

2021

(REV. 2021)

STATE OF HAWAII—DEPARTMENT OF TAXATION

INSTRUCTIONS FOR FORM N-40 AND SCHEDULES A, B, C, D, E, F, G, J, AND K-1 FIDUCIARY INCOME TAX RETURN

(Section references are to the Internal Revenue Code (IRC), as adopted and incorporated by reference in Chapter 235, Hawaii Revised Statutes (HRS).)

(Publication references are to federal Publications.)

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ATTENTION:

Hawaii has not adopted the increased expensing deduction under section 179 (Hawaii limit is \$25,000) or the bonus depreciation provisions.

Hawaii has not adopted the domestic activities production deduction under section 199.

Where To Get Tax Forms

Hawaii tax forms, instructions, and schedules may be obtained at any taxation district office or from the Department of Taxation's (Department) website at tax.hawaii.gov, or you may contact a customer service representative at: 808-587-4242 or 1-800-222-3229 (Toll-Free).

Changes You Should Note

Act 89, Session Laws of Hawaii (SLH) 2021 — This act amends Hawaii Income Tax Law under chapter 235, Hawaii Revised Statutes (HRS), to conform to certain provisions of the IRC, as amended as of December 31, 2020.

Act 226, SLH 2021 – This act clarifies when and how members or partners may claim the **low income housing tax credit**, requires taxpayers to file federal Form 8609 to claim the credit, provides additional tax provisions with respect to buildings and projects placed in service after December 31, 2020, and extends the sunset date to December 31, 2027.

General Instructions

Who Must File Form N-40

Decedent's Estate

Every estate having for the taxable year gross income of \$400 or more subject to taxation under the Hawaii Income Tax Law.

Trust

Every trust having for the taxable year any taxable income, or having gross income of \$400 or more

subject to taxation under Hawaii Income Tax Law regardless of the amount of taxable income.

The trustee of a **charitable remainder trust** shall file a Hawaii Form N-40, showing the revenues and expenses of the trust and no tax liability for the trust. Compute the taxable income and enter the amount on line 15 on page 1 as an adjustment to result in no taxable income on line 22. Schedules K-1 are to be attached to the Form N-40.

A **qualified revocable trust** which has made the election for Hawaii purposes under section 645(a) to be treated and taxed, for income tax purposes, as part of its related estate during the election period, files Form N-40. To make this election, file federal Form 8855 with the Department.

Nonresident Estate or Trust

Every nonresident estate or trust having gross income of \$400 or more (some part or all of which is from sources within Hawaii) regardless of the amount of gross income subject to taxation or the amount of taxable income, (i) if any of the beneficiaries is a resident of Hawaii, or (ii) if in the case of a trust, a resident of Hawaii is treated as the substantial owner of any portion of the trust, or (iii) if the trust is engaging in business (rental of real property located in Hawaii).

"Resident trust" means a trust of which the fiduciary is a resident of the State or the administration of which is carried on in the State.

"Nonresident trust" means one other than resident.

Period To Be Covered By 2021 Return

File the 2021 return for calendar year 2021 and fiscal years beginning in 2021 and ending in 2022. If the return is for a fiscal year or a short tax year (less than 12 months), fill in the tax year space at the top of the form.

Note: *Form N-40 for 2021 may also be used if: (1) the trust or estate has a tax year of less than 12 months that begins and ends in 2022 and (2) the 2022 Form N-40 is not available by the time the trust or estate is required to file its return. However, the trust or estate must show its 2022 tax year on the 2021 Form N-40 and incorporate any tax law changes that are effective for tax years beginning after December 31, 2021.*

When Form N-40 Must Be Filed

Returns must be filed on or before the 20th day of the fourth month following the close of the taxable year of the estate or trust. If the due date falls on a Saturday, Sunday, or holiday, the due date for the return is extended to the next business day.

Note: *Under Hawaii Tax Law, certain tax credits must be claimed within 12 months from the close of the tax year.*

Private delivery services. Hawaii has adopted the IRC provision to allow documents and payments delivered by a designated private delivery service to qualify for the "timely mailing treated as timely filing/paying rule." The Department will conform to the Internal Revenue Service (IRS) listing of designated

private delivery service and type of delivery services qualifying under this provision. Timely filing of mail which does not bear the U.S. Post Office cancellation mark or the date recorded or marked by the designated delivery service will be determined by reference to other competent evidence. The private delivery service can tell you how to get written proof of the mailing date.

Six-month automatic extension of time to file. Section 18-235-98, Hawaii Administrative Rules (HAR), allows an automatic six-month extension of time to file a return without filing an application for extension. This extension does not include an extension of time to pay. File Form N-201V, Business Income Tax Payment Voucher, to make a payment (if applicable). File Form N-201V by the regular due date of the fiduciary income tax return. Federal Form 7004, Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns, may not be used in lieu of Form N-201V. Form N-201V may be filed and payment made electronically through the State's internet portal. For more information, go to tax.hawaii.gov/eservices/.

Where Form N-40 Must Be Filed

If you are enclosing a check or money order with your tax return, mail your **return with payment** to:

Hawaii Department of Taxation
P.O. Box 1530
Honolulu, HI 96806-1530

If you are **not enclosing a payment** with your tax return, mail your return to:

Hawaii Department of Taxation
P.O. Box 3559
Honolulu, HI 96811-3559

Payment can be made electronically through the State's internet portal. For more information, go to tax.hawaii.gov/eservices/.

Authentication

Returns shall be authenticated by the original signature of the individual fiduciary, or by the authorized officer of the organization receiving or having custody or control and management of the income of the estate or trust.

The Paid Preparer's Information at the bottom of page 1 of Form N-40 must be signed and completed by the person or in the name of the firm or corporation paid to prepare the fiduciary's return. Individual preparers may furnish their alternative identifying number for income tax return preparers (PTIN) instead of their social security number.

The preparer required to sign the return MUST complete the required preparer information and:

- Sign it in the space provided for the preparer's signature.
- Give a copy of Form N-40 to the taxpayer, in addition to the copy to be filed with the Department.

The fiduciary may authorize the Department to discuss its tax return with its paid preparer by checking the "Yes" box above the paid preparer's identification number. Checking "Yes" will allow the Department to contact the paid preparer to answer any

questions that may arise during the processing of your tax return. This designation does not allow your paid preparer to call the Department for information about the processing of your return or for other issues relating to your return. This designation does not replace Form N-848, Power of Attorney.

When and to Whom the Tax Must Be Paid

The tax of a trust or an estate must be paid in full when the return is filed.

The tax may be paid by check or money order made payable to the *Hawaii State Tax Collector*. **Do not send cash.**

Write your Federal Employer I.D. No. (FEIN) on the check or money order. Your check must be on a U.S. bank and payment in U.S. dollars.

Note: Form N-201V is no longer required when making a payment with your return.

If the estate or trust cannot pay the full amount that is owed, you can ask to enter a payment agreement **after** you receive a billing notice for the balance due. Please be aware that penalty and interest continue to accrue on the unpaid tax amount even though you have not yet received a billing notice. Payments will be accepted and applied to the entity's tax liability; however, to ensure that the entity's payments are applied correctly, your check or money order must have: (1) the entity's name as shown on the return clearly printed on the check, (2) the entity's FEIN, and (3) the tax year and form number being filed (e.g., 2021 N-40).

If the fiduciary expects a tax liability of \$500 or more, a declaration of estimated tax must be filed. Use Form N-201V to send your estimated tax payment to the Department.

If you are filing your return after the prescribed due date, the refund shown may be limited or disallowed due to the statute of limitations. In general, a claim for refund or credit for overpaid income taxes must be filed within three years after the return is filed for the taxable year, within three years of the due date for filing the return, or within two years from when the tax is paid, whichever is later. For purposes of determining whether a refund or credit is allowed, taxes paid on or before the due date of the return (e.g. taxes withheld from an employee's pay, or estimated tax payments) are considered paid on the due date of the return, without considering an extension of time to file the return.

Penalties and Interest

For failure to file, pay or amend as required by law, penalties and interest will be added to the tax under section 235-104, HRS.

Late filing of return. The penalty for failure to file a return on time is assessed on the tax due at a rate of 5% per month, or part of a month, up to a maximum of 25%.

Failure to pay tax after filing timely returns. The penalty for failure to pay the tax after filing a timely return is 20% of the tax unpaid within 60 days of the prescribed due date.

Interest. 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.

Underpayment of estimated taxes. The Department imposes the penalty for the underpayment of estimated tax as provided in section 235-97(f), HRS. If applicable, this penalty shall be added to the tax for the taxable year in an amount determined at the rate of 2/3 of 1% per month, or part of a month,

upon the amount of the underpayment for the period of the underpayment.

Generally, if at least:

- (1) 60% of the tax shown on the 2021 tax return; or
- (2) 100% of the tax shown on the 2020 return is not prepaid, a penalty for not paying enough estimated tax may be charged.

For more information regarding the underpayment penalty and special rules for farmers and fishermen, see Form N-210.

Amended Return

If a fiduciary's return is filed and then it becomes necessary to make changes to income, deductions, or credits, file an amended return on Form N-40, using the form for the year being amended. Check the box on Form N-40, Item F for an amended return and fill in the return with all of the correct information. Attach a completed Schedule AMD, Explanation of Changes on Amended Return, to the amended return. Also, attach all schedules, forms, and attachments required to file a complete return. See the instructions for Schedule G lines 14 and 15. If the return is being amended to take a farming net operating loss (NOL) carryback deduction, also check the box on Form N-40, Item F, NOL Carryback.

For NOLs arising in tax years ending after December 31, 2017, Act 27, SLH 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused NOLs to be carried forward indefinitely. Also, the NOL deduction is limited to 80% of taxable income for NOLs arising in tax years beginning after December 31, 2017.

Note: Hawaii does not conform to the federal law changes made in the CARES Act to re-allow the carrybacks for non-farm NOLs and to eliminate the 80% of taxable income limitation for taxable years beginning after December 31, 2017 and ending before January 1, 2021.

You may elect to carry the farming NOL forward instead of first carrying it back to prior years. If you make this election, then you can use your farming NOL only in the carryforward period. To make this election, attach a statement to your original return filed by the due date (including extensions) for the farming NOL year. This statement must state that you are electing to waive the carryback period under section 235-7(d), HRS, and IRC section 172(b)(1)(B)(iv).

If you filed your original return on time but did not file the statement with it, you can make this election on an amended return filed within 6 months of the original due date of the return, but not including any extension. Attach a statement to your amended return, and write "Filed pursuant to 26 C.F.R. 301.9100-2" at the top of the statement. Also include the statement noted above that you are waiving the carryback period. Once you elect to waive the carryback period, it cannot be changed later. If you do not file this statement on time, the carryback period cannot be waived and you must first carry the farming NOL back before carrying it forward.

If you are filing your return after the prescribed due date, the refund shown may be limited or disallowed due to the statute of limitations. In general, a claim for refund or credit for overpaid income taxes must be filed within three years after the return is filed for the taxable year, within three years of the due date for filing the return, or within two years from when the tax is paid, whichever is later. For purposes of determining whether a refund or credit is allowed, taxes paid on or before the due date of the return (e.g. taxes withheld from an employee's pay, or estimated tax payments) are considered paid on the

due date of the return, without considering an extension of time to file the return.

Change In Federal Taxable Income

In general, a change to your federal return whether it is made by you, or by the IRS, must be reported to the State of Hawaii.

- (1) Section 235-101(b), HRS, requires a report to the Director of Taxation if the amount of federal taxable income is changed, corrected, adjusted, or recomputed as stated in (3).
- (2) This report must be made:
 - (a) Within 90 days after a change, correction, adjustment or recomputation is finally determined.
 - (b) Within 90 days after an amended federal return is filed.
 - (c) At the time of filing the next income tax return, if earlier than set forth in (a) or (b).
- (3) A report within the time set out in (2) is required if:
 - (a) The amount of taxable income as returned to the United States is changed, corrected or adjusted by an officer of the United States other competent authority.
 - (b) A change in taxable income results from a renegotiation of a contract with the United States or a subcontract thereunder.
 - (c) A recomputation of the income tax imposed by the United States under the IRC results from any cause.
 - (d) An amended income tax return is made to the United States.
- (4) The report referred to above shall be in the form of an amended Hawaii income tax return.
- (5) The statutory period for the assessment of any deficiency or the determination of any refund attributable to the report shall not expire before the expiration of one year from the date the Department is notified by the taxpayer or the IRS, whichever is earlier, of such a report in writing. Before the expiration of this one-year period, the Department and the taxpayer may agree in writing to the extension of this period. The period so agreed upon may be further extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

IRS Adjustment Checkbox

If you are filing an amended return due to an IRS adjustment, check the boxes on Form N-40, Item F, Amended Return and IRS Adjustment. Fill in the return with all the correct information and attach a completed Schedule AMD, Explanation of Changes on Amended Return, to the amended return. Also, attach all schedules, forms, and attachments required to file a complete return. Give a corrected Schedule K-1 (Form N-40) to each beneficiary. On Schedule K-1 (Form N-40), check the box Amended K-1 to indicate it is an amended Schedule K-1.

