

S.B. NO. 1006

JAN 25 2017

A BILL FOR AN ACT

RELATING TO THE ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.

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

1 SECTION 1. Act 220, Session Laws of Hawaii 2012, enacted
2 the Estate and Generation-Skipping Transfer Tax Reform Act,
3 designated as chapter 236E, Hawaii Revised Statutes, which
4 established the estate and generation-skipping transfer taxes
5 based on the valuations, deduction, and expenses allowed for
6 federal transfer tax purposes but with tax rates independent of
7 the federal transfer taxes. The purpose of this Act is to close
8 a loophole that allows a nonresident decedent to completely or
9 substantially avoid the estate and generation-skipping transfer
10 taxes by merely using a single member limited liability company,
11 which is disregarded for income taxes, to hold title to real
12 property situated in the State.

13 SECTION 2. Section 236E-8, Hawaii Revised Statutes, is
14 amended by amending subsection (a) to read as follows:

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

S.B. NO. 1006

- 1 (1) A resident of the State; or
- 2 (2) A nonresident of the State whose gross estate includes
- 3 any real property situated in the State or tangible
- 4 personal property having a situs in the State. Where
- 5 the decedent is the sole owner of a single member
- 6 limited liability company that has not elected to be
- 7 taxed as a corporation, the single member limited
- 8 liability company shall be disregarded for purposes of
- 9 this chapter and this chapter shall be applied as if
- 10 the sole member is the owner of the property."

11 SECTION 2. Statutory material to be repealed is bracketed

12 and stricken. New statutory material is underscored.

13 SECTION 3. This Act shall take effect on its approval and

14 shall apply to decedents dying or taxable transfers occurring

15 after December 31, 2016.

16

INTRODUCED BY: MMN. M.

BY REQUEST

S.B. NO. 1006

Report Title:

Estate and Generation-skipping Transfer Tax

Description:

Clarifies the situs of property where the property is held by the decedent through a single member limited liability company that has not elected to be taxed as a corporation.

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

SB. NO. 1006

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO THE ESTATE AND GENERATION-SKIPPING TRANSFER TAXES.

PURPOSE: To clarify the operation of the estate and generation-skipping transfer taxes in the case of a decedent who is the sole owner of a single member limited liability company.

MEANS: Amend section 236E-8(a), Hawaii Revised Statutes.

JUSTIFICATION: The amendment will clarify the law making it more robust to practices intended to take advantage of unclear provisions.

Impact on the public: Taxpayers will have more clarity in the estate and generation-skipping transfer tax law leading to less uncertainty in planning estates.

Impact on the department and other agencies: The department will avoid a potential conflict with taxpayers and practitioners over a technical interpretation of an unclear provision.

GENERAL FUND: Pending.

OTHER FUNDS: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval. Applies to decedents dying after December 31, 2016.