
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 ESTATE AND GENERATION-SKIPPING TRANSFER TAX

6 § -1 **Short title.** This chapter shall be known and may
7 be cited as the Estate and Generation-Skipping Transfer Tax
8 Reform Act.

9 § -2 **Definitions.** As used in this chapter:

10 "Applicable generation-skipping transfer tax rate" means
11 2.25 per cent multiplied by the inclusion ratio with respect to
12 any property transferred in a generation-skipping transfer as
13 determined under section 2642 of the Internal Revenue Code.

14 "Decedent" means a deceased individual owning property in
15 the State.

16 "Department" means the department of taxation.



1 "Federal estate tax" means the tax due to the United States
2 with respect to a taxable transfer under chapter 11 of the
3 Internal Revenue Code.

4 "Federal generation-skipping transfer tax" means the tax
5 due to the United States with respect to a taxable transfer
6 under chapter 13 of the Internal Revenue Code.

7 "Federal return" means the federal estate tax return with
8 respect to the federal estate tax and means the federal
9 generation-skipping transfer tax return with respect to the
10 federal generation-skipping transfer tax.

11 "Federal taxable estate" means the gross estate less
12 allowable deductions, as determined under chapter 11 of the
13 Internal Revenue Code.

14 "Federal transfer tax" means the federal estate tax or the
15 federal generation-skipping transfer tax.

16 "Generation-skipping transfer" means a generation-skipping
17 transfer as defined and used in section 2611 of the Internal
18 Revenue Code.

19 "Gross estate" means gross estate as defined and used in
20 sections 2031 to 2046 of the Internal Revenue Code.



1 "Hawaii estate tax" means the tax due to the State with
2 respect to a taxable transfer, unless the context clearly
3 otherwise indicates.

4 "Hawaii generation-skipping transfer tax" means the tax due
5 to the State with respect to a taxable transfer that gives rise
6 to a federal generation-skipping transfer tax.

7 "Hawaii net taxable estate" means Hawaii taxable estate
8 less the applicable exclusion amount as set forth in section
9 -6.

10 "Hawaii transfer tax" means the Hawaii estate tax or the
11 Hawaii generation-skipping transfer tax.

12 "Nonresident" means a decedent who was not domiciled in the
13 State at time of death.

14 "Nonresident trust" means a trust other than a resident
15 trust as defined in this section.

16 "Person" means any individual, estate, trust, receiver,
17 cooperative association, club, corporation, company, firm,
18 partnership, joint venture, syndicate, or other entity and, to
19 the extent permitted by law, any federal, state, or other
20 governmental unit or subdivision or agency, department, or
21 instrumentality thereof.



1 "Personal representative" means the personal representative
2 of a decedent appointed under chapter 560, and includes an
3 executor (as defined under section 2203 of the Internal Revenue
4 Code), administrator, successor personal representative, special
5 administrator, and persons who perform substantially the same
6 function under the law governing their status.

7 "Property" means property included in the gross estate.

8 "Qualified heir" means a qualified heir as defined in
9 section 2032A(e)(1) of the Internal Revenue Code.

10 "Release" means a document issued by the department that
11 certifies that all taxes have been paid or the estate is
12 released from all taxes due under this chapter.

13 "Resident" means a decedent who was domiciled in the State
14 at the time of death.

15 "Resident trust" means a resident trust as defined under
16 section 235-1; or if the administration is partly carried on in
17 the State and partly outside the State, a trust where one-half
18 or more of the fiduciaries reside in the State.

19 "Situs" means, with respect to a decedent not a resident or
20 citizen of the United States, the location of the decedent's
21 property within the meaning of section 2104 of the Internal



1 Revenue Code, including regulations and other guidance issued
2 thereunder, substituting "Hawaii" for "the United States".

3 "State" means any state, territory of the United States and
4 the District of Columbia.

5 "Transfer" or "taxable transfer" means:

6 (1) A transfer as defined and used in section 2001(a) of
7 the Internal Revenue Code and shall include the
8 disposition of or failure to use property for a
9 qualified use under section 2032A(c) of the Internal
10 Revenue Code; or

11 (2) A generation-skipping transfer as defined and used in
12 section 2611 of the Internal Revenue Code.

13 "Transferee" means a transferee within the meaning of
14 sections 2603(a) (1) and 6901(h) of the Internal Revenue Code.

