
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 who has title to
16 property in 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 December 31,
3 2011, 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 on or
11 after January 1, 2012, the tax based on the Hawaii net taxable
12 estate 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 per cent of
15		the Hawaii net
16		taxable estate
17	Over \$1,000,000 but	\$100,000 plus 11.0
18	not over \$2,000,000	per cent
19		of the amount by
20		which the Hawaii
21		net taxable estate
22		exceeds \$1,000,000



1	Over \$2,000,000 but	\$210,000 plus 12
2	not over \$3,000,000	per cent
3		of the amount by
4		which the Hawaii
5		net taxable estate
6		exceeds \$2,000,000
7	Over \$3,000,000 but	\$330,000 plus 13
8	not over \$4,000,000	per cent
9		of the amount by
10		which the Hawaii
11		net taxable estate
12		exceeds \$3,000,000
13	Over \$4,000,000 but	\$460,000 plus 14
14	not over \$5,000,000	per cent
15		of the amount by
16		which the Hawaii
17		net taxable estate
18		exceeds \$4,000,000
19	Over \$5,000,000	\$600,000 plus 15.7
20		per cent
21		of the amount by
22		which the Hawaii

1 net taxable estate
2 exceeds \$5,000,000.

3 (c) If any property of a resident is subject to a death
4 tax imposed by another state and if the tax imposed by the other
5 state is not qualified by a reciprocal provision allowing the
6 property to be taxed in the state of the decedent's domicile,
7 the amount of the tax due under this section shall be credited
8 with the lesser of:

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

11 (2) An amount computed by multiplying the Hawaii estate
12 tax by a fraction, the numerator of which is the value
13 of the property subject to the death tax imposed by
14 the other state, and the denominator of which is the
15 total value of the decedent's gross estate.

16 (d) Except as otherwise expressly provided, for purposes
17 of this chapter, the gross value of transferred property shall
18 be its value as finally determined for purposes of the federal
19 transfer tax.

20 § -9 Returns; time to file return and pay tax. (a) The

21 Hawaii transfer tax return, including any supplemental or
22 amended return, is required to be filed pursuant to this chapter



1 whenever a federal estate tax return or applicable generation-
2 skipping transfer tax return is required to be filed. The
3 return shall be filed, and the Hawaii transfer tax, including
4 any additional tax that may become due, shall be paid by the
5 same person or persons, respectively, who are required to pay
6 the federal transfer tax and file the federal return, including
7 any duly authorized executor or administrator. If there is more
8 than one executor or administrator, the return shall be made
9 jointly by all. If there is no executor or administrator
10 appointed, qualified, and acting, each person in actual or
11 constructive possession of any property of the decedent is
12 constituted an executor for purposes of the tax and shall make
13 and file a return. If in any case the executor is unable to
14 make a complete return as to any part of the gross estate, the
15 executor shall provide all the information available to the
16 executor with respect to the property, including a full
17 description and the name of every person holding a legal or
18 beneficial interest in the property. If the executor is unable
19 to make a return as to any property, each person holding a legal
20 or equitable interest in the property shall, upon notice from
21 the department, make a return as to that part of the gross
22 estate.



1 (b) The executed Hawaii transfer tax return shall be filed
2 with the department on or before the date the federal estate tax
3 return or applicable generation-skipping transfer tax return is
4 required to be filed, including any extension of time for filing
5 the federal estate tax return or applicable generation-skipping
6 transfer tax return.

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

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



1 corresponding right of recovery under this section,
2 unless the will or revocable trust specifically states
3 otherwise.

4 (d) For the purposes of this chapter, the timely filing of
5 any tax return, claim, statement, report, or other document
6 required or authorized to be filed with, or the timeliness of
7 any payment made to, the department and any notice required or
8 authorized to be given by the department shall be governed by
9 chapter 231.

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

21 Deferred payments and installment payments, with interest,
22 shall be paid at the same time and in the same manner as



1 payments of the federal transfer tax are required to be made
2 under the applicable sections of the Internal Revenue Code;
3 provided that the rate of interest on unpaid amounts of Hawaii
4 transfer tax shall be determined under this chapter.

5 Acceleration of payment under this section shall occur
6 under the same circumstances and in the same manner as provided
7 in the Internal Revenue Code.

8 (f) No return shall be required to be filed unless the
9 estate files or is required to file a federal estate tax return
10 or applicable generation-skipping transfer tax return.

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

17 (b) If the return provided for in section -9 is not
18 filed within the time period specified, unless it is shown that
19 the failure to file is due to a reasonable cause, then there
20 shall be paid, in addition to the interest provided in this
21 section, a penalty equal to five per cent of the tax due in
22 respect to the transfer, or five per cent of the additional tax



1 due in the case of a supplemental return, for each month beyond
2 the time periods that the return has not been filed; provided
3 that no penalty so imposed shall exceed a total of twenty-five
4 per cent of the tax.

