

**"CHAPTER 236D  
ESTATE AND TRANSFER TAX**

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## Note

Chapter does not apply to decedents dying or taxable transfers occurring after January 25, 2012. L 2012, c 220, §3.

" **[§236D-1] Short title.** This chapter may be cited as the "Estate and Transfer Tax Reform Act of 1983". [L 1983, c 217, pt of §1]

" **§236D-2 Definitions.** As used in this chapter:

"Decedent" means a deceased individual.

"Department" means the department of taxation.

"Federal credit" means:

- (1) For a transfer, the maximum amount of the credit for state death taxes allowed by section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent's adjusted taxable estate;
- (2) For a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code as it existed on December 31, 2000; and
- (3) For a noncitizen transfer, the maximum amount of the credit for state death taxes allowed by section 2102 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent's adjusted taxable estate.

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

"Gross estate" means gross estate as defined and used in sections 2031 to 2046 of the Internal Revenue Code. For purposes of section 236D-4.5, "gross estate" means gross estate as defined and used in section 2103 of the Internal Revenue Code.

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and renumbered, as of December 31, 2009; provided that sections 2011, 2102, and 2604 of the Internal Revenue Code shall mean those sections as of December 31, 2000; and provided further that section 2058 shall not be operative for purposes of this chapter. "Internal Revenue Code" includes the federal tax principles of alter ego, nominee, sham transaction, substance over form, economic substance, or business purpose, as those principles are developed by statute or common law. The Internal Revenue Code, for purposes of this chapter, shall be applied using changes in nomenclature and other language, including the omission of inapplicable language

or the insertion of interpretive language, where necessary to effectuate the intent of this chapter.

"Noncitizen transfer" means a transfer within the meaning of section 2101 of the Internal Revenue Code.

"Nonresident" means a decedent who was not domiciled in Hawaii at time of death.

"Nonresident not a citizen" means a nonresident who is not a citizen of the United States.

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

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

"Property" means:

- (1) For a transfer, property included in the gross estate; and
- (2) For a generation-skipping transfer, all real and personal property subject to the federal generation-skipping transfer tax.

"Release" means a document issued by the department which certifies that all taxes have either been paid or which releases the estate from all taxes due under this chapter.

"Resident" means a decedent who was domiciled in Hawaii at time of death.

"Resident trust" means a trust the administration of which is carried on wholly in the State; or if the administration is partly carried on in the State and partly outside the State, a trust of which one-half or more of the fiduciaries reside in the State.

"Section 2011" means section 2011 of the Internal Revenue Code as it existed on December 31, 2000.

"Taxable estate" means taxable estate as defined in sections 2051 to 2056 of the Internal Revenue Code. For purposes of section 236D-4.5, "taxable estate" means taxable estate as defined and used in section 2106 of the Internal Revenue Code, with situs in Hawaii.

"Transfer" means transfer as defined and used in section 2001 of the Internal Revenue Code. [L 1983, c 217, pt of §1; am L 1984, c 248, §1; am L 1994, c 142, §§2, 3; am L 2010, c 74, §2]

### **Note**

The 2010 amendment applies to property interests of persons who die after April 30, 2010. L 2010, c 74, §5.

### **Law Journals and Reviews**

Is The Hawaii Estate Tax Our State's Newest Supertramp? 14 HBJ, no. 13, at 91 (2011).

" **[\$236D-2.3] Effect of civil union.** All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or person in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were "husband and wife", "spouses", or other terms that describe persons in a legal marital relationship. [L 2011, c 1, §5]

### **Note**

Section applies to taxable years beginning after December 31, 2011. L 2011, c 1, §10.

### **Attorney General Opinions**

Civil union partners have all the same rights, benefits, protections, and responsibilities under the law as married couples who are of the opposite gender; civil union partners have the same tax filing status options as married couples who are of the opposite gender for Hawaii income tax purposes for taxable years beginning after December 31, 2011. Att. Gen. Op. 11-2.

" **[\$236D-2.5] Taxation under chapter 236D; applicable exclusion amount.** Notwithstanding any other law to the contrary, a decedent shall be entitled to all applicable exclusion or exemption amounts as determined under the Internal Revenue Code as of December 31, 2009, before being subject to any taxes imposed under this chapter, including up to a \$3,500,000 applicable exclusion amount allowed by section 2010 of the Internal Revenue Code on December 31, 2009, as further adjusted by law. [L 2010, c 74, pt of §1]

### **Note**

Section applies to property interests of persons who die after April 30, 2010. L 2010, c 74, §5.

