CHAPTER 233
TAX CLASSIFICATION OF CERTAIN BUSINESS RELATIONSHIPS

Section
233-1 Certain relationship deemed as that of employer-employee
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§233-1 Certain relationship deemed as that of employer-employee. Whenever a person, firm, corporation, or the like, shall engage or continue in this State in the business of selling tangible personal property, and shall cause such property to be distributed to, by, or through representatives, distributors, dealers, salespersons, peddlers, canvassers, carriers, truckers, or the like, the department of taxation may adopt, in the manner provided by law, one or more rules or regulations providing that for the purposes of the tax laws administered by the department the group, class, or category of persons or business described therein (to be determined by the department as may be appropriate for the purposes of the particular rule or regulation) shall, irrespective of whether the relationship or class of business otherwise would be deemed that of seller and buyer, principal and agent, or master and servant, be deemed to be that of employer and employee; provided that no rule or regulation adopted under this section shall apply to any group, class, or category of persons or business as to which the department shall determine, or it shall be shown:

(1) That the potential employee has been and will continue to be free from control or direction over the performance of the business or services undertaken by the potential employee, and also
(2) That the business or services are performed outside of all the places of business of the potential employer, and also
(3) That the potential employee is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the business or services in which the potential employee is engaged or which the potential employee has undertaken for, with, or at the behest of the potential employer.

As used in paragraphs (1), (2), and (3) "potential employee"means the person who by such rule or regulation would be classed as an employee, and "potential employer" means the person, firm, corporation, or the like, who by such rule or regulation would be classed as the employer. [L 1955, c 195, §1; ree L 1959, c 277, §5(a); am L Sp 1959 2d, c 1, §16; Supp, §117A-1; HRS §233-1; am imp L 1984, c 90, §1; gen ch 1985]

Cross References

Rules, see chapter 91.

§233-2 Same: application of taxes. In the event of the adoption of a rule or regulation pursuant to section 233-1:

(1) The person, firm, corporation, or the like, who is the subject of the rule or regulation and thereafter engages or continues in the business of selling tangible personal property (A) shall be deemed to be selling the same to the persons or entities who would be the buyers if in fact, such representatives, distributors, dealers, salesmen, peddlers, canvassers, carriers, truckers, or the like were employees, (B) shall be deemed to be the employer of the persons classed by such rule or regulation as employees, and (C) shall be subject to all of the liabilities, duties, and obligations of the sellers and employers under the tax laws administered by the department of taxation.
(2) The persons so classed as employees (A) shall not be deemed to be buying such property or reselling the same, (B) shall be deemed to be the employees of the person so deemed an employer, and (C) shall be subject to all of the liabilities, duties, and obligations of employees, under the tax laws administered by the department.
(3) The rule or regulation of the department (A) shall provide for the collection, in lieu of withholding, of taxes levied upon the persons so classed as employees in cases in which the persons themselves retain, from receipts handled by them, their fees, charges, commissions, markups, percentages, or other remuneration, (B) shall designate the fees, charges, commissions, markups, percentages, or other remuneration, constituting the taxable compensation of the person classed as employees, and (C) shall contain such other provisions as may be necessary or proper to effectuate this chapter. [L 1955, c 195, §2; ree L 1959, c 277, §5(a); am L Sp 1959 2d, c 1, §16; Supp, §117A-2; HRS §233-2; gen ch 1993]

§233-3 Selling personal property, defined. As used in this chapter "the business of selling tangible personal property" includes both business classed as such under chapter 237 and also the rendering of a service which involves the consumption or use of tangible personal property furnished by the "potential employer" referred to in section 233-1. [L 1959, c 277, §5(b); Supp, §117A-3; HRS §233-3]