

INSTRUCTIONS FOR FORM M-6 HAWAII ESTATE TAX RETURN

(NOTE: References to “married”, “unmarried”, and “spouse” also means “in a civil union”, “not in a civil union”, and “civil union partner”, respectively.)

Changes You Should Note

Act 220, Session Laws of Hawaii (SLH) 2012, created a new chapter entitled Estate and Generation-Skipping Transfer Tax. This is effective for individuals dying after January 25, 2012. The Hawaii taxable estate is determined under federal estate law as of December 31, 2011. Estates of residents of Hawaii, nonresidents of Hawaii but U.S. resident or citizen and nonresidents of U.S., not U.S. citizens are not allowed the deduction for state death taxes. The federal Estate Tax Return (Form 706, revised August, 2012, or Form 706-NA) and their related instructions must be used to determine the Hawaii taxable estate.

Effective January 1, 2012, pursuant to Act 1, SLH 2011 (Act 1), civil unions are recognized in Hawaii. Provisions that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship. Accordingly, references to “married”, “unmarried”, and “spouse” also means “in a civil union”, “not in a civil union”, and “civil union partner”, respectively.

General Instructions

Purpose of Form — Hawaii does not have a gift tax or an inheritance tax, but it does have an estate tax for estates of decedents dying after January 25, 2012. For persons dying after January 25, 2012, the Hawaii Estate and Generation-Skipping Transfer Tax is imposed on the transfer of the taxable estate of every resident and the taxable estate located in Hawaii of every nonresident.

Since Hawaii does not have a gift tax, the applicable exclusion amount is not reduced by the amount of taxable gifts made.

Generation-skipping transfers due to taxable distributions or taxable terminations made after June 30, 1994 and before January 1, 2005 or on or after May 1, 2010, are reported using the Hawaii Generation-Skipping Transfer Tax Report, Form M-6GS.

Which Estates Must File — An estate of a resident of Hawaii or a nonresident of Hawaii but U.S. resident or citizen is not taxable and no estate tax return is required if the taxable estate (federal Form 706, Part 2, line 3a) is \$5,120,000 or less. However, if the decedent is survived by a spouse and that spouse is allowed to claim an election for transfer, or portability, of the deceased spouse's unused exclusion amount, an estate tax return must be filed.

The estate of a nonresident of U.S., not U.S. citizen, is not taxable and no return is required if the taxable estate (federal Form 706-NA, Part II, line 1) is \$60,000 or less.

However, the personal representative or person(s) in possession, control, or custody of the property **must** file a Request for Release (Form M-6A) with the Department of Taxation if they wish to obtain a release, which indicates that the personal representative or person(s) in possession, control, or custody are free from taxes under chapter 236E, Hawaii Revised Statutes (HRS).

Civil Union — Act 1 provides that effective January 1, 2012, civil unions are recognized in Hawaii. Civil unions entered into in a jurisdiction other than Hawaii are also recognized, provided that the relationship meets Hawaii's eligibility requirements, has been entered into in accordance with the laws of the other jurisdiction, and can be documented.

Act 1 provides that the Internal Revenue Code (IRC) provisions referred to in Hawaii's Estate and Generation-Skipping Transfer Tax Law that apply to a husband and wife, spouses, or person in a legal marital relationship shall apply to partners in a civil union with the same force and effect as if they were “husband and wife”, “spouses”, or other terms that describe persons in a legal marital relationship.” Accordingly, references to “married”, “unmarried”, and “spouse” also means “in a civil union”, “not in a civil union”, and “civil union partner”, respectively.

For Hawaii estate tax purposes, civil union couples have the same tax filing options as married couples. However, because the federal government does not recognize civil unions as married individuals for federal estate tax purposes, civil unions will continue to file as unmarried individuals on their federal estate tax returns.

For estate tax purposes, marital status is determined as of the date of death of the decedent. One area that civil unions and same sex marriages should be aware of relates to the marital deduction permitted to a surviving spouse under the provisions of the IRC in effect on the date of death. While the Internal Revenue Service (IRS) will not permit such a deduction for federal estate tax purposes, decedents subject to the Hawaii estate tax may take the deduction up to the maximum deduction allowable.