Protective Claim

A protective claim is a claim filed to protect a taxpayer's right to a potential refund on a contingent event for a taxable period for which the statute of limitations is about to expire. A protective claim is usually based on contingencies such as pending litigation or an ongoing federal income tax or an audit in another state. For more information see Tax Facts 2021-2.

Simple and Complex Trusts

If the terms of the governing instrument of a trust require that all of its income (determined under the governing instrument and Hawaii law) be distributed

currently and do not provide that any amounts may be paid, permanently set aside or used in the taxable year for the charitable purposes specified in section 642(c), such a trust may qualify as a "simple" trust under section 651(a). Such a trust is qualified under section 651(a) only in those taxable years of the trust in which it does not distribute to a beneficiary amounts other than amounts of income (determined under the governing instrument and local law) required to be distributed currently. Section 651(a) is not applicable to estates.

Any trust which does not qualify for the taxable year under section 651(a) is treated as a "complex" trust under section 661(a). All estates are treated under section 661(a) in the same manner as "complex" trusts.

Income in Respect of a Decedent

Section 691 provides for the inclusion, when received, in gross income of an estate or trust of amounts of gross income which, although attributable to the decedent, were not properly includable in his or her return for any period up to the date of his or her death. This includes income from installment obligations. The same section allows deductions for business expenses, interest, taxes, etc., to the estate or other person receiving the property to which the deduction pertains.

These provisions apply for State purposes if the decedent died on or after January 1, 1958. The taxable status of the income attributable to the decedent is the same as if the decedent had lived and received the income. Thus, if the decedent was a resident his or her income would be treated as though it had its source in Hawaii even if it had its source elsewhere, since the fact that the decedent was a resident in itself makes the income taxable. On the other hand, if the decedent's income had its source outside Hawaii and he or she was a nonresident, this income will be treated as wholly tax exempt.

Estate tax or Generation-Skipping Transfer (GST) tax previously paid to Hawaii, under Chapter 236D or Chapter 236E, HRS, which was attributable to the inclusion in a decedent's gross estate of the right to receive items of income treated as income in respect of a decedent and includable in gross income on the fiduciary return, is allowable as a deduction either to the fiduciary or to the beneficiaries, depending on whether or not such income is paid, credited, or required to be distributed. The fiduciary is entitled to deduct only the portion of the Chapter 236D or Chapter 236E, HRS, tax attributable to such income, which was not (during the taxable year in which received) paid, credited, or required to be distributed to a beneficiary. Any deductions in this connection to which beneficiaries are entitled should be shown in a statement attached to the return.

The credit for taxes paid to other jurisdictions is limited to taxes imposed on the fiduciary itself as the taxpayer. Do not take any credit for taxes paid to oth-

er jurisdictions for taxes imposed on the decedent even if paid by the fiduciary.

Income Taxable to the Grantor or Substantial Owner

Report on Form N-40 the part of the income that is taxable to the trust. Do not report on Form N-40 the income that is taxable to the grantor or another person. Instead, attach a separate sheet to report the following:

- The income of the trust that is taxable to the grantor or another person under sections 671 through 678.
- The name, identifying number, and address of the person(s) to whom the income is taxable.
- Any deductions or credits applied to this income.

On page 1 at the top of Form N-40, write the name, identification number, and address of the grantor(s) or other person(s) in parentheses after the name of the trust.

The income taxable to the grantor or another person under sections 671 through 678 and the deductions and credits applied to the income must be reported on the income tax return that person files.

The grantor/trustee for a trust that was created in a tax year beginning on or after January 1, 1981, should not file Form N-40. The grantor/trustee must furnish his or her social security number to payors of income and report all items of income, deduction, and credit from the trust on his or her Form N-11 or Form N-15.

The grantor/trustee for a trust described above, including grantor trusts created in tax years beginning before 1981, who has previously filed Form N-40 and who wants to take advantage of the simplified reporting requirements in the future should file a Form N-40 for the current year and write on it "pursuant to section 1.671-4(b), this is the final return for this grantor trust." A grantor/trustee who chooses this option must furnish his or her social security number to payors of income for the next year and report the trust income on his or her Form N-11 or Form N-15 for the next year and for future years. The grantor/trustee must not file Form N-40 for future years.

At-Risk Loss Limitations

Generally, the amount the estate or trust has "at risk" limits the loss you can deduct for any tax year. Use federal Form 6198, At-Risk Limitations, to figure the deductible loss for the year and file it with Form N-40. For more information, see federal Form 6198, Publication 559, and Publication 925, Passive Activity and At-Risk Rules.

Passive Activity Loss Limitations

Section 469 generally limits deductions and credits derived from passive activities to the amount of income derived from all passive activities.

Generally, an activity is deemed to be passive if it involves the conduct of any trade or business, and the taxpayer does not materially participate in the activity. Passive activities do not include working interests in oil and gas properties (as defined in section 469(d)).

An estate or trust is treated as materially participating in an activity if an executor or fiduciary, in his or her capacity as such, is involved in operations of the activity on a regular, continuous, and substantial basis. In the case of a grantor trust, however, material participation is determined at the grantor level. Rental activities are considered to be passive activities, whether or not the taxpayer materially participates.

In the case of taxable years of an estate ending less than two years after the date of death of the decedent, up to \$25,000 of deductions and credit equivalents attributable to all rental real estate activities in which the decedent actively participated is allowed. Any unused losses and/or credits are deemed "suspended" passive activity losses for the year, and are carried forward indefinitely.

If the estate or trust distributes any interest in a passive activity, the basis of the property immediately before the distribution is increased by the passive activity losses allocable to the interest; and such losses are not allowable as a deduction. See section 469(j).

Note: *Losses from passive activities are first subject to the at-risk rules. When the losses are deductible under the at-risk rules, the passive activity rules then apply.*

Portfolio income is not treated as income from a passive activity, and passive losses and credits generally may not be applied to offset it. Portfolio income generally includes interest, dividends, royalties, and income from annuities. Portfolio income of an estate or trust must be accounted for separately, and may not be offset by losses from passive activities. See federal Form 8582, Passive Activity Loss Limitations, to compute the amount of allowable passive activity loss.

Withholding of Taxes On the Income of Nonresident Beneficiaries

Pursuant to Act 232, SLH 2019, and applicable to taxable years beginning after December 31, 2018, estates and trusts are required to withhold and pay to the State on behalf of their nonresident beneficiaries an amount equal to the highest marginal tax rate applicable to individuals, currently 11%, multiplied by the amount of the beneficiary's distributive share of income attributable to the State reflected on the estate's and trust's return for the taxable period. Form N-201V is used for reporting and paying this withholding by the estate or trust to the Department.

OF SPECIAL INTEREST TO BANKRUPTCY TRUSTEES AND DEBTORS-IN-POSSESSION

Taxation of Bankruptcy Estates of An Individual

For federal and State tax purposes, when an individual files a petition under chapter 7 or 11 of the United States Code, a separate taxable entity is created. See section 1398 and 11 U.S.C. section 346. In a chapter 7 bankruptcy case, the trustee must obtain a Tax Identification Number (TIN) from the IRS and file the estate tax return. Unless a trustee has been appointed in a chapter 11 bankruptcy case, the debtor-in-possession must obtain a TIN for the estate and file any required tax return. Unless sub-

stantive consolidation has been ordered in a joint petition, two separate bankruptcy estates and two separate taxable entities are created. A TIN must be obtained for each, and a separate return filed for each estate. The TIN obtained from the IRS for the bankruptcy estate must be used in filing any required State estate tax returns. Do not use the individual's social security number when filing bankruptcy estate tax returns.

Caution: *The individual debtor and the bankruptcy estate are separate taxable entities, with their own separate tax filing requirements. Generally, the individual debtor retains his or her tax identity*

and must file his or her own personal tax returns, and the trustee or debtor-in-possession, as applicable, files the required returns of the estate. The filing of a tax return for the bankruptcy estate does not relieve the individual debtor of his or her (or their) individual tax obligations.

Note: *A separate taxable entity is not created if a partnership or corporation files a petition under any chapter of title 11 of the U.S. Code. For additional information about bankruptcy estates, please refer to Publication 908, Bankruptcy Tax Guide.*

Who Must File

Every trustee (or debtor-in-possession) for an individual's bankruptcy estate under chapter 7 or 11 of title 11 of the United States Code, must file a return if the bankruptcy estate has gross income for the tax year beginning in 2021 of \$3,344 or more.

When To File

File Form N-40 on or before the 20th day of the fourth month following the close of the tax year. Section 18-235-98, HAR, allows an automatic six-month extension of time to file without filing an application for extension. This extension does not include an extension of time to pay. File Form N-201V, Business Income Tax Payment Voucher, to make a payment (if applicable). File Form N-201V by the regular due date of Form N-40. Form N-201V can be filed and payment made electronically through the State's Internet portal. For more information, go to tax.hawaii.gov/eservices/.

Disclosure of Return Information

Under section 235-116, HRS, tax returns of individual debtors who have filed for bankruptcy under chapter 7 or 11 of title 11 are, upon written request, open to inspection by or disclosure to the trustee. The returns subject to disclosure to the trustee are those for the year the bankruptcy begins and prior years. Use Form L-72, Request for Copies of Hawaii Tax Return (available at any District Tax Office), to request copies of the individual debtor's tax returns. If the bankruptcy case was not voluntary, disclosure cannot be made before the bankruptcy court has entered an order for relief, unless the court rules that the disclosure is needed for determining whether relief should be ordered.

Special Filing Instructions Only for Bankruptcy Estates

Form N-40 is used ONLY as a transmittal for Form N-11, Hawaii Individual Income Tax Return (Resident) or Form N-15, Hawaii Individual Income Tax Return (Nonresident and Part-Year Resident). Under section 1398(c), the taxable income of the bankruptcy estate generally is figured in the same manner as that of an individual, and includes any income included in property of the estate as defined in Bankruptcy Code sections 541 and 1115. The bankruptcy estate of an individual is allowed one exemption. Complete only the identification area at the top of Form N-40. The name of the bankruptcy estate should be entered on Form N-40 in the following format:

"John Q. Public Bankruptcy Estate"

Beneath, enter the name of the trustee in the following format:

"Mary Kalikimaka, Trustee"

If the fiduciary's address is outside the United States or its possessions or territories, enter the information on the line for "City or town, State and Postal/ZIP Code" in the following order: city, province or state, postal code, and the name of the country. Do not abbreviate the country name. Be sure to include the TIN of the estate.

The "Date Entity Created" is the date on which the petition was filed, or the date of conversion to a chapter 7 or 11 case. Be sure to note the period covered by the return, since a bankruptcy estate is allowed to have a fiscal year. If a fiscal year is selected, the period can be no longer than 12 months and the tax return due date is on or before the 20th day of the fourth month following the close of the fiscal year. If a fiscal year is chosen, it must be the same for the federal return.

Then, prepare a Form N-11 or N-15 (as appropriate) to report the income and deductions to which

the estate is entitled. Enter only the name of the bankruptcy estate in the "Name" section of the Form N-11 or N-15 as follows:

First Name: "John Q. Public"

Last Name: "Bankruptcy Estate"

Also, enter the estate's TIN in place of the social security number. Do not otherwise complete the identification portion of the Form N-11 or N-15. In the top margin of each page of the Form N-11 or N-15, write "Attachment to Form N-40. DO NOT DETACH OR PROCESS." When completed, attach the Form N-11 or N-15 to the Form N-40.

Calculate the taxable income based on the income and deductions of the estate by completing lines 7 through 26 (Form N-11) or lines 7 through 43 (Form N-15).

Note: *In a chapter 11 case filed after October 16, 2005, the allocations used for federal tax purposes must be used to allocate any State tax items, including any taxes withheld at the source. If any income was allocated, the debtor-in-possession (or the chapter 11 trustee, if one was appointed) must attach a schedule that shows (a) all the income reported on the Form W-2, Form 1099, or other information return, (b) the portion of this income includible in the bankruptcy estate's gross income, and (c) all the withheld income tax, if any, and the portion of withheld tax reasonably allocated to the bankruptcy estate. Attach a copy of the Form W-2, if any, issued to the individual debtor for the tax year if any allocation is required because of Bankruptcy Code section 1115. In addition, if any deduction or credit was allocated, attach a schedule showing how such allocation was accomplished. For more details, including acceptable allocation methods, see Notice 2006-83, 2006-40 I.R.B. 596, available at www.irs.gov/irb/2006-40_IRB/ar12.html.*

Transfer of Tax Attributes From the Individual Debtor to the Bankruptcy Estate

Under section 1398(g), the bankruptcy estate succeeds to the following tax attributes of the individual debtor:

- Net operating loss carryovers;
- Charitable contributions carryovers;
- Recovery of tax benefit items;
- Credit carryovers;
- Capital loss carryovers;
- Basis, holding period, and character of assets;
- Method of accounting; and
- Other tax attributes that may be prescribed by the Department.

Income, Deductions, and Credits

Under section 1398(c), the taxable income of the bankruptcy estate generally is figured in the same manner as that of an individual. The gross income of the bankruptcy estate includes any income included in property of the estate as defined in U.S. Code, title 11, sections 541 and 1115.