15 "Transferred property" means:

16 (1) With respect to a taxable transfer subject to the
17 federal estate tax, the deceased individual's gross
18 estate as defined in section 2031 of the Internal
19 Revenue Code;

20 (2) With respect to a taxable transfer occurring as a
21 result of a taxable termination as defined in section
22 2612(a) of the Internal Revenue Code, the taxable



- 1 amount determined under section 2622(a) of the
2 Internal Revenue Code;
- 3 (3) With respect to a taxable transfer occurring as a
4 result of a taxable distribution as defined in section
5 2612(b) of the Internal Revenue Code, the taxable
6 amount determined under section 2621(a) of the
7 Internal Revenue Code;
- 8 (4) With respect to a taxable transfer occurring as a
9 result of a direct skip, as defined in section 2612(c)
10 of the Internal Revenue Code, the taxable amount
11 determined under section 2623 of the Internal Revenue
12 Code; and
- 13 (5) With respect to an event which causes the imposition
14 of an additional federal estate tax under section
15 2032A(c) of the Internal Revenue Code, the qualified
16 real property that was disposed of or which ceased to
17 be used for the qualified use, within the meaning of
18 section 2032A(c)(1) of the Internal Revenue Code.

19 § -3 Conformance to the federal Internal Revenue
20 Code; general application. For all decedents dying after
21 December 31, 2011, as used in this chapter, "Internal Revenue
22 Code" means subtitle B of the federal Internal Revenue Code of



1 1986, as amended as of December 31, 2011, as it applies to the
2 determination of gross estate, adjusted gross estate, federal
3 taxable estate, and generation-skipping transfers, except those
4 provisions of the Internal Revenue Code and federal public laws
5 that, pursuant to this chapter, do not apply or are otherwise
6 limited in application.

7 § -4 Administration, adoption, and interrelationship of
8 Internal Revenue Code and federal public laws with this chapter.

9 (a) Reference in provisions of the Internal Revenue Code that
10 are operative in this State to provisions in the Internal
11 Revenue Code that are not operative in this State shall be
12 considered inoperative for the purposes of determining the gross
13 estate, federal taxable estate, and generation-skipping
14 transfers; provided that:

- 15 (1) References to time limits and other administrative
16 provisions in subtitle F (sections 6001 to 7874) of
17 the Internal Revenue Code contained in operative
18 sections of the Internal Revenue Code shall be deemed
19 references to applicable provisions of this chapter or
20 chapter 231 or 232, and in the absence of applicable
21 provisions in this chapter or chapter 231 or 232, then



1 to rules adopted by the director of taxation under
2 subsection (b);

3 (2) If inoperative provisions of the Internal Revenue Code
4 have been codified in this chapter, the references
5 shall be deemed references to the codified provisions
6 in this chapter. Transitory and savings provisions in
7 federal public laws amending sections of the Internal
8 Revenue Code operative in this chapter shall be
9 operative for the purposes of this chapter.

10 Provisions in this chapter or chapter 231 or 232 in
11 conflict with the Internal Revenue Code or transitory
12 or savings provisions in federal public law shall
13 control; and

14 (3) Retroactive and prospective provisions in federal
15 public laws amending sections of the federal Internal
16 Revenue Code operative in this chapter affecting
17 taxable years beginning or ending before December 31,
18 2011, shall be operative for the purposes of this
19 chapter.

20 (b) The director of taxation may adopt the rules and
21 regulations promulgated by the United States Secretary of
22 Treasury or a delegate of the Secretary relating to the



1 provisions of subtitle B of the Internal Revenue Code operative
2 in this chapter and any administrative provisions of the
3 Internal Revenue Code (subtitle F, sections 6001 to 7874) not in
4 conflict with or similar to provisions contained in this chapter
5 or chapter 231 or 232 either by reference or by setting them
6 forth in full; provided that any rule adopted pursuant to this
7 subsection shall be adopted pursuant to chapter 91.

8 (c) The department of taxation shall submit to the
9 legislature, no later than twenty days prior to the convening of
10 each regular session, proposed legislation to amend section
11 -3 and any other sections and subsections of this chapter as
12 may be necessary to adopt the Internal Revenue Code as it exists
13 on the December 31 preceding the regular session. In submitting
14 the proposed legislation, the department may provide that
15 certain amendments made to the Internal Revenue Code by Congress
16 during the preceding calendar year shall not be operative in
17 this State or shall be limited in their operation. The
18 department shall also prepare a digest and explanation of the
19 amended provisions of the Internal Revenue Code recommended for
20 operation, as well as those provisions that are recommended to
21 be limited in their operation, or that are not recommended for
22 operation, and shall submit with the proposed legislation



1 required by this subsection the digest, explanation, and a
2 statement of revenue impact of the adoption of the proposed
3 legislation. In preparing the proposed legislation, digest, and
4 explanation, the department may request the assistance of the
5 legislative reference bureau.

6 It is the intent of the legislature to adopt all amendments
7 made to the Internal Revenue Code during the calendar year
8 preceding each regular session; provided that the legislature
9 may choose to adopt none of the amendments to the Internal
10 Revenue Code or may provide that certain amendments are limited
11 in their operation.

12 § -5 Legislative intent, how the Internal Revenue Code
13 shall apply, in general. (a) It is the intent of this chapter,
14 in addition to the essential purpose of raising revenue, to
15 conform the estate and generation-skipping transfer tax law of
16 the State as closely as possible to the Internal Revenue Code,
17 in order to simplify the filing of returns and minimize the
18 taxpayers' burdens in complying with the estate and generation-
19 skipping transfer tax law. The rules and regulations, forms,
20 and procedures adopted and established under this chapter shall
21 conform as nearly as possible, unless there is good reason to
22 the contrary, to the rules and regulations, forms, and



1 procedures adopted and established under the Internal Revenue
2 Code.

