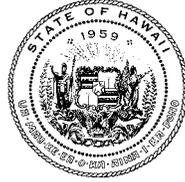


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October 6, 2010

TAX INFORMATION RELEASE NO. 2010-09

Re: Hawaii Estate & Transfer Tax Administration; Marital Deduction, QTIP Election, Extension to File the Return, and Basis in Property Received from a Decedent.

The purpose of this Tax Information Release (TIR) is to provide guidance on the following matters relating to the administration of the Estate & Transfer tax set forth under Chapter 236D, Hawaii Revised Statutes (HRS).

IRC § 2056—ALLOWANCE OF THE MARITAL DEDUCTION GENERALLY

Chapter 236D, HRS, conforms to Section 2056 of the Internal Revenue Code (IRC) as of December 31, 2009.

IRC § 2056 allows for a marital deduction from a decedent's gross estate equal to the value of transfers made to a surviving spouse. Transfers made by a decedent to a surviving spouse may be deducted from the decedent's gross estate on the Hawaii estate tax return as allowed by the IRC, relevant treasury regulations, and court decisions interpreting IRC § 2056.

IRC § 2056(b)(7)—THE MARITAL DEDUCTION AND QTIP ELECTIONS

IRC § 2056(b)(7) allows for certain qualified terminable interest property ("QTIP property") to qualify for the estate tax marital deduction. In order for QTIP property to qualify for the marital deduction, an election must be made.

The executor of a decedent's estate may elect to claim a marital deduction for transfers of QTIP property, including transfers into a QTIP trust, as allowed by the IRC, relevant treasury regulations, and court decisions interpreting IRC § 2056(b)(7) on a timely filed Hawaii estate tax return. The election to claim a marital deduction for transfers of QTIP property on a Hawaii estate tax return is separate and independent from any similar election made on a federal or other state estate tax return.

For purposes of the Hawaii estate tax, IRC § 2044 as of December 31, 2009 is also operative, which requires the inclusion of any QTIP property in the gross estate of a surviving spouse.

EXTENSION TO FILE HAWAII ESTATE TAX RETURN

The Hawaii Estate & Transfer tax return shall be due within nine months from the decedent's date of death. An automatic six-month extension to file the return may be requested by filing the appropriate form with the Department of Taxation.

An extension to file is not an extension to pay tax. Any request for an extension to file the Hawaii Estate & Transfer Tax return must be accompanied by payment of the tax. Interest will be owed on any additional amount of tax over the amount paid with the request for an extension to file.

NO STEP-UP IN BASIS AFTER DECEMBER 31, 2009

Hawaii income tax law conforms to IRC § 1014, relating to the basis of property acquired from a decedent before January 1, 2010. Hawaii income tax law also conforms to IRC § 1022, relating to the basis of property acquired from a decedent after December 31, 2009.

Beneficiaries or other persons receiving property from a decedent, including decedents whose estates are subject to Hawaii estate tax, are not entitled to a step-up in basis under IRC § 1014 after December 31, 2009. Property acquired from a decedent dying after December 31, 2009 is subject to the modified carry-over basis rules of IRC § 1022.

Hawaii income tax law also conforms to the sunset provisions applicable to both IRC §§ 1014 and 1022, which are effective after December 31, 2010. Therefore, IRC § 1014 is reinstated for persons dying after December 31, 2010.

For additional information, please contact the Technical Section at 587-1577.


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