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TAX INFORMATION RELEASE NO. 94-5

RE: Licensing Requirements for Certain Trusts Under Hawaii's General Excise Tax Law.

Act 12, Session Laws of Hawaii (SLH) 1994, provides that no licensing, registration, or filing requirements under Hawaii's General Excise Tax Law shall apply to certain trusts provided that the individual grantor or grantors are licensed and pay the appropriate general excise tax on trust income, if the trust income is from engaging in business. For trusts qualifying under Act 12, SLH 1994, the general rule stated in Tax Information Release No. 93-7 is modified as specified in this Tax Information Release. Act 12, SLH 1994, is effective beginning July 1, 1994.

In order to qualify for the no licensing, registration, or filing requirements under Act 12, SLH 1994, a trust must be one that, for State and federal income tax reporting purposes:

1. Has no registration or filing requirements separate and apart from its grantor or grantors;

2. Is subject to the requirement that all items of income, deduction, and credit are to be reported by the individual grantor or grantors; and

3. Is revocable by the grantor or grantors.

The grantors of trusts described below are not required to obtain employer federal identification numbers until such time that the trusts no longer fit the description presented. Instead, the grantors of such trusts must furnish the grantors' social security numbers to payers of income, and payees must report income as if paid to the grantors, not the trusts. These trusts are those where the situs of the trust or any of the assets of the trust are within the United States and either:

1. The same individual is both grantor and trustee (or co-trustee), and that individual is treated as owner for the taxable year of all of the assets of the trust by the application of Internal Revenue Code (IRC) section 676, with respect to power to revoke); or

2. A husband and wife are the sole grantors, one spouse is trustee or co-trustee with a third party or both spouses are trustees or co-trustees with a third party, one or both spouses are treated as owners of all the assets of the trust for the taxable year by

the application of IRC section 676, and the husband and wife file a joint income tax return for the taxable year for both federal and State purposes.

A trust that does not fit the above description is required to get a Federal Employer's Identification Number (FEIN) and does not qualify for the no separate licensing provisions enacted by Act 12, SLH 1994. A trust is not disqualified under Act 12, SLH 1994, simply because it has a FEIN. A trust that is not required to obtain a FEIN but voluntarily obtains one may still qualify under Act 12, SLH 1994. If, however, a trust is required to file Hawaii Form N-40, Fiduciary Income Tax Return, or federal Form 1041, the trust does not qualify under Act 12, SLH 1994, and must file and report as a separate entity for general excise tax purposes.

If a person has been reporting the income of a revocable living trust on that person's individual or joint general excise tax return, the person may continue reporting as in the past. If a person relying on Tax Information Release No. 93-7 has obtained a general excise tax license for a revocable living trust and the trust has started reporting its own income on its own tax returns, the trust may continue to report its own income because Act 12, SLH 1994, does not require an individual to report the income of a qualifying trust. If, however, the person would like to change back to reporting trust income on the individual's return, the trust should cancel its general excise license using the form provided in the general excise tax return booklet. The Department cannot refund any part of the license fee paid for the trust's license.

A result of Act 12, SLH 1994, is that the income of a qualifying trust that is reported on the general excise tax return of a grantor who is blind, deaf, or totally disabled, is taxable subject to the benefits available to persons who are blind, deaf, or totally disabled. See Tax Information Release No. 89-3, RE: State Tax Benefits Available to Persons with Impaired Sight, Impaired Hearing, or Who are Totally Disabled for information relating to these benefits. These benefits are not available to a qualifying trust reporting its own income on its own tax return or to a trust not qualifying under Act 12, SLH 1994.

RICHARD F. KAHLE, JR.
Director of Taxation

HRS Sections Explained: HRS §§237-9.5 (Act 12, §2, SLH 1994), 237-17, 237-24(13)