3 (b) The Internal Revenue Code, so far as made operative by
4 this chapter, is a statute adopted and incorporated by
5 reference. The Internal Revenue Code shall be applied using
6 changes in nomenclature and other language, including the
7 omission of inapplicable language, where necessary to effectuate
8 the intent of this section. References to the following terms
9 in the Internal Revenue Code shall have the following meanings:

10 (1) "Secretary or his delegate" means the director of
11 taxation and the director's duly authorized
12 subordinates; and

13 (2) "Interest at the underpayment rate" or "interest at the
14 overpayment rate" means the interest rate set forth in
15 section 231-39(b)(4) or section 231-23(d)(1), as the
16 case may be.

17 § -6 **Applicable exclusion amounts.** (a) An exclusion
18 from a Hawaii taxable estate shall be allowed to the estate of
19 every decedent against the tax imposed by section -8. For
20 the purpose of this section, the applicable exclusion amount is
21 the same as the federal applicable exclusion amount, or the
22 exemption equivalent of the unified credit, without reduction



1 for taxable gifts, as set forth for the decedent in chapter 11
2 of the Internal Revenue Code as further adjusted below:

- 3 (1) For residents, 100 per cent of the applicable
4 exclusion amount;
- 5 (2) For nonresidents, an amount computed by multiplying
6 the applicable exclusion amount by a fraction, the
7 numerator of which is the value of the property in the
8 State subject to tax under this chapter, and the
9 denominator of which is the federal gross estate; and
- 10 (3) For nonresidents not citizens, an amount computed by
11 multiplying the exemption equivalent of the unified
12 credit by a fraction, the numerator of which is the
13 value of the property in the State subject to tax
14 under this chapter, and the denominator of which is
15 the federal gross estate.

16 (b) (1) For the purposes of this chapter, every decedent
17 having property in the State shall be presumed to have
18 died a resident of the State. The burden of proof in
19 an estate tax proceeding shall be upon any decedent's
20 estate claiming exemption from the tax imposed by this
21 chapter by reason of the decedent's alleged
22 nonresidency;



1 (2) Any person required to make and file a tax return
2 under this chapter, believing that the decedent died a
3 nonresident of the State, may file a request for
4 determination of domicile in writing with the
5 department, stating the specific grounds upon which
6 the request is founded, provided:

7 (A) The person has filed the return required under
8 this chapter;

9 (B) At least two hundred seventy days, but no more
10 than three years, has elapsed since the due date
11 of the return or, if applicable, the extended due
12 date of the return;

13 (C) The person has not been notified, in writing, by
14 the department that a written agreement of
15 compromise with the taxing authorities of another
16 jurisdiction, under section -24, is being
17 negotiated; and

18 (D) The department has not previously determined
19 whether the decedent died a resident of the
20 State;

21 (3) Not later than one hundred eighty days following
22 receipt of a request for determination, the department



1 shall determine whether the decedent died a resident
2 or a nonresident of the State. If the department
3 commences negotiations over a written agreement of
4 compromise with the taxing authorities of another
5 jurisdiction after a request for determination of
6 domicile is filed, the one hundred eighty day period
7 shall be tolled for the duration of the negotiations.
8 When, before the expiration of the one hundred eighty
9 day period, both the department and the person
10 required to make and file a tax return under this
11 chapter have consented in writing to the making of a
12 determination after such time, the determination may
13 be made at any time prior to the expiration of the
14 period agreed upon. The period agreed upon may be
15 extended by subsequent agreements; provided that the
16 agreements are made in writing before the expiration
17 of the period previously agreed upon;

- 18 (4) The department shall mail notice of the proposed
19 determination to the person required to make and file
20 a tax return under this chapter. The notice shall
21 briefly set forth the department's findings of fact
22 and the basis of decision in each case decided



1 adversely to the person. Sixty days after the date on
 2 which it is mailed, a notice of proposed determination
 3 shall constitute a final determination, unless the
 4 person required to make and file a tax return under
 5 this chapter has filed an appeal of the determination
 6 as provided in section -18; and

7 (5) Nothing in this subsection shall be construed to
 8 relieve any person filing a request for determination
 9 of domicile of the obligation to pay the correct
 10 amount of tax on or before the due date of the tax.

