

**HB 306**

**HD1, SD1**

**NEIL ABERCROMBIE**  
GOVERNOR

**BRIAN SCHATZ**  
LT. GOVERNOR



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**DEPARTMENT OF TAXATION**  
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**SENATE COMMITTEE ON WAYS AND MEANS**

**COMMENTS OF THE DEPARTMENT OF TAXATION  
REGARDING HB 306, HD 1, SD 1  
RELATING TO TAXATION**

**TESTIFIER:** **FREDERICK D. PABLO, DIRECTOR OF TAXATION (OR  
DESIGNEE)**

**COMMITTEE:** **WAM**

**DATE:** **APRIL 7, 2011**

**TIME:** **9:30AM**

**POSITION:** **SUPPORT**

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This bill clarifies the estate tax law. The Department of Taxation (Department) supports this bill. The previous committee made several technical amendments the Department recommended.

Because this bill merely clarifies the existing estate tax and makes no substantive changes, the Department estimates no revenue impact.

# TAXBILLSERVICE

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TAX FOUNDATION OF HAWAII

Honolulu, Hawaii 96813 Tel. 536-4587

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:

HB 306, SD-1 - Continued

If the taxable estate is:

The tax shall be:

Not over \$120,000	0
Over \$120,000 but not over \$150,000	0.8% of the amount by which the taxable estate exceeds \$120,000
Over \$150,000 but not over \$200,000	\$240 plus 1.6% of the amount by which the taxable estate exceeds \$150,000
Over \$200,000 but not over \$300,000	\$1,040 plus 2.4% of the amount by which the taxable estate exceeds \$200,000
Over \$300,000 but not over \$500,000	\$3,440 plus 3.2% of the amount by which the taxable estate exceeds \$300,000
Over \$500,000 but not over \$700,000	\$9,840 plus 4% of the amount by which the taxable estate exceeds \$500,000
Over \$700,000 but not over \$900,000	\$17,840 plus 4.8% of the amount by which the taxable estate exceeds \$700,000
Over \$900,000 but not over \$1,100,000	\$27,440 plus 5.6% of the amount by which the taxable estate exceeds \$900,000
Over \$1,100,000 but not over \$1,600,000	\$38,640 plus 6.4% of the amount by which the taxable estate exceeds \$1,100,000
Over \$1,600,000 but not over \$2,100,000	\$70,640 plus 7.2% of the amount by which the taxable estate exceeds \$1,600,000
Over \$2,100,000 but not over \$2,600,000	\$106,640 plus 8% of the amount by which the taxable estate exceeds \$2,100,000
Over \$2,600,000 but not over \$3,100,000	\$146,640 plus 8.8% of the amount by which the taxable estate exceeds \$2,600,000
Over \$3,100,000 but not over \$3,600,000	\$190,640 plus 9.6% of the amount by which the taxable estate exceeds \$3,100,000
Over \$3,600,000 but not over \$4,100,000	\$238,640 plus 10.4% of the amount by which the taxable estate exceeds \$3,600,000
Over \$4,100,000 but not over \$5,100,000	\$290,640 plus 11.2% of the amount by which the taxable estate exceeds \$4,100,000
Over \$5,100,000 but not over \$6,100,000	\$402,640 plus 12% of the amount by which the taxable estate exceeds \$5,100,000
Over \$6,100,000 but not over \$7,100,000	\$522,640 plus 12.8% of the amount by which the taxable estate exceeds \$6,100,000
Over \$7,100,000 but not over \$8,100,000	\$650,640 plus 13.6% of the amount by which the taxable estate exceeds \$7,100,000
Over \$8,100,000 but not over \$9,100,000	\$786,640 plus 14.4% of the amount by which the taxable estate exceeds \$8,100,000
Over \$9,100,000 but not over \$10,100,000	\$930,640 plus 15.2% of the amount by which the taxable estate exceeds \$9,100,000
Over \$10,100,000	\$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.

Digested 3/29/11

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**TO:** Senator David Y. Ige  
Chair, Committee on Ways and Means  
Hawaii State Capitol, Room 215  
*Via Email: [WAMTestimony@Capitol.hawaii.gov](mailto:WAMTestimony@Capitol.hawaii.gov)*

**FROM:** Mihoko E. Ito

**DATE:** April 5, 2011

**RE:** H.B. 306, H.D. 1, S.D. 1 – Relating to Taxation  
Decision Making: Thursday, April 7, 2011 at 9:30 a.m.

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Dear Chair Ige and Members of the Committee on Ways and Means:

We appreciate the opportunity to submit comments on behalf of Sopogy, Inc. regarding H.B. 306, H.D. 1, S.D. 1. Sopogy is a solar power technology company based in Hawaii that uses concentration solar thermal technology to generate electricity, process heat, and provide solar air conditioning. Its mission is to bring renewable solar energy technologies to Hawaii and its people for the betterment of our environment, independence from volatile imported fossil fuels, and energy stability. The company has successfully completed numerous projects in Hawaii and around the world using this technology.

