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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

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

5 "CHAPTER

6 ESTATE AND GENERATION-SKIPPING TRANSFER TAX

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

10 § -2 Definitions. As used in this chapter:

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

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

17 "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 indicates otherwise.

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 or territory of the United States  
4 and the District of Columbia.

5 "Transfer" or "taxable transfer" means:

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

10 (2) A generation-skipping transfer as defined and used in  
11 section 2611 of the Internal Revenue Code; provided  
12 that a direct skip that is a transfer subject to the  
13 tax imposed by chapter 12 of the Internal Revenue Code  
14 shall not be treated as a taxable transfer.

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

17 "Transferred property" means:

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



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



1           **§ -3 Conformance to the Internal Revenue Code;**  
2 **general application.** For all decedents dying after January 25,  
3 2012, as used in this chapter, "Internal Revenue Code" means  
4 subtitle B of the federal Internal Revenue Code of 1986, as  
5 amended as of December 31, 2011, as it applies to the  
6 determination of gross estate, adjusted gross estate, federal  
7 taxable estate, and generation-skipping transfers, except those  
8 provisions of the Internal Revenue Code and federal public laws  
9 that, pursuant to this chapter, do not apply or are otherwise  
10 limited in application.

11           **§ -4 Administration, adoption, and interrelationship of**  
12 **Internal Revenue Code and federal public laws with this chapter.**

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

19           (1) References to time limits and other administrative  
20 provisions in subtitle F (sections 6001 to 7874) of  
21 the Internal Revenue Code contained in operative  
22 sections of the Internal Revenue Code shall be deemed



1 references to applicable provisions of this chapter or  
2 chapter 231 or 232, and in the absence of applicable  
3 provisions in this chapter or chapter 231 or 232, then  
4 to rules adopted by the director of taxation under  
5 subsection (b);

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

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

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





1           (b) The director of taxation may adopt the rules and  
2 regulations promulgated by the United States Secretary of  
3 Treasury or a delegate of the Secretary relating to the  
4 provisions of subtitle B of the Internal Revenue Code operative  
5 in this chapter and any administrative provisions of subtitle F,  
6 sections 6001 to 7874, of the Internal Revenue Code not in  
7 conflict with or similar to provisions contained in this chapter  
8 or chapter 231 or 232 either by reference or by setting them  
9 forth in full; provided that any rule adopted pursuant to this  
10 subsection shall be adopted pursuant to chapter 91.

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



1 as those provisions that are recommended to be limited in their  
2 operation, or that are not recommended for operation, and shall  
3 submit with the proposed legislation required by this subsection  
4 the digest, explanation, and a statement of revenue impact of  
5 the adoption of the proposed legislation. In preparing the  
6 proposed legislation, digest, and explanation, the department  
7 may request the assistance of the legislative reference bureau.

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

14 All provisions of the Internal Revenue Code referred to in  
15 this chapter that apply to a husband and wife, spouses, or  
16 persons in a legal marital relationship shall be deemed to apply  
17 in this chapter to partners in a civil union with the same force  
18 and effect as if they were "husband and wife", "spouses", or  
19 other terms that describe persons in a legal marital  
20 relationship.

21 § -5 Legislative intent; application of Internal Revenue  
22 Code. (a) It is the intent of this chapter, in addition to the



1 essential purpose of raising revenue, to conform the estate and  
 2 generation-skipping transfer tax law of the State as closely as  
 3 possible to the Internal Revenue Code, in order to simplify the  
 4 filing of returns and minimize the taxpayers' burdens in  
 5 complying with the estate and generation-skipping transfer tax  
 6 law. The rules and regulations, forms, and procedures adopted  
 7 and established under this chapter shall conform as nearly as  
 8 possible, unless there is good reason to the contrary, to the  
 9 rules and regulations, forms, and procedures adopted and  
 10 established under the Internal Revenue Code.

11 (b) The Internal Revenue Code, so far as made operative by  
 12 this chapter, is a statute adopted and incorporated by  
 13 reference. The Internal Revenue Code shall be applied using  
 14 changes in nomenclature and other language, including the  
 15 omission of inapplicable language, where necessary to effectuate  
 16 the intent of this section. References to the following terms  
 17 in the Internal Revenue Code shall have the following meanings:

18 (1) "Secretary or his delegate" means the director of  
 19 taxation or the director's duly authorized  
 20 subordinates; and

21 (2) "Interest at the underpayment rate" or "interest at the  
 22 overpayment rate" means the interest rate set forth in



1 section 231-39(b)(4) or section 231-23(d)(1), as the  
2 case may be.

