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October 8, 2014

Rules Office
Hawaii Department of Taxation
830 Punchbowl Street, Room 221
Honolulu, HI 96813

Re: **Comments on Proposed Amendments to HAR § 18-235-1.14 -
“Substantial gainful business or occupation”, defined.
Public Hearing: October 24, 2014, 9:30 a.m.**

Ladies and Gentlemen:

Currently, “persons totally disabled” are afforded tax benefits under the income tax and general excise laws. A person qualifies for tax benefits as a “person totally disabled” if the person is certified as totally and permanently disabled and also is unable to engage in any substantial gainful business or occupation (“SGB”). The latter concept is the subject matter of the proposed rules.

Tax Information Release (TIR) 89-3, issued May 15, 1989, announced that a person would be presumed to be engaged in a SGB if the person’s gross income and/or gross receipts exceeded \$10,000 per year. The TIR stated that this bright line was being set for administrative convenience and was based upon a long standing departmental practice. By TIR 94-2, effective March 15, 1994, the \$10,000 threshold was increased to \$30,000, which was the maximum income level allowed to be eligible for the food/excise tax credit under HRS section 235-55.8(b)(2). This threshold was incorporated into the present version of HAR §18-235-1.14.

A similar concept, called “substantial gainful activity” or SGA, is used to define disability for purposes for federal Social Security or SSI benefits. A person making money at the threshold SGA level or more is considered not to be disabled and is ineligible for federal benefits. The SGA threshold is far more stringent than SGB. In 2014, SGA is defined as earning \$1,070 or more a month from working, or \$1,800 for blind people. These dollar amounts are annually adjusted for inflation.

The proposed rule would amend the definition of SGB by eliminating the earned income threshold of \$30,000. It is unclear what elimination of the threshold is supposed to accomplish. Physicians who are being asked to certify a person as totally disabled for state purposes, and who are not being told what SGB is, will have to engage in some guesswork.

Is the idea to retain the \$30,000 threshold administratively so that it can be changed with another TIR and without having to go through Hawaii Administrative Procedures Act rulemaking procedures? Or is the idea to force doctors to use the SGA standard, which is many times more stringent?

In addition, the proposed rule eliminates the existing guidance on the kinds of income items that do and don't count toward the income threshold, whatever it may be. Existing §18-235-1.14(d) states that earned income items such as salaries, wages, and net earnings from self-employment count while interest, dividends, capital gains, pensions, and deferred compensation don't count. It is unclear what is to be accomplished by eliminating this guidance.

Thus, as proposed, elimination of the earned income threshold would allow physicians or commissioned medical officers to determine whether a disabled person would qualify for income and general excise tax benefits, the adoption of this amendment might allow a disabled person with \$100,000 as well as a disabled person with \$5,000 in earned income to receive similar tax benefits. To ensure consistency in the determination of eligibility by licensed physicians or commissioned medical officers, we should be adding, rather than taking away, guidelines established to assist in the determination of eligible persons.

Thank you for the opportunity to provide comments.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas Yamachika".

Thomas Yamachika
President