Portability of the Deceased Spousal Unused Exclusion (DSUE) — The federal Tax Relief Act of 2010 introduced portability of the DSUE amount into the estate tax system. Portability allows a surviving spouse to use a predeceased spouse's unused applicable exclusion amount. Portability provides that any unused applicable exclusion amount that remains at the death of the first spouse (called the “deceased spousal unused exclusion amount”) may be used by the surviving spouse, in addition to the spouse's own exemption. If the surviving spouse has had more than one predeceased spouse, the amount of unused exclusion is limited to (a) the lesser of \$5,120,000 or (b) the unused exclusion of the last predeceased spouse. Portability can only be elected on a timely filed estate tax return of the predeceased spouse whose exemption is intended to be used, regardless of whether the estate of the predeceased spouse is otherwise required to file a tax return. To claim the predeceased spouse's exclusion amount for the surviving spouse, the executor of the predeceased spouse will need to file a Hawaii estate tax return even if the predeceased spouse's estate is not taxable.

Portability applies only to decedents who pass away after January 25, 2012 and who are U.S. residents or U.S. Citizens and who were validly married on the date of death, including Hawaii civil unions or the equivalent, and to nonresidents of U.S., not U.S. citizens, but only where allowed by any applicable treaty obligation of the United States. If applicable, attach a statement to the return that refers to the particular treaty applicable to the estate and for which the estate is claiming its benefits. The deceased spousal unused exclusion amount cannot exceed \$5,120,000 or the amount of the unused applicable exclusion amount, whichever is less.

Who Must File — Form M-6 must be filed by the personal representative of the decedent's estate. A “personal representative” means the personal representative of a decedent appointed under chapter 560, HRS, and includes an executor as defined under section 2203 of the IRC, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status.

When to File — Form M-6 is due 9 months after the date of the decedent's death. An extension to file Form M-6 is based on the federal extension to file the federal estate tax return. Hawaii does not have a separate extension form. An automatic six-month extension to file Form M-6 will be granted if: (1) a copy of the IRS approved extension to file the federal estate tax return (federal Form 4768) is attached to Form M-6; and (2) Form M-6 is filed by the due date specified by the IRS for filing the federal estate tax return. An extension of time to file does not extend the time to pay. If a request for extension has been denied by the IRS, there will be no penalty for late-filing assessed if Form M-6 is filed within the time specified by the IRS for filing the federal estate tax return. Attach a copy of federal Form 4768 showing the date on which the return may be filed without penalty.

Where to File — Mail Form M-6 and payment in full to:

Hawaii Department of Taxation
P. O. Box 259
Honolulu, Hawaii 96809-0259

Payment of Tax — The due date of payment is the same as the time for filing the return (see When to File above). However, any tax due that is not paid by the due date will incur interest from the due date, regardless of any extension of time to file the return. An extension for payment of taxes will

be granted if an extension of payment has been granted by the IRS. An IRS approved copy of federal Form 4768 must be submitted with Form M-6. If a request for extension of time to pay the federal estate tax is denied by the IRS, there will be no penalty assessed if the Hawaii estate tax is paid within the time specified by the IRS.

The tax is due 9 months after the date of the decedent's death. Pay the amount shown on Schedule D, line 6 of this return. Attach a check or money order payable to "Hawaii State Tax Collector" to the return. Please write the decedent's name, social security number and "Form M-6" on the check. Pay in U.S. dollars drawn on any U. S. bank. Do not send cash.

IRC Section 6166 Installment Payments — If the gross estate includes an interest in a closely-held business, you may be able to elect to pay part of the federal estate tax in installments under IRC section 6166. If federal estate tax is paid in installments under IRC section 6166, then an election may be made to pay part of the Hawaii estate tax in installments.

The portion of the Hawaii estate tax which is subject to deferral or payable in installments is determined by multiplying the Hawaii estate tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a tax situs in this State and for which the IRS has granted a deferred or installment payment plan, and the denominator of which is the gross value of all assets included in the transferred property having a tax situs in this State. Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the federal extension. Calculate the amount of interest on unpaid amounts at the rate of 2/3 of 1% per month or part of a month. If the IRS accelerates the payment of the tax, any amount due shall be accelerated for Hawaii purposes. Attach a copy of the approved federal Form 4768 to Form M-6. Also, attach any attachments that are required to be attached to federal Form 706.

Amount Paid with Extension — Persons who will be filing Form M-6 after the filing deadline (9 months after the date of the decedent's death) because they have requested an automatic extension of time to file must make a tax payment prior to filing Form M-6 by submitting Form VP-2 and payment for the taxes due. Include this amount on Schedule D, line 5.

Required Attachments — The following items must be submitted with Form M-6:

- Federal Form 706 (Revised 8/2012) completed through Part 2, line 12 or
- Federal Form 706-NA completed through Part II, line 8.
- Federal schedules with federal Forms 712, as required.
- Death certificate,
- Will,
- Trusts,
- Power of appointment documents,
- A copy of another state's estate tax return or foreign estate tax return, if the estate is subject to other estate taxes,
- Any valuations or appraisals.

