

HB 306

HD1, SD1

TAXBILLSERVICE

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SUBJECT: ESTATE AND TRANSFER, State imposition

BILL NUMBER: HB 306, SD-1

INTRODUCED BY: Senate Committee on Economic Development and Technology

BRIEF SUMMARY: Amends HRS section 236D-3 to provide that an estate and transfer tax shall be imposed on the transfer of the taxable estate of every resident according to the following:

If the taxable estate is:	The tax shall be:
Not over \$3,560,000	0
Over \$3,560,000 but not over \$3,600,000	9.6% of the amount in excess of \$3,560,000
Over \$3,600,000 but not over \$4,100,000	\$3,840 plus 10.4% over \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$55,840 plus 11.2% over \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$167,840 plus 12% over \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$287,840 plus 12.8% over \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$415,840 plus 13.6% over \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$551,840 plus 14.4% over \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$695,840 plus 15.2% over \$9,100,000
Over \$10,100,000	\$847,840 plus 16% over \$10,100,000

Amends HRS 236D-3.5(a) to provide that a tax in an amount equal to two and 25/100 percent shall be imposed on every generation-skipping transfer exceeding an aggregate exclusion of \$3,560,000 per decedent of property: (1) located in this state; and (2) from a resident trust. If the generation-skipping transfer is subject to a similar tax in another state, the amount of the tax due under this section shall be credited with the lesser of: (1) the amount of the tax paid to the other state; or (2) an amount computed by multiplying the tax imposed under subsection (a) by a fraction, the numerator of which is the value of the property subject to the generation-skipping transfer tax paid to the other state, and the denominator of which is the value of all property subject to the federal generation-skipping transfer tax.

Amends HRS section 236D-4(b) to provide that the tax shall be computed by multiplying the tax imposed on the transfer of the decedent's taxable estate under HRS section 236D-3(a) by a fraction, the numerator of which is the value of the property located in Hawaii, and the denominator of which is the value of the decedent's gross estate.

Amends HRS section 236D-4.5(b) to provide that the tax on noncitizen transfers of a taxable estate located in Hawaii shall be computed by multiplying the tax imposed on the transfer of the decedent's taxable estate in accordance with the following table by a fraction, the numerator of which is the value of the property with a situs in Hawaii, and the denominator of which is the value of the decedent's gross estate under section 2103 of the Internal Revenue Code:

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If the taxable estate is:

Not over \$120,000
Over \$120,000 but not over \$150,000
Over \$150,000 but not over \$200,000
Over \$200,000 but not over \$300,000
Over \$300,000 but not over \$500,000
Over \$500,000 but not over \$700,000
Over \$700,000 but not over \$900,000
Over \$900,000 but not over \$1,100,000
Over \$1,100,000 but not over \$1,600,000
Over \$1,600,000 but not over \$2,100,000
Over \$2,100,000 but not over \$2,600,000
Over \$2,600,000 but not over \$3,100,000
Over \$3,100,000 but not over \$3,600,000
Over \$3,600,000 but not over \$4,100,000
Over \$4,100,000 but not over \$5,100,000
Over \$5,100,000 but not over \$6,100,000
Over \$6,100,000 but not over \$7,100,000
Over \$7,100,000 but not over \$8,100,000
Over \$8,100,000 but not over \$9,100,000
Over \$9,100,000 but not over \$10,100,000
Over \$10,100,000

The tax shall be:

0
0.8% of the amount by which the taxable estate exceeds \$120,000
\$240 plus 1.6% of the amount by which the taxable estate exceeds \$150,000
\$1,040 plus 2.4% of the amount by which the taxable estate exceeds \$200,000
\$3,440 plus 3.2% of the amount by which the taxable estate exceeds \$300,000
\$9,840 plus 4% of the amount by which the taxable estate exceeds \$500,000
\$17,840 plus 4.8% of the amount by which the taxable estate exceeds \$700,000
\$27,440 plus 5.6% of the amount by which the taxable estate exceeds \$900,000
\$38,640 plus 6.4% of the amount by which the taxable estate exceeds \$1,100,000
\$70,640 plus 7.2% of the amount by which the taxable estate exceeds \$1,600,000
\$106,640 plus 8% of the amount by which the taxable estate exceeds \$2,100,000
\$146,640 plus 8.8% of the amount by which the taxable estate exceeds \$2,600,000
\$190,640 plus 9.6% of the amount by which the taxable estate exceeds \$3,100,000
\$238,640 plus 10.4% of the amount by which the taxable estate exceeds \$3,600,000
\$290,640 plus 11.2% of the amount by which the taxable estate exceeds \$4,100,000
\$402,640 plus 12% of the amount by which the taxable estate exceeds \$5,100,000
\$522,640 plus 12.8% of the amount by which the taxable estate exceeds \$6,100,000
\$650,640 plus 13.6% of the amount by which the taxable estate exceeds \$7,100,000
\$786,640 plus 14.4% of the amount by which the taxable estate exceeds \$8,100,000
\$930,640 plus 15.2% of the amount by which the taxable estate exceeds \$9,100,000
\$1,082,640 plus 16% of the amount by which the taxable estate exceeds \$10,100,000

Repeals the definitions and references to "federal credit" and "section 2011."

EFFECTIVE DATE: July 1, 2030

STAFF COMMENTS: With the adoption of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal estate tax was phased out and ultimately repealed over a ten-year period. Along with that repeal, the credit that is allowable under the federal law recognizing that an estate may have incurred state death taxes is phased out over a three-year period beginning in 2002. Hawaii, like many other states, has utilized this amount as its state death tax since 1983 and is known as the “pick up” tax as the state merely picks up what the federal table allows as state death taxes.