Caution: *Earnings from services performed by an individual debtor in a chapter 11 case after the commencement of the chapter 11 case are property of the bankruptcy estate under section 1115 of the Bankruptcy Code (11 U.S.C. section 1115). In addition, income from property acquired after the beginning of the case is taxable to the estate.*

To determine whether any amount paid or incurred by the bankruptcy estate is allowable as a deduction or credit, or is treated as wages for employment tax purposes, treat the amount as if it was paid or incurred by the individual debtor in the same trade

or business or other activity the individual debtor engaged in before the bankruptcy proceedings began.

Administrative expenses.—The bankruptcy estate is allowed a deduction for any administrative expense allowed under section 503 of title 11 of the U.S. Code, and any fee or charge assessed under chapter 123 of title 28 of the U.S. Code, to the extent not disallowed under an IRC provision.

Administrative expense loss.—When figuring a NOL, nonbusiness deductions (including administrative expenses) are limited under section 172(d) (4) to the bankruptcy estate's nonbusiness income. The excess nonbusiness deductions are an administrative expense loss that may be carried back to each of the three preceding tax years and forward to each of the seven succeeding tax years of the bankruptcy estate. The amount of an administrative expense loss that may be carried to any tax year is determined after the NOL deductions allowed for that year.

Caution: *An administrative expense loss is allowed only to the bankruptcy estate and cannot be carried to any tax year of the individual debtor.*

Carryback of NOLs.—For NOLs arising in taxable years ending after December 31, 2017, Act 27, SLH 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused NOLs to be carried forward indefinitely. Also, the NOL deduction is limited to 80% of taxable income for taxable years beginning after December 31, 2017. (See the Note under "Amended Return" on page 2.)

You may elect to carry the farming NOL forward instead of first carrying it back to prior years. If you make this election, then you can use your farming NOL only in the carryforward period. To make this election, attach a statement to your original return filed by the due date (including extensions) for the farming NOL year. This statement must state that you are electing to waive the carryback period under section 235-7(d), HRS, and IRC section 172(b)(1) (B)(iv).

Exemption.—A bankruptcy estate is allowed a personal exemption of \$1,144.

Standard deduction.—A bankruptcy estate that does not itemize deductions is allowed a standard deduction of \$2,200.

Discharge of indebtedness.—In a title 11 case, gross income does not include amounts that normally would be included in gross income resulting from the discharge of indebtedness. However, any amount excluded from gross income must be applied to reduce certain tax attributes in a certain order.

Use federal Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness, to show the reduction of tax attributes. However, for Hawaii purposes the following reductions are not operative and are not allowed as exclusions:

- General business credit;
- Minimum tax credit; and
- Foreign tax credit carryovers.

Tax Rate Schedule

Once the amount of taxable income of the estate is determined (line 26 of Form N-11 or line 43 of Form N-15), also enter this amount on line 22 of Form N-40. Calculate the amount of tax for the bankruptcy estate using the tax table or the tax rate schedule for a married individual filing a separate return. Be sure to complete the capital gain worksheet to determine the tax if the estate has any such gains, as this may potentially lower the tax liability.

Enter this computed tax on Form N-11, line 27 or Form N-15, line 44. Determine the amount of tax due after any credits that the bankruptcy estate is entitled to claim. Be sure to attach all applicable forms required to claim the credit, as well as any required schedules. Claim all credits to which the bankruptcy estate is entitled to on Form N-11 or N-15 as applicable. Do not claim these credits by filling out the credit sections of the Form N-40. Also, remember that non-refundable credits may not decrease the amount of tax owed below zero.

Once the amount of credits that the bankruptcy estate is entitled to has been determined, enter the amount from line 36 of Form N-11 or line 53 of Form N-15 on Form N-40, Schedule G, lines 1, 3, and 5.

Enter on Form N-11 or N-15 any tax withheld, estimated tax payments, or amounts paid with extension. If any withheld tax reported on a Form W-2 has been allocated between the bankruptcy estate and the individual debtor, be sure to attach the allocation schedule. Any tax payments reported on Form N-288A should be included in the amount of estimated tax paid. Be sure to attach the form to the return. Determine the amount of total payments (line 41 of Form N-11 or line 58 of Form N-15) and also enter this amount on Form N-40, Schedule G, line 7. Complete lines 8 through 15 of Schedule G. Be sure to sign and date the Form N-40.

Prompt Determination of Tax Liability

To request a prompt determination of the tax liability of the bankruptcy estate, the trustee or debtor-in-possession must file a written request for the determination with the Department. The request must be accompanied by the original return which must be executed under penalties of perjury plus a duplicate. The request must include a statement indicating that it is a request for prompt determination of tax liability and: (a) the return type, and all the tax periods for which prompt determination is sought; (b) the debtor's name; (c) the debtor's SSN, TIN, or EIN; (d) the type of bankruptcy estate; (e) the bankruptcy case number; and (f) the court where the bankruptcy is pending. Send the request to the address noted below. Mark the envelope with "Request for Prompt Determination." The Department will notify the trustee or debtor-in-possession within 60 days from receipt of the request if the return filed by the trustee or debtor-in-possession has been selected for examination or has been accepted as filed. If the return is selected for examination, it will be examined as soon as possible. The Department will notify the trustee or debtor-in-possession of any tax due within 180 days from receipt for the request or within any additional time permitted by the bankruptcy court.

Where to File

All bankruptcy estate tax returns (including requests for prompt determination) must be mailed to:

Hawaii State Tax Collector
Bankruptcy Unit
P. O. Box 259
Honolulu, HI 96809-0259

Do not mail bankruptcy estate tax returns to any other address.

Dismissal of Bankruptcy Case

If the bankruptcy court later dismisses an individual's chapter 7 or 11 case, the bankruptcy estate is no longer treated as a separate taxable entity. It is as if no bankruptcy estate was ever created for tax purposes. In this situation, the debtor must file amended tax returns on Form N-11 or N-15 to replace all full or short year individual returns and bankruptcy estate returns filed as result of the bankruptcy case. Any income, deductions, and credits previously reported by the bankruptcy estate on its tax return must be reported on the debtor's amended returns. Attach a statement to the amended returns explaining why the debtor is filing an amended return, and be sure to check the "Amended" box on the applicable form.

Caution: An individual may not deduct administrative expenses incurred by the bankruptcy estate if a bankruptcy case is dismissed as these are considered to be personal nondeductible expenses. The taxpayer may deduct only those expenses allowable had a bankruptcy not been filed.

The specific instructions that follow this section explain how all trusts and estates should fill in the form.

Trusts and estates may authorize the Department to discuss its tax return with its paid preparer by checking the "Yes" box above the paid preparer's signature. Checking "Yes" will allow the Department to contact the paid preparer to answer any questions that may arise during the processing of the return. This designation does not allow your paid preparer

HOW TO FILL IN FORM N-40

to call the Department for information about the processing of your return or for other issues relating to your return. This designation does not take the place of a power of attorney for other return related matters. Form N-848 must still be used to grant a power of attorney.

Change of Address

If your mailing address has changed, you must notify the Department of the change by completing Form

ITPS-COA, Change of Address Form, or log in to your Hawaii Tax Online account at hitax.hawaii.gov. Failure to do so may prevent your address from being updated, any refund due to you from being delivered (the U.S. Postal Service is not permitted to forward your State refund check), and delay important notices or correspondence to you regarding your return.

SIMPLE TRUSTS WITHOUT CAPITAL GAINS (OR LOSSES) MAY USE THE FOLLOWING-DESCRIBED SHORT-FORM METHOD OF COMPLETING THEIR RETURNS

(a) **Reporting Income and deductions.** Fill in page 1, lines 1 through 19 in accordance with specific instructions.

(b) **Determine taxable income and tax of fiduciary.** If the amount shown on line 18 is not more

than the amount of income required to be distributed currently, enter on line 19 the amount shown on line 18 and enter zero on line 22. Schedule G (Form N-40) need not be completed.

If the amount shown on line 18 exceeds the amount of income required to be distributed currently less nontaxable income, enter on line 19 the amount of income required to be distributed currently and complete the remainder of page 1.

SPECIFIC INSTRUCTIONS FOR RESIDENT ESTATES AND TRUSTS

Income

General Instructions

Any intangible income, such as dividends and interest, shall be excluded from the gross income earned by a resident trust to the extent that, during the trust's taxable year, the beneficial interest in the trust is held by a nonresident beneficiary(ies). This exclusion does not apply, however, to income received from real property held in a land trust formed under Chapter 558, HRS.

All income earned and proceeds derived from stock options or stock, including stock issued through the exercise of stock options or warrants, from a qualified high technology business or from a holding company of a qualified high technology business by an employee, officer or director of the qualified high technology business, or investor who qualified for the high technology business investment tax credit is excluded from income.

Rounding Off to Whole Dollars

The Department is requiring taxpayers to round off cents to the nearest whole dollar for all dollar entries on the tax return and schedules. To do so, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar. For example \$1.39 becomes \$1 and \$2.69 becomes \$3. If you have to add two or more amounts to figure the amount to enter on a line, schedule, or worksheet, you may choose to use one of two methods. Once a method of rounding is established, you must use the same method throughout the return. The first method is to include the cents when adding and round off only the total. The other method is to round off each entry. For example: You received two W-2 forms, one showing Hawaii withholding of \$50.55 and one showing Hawaii withholding of \$185.73. For rounding method 1, show your total Hawaii withholding as \$236, (\$50.55 + \$185.73 = \$236.28 rounded to \$236). For rounding method 2, show your total Hawaii withholding as

\$237 (\$50.55 rounded to \$51.00 + \$185.73 rounded to \$186.00 = \$51 \$186 = \$237).

Line-by-Line Instructions

Line 1. Interest income.—Enter the fiduciary's share of all taxable interest income including any original issue discount, and income received as a regular interest holder of a Real Estate Mortgage Investment Conduit (REMIC). For taxable bonds acquired after December 31, 1987, amortizable bond premium is treated as an offset to the interest income instead of as a separate interest deduction. See Publication 550.

Line 2. Ordinary Dividends.—Enter the fiduciary's share of all taxable dividends received by the estate or trust.

Line 3. Income or (losses) from partnerships, other estates or other trusts.—Enter on line 3 all

income or (losses) from partnerships except the following:

- Interest (enter on line 1)
- Ordinary Dividends (enter on line 2)
- Capital gain or (loss) (enter on Schedule D Form N-40).
- Ordinary gain or (loss) (enter on Schedule D-1).

Attach a copy of federal Schedule E, Supplemental Income Schedule, to the return.

Line 4. Rent and royalty income or (loss).—Enter the net rent and royalty income or loss on line 4. Attach federal Schedule E, Supplemental Income Schedule, to show the fiduciary's share of income and expenses including depreciation and depletion. This may or may not be the same as the amount shown on federal Form 1041.

Hawaii has not adopted federal bonus depreciation provisions. If a depreciation deduction is claimed for Hawaii tax purposes, the fiduciary must: (a) complete a federal Form 4562 for Hawaii tax purposes using the federal depreciation guidelines in effect before the adoption of the bonus depreciation provisions, (b) attach the completed federal Form 4562 to the Hawaii tax return, (c) make the necessary adjustments to the Hawaii tax return for the depreciation difference between federal and Hawaii, and (d) attach to the Hawaii tax return any worksheet showing the computation of the adjustments. The fiduciary must also keep records of the differences in the asset's depreciable basis for federal and Hawaii tax purposes.

For a trust, divide the deductions for amortization, depreciation, and depletion between the fiduciary and the beneficiaries as specified in the trust instrument. If the trust instrument does not specify, divide the deductions on the same basis as the trust instrument provides for dividing the income between the fiduciary and the beneficiaries. For an estate, divide the deductions for amortization, depreciation, and depletion between the estate and the beneficiaries in the same way the estate income is allocated to each. See federal Regulations sections 1.642(e)-1, 1.642(f)-1, 1.167(h)-1, and 1.611-1(c) for more information about the division of these deductions. If the estate or trust has a loss from an activity, see "At-Risk Loss Limitations" and "Passive Activity Loss Limitations" discussed earlier.

Attach federal Form 4562, Depreciation and Amortization, to explain any depreciation, and amortization deduction. Attach a separate computation for any depletion deduction.

Note: *An estate or trust cannot make an election under section 179 to expense certain depreciable business assets.*

Line 5. Net business and farm income or (loss).—Enter the net profit or loss from business and farming during the tax year. Attach federal Schedule C, Profit or Loss from Business, to report the business income or loss. Attach federal Schedule F, Profit or Loss From Farming, to report the farm income or loss. Complete all information on federal Schedules C and F that applies to the estate or trust. See the instructions for lines 4 and 15 for more information on dividing the deductions for amortization, depreciation, and depletion between the fiduciary and the beneficiaries.

Line 6. Capital gain or (loss).—Enter from Schedule D (Form N-40) the gain or loss from the sale or exchange of capital assets.