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

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



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

11 § -12 Department to issue release; final settlement of
12 account. (a) The department shall issue an automatic release
13 of estate tax liability to the personal representative when:

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

19 (2) The estate taxes due under this chapter have been paid
20 as prescribed in section -9, and the request for a
21 release includes the sworn statement of the personal



1 representative that in fact all taxes due have been
2 paid.

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

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



1 -10, at the same time the supplemental or amended return is
2 filed.

3 § -14 **Administration; rules.** The department may adopt
4 rules under chapter 91 to implement this chapter.

5 § -15 **Sale of property to pay tax; creation of lien.**

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

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



- 1 (1) The limitation period, as described in this
2 subsection, in each case shall be extended for a
3 period of time equal to the period of pendency of
4 litigation of questions affecting the determination of
5 the amount of tax due; provided that a lis pendens has
6 been filed with the bureau of conveyances or land
7 court in the county in which the property is located;
- 8 (2) Any part of the gross estate that is transferred to a
9 bona fide purchaser shall be divested of the lien and
10 the lien shall be transferred to the proceeds arising
11 out of the transfer; and
- 12 (3) A mortgage on property pursuant to an order of court
13 for payment of charges against the estate and expenses
14 of administration shall constitute a lien upon the
15 property prior and superior to the tax lien.

16 § -16 **Liability for failure to pay tax before**
17 **distribution or delivery.** (a) Any personal representative who
18 distributes any property without first paying, securing
19 another's payment of, or furnishing security for payment of the
20 estate taxes due under this chapter shall be personally liable
21 for the taxes due to the extent of the value of any property
22 that may come or may have come into the possession of the



1 personal representative. Security for payment of the estate
2 taxes due under this chapter shall be in an amount not less than
3 the value of all property that is or has come into the
4 possession of the personal representative, as of the time the
5 security is furnished.

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

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

21 For the purposes of this subsection, "person" may include
22 but is not limited to a stockbroker or stock transfer agent,



1 bank or other depository of checking and savings account, safe-
2 deposit company, or life insurance company.

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

12 § -17 **Generation-skipping transfers; tax imposed.** (a)

13 A Hawaii generation-skipping transfer tax is imposed on every
14 taxable transfer involving:

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

16 (2) Transferred property from a resident trust.

17 (b) The tax shall be the applicable generation-skipping
18 transfer tax rate multiplied by the taxable amount as determined
19 under chapter 13 of the Internal Revenue Code, multiplied by a
20 fraction, the numerator of which is the taxable transfer subject
21 to the tax under subsection (a) and the denominator of which is



1 the total amount of taxable transfers subject to the federal
2 generation-skipping transfer tax.

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

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

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

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

19 (e) If a taxable transfer subject to the Hawaii
20 generation-skipping transfer tax is subject to a generation-
21 skipping transfer tax imposed by another state and if the tax
22 imposed by the other state is not qualified by a reciprocal



1 provision allowing the property to be taxed in this State, the
2 amount of the tax due under this section shall be credited with
3 the lesser of:

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

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

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

16 § -18 Administration by department; action for
17 collection of tax; appeal. The department may collect the taxes
18 provided for in this chapter, including applicable interest and
19 penalties, and shall represent the State in all matters
20 pertaining to this chapter, before any court or in any other
21 manner. The department, through the attorney general, may



1 institute proceedings for the collection of the taxes and any
2 interest and penalties on the taxes.

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

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

18 Any court first acquiring jurisdiction shall retain the
19 same to the exclusion of every other. The tax appeal court
20 shall have jurisdiction to hear and determine all questions in
21 relation to the generation-skipping transfer tax arising under
22 this chapter.



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

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

- 15 (1) Section 2032A of the Internal Revenue Code for the
16 valuation of property under that section; or
17 (2) Section 2057 of the Internal Revenue Code relating to
18 deduction of the value of certain property under that
19 section.

20 Any election so made, and any agreement so signed, shall have
21 the same legal force and effect as if the election had been made
22 and the agreement had been signed by the minor or disabled



1 person and the minor or disabled person had been legally
2 competent.

3 § -20 **Reimbursement.** If a person who pays the Hawaii
4 transfer tax arising from a taxable transfer is entitled under
5 the Internal Revenue Code or any other state or federal statute
6 or rule of law to reimbursement of a portion of the federal
7 transfer tax from any other person who has received transferred
8 property, then, unless the governing document directs otherwise,
9 the person who paid the Hawaii transfer tax shall be entitled to
10 reimbursement from that other person of a portion of the Hawaii
11 transfer tax. The amount of reimbursement shall be determined
12 by multiplying the total Hawaii transfer tax by a fraction, the
13 numerator of which shall be the gross value of the transferred
14 property received by that other person and having a tax situs in
15 the State that gives rise to a right of reimbursement of the
16 federal transfer tax, and the denominator of which shall be the
17 gross value of all transferred property having a tax situs in
18 the State.

