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TAX INFORMATION RELEASE No. 91-9

RE: General Excise Tax on the Gross Income of a Trustee in Bankruptcy


The purpose of this Tax Information Release is to notify taxpayers that gross income, including interest income, of trustees in bankruptcy is subject to the general excise tax to the same extent as is gross income of other persons subject to the tax. The Department of Taxation will no longer follow the decision reached in In re The Hawaii Corporation Bankruptcy No. 76-0512 (D. Haw. January 6, 1983) (THC).

In THC, the court relied on federal law to hold that the interest income on deposits of proceeds from the liquidation of estate assets is not subject to general excise tax. At that time, federal law had been interpreted to prohibit state taxation of bankruptcy estates that were not conducting business within the meaning of 11 U.S.C. § 960. Under federal law, liquidating estates were not conducting business. (See, e.g., California State Board of Equalization v. Goggin, 245 F.2d 44 (9th Cir. 1957) cert. denied 353 U.S. 961 (1957) (Goggin II), cited in THC at p. 8.

On June 12, 1989, the U.S. Supreme Court disapproved the holding in Goggin II, finding that federal law does not prohibit state taxation of liquidating sales in bankruptcy. California State Board of Equalization v. Sierra Summit, Inc., 490 U.S. 844 (1989). Taxation of such sales is a matter of state law. Unless otherwise prohibited by the Bankruptcy Code, persons in bankruptcy are taxable to the same extent as persons not in bankruptcy. Under Hawaii law, Taxpayers making liquidating sales are engaged in business and subject to general excise tax on sales proceeds and the interest earned thereon.

Act 23, Session Laws of Hawaii, effective April 17, 1991, clarified the treatment of a trustee in bankruptcy under the general excise tax. The purpose of the measure is to amend the definition of "person" for general excise tax purposes to include trustees in bankruptcy.

It should be noted that this amendment does not change the substantive law in this State, as the Hawaii Supreme Court ruled in In Re Taxes, Guntzer, 52 Haw. 56 (1970), that a bankruptcy trustee is a person doing business for purposes of the general excise tax law.


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