11 § -7 **Hawaii taxable estate.** For the purposes of this
 12 chapter, "Hawaii taxable estate" means:

13 (1) For residents, the federal taxable estate under
 14 section 2051, et. seq., of the Internal Revenue Code
 15 but without regards for the deduction for state death
 16 taxes paid under section 2058 of the Internal Revenue
 17 Code;

18 (2) For nonresidents, the federal taxable estate under
 19 section 2051, et. seq., of the Internal Revenue Code,
 20 but without regard for the deduction for state death
 21 taxes paid under section 2058 of the Internal Revenue
 22 Code, multiplied by a fraction, the numerator of which



1 is the value of the property in the State subject to
2 tax under this chapter, and the denominator of which
3 is the federal gross estate; and

4 (3) For nonresidents not citizens, the federal taxable
5 estate determined under section 2106 of the Internal
6 Revenue, but without regard for the deduction for
7 state death taxes paid under section 2106(a)(4) of the
8 Internal Revenue Code, multiplied by a fraction, the
9 numerator of which is the value of the property with a
10 situs in the State subject to tax under this chapter,
11 and the denominator of which is the federal gross
12 estate.

13 § -8 Tax imposed; credit for tax paid other state. (a)

14 A state tax return shall be filed in the case of every decedent
15 whose estate is required by the laws of the United States to
16 file a federal estate tax return. This section shall apply to a
17 decedent who, at the time of death was:

- 18 (1) A resident of the State; or
- 19 (2) A nonresident of the State whose gross estate includes
20 any real property situated in the State or tangible
21 personal property having a situs in the State.



1 (b) With respect to the estates of decedents dying on or
2 after January 1, 2012, the tax based on the Hawaii net taxable
3 estate shall be as provided in the following schedule:

4	If the Hawaii net taxable estate is:	The tax shall be:
5	Zero	Zero
6	Up to \$1,000,000	10.0% of the Hawaii
7		net taxable estate
8	Over \$1,000,000 but	\$100,000 plus 11.0%
9	not over \$2,000,000	of the amount by
10		which the Hawaii
11		net taxable estate
12		exceeds \$1,000,000
13	Over \$2,000,000 but	\$210,000 plus 12%
14	not over \$3,000,000	of the amount by
15		which the Hawaii
16		net taxable estate
17		exceeds \$2,000,000
18	Over \$3,000,000 but	\$330,000 plus 13%
19	not over \$4,000,000	of the amount by
20		which the Hawaii
21		net taxable estate
22		exceeds \$3,000,000



1	Over \$4,000,000 but	\$460,000 plus 14%
2	not over \$5,000,000	of the amount by
3		which the Hawaii
4		net taxable estate
5		exceeds \$4,000,000
6	Over \$5,000,000	\$600,000 plus 15.7%
7		of the amount by
8		which the Hawaii
9		net taxable estate
10		exceeds \$5,000,000.

11 (c) If any property of a resident is subject to a death
 12 tax imposed by another state and if the tax imposed by the other
 13 state is not qualified by a reciprocal provision allowing the
 14 property to be taxed in the state of decedent's domicile, the
 15 amount of the tax due under this section shall be credited with
 16 the lesser of:

17 (1) The amount of the death tax actually paid the other
 18 state; or

19 (2) An amount computed by multiplying the Hawaii estate
 20 tax by a fraction, the numerator of which is the value
 21 of the property subject to the death tax imposed by



1 the other state, and the denominator of which is the
2 total value of the decedent's gross estate.

3 (d) Except as otherwise expressly provided, for purposes
4 of this chapter, the gross value of transferred property shall
5 be its value as finally determined for purposes of the federal
6 transfer tax.

7 § -9 Returns; time to file return and pay tax. (a) The
8 Hawaii transfer tax return (including any supplemental or
9 amended return) is required to be filed pursuant to this chapter
10 whenever a federal estate tax return is required to be filed.
11 The return shall be filed, and the Hawaii transfer tax
12 (including any additional tax that may become due) shall be paid
13 by the same person or persons, respectively, who are required to
14 pay the federal transfer tax and file the federal return,
15 including any duly authorized executor or administrator. If
16 there is more than one executor or administrator, the return
17 shall be made jointly by all. If there is no executor or
18 administrator appointed, qualified and acting, each person in
19 actual or constructive possession of any property of the
20 decedent is constituted an executor for purposes of the tax and
21 shall make and file a return. If in any case the executor is
22 unable to make a complete return as to any part of the gross



1 estate, the executor shall provide all the information available
2 to the executor with respect to the property, including a full
3 description and the name of every person holding a legal or
4 beneficial interest in the property. If the executor is unable
5 to make a return as to any property, each person holding a legal
6 or equitable interest in the property shall, upon notice from
7 the department, make a return as to that part of the gross
8 estate.

9 (b) The executed Hawaii transfer tax return shall be filed
10 with the department on or before the date the federal estate tax
11 return is required to be filed, including any extension of time
12 for filing the federal estate tax return.

