

INSTRUCTIONS FOR FORM M-6 HAWAII ESTATE TAX RETURN

(NOTE: References to “married” and “spouse” are also references to “in a civil union” and “civil union partner,” respectively.)

Changes You Should Note

Act 95, Session Laws of Hawaii (SLH) 2017, conforms the Hawaii Estate and Generation-Skipping Transfer Tax Law to the Internal Revenue Code (IRC) as amended as of December 31, 2016. For decedents dying in 2017, the exclusion amount which has been indexed for inflation, increased from \$5,450,000 to \$5,490,000. Since Hawaii does not have a gift tax, the applicable exclusion amount is reduced by the federal adjusted taxable gift(s) made by the decedent.

Act 156, SLH 2017, clarifies the situs of property where the property is held by the decedents through a single member LLC not elected to be taxed as a corporation.

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.

The federal Estate Tax Return (Form 706, Revised 8/2017, or Form 706-NA, Revised 8/2013) and its related instructions must be used to determine the Hawaii taxable estate.

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 — If the decedent was a resident of Hawaii or a nonresident of Hawaii, but a U.S. resident or U.S. citizen, and the taxable estate (federal Form 706, Part 2, line 5) is \$5,490,000 or less, no estate tax return is required. However, the estate of a decedent with a surviving spouse must timely file a return. File this return to elect portability of the deceased spousal unused exclusion (DSUE) amount, to the surviving spouse.

If the decedent was a nonresident not citizen and the taxable estate (federal Form 706-NA, Part II, line 3) is \$60,000 or less, no return is required.

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).

Same Sex Marriages — Effective December 2, 2013, same-sex marriages are recognized in Hawaii. Hawaii’s law recognizes marriages between individuals of the same-sex, and extends to such same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive.

Civil Union — 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. However, registered domestic partnerships, civil unions, or other similar formal relationships that are not marriages under state law are not considered marriages for federal tax purposes. Since the federal government does not recognize partners in civil unions as married individuals for federal income tax purposes, partners in civil unions will continue to file as unmarried individuals on their federal estate tax returns.

The IRC provisions referred to in Hawaii’s Estate and Generation-Skipping Transfer Tax Law that apply to a taxpayer and spouse, spouses, or person in a legal marital relationship, including same-sex marriages, 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” and “spouse” are also references to “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.

For estate tax purposes, marital status is determined as of the date of death of the decedent. Partners in civil unions should be aware that while the Internal Revenue Service will not permit the marital deduction for federal estate tax purposes, estates subject to the Hawaii estate tax may take the deduction up to the maximum amount allowed.

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 provides that any unused basic 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 surviving spouse’s own exemption. If the surviving spouse has had more than one predeceased spouse, the DSUE is limited to (a) the lesser of \$5,490,000 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 personal representative 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 who were U.S. residents or U.S. citizens, and who were validly married on the date of death or in a Hawaii civil union or the equivalent. Portability does not apply to decedents who were nonresidents not citizens except 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 DSUE amount cannot exceed \$5,490,000 or the amount of the unused basic 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 nine 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 nine 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 the 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 documents 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 (nine 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 8/2017) completed through Part 2, line 12 or
- Federal Form 706-NA (Revised 8/2013) 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; and
- 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 other documents 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.

- (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 tax.hawaii.gov 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 not citizen" means a decedent required to file under subchapter B of chapter 11 of the Internal Revenue Code.

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

Specific Instructions

If you are filing for the estate of a decedent who was a resident of Hawaii and a U.S. resident or citizen on the date of death, complete Schedules A and D. If you are filing for the estate of a decedent who was a nonresident of Hawaii and a U.S. resident or citizen on the date of death, complete Schedules B and D. If you are filing for the estate of a decedent who was a nonresident not a citizen of the U.S., complete Schedules C and D.

If you are a personal representative electing to transfer the DSUE amount to the surviving spouse, you must also complete Part 2.

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 Revised 8/2017) must be filed with this return for decedents dying after December 31, 2016. Federal Form 706 should be completed using federal estate tax law as of December 31, 2016 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 2. — If the amount entered on line 2 is zero, go to Part 2 if the decedent is married and the surviving spouse will claim the DSUE amount.

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 or registered domestic partnership which is recognized in Hawaii for decedents dying after December 31, 2016 and 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 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. — If the decedent was a surviving spouse who received a DSUE amount from one or more predeceased spouses, enter the DSUE amount on line 8. If none, enter zero. Enter the name, tax identification number, and date of death of the predeceased spouse(s) whose unused exclusion amount is claimed as portable in the space provided. Attach a copy of Form M-6 showing the election made by the estate of the predeceased spouse(s).

Schedule A, Line 11. — Compute the tax for the amount shown on line 10 based on the tax rate schedule on page 4 of Form M-6. If the amount entered on line 11 is zero, go to Part 2 if the decedent was married and the surviving spouse will claim the DSUE amount.