Line 7. Ordinary gain or (loss).—Enter from Schedule D-1 the gain or loss from the sale or exchange of property other than capital assets and also from involuntary conversions (other than casu-

ality or theft). For more information, see the instructions for Schedule D-1.

Line 8. Other Income.—Enter the total taxable income not reportable elsewhere. State the nature of the income. Attach a separate sheet if necessary.

Examples of income to be reported on line 8 are:

- Wages and salaries received by the decedent's estate that are income in respect of a decedent. See Publication 559 for more information.
- The estate's or trust's share of aggregate income or loss that is ordinary income if the estate or trust is a shareholder of an S corporation. Also state the name and FEIN of the corporation. Report capital gain income, dividend income, etc., on other appropriate lines.
- The estate's or trust's share of taxable income or (loss) if the estate or trust is a residual holder of a REMIC. You should receive federal Schedule Q (Form 1066) and instructions from the REMIC for each quarter. See the federal instruction for Schedule E for reporting requirements, and attach federal Schedule E.
- Any part of a total distribution shown on federal Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., that is treated as ordinary income. For more information, see the separate instructions for Form N-152, Tax on Lump-Sum Distributions.

Also see Miscellaneous Taxable Income, in Publication 525, Taxable and Nontaxable Income for more information.

Deductions

General Instructions

Allocation of deductions for tax-exempt income.—All deductions entered on lines 10 through 16 must include only the fiduciary's share of deductions related to taxable income. If the estate or trust has tax-exempt income, the amount included on lines 10 through 16 must be reduced by the allocable portion attributed to tax-exempt income. However, see the *Exception* below. The allocable amounts to be included on lines 10 through 16 are determined as follows:

1. Determine the percentage of tax-exempt income to gross income.—Divide the total tax-exempt income received by the total of all items of gross income (including tax-exempt income) included in distributable net income (DNI).
2. Determine the excludable amount of each specific deduction.—Multiply the percentage of tax-exempt income by each specific deduction.
3. Determine the amount deductible on lines 10 through 16.—Subtract the excludable amount of each specific deduction from the specific deduction and enter the balance on the appropriate line.

For more information, see Publications 550 and 559.

EXCEPTION. Expenses for royalties and other income derived from any patents, copyrights, and trade secrets which are excluded from net income are now deductible for a qualified high technology business.

Accrued expenses.—Generally, an accrual basis taxpayer can deduct accrued expenses in the tax year that: (1) all events have occurred that determine the liability; and (2) the amount of the liability can be figured with reasonable accuracy. However, all the events that establish liability are treated as occurring only when economic performance takes

place. There are exceptions for recurring items. See section 461(h).

Line-by-Line Instructions

Line 10. Interest.—Enter any deductible interest paid or accrued that is not deductible elsewhere on Form N-40. Do not include interest on a debt that was incurred or continued in order to buy or carry obligations that yield tax-exempt interest. If unpaid interest is due to a related person, see Publication 550, Investment Income and Expenses.

Fully deductible interest includes:

- (1) interest paid or accrued on indebtedness incurred in connection with the conduct of a trade or business;
- (2) any investment interest (subject to limitations);
- (3) any "qualified residence interest"; or
- (4) any interest payable under section 6601 on any unpaid portion of the estate tax attributable to the value of a reversionary or remainder interest in property, or an interest in a closely held business for the period during which an extension of time for payment of such tax is in effect.

Interest paid or accrued by an estate or trust on indebtedness secured by a qualified residence of a beneficiary of an estate or trust is treated as "qualified residence interest" if the residence would be a qualified residence (i.e., the principal residence or the second residence selected by the beneficiary) if owned by the beneficiary. The beneficiary must have a present interest in the estate or trust or an interest in the residuary of the estate or trust. See Publication 936, Home Mortgage Interest Deduction, for an explanation of the general rules for deducting home mortgage interest.

See section 163(h)(3) for a definition of "qualified residence interest" and limitations on indebtedness.

Generally, "investment interest" is interest (including amortizable bond premium on taxable bonds acquired after 10/22/86, but before 1/1/88) that is paid or accrued on indebtedness that is properly allocable to property held for investment. Investment interest does not include any "qualified residence interest," or interest that is taken into account under section 469 in computing income or loss from a passive activity.

Generally, net investment income is the excess of investment income over investment expenses. Investment expenses are those expenses (other than interest) allowable after application of the 2% floor on miscellaneous itemized deductions.

The amount of investment interest deduction may be limited. Use Form N-158, Investment Interest Expense Deduction, to compute the allowable investment interest deduction.

Any disallowed investment interest expense is allowed as a carryforward to the next tax year. See section 163(d) and Publication 550, for more information.

If the allowable part of the excess investment interest expense is deductible, write "Form N-158 attached" on line 10. Then add the deductible interest figured on Form N-158 to the other types of deductible interest and enter the total on line 10.

Personal interest is not deductible. This includes interest paid on:

- Revolving charge accounts.
- Personal notes for money borrowed from a bank, credit union, or another person.
- Installment loans on personal property.
- Taxes.

Line 11. Taxes.—Enter any deductible taxes paid or accrued during the tax year that are not deductible

elsewhere on Form N-40. State and local sales taxes are not deductible. Instead, they are to be treated as part of the cost of the property upon acquisition, or as a reduction in the amount realized upon disposition.

Deductible taxes include:

- State and local income or real property tax.

Nondeductible taxes include:

- Federal income and excise taxes.
- Customs duties.
- State and local sales taxes.
- Federal estate taxes, but see the instructions for line 20 and *Income in Respect of a Decedent* in the General Instructions.

Note: Act 27, SLH 2018, does not adopt the federal provision that limits the deduction for state and local taxes to \$10,000 (\$5,000 for a married taxpayer filing a separate return) for tax years 2018 through 2025.

Line 12. Fiduciary fees.—Enter the total deductible fees paid to the fiduciary for administering the estate or trust during the tax year.

Line 13. Charitable deduction.—Enter the total from Schedule A (Form N-40) line 6 or 7(c).

Line 14. Attorney, accountant, and return preparer fees.—Enter the deductible attorney, accountant, and return preparer fees paid for the estate or trust during the tax year.

Line 15. Other deductions NOT subject to the 2% floor.—Use Schedule C (Form N-40) on page 3 to list all authorized deductions that are not deductible elsewhere on Form N-40.

Special instructions for charitable remainder trusts.—Compute the taxable income and enter the amount on line 15 as an adjustment to result in no taxable income on line 22.

Include on Schedule D (Form N-40) as losses on capital assets, any losses on worthless bonds and similar obligations and nonbusiness bad debts.

See Publication 550 for more information on expenses of producing income.

Bond premium(s).—The rules for amortizing bond premiums are different for taxable bonds and tax-exempt bonds.

For taxable bonds acquired before 10/23/86:

- You may elect to amortize the premium.
- Only the fiduciary may make the election for the estate or trust.
- The basis must be reduced if you elect to amortize.

For tax-exempt bonds:

- You must amortize the premium.
- You may not deduct the amortization of premium from income.
- The basis must be reduced by the amortization of the premium.

For more information, see section 171 and Publication 550.

If you claim a bond premium deduction for the estate or trust, figure the deduction on a separate sheet and attach it to this return.

Casualty and theft losses.—Use federal Form 4684, *Casualties and Thefts*, to report casualty and theft losses.

If you have any sales, exchanges, or involuntary conversions (other than casualty or theft) of property used in a trade or business, or any involuntary

conversions (other than casualty or theft) of certain capital assets, use Schedule D-1.

NOL deduction.—An estate or trust is allowed the NOL deduction under section 172. In computing the NOL, exclude that portion of the income and deductions attributable to the grantor under sections 671 through 678. Also, the charitable contribution deduction under section 235-2.45(a)(2), HRS, and the income distribution deductions under sections 651 and 661 are not allowed.

For NOLs arising in taxable years ending after December 31, 2017, Act 27, SLH 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused NOLs to be carried forward indefinitely. Also, the NOL deduction is limited to 80% of taxable income for taxable years beginning after December 31, 2017. (See the Note under “Amended Return” on page 2.)

You may elect to carry the farming NOL forward instead of first carrying it back to prior years. If you make this election, then you can use your farming NOL only in the carryforward period. To make this election, attach a statement to your original return filed by the due date (including extensions) for the farming NOL year. This statement must state that you are electing to waive the carryback period under section 235-7(d), HRS, and IRC section 172(b)(1)(B)(iv).

If you filed your original return on time but did not file the statement with it, you can make this election on an amended return filed within 6 months of the original due date of the return, but not including any extension. Attach a statement to your amended return, and write “Filed pursuant to 26 C.F.R. 301.9100-2” at the top of the statement. Also include the statement noted above that you are waiving the carryback period. Once you elect to waive the carryback period, it cannot be changed later. If you do not file this statement on time, the carryback period cannot be waived and you must first carry the farming NOL back before carrying it forward.

Hawaii has not adopted changes to the federal tax law that eliminates certain loss limitation rules for restructurings under the Troubled Asset Relief Program authorized by the Emergency Economic Stabilization Act of 2008.

For more information, see Publication 536, *Net Operating Losses for Individuals, Estates, and Trusts*, and Form N-109, *Application for Tentative Refund*. If you claim an NOL deduction for the estate or trust, figure the deduction on a separate sheet and attach it to this return.

Fiduciary's share of amortization, depreciation, and depletion not claimed elsewhere.—If you cannot deduct the amortization, depreciation, and depletion as rent or royalty expenses on federal Schedule E, or as business or farm expenses on federal Schedules C and F, itemize the fiduciary's share of the deductions on Schedule C. Then include them on line 15. Itemize each beneficiary's share of the deductions on the appropriate line of Schedule K-1 (Form N-40). See the instructions for Schedule K-1 for more information, including the rules for dividing the deductions between the fiduciary and the beneficiaries.

Restricted deductions.—For the special rules on real property construction period interest and taxes for trade or business and activities conducted for profit, see Publication 535, *Business Expenses*.

For information on unpaid expenses due related persons, see Publication 550.

For the rules on the tax year for which a deduction is claimed, including the limit for expenses paid in advance, see Publication 538.

For the limit on deductions for certain farming syndicates, see Publication 535.

Line 16. Allowable miscellaneous itemized deductions subject to the 2% floor.—Miscellaneous itemized deductions are deductible only to the extent that the aggregate amount of such deductions exceeds 2% of adjusted gross income (AGI).

The term “miscellaneous itemized deductions” does not include deductions relating to:

- Interest under section 163.
- Taxes under section 164.

Note: For taxable years beginning after December 31, 2013, Act 88, SLH 2014, disallows the itemized deduction for state and foreign income taxes paid to another state or foreign country if the taxpayer has claimed the credit for income taxes paid to other states and countries.

- The amortization of bond premium under section 171.
- Estate taxes in the case of income in respect of a decedent under section 691(c).

For more exceptions, see section 67(b).

For estates and trusts, the AGI is computed by subtracting the following from total income (line 9):

- (1) the administration costs of the estate or trust (the total of lines 12, 14, 15, and 16 to the extent they are costs incurred in the administration of the estate or trust) that would have not been incurred if the property were NOT held by the estate or trust;
- (2) the income distribution deduction under section 651 or 661 (line 19);
- (3) the amount of the exemption (line 20); and
- (4) other deductions claimed on lines 10 through 15 that were incurred in the conduct of a trade or business, or the production of income.

Allowable administration costs are those costs incurred with the administration of the estate or trust which would not have been incurred if the property were not held in such estate or trust. These administration costs are not subject to the 2% floor.

For those estates and trusts whose income distribution deduction is limited to the actual distribution, and NOT the DNI, (i.e., the net income distribution is less than the DNI) when computing the AGI, use the amount of the actual distribution.

For those estates and trusts whose income distribution deduction is limited to the DNI (i.e., the actual distribution exceeds the DNI), the DNI must be computed taking into account the allowable miscellaneous itemized deductions (AMID) after application of the 2% floor. In this situation there are two unknown amounts: the AMID; and the DNI.

The following example illustrates how an algebraic equation can be used to solve for these unknown amounts:

The Malcolm Smith Trust, a complex trust, earned \$20,000 of dividend income, \$20,000 of capital gains, and a fully deductible \$5,000 loss from XYZ partnership (chargeable to corpus) in 2021. The trust instrument provides that capital gains be added to corpus. 50% of the fiduciary fees were allocated to income and 50% to corpus. The trust claimed a \$2,000 deduction on line 12 of Form N-40. The trust incurred \$1,500 of miscellaneous itemized deductions (chargeable to income), which are subject to the 2% floor. There are no other deductions. The trustee made a discretionary distribution of the accounting income of \$17,500 to the trust's sole beneficiary.

Since the actual distribution can reasonably be expected to exceed the DNI, the trust must compute the DNI, taking into account the allowable miscella-

neous itemized deductions, to determine the amount to be entered on line 16.

The trust also claims an exemption of \$80 on line 20.