Sopogy supports the inclusion of the contents of S.B. 1164, S.D.2, H.D.1 into H.B. 306, H.D.1, S.D.1. The proposed language amends the definition of "eligible business activity" in Hawaii's enterprise zone program to include the production of certain electric power from renewable energy.

The proposed language would extend enterprise zone benefits (that are presently available to qualified wind energy businesses) to the solar energy industry. By becoming part of the Enterprise Zone, qualified solar energy companies would receive the benefits of exemptions from state income tax and state unemployment tax for the first seven years (beginning at 80% for the first year, with a 10% reduction each year after until year seven). Qualified businesses would also receive a limited exemption from the state general excise and use tax. These tax benefits will provide a significant benefit to the

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State, as they will stimulate the growth of the energy technology sector, and will create new construction, new jobs and promote research and development in the solar energy technologies field. Each of these benefits will move Hawaii one step closer to helping the State eliminate its fossil fuel dependency.

Sopogy supports the State's efforts to develop a new renewable energy sector that will incentivize Hawaii-based renewable energy companies to develop their solar facilities in the state of Hawaii.

We have concerns that the present language of S.B. 1164, S.D.2, H.D.1, as drafted, does not include Sopogy's proposed activities. However, we have been productively working with DBEDT to refine the language in the bill, and would request that this committee pass the bill including the contents of S.B. 1164, S.D.2, H.D.1 so that we can continue discussions regarding the inclusion of renewable energy into the Enterprise Zone program, and the many financial and other benefits it would bring to the State.

In sum, we urge your support for this bill with amendments, which will help the State become truly energy independent and meet its goals of generating 40% of its energy needs locally by 2030.

Thank you for this opportunity to submit comments regarding this measure.





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Comments on

## H.B. NO. 306 HD1 SD1 RELATING TO SEAWATER AIR CONDITIONING

Before the  
Senate Committee on Ways and Means  
Thursday, April 7, 2011, 9:30 a.m., Conference Room 211

By Frederic Berg, Project Director  
Honolulu Seawater Air Conditioning, LLC

Good afternoon Chair Ige, Vice Chair Kidani, and members of the Committees. My name is Frederic Berg and I am providing comments on behalf of Honolulu Seawater Air Conditioning, LLC.

I understand the committee is considering inserting SB 1164 language into HB 306 and would encourage the committee to do so. Honolulu Seawater Air Conditioning, LLC **strongly supports** H.B. 306 HD1 SD1, which among other items would allow the sale of chilled water service from a seawater air conditioning district cooling system in the Kakaako area to qualify for state enterprise zone benefits.

If passed, this bill will assist potential customers of seawater air conditioning district cooling systems making the critical decision to eliminate their inefficient cooling systems in favor of utilizing a district cooling system driven by infinitely renewable cold deep seawater which nearly eliminates the use of fossil fuels in the production of air conditioning. **There are over 5,800 district energy systems in operation in the United States. The benefits have been proven over time. With proper maintenance, the infrastructure supporting these systems has a useful life of more than 60 years.**

Potential customers of the downtown Honolulu Seawater Air Conditioning, LLC project have expressed concern over the costs of converting to Seawater Air Conditioning, including the risk of higher costs in the initial years of operation. The enterprise zone qualification would significantly assist customers in offsetting the costs inherent in converting to this green technology.

If adopted by customers, a downtown Honolulu Seawater Air Conditioning project would generate close to **\$200 million of dollars in construction project spending and create more than 1,500 construction jobs between 7/2011 and 6/2013**. In addition, it would create a long-term, gainful employment and establish local companies as the leading authorities on Seawater Air Conditioning systems. Other local economic development benefits would accrue from money that stays in Hawaii and is not exported outside the State to purchase oil.

In addition to helping stimulate the State's economy, a downtown Seawater Air Conditioning project would provide the following benefits over the first 25 years of operation:

#### **Energy and Environmental Benefits Over First 25 Years**

<b>Electricity Savings</b>	<b>2,000,000,000 kWh</b>
<b>Reduction in Demand for New Fossil Fuel Fired Generation</b>	<b>14 MW</b>
<b>Reduction in Crude Oil Use</b>	<b>4,450,000 barrels</b>
<b>Reduction in Potable Water Use</b>	<b>6,500,000,000 gallons</b>
<b>Reduced Sewage Generation</b>	<b>2,130,000,000 gallons</b>

This bill adds seawater air conditioning district cooling systems among other renewable energy systems to the definition of "qualified business" to qualify for state enterprise zone benefits in an existing enterprise zone. Downtown Honolulu and Kakaako (the service area for a downtown Honolulu Seawater Air Conditioning project) are in an enterprise zone.

The purpose of providing benefits to qualified businesses in enterprise zones is to stimulate business and industrial growth by means of regulatory flexibility and tax incentives. Tax incentives include exemption of qualified businesses from the GET, and State income taxes (on a declining basis), for a period of seven years. Providing these benefits would effectively reduce the costs of such systems to customers and would help introduce this promising technology to Hawaii.

Thank you for this opportunity to testify.