

JAN 20 2023

A BILL FOR AN ACT

RELATING TO TELEWORK.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 235-4, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Nonresidents.

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

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

13 (2) In the case of a nonresident who immediately prior to
14 the Hawaii coronavirus disease 2019 state of emergency
15 was an employee engaged in performing services in the
16 State and is currently performing the same services
17 from a location outside of the State due to a



1 pandemic-related circumstance; for taxable years
2 beginning after December 31, 2022, the tax applies to
3 all income received by the nonresident from the
4 services performed outside the State.

5 As used in this subsection, "Hawaii coronavirus
6 disease 2019 state of emergency" and "pandemic-related
7 circumstances" shall have same meaning as defined in
8 section 235-4.2."

9 SECTION 2. Section 235-4.2, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "~~{}~~§235-4.2~~{}~~ **Persons lacking physical presence in the**
12 **State; nexus presumptions.** (a) A person that lacks physical
13 presence in the State is presumed to be systematically and
14 regularly engaging in business in the State and taxable under
15 this chapter if, during the current or preceding calendar year:

16 (1) The person engages in two hundred or more business
17 transactions with persons within the State; ~~{}~~

18 (2) The sum of the value of the person's gross income
19 attributable to sources in this State equals or
20 exceeds \$100,000 or for a person that does business
21 within and without the State the numerator of the



1 person's sales factor for the State equals or exceeds
2 \$100,000[-]; or

3 (3) The person is a nonresident, who:

4 (A) Immediately prior to the Hawaii coronavirus
5 disease 2019 state of emergency, was an employee
6 engaged in performing services in the State; and

7 (B) Is performing the same services from a location
8 outside of the State due to a pandemic-related
9 circumstance.

10 (b) As used in this section:

11 "Hawaii coronavirus disease 2019 state of emergency" means
12 the state of emergency in the State declared in the governor's
13 proclamation related to the COVID-19 Emergency, signed March 4,
14 2020.

15 "Pandemic-related circumstances" means a situation that
16 includes:

17 (1) A government order issued in response to the
18 coronavirus disease 2019 pandemic;

19 (2) A remote work policy adopted by an employer in
20 compliance with federal or state government guidance



1 or public health recommendations relating to the
2 coronavirus disease 2019 pandemic;

3 (3) The worker's compliance with quarantine, isolation
4 directions relating to a SARS-CoV-2 diagnosis or
5 suspected diagnosis, or advice of a physician relating
6 to SARS-CoV-2 exposure; or

7 (4) Any other work arrangement in which an employee, who
8 performed services at a location in the State prior to
9 the Hawaii coronavirus disease 2019 state of
10 emergency, performs services for the employer from a
11 location outside the State after the Hawaii
12 coronavirus disease 2019 state of emergency."

13 SECTION 3. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act, upon its approval, shall apply to
16 taxable years beginning after December 31, 2022.

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INTRODUCED BY:





S.B. NO. 1116

Report Title:

Income Tax; Nonresident; Telework; Coronavirus Disease 2019
Pandemic

Description:

Clarifies that there is a presumption of a nexus for certain nonresident employees who telework. Amends the income tax law to apply to the total income of certain nonresident employees who telework. Applies to taxable years beginning after 12/31/2022.

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