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TAX ANNOUNCEMENT NO. 2022-05

RE: Adoption of Internal Revenue Service Revenue Procedure 2022-32

The purpose of this Tax Announcement is to note the State's adoption of Internal Revenue Service Revenue Procedure 2022-32, issued on and effective as of July 8, 2022. It provides a simplified method for certain estates to make a late portability election to allow the surviving spouse of the decedent to use the Deceased Spousal Unused Exclusion (DSUE) amount up to the fifth anniversary of the decedent's death. This Revenue Procedure expressly supersedes Rev. Proc. 2017-34, which allowed an estate that was not required to file an estate tax return (due to the value of the gross estate and adjusted taxable gifts being under the filing threshold in Internal Revenue Code Section 6018(a)) to make a late election through the second anniversary of the decedent's death.

Hawaii Revised Statutes (HRS) section 236E-5(a) expressly provides that "[i]t is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the estate and generation-skipping transfer tax law of the State as closely as possible to the Internal Revenue Code, in order to simplify the filing of returns and minimize the taxpayers' burdens in complying with the estate and generation-skipping transfer tax law. The rules and regulations, forms, and procedures adopted and established under this chapter shall conform as nearly as possible, unless there is good reason to the contrary, to the rules and regulations, forms, and procedures adopted and established under the Internal Revenue Code." As such, Hawaii also adopts this new revenue procedure.

As it relates to the Hawaii estate tax, the executor of the decedent's estate may file a Hawaii estate tax return to claim portability of the DSUE to a surviving spouse if:

(1) the decedent died after January 25, 2012 (the date Chapter 236E became effective);
(2) the decedent was a citizen or resident of the United States on the date of death;
(3) the decedent's estate was not required to file an estate tax return because the decedent's Hawaii taxable estate was less than the Hawaii applicable exclusion amount as determined under HRS section 236E-6; and
(4) the estate did not in fact file a timely estate tax return.

To avail themselves of the new procedure, the executor of the decedent's estate is required to file a completed estate tax return on or before the fifth anniversary of the decedent's

date of death, and the top of the return must state: "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER 2010(C)(5)(A)."

For further information, please refer to IRS Revenue Procedure 2022-32, which can be found at https://www.irs.gov/pub/irs-drop/rp-22-32.pdf.

If you have any questions, please contact the Technical Section by email at tax.technical.section@hawaii.gov, or by calling (808) 587-1577.

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