
A BILL FOR AN ACT

RELATING TO TAXATION.

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.



Report Title:

Taxation; Income Tax Rates

Description:

Taxes the transfer of a taxable estate located in Hawaii by a nonresident who is not a citizen of the United States. Specifies that a decedent shall be entitled to all applicable exclusion or exemption amounts as determined under the Internal Revenue Code as of December 31, 2009, before being subject to any taxes, including up to a \$3,500,000 applicable exclusion amount. Amends the definition of "Internal Revenue Code" to include certain federal tax principles. Adds definitions of "nonresident not a citizen" and "noncitizen transfer". Retains the State's ability to "pick-up" the state death tax credit as it existed in the Internal Revenue Code on December 31, 2000. (HB2866 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