19 § -21 **Statute of limitations; claims for refund.** (a)
20 If the amount paid with respect to any taxable transfer is less
21 than the amount due under this chapter, the department shall
22 assess the underpayment from the person responsible for payment;



1 provided that a proceeding to assess the underpayment amount
2 shall commence within:

- 3 (1) Three years from the date the federal estate tax
4 return was filed; or
5 (2) One year after the date of final determination of the
6 related federal transfer tax,
7 whichever is later.

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

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



- 1 (1) One year after the last date allowable under the
- 2 Internal Revenue Code for filing a claim for refund of
- 3 any part of the related federal transfer tax; or
- 4 (2) One year after the date of final determination of the
- 5 related federal transfer tax,
- 6 whichever is later.

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

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

18 § -23 **Who liable; amount.** In addition to the amount of
 19 tax determined to be due under this chapter, every person who
 20 fails or refuses to perform, within a reasonable time, any duty
 21 required by this chapter, or who fails or refuses to make and
 22 deliver within a reasonable time any statement or record

1 required by this chapter, shall forfeit to the State the
2 additional sum of \$10,000, to be recovered in an action brought
3 by the attorney general in the name of the State.

4 § -24 **Agreements with other states for payment of tax**
5 **imposed by this chapter.** Where the department claims that
6 transferred property has a tax situs in this State and the
7 taxing authority of any other state claims the same transferred
8 property is subject to a transfer tax in the other state, the
9 department may enter into a written agreement with the taxing
10 authority in the other state and with the person required to
11 file the Hawaii transfer tax return or pay the Hawaii transfer
12 tax that a certain sum shall be accepted in full payment of the
13 tax imposed by this chapter; provided that the agreement also
14 fixes the amount to be paid in full payment to the other state.
15 The person required to file the Hawaii transfer tax return or
16 pay the Hawaii transfer tax shall be authorized to enter into
17 the agreement provided for in this section.

18 § -25 **Disclosure of federal return information.** When
19 receipt of estate tax information from the Internal Revenue
20 Service under section 6103(d) of the Internal Revenue Code
21 discloses possible Hawaii estate tax liability, any person
22 possessing federal estate tax information shall be required to



1 submit the information to the department upon request to enable
2 the department to audit the return or Internal Revenue Service
3 audit adjustments and to determine whether any tax, penalty, or
4 interest is due the State where such return information has not
5 been filed with the department. A claim of confidentiality
6 shall not prohibit the dissemination of tax information required
7 under this section and shall not constitute grounds for failing
8 or refusing to surrender the tax information to the department
9 in the administration and enforcement of this chapter. Any tax
10 information submitted in compliance with this section shall be
11 treated and afforded with the same confidentiality as a return
12 filed under section 235-116.

13 § -26 **Disposition of revenues.** All moneys collected
14 under this chapter shall be state realizations, to be kept and
15 accounted for as provided by law."

16 SECTION 2. This part does not affect rights and duties
17 that matured, penalties that were incurred, and proceedings that
18 were begun before its effective date.

19 SECTION 3. Chapter 236D, Hawaii Revised Statutes, shall
20 not apply to decedents dying or taxable transfers occurring
21 after December 31, 2011.



1 PART II

2 SECTION 4. In 2007, the legislature enacted Act 166, which
3 provides an income tax exemption of one hundred per cent of
4 capital gains realized during taxable years 2008-2012 from sales
5 of leased fee interest in condominium units to association of
6 apartment owners or residential cooperative corporations. The
7 purpose of the law is to encourage landowners to sell
8 condominium lessees the fee interest in their units, and thereby
9 promote the long-term stability in Hawaii's condominium housing
10 market. Act 166, Session Laws of Hawaii 2007, sunsets on
11 December 31, 2012.

12 Between the years 2012-2015, the lease terms of more than
13 one thousand two hundred fifty condominium units in the urban
14 district of Honolulu will expire, with lease terms of over one
15 hundred units on the island of Hawaii expiring in 2015.
16 Extending Act 166, Session Laws of Hawaii 2007, for an
17 additional five years through 2017 will provide landowners and
18 condominium lessees with a tool that encourages long-term home
19 ownership.

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



1 "SECTION 3. This Act shall take effect upon approval, and
2 shall apply to taxable years beginning after December 31, 2007,
3 and ending prior to January 1, [~~2013,~~] 2018; provided that on
4 January 1, [~~2013,~~] 2018, this Act shall be repealed and section
5 235-7(a), Hawaii Revised Statutes, shall be reenacted in the
6 form in which it read on the day prior to the effective date of
7 this Act."

8 PART III

9 SECTION 6. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 7. This Act shall take effect on July 1, 2050;
12 provided that part I shall apply to decedents dying or taxable
13 transfers occurring after December 31, 2011.



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, SLH 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 01/01/2018. Effective 07/01/2050. (SD1)

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