3 **§ -6 Applicable exclusion amounts.** (a) An exclusion  
4 from a Hawaii taxable estate shall be allowed to the estate of  
5 every decedent against the tax imposed by section -8. For  
6 the purpose of this section, the applicable exclusion amount is  
7 the same as the federal applicable exclusion amount, or the  
8 exemption equivalent of the unified credit, without reduction  
9 for taxable gifts, as set forth for the decedent in chapter 11  
10 of the Internal Revenue Code as further adjusted below:

- 11 (1) For residents, 100 per cent of the applicable  
12 exclusion amount;
- 13 (2) For nonresidents, an amount computed by multiplying  
14 the applicable exclusion amount by a fraction, the  
15 numerator of which is the value of the property in the  
16 State subject to tax under this chapter, and the  
17 denominator of which is the federal gross estate; and
- 18 (3) For nonresidents who are not citizens, an amount  
19 computed by multiplying the exemption equivalent of  
20 the unified credit by a fraction, the numerator of  
21 which is the value of the property in the State



1 subject to tax under this chapter, and the denominator  
2 of which is the federal gross estate.

3 (b) (1) For the purposes of this chapter, every decedent  
4 having property in the State shall be presumed to have  
5 died a resident of the State. The burden of proof in  
6 an estate tax proceeding shall be upon any decedent's  
7 estate claiming exemption from the tax imposed by this  
8 chapter by reason of the decedent's alleged  
9 nonresidency;

10 (2) Any person required to make and file a tax return  
11 under this chapter, who believes that the decedent  
12 died a nonresident of the State, may file a request  
13 for determination of domicile in writing with the  
14 department, stating the specific grounds upon which  
15 the request is founded, provided:

16 (A) The person has filed the return required under  
17 this chapter;

18 (B) At least two hundred seventy days, but no more  
19 than three years, have elapsed since the due date  
20 of the return or, if applicable, the extended due  
21 date of the return;



1 (C) The person has not been notified, in writing, by  
2 the department that a written agreement of  
3 compromise with the taxing authorities of another  
4 jurisdiction, under section -24, is being  
5 negotiated; and

6 (D) The department has not previously determined  
7 whether the decedent died a resident of the  
8 State;

9 (3) Not later than one hundred eighty days following  
10 receipt of a request for determination, the department  
11 shall determine whether the decedent died a resident  
12 or a nonresident of the State. If the department  
13 commences negotiations over a written agreement of  
14 compromise with the taxing authorities of another  
15 jurisdiction after a request for determination of  
16 domicile is filed, the one hundred eighty day period  
17 shall be tolled for the duration of the negotiations.  
18 If, before the expiration of the one hundred eighty  
19 day period, both the department and the person  
20 required to make and file a tax return under this  
21 chapter have consented in writing to the making of a  
22 determination after such time, the determination may



1 be made at any time prior to the expiration of the  
2 period agreed upon. The period agreed upon may be  
3 extended by subsequent agreements; provided that the  
4 agreements are made in writing before the expiration  
5 of the period previously agreed upon;

6 (4) The department shall mail notice of the proposed  
7 determination to the person required to make and file  
8 a tax return under this chapter. The notice shall  
9 briefly set forth the department's findings of fact  
10 and the basis of decision in each case decided  
11 adversely to the person. Sixty days after the date on  
12 which it is mailed, a notice of proposed determination  
13 shall constitute a final determination, unless the  
14 person required to make and file a tax return under  
15 this chapter has filed an appeal of the determination  
16 as provided in section -18; and

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

21 **§ -7 Hawaii taxable estate.** For the purposes of this  
22 chapter, "Hawaii taxable estate" means:



