



STATE OF HAWAII
DEPARTMENT OF TAXATION

P.O. BOX 259
HONOLULU, HAWAII 96809-0259

June 26, 1990

TAX INFORMATION RELEASE NO. 90-6

RE: Act 16, Session Laws of Hawaii (SLH) 1990, Relating to
S Corporations.

Act 16, SLH 1990, incorporates provisions of the Model S Corporation State Income Tax Act into Hawaii's Net Income Tax Law effective for taxable years beginning after December 31, 1989. A number of changes to Hawaii's law were made by this Act.

A valid S corporation election for federal purposes is now automatically effective for Hawaii income tax purposes without the separate election previously required. This applies not only to those corporations electing federal S corporation status for the first time, but also to those corporations which chose not to, or could not, make the election for Hawaii income tax purposes in the past. Act 16, SLH 1990, does not permit shareholders of a federal S corporation to elect out of S status for Hawaii purposes. The Hawaii S status is effective for taxable years beginning after December 31, 1989.

S corporations doing business in more than one state, including Hawaii, must provide each of their shareholders who is not a resident of the State of Hawaii with information regarding the shareholders share of the corporation Hawaii income.

S corporations having nonresident shareholders are required to obtain from each nonresident shareholder, and file with the Department, an agreement that the shareholder will file a Hawaii return and make timely payment of all taxes imposed with respect to the shareholder's share of the S corporation's Hawaii income. Also, the shareholder will be subject to personal jurisdiction in the State for purposes of the collection of unpaid income tax, penalties, and interest. If the corporation fails to timely file these agreements on behalf of its nonresident shareholders, the corporation is required to pay to the State, on behalf of each shareholder for whom an agreement has not been timely filed, an amount equal to the highest marginal tax rate on individuals multiplied by the shareholder's pro rata share of the income attributable to the State. Any payments made will be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period. These agreements are to be filed with the Department at the time the annual return is filed.

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S corporations having nonresident shareholders may file composite returns and make composite payments on behalf of some or all of their nonresident shareholders.


RICHARD F. KAHLE, JR.
Director of Taxation