



DEPARTMENT OF TAXATION
STATE OF HAWAII

November 28, 1983

TAX INFORMATION RELEASE

NO. 83-5

RE: Estate and Transfer Tax Releases and Waivers

This Tax Information Release expands upon Tax Information Release No. 83-4, issued August 30, 1983. Some confusion continues to exist regarding the need for tax clearances from the State of Hawaii prior to the release of a decedent's asset(s).

The new law, HRS Chapter 236D, is effective only for decedents who die after June 30, 1983. For decedents who die before July 1, 1983, the old provisions of HRS Chapter 236 (Inheritance and Estate Taxes Law) still apply. Thus, an inheritance tax return will still be required, inheritance taxes will still have to be paid, and tax waivers (Consents of the Director to Transfer Assets) must be obtained to transfer assets in which a decedent had an interest, if that decedent died before July 1, 1983.

No tax waivers will be issued for assets of decedents who die after June 30, 1983. Under the old law, a bank, safe deposit company, trust company, or other institution with which a decedent had an account or other interest was deemed to be in control and possession of the property, and could not release the assets to a joint tenant or successor of the decedent. This led to the practice of "freezing" accounts until a tax waiver was presented, absolving the institution from any tax liability with respect to the assets. Under Section 236D-12(c) of the new law, an institution is not deemed to be in control or possession of the assets of a decedent, and thus has no potential tax liability. Therefore, no waivers will be issued and the assets of a person who dies after June 30, 1983, should not be frozen by any institution. Assets should be released to a joint tenant, successor, or personal representative upon the application of such person and prove satisfactory to the institution that such person is entitled to the assets.

It should be noted that Section 236D-5(2)(d) of the new law provides that a release letter will be issued by the Department of Taxation upon the request of a personal representative, surviving spouse, or joint tenant of a decedent. The release letter is not a mandatory document on the part of such personal representative or other person if no taxes are due the State, but a request for its issuance (made by filing either Form M-6 (Rev July, 1983) or Form M-6A). The probate court will still require filing of the release letter

in probate proceedings, but it is otherwise issued as a matter of record only. The release letter is not intended as a replacement or substitute for the tax waivers required under the old law, and should not be required by institutions as a condition of turning over assets. In estates where no probate proceedings are necessary and a federal estate tax return need not be filed, it is possible no release letter will ever be applied for and issued.

These are administrative procedures developed by the Department:

1. For estates of decedents who died prior to July 1, 1983, only, the provisions of Chapter 236, Hawaii Revised Statutes, remain in full effect. An inheritance tax return on Form M-6 (Rev. 1982) must be filed within eighteen months of the date of death, inheritance taxes (if any) must be paid, and tax waivers (Consents of the Director to Transfer Assets) must be obtained before an institution, such as, a bank, safe deposit company, trust institution, etc., can release assets in which the decedent had an interest to the decedent's personal representative, surviving spouses joint tenant, or other successor.
2. For estates of decedents who die after June 30, 1983, the provisions of new Chapter 236D, Hawaii Revised Statutes, apply. No tax waivers are required nor will any be issued to transfer the assets of a decedent. Institutions holding assets in which a decedent had an interest no longer have any Hawaii inheritance or estate tax liability with respect to those assets, and therefore should release the assets to the persons entitled to them, without consideration of tax ramifications.
3. Tax releases will be issued to a personal representative or other persons upon the filing of Form M-6 or M-6A, but a release is not mandatory under the tax statute for any person. The probate court will require filing of a tax release letter or receipt for taxes paid in probate estates. Any release will be issued in original only; the recipient should make photocopies, if any are needed for its purposes.

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