

**A BILL FOR AN ACT** **VETO OVERRIDE**

RELATING TO TAXATION.

Act No. 74  
Approved: [Signature]  
Dated: April 29, 2010

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Chapter 236D, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§236D-A Nonresidents not citizens; tax imposed;  
5 exemption. (a) A tax in an amount computed as provided in this  
6 section is imposed on the noncitizen transfer of the taxable  
7 estate located in Hawaii of every nonresident decedent who was  
8 not a citizen at the time of their death.

9 (b) The tax shall be computed by multiplying the federal  
10 credit by a fraction, the numerator of which is the value of the  
11 property with a situs in Hawaii, and the denominator of which is  
12 the value of the decedent's gross estate.

13 (c) The noncitizen transfer of the property of a  
14 nonresident not a citizen is exempt from the tax imposed by this  
15 section to the extent that the property of residents is exempt  
16 from taxation under the laws of the state in which the  
17 nonresident not a citizen is domiciled; except that the  
18 following shall be subject to tax under this section:



- 1        (1) Real property having an actual situs in this state,  
2        whether or not held in a trust the corpus of which is  
3        included in a decedent's gross estate for federal  
4        estate tax purposes;
- 5        (2) A beneficial interest in a land trust that owns real  
6        property located in the state; and
- 7        (3) Tangible and intangible personal property having a  
8        situs in this state.
- 9        (d) "Situs" as used in this section means the location of  
10       a decedent's property within the meaning of Section 2104 of the  
11       Internal Revenue Code, including regulations and other guidance  
12       issued thereunder, substituting "Hawaii" for "the United  
13       States".
- 14       §236D-B Taxation under chapter 236D; applicable exclusion  
15       amount. Notwithstanding any other law to the contrary, a  
16       decedent shall be entitled to all applicable exclusion or  
17       exemption amounts as determined under the Internal Revenue Code  
18       as of December 31, 2009, before being subject to any taxes  
19       imposed under this chapter, including up to a \$3,500,000  
20       applicable exclusion amount allowed by Section 2010 of the  
21       Internal Revenue Code on December 31, 2009, as further adjusted  
22       by law."



1 SECTION 2. Section 236D-2, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By adding three new definitions to be appropriately  
4 inserted and to read:

5 "Internal Revenue Code" means the Internal Revenue Code of  
6 1986, as amended and renumbered, as of December 31, 2009;  
7 provided that Sections 2011, 2102, and 2604 of the Internal  
8 Revenue Code shall mean those Sections as of December 31, 2000;  
9 and provided further that Section 2058 shall not be operative  
10 for purposes of this chapter. "Internal Revenue Code" includes  
11 the federal tax principles of alter ego, nominee, sham  
12 transaction, substance over form, economic substance, or  
13 business purpose, as those principles are developed by statute  
14 or common law. The Internal Revenue Code, for purposes of this  
15 chapter, shall be applied using changes in nomenclature and  
16 other language, including the omission of inapplicable language  
17 or the insertion of interpretive language, where necessary to  
18 effectuate the intent of this chapter.

19 "Noncitizen transfer" means a transfer within the meaning  
20 of Section 2101 of the Internal Revenue Code.

21 "Nonresident not a citizen" means a nonresident who is not  
22 a citizen of the United States."



1           2. By amending the definitions of "federal credit",  
2 "generation-skipping transfer", "gross estate", "personal  
3 representative", "section 2011", "taxable estate", and  
4 "transfer" to read:

5           "Federal credit" means:

- 6           (1) For a transfer, the maximum amount of the credit for  
7 state death taxes allowed by ~~[section]~~ Section 2011 of  
8 the Internal Revenue Code, as it existed on December  
9 31, 2000, for the decedent's adjusted taxable estate;  
10 [and]
- 11           (2) For a generation-skipping transfer, the maximum amount  
12 of the credit for state taxes allowed by ~~[section]~~  
13 Section 2604 of the [federal] Internal Revenue Code  
14 [of 1986, as amended or renumbered.] as it existed on  
15 December 31, 2000; and
- 16           (3) For a noncitizen transfer, the maximum amount of the  
17 credit for state death taxes allowed by Section 2102  
18 of the Internal Revenue Code, as it existed on  
19 December 31, 2000, for the decedent's adjusted taxable  
20 estate.

21           "Generation-skipping transfer" means a generation-skipping  
22 transfer as defined and used in ~~[section]~~ Section 2611 of the



1 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~  
2 ~~renumbered]~~.

3 "Gross estate" means gross estate as defined and used in  
4 ~~[sections]~~ Sections 2031 to [2045] 2046 of the ~~[federal]~~  
5 Internal Revenue Code ~~[of 1986, as amended or renumbered]~~. For  
6 purposes of section 236D-A, "gross estate" means gross estate as  
7 defined and used in Section 2103 of the Internal Revenue Code.

8 "Personal representative" means the personal representative  
9 of a decedent appointed under chapter 560, and includes an  
10 executor (as defined under ~~[section]~~ Section 2203 of the  
11 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~  
12 ~~renumbered]~~), administrator, successor personal representative,  
13 special administrator, and persons who perform substantially the  
14 same function under the law governing their status.

15 "Section 2011" means ~~[section]~~ Section 2011 of the  
16 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~  
17 ~~renumbered]~~ as it existed on December 31, 2000.

18 "Taxable estate" means taxable estate as defined in  
19 ~~[sections]~~ Sections 2051 to 2056 of the ~~[federal]~~ Internal  
20 Revenue Code ~~[of 1986, as amended or renumbered]~~. For purposes  
21 of section 236D-A, "taxable estate" means taxable estate as



1 defined and used in Section 2106 of the Internal Revenue Code,  
2 with situs in Hawaii.

3 "Transfer" means transfer as defined and used in [~~section~~]  
4 Section 2001 of the [~~federal~~] Internal Revenue Code [~~of 1986, as~~  
5 ~~amended or renumbered~~]."

6 SECTION 3. In codifying the new sections added by section  
7 1 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 4. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

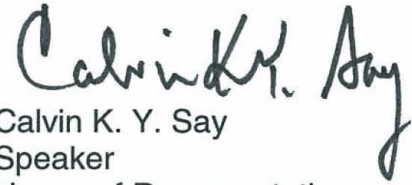
12 SECTION 5. This Act, upon its approval, shall apply to  
13 property interests of persons who die after April 30, 2010.



THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 29, 2010  
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the House of Representatives of the State of Hawaii, on this date reconsidered House Bill No. 2866, HD 1, SD 1, CD 1, heretofore vetoed as contained in a Governor's Message dated April 25, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the House of Representatives of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.



Calvin K. Y. Say  
Speaker  
House of Representatives



Patricia Mau-Shimizu  
Chief Clerk  
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: April 29, 2010  
Honolulu, Hawaii

We hereby certify that, pursuant to Sections 16 and 17 of Article III of the Hawaii State Constitution, the Senate of the State of Hawaii, on this date reconsidered House Bill No. 2866 HD 1, SD 1, CD 1, heretofore vetoed as contained in a Governor's Message dated April 25, 2010, and approved said bill by an affirmative vote of two-thirds of all members to which the Senate of the Twenty-fifth Legislature of the State of Hawaii, Regular Session 2010, is entitled.



Colleen Hanabusa  
President of the Senate



Carol Taniguchi  
Clerk of the Senate