13 (c) (1) The personal representative, without assessment,
14 notice, or demand, shall pay any tax due thereon to
15 the department on or before the date fixed for filing
16 the return, out of any moneys belonging to the estate
17 in the personal representative's hands; and

18 (2) The personal representative shall have the same powers
19 and duties with respect to the raising of funds for
20 the payment of the tax as conferred upon an executor
21 under sections 2205, 2206, 2207, 2207A, and 2207B of
22 the Internal Revenue Code, and pursuant to the laws of



1 the State in the case of raising funds for the payment
2 of a decedent's debts generally. Any provision in a
3 decedent's will (or revocable trust) in which a
4 decedent effectively waives a right of recovery under
5 a section of the Internal Revenue Code referred to in
6 the preceding sentence shall be deemed a waiver of the
7 corresponding right of recovery under this section,
8 unless the will or revocable trust specifically states
9 otherwise.

10 (d) For the purposes of this chapter, the timely filing of
11 any tax return, claim, statement, report, or other document
12 required or authorized to be filed with, or the timeliness of
13 any payment made to, the department and any notice required or
14 authorized to be given by the department shall be governed by
15 chapter 231.

16 (e) If any portion of the federal transfer tax is deferred
17 or to be paid in installments under the provisions of the
18 Internal Revenue Code, the portion of the Hawaii transfer tax
19 that is subject to deferral or payable in installments shall be
20 determined by multiplying the Hawaii transfer tax by a fraction,
21 the numerator of which is the gross value of the assets included
22 in the transferred property having a tax situs in the State and



1 that give rise to the deferred or installment payment under the
2 Internal Revenue Code, and the denominator of which is the gross
3 value of all assets included in the transferred property having
4 a tax situs in the State.

5 Deferred payments and installment payments, with interest,
6 shall be paid at the same time and in the same manner as
7 payments of the federal transfer tax are required to be made
8 under the applicable sections of the Internal Revenue Code;
9 provided that the rate of interest on unpaid amounts of Hawaii
10 transfer tax shall be determined under this chapter.

11 Acceleration of payment under this section shall occur
12 under the same circumstances and in the same manner as provided
13 in the Internal Revenue Code.

14 (f) No return shall be required to be filed unless the
15 estate files or is required to file a federal estate tax return.

16 § -10 Interest on amount due; penalties. (a) Any tax
17 due under this chapter that is not paid by the time prescribed
18 for the filing of the return as provided in section -9, not
19 including any extension with respect to the filing of the report
20 or the payment of the tax, shall bear interest at the rate in
21 section 231-39(b)(4) from the date any tax is due until paid.



1 (b) If the return provided for in section -9 is not
2 filed within the time period specified, unless it is shown that
3 the failure to file is due to a reasonable cause, then there
4 shall be paid, in addition to the interest provided in this
5 section, a penalty equal to five per cent of the tax due in
6 respect to the transfer (or five per cent of the additional tax
7 due in the case of a supplemental return) for each month beyond
8 the time periods that the return has not been filed; provided
9 that no penalty so imposed shall exceed a total of twenty-five
10 per cent of the tax.

11 (c) If the Internal Revenue Service waives the penalty
12 provided in the Internal Revenue Code for failure to timely file
13 the federal return or the penalty for failure to timely pay the
14 federal transfer tax liability, the waiver shall be deemed to
15 constitute reasonable cause for the purposes of this section.

16 § -11 **Extension of time to file return.** If the date for
17 filing the federal return or the date for payment of the federal
18 transfer tax is extended by the Internal Revenue Service, the
19 filing of the return and payment of the tax imposed by this
20 chapter shall be due on the respective dates specified by the
21 Internal Revenue Service in granting a request for extension.
22 If the request for extension is granted by the Internal Revenue



1 Service, the person required to file the Hawaii transfer tax
2 return shall file along with the return required under this
3 chapter a copy of the request for extension showing approval of
4 the extension by the Internal Revenue Service. If a request for
5 extension of time to file the federal return is denied by the
6 Internal Revenue Service, no penalty shall be due under this
7 chapter if the return required by this chapter is filed within
8 the time specified by the Internal Revenue Service for filing
9 the federal return. If a request for extension of time to pay
10 the federal transfer tax is denied by the Internal Revenue
11 Service, no penalty shall be due under this chapter if the tax
12 is paid within the time specified by the Internal Revenue
13 Service for paying the federal transfer tax. The extension
14 shall be made by filing a true copy of the federal extension or
15 extensions of time for filing or payment, or both, with the
16 return required under section -9.

17 § -12 Department to issue release; final settlement of
18 account. (a) The department shall issue an automatic release
19 of estate tax liability to the personal representative when:

20 (1) No estate tax is imposed by this chapter and upon the
21 receipt of a request for a release, if the release
22 includes the sworn statement of the personal



1 representative or agent that in fact no taxes are due;
2 or

3 (2) The estate taxes due under this chapter have been paid
4 as prescribed in section -9, and the request for a
5 release includes the sworn statement of the personal
6 representative that in fact all taxes due have been
7 paid.

8 (b) The obtaining of a release shall give to the personal
9 representative sufficient authority to effectuate the transfer
10 of all property composing the decedent's estate.