" **[\$236D-3] Residents; tax imposed; credit for tax paid other state.** (a) A tax in an amount equal to the federal credit is imposed on the transfer of the taxable estate of every resident.

(b) If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by section 2011; and, if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the death tax paid the other state and credited against the federal estate tax; or
- (2) An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state, and the denominator of which is the value of the decedent's gross estate. [L 1983, c 217, pt of §1]

#### **Law Journals and Reviews**

Is The Hawaii Estate Tax Our State's Newest Supertramp? 14 HBJ, no. 13, at 91 (2011).

" **[\$236D-3.5] Generation-skipping transfers; tax imposed; credit for tax paid other state.** (a) A tax in an amount equal to the federal credit is imposed on every generation-skipping transfer of:

- (1) Property located in this State; and
- (2) Property from a resident trust.

(b) If the generation-skipping transfer is subject in another state to a similar tax and qualifies for the federal credit, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the tax paid to the other state and credited against the federal tax; or
- (2) An amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the generation-skipping transfer tax paid to the other state, and the denominator of which is the value of all property

subject to the federal generation-skipping transfer tax.

If paragraph (1) or (2) results in an amount less than the total federal credit allowed being paid to all states which may claim any part of the credit, then the interested states may agree to a fair and equitable apportionment of the credit without regard to the residence of the trust. [L 1994, c 142, §1]

" **[§236D-4] Nonresidents; tax imposed; exemption.** (a) A tax in an amount computed as provided in this section is imposed on the transfer of the taxable estate located in Hawaii of every nonresident.

(b) The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in Hawaii, and the denominator of which is the value of the decedent's gross estate.

(c) The transfer of the property of a nonresident is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled, except that:

- (1) Real property having an actual situs in this State, whether or not held in a trust the corpus of which is included in a decedent's gross estate for federal estate tax purposes;
- (2) A beneficial interest in a land trust which owns real property located in the State; and
- (3) Tangible personal property having an actual situs in this State;

shall be subject to tax under this section. [L 1983, c 217, pt of §1]

" **[§236D-4.5] Nonresidents not citizens; tax imposed; exemption.** (a) A tax in an amount computed as provided in this section is imposed on the noncitizen transfer of the taxable estate located in Hawaii of every nonresident decedent who was not a citizen at the time of their death.

(b) The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property with a situs in Hawaii, and the denominator of which is the value of the decedent's gross estate.

(c) The noncitizen transfer of the property of a nonresident not a citizen is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident not a citizen is domiciled; except that the following shall be subject to tax under this section:

- (1) Real property having an actual situs in this State, whether or not held in a trust the corpus of which is included in a decedent's gross estate for federal estate tax purposes;
  - (2) A beneficial interest in a land trust that owns real property located in the State; and
  - (3) Tangible and intangible personal property having a situs in this State.
- (d) "Situs" as used in this section means the location of a decedent's property within the meaning of section 2104 of the Internal Revenue Code, including regulations and other guidance issued thereunder, substituting "Hawaii" for "the United States". [L 2010, c 74, pt of §1]

#### **Note**

Section applies to property interests of persons who die after April 30, 2010. L 2010, c 74, §5.

- " **§236D-5 Tax reports; date to be filed; extensions.** (a) The personal representative of every estate subject to the estate tax imposed by this chapter who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:
- (1) A report for the estate taxes due under this chapter; and
  - (2) A true copy of the federal estate tax return.
- (b) The person required to report and pay the federal generation-skipping transfer tax to which the federal credit applies shall file with the department on or before the date the federal generation-skipping transfer tax return is required to be filed, including any extension of time for filing the federal return:
- (1) A report for the generation-skipping transfer tax due under section 236D-3.5; and
  - (2) A true copy of the federal generation-skipping transfer tax return.
- (c) If the person required to file the return has obtained an extension of time for filing the federal return, the filing required by subsection (a) or (b) shall be extended similarly until the end of the time period granted in the extension of time for the federal return. A true copy of the extension shall be filed with the department within thirty days of issuance.

(d) No Hawaii report need be filed if the estate is not subject to the estate tax imposed by this chapter.

