

STATE OF HAWAII — DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM HW-6
Employee's Statement to Employer Concerning
Nonresidence in the State of Hawaii

General Information

Purpose of Form

If you are a nonresident employee and withholding is not required on your wages (see "When Withholding is Not Required"), you must file Form HW-6 with your employer in order to qualify for the exemption from withholding on your wages. By filing Form HW-6 with your employer, you are informing your employer that you are a nonresident.

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), Hawaii Revised Statutes, 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 (TIR) 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.

Resident

A resident is taxed on income from all sources.

A Hawaii resident is (1) Every individual domiciled in Hawaii, and (2) Every other individual whether domiciled in Hawaii or not, who resides in Hawaii for other than a temporary or transitory purpose.

An individual domiciled outside Hawaii is presumed to be a resident if the individual spends more than 200 days in Hawaii during the taxable year. This presumption may be overcome by evidence satisfactory to the Department of Taxation that the individual maintained a permanent place of abode outside the State and is in the State for a temporary or transitory purpose. No person shall be deemed to have gained or lost a residence simply because of the person's presence or absence in compliance with military or naval orders of the United States, while engaged in aviation or navigation, or while a student at any institution of learning. See TIR No. 90-3, "*Income Taxation and Eligibility for Credits of an Individual Taxpayer Whose Status Changes from Resident to Nonresident or from Nonresident to Resident*" and TIR No. 97-1, "*Determination of Residence Status*".

Nonresident

A Hawaii nonresident is an individual who is in Hawaii for a temporary or transient purpose, and whose permanent domicile is not Hawaii.

A nonresident must file an Individual Income Tax Return—Nonresident and Part-Year Resident (Form N-15), if required to do so. A nonresident will be taxed on income from Hawaii sources only. A nonresident married to a Hawaii resident may choose to file a joint resident return with the resident spouse; **however, the nonresident will then be taxed on all income from all sources.**

Part-Year Resident

A part-year resident is an individual who was a Hawaii resident for part of the year, and a nonresident of Hawaii during the other part of the year. This includes those who became Hawaii residents during the year and those

who gave up being a Hawaii resident during the year.

A part-year resident must file an Individual Income Tax Return—Nonresident and Part-Year Resident (Form N-15), if required to do so. A part-year resident will be taxed on all income from all sources during the period of residency, and on income from Hawaii sources only during the period of nonresidency.

Domicile Defined

The term “domicile” means the place where an individual has a true, fixed, permanent home and principal establishment, and to which place the individual has, whenever absent, the intention of returning. It is the place in which an individual has voluntarily fixed the habitation of the individual and individual's family, **not for a mere special or temporary purpose, but with the present intention of making a permanent home.** Three things are necessary to create a new domicile: first, an abandonment of the old domicile; second, the intent to establish a new domicile; and third, an actual physical presence in the new domicile. Once a domicile is established, the intent to abandon it is not itself sufficient to create a new domicile; a new domicile must be shown.

Reminder: If you are in Hawaii because of military orders and do not intend to make Hawaii your permanent home, you are not considered a Hawaii resident for income tax purposes even though you are in the State for more than 200 days during the taxable year.

Resident vs. Nonresident Examples

Note: For more information, see TIR No. 90-3, “Income Taxation and Eligibility for Credits of an Individual Taxpayer Whose Status Changes from Resident to Nonresident or from Nonresident to Resident”, TIR No. 90-10, “Clarification of Taxation and the Eligibility for Personal Exemptions and Credits of Residents and Nonresidents in the Military and Spouses and Dependents of Persons in the Military”, and TIR No. 97-1, “Determination of Residence Status”.

Example 1 — A Hawaii resident who enlists in the military normally will remain a Hawaii resident regardless of the length of absence from Hawaii while stationed outside of Hawaii.

Example 2 — A Hawaii resident working in a foreign country will remain a Hawaii resident

unless permanent resident status is granted by the foreign country.

Example 3 — Foreign students who are granted entry into the United States on “F” visas are nonresidents for Hawaii tax purposes. Researchers and faculty members who are granted entry into the United States on “H”, “J”, or “Q” visas, and who have been in Hawaii for more than 200 days during the taxable year may be considered Hawaii residents.

Example 4 — Spouses of those in the military service do not become Hawaii residents if their principal reason for moving to Hawaii was the transfer of the service member spouse to Hawaii, and if it is their intention to leave Hawaii when the service member spouse either is transferred to another military station or leaves the service.

Example 5 — A Hawaii resident who marries a nonresident will remain a Hawaii resident unless the three requirements for changing the Hawaii resident's domicile are also met. (Refer to “Domicile Defined” on page 1.) This situation applies in reverse to a nonresident who marries a resident. A person's residence status will not change just because of marriage.

Line-by-line Instructions

At the top of the form:

- (1) Enter your full name and social security number. If you are an alien and were issued an individual taxpayer identification number (ITIN) by the Internal Revenue Service, enter your ITIN.
- (2) Enter your current street or mailing address.
- (3) Enter your employer's name, including any business or trade name, and current mailing address.

Lines 1 to 23. Answer **all** these questions.

Line 5. Check “Yes” if you can be claimed as a dependent on another person's income tax return, whether or not that person actually claims you.

Lines 24 to 34. Complete **all** these lines if you checked “Yes” on line 2.

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

Filing Form HW-6. Complete and return Form HW-6 to your employer.

Filing Form HW-7. If withholding is not required on your wages under items (a) or (b)

of “When Withholding is Not Required”, your employer must file Form HW-7, Exemption From Withholding on Nonresident Employee's Wages, along with the original Form HW-6, with the Department of Taxation. Your employer will keep a copy of your Form HW-6 for their records.

If withholding is not required on your wages under item (c) of “When Withholding is Not Required”, your employer does not have to file Form HW-7 with the Department of Taxation. Withholding is not required on your wages. Your employer will keep your Form HW-6 for their records.

Effective Date. Your employer shall stop withholding taxes from your 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 your employer is not required to file Form HW-7 with the Department, your employer shall stop withholding taxes from your wages on or after the first payroll period or the first payment of wages after you give Form HW-6 to your employer.

Investigation of Nonresidency Status. Your employer shall withhold taxes from your wages if your employer is notified by the Department that your residency status is being investigated. Notice of the investigation and the Department's determination will be sent to both you and your employer. 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 the option of your employer, the Department's determination may go into effect at an earlier payroll period.

Change of Status. If at anytime your residency status changes, you must notify your employer of the change in status within 10 days. Your employer then must notify the Department of the change in your 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 the option of your employer, the change in residency status may go into effect at an earlier payroll period if you are notified of the change.

Note to Employers: See the instructions to Form HW-7 upon receipt of Form HW-6 from your employee.

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