To compute line 16, solve the equation below:

$$\text{AMID} = \text{total miscellaneous itemized deductions} - (.02(\text{AGI}))$$

In the above example:

$$\text{AMID} = 1,500 - (.02(\text{AGI}))$$

In all situations, use the following equation to compute the AGI:

$$\text{AGI} = (\text{line 9}) - (\text{the total of lines 12, 14, and 15 to the extent they are costs incurred in the administration of the estate or trust that would have not been incurred if the property were NOT held by the estate or trust}) - (\text{line 19}) - (\text{line 20})$$

In the above example:

$$\text{AGI} = 35,000 - 2,000 - \text{DNI} - 80$$

Since the value of line 19 is not known because it is limited to the DNI, you are left with the following:

$$\text{AGI} = 32,920 - \text{DNI}$$

Substitute the value of AGI in the equation:

$$\text{AMID} = 1,500 - (.02(32,920 - \text{DNI}))$$

The equation cannot be solved until the value of DNI is known. The DNI can be expressed in terms of the AMID. To do this, compute the DNI using the known values. In this example, the DNI is equal to the total income of the trust (less any capital gains allocated to corpus; or plus any loss from line 4); less total deductions from line 17 (computed without regard to any miscellaneous itemized deductions); less the AMID.

Thus, $\text{DNI} = (\text{line 9}) - (\text{line 17 column (b) of Schedule D (Form N-40)}) - (\text{line 17}) - (\text{AMID})$

Substitute the known values:

$$\begin{aligned} \text{DNI} &= 35,000 - 20,000 - 2,000 - \text{AMID} \\ \text{DNI} &= 13,000 - \text{AMID} \end{aligned}$$

Substitute the value of DNI into the equation to solve for AMID:

$$\begin{aligned} \text{AMID} &= 1,500 - (.02(32,920 - (13,000 - \text{AMID}))) \\ \text{AMID} &= 1,500 - (.02(32,920 - 13,000 + \text{AMID})) \\ \text{AMID} &= 1,500 - (658 - 260 + .02 \text{AMID}) \\ \text{AMID} &= 1,102 - .02 \text{AMID} \\ \text{AMID} &= 1,080 \\ \text{DNI} &= 11,920 \\ \text{AGI} &= 21,000 \text{ (i.e., } 32,920 - 11,920) \end{aligned}$$

Note: *The income distribution deduction is equal to the lesser of the distribution (\$17,500) or the DNI (\$11,920).*

Enter the value of AMID on line 16 (the DNI should equal line 9 of Schedule B) and complete the rest of Form N-40 according to the instructions.

Line 18. Adjusted total income or (loss).—If you are filing for a year other than the final year, and line 17 is more than line 9, you may have an NOL. Use Form N-109, Application for Tentative Refund.

Note: For NOLs arising in taxable years ending after December 31, 2017, Act 27, SLH 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused

to be carried forward indefinitely. Also, the NOL deduction is limited to 80% of taxable income for taxable years beginning after December 31, 2017. (See the Note under “Amended Return” on page 2.)

If you are filing for the final year, and the amount on line 17 is more than the amount on line 9, then you have excess deductions. Excess deductions can only be distributed to a beneficiary on the final return of the estate or trust. For more information, see the instructions for Schedule K-1, line 8.

Line 19. Income distribution deduction.—If this trust is other than a “Simple Trust” or “Pooled Income Fund,” complete Schedule B on page 2. However, if line 18 is equal to or less than zero and no distributions were actually made or available on demand to the beneficiaries in the tax year, do not complete Schedule B.

Cemetery perpetual care fund.—On line 19, deduct the amount, not more than \$5 per gravesite, paid for maintenance of cemetery property. Write the number of gravesites to the right of the entry space for line 19. Also write “Section 642(i) trust” in parentheses after the trust’s name at the top of Form N-40. You do not have to complete Schedule B of (Form N-40) and Schedule K-1 (Form N-40).

Line 20. Deduction for personal exemption.—An estate is allowed a deduction of \$400. A trust which, under its governing instrument, is required to distribute all of its income currently, is allowed a deduction of \$200; all other trusts are allowed a deduction of \$80.

Hawaii estate and generation skipping transfer taxes are deductible if they were paid during the year that the income in respect of a decedent is includible in income. The deduction should be included on this line. Write on the dotted line “Hi Est. tax on IRD \$XXX”.

Note: *No exemption is allowed on the final return of an estate or trust. Also, qualified funeral trusts are not allowed a deduction for a personal exemption.*

Schedule A — Page 2 Treatment of charitable contributions; computation of charitable deduction

General Instructions

Subject to certain limitations, an estate or trust (other than a simple trust) shall be allowed a deduction for any amount of gross income which pursuant to the terms of the governing instruments is, during the taxable year, paid or permanently set aside for a purpose specified in section 170(c), or is to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or for the establishment, acquisition, maintenance, or operation of a public cemetery not operated for profit. This deduction is not subject to any percentage limitation if the charitable contributions are to be used exclusively in Hawaii (unless the limitations of section 681 apply). Under Chapter 235, HRS, the deduction is the sum of (a) the amount to be used exclusively in Hawaii and (b) the excess of the total contributions over the amount of contributions used exclusively in Hawaii. The amount determined in (b) is subject to the same limitations applicable to contributions made by individuals. These limitations are computed as follows: (1) the amount actually paid within the taxable years to a church, educational organization, or hospital, qualified under section 170(b)(1)(A) but not in excess of 50% of taxable income (page 1, line 22, computed without any charitable contributions deduction on line 13 or the exemption on line 20), plus (2) any other amount actually paid other than

a charitable contribution to which section 170(b)(1)(A) applies shall be allowed as a deduction to the extent that the aggregate of such contribution does not exceed the lesser of: (a) 20% of the taxable income (page 1, line 22, computed without any charitable contribution on line 13 or exemption on line 20), or (b) the excess of 50% of the taxable income (page 1, line 22, computed without any charitable contribution or exemption on line 20) for the taxable year over the amount of charitable contributions qualifying for the 50% deduction ceiling.

“Charitable contributions” means any amount of gross income which is paid, permanently set aside, or used in such manner as to qualify for the charitable contributions deduction (except for the special limitation in Chapter 235, HRS).

Line-by-Line Instructions

Line 1.—Enter on this line the full amount paid or permanently set aside for the purposes described above out of the current year’s income. This does not include capital gains allocable to corpus, but does include capital gains which are treated as income under the governing instrument and Hawaii law. Capital gains reported on Schedule D (Form N-40), which are allocable to corpus, should be entered on line 4.

Line 2.—This line provides for an adjustment of the charitable contributions attributable to income of the current year (line 1), so that the charitable deduction will not include contributions attributable to tax-exempt interest or other nontaxable income. In the absence of specific provisions in the governing instrument, enter on line 2(a) the result obtained by multiplying line 1 by the total of all tax-exempt interest and other income which is nontaxable irrespective of source, included in income of the current year (under the governing instrument and Hawaii law), and dividing by the total of all the income items included in income of the current year (under the governing instrument and Hawaii law). In computing the total of all items of income under applicable local law, do not reduce income by any losses (such as losses from the sale or exchange of property). In the case of a nonresident estate or trust, enter on line 2(b) the result obtained by multiplying line 1 by the total of all income which is nontaxable because it is derived from property owned outside Hawaii or from other sources outside of Hawaii but which is included in income of the current year, under the governing instrument or Hawaii law, and dividing by the total of all the income items included in income of the current year determined as above stated. The nonresident estate or trust should include, as income which is nontaxable because of source outside Hawaii, the capital gains from property owned outside Hawaii if the capital gains are allocable to income.

Line 4.—Enter the total of all net short-term capital gain and net long-term capital gain of the current year that is:

- Allocable to corpus or
- Paid or permanently set aside for charitable purposes; and
- Not included on line 1.

Line 5.—Enter the total of deductible amounts paid or permanently set aside for charitable purposes from gross income of a prior tax year (and for which no charitable deduction was claimed in the prior tax year). Attach a statement to show the details.

Schedule B — Page 2

Income distribution deduction

General Instructions

The term “distributable net income” (DNI) limits the deductions allowable to estates and trusts for amounts paid, credited, or required to be distributed to beneficiaries and is used to determine how much of an amount paid, credited, or required to be distributed to a beneficiary will be includable in his or her gross income.

Separate share rule.—If a single trust has more than one beneficiary, and if different beneficiaries have substantially separate and independent shares, their shares are treated as separate trusts for the sole purpose of determining the DNI allocable to the respective beneficiaries. If the separate share rule applies, figure the DNI allocable to each beneficiary on a separate sheet and attach the sheet to this return. For more information, see section 663(c) and related regulations.

Line-by-Line Instructions

Line 1.—Enter the amount shown on page 1, line 18, computed by using Schedule A, line 6, for page 1, line 13. If the amount is a loss, enter zero on line 1, Schedule B, however, if the loss is attributable to the capital loss limitation rules under section 1211(b), enter on line 1, Schedule B, the smaller of the net loss from line 18 of page 1, Form N-40, or the loss from line 6 of page 1, Form N-40.

Line 2(a).—Enter the amount of tax-exempt interest and other nontaxable income received, less: (i) the amount of tax-exempt income shown on Schedule A line 2(a); and (ii) any amounts which, but for the provisions of section 265, would be deductible in respect of disbursements, expenses, losses, etc., of the trust or estate, directly or indirectly allocable to such income. The amount of the indirect disbursements, etc., allocable to a tax-exempt income is that amount which bears the same ratio to the total disbursements, etc., of the trust or estate not directly attributable to other items of income as the total tax-exempt income received bears to the total of all the items of gross income (including tax-exempt income and, in the case of a nonresident estate or trust, income which is nontaxable because it is derived from property owned outside Hawaii or from other sources outside Hawaii) entering into distributable net income.

Line 2(b).—In the case of a nonresident estate or trust, enter the amount of income which is nontaxable because it is derived from property owned outside Hawaii or from other sources outside Hawaii, adjusted in the same manner as the tax-exempt income. Include capital gains which are paid, credited, or required to be distributed to beneficiaries but are not taxable to the nonresident estate or trust because it is derived from property owned outside Hawaii.

Line 5. Long-term capital gains distributed for charitable purposes.—Figure the amount to enter on line 5 as follows: Multiply line 1 of Schedule A by a fraction; the numerator of which is the amount of long-term capital gains that are included in the accounting income of the estate or trust (i.e., not allocated to corpus) AND are distributed to charities; the denominator of which is all items of income (including the amount of such long-term capital gains) included in DNI.

Line 6. Short-term capital gains distributed for charitable purposes.—Figure line 6 in the same manner as line 5, except the numerator of the fraction includes only short-term capital gains that are

included in the accounting income of the estate or trust and distributed to charities.

Line 10.—If you are filing for an estate, enter -0-. If you are filing for a simple or a complex trust, enter the income for the tax year determined under the terms of the governing instrument and applicable Hawaii law. Do not include extraordinary dividends or taxable stock dividends determined under the governing instrument and applicable Hawaii law to be attributable to corpus.

Lines 11 and 12

Do not include any:

- Amounts deducted on an earlier year’s return that were required to be distributed in the earlier year.
- Amount that is properly paid or credited as a gift or bequest of a specific amount of money or specific property. (To qualify as a gift or bequest, the amount must be paid in three or fewer installments.) An amount that can be paid or credited only from income is not considered a gift or bequest.
- Amount paid or permanently set aside for charitable purposes or otherwise qualifying for the charitable deduction.

Line 11.—Enter income of the estate or trust that is required to be distributed currently to all beneficiaries, whether it is distributed or not. The governing instrument and Hawaii law determine the items of income and whether an amount must be distributed currently. If the governing instrument requires that stated amounts be paid to a beneficiary and that these amounts may come from either income or corpus, include on line 11 any part of these amounts paid from the current year’s income.

Line 12.—Enter other amounts actually paid, credited or required to be distributed to beneficiaries in the tax year, whether from income or corpus.

Unless a section 643(e)(3) election is made, the value of all noncash property actually paid, credited, or required to be distributed to any beneficiaries after June 1, 1984, is the smaller of:

- (1) The estate’s or trust’s adjusted basis in the property immediately before distribution, plus any gain or minus any loss recognized to the estate or trust on the distribution (basis of beneficiary), or
- (2) The fair market value of such property. This rule does not apply to any noncash property distributed in satisfaction of a specific sum of money.

If a section 643(e)(3) election is made by the fiduciary, then the amount entered on line 12 will be the fair market value of the property.

Line 13. Total distributions.—Add lines 11 and 12 and enter the total on line 13. If line 13 is more than line 10 and you are filing for a complex trust, complete Schedule J (Form N-40) and file it with Form N-40 unless the complex trust has no previously accumulated income.

Line 14.—In computing the income distribution deduction for beneficiaries, the estate or trust is not allowed a deduction for any item of DNI that is not included in the gross income of the estate or trust. Thus, for purposes of computing the allowable income distribution deduction, the DNI (line 9) is computed without regard to any tax-exempt interest.

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 13), and the DNI (line 9) is less than or equal to line 13, then enter on line 14 the amount from line 2(a).

If tax-exempt interest is the only tax-exempt income included in the total distributions (line 13), and

the DNI is more than line 13 (i.e., the estate or trust made a distribution that is less than the DNI), then compute the adjustment as follows:

Multiply line 2(a) by a fraction; the numerator of which is the total distributions (line 13), and the denominator of which is the DNI (line 9). Enter the result on line 14.

