form. If you are required to file Form HW-7 (see "Purpose of Form" above), send Form HW-7, along with the original Form HW-6, *Employee's* Statement to Employer Concerning Nonresidence in the State of Hawaii, (keep a copy of your employee's Form HW-6 for your records) to:

HAWAII DEPARTMENT OF TAXATION

P.O. Box 3827
Honolulu, Hawaii 96812-3827

Telephone: 808-587-4242
Toll-Free: 1-800-222-3229

Note: If your employee is a nonresident employee and withholding is not required on your employee's wages under item (c) of "When Withholding is Not Required", you do not have to file Form HW-7 with the Department of Taxation. Withholding is not required on your employee's wages. Keep your employee's Form HW-6 for your records.

Effective Date. You shall stop withholding taxes from your nonresident employee's wages on or after the first payroll period or the first payment of wages after Form HW-7 and Form HW-6 are filed with the Department. If you are not required to file Form HW-7 with the Department, you shall stop withholding taxes from your nonresident employee's wages on or after the first payroll period or the first payment of wages after your employee gives you Form HW-6.

Investigation of Nonresidency Status. You shall withhold taxes from the wages of your nonresident employee if you are notified by the Department that your employee's residency status is being investigated. Notice of the investigation and the Department's determination will be sent to both you and your employee. 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 30 days after notice from the Department is received. At your option, the Department's determination may go into effect at an earlier payroll period.

Change of Status. If at anytime your employee's residency status changes, your employee must notify you of the change in status within 10 days. You then must notify the Department of the change in your employee's residency status. The change in status shall go into effect for the first payment of wages made on or after the first day of the calendar month which is at least 30 days after the Department is notified. At your option, the change in residency status may go into effect at an earlier payroll period if your employee is notified of the change.

Returning Form HW-7 to the Employer. The Department will only return the Form HW-7 to the employer if withholding is required.