- 1 (1) For residents, the federal taxable estate under  
2 section 2051, et seq., of the Internal Revenue Code  
3 but without regard for the deduction for state death  
4 taxes paid under section 2058 of the Internal Revenue  
5 Code;
- 6 (2) For nonresidents, the federal taxable estate under  
7 section 2051, et seq., of the Internal Revenue Code,  
8 but without regard for the deduction for state death  
9 taxes paid under section 2058 of the Internal Revenue  
10 Code, multiplied by a fraction, the numerator of which  
11 is the value of the property in the State subject to  
12 tax under this chapter, and the denominator of which  
13 is the federal gross estate; and
- 14 (3) For nonresidents not citizens, the federal taxable  
15 estate determined under section 2106 of the Internal  
16 Revenue, but without regard for the deduction for  
17 state death taxes paid under section 2106(a)(4) of the  
18 Internal Revenue Code, multiplied by a fraction, the  
19 numerator of which is the value of the property with a  
20 situs in the State subject to tax under this chapter,  
21 and the denominator of which is the federal gross  
22 estate.





1           §   -8 Tax imposed; credit for tax paid other state. (a)

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

- 6           (1) A resident of the State; or
- 7           (2) A nonresident of the State whose gross estate includes
- 8                     any real property situated in the State or tangible
- 9                     personal property having a situs in the State.

10           (b) With respect to the estates of decedents dying after  
11 January 25, 2012, the tax based on the Hawaii net taxable estate  
12 shall be as provided in the following schedule:

13	If the Hawaii net taxable estate is:	The tax shall be:
14	\$1,000,000 or less	10.0% of the Hawaii
15		net taxable estate
16	Over \$1,000,000 but	\$100,000 plus 11.0%
17	not over \$2,000,000	of the amount by
18		which the Hawaii
19		net taxable estate
20		exceeds \$1,000,000
21	Over \$2,000,000 but	\$210,000 plus 12%
22	not over \$3,000,000	of the amount by



1 which the Hawaii  
2 net taxable estate  
3 exceeds \$2,000,000  
4 Over \$3,000,000 but \$330,000 plus 13%  
5 not over \$4,000,000 of the amount by  
6 which the Hawaii  
7 net taxable estate  
8 exceeds \$3,000,000  
9 Over \$4,000,000 but \$460,000 plus 14%  
10 not over \$5,000,000 of the amount by  
11 which the Hawaii  
12 net taxable estate  
13 exceeds \$4,000,000  
14 Over \$5,000,000 \$600,000 plus 15.7%  
15 of the amount by  
16 which the Hawaii  
17 net taxable estate  
18 exceeds \$5,000,000.

19 (c) If any property of a resident is subject to a death  
20 tax imposed by another state and if the tax imposed by the other  
21 state is not qualified by a reciprocal provision allowing the  
22 property to be taxed in the state of the decedent's domicile,



1 the amount of the tax due under this section shall be credited  
2 with the lesser of:

3 (1) The amount of the death tax actually paid to the other  
4 state; or

5 (2) An amount computed by multiplying the Hawaii estate  
6 tax by a fraction, the numerator of which is the value  
7 of the property subject to the death tax imposed by  
8 the other state, and the denominator of which is the  
9 total value of the decedent's gross estate.

10 (d) Except as otherwise expressly provided, for purposes  
11 of this chapter, the gross value of transferred property shall  
12 be its value as finally determined for purposes of the federal  
13 transfer tax.

14 **§ -9 Returns; time to file return and pay tax.** (a) The  
15 Hawaii transfer tax return, including any supplemental or  
16 amended return, is required to be filed pursuant to this chapter  
17 whenever a federal estate tax return or applicable generation-  
18 skipping transfer tax return is required to be filed. The  
19 return shall be filed, and the Hawaii transfer tax, including  
20 any additional tax that may become due, shall be paid by the  
21 same person or persons, respectively, who are required to pay  
22 the federal transfer tax and file the federal return, including



1 any duly authorized executor or administrator. If there is more  
2 than one executor or administrator, the return shall be made  
3 jointly by all. If there is no executor or administrator  
4 appointed, qualified, and acting, each person in actual or  
5 constructive possession of any property of the decedent is  
6 constituted an executor for purposes of the tax and shall make  
7 and file a return. If in any case the executor is unable to  
8 make a complete return as to any part of the gross estate, the  
9 executor shall provide all the information available to the  
10 executor with respect to the property, including a full  
11 description and the name of every person holding a legal or  
12 beneficial interest in the property. If the executor is unable  
13 to make a return as to any property, each person holding a legal  
14 or equitable interest in the property shall, upon notice from  
15 the department, make a return as to that part of the gross  
16 estate.