Amended Return — If changes need to be made to Form M-6, an amended return must be filed. Check the box on Form M-6, page 1, to indicate that it is an amended return. Complete Form M-6 with all of the correct information and attach Schedule AMD, Explanation of Changes on Amended Return, to the return. Also, attach all schedules, forms, and attachments required to file a complete return. Attach any federal Form 706 schedules affected by the corrections or changes.

Penalty and Interest —

- (a) *Penalty* for failure to file is equal to 5% of the tax due for each month or part of a month that the return is delinquent, up to a maximum of 25% of the tax payable.
- (b) *Penalty* for failure to pay after filing timely return is 20% of the tax unpaid within 60 days of the prescribed due date. The 60-day period is calculated beginning with the prescribed due date even if the prescribed due date falls on a Saturday, Sunday, or legal holiday.
- (c) *Interest* at the rate of 2/3 of 1% per month or part of a month shall be assessed on unpaid taxes and penalties beginning with the first calendar day after the date prescribed for payment, whether or not that first calendar day falls on a Saturday, Sunday, or legal holiday.

Where to Get More Information — More information is available on the Department's website at www.hawaii.gov/tax or you may contact a customer service representative at:

Voice: 808-587-4242
1-800-222-3229 (Toll-Free)

Telephone for the Hearing Impaired:
808-587-1418
1-800-887-8974 (Toll-Free)

Fax: 808-587-1488

E-mail: Taxpayer.Services@hawaii.gov

Mail: Taxpayer Services Branch
P.O. Box 259
Honolulu, HI 96809-0259

Definitions —

"Nonresident" means a decedent who was not domiciled in Hawaii at time of death.

"Nonresident trust" means a trust other than a resident trust as defined in this section.

"Resident" means a decedent who was domiciled in Hawaii at the time of death.

"Resident trust" means a resident trust as defined under section 235-1; or if the administration is partly carried on in Hawaii and partly outside Hawaii, a trust where one-half or more of the fiduciaries reside in Hawaii.

Specific Instructions

PART 1 - ESTATE TAX COMPUTATION

SCHEDULE A - RESIDENT DECEDENT'S ESTATE

Complete United States Estate (and Generation-Skipping Transfer) Tax Return (federal Form 706) — The United States Estate (and Generation-Skipping Transfer) Tax Return (federal Form 706 Rev. August 2012) must be filed with this return for decedent's dying after January 25, 2012. Federal Form 706 should be completed using federal Estate Tax Law as of December 31, 2011 to arrive at the Hawaii taxable estate. Federal Form 706 (used by estates of residents of Hawaii) should be completed through Part 2, line 12. Include any schedules and federal Forms 712 as required. Identify any Hawaii property.

Schedule A, Line 4. — For purposes of calculating the value of the gross estate, deductions, and taxable estate, a taxpayer may not make one election for federal estate tax purposes and another for Hawaii estate tax purposes with the following exception. If the decedent was a partner in a civil union, registered domestic partnership or same sex marriage which is recognized in Hawaii for decedents dying after January 25, 2012 and who is survived by their partner, a different election is permitted for Hawaii estate tax purposes. In these cases, a "Recomputed-Hawaii only" federal Form 706 must be completed as though the IRC treated a civil union partner/

same sex spouse as a valid surviving spouse in order to properly compute the Hawaii estate tax liability. Prepare and attach the recomputed Hawaii only form, along with any applicable schedules and attach this to the Hawaii estate tax return. The "Recomputed-Hawaii only" federal Form 706 should be clearly marked "Recomputed-Hawaii only" on the top of each page. It is not necessary to submit recomputed schedules or statements if they are not different from the actual submitted federal return. **DO NOT FILE THESE RECOMPUTED FORMS WITH THE IRS.** Use the recomputed amounts in completing the Hawaii estate tax return where information is required from the federal estate tax return. Also attach a copy of federal Form 706 that was filed with the IRS (including all schedules and statements) when filing the Hawaii return.

Schedule A, Line 8. — Enter the name, tax identification number, and date of death of spouse whose exclusion is claimed as portable. Attach a copy of Form M-6 showing such election, enter the amount of the election on line 8, and check the box. If not, enter zero on line 8.

Schedule A, Line 11. — Compute the tax for the amount shown on line 10 based on the tax rate schedule on page 3 of Form M-6.