If line 13 includes tax-exempt income other than tax-exempt interest, figure line 14 as follows:

From tax-exempt income included on line 13, subtract the total of:

- (1) the charitable contribution deduction allocable to such tax-exempt income, and
- (2) expenses allocable to tax-exempt income. To compute the expenses allocable to tax-exempt income, divide tax-exempt income by total income. Multiply the result by expenses not directly allocable to any item of income.

MULTISTATE TAX COMPACT ACT.—Any taxpayer, other than a corporation, acting as a business entity in more than one state who is required by the Hawaii Income Tax Law to file a return and whose only activities in this State consist of sales and who does not own or rent real estate or tangible personal property and whose annual gross sales in or into the State during the tax year is not in excess of \$100,000 may elect to report and pay a tax of 0.5% of such annual gross sales. Taxpayers who elect the foregoing shall file Form N-310.

Schedule C — Page 3

Explanation of deductions

Itemize in Schedule C the deductions for interest and taxes, and other deductions claimed on page 1, lines 10, 11, 12, 14, 15, and 16. If the space provided on the form is insufficient, attach a separate schedule.

Schedule E — Page 3

Nonrefundable Credits

(Enter fiduciary’s share only on Schedule CR and attach Schedule CR to Form N-40)

See the Instructions for Schedule CR for more information on the nonrefundable credits.

Note: *The amount of a specific credit actually received may be limited by the amount of tax liability and the amount of other credits allowed. See specific credit forms for limitations.*

Credit allowed for taxes paid to a state or foreign country by a resident estate or trust.—If a resident estate or trust derived income from sources without Hawaii and paid a net income tax to a state or foreign country, a credit may be claimed against the Hawaii income tax. A credit is allowable against the Hawaii income tax only if the tax paid to a state or foreign country was based on net income of the same taxable year and only if the income taxed by the state or foreign country was derived from sources without Hawaii. Intangible personal property of a resident estate or trust has a situs within Hawaii, therefore, income from such property is derived from within and not from without Hawaii and no credit may be allowed for taxes paid to a state or foreign country based on such income. (However, in the rare case of a separate business situs there may be an exception to this rule.) To obtain a credit against the Hawaii tax, a copy of the return filed with a state or foreign country must be furnished as well as a receipt or other evidence to substantiate payment of the tax. If any taxes paid are at any time refunded, the Hawaii State Tax Collector must be notified promptly of such refund. The Hawaii Income Tax Law allows no credit to a nonresident estate or trust for the taxes paid to

a state or foreign country. Limitations of credit—see Department Rules.

**Schedule F — Page 3
Refundable Credits**

(Enter fiduciary’s share only on Schedule CR and attach Schedule CR to Form N-40)

See the Instructions for Schedule CR for more information on the refundable credits.

**Schedule G — Page 3
Tax Computation**

If the estate or trust had no taxable net capital gains, the amount of the tax shall be determined using the following rate schedule:

If the taxable income (line 22) is:		The tax shall be:	
Over	But Not Over		Of the amount over
\$ 0	\$ 2,000	1.40%	\$ 0
2,000	4,000	\$28.00 plus 3.20%	2,000
4,000	8,000	92.00 plus 5.50%	4,000
8,000	12,000	312.00 plus 6.40%	8,000
12,000	16,000	568.00 plus 6.80%	12,000
16,000	20,000	840.00 plus 7.20%	16,000
20,000	30,000	1,128.00 plus 7.60%	20,000
30,000	40,000	1,888.00 plus 7.90%	30,000
40,000	—	2,678.00 plus 8.25%	40,000

If the estate or trust had both net capital gain and any taxable income, complete Part VI of Schedule D (Form N-40), enter the tax from line 45 of Schedule D, and check the “Schedule D (Form N-40)” box.

Section 641(c) tax on electing small business trusts (ESBTs)

Special rules apply when figuring the tax on the portion of an ESBT consisting of stock in one or more S corporations. This tax must be figured separately from the tax on the remainder of the ESBT and is included in the total tax on Schedule G (Form N-40) line 1. The tax on the remainder of the ESBT is figured in the normal manner on Form N-40.

The tax on the S corporation items is figured as if that portion of the ESBT were a separate trust with the following modifications:

- Take into account only the income, losses, deductions, and credits allocated to the ESBT as an S corporation shareholder and gain or loss from the disposition of S corporation stock.
- You may not claim a deduction for capital losses in excess of capital gains.
- You may not claim an income distribution deduction or an exemption amount.
- Except in figuring the maximum tax on capital gains, the tax on the separate trust’s taxable income is at the highest rate imposed on estates and trusts.

When figuring the tax and DNI on the remaining portion of the trust, disregard the S corporation items.

Do not apportion to the beneficiaries any of the S corporation items.

Include the section 641(c) tax on Schedule G (Form N-40) line 1. Attach the section 641(c) tax computation to the return.

Line 2. Total Refundable Credits from Schedule CR, line 8.—If the estate or trust is claiming any refundable tax credits, you must use Schedule

CR, Schedule of Tax Credits, to summarize the total refundable tax credits claimed. Complete Part I of Schedule CR, and enter the amount from Schedule CR, line 8, on line 2. Attach Schedule CR to Form N-40.

Line 3. ADJUSTED TAX LIABILITY.—Line 1 minus line 2. If line 3 is less than zero, enter a minus sign, “-”, to the left of the number.

If line 3 is zero or less, the nonrefundable credits may not be used. Even if you are not able to use the nonrefundable credits, complete the forms for any credits you qualify for, and attach the forms to your Form N-40. If the forms are not attached, no claim for the credit has been made, and you will lose the carryover of your unused credits.

Line 4. Total Nonrefundable Credits from Schedule CR, line 28.—*Note: If line 3 is zero or less, no nonrefundable tax credit may be used. Enter zero on line 4.*

If the estate or trust is claiming any nonrefundable tax credits, you must use Schedule CR, Schedule of Tax Credits, to summarize the total nonrefundable tax credits claimed. Complete Part II of Schedule CR, and enter the amount from Schedule CR, line 28 on line 4. Attach Schedule CR to Form N-40.

Line 5.—Line 3 minus line 4. If line 5 is less than zero, enter a minus sign, “-”, to the left of the number.

Line 6(a). Estimated tax payments.—Enter on this line the total estimated taxes paid by the estate or trust for 2021. Show the breakdown of the total paid on Forms N-201V and N-288A (net of N-288C refunds) in the appropriate spaces.

Line 6(b). Tax withheld on Form N-4.—Enter the amount of Hawaii income tax withheld by an S corporation as shown on the Form N-4 issued to the fiduciary.

Attach Form N-4 to the front of the fiduciary’s Form N-40 where indicated.

Line 6(d). Estimated tax payments allocated to beneficiaries.—A trust or a decedent’s estate may elect to have any part of its estimated tax payments treated as made by a beneficiary or beneficiaries.

Use **Form N-40T** to make the election to allocate estimated tax payments to beneficiaries. **This election must be filed by March 7, 2021.**

Line 6(f). Amount applied from 2020 return.—Enter on this line any overpayment from the 2020 return that was applied to the 2021 estimated tax.

Line 8. Penalty for underpayment of estimated tax.—See “Penalties and Interest” in the General Instructions and Form N-210.

Line 9. TAX DUE.—If the total of lines 5 and 8 is larger than line 7, the difference is your balance due.

Line 10. PAYMENT AMOUNT.—Enter the amount of payment. Attach your check or money order to the front of Form N-40. Make check or money order payable to “Hawaii State Tax Collector.”

If the estate or trust cannot pay the full amount that is owed, you can ask to enter a payment agreement **after** you receive a billing notice for the balance due. Please be aware that penalty and interest continue to accrue on the unpaid tax amount even though you have not yet received a billing notice. Payments will be accepted and applied to the entity’s tax liability; however, to ensure that the entity’s payments are applied correctly, your check or money order must have: (1) the entity’s name as shown on the return clearly printed on the check, (2) the entity’s federal employer identification number (FEIN), and (3) the tax year and form number being filed (e.g., 2021 N-40).

Line 11. OVERPAYMENT.—If line 7 is larger than the total of lines 5 and 8, subtract line 7 from the total of lines 5 and 8 and show the difference on line 11. This is the amount overpaid.

However, if line 5 is less than zero, complete the following worksheet:

1. Amount from line 5 (enter as a positive number).
2. Amount from line 7
3. Add line 1 and line 2.

Enter the amount from line 3 of the worksheet on line 11. This is the amount overpaid.

Amended Returns

Complete the entity’s amended return through line 11, using corrected amounts, then go to line 14. If the return is being amended to take a farming NOL carryback deduction, also check the NOL box. Attach a completed Schedule AMD, Explanation of Changes on Amended Return, to the amended return. Also, attach all schedules, forms, and attachments required to file a complete return.

Note: For NOLs arising in taxable years ending after December 31, 2017, Act 27, SLH 2018, eliminates NOL carrybacks (except for farming NOLs which are permitted a two-year carryback), and allows unused NOLs to be carried forward indefinitely. Also, the NOL deduction is limited to 80% of taxable income for taxable years beginning after December 31, 2017. (See the Note under “Amended Return” on page 2.)

You may elect to carry the farming NOL forward instead of first carrying it back to prior years. If you make this election, then you can use your farming NOL only in the carryforward period. To make this election, attach a statement to your original return filed by the due date (including extensions) for the farming NOL year. This statement must state that you are electing to waive the carryback period under section 235-7(d), HRS, and IRC section 172(b)(1)(B)(iv)

Line 14. Amount paid (overpaid) on original return.—Enter on line 14 the amount paid on the entity’s original 2021 return (from line 10 of the **original** return) or the amount overpaid (from line 11 of the **original** return). If there is an overpayment, enter a minus sign, “-”, to the left of the overpayment amount.

Line 15. BALANCE DUE (REFUND) with amended return.—If no amount was entered on line 14, enter on line 15 the amount, if any, from line 9 or line 11 of the **amended** return. If there is an amount on line 14, and that amount is:

- a. A payment and there is an amount on line 9 of the **amended** return, subtract the amount on line 14 from the amount on line 9 and enter the difference on line 15. If the difference is a negative amount, show the negative amount on line 15 with a minus sign, “-”.
- b. A payment and there is an amount on line 11, add these amounts and enter the total on line 15 and enter a minus sign, “-”, to the left of the amount.
- c. An overpayment and there is an amount on line 9, subtract the amount on line 14 from the amount on line 9, and enter the result on line 15. This is the amount the entity owes on its amended return.
- d. An overpayment and there is an amount on line 11, consider the amount on line 11 a negative amount and subtract the amount on line 14 from the amount on line 11, and enter the difference on line 15. If the difference is a negative amount,

show the negative amount on line 15 with a minus sign, “-”. If there is an overpayment on the amended return, do **NOT** enter this amount on line 13.

If the entity has an amount due on its amended return, make check or money order payable to “Hawaii State Tax Collector” and attach the check or money order to the front of Form N-40.

INSTRUCTIONS FOR SCHEDULE D (FORM N-40) — GAINS AND LOSSES FROM THE SALE OR EXCHANGE OF CAPITAL ASSETS

General Instructions

Use Schedule D (Form N-40) to report gains and losses from the sale or exchange of capital assets by an estate or trust.

To report sales or exchanges of property other than capital assets, including the sale or exchange of property used in a trade or business and involuntary conversions (other than casualties and thefts), see Schedule D-1 and related instructions.

If property is involuntarily converted because of a casualty or theft, use federal Form 4684, Casualties and Thefts.

Section 1256 contracts and straddles are reported on federal Form 6781, Gains and Losses From Section 1256 Contracts and Straddles.

Note: All income earned and proceeds derived from stock options or stock, including stock issued through the exercise of stock options or warrants, from a qualified high technology business or from a holding company of a qualified high technology business by an employee, officer or director of the qualified high technology business, or investor who qualified for the high technology business investment tax credit is excluded from income.

Capital asset.—Each item of property held by the estate or trust (whether or not connected with its trade or business) is a capital asset except:

- Stock in trade or other property included in inventory or held mainly for sale to customers.
- Accounts or notes receivable acquired in the ordinary course of the trade or business for services rendered or from the sale of stock in trade or other property included in inventory or held mainly for sale to customers.
- Depreciable or real property used in the trade or business, even if it is fully depreciated.
- Certain copyrights; literary, musical, or artistic compositions; letters or memorandums; or similar property.
- Certain U.S. Government publications, including the Congressional Record, received from the Government, other than by purchase at the normal sales price, or that the estate or trust got from another taxpayer who had received it in a similar way, if the estate or trust’s basis is determined by reference to the previous owner’s basis.
- Certain commodities derivative financial instruments held by a dealer not in connection with its dealer activities.
- Certain identified hedging transactions entered into in the normal course of a trade or business.
- Supplies regularly used in the trade or business.

You may find additional helpful information in the following publications that are available from the IRS:

Publication 544, Sales and Other Dispositions of Assets.