11 § -13 **Amended returns; final determination.** If the
12 amount of the federal taxable estate reported on an estate's
13 federal estate tax return is changed or corrected by the
14 Internal Revenue Service, the person required to make and file
15 the estate tax return under this chapter shall provide notice of
16 the change or correction to the department by filing, within
17 ninety days after the final determination of the change or
18 correction, or as otherwise required by the department, an
19 amended return under this chapter, and shall furnish to the
20 department any information, schedules, records, documents or
21 papers relating to the change or correction. The time for
22 filing the return may be extended by the department upon a



1 showing of due cause. If an additional tax under this chapter
2 is required to be paid pursuant to the changed or amended
3 return, the person required to pay the tax shall pay the
4 additional tax, together with interest as provided in section
5 -10, at the same time the supplemental or amended return is
6 filed.

7 § -14 Administration; rules. The department may adopt
8 rules under chapter 91 to implement this chapter.

9 § -15 Sale of property to pay tax; creation of lien.

10 (a) Subject to chapter 560 and section 531-29, as applicable, a
11 personal representative may sell any property as necessary to
12 pay the estate taxes due under this chapter. A personal
13 representative may sell any property specifically bequeathed or
14 devised as necessary to pay the proportionate amount of the
15 taxes due on the transfer of the property and the fees and
16 expenses of the sale, unless the legatee or devisee thereof pays
17 the personal representative the proportionate amount of the
18 taxes due.

19 (b) Unless any estate tax due is sooner paid in full, it
20 shall be a lien upon the gross estate of the decedent for a
21 period of ten years from the date of death, except that any part
22 of the gross estate that is used for the payment of charges



1 against the estate and expenses of its administration, allowed
2 by any court having jurisdiction thereof, shall be divested of
3 the lien. Liens created under this subsection shall be
4 qualified as follows:

5 (1) The limitation period, as described in this
6 subsection, in each case shall be extended for a
7 period of time equal to the period of pendency of
8 litigation of questions affecting the determination of
9 the amount of tax due; provided that a lis pendens has
10 been filed with the bureau of conveyances or land
11 court in the county in which the property is located;

12 (2) Any part of the gross estate that is transferred to a
13 bona fide purchaser shall be divested of the lien and
14 the lien shall be transferred to the proceeds arising
15 out of the transfer; and

16 (3) A mortgage on property pursuant to an order of court
17 for payment of charges against the estate and expenses
18 of administration shall constitute a lien upon the
19 property prior and superior to the tax lien.

20 § -16 Liability for failure to pay tax before
21 distribution or delivery. (a) Any personal representative who
22 distributes any property without first paying, securing



1 another's payment of, or furnishing security for payment of the
2 estate taxes due under this chapter shall be personally liable
3 for the taxes due to the extent of the value of any property
4 that may come or may have come into the possession of the
5 personal representative. Security for payment of the estate
6 taxes due under this chapter shall be in an amount no less than
7 the value of all property that is or has come into the
8 possession of the personal representative, as of the time the
9 security is furnished.

10 (b) Any person who has the control, custody, or possession
11 of any property and who delivers any of the property to the
12 personal representative or legal representative of the decedent
13 outside the State without first paying, securing another's
14 payment of, or furnishing security for payment of the estate
15 taxes due under this chapter shall be liable for the taxes to
16 the extent of the value of the property delivered. Security for
17 payment of the estate taxes due under this chapter shall be in
18 an amount not less than the value of all property delivered to
19 the personal representative or legal representative of the
20 decedent outside the State by the person.

21 (c) For the purpose of this section, a person does not
22 have control, custody, or possession of a decedent's property,



1 if the person is not responsible for paying the tax due under
2 this section.

3 For the purposes of this subsection, "person" may include
4 but is not limited to a stockbroker or stock transfer agent,
5 bank and other depositories of checking and savings account,
6 safe-deposit company, and life insurance company.

7 (d) For the purposes of this section, any person who has
8 the control, custody, or possession of any property and who
9 delivers any of the property to the personal representative or
10 legal representative of the decedent may rely upon the release
11 furnished by the department to the personal representative as
12 evidence of compliance with the requirements of this chapter,
13 and make any delivery and transfer as the personal
14 representative may direct without being liable for any estate
15 taxes due under this chapter.

16 § -17 **Generation-skipping transfers; tax imposed.** (a)

17 A Hawaii generation-skipping transfer tax is imposed on every
18 taxable transfer involving:

19 (1) Transferred property located in the State; and

20 (2) Transferred property from a resident trust.

21 (b) The tax shall be the applicable generation-skipping
22 transfer tax rate multiplied by the taxable amount as determined



1 under chapter 13 of the Internal Revenue Code, multiplied by a
2 fraction, the numerator of which is the taxable transfer subject
3 to the tax under subsection (a) and the denominator of which is
4 the total amount of taxable transfers subject to the federal
5 generation-skipping tax.