SCHEDULE B - NONRESIDENT DECEDENT'S ESTATE

Complete United States Estate (and Generation-Skipping Transfer) Tax Return (federal Form 706) — The United States Estate (and Generation-Skipping Transfer) Tax Return (federal Form 706 Rev. August 2012) must be filed with this return for decedent's dying after January 25, 2012. Federal Form 706 should be completed using federal Estate Tax Law as of December 31, 2011 to arrive at the Hawaii taxable estate. Federal Form 706 (used by estates of nonresidents of Hawaii but U.S. resident or citizen) should be completed through Part 2, line 12. Include any schedules and federal Forms 712 as required. Identify any Hawaii property.

Schedule B, Line 1. — Reciprocity exemption: A nonresident decedent's estate is exempt from Hawaii's estate tax if the nonresident's state of domicile exempts the property of Hawaii residents from estate, inheritance, or other death taxes normally imposed by the domicile state. The exemption must be applicable to the decedent based on the date of death and such exemption must specifically reference Hawaii, or must contain a reciprocal provision under which nonresidents of the domicile state are exempted from applicable death taxes with respect to property or transfers which would otherwise be subject to the jurisdiction of that state. The nonresident decedent must also have been a citizen and resident of the United States at the time of death.

Entries for property having a situs in Hawaii, Hawaii taxable estate, and Hawaii estate tax should all be zero if all of the decedent's Hawaii's assets are exempt pursuant to the applicable agreement or statutory provisions. Although there may be no tax due, if the decedent's estate is required to file a federal estate tax return, a Hawaii estate tax return must also be filed, setting forth the property in Hawaii but with a value of zero. Attach a statement to the Hawaii estate tax return that refers to the particular agreement or statutory provisions applicable to the estate and for which the estate is claiming its benefits.

Schedule B, Line 4. — For purposes of calculating the value of the gross estate, deductions, and taxable estate, a taxpayer may not make one election for federal estate tax purposes and another for Hawaii estate tax purposes with the following exception. If the decedent was a partner in a civil union, registered domestic partnership or same sex marriage which is recognized in Hawaii for decedents dying after January 25, 2012 and who is survived by their partner, a different election is permitted for Hawaii estate tax purposes. In these cases, a "Recomputed-Hawaii only" federal Form 706 must be completed as though the IRC treated a civil union partner/same sex spouse as a valid surviving spouse in order to properly compute the Hawaii estate tax liability. Prepare and attach the recomputed Hawaii only form, along with any applicable schedules and attach this to the Hawaii estate tax return. The "Recomputed-Hawaii only" federal Form 706 should be clearly marked "Recomputed-Hawaii only" on the top of each page. It is not necessary to submit recomputed schedules or statements if they are not different from the actual submitted federal return. **DO NOT FILE THESE RECOMPUTED FORMS WITH THE IRS.** Use the recomputed amounts in completing the Hawaii estate tax return where information is required from the federal estate tax return. Also attach a copy of federal Form 706 that

was filed with the IRS (including all schedules and statements) when filing the Hawaii return.

Schedule B, Line 10. — Enter the name, tax identification number, and date of death of spouse whose exclusion is claimed as portable. Attach a copy of Form M-6 showing such election, enter the amount of the election on line 10, and check the box. If not, enter zero on line 10.

Schedule B, Line 13. — Compute the tax for the amount shown on line 12 based on the tax rate schedule on page 3 of Form M-6.

SCHEDULE C - NONRESIDENT ALIEN DECEDENT'S ESTATE

Complete United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States (federal Form 706-NA) — The United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States (federal Form 706-NA) must be filed with this return for decedent's dying after January 25, 2012. Federal Form 706-NA should be completed using federal Estate Tax Law as of December 31, 2011 to arrive at the Hawaii taxable estate. Federal Form 706-NA (used by estates of nonresidents of U.S., not U.S. citizens) should be completed through Part II, line 8. Include any schedules and federal Forms 712 as required. Identify any Hawaii property.

The transfer of a nonresident of U.S., not U.S. citizen's property is exempt from Hawaii's Estate and Generation-Skipping Transfer Tax to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident of U.S., not U.S. citizen, is domiciled; except that the following shall be subject to Hawaii's tax:

1. Real property located in Hawaii, whether or not held in a trust the corpus of which is included in a decedent's gross estate for federal estate tax purposes;
2. A beneficial interest in a land trust that owns real property located in Hawaii; and
3. Tangible and intangible personal property having a situs in Hawaii, including:
 - a. Shares of stock owned by a nonresident of U.S., not U.S. citizen, if issued by a domestic corporation.
 - b. Any property of which the decedent has made a transfer, by trust or otherwise, within the meaning of IRC sections 2035 to 2038, inclusive, shall be deemed situated in Hawaii if so situated either at the time of the transfer or at the time of the decedent's death; and
 - c. Debt obligations of a Hawaii person or the state of Hawaii, or any political subdivision thereof, owned and held by a nonresident of U.S., not U.S. citizen, shall be deemed property within Hawaii.