The pick up tax was created in 1924 when Congress provided a credit against the federal estate tax which had been created in 1916 in recognition of the estate having been required to pay death taxes to the state. This dollar-for-dollar credit against state taxes paid enables the state to “pick up” some of the federal tax liability without increasing the total liability of the state. Thus, when the state chose to eliminate its old inheritance tax in favor of the pick up tax in 1983, it eliminated any additional state tax liability for the estate and made its tax revenues from this source completely dependent on the federal law. One of the pluses to utilizing the pick up tax is that it eliminated any additional paperwork that a separate state death tax would involve.

On January 1, 2010, the federal estate tax was officially repealed by EGGTRA, but on December 17, 2010, it was reinstated retroactively to January 1 by Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (PL 111-312). The federal estate tax is now 35% with a \$5 million individual exemption for the 2010, 2011 and 2012 tax years. On January 1, 2013 the exemption and rate are scheduled to revert back to the numbers that were in effect in 2002 - a \$1,000,000 exemption and 55% estate tax rate.

This measure proposes to “decouple” from the federal provisions and impose a tax on estates of over \$3,560,000 at 9.6% to 16% for estates \$10,100,000 and over. It should be noted that while Hawaii utilized the “pickup tax” and relied on the federal Internal Revenue Code provisions, and this measure would adopt a similar tax for Hawaii tax purposes, it is questionable whether the estate and transfer tax provisions under HRS section 236D are updated to be efficient and equitable since these provisions have not been needed and have not been amended or updated.

Further, it should be noted that in the closing days of the 2010 session of Congress, federal lawmakers resurrected the federal death tax, setting the estate tax exemption at \$5 million and a top rate of 35% of any amount of an estate over and above the basic exemption applicable to those dying after December 31, 2009 but before January 1, 2013. This measure appears to use \$3,560,000 as the floor for state tax exemptions for Hawaii estates, which is slightly higher than the federal tax exemption that was in effect through the calendar year 2009. That extension of the federal estate tax will sunset on December 31, 2012 when the federal exemption will drop back to \$1 million which will force federal lawmakers to revisit this issue at that time. Thus, this measure should be seen as another temporary measure to reinstate the estate tax for Hawaii purposes. Regardless, given that Hawaii went without an estate tax for nearly five years, one questions what the motive for the reinstatement of the law accomplishes other than a grab for additional general fund revenues. If nothing else, lawmakers should set the same parameters as the federal law for those dying after December 31, 2009 by adopting the \$5 million exemption. With the federal exemption set at that level from now until 2013, keeping the state exemption at \$3.5 million will create the disparity of having an estate taxed at the state level but not at the federal level. Further, because the Hawaii law does not recognize the newly established portability of the exemption that was

adopted at the federal level, spouses will be caught between the two laws.

While proponents declare that this proposal clarifies how the law is to be applied, they have not addressed some of the other changes in the federal law which create disparities between the two laws. Thus, while this proposal attempts to clarify how the state tax is to be applied in Hawaii, it is an incomplete reform of the hasty re-enactment of the estate tax law last year. Because of the changes enacted late in the year at the federal level, the clarification of the state law should have been debated long before the start of this session. Unfortunately, only those privy to the proposal were able to introduce their special interests into the measure as it does not address many of the other changes that should have been considered. With that in mind, consideration should be given to imposing a sunset provision of 2013 on this proposed change to force local lawmakers to review what Congress will do in 2012 in order to put the Hawaii law in synch with the federal law. Under this law, some estates may be taxable for state purposes but not for federal purposes in the next two years.

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March 30, 2011

The Honorable David Y. Ige, Chair
Senate Committee on Ways and Means
State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

RE: H.B. 306, H.D.1, S.D.1, Relating To Taxation

DECISION MAKING: Wednesday, March 30, 2011, at 9:00 a.m.

Aloha Chair Ige, Vice Chair Kidani and Members of the Committee:

I am Craig Hirai, a member of the Subcommittee on Taxation and Finance, submitting written comments on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,500 members. HAR **supports** the amendments to HRS Chapter 236D contained in H.B. 306, H.D.1, S.D.1, Relating to Taxation, which amends the method of computing the Hawai'i estate and transfer tax, generation-skipping transfer tax, and estate tax for noncitizens.

HAR believes that the computation of the Hawai'i Estate and Transfer Taxes under HRS Chapter 236D is confusing and may not accurately reflect the legislative intent of Act 74, SLH 2010. HAR further believes that this confusion is in large part caused by HRS §236D-2.5 which HAR believes should be repealed and replaced with amendments to other sections of HRS Chapter 236D.

HRS §236D-2.5 was inserted into Act 74, SLH 2010, primarily to ensure that the estates of Hawai'i residents valued at under \$3,500,000 would not be subject to the Hawai'i Estate and Transfer Tax as was the case in 2009 under the federal Estate Tax Law (and which has consistently been the position of the Obama Administration). H.B. 306, H.D.1, S.D.1, amends HRS Chapter 236D by inserting the appropriate exemption amounts currently contained under Act 74, SLH 2010, into tax tables in order to clarify the method of computing the Hawai'i estate and transfer tax, generation-skipping transfer tax, and estate tax for noncitizens.

Since H.B. 306, H.D.1, S.D.1, is merely a clarification of Act 74, SLH 2010, HAR respectfully requests that it be applied retroactively to the estates of decedents who died after April 30, 2010, the effective date of Act 74, SLH 2010.

Mahalo for the opportunity to submit written comments.

