



DEPARTMENT OF TAXATION
STATE OF HAWAII

March 18, 1981

TAX INFORMATION RELEASE NO. 81-2

RE: General Excise Tax Licensing and Reporting Requirements of Persons Transferring Rental Real Property to a Land Trust

This tax information release is in response to advice requested as to who should be made liable for the general excise tax and licensing provisions of HRS Chapter 237, where rental real property is held in a land trust pursuant to HRS Chapter 558.

Under a land trust created pursuant to the provisions of HRS Chapter 558, the trustee may hold both the legal and equitable title to the land and his fiduciary duty in the administration of the trust remains undiminished as in an ordinary trust. The beneficiary has beneficial interest in the land which, if designated under the trust instrument as personal property, is then deemed personally for all purposes under HRS Section 558-7. Moreover, under the terms of such trust agreement, the beneficiary is given the power to direct the trustee to do various acts regarding title to the property.

With respect to the general excise tax, HRS Section 237-13 imposes the tax upon all persons doing business in the State. Section 237-1 defines a "person" as follows:

"'Person' or 'company' includes every individual, partnership, society, unincorporated association, joint adventure, group, hui, joint stock company, corporation, trustee, personal representative, trust estate, decedent's estate, trust, or other entity, whether such persons are doing business for themselves or in a fiduciary capacity"

Under HRS Section 237-13, trustees, trust estates and a trust are deemed persons for purposes of the general excise tax whether or not they are doing business for themselves or in a fiduciary capacity.

In Re Grayco Land Escrow, Ltd., 57 Haw. 436 (1977), the Supreme Court determined that Grayco, a trustee who only held the bare legal title, was liable for general excise taxes due upon interest derived from various agreements of sale. Grayco made the claim that it was not the proper taxpayer as it was merely a passive trustee in a flow-through trust holding such bare legal title, and that it did not have any beneficial interest under the trust agreement either in the land or trust corpus. The Court rejected this argument and held that Grayco was the proper taxpayer.

On the basis of the foregoing discussion, it is the determination of the Department of Taxation that the trustee is required to be licensed and is likewise liable for the payment of general excise taxes upon any rentals that may be derived from the real property held in a land trust. While the agreement forming the trust may contractually affix the liability for all taxes upon the beneficiary, the Court, In Re Grayco Land Escrow, Ltd., found that such a contractual undertaking is "not binding upon the taxing authorities or determinative of the tax consequences."

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