(e) If the estate is not subject to the estate tax imposed by this chapter, the personal representative may apply to the department for the issuance of the release provided in this chapter. The release, when issued, shall indicate that it has been determined that the estate is not subject to the estate tax and that the estate and the personal representative are free of any claim by the State for estate taxes owed under this chapter. [L 1983, c 217, pt of §1; am L 1994, c 142, §4]

" **§236D-6 Date payment due; date deemed received.** (a) The taxes imposed by this chapter shall be paid to the department on or before the date the return for the taxes is required to be filed under section 236D-5.

(b) For the purposes of this chapter, the timely filing of any tax return, claim, statement, report, or other document required or authorized to be filed with, or the timeliness of any payment made to, the department and any notice required or authorized to be given by the department shall be governed by chapter 231. [L 1983, c 217, pt of §1; am L 1994, c 142, §5]

" **§236D-7 Interest on amount due; extension of time to file federal return.** (a) Any tax due under this chapter which is not paid by the time prescribed for the filing of the report as provided in section 236D-5, not including any extension in respect to the filing of the report or the payment of the tax, shall bear interest at the rate in section 231-39(b)(4) from the date any tax is due until paid.

(b) If the report provided for in section 236D-5 is not filed within the time periods specified, then there shall be paid, in addition to the interest provided in this section, a penalty equal to five per cent of the tax due in respect to the transfer or generation-skipping transfer for each month beyond the time periods that the report has not been filed, but no penalty so imposed shall exceed a total of twenty-five per cent of the tax.

(c) If the person required to pay the tax has obtained an extension of time for payment of the federal tax, the person may elect to extend the time for payment of the tax due under this chapter in accordance with the extension. The election shall be made by filing a true copy of the extension of time for payment with the report and the returns required under section 236D-5. [L 1983, c 217, pt of §1; am L 1994, c 142, §6]



" **§236D-8 Department to issue release; final settlement of account.** (a) The department shall issue an automatic release of estate tax liability to the personal representative when:

- (1) No estate tax is imposed by this chapter and upon the receipt of a request for a release, if the release includes the sworn statement of the personal representative or agent that in fact no taxes are due; or
- (2) The estate taxes due under this chapter have been paid as prescribed in section 236D-6, and the request for a release includes the sworn statement of the personal representative that in fact all taxes due have been paid.

(b) The obtaining of a release shall give to the personal representative sufficient authority to effectuate the transfer of all property composing the decedent's estate. [L 1983, c 217, pt of §1; am L 1994, c 142, §7]

#### **Law Journals and Reviews**

Is The Hawaii Estate Tax Our State's Newest Supertramp? 14  
HBJ, no. 13, at 91 (2011).

" **§236D-9 Amended returns; final determination.** (a) If an amended federal return is filed, there immediately shall be filed with the department an amended Hawaii report with a true copy of the amended federal return. If an additional tax under this chapter is required to be paid pursuant to the amended return, the person required to pay the tax shall pay the additional tax, together with interest as provided in section 236D-7, at the same time the amended return is filed, subject to any extension election under section 236D-7.

(b) Upon final determination of the federal tax due, the person, within sixty days after the determination, shall give written notice of the determination to the department in such forms as may be prescribed. If any additional tax is due under this chapter by reason of the determination, the person shall pay the tax, together with interest as provided in section 236D-7, at the same time the notice is filed, subject to any extension election under section 236D-7. [L 1983, c 217, pt of §1; am L 1994, c 142, §8]

" **[§236D-10] Administration; rules.** The department shall adopt such rules under chapter 91 as may be necessary to carry into effect this chapter, including rules relating to the return for taxes due under this chapter. [L 1983, c 217, pt of §1]

" **§236D-11 Sale of property to pay tax; creation of lien.**

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

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

- (1) The limitation period, as described in this subsection, in each case shall be extended for a period of time equal to the period of pendency of litigation of questions affecting the determination of the amount of tax due; provided a lis pendens has been filed with the bureau of conveyances or land court in the county in which the property is located;
- (2) Any part of the gross estate which is transferred to a bona fide purchaser shall be divested of the lien and the lien shall be transferred to the proceeds arising out of the transfer; and
- (3) A mortgage on property pursuant to an order of court for payment of charges against the estate and expenses of administration shall constitute a lien upon the property prior and superior to the tax lien, which tax lien shall attach to the proceeds. [L 1983, c 217, pt of §1; am L 1994, c 142, §9]

" **§236D-12 Liability for failure to pay tax before distribution or delivery.** (a) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the estate taxes due under this chapter is personally liable for the taxes due to the extent of the value of any property that may come or may have come into the possession of the personal representative. Security for payment of the estate taxes due under this chapter shall be in an amount equal to or greater than the value of all property that is or has come into the

possession of the personal representative, as of the time the security is furnished.