17 (b) The executed Hawaii transfer tax return shall be filed  
18 with the department on or before the date the federal estate tax  
19 return or applicable generation-skipping transfer tax return is  
20 required to be filed, including any extension of time for filing  
21 the federal estate tax return or applicable generation-skipping  
22 transfer tax return.



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

6 (2) The personal representative shall have the same powers  
7 and duties with respect to the raising of funds for  
8 the payment of the tax as conferred upon an executor  
9 under sections 2205, 2206, 2207, 2207A, and 2207B of  
10 the Internal Revenue Code, and pursuant to the laws of  
11 the State in the case of raising funds for the payment  
12 of a decedent's debts generally. Any provision in a  
13 decedent's will or revocable trust in which a decedent  
14 effectively waives a right of recovery under a section  
15 of the Internal Revenue Code specified in this  
16 paragraph shall be deemed a waiver of the  
17 corresponding right of recovery under this section,  
18 unless the will or revocable trust specifically states  
19 otherwise.

20 (d) For the purposes of this chapter, the timely filing of  
21 any tax return, claim, statement, report, or other document  
22 required or authorized to be filed with, or the timeliness of



1 any payment made to, the department and any notice required or  
2 authorized to be given by the department shall be governed by  
3 chapter 231.

4 (e) If any portion of the federal transfer tax is deferred  
5 or to be paid in installments under the provisions of the  
6 Internal Revenue Code, the portion of the Hawaii transfer tax  
7 that is subject to deferral or payable in installments shall be  
8 determined by multiplying the Hawaii transfer tax by a fraction,  
9 the numerator of which is the gross value of the assets included  
10 in the transferred property having a tax situs in the State and  
11 that give rise to the deferred or installment payment under the  
12 Internal Revenue Code, and the denominator of which is the gross  
13 value of all assets included in the transferred property having  
14 a tax situs in the State.

15 Deferred payments and installment payments, with interest,  
16 shall be paid at the same time and in the same manner as  
17 payments of the federal transfer tax are required to be made  
18 under the applicable sections of the Internal Revenue Code;  
19 provided that the rate of interest on unpaid amounts of Hawaii  
20 transfer tax shall be determined under this chapter.



1 Acceleration of payment under this section shall occur  
2 under the same circumstances and in the same manner as provided  
3 in the Internal Revenue Code.

4 (f) No return shall be required to be filed unless a  
5 federal estate tax return or applicable generation-skipping  
6 transfer tax return is required to be filed.

7 **§ -10 Interest on amount due; penalties.** (a) Any tax  
8 due under this chapter that is not paid by the time prescribed  
9 for the filing of the return as provided in section -9, not  
10 including any extension with respect to the filing of the report  
11 or the payment of the tax, shall bear interest at the rate in  
12 section 231-39(b)(4) from the date any tax is due until paid.

13 (b) If the return provided for in section -9 is not  
14 filed within the time period specified, unless it is shown that  
15 the failure to file is due to a reasonable cause, then there  
16 shall be paid, in addition to the interest provided in this  
17 section, a penalty equal to five per cent of the tax due in  
18 respect to the transfer, or five per cent of the additional tax  
19 due in the case of a supplemental return, for each month beyond  
20 the time periods that the return has not been filed; provided  
21 that no penalty so imposed shall exceed a total of twenty-five  
22 per cent of the tax.



1 (c) If the Internal Revenue Service waives the penalty  
2 provided in the Internal Revenue Code for failure to timely file  
3 the federal return or the penalty for failure to timely pay the  
4 federal transfer tax liability, the waiver shall be deemed to  
5 constitute reasonable cause for the purposes of this section.