6 (c) The person required to report and pay the federal
7 generation-skipping transfer tax shall file with the department
8 on or before the date the federal generation-skipping transfer
9 tax return is required to be filed, including any extension of
10 time for filing the federal return:

11 (1) A report for the generation-skipping transfer tax due
12 under this section; and

13 (2) A true copy of the federal generation-skipping
14 transfer tax return.

15 (d) If the person required to file the return has obtained
16 an extension of time for filing the federal return, the filing
17 required by subsection (a) or (b) shall be extended similarly
18 until the end of the time period granted in the extension of
19 time for the federal return. A true copy of the extension shall
20 be filed with the department along with the report required
21 under subsection (c).



1 (e) If a taxable transfer subject to the Hawaii
 2 generation-skipping transfer tax is subject to a generation-
 3 skipping transfer tax imposed by another state and if the tax
 4 imposed by the other state is not qualified by a reciprocal
 5 provision allowing the property to be taxed in this State, the
 6 amount of the tax due under this section shall be credited with
 7 the lesser of:

8 (1) The amount of the generation-skipping transfer tax
 9 actually paid the other state; or

10 (2) An amount computed by multiplying the Hawaii
 11 generation-skipping transfer tax by a fraction, the
 12 numerator of which is the taxable transfer subject to
 13 the generation-skipping transfer tax imposed by the
 14 other state, and the denominator of which is the total
 15 amount of the taxable transfers subject to the federal
 16 generation-skipping transfer tax.

17 (f) For the purposes of this section, the term "trust"
 18 includes a trust as defined in section 2652(b)(1) of the
 19 Internal Revenue Code.

20 § -18 Administration by department; action for
 21 collection of tax; appeal. The department may collect the taxes
 22 provided for in this chapter, including applicable interest and



1 penalties, and shall represent the State in all matters
2 pertaining to this chapter, before any court or in any other
3 manner. The department, through the attorney general, may
4 institute proceedings for the collection of the taxes and any
5 interest and penalties on the taxes.

6 The circuit court for any county that has assumed lawful
7 jurisdiction over the property of the decedent for general
8 probate or administration purposes under the laws of the State
9 shall have jurisdiction to hear and determine all questions in
10 relation to the estate tax and generation-skipping transfer tax
11 arising under this chapter. If there are no probate or
12 administration proceedings in any court of the State, the
13 following court shall have jurisdiction:

- 14 (1) If the decedent was a domiciliary, the circuit court
15 for the county in which the decedent was a resident;
16 or
17 (2) If the decedent was a nondomiciliary, any court that
18 has jurisdiction over the property of the decedent,
19 the transfer of which is taxable, to issue probate or
20 administration proceedings thereon, had the same been
21 justified by the legal status of the property or had
22 the same been applied for.



1 Any court first acquiring jurisdiction shall retain the
2 same to the exclusion of every other. The tax appeal court
3 shall have jurisdiction to hear and determine all questions in
4 relation to the generation-skipping transfer tax arising under
5 this chapter.

6 Any person aggrieved by any assessment of the tax imposed
7 by this chapter may appeal from the assessment to a court of
8 competent jurisdiction within the time set forth in section 235-
9 114. The distribution of taxes paid pending the appeal shall be
10 as provided in chapter 232.

11 § -19 Parent as natural guardian for purposes of
12 sections 2032A and 2057 of the Internal Revenue Code. A parent,
13 without being appointed guardian of the person or guardian of
14 the estate, or a guardian of the estate, or, if no guardian of
15 the estate has been appointed, a guardian of the person, of any
16 minor or disabled person whose interest is not adverse to the
17 minor or disabled person, may make any election and sign,
18 without court approval, any agreement on behalf of the minor or
19 disabled person under:

20 (1) Section 2032A of the Internal Revenue Code for the
21 valuation of property under that section; or



1 (2) Section 2057 of the Internal Revenue Code relating to
2 deduction of the value of certain property under that
3 section.

4 Any election so made, and any agreement so signed, shall have
5 the same legal force and effect as if the election had been made
6 and the agreement had been signed by the minor or disabled
7 person and the minor or disabled person had been legally
8 competent.

9 § -20 Reimbursement. If a person who pays the Hawaii
10 transfer tax arising from a taxable transfer is entitled under
11 the Internal Revenue Code or any other state or federal statute
12 or rule of law to reimbursement of a portion of the federal
13 transfer tax from any other person who has received transferred
14 property, then, unless the governing document directs otherwise,
15 the person who paid the Hawaii transfer tax shall be entitled to
16 reimbursement from that other person of a portion of the Hawaii
17 transfer tax. The amount of reimbursement shall be determined
18 by multiplying the total Hawaii transfer tax by a fraction, the
19 numerator of which shall be the gross value of the transferred
20 property received by that other person and having a tax situs in
21 the State that gives rise to a right of reimbursement of the
22 federal transfer tax, and the denominator of which shall be the



1 gross value of all transferred property having a tax situs in
2 the State.

