
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 a new section to be appropriately designated
3 and to read as follows:

4 "§236D- 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 not a citizen.

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

12 (c) The noncitizen transfer of the property of a
13 nonresident not a citizen is exempt from the tax imposed by this
14 section to the extent that the property of residents is exempt
15 from taxation under the laws of the state in which the
16 nonresident not a citizen is domiciled; except that the
17 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 the term "Hawaii" for the term
13 "United States"."

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

16 1. By adding three new definitions to be appropriately
17 inserted and to read:

18 "Internal Revenue Code" means the federal Internal Revenue
19 Code of 1986, as amended and renumbered, as of December 31,
20 2009; provided that sections 2011, 2102, and 2604 of the
21 Internal Revenue Code shall mean those sections as of December
22 31, 2000; and provided further that section 2058 shall not be



1 operative for purposes of this chapter. "Internal Revenue Code"
2 also includes the federal tax principles of alter ego, nominee,
3 sham transaction, substance over form, economic substance, or
4 business purpose, as those principles are developed by statute
5 or common law. The Internal Revenue Code, for purposes of this
6 chapter, shall be applied using changes in nomenclature and
7 other language, including the omission of inapplicable language
8 or the insertion of interpretive language, where necessary to
9 effectuate the intent of this chapter.

10 "Nonresident not a citizen" means a nonresident person who
11 is not a citizen of the United States.

12 "Noncitizen transfer" means a transfer within the meaning
13 of section 2101 of the Internal Revenue Code."

14 2. By amending the definitions of "federal credit",
15 "generation-skipping transfer", "gross estate", "personal
16 representative", "section 2011", "taxable estate", and
17 "transfer" to read:

18 ""Federal credit" means:

19 (1) For a transfer, the maximum amount of the credit for
20 state death taxes allowed by section 2011 of the
21 Internal Revenue Code, as it existed on December 31,



1 2000, for the decedent's adjusted taxable estate;

2 [and]

3 (2) For a generation-skipping transfer, the maximum amount
4 of the credit for state taxes allowed by section 2604
5 of the [~~federal~~] Internal Revenue Code [~~of 1986, as~~
6 ~~amended or renumbered.~~] as it existed on December 31,
7 2000; and

8 (3) For a noncitizen transfer, the maximum amount of the
9 credit for state death taxes allowed by section 2102
10 of the Internal Revenue Code, as it existed on
11 December 31, 2000, for the decedent's adjusted taxable
12 estate.

13 "Generation-skipping transfer" means a generation-skipping
14 transfer as defined and used in section 2611 of the [~~federal~~]
15 Internal Revenue Code [~~of 1986, as amended or renumbered~~].

16 "Gross estate" means gross estate as defined and used in
17 sections 2031 to [~~2045~~] 2046 of the [~~federal~~] Internal Revenue
18 Code [~~of 1986, as amended or renumbered~~]. For purposes of
19 section 236D- , "gross estate" means gross estate as defined
20 and used in section 2103 of the Internal Revenue Code.

21 "Personal representative" means the personal representative
22 of a decedent appointed under chapter 560, and includes an



1 executor (as defined under section 2203 of the [~~federal~~]
2 Internal Revenue Code [~~of 1986, as amended or renumbered~~]),
3 administrator, successor personal representative, special
4 administrator, and persons who perform substantially the same
5 function under the law governing their status.

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

9 "Taxable estate" means taxable estate as defined in
10 sections 2051 to 2056 of the [~~federal~~] Internal Revenue Code [~~of~~
11 ~~1986, as amended or renumbered~~]. For purposes of section 236D-
12 _____ , "taxable estate" means taxable estate as defined and used
13 in section 2106 of the Internal Revenue Code, with situs in
14 Hawaii.

15 "Transfer" means transfer as defined and used in section
16 2001 of the [~~federal~~] Internal Revenue Code [~~of 1986, as amended~~
17 ~~or renumbered~~]."

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect upon its approval;
21 provided that this Act shall apply to any individual who dies
22 after March 31, 2010.



Report Title:

Taxation; Income Tax Rates

Description:

Retains the State's ability to "pick-up" the state death tax credit as it existed in the Internal Revenue Code on 12/31/2009. Amends the definition of "Internal Revenue Code" to include certain federal tax principles. Adds definitions of "nonresident not a citizen" and "noncitizen transfer". Taxes the transfer of a taxable estate located in Hawaii by a nonresident who is not a citizen of the United States.

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