Schedule C, Line 4. — For purposes of calculating the value of the gross estate, deductions, and taxable estate, a taxpayer may not make one election for federal estate tax purposes and another for Hawaii estate tax purposes with the following exception. If the decedent was a partner in a civil union, registered domestic partnership or same sex marriage which is recognized in Hawaii for decedents dying after January 25, 2012 and who is survived by their partner, a different election is permitted for Hawaii estate tax purposes. In these cases, a "Recomputed-Hawaii only" federal Form 706 must be completed as though the IRC treated a civil union partner/same sex spouse as a valid surviving spouse in order to properly compute the Hawaii estate tax liability. Prepare and attach the recomputed Hawaii only form, along with any applicable schedules and attach this to the Hawaii estate tax return. The "Recomputed-Hawaii only" federal Form 706 should be clearly marked "Recomputed-Hawaii only" on the top of each page. It is not necessary to submit recomputed schedules or statements if they are not different from the actual submitted federal return. **DO NOT FILE THESE RECOMPUTED FORMS WITH THE IRS.** Use the recomputed amounts in completing the Hawaii estate tax return where information is required from the federal estate tax return. Also attach a copy of federal Form 706 that was filed with the IRS (including all schedules and statements) when filing the Hawaii return.

Schedule C, Line 8. — If the decedent was a citizen of a U.S. possession or of a country that has a death tax treaty in effect with the U.S. such that the unified credit is affected under IRC section 2102(b)(3)(A) (which correspondingly increases the applicable exclusion amount), check the box on

line 8 and attach a statement to the return that refers to the particular treaty applicable to the estate and for which the estate is claiming its benefits. Use the table on page 4 to determine the amount to enter on line 8.

Caution: If the decedent was a citizen of a country that has a death tax treaty with the U.S. that exempts from the U.S. estate tax property having a U.S. situs, no adjustment is necessary for Hawaii estate tax purposes since these properties are valued at zero for federal estate tax purposes. Entries for the gross estate in the U.S. and the taxable estate would be zero if all of the decedent's U.S. assets are exempt from U.S. estate tax pursuant to the applicable treaty. Even though no tax may be owed, if the decedent's estate is required to file a federal estate tax return, a Hawaii estate tax return must

also be filed. Attach a statement to the Hawaii estate tax return that refers to the particular treaty applicable to the estate and for which the estate is claiming its benefits.

Schedule C, Line 10. — Enter the name, tax identification number, and date of death of spouse whose exclusion is claimed as portable. Attach a copy of Form M-6 showing such election, enter the amount of the election on line 10, and check the box. If not, enter zero on line 10.

Schedule C, Line 13. — Compute the tax for the amount shown on line 12 based on the tax rate schedule on page 3 of Form M-6.

EXCLUSION COMPUTATION WORKSHEET FOR NONRESIDENT ALIENS (see instructions for Schedule C, line 8)	
A. Enter the amount of allowed unified credit (Part II, line 7 of Form 706-NA).....	_____
B. If line A is \$13,000 or less, enter \$60,000 here and on line 8.....	_____
C. If line A is more than \$13,000 but not more than \$18,200, subtract \$13,000 from line A.....	_____
Divide by 0.26	_____
Add \$60,000 and enter the result here and on line 8.....	_____
D. If line A is greater than \$18,200 but not more than \$23,800, subtract \$18,200 from line A.....	_____
Divide by 0.28	_____
Add \$80,000 and enter the result here and on line 8.....	_____
E. If line A is greater than \$23,800 but not more than \$38,800, subtract \$23,800 from line A.....	_____
Divide by 0.30	_____
Add \$100,000 and enter the result here and on line 8.....	_____
F. If line A is greater than \$38,800 but not more than \$70,800, subtract \$38,800 from line A.....	_____
Divide by 0.32	_____
Add \$150,000 and enter the result here and on line 8.....	_____
G. If line A is greater than \$70,800 but not more than \$155,800, subtract \$70,800 from line A.....	_____
Divide by 0.34	_____
Add \$250,000 and enter the result here and on line 8.....	_____
H. If the amount on line A is greater than \$155,800, subtract \$155,800 from line A.....	_____
Divide by 0.35	_____
Add \$500,000 and enter the result here and on line 8.....	_____