Publication 551, Basis of Assets.

Short Term or Long Term.—Separate the capital gains and losses according to how long the estate or trust held or owned the property. The holding period for short-term capital gains and losses is one year or less. The holding period for long-term capital gains

and losses is more than one year. Property acquired by a decedent’s estate from the decedent and sold or otherwise disposed of within one year is considered as held for more than one year.

When you figure the length of the period the estate or trust held property, begin counting on the day after the estate or trust acquired the property and include the day the estate or trust disposed of it. Use the trade dates for the date of acquisition and sale of stocks and bonds on an exchange or over-the-counter market.

Section 643(e)(3) election.—For noncash property distributions, a fiduciary may elect to have the estate or trust recognize gain or loss in the same manner as if the distributed property had been sold to the beneficiary at its fair market value (FMV). The distribution deduction is the property’s FMV. This election applies to all distributions made by the estate or trust during the tax year, and once made may be revoked only with the consent of the IRS.

Note that section 267 does not allow a deduction for any loss from the sale of property on which a trust makes a section 643(e)(3) election. In addition, when a trust distributes depreciable property, section 1239 applies to deny capital gains treatment on the gain to the trust if the trust makes a section 643(e)(3) election.

Exchange of “like-kind” property.—In most cases, no gain or loss is recognized when property held for productive use in a trade or business or for investment is exchanged solely for property of a “like-kind” to be held either for productive use in a trade or business or for investment. See section 1031. However, if a trust exchanges “like-kind” property with a “related person” (see discussion below), and before two years after the date of the last transfer which was part of the exchange the related person disposes of the property, or the trust disposes of the property received in exchange from the related person, then the original exchange will not qualify for nonrecognition. See section 1031(f) for exceptions.

Report these transactions on Schedule D or Schedule D-1 whichever is applicable. If you use Schedule D, identify in column (a) the property disposed of. Enter the date of acquisition in column (b) and the date of exchange in column (c). Write “like-kind exchange” in column (d) and enter the adjusted basis in column (e). Enter zero in column (f). Also complete and attach federal Form 8824. See the Schedule D-1 instructions for more information.

Related persons.—Do not deduct a loss from the sale or exchange of property directly or indirectly between any of the following:

- A grantor and a fiduciary of a trust;
- A fiduciary and a fiduciary or beneficiary of another trust created by the same grantor;
- A fiduciary and a beneficiary of the same trust;
- A trust fiduciary and a corporation of which more than 50% in value of the outstanding stock is owned directly or indirectly by or for the trust or by or for the grantor of the trust; or
- An executor of an estate and a beneficiary of that estate, except when the sale or exchange is to satisfy a pecuniary bequest (i.e., a bequest of a sum of money).

Items for special treatment.—The following items may require special treatment:

- Wash sales of stock or securities (section 1091).
- Gain or loss on options to buy or sell (section 1234).
- Certain real estate subdivided for sale that may be considered a capital asset (section 1237).
- Gain on disposition of stock in an interest charge domestic international sales corporation (section 995(c)).
- Gain on the sale or exchange of stock in certain foreign corporations (section 1248).
- Sale of stock received under a qualified public utility dividend reinvestment plan. See Publication 550 for details.
- Transfer of appreciated property to a political organization (section 84).
- Disposition of market discount bonds (section 1276).
- Gains from certain constructive ownership transactions. Gain in excess of the gain the estate or trust would have recognized if the estate or trust had held a financial asset directly during the term of a derivative contract must be treated as ordinary income. See section 1260 for details.

Line-by-Line Instructions

Lines 1 and 7. Short-term and long-term capital gains and losses.—Enter all sales of stocks, bonds, etc.

If you are reporting capital gain from a lump-sum distribution, see the instructions for Form N-152 for information on death benefit exclusion and the Federal estate tax.

Column (d). Gross sales price.—Enter either the gross sales price or the net sales price from the sale. On sales of stocks and bonds, report the gross amount as reported to the fiduciary by the fiduciary’s broker on federal Form 1099-B or similar statement. However, if the broker advised the fiduciary that gross proceeds (gross sales price) less commissions and option premiums were reported to the IRS, enter that net amount in column (d).

Column (e). Cost or other basis, as adjusted, plus expense of sale.—Enter the cost or adjusted basis of the property sold or exchanged, plus any expense of sale, such as broker’s fees, commissions, etc. The basis of property acquired from or passing from a decedent is generally the FMV at the date of death. For more information, see Publication 551.

Caution: The special federal election for capital assets acquired in tax years beginning before January 1, 2001 (election under section 311 of the Taxpayer Relief Act of 1997) was not available for Hawaii tax purposes. As a result, the basis of assets for which an election was made on a taxpayer’s 2001 federal tax return will be different for federal and State tax purposes.

Lines 2 and 8. Installment sales.—If the estate or trust sold property at a gain this year and will receive a payment in a later tax year, use the installment method and file federal Form 6252, Installment Sale Income, unless you elect not to do so.

Also use federal Form 6252 to report any payment received in 2018 from a sale made in an earlier year that was reported on the installment method.

If the estate or trust elects not to use the installment method, report the full amount of the gain on a timely filed return (including extensions).

If the estate or trust files federal Form 6252, enter on Schedule D (Form N-40), line 2, the short-term capital gain from installment sales from federal Form 6252. Enter on Schedule D (Form N-40), line 8, the long-term capital gain from installment sales from federal Form 6252.

Lines 4 and 12. Short-term and long-term capital gains from qualified high technology business stock options.—All income earned and proceeds derived from stock options or stock, including stock issued through the exercise of stock options or warrants, from a qualified high technology business or from a holding company of a qualified high technology business by an employee, officer or director of the qualified high technology business, or investor who qualified for the high technology business investment tax credit is excluded from income. Losses on sales or dispositions of stock obtained through options or warrants from a qualified high technology business may be deducted. These losses are not added back to income.

Use lines 4 and 12 to reduce the estate's or trust's capital gain for these amounts reported on other lines of Schedule D.

Line 10. Capital gain distributions.—Enter any amounts shown on federal Form 2439, Notice to Shareholder of Undistributed Long-Term Capital Gains, that represent the estate's or trust's share of the undistributed capital gains of a regulated investment company.

Line 15, column (a). Beneficiaries' net short-term capital gain or loss.—Enter the amount of net short-term capital gain or loss allocable to the beneficiary or beneficiaries. Except in the final year, include only those short-term capital losses that are taken into account in determining the amount of gain from the sale or exchange of capital assets that is paid, credited, or required to be distributed to any beneficiary during the tax year. See Regulations section 1.643(a)-3 for more information about allocation of capital gains and losses.

Except in the final year, if the losses from the sale or exchange of capital assets are more than the gains, all of the losses are allocated to the fiduciary and none are allocated to the beneficiaries.

Line 15, column (b). Fiduciary's net short-term capital gain or loss.—Enter the amount of the net short-term capital gain or loss allocable to the fiduciary. Include any capital gain paid or permanently set aside for the charitable purpose specified in section 642(c).

Line 15, column (c). Total.—Enter the total of the amounts entered in columns (a) and (b). The amount in column (c) should be the same as the amount on line 6.

Line 16. Net long-term capital gain or loss.—Treat the net long-term capital gain or loss on line 16 in the same manner as the net short-term capital gain or loss on line 15.

Part IV. Computation of capital loss limitation.—If the sum of all the capital losses is more than the sum of all the capital gains, then these capital losses are allowed as a deduction only to the extent of the smaller of the net loss or \$3,000.

Part V. Computation of capital loss carryovers from 2021 to 2022.—Complete Part V to figure the capital loss carryover. A capital loss carryover may be carried forward indefinitely. Capital losses keep their character as either short-term or long-term when carried over to the following year. To the extent the capital loss subject to the limitation is deducted from ordinary income, consider the net short-term capital loss as deducted first. If this is the final year of the estate or trust, also enter on line 8b, Schedule K-1, if short-term, or on line 8c, Schedule K-1, if long-term.

Part VI. Tax Computation Using Maximum Capital Gains Rate.—

Line 44.—To compute the regular tax, see the instructions for Form N-40, Schedule G line 1.

Line 45.—If the tax, using the Maximum Capital Gains Rate (line 43), is less than the regular tax (line 44), then enter the amount from line 45 on Form N-40, Schedule G line 1, and check the "Schedule D (Form N-40)" box.

INSTRUCTIONS FOR SCHEDULE J (FORM N-40) — TRUST ALLOCATION OF AN ACCOUNTING DISTRIBUTION

Line-by-Line Instructions

Line 7. Distributions — For years prior to 1987, enter the total of columns 3 and 4, Schedule C, Form N-40. For years 1987 through 1989, enter the amount from line 1, Schedule G, Form N-40.

Line 18. Tax — For years prior to 1983, enter the amount from line 22, page 1, Form N-40. For years 1983 through 2008, enter the amount from line 23, page 1, Form N-40.

Line 20. Net long term gain — For years prior to 2008, enter the following amounts from Schedule D, (Form N-40). For years prior to 1979, enter 50% of line 16(e) or line 23(e), whichever is applicable. For years 1979 through 1986, enter 40% of line 16(e). For the period from 1/1/1987 to 3/31/1987, enter 45% of line 20(e). For the period from 4/1/1987 to 12/31/1987, enter the smaller of line 22 or 23, col-

umn 2. For years 1988 through 2007, enter the smaller of line 16 or 17, column (b). For years 1988 through 2007, enter the smaller of line 16 or 17, column (b). For years 2008 through 2017, enter the smaller of line 16 or 17, column (b).

Line 22. Taxable income — For years prior to 1983, enter taxable income from line 21, Form N-40.

INSTRUCTIONS FOR SCHEDULE K-1 (FORM N-40) — BENEFICIARY'S SHARE OF INCOME, DEDUCTIONS, CREDITS, ETC.

Important Notes

- For Form N-11 filers, if your federal Schedule K-1 (Form 1041) and Hawaii Schedule K-1 (Form N-40) amounts are different, the necessary adjustments are to be computed on the Hawaii Additions Worksheet and the Hawaii Subtractions Worksheet in the Form N-11 Instructions.
- All referenced worksheets are contained in the Form N-11 Instructions and in the Form N-15 Instructions.

General Instructions

Purpose of form.—The fiduciary uses Schedule K-1 (Form N-40) to report the beneficiary's share of income, deductions, and credits from a trust or decedent's estate.

Who must file.—The fiduciary (or one of the joint fiduciaries) must file Schedule K-1. A copy of each beneficiary's Schedule K-1 is attached to the Form N-40 filed with the Department and each beneficiary is given a copy of his or her respective Schedule K-1. One copy of each Schedule K-1 must be retained for the fiduciary's records.

Beneficiary's identifying number.—As a payor of income, you are required to request and provide a proper identifying number for each recipient of income. Individuals and business recipients are responsible for giving you their taxpayer identification numbers upon request.

Beneficiary's income.—If no special computations are required, use the following instructions to compute the beneficiary's income from the estate or trust. In other cases, see Publication 559 and sections 652, 662, and 663, and related regulations. For example, special computations are required for capital gains and losses or a charitable deduction. In addition, the terms of the governing instrument may require different computations.

Income.—The beneficiary must include in gross income the smaller of: (1) the amounts paid, credited, or required to be distributed; or (2) the proportionate share of distributable net income, reduced in either case by the share of distributable tax-exempt income minus the allocable expense not allowable as a deduction on Form N-40.

Character of income.—The beneficiary's income is considered to have the same proportion of each class of items entering into the computation of DNI

that the total of each class has to the DNI (for example, half dividends and half interest if the entity's income is half dividends and half interest).

Allocation of deductions.—Generally, items of deduction that enter into the computation of DNI are to be allocated among the items of income to the extent such allocation is not inconsistent with the rules set out in section 469 and the regulations thereunder, relating to passive activity loss limitations, in the following order.

First, all deductions directly attributable to one class of income are deducted from that income. For example, rental expenses, to the extent allowable, are deducted from rental income.

Second, deductions which are not directly attributable to one class of income, such as fiduciary fees, may be allocated to any class of income, as long as a reasonable portion is allocated to any tax-exempt income.

Finally, any excess deductions which are directly attributable to a class of income may be allocated to another class of income. In no case can excess deductions from a passive activity be allocated to income from a non-passive activity, or to portfolio income earned by the estate or trust. Excess deduc-

tions attributable to tax-exempt income cannot offset any other class of income.

In no case can deductions be allocated to an item of income that is not included in the computation of DNI, or attributable to corpus.

Except for the final year and for depreciation or depletion allocations in excess of income, you may not show any negative amounts for any class of income because the beneficiary generally may not claim losses or deductions from the estate or trust.

Allocation of credits.—In general, the estate or trust or the beneficiaries may claim applicable tax credits according to how the income is divided.

Past years.—Do not include in the beneficiary's income amounts deducted on Form N-40 for an earlier year that were credited or required to be distributed in that earlier year.

Beneficiary's tax year.—The beneficiary's income from the estate or trust must be included in the beneficiary's tax year during which the tax year of the estate or trust ends. See Publication 559 for more information including the effect of the death of a beneficiary during the tax year of the estate or trust.

