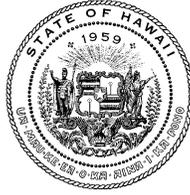


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## **TAX INFORMATION RELEASE NO. 2000-3**

**RE:** Application of Hawaii Estate Taxes to a Nonresident's Interest in a Partnership That Owns Hawaii Real Property

This Tax Information Release (TIR) clarifies that a nonresident's interest in a partnership that owns Hawaii real property is subject to the Hawaii estate tax except that the nonresident's interest is exempt if the property of a Hawaii resident is exempt from taxation under the laws of the state where the nonresident is domiciled.

Section 236D-4(a), Hawaii Revised Statute (HRS), imposes an estate tax on the transfer of the taxable estate located in Hawaii of every nonresident. The estate tax is equal to the federal credit for state death taxes multiplied by a fraction the numerator of which is the value of the property located in Hawaii and the denominator of which is the value of the decedent's gross estate. Section 236D-4(b), HRS.

The transfer of a nonresident's property is exempt from the estate tax to the extent that the property of Hawaii residents is exempt from taxation under the laws of the state where the nonresident is domiciled. The exception does not apply to: (1) real property having an actual situs in Hawaii, whether or not held in a trust the corpus of which is included in the decedent's gross estate for federal estate tax purposes, (2) a beneficial interest in a land trust that owns property located in Hawaii, and (3) tangible personal property having an actual situs in Hawaii. Section 236D-4(c), HRS.

None of the exceptions in section 236-D-4(c), HRS, are applicable to a nonresident's interest in a partnership that owns Hawaii real property because the interest is an intangible personal property interest. The partner does not directly own the partnership property. Section 425-124, HRS describes a partner's property rights as "(1) the partner's specific rights in specific partnership property, (2) the partner's interest in the partnership, and (3) the partner's right to participate in the management." "A partner's interest in the partnership is the partner's share of the profits and surplus, and the same is personal property." Section 425-126, HRS

**Example:** X, a California resident, dies owning an interest in a partnership that owns land in Hawaii. California does not tax the partnership interest of a nonresident.<sup>1</sup>

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<sup>1</sup>California Revenue and Taxation Code section, 13402 states that the estate includes "all intangible personal property of a resident decedent within or without the state subject to the jurisdiction thereof." (emphasis added). The term intangible property includes "partnership interests." California Code of regulations section 1138.22.

The Hawaii estate tax would not be applicable to X's partnership interest under the reciprocal provisions of section 236D-4(c) HRS, because California does not tax the partnership interest of a Hawaii resident.

This TIR is effective immediately. Pursuant to section 236D-13, HRS, a claim for refund of overpayment of the estate tax must be initiated within two years after the date the federal tax has finally been determined. Forms and other tax information may be downloaded from the Department's website at [www.state.hi.us/tax](http://www.state.hi.us/tax). On Oahu, forms may be ordered by calling the Department's Forms Request Line at 808-587-7572. Persons who are not calling from Oahu may call 1-800-222-7572 to receive forms by mail or 808-678-0522 from a fax machine to receive forms by fax.

*Marie Y. Okamura*

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HRS Sections Explained: HRS § 236D-4