3 § -21 Statute of limitations; claims for refund. (a)

4 If the amount paid with respect to any taxable transfer is less
5 than the amount due under this chapter, the department shall
6 assess the underpayment from the person responsible for payment;
7 provided that a proceeding to assess the underpayment amount
8 shall commence within:

9 (1) Three years from the date the federal estate tax
10 return was filed; or

11 (2) One year after the date of final determination of the
12 related federal transfer tax;

13 whichever is later.

14 Amounts set forth on a duly filed and accepted federal
15 return for valuations of property, the gross estate, federal
16 taxable estate, and applicable exclusion amount shall be
17 conclusive for purposes of this chapter, and the return required
18 under this chapter shall use the same amounts as the
19 corresponding amounts on the federal return.

20 (b) If the amount paid with respect to any taxable
21 transfer is more than the amount due under this chapter, the
22 department shall refund the excess to the person entitled to the



1 refund together with interest at the existing statutory rate of
2 interest in the manner provided in section 231-23(c); provided
3 that no amount shall be refunded unless application for the
4 refund is filed with the department within:

5 (1) One year after the last date allowable under the
6 Internal Revenue Code for filing a claim for refund of
7 any part of the related federal transfer tax; or

8 (2) One year after the date of final determination of the
9 related federal transfer tax;

10 whichever is later.

11 As to all tax payments for which a refund or credit is not
12 authorized by this section (including, without prejudice to the
13 generality of the foregoing, cases of unconstitutionality), the
14 remedies provided by appeal or by section 40-35 are exclusive.

15 § -22 **Expenses of court proceeding.** Whenever a circuit
16 court certifies that probable cause exists for issuing a
17 citation and taking proceedings under this chapter, the director
18 of finance shall pay from the tax reserve fund provided in
19 section 231-23(c)(2), or allow, all expenses incurred for
20 services of citation and other lawful disbursements that have
21 not otherwise been paid.



1 § -23 Who liable, amount. In addition to the amount of
2 tax determined to be due under this chapter, every person who
3 fails or refuses to perform, within a reasonable time, any duty
4 required by this chapter, or who fails or refuses to make and
5 deliver within a reasonable time any statement or record
6 required by this chapter, shall forfeit to the State the
7 additional sum of \$10,000, to be recovered in an action brought
8 by the attorney general in the name of the State.

9 § -24 Agreements with other states for payment of tax
10 imposed by this chapter. Where the department claims that
11 transferred property has a tax situs in this State and the
12 taxing authority of any other state claims the same transferred
13 property is subject to a transfer tax in the other state, the
14 department may enter into a written agreement with the taxing
15 authority in the other state and with the person required to
16 file the Hawaii transfer tax return or pay the Hawaii transfer
17 tax that a certain sum shall be accepted in full payment of the
18 tax imposed by this chapter; provided that the agreement also
19 fixes the amount to be paid in full payment to the other state.
20 The person required to file the Hawaii transfer tax return or
21 pay the Hawaii transfer tax shall be authorized to enter into
22 the agreement provided for in this section.



1 § -25 **Disclosure of federal return information.** When
2 receipt of estate tax information from the Internal Revenue
3 Service under the Agreement on Coordination of Tax
4 Administration between the Internal Revenue Service and the
5 department discloses possible Hawaii estate tax liability, any
6 person possessing federal estate tax information shall be
7 required to submit the information to the department upon
8 request to enable the department to audit the return or Internal
9 Revenue Service audit adjustments and to determine whether any
10 tax, penalty, or interest is due the State where such return
11 information has not been filed with the department. A claim of
12 confidentiality shall not prohibit the dissemination of tax
13 information required under this section and shall not constitute
14 grounds for failing or refusing to surrender the tax information
15 to the department in the administration and enforcement of this
16 chapter. Any tax information submitted in compliance with this
17 section shall be treated and afforded with the same
18 confidentiality as a return filed under section 235-116.

19 § -26 **Disposition of revenues.** All moneys collected
20 under this chapter shall be state realizations, to be kept and
21 accounted for as provided by law."

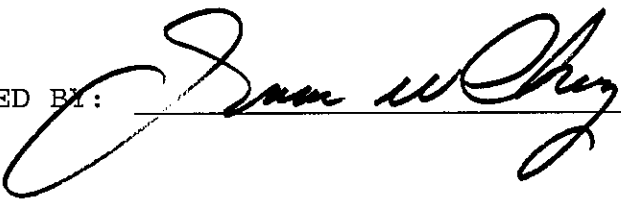


1 SECTION 2. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 3. This Act, upon its approval, shall apply to
5 any:

- 6 (1) Person who dies; and
- 7 (2) Taxable transfers that occur after December 31,
8 2011. decedents dying or taxable transfers occurring
9 after December 31, 2011.

10

INTRODUCED BY: 

JAN 23 2012



H.B. NO. 2328

Report Title:

Taxation; Estate and Transfer Tax

Description:

Adds a chapter to the HRS entitled "Estate and Generation-Skipping Transfer Tax".

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