Line-by-Line Instructions

Line 1. Interest.—Enter the beneficiary's share of the taxable interest income.

Line 2. Ordinary Dividends.—Enter the beneficiary's share of dividend income.

Line 3a. Net short-term capital gain.—Enter the beneficiary's share of the net short-term capital gain from Schedule D (Form N-40), line 15, column (a). Do not enter a loss for any year before the final year of the estate or trust. If for the final year there is a capital loss carryover, enter on line 8b, the beneficiary's share of short-term capital loss carryover as a loss in parentheses. However, if the beneficiary is a corporation, enter the beneficiary's share of all carryover capital losses in parentheses. See federal Publication 559 and section 642(h) and related regulations for more information.

Line 3b. Net long-term capital gain.—Enter the beneficiary's share of the net long-term capital gain from Schedule D (Form N-40), line 16, column (a). Do not enter a loss for any year before the final year of the estate or trust. If for the final year there is a capital loss carryover, enter on line 8c, the beneficiary's share of the long-term capital loss carryover as a loss in parentheses. (If the beneficiary is a corporation, see the instructions for line 3a.) See Publication 559, section 642(h) and related regulations for more information.

Gains, or losses, from the complete, or partial, disposition of a rental, rental real estate, or trade or business activity that is a passive activity, must be shown as an attachment to Schedule K-1.

Line 4a. Business income and other non-passive income.—Enter the beneficiary's share of annuities, royalties, or any other income, before any directly apportionable deductions, that is NOT subject to any passive activity loss limitation rules at the beneficiary level. Use line 5a to report income items that could be subject to the passive activity rules at the beneficiary's level.

Lines 4b and 5b. Depreciation (including cost recovery).—Enter the beneficiary's share of the depreciation deductions attributable to each activity reported on lines 4a and 5a. See the instructions for line 4 on page 5 for a discussion of how the depreciation deduction is apportioned between the beneficiaries and the estate or trust.

Note: *An estate or trust cannot make an election under section 179 to expense certain depreciable business assets.*

Lines 4c and 5c. Depletion.—Enter the beneficiary's share of the depletion deduction under section 611 attributable to each activity reported on lines 4a and 5a. See the instructions for line 4 on page 5 for a discussion of how the depletion deduction is apportioned between the beneficiaries and the estate or trust.

Lines 4d and 5d. Amortization.—Itemize the beneficiary's share of the amortization deductions attributable to each activity reported on lines 4a and 5a. Divide the amortization deductions between the fiduciary and the beneficiaries in the same way that the depreciation and depletion deductions are divided.

Lines 5a through 5d.—Caution: *The limitations on passive activity losses and credits under section 469 apply to estates and trusts. Estates and trusts that distribute income to beneficiaries are allowed to allocate depreciation, depletion, and amortization deductions to the beneficiaries. These deductions are referred to as "directly allocable deductions."*

Any directly allocable deduction, such as depreciation, is treated by the beneficiary as having been incurred in the same activity as incurred by the trust or estate. However, the character of such deduction may be determined as if the beneficiary incurred the deduction directly.

To assist the beneficiary in computing any applicable passive activity loss limitations, also attach a separate schedule showing the beneficiary's share of income derived from: (a) rental; (b) rental real estate; and (c) business activities.

If there is more than one activity, one or more of which is a passive activity, income and deductions are to be shown separately for each activity on an attached schedule.

Line 6. Other net income taxes.—List on a separate sheet the beneficiary's share of the applicable net income taxes paid or accrued to another state or foreign country. Identify and include the various sources for the beneficiary's credit.

Line 7a. Capital Goods Excise Tax Credit.—Enter the beneficiary's share of the cost of property qualifying for the capital goods excise tax credit. Beneficiaries are to figure their credit on Form N-312.

Line 7b. Low-Income Housing Tax Credit.—Enter the beneficiary's share of the low-income housing tax credit. Beneficiaries are to report their share of the credit on Form N-586.

Line 7c. Tax Credit for Research Activities.—Enter the beneficiary's share of the tax credit for research activities. Beneficiaries are to report their share of the credit on Form N-346.

Line 8a. Excess deductions on termination.—If this is the final return and there are excess deductions on termination or an NOL carryover (see instruction for "Line 18. Adjusted total income or (loss)."), enter the beneficiary's share of the excess deductions on line 8a.

(a) *Excess Deductions.* Excess deductions on termination occur only during the last taxable year of the estate or trust when the total deductions (other than the deductions allowed under section 642(b) (relating to the exemption amount) or section 642(c) (relating to the charitable contributions)) are greater than the gross income during that tax year. Figure the deductions on a separate sheet and attach it to the form.

Only the beneficiary of an estate or trust that succeeds to its property is allowed to deduct that entity's

excess deductions on termination. A beneficiary who does not have enough income in that year to absorb the entire deduction may not carry the balance over to any succeeding year. An individual beneficiary must be able to itemize deductions in order to claim the excess deductions in determining taxable income.

Lines 8b and 8c. Unused capital loss carryover.—Upon termination of the trust or decedent's estate, the beneficiary succeeding to the property is allowed as a deduction any unused capital loss carryover under section 1212. If the estate or trust incurs capital losses in the final year, use Part V of Schedule D (Form N-40) to compute the amount of capital loss carryover to be allocated to the beneficiary.

Line 8d. Net operating loss (NOL) carryover.—Generally, a deduction based upon an NOL carryover is not available to a beneficiary as an excess deduction. However, if the last tax year of the estate or trust is also the last year in which an NOL carryover may be taken (see section 172(b)), then the NOL carryover is considered an excess deduction on the termination of the entity to the extent it is not absorbed by the estate or trust during its final tax year. For more information, see Publication 559, section 642(h), and the related regulations.

Upon termination of an estate or trust, a beneficiary succeeding to its property is allowed to deduct any amount of unused NOL carryover. Enter the unused carryover amount and write "NOL CARRYOVER" (see line 8a instructions) to the left of the figure.

Line 9. Other.—Itemize on line 9, or on a separate sheet, the beneficiary's tax information for which there is no other line on Schedule K-1. This includes the allocable share, if any, of:

- Payment of estimated tax to be credited to the beneficiary, including any Hawaii income taxes withheld upon the sale of Hawaii real property by a nonresident estate or trust if the sale is taxable at the beneficiary level. The fiduciary must timely file (by the 65th day after the close of the tax year) Form N-40T, Allocation of Estimated Tax Payments to Beneficiaries, in order for these payments to be transferred to the beneficiaries. If Form N-40T is not timely filed, the estimated tax payments cannot be used by the beneficiaries. (A copy of Schedule K-1 (Form N-40) must be attached to the beneficiary's return to substantiate claim.);
- Tax-exempt interest realized by the trust (including exempt-interest dividends received as a shareholder in a mutual fund or other regulated investment company);
- Nontaxable dividends;
- Investment income (section 163(d));
- Enterprise Zone Tax Credit;
- Credit for Employment of Vocational Rehabilitation Referrals;
- Credit for School Repair and Maintenance;
- Renewable Energy Technologies Income Tax Credit. Attach Form N-342A to the Schedule K-1;
- Fuel Tax Credit for Commercial Fishers;
- Motion Picture, Digital Media, and Film Production Income Tax Credit;
- Credit for tax deemed paid on undistributed capital gains of regulated investment companies;
- Important Agricultural Land Qualified Agricultural Cost Tax Credit;
- Renewable Fuels Production Tax Credit;
- Organic Foods Production Tax Credit;

- Historic Preservation Income Tax Credit;
- The information a beneficiary will need to compute any recapture taxes; and

- Taxes withheld by an S corporation on behalf of the fiduciary allocated to the beneficiaries.

Note: Upon termination of an estate or trust, any suspended passive activity losses (PALs) relating to

an interest in a passive activity cannot be distributed to the beneficiary. Instead, the basis in such activity is increased by the amount of any PALs allocable to the interest, and no losses are allowed as a deduction on the estate's or trust's Form N-40.

SPECIFIC INSTRUCTIONS FOR NONRESIDENT ESTATES AND TRUSTS

In general, the instructions for resident estates and trusts apply. However, lines 1 through 8 will include only gross income from property owned and other sources in Hawaii.

No deduction may be had for interest paid or accrued or indebtedness incurred or continued to

purchase or carry property owned outside Hawaii or to carry on trade or business outside Hawaii. Losses from property owned outside Hawaii and from other sources outside Hawaii shall not be deducted. Likewise, other deductions connected with income from sources outside Hawaii shall not be allowed. Though

an amount otherwise would be allowable as a deduction under section 212 (relating to expenses for the production of income), it is not allowable to the extent allocable to income from sources outside Hawaii.

SPECIFIC INSTRUCTIONS FOR QUALIFIED FUNERAL TRUSTS

Hawaii's Income Tax Law allows a pre-need funeral trust to elect not to be treated as a grantor trust but to be taxed as a qualified funeral trust (QFT) and to have the tax on the earnings of the trust paid by the trustee. The income tax rates for estates and trusts are applicable to QFTs. For Hawaii purposes, a QFT is to file Form N-40 to report the income, deductions, gains, losses, etc., and income tax liability of the QFT. These provisions are effective for tax years ending after August 5, 1997.

In general, the trustee of a pre-need funeral trust which has elected to be taxed as a QFT files Form N-40 to report the income, deductions, gains, losses, etc., and income tax liability of the QFT. The trustee can use the form to file for a single QFT or for multiple QFTs having the same trustee, following the rules discussed under **Composite Return** below.

For contracts entered into for tax years beginning after August 29, 2008, there is no limit on the amount of contributions that may be made to a QFT. For contracts entered into 2008 for tax years beginning before August 30, 2008, contributions to a QFT may not exceed \$9,000.

Making the Election

For Hawaii purposes, the trustee makes the election to treat a trust as a QFT when the trustee, for federal purposes, files federal Form 1041-QFT.

The election may be made for any tax year ending after August 5, 1997. QFT status may be elected for trust's first eligible year or for any subsequent year.

Once made, the election for federal purpose may not be revoked without the consent of the IRS. If the election is revoked for federal purposes, the election is also revoked for Hawaii purposes.

Composite Return

A trustee may file a single, composite Form N-40 for all QFTs of which he or she is the trustee. Generally, a QFT included on a composite return must have a calendar year as its tax year.

Check the box "Composite Qualified Funeral Trust" at the top of Form N-40.

On the applicable lines of the Form N-40, enter the totals for all the QFTs included on the return. With regard to the adjusted gross income (AGI) to

be used for the allowable miscellaneous itemized deductions subject to the 2% floor, you must figure the AGI separately for each QFT using each QFT's share of income and deduction amounts.

Also, a schedule must be attached to the composite Form N-40 that includes the following information for each QFT (or separate interest treated as a separate QFT):

- The name of the owner or the beneficiary. If you list the name of the owner and that trust has more than one beneficiary, you must separate the trust into shares held by the separate beneficiaries;
- The type and gross amount of each type of income earned by the QFT for the tax year. For capital gains, identify separately the amount of net short-term capital gain, net long-term capital gain, and unrecaptured section 1250 gain;
- The type and amount of each deduction and credit allocable to the QFT
- The tax and payments made for each QFT; and
- If the QFT was terminated during the year, give the date of the termination.

STATE OF HAWAII — DEPARTMENT OF TAXATION RELATED FEDERAL/HAWAII FIDUCIARY TAX FORMS

<u>Federal Form Number</u>	<u>Title or Description of Federal Form</u>	<u>Use Hawaii Form</u>	<u>Copy of Fed. Form May Be Used</u>
970	Application To Use LIFO Inventory Method	None	Yes*
1041	U.S. Income Tax Return for Estates and Trusts	N-40	No
1041-QFT	U.S. Income Tax Return for Qualified Funeral Trusts	N-40	No
Schedule D	Capital Gains and Losses	Sch. D (N-40)	No
Schedule J	Accumulation Distribution for Certain Complex Trusts	Sch. J (N-40)	No
Schedule K-1	Beneficiary's Share of Income, Deductions, Credits, Etc.	Sch. K-1 (N-40)	No
1128	Application to Adopt, Change, or Retain a Tax Year	None	Yes*
3115	Application for Change in Accounting Method	None	Yes*
4562	Depreciation and Amortization	None	Yes*
4684	Casualties and Thefts	None	Yes*
4797	Sales of Business Property	Sch. D-1	No
4970	Tax on Accumulation Distribution of Trusts	N-405	No
5884	Work Opportunity Credit	N-884	No
6198	At-Risk Limitations	None	Yes*
6252	Installment Sale	None	Yes*
6781	Gains and Losses from Section 1256 Contracts and Straddles	None	Yes*
7004	Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns	N-201V	No
8582	Passive Activity Loss Limitations	None	Yes*
8586	Low-Income Housing Credit	N-586	No
8824	Like-Kind Exchanges	None	Yes*
8855	Election to Treat a Qualified Revocable Trust as Part of an Estate	None	Yes*
8949	Sales and Other Dispositions of Capital Assets	None	Yes*

* If there is no Hawaii equivalent form, the federal form must be used.