(b) Any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent outside Hawaii without first paying, securing another's payment of, or furnishing security for payment of the estate taxes due under this chapter is liable for the taxes to the extent of the value of the property delivered. Security for payment of the estate taxes due under this chapter shall be in an amount equal to or greater than the value of all property delivered to the personal representative or legal representative of the decedent outside Hawaii by such a person.

(c) For the purpose of this section, persons do not have control, custody, or possession of a decedent's property, if they are not responsible for paying the tax due under this section such as transferees, which term includes but is not limited to stockbrokers or stock transfer agents, banks, and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(d) For the purposes of this section, any person who has the control, custody, or possession of any property and who delivers any of the property to the personal representative or legal representative of the decedent may rely upon the release furnished by the department to the personal representative as evidence of compliance with the requirements of this chapter, and make such deliveries and transfers as the personal representative may direct without being liable for any estate taxes due under this chapter. [L 1983, c 217, pt of §1; am L 1984, c 248, §2; am L 1994, c 142, §10]

" **§236D-13 Refund for overpayment.** Whenever the tax due under this chapter is proved to have been overpaid, the department shall refund the amount of the overpayment, together with interest at the then existing statutory rate of interest in the manner provided in section 231-23(c). No claim for refund may be initiated more than two years after the date the federal tax has been finally determined.

As to all tax payments for which a refund or credit is not authorized by this section (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or by section 40-35 are exclusive. [L 1983, c 217, pt of §1; am L 1994, c 19, §1]

" **§236D-14 REPEALED.** L 1995, c 92, §24.

" **§236D-15 Administration by department; action for collection of tax; appeal.** The department may collect the taxes provided for in this chapter, including applicable interest and penalties, and shall represent this State in all matters pertaining to this chapter, either before courts or in any other manner. The department, through the attorney general, may institute proceedings for the collection of the taxes and any interest and penalties on the taxes.

The circuit court for any county which has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of Hawaii shall have jurisdiction to hear and determine all questions in relation to the estate tax arising under this chapter. If no probate or administration proceedings have been taken out in any court of this State, the circuit court for the county in which the decedent was a resident, if the decedent was a domiciliary, or, if the decedent was a nondomiciliary, any court which has sufficient jurisdiction over the property of the decedent, the transfer of which is taxable, to issue probate or administration proceedings thereon, had the same been justified by the legal status of the property or had the same been applied for, shall have jurisdiction. Any such court first acquiring jurisdiction shall retain the same to the exclusion of every other. The tax appeal court shall have jurisdiction to hear and determine all questions in relation to the generation-skipping transfer tax arising under this chapter.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114. The distribution of taxes paid pending the appeal shall be as provided in chapter 232. [L 1983, c 217, pt of §1; am L 1992, c 147, §4; am L 1994, c 142, §12; am L 2004, c 123, §2]

#### **Note**

The 2004 amendment applies to tax appeals filed on or after July 1, 2004. L 2004, c 123, §14.

" **[\$236D-16] Expenses of court proceeding.** Whenever a circuit court certifies that there was probable cause for issuing a citation and taking proceedings under this chapter, the director of finance shall pay from the tax reserve fund provided in section 231-23(c)(2), or allow, all expenses incurred for services of citation and other lawful disbursements that have not otherwise been paid. [L 1983, c 217, pt of §1]

#### **Revision Note**

Section "231-23(c)(2)" substituted for "231-23(d)(2)".

" **[\$236D-17] Who liable, amount.** Every person who fails or refuses to perform, within a reasonable time, any and every duty required by this chapter, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this chapter, shall forfeit to the State the sum of \$1,000, to be recovered in an action brought by the attorney general in the name of the State. [L 1983, c 217, pt of §1]

" **[\$236D-18] Disposