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Op. 64-5

STATE OF HAWAII  
DEPARTMENT OF THE ATTORNEY GENERAL  
HONOLULU

January 23, 1964

Honorable Edward J. Burns  
Director of Taxation  
425 S. Queen Street  
Honolulu, Hawaii

Dear Sir:

This is in response to your inquiry concerning certain disaster claims. You asked several questions designated as Items 1A, 1B, 2A, 2B, and 3. We will answer these questions in that sequence.

Item 1A. In this case, the trustees of a certain trust filed a disaster claim with the Natural Disaster Claims Commission and had the claim certified by the Commission (Certification No. 163). The beneficiaries of the trust now ask for the remission, refund, or forgiveness of taxes which are due and owing by them. The question is whether they are entitled thereto. You raised the question of transferability of claims by the trustees to the beneficiaries under Section 131E-8 Revised Laws of Hawaii 1955, as amended (1961 Supplement). <sup>1/</sup>

The beneficiaries of a trust have an equitable estate in the trust property. This estate is considered to be a property interest and not merely a chose in action. Blair v.

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<sup>1/</sup> "§ 131E-8. Claimants and transferees, limitations. The original claimant may be an individual or a legal entity recognized as a separate entity under chapter 121 by the director of taxation. The tax relief authorized by this chapter shall not be applicable to transferees, heirs or assignees of a claimant unless such transferees, heirs or assignees are either the spouse or children of the original claimant."

Commissioner, 300 U.S. 5, 13-14 (1937); 2 Scott, Trusts, § 130 at 967 (2d ed. 1956); 1A Bogert, Trusts and Trustees, § 183 at 178 (2d ed. 1951); 54 Am. Jur., Trusts, § 102 at 93. Because the beneficiaries have a property interest in the trust property, the disaster loss sustained by the trust will be reflected in the distributive shares received by the beneficiaries. Therefore, an argument could be made that where a trust sustains a disaster loss the remaindermen-beneficiaries, as parties bearing the loss, should be characterized as original claimants. Despite the favorable equitable considerations found in this argument, such considerations being possibly worthy of corrective legislation, the present statutory provisions cannot be construed so as to impart unto the beneficiaries of the trust the status of original claimants. Neither can the beneficiaries qualify as transferees within the prescribed relationship under the statute because of the impersonal nature of a trust.

In conclusion, since Section 131E-8, Revised Laws of Hawaii 1955, as amended (1961 Supplement), allows tax relief to only original claimants and transferees within a circumscribed degree of relationship to the original claimants, the beneficiaries of a trust cannot qualify as original claimants or as transferees within the definition of Section 131E-8. It is our view, therefore, that the beneficiaries of the trust are not entitled to have a remission, refund, or forgiveness of taxes which are due and owing by them.

Item 1B. We understand the question to be whether the refund of real property taxes after termination of the trust can be considered to be income to the beneficiaries. After the termination of a trust, a trust's subsequent income is considered the income of the person or persons who succeed to the trust property. Thus, the refund of real property taxes is income to the owners of the property of the trust--the beneficiaries.

Item 2A. We have here a case in which the original claimant subsequently declared a trust naming, besides himself, three other persons as beneficiaries. We do not know what the relationship of the beneficiaries to the original claimant is, nor do we have the trust instrument itself. Nevertheless, from the nature of the problem presented, we can assume that the Proper question to be considered is whether the credits of the original claimant can be used by the trust to obtain a remission, refund or forgiveness of taxes due and owing by the trust. We reply in the negative.

There are two aspects to the question of determining whether a refund, remission or forgiveness of taxes should be granted to a particular person. First, the person must be either an original claimant or a transferee, heir or assignee who is a spouse or child of the original claimant. Second, the taxes must be due and owing by the claimant asking for refund, remission or forgiveness of taxes.

The purpose of Chapter 131E, Revised Laws of Hawaii 1955, as amended, is to provide tax relief to original claimants and certain transferees who qualify within the degree of relationship specified in the statute. The fact that the beneficiaries of a trust to which tax credits are being transferred are within the required relationship stated in the statute, plus the fact that the beneficiaries have a property interest in the trust property, do not lead necessarily to the categorization of the transfer of tax credits as being within the requirements of the statute. There is in this case a transfer of tax credits. This fact necessitates the imposition of the restrictions stated in Section 131E-8, Revised Laws of Hawaii 1955, as amended (1961 Supplement). Section 131E-8 provides relief to the transferees who have taxes due and owing by them and who come within the required relationship stated in the statute. The fact that the beneficiaries may be so related to the original claimant-settlor and the fact that we have previously stated that beneficiaries have a certain property interest in trust property do not detract from the one salient consideration that the credits are being applied against taxes due and owing by the trust and not by the beneficiaries. As noted earlier, the trust, being an impersonal entity, cannot be regarded as a spouse or child within the meaning of Section 131E-8, prescribing the qualifications of transferees.

It is our opinion that taxes due and owing by the trust cannot be remitted, refunded or forgiven.

Item 2B. This is another case of a trust arrangement in which certain beneficiaries and the trustee are claimants of disaster losses that have been certified by the Claims Commission. The question here is whether the trust can have taxes due and owing by the trust remitted, refunded, or forgiven.

It is our opinion that taxes due and owing by the trust cannot be remitted, refunded or forgiven. Our reasons are stated in the discussion under Item 2A.

Item 3. Our understanding of this case is that Partner A and Partner B were entitled to tax credits amounting to \$8,882.96 each. Since Partner A has used the substantial part

of his tax credits against taxes due and owing on separate businesses of his own, whereas Partner B still has substantial tax credits available, the question arose as to whether Partner B's tax credits could be applied against all of the taxes derived from the activities of the partnership.

It is our opinion that Partner B can apply her tax credits against partnership taxes on account of real property owned by the partnership or a trade or business conducted by the partnership. Since each partner is jointly and severally liable for the debts of the partnership, taxes included, the tax credit that one partner has can be used against taxes due and owing by the partnership. Such taxes could include real property taxes and gross income taxes since both of these taxes are characterized as taxes due and owing by the partnership as a tax entity. See Section 128-5, Revised Laws of Hawaii 1955, and Section 117-1, Revised Laws of Hawaii 1955, as amended (1961 Supplement). The first section mentioned above expressly allows for the assessment of real property of a partnership as a partnership obligation. The latter section, a definitions section, by implication refers to the partnership as the tax-paying entity by stating that a partnership falls within the definition of a "person", and a "taxpayer" is defined as "any person liable for any tax hereunder". (Emphasis added.) Net income taxes, however, are not taxes imposed on the partnership as such so that these taxes must be considered to be personal to each partner, and the tax credit of one partner cannot be used against the income tax of the other partner. See Section 121-15, Revised Laws of Hawaii 1955, as amended (1961 Supplement). Summarizing, Partner B's tax credit can be applied to the real property and gross income taxes attributable to the partnership since each partner is jointly and severally liable for the debts of the partnership, in this particular instance, the taxes due and owing by the partnership; net income taxes, however, are not considered to be partnership debts but the debts of the individual partners so that Partner B can apply her tax credit against her own income taxes only.

Very truly yours,

/s/ CLIFFORD I. ARINAGA

CLIFFORD I. ARINAGA  
Deputy Attorney General

APPROVED:

/s/ BERT T. KOBAYASHI

BERT T. KOBAYASHI  
Attorney General

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