Schedule A, Line 16. — Skip Schedules B and C and go to Schedule D.

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 Revised 8/2017) must be filed with this return for decedents dying after December 31, 2016. Federal Form 706 should be completed using federal estate tax law as of December 31, 2016 to arrive at the Hawaii taxable estate. Federal Form 706 (used by estates of nonresidents of Hawaii but U.S. residents or citizens) 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 U.S. 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 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 2. — If the amount entered on line 2 is zero, go to Part 2 if the decedent is married and the surviving spouse will claim the DSUE amount.

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 or registered domestic partnership which is recognized in Hawaii for decedents dying after December 31, 2016 and 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 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. — If the decedent was a surviving spouse who received a DSUE amount from one or more predeceased spouses, enter the DSUE amount on line 10. If none, enter zero. Enter the name, tax identification number, and date of death of the predeceased spouse(s) whose unused exclusion amount is claimed as portable in the space provided. Attach a copy of Form M-6 showing the election made by the estate of the predeceased spouse(s).

Schedule B, Line 13. — Compute the tax for the amount shown on line 12 based on the tax rate schedule on page 4 of Form M-6. Skip Schedules A and C and go to Schedule D. If the amount entered on line 13 is zero, go to Part 2 if the decedent was married and the surviving spouse will claim the DSUE amount.

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 a decedent who was a nonresident not citizen of the U.S. (federal Form 706-NA Revised 8/2013) must be filed with this return for decedents dying after December 31, 2016. Federal Form 706-NA should be completed using federal estate tax law as of December 31, 2016 to arrive at the Hawaii taxable estate. Federal Form 706-NA (used by estates of nonresidents not 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 not 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 not 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 not 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, if situated in Hawaii 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 not citizen.

Schedule C, Line 2. — If the amount entered on line 2 is zero, go to Part 2 if the decedent was married and the surviving spouse will claim the DSUE amount.

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

poses with the following exception. If the decedent was a partner in a civil union or registered domestic partnership which is recognized in Hawaii for decedents dying after December 31, 2016 and 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 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 6. — 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 6 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 (Exclusion Computation Worksheet for Nonresident Aliens) on Form M-6, page 4 to determine the amount to enter on line 6.

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. — If the decedent was a surviving spouse who received a DSUE amount from one or more predeceased spouses, enter the DSUE amount on line 10. If none, enter zero. Enter the name, tax identification number, and date of death of the predeceased spouse(s) whose unused exclusion amount is claimed as portable in the space provided. At-

tach a copy of Form M-6 showing the election made by the estate of the predeceased spouse(s).

Schedule C, Line 13. — Compute the tax for the amount shown on line 12 based on the tax rate schedule on page 4 of Form M-6. Skip schedules A and B and go to Schedule D. If the amount entered on line 13 is zero, go to Part 2 if the decedent was married and the surviving spouse will claim the DSUE amount.

PART 2 - PORTABILITY OF THE DSUE ELECTION

The estate of a decedent with a surviving spouse (including a partner in a civil union recognized in Hawaii) may elect portability of the DSUE amount if at the time of death, the decedent was: (1) a resident of Hawaii; (2) a nonresident of Hawaii, but a U.S. resident or citizen; or (3) a nonresident not citizen but is allowed to claim a DSUE amount pursuant to a treaty obligation of the United States. This election is made by completing and timely-filing this return. To elect portability of the DSUE amount to the surviving spouse, complete Part 2. Be sure to provide a signed copy of the return to the surviving spouse.

PART 3 - SPECIAL INSTRUCTIONS IF A QDOT ELECTION IS MADE

Schedule D, Line 1. — If the decedent's surviving spouse is not a U.S. citizen but makes a federal Qualified Domestic Trust (QDOT) election, the same election applies for Hawaii estate tax purposes. This election allows the surviving spouse to qualify for the unlimited marital deduction, which is ordinarily not available to a surviving spouse who is not a U.S. citizen.

However, distributions, other than for hardship, from the QDOT are generally subject to the estate tax as they are made. For further information, see federal Form 706-QDT and the instructions. If a taxable distribution is made for federal estate tax purposes, then a taxable distribution has been made for Hawaii estate tax purposes, and a QDOT return must be filed by completing Part 3.

Attach a copy of the federal Form 706-QDT to a copy of the first page of the decedent's original M-6. Mail the returns and all attachments to the address noted above in "Where to File." The QDOT estate tax is due by April 20 of the year following the calendar year in which taxable distributions were made. However, if the surviving spouse died during the year or if the trust ceased to qualify as a QDOT during the year, the tax on those events and on any taxable distributions occurring during that calendar year is due within nine months following the date of death or the failure of the trust to qualify.