6 § -11 **Extension of time to file return.** If the date for  
7 filing the federal return or the date for payment of the federal  
8 transfer tax is extended by the Internal Revenue Service, the  
9 filing of the return and payment of the tax imposed by this  
10 chapter shall be due on the respective dates specified by the  
11 Internal Revenue Service in granting a request for extension.  
12 If the request for extension is granted by the Internal Revenue  
13 Service, the person required to file the Hawaii transfer tax  
14 return shall file along with the return required under this  
15 chapter a copy of the request for extension showing approval of  
16 the extension by the Internal Revenue Service. If a request for  
17 extension of time to file the federal return is denied by the  
18 Internal Revenue Service, no penalty shall be due under this  
19 chapter if the return required by this chapter is filed within  
20 the time specified by the Internal Revenue Service for filing  
21 the federal return. If a request for extension of time to pay  
22 the federal transfer tax is denied by the Internal Revenue





1 Service, no penalty shall be due under this chapter if the tax  
2 is paid within the time specified by the Internal Revenue  
3 Service for paying the federal transfer tax. The extension  
4 shall be made by filing a true copy of the federal extension or  
5 extensions of time for filing or payment, or both, with the  
6 return required under section -9.

7 **§ -12 Department to issue release; final settlement of**  
8 **account.** (a) The department shall issue an automatic release  
9 of estate tax liability to the personal representative when:

10 (1) No estate tax is imposed by this chapter and upon the  
11 receipt of a request for a release, if the release  
12 includes the sworn statement of the personal  
13 representative or agent that in fact no taxes are due;  
14 or

15 (2) The estate taxes due under this chapter have been paid  
16 as prescribed in section -9, and the request for a  
17 release includes the sworn statement of the personal  
18 representative that in fact all taxes due have been  
19 paid.

20 (b) The obtaining of a release shall confer upon the  
21 personal representative sufficient authority to effectuate the  
22 transfer of all property composing the decedent's estate.



1           **§ -13 Amended returns; final determination.** If the  
2 amount of the federal taxable estate reported on an estate's  
3 federal estate tax return is changed or corrected by the  
4 Internal Revenue Service, the person required to make and file  
5 the estate tax return under this chapter shall provide notice of  
6 the change or correction to the department by filing, within  
7 ninety days after the final determination of the change or  
8 correction, or as otherwise required by the department, an  
9 amended return under this chapter, and shall furnish to the  
10 department any information, schedules, records, documents or  
11 papers relating to the change or correction. The time for  
12 filing the return may be extended by the department upon a  
13 showing of due cause. If an additional tax under this chapter  
14 is required to be paid pursuant to the changed or amended  
15 return, the person required to pay the tax shall pay the  
16 additional tax, together with interest as provided in section  
17 -10, at the same time the supplemental or amended return is  
18 filed.

19           **§ -14 Administration; rules.** The department may adopt  
20 rules under chapter 91 to implement this chapter.

21           **§ -15 Sale of property to pay tax; creation of lien.**

22 (a) Subject to chapter 560 and section 531-29, as applicable, a



1 personal representative may sell any property necessary to pay  
2 the estate taxes due under this chapter. A personal  
3 representative may sell any property specifically bequeathed or  
4 devised as necessary to pay the proportionate amount of the  
5 taxes due on the transfer of the property and the fees and  
6 expenses of the sale, unless the legatee or devisee thereof pays  
7 the personal representative the proportionate amount of the  
8 taxes due.

9 (b) Unless any estate tax due is sooner paid in full, it  
10 shall be a lien upon the gross estate of the decedent for a  
11 period of ten years from the date of death, except that any part  
12 of the gross estate that is used for the payment of charges  
13 against the estate and expenses of its administration, allowed  
14 by any court having jurisdiction thereof, shall be divested of  
15 the lien. Liens created under this subsection shall be  
16 qualified as follows:

17 (1) The limitation period, as described in this  
18 subsection, in each case shall be extended for a  
19 period of time equal to the period of pendency of  
20 litigation of questions affecting the determination of  
21 the amount of tax due; provided that a lis pendens has



1           been filed with the bureau of conveyances or land  
2           court in the county in which the property is located;

3       (2) Any part of the gross estate that is transferred to a  
4       bona fide purchaser shall be divested of the lien and  
5       the lien shall be transferred to the proceeds arising  
6       out of the transfer; and

7       (3) A mortgage on property pursuant to an order of court  
8       for payment of charges against the estate and expenses  
9       of administration shall constitute a lien upon the  
10      property prior and superior to the tax lien.

11       **§ -16 Liability for failure to pay tax before**

12 **distribution or delivery.** (a) Any personal representative who  
13 distributes any property without first paying, securing  
14 another's payment of, or furnishing security for payment of the  
15 estate taxes due under this chapter shall be personally liable  
16 for the taxes due to the extent of the value of any property  
17 that may come or may have come into the possession of the  
18 personal representative. Security for payment of the estate  
19 taxes due under this chapter shall be in an amount not less than  
20 the value of all property that is or has come into the  
21 possession of the personal representative, as of the time the  
22 security is furnished.



1 (b) Any person who has the control, custody, or possession  
2 of any property and who delivers any of the property to the  
3 personal representative or legal representative of the decedent  
4 outside the State without first paying, securing another's  
5 payment of, or furnishing security for payment of the estate  
6 taxes due under this chapter shall be liable for the taxes to  
7 the extent of the value of the property delivered. Security for  
8 payment of the estate taxes due under this chapter shall be in  
9 an amount not less than the value of all property delivered to  
10 the personal representative or legal representative of the  
11 decedent outside the State by the person.

12 (c) For the purposes of this section, a person does not  
13 have control, custody, or possession of a decedent's property,  
14 if the person is not responsible for paying the tax due under  
15 this section.

16 For the purposes of this subsection, "person" may include  
17 but is not limited to a stockbroker or stock transfer agent,  
18 bank or other depository of checking and savings account, safe-  
19 deposit company, or life insurance company.

20 (d) For the purposes of this section, any person who has  
21 the control, custody, or possession of any property and who  
22 delivers any of the property to the personal representative or



1 legal representative of the decedent may rely upon the release  
2 furnished by the department to the personal representative as  
3 evidence of compliance with the requirements of this chapter,  
4 and make any delivery and transfer as the personal  
5 representative may direct without being liable for any estate  
6 taxes due under this chapter.

7       **§ -17 Generation-skipping transfers; tax imposed.** (a)

8 A Hawaii generation-skipping transfer tax is imposed on every  
9 taxable transfer involving:

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

11       (2) Transferred property from a resident trust.

12       (b) The tax shall be the applicable generation-skipping  
13 transfer tax rate multiplied by the taxable amount as determined  
14 under chapter 13 of the Internal Revenue Code, multiplied by a  
15 fraction, the numerator of which is the taxable transfer subject  
16 to the tax under subsection (a) and the denominator of which is  
17 the total amount of taxable transfers subject to the federal  
18 generation-skipping transfer tax.

19       (c) The person required to report and pay the federal  
20 generation-skipping transfer tax shall file with the department  
21 on or before the date the federal generation-skipping transfer



1 tax return is required to be filed, including any extension of  
2 time for filing the federal return:

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

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

7 (d) If the person required to file the return has obtained  
8 an extension of time for filing the federal return, the filing  
9 required by subsection (c) shall be extended similarly until the  
10 end of the time period granted in the extension of time for the  
11 federal return. A true copy of the extension shall be filed  
12 with the department along with the report required under  
13 subsection (c).

14 (e) If a taxable transfer subject to the Hawaii  
15 generation-skipping transfer tax is subject to a generation-  
16 skipping transfer tax imposed by another state and if the tax  
17 imposed by the other state is not qualified by a reciprocal  
18 provision allowing the property to be taxed in this State, the  
19 amount of the tax due under this section shall be credited with  
20 the lesser of:

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



1 (2) An amount computed by multiplying the Hawaii  
2 generation-skipping transfer tax by a fraction, the  
3 numerator of which is the taxable transfer subject to  
4 the generation-skipping transfer tax imposed by the  
5 other state, and the denominator of which is the total  
6 amount of the taxable transfers subject to the federal  
7 generation-skipping transfer tax.

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

11 **§ -18 Administration by department; action for**  
12 **collection of tax; appeal.** The department may collect the taxes  
13 provided for in this chapter, including applicable interest and  
14 penalties, and shall represent the State in all matters  
15 pertaining to this chapter, before any court or in any other  
16 manner. The department, through the attorney general, may  
17 institute proceedings for the collection of the taxes and any  
18 interest and penalties on the taxes.

19 The circuit court for any county that has assumed lawful  
20 jurisdiction over the property of the decedent for general  
21 probate or administration purposes under the laws of the State  
22 shall have jurisdiction to hear and determine all questions in





1 relation to the Hawaii estate tax arising under this chapter.  
2 If there are no probate or administration proceedings in any  
3 court of the State, the following court shall have jurisdiction:

4 (1) If the decedent was a resident, the circuit court for  
5 the county in which the decedent was a resident; or

6 (2) If the decedent was a nonresident, any court that has  
7 jurisdiction over the property of the decedent, the  
8 transfer of which is taxable, to issue probate or  
9 administration proceedings thereon, had the same been  
10 justified by the legal status of the property or had  
11 the same been applied for.

12 Any court first acquiring jurisdiction shall retain the  
13 same to the exclusion of every other. The tax appeal court  
14 shall have jurisdiction to hear and determine all questions in  
15 relation to the generation-skipping transfer tax arising under  
16 this chapter.

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



1           **§ -19 Parent as natural guardian for purposes of**  
2 **sections 2032A and 2057 of the Internal Revenue Code.** A parent,  
3 without being appointed guardian of the person or conservator of  
4 the estate, or a conservator of the estate, or, if no  
5 conservator of the estate has been appointed, a guardian of the  
6 person, of any minor or disabled person whose interest is not  
7 adverse to the minor or disabled person, may make any election  
8 and sign, without court approval, any agreement on behalf of the  
9 minor or disabled person under:

- 10           (1) Section 2032A of the Internal Revenue Code for the
- 11                     valuation of property under that section; or
- 12           (2) Section 2057 of the Internal Revenue Code relating to
- 13                     deduction of the value of certain property under that
- 14                     section.

15 Any election so made, and any agreement so signed, shall have  
16 the same legal force and effect as if the election had been made  
17 and the agreement had been signed by the minor or disabled  
18 person and the minor or disabled person had been legally  
19 competent.

20           **§ -20 Reimbursement.** If a person who pays the Hawaii  
21 transfer tax arising from a taxable transfer is entitled under  
22 the Internal Revenue Code or any other state or federal statute



1 or rule of law to reimbursement of a portion of the federal  
2 transfer tax from any other person who has received transferred  
3 property, then, unless the governing document directs otherwise,  
4 the person who paid the Hawaii transfer tax shall be entitled to  
5 reimbursement from that other person of a portion of the Hawaii  
6 transfer tax. The amount of reimbursement shall be determined  
7 by multiplying the total Hawaii transfer tax by a fraction, the  
8 numerator of which shall be the gross value of the transferred  
9 property received by that other person and having a tax situs in  
10 the State that gives rise to a right of reimbursement of the  
11 federal transfer tax, and the denominator of which shall be the  
12 gross value of all transferred property having a tax situs in  
13 the State.

14 **§ -21 Statute of limitations; claims for refund. (a)**

15 If the amount paid with respect to any taxable transfer is less  
16 than the amount due under this chapter, the department shall  
17 assess the underpayment from the person responsible for payment;  
18 provided that a proceeding to assess the underpayment amount  
19 shall commence within:

- 20 (1) Three years from the date the federal estate tax  
21 return was filed; or



1           (2) One year after the date of final determination of the  
2           related federal transfer tax,  
3 whichever is later.

4           Amounts set forth on a duly filed and accepted federal  
5 return for valuations of property, the gross estate, federal  
6 taxable estate, and applicable exclusion amount shall be  
7 conclusive for purposes of this chapter, and the return required  
8 under this chapter shall use the same amounts as the  
9 corresponding amounts on the federal return.

10          (b) If the amount paid with respect to any taxable  
11 transfer is more than the amount due under this chapter, the  
12 department shall refund the excess to the person entitled to the  
13 refund together with interest at the existing statutory rate of  
14 interest in the manner provided in section 231-23; provided that  
15 no amount shall be refunded unless application for the refund is  
16 filed with the department within:

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

20          (2) One year after the date of final determination of the  
21 related federal transfer tax,  
22 whichever is later.



1 As to all tax payments for which a refund or credit is not  
2 authorized by this section, including, without prejudice to the  
3 generality of the foregoing, cases of unconstitutionality, the  
4 remedies provided by appeal or by section 40-35 are exclusive.

5 **§ -22 Expenses of court proceeding.** Whenever a circuit  
6 court certifies that probable cause exists for issuing a  
7 citation and taking proceedings under this chapter, the director  
8 of finance shall pay from the tax reserve fund provided in  
9 section 231-23(c)(2), or allow all expenses incurred for  
10 services of citation and other lawful disbursements that have  
11 not otherwise been paid.

12 **§ -23 Who liable; amount.** In addition to the amount of  
13 tax determined to be due under this chapter, every person who  
14 fails or refuses to perform, within a reasonable time, any duty  
15 required by this chapter, or who fails or refuses to make and  
16 deliver within a reasonable time any statement or record  
17 required by this chapter, shall forfeit to the State the  
18 additional sum of \$10,000, to be recovered in an action brought  
19 by the attorney general in the name of the State.

20 **§ -24 Agreements with other states for payment of tax**  
21 **imposed by this chapter.** Where the department claims that  
22 transferred property has a tax situs in this State and the



1 taxing authority of any other state claims the same transferred  
2 property is subject to a transfer tax in the other state, the  
3 department may enter into a written agreement with the taxing  
4 authority in the other state and with the person required to  
5 file the Hawaii transfer tax return or pay the Hawaii transfer  
6 tax that a certain sum shall be accepted in full payment of the  
7 tax imposed by this chapter; provided that the agreement also  
8 fixes the amount to be paid in full payment to the other state.  
9 The person required to file the Hawaii transfer tax return or  
10 pay the Hawaii transfer tax shall be authorized to enter into  
11 the agreement provided for in this section.

12       **§ -25 Disclosure of federal return information.** When  
13 receipt of estate tax information from the Internal Revenue  
14 Service under section 6103(d) of the Internal Revenue Code  
15 discloses possible Hawaii estate tax liability, any person  
16 possessing federal estate tax information shall be required to  
17 submit the information to the department upon request to enable  
18 the department to audit the return or Internal Revenue Service  
19 audit adjustments and to determine whether any tax, penalty, or  
20 interest is due the State where such return information has not  
21 been filed with the department. A claim of confidentiality  
22 shall not prohibit the dissemination of tax information required





1 condominium lessees the fee interest in their units, and thereby  
2 promote the long-term stability in Hawaii's condominium housing  
3 market. Act 166, Session Laws of Hawaii 2007, sunsets on  
4 December 31, 2012.

5 Between the years 2012-2015, the lease terms of more than  
6 one thousand two hundred fifty condominium units in the urban  
7 district of Honolulu will expire, with lease terms of over one  
8 hundred units on the island of Hawaii expiring in 2015.

9 Extending Act 166, Session Laws of Hawaii 2007, for an  
10 additional five years through 2017 will provide landowners and  
11 condominium lessees with a tool that encourages long-term home  
12 ownership.

13 SECTION 5. Act 166, Session Laws of Hawaii 2007, is  
14 amended by amending section 3 to read as follows:

15 "SECTION 3. This Act shall take effect upon approval, and  
16 shall apply to taxable years beginning after December 31, 2007,  
17 and ending prior to January 1, [~~2013,~~] 2018; provided that on  
18 January 1, [~~2013,~~] 2018, this Act shall be repealed and section  
19 235-7(a), Hawaii Revised Statutes, shall be reenacted in the  
20 form in which it read on the day prior to the effective date of  
21 this Act."





1 PART III

2 SECTION 6. Statutory material to be repealed is bracketed  
3 and stricken. New statutory material is underscored.

4 SECTION 7. This Act shall take effect on July 1, 2012;  
5 provided that part I shall apply to decedents dying or taxable  
6 transfers occurring after January 25, 2012.



**Report Title:**

Taxation; Estate and Transfer Tax; Leased Fee Interest Sale;  
Capital Gains; Exempt from Taxation

**Description:**

Establishes the Estate and Generation-Skipping Transfer Tax as a new chapter within the Hawaii Revised Statutes. Extends the sunset provision of Act 166, Session Laws of Hawaii 2007, to extend the exemption from taxation of capital gains realized from the sale of leased fee interest in condominium units to association of apartment owners or residential cooperative corporations until January 1, 2018. Effective July 1, 2012. (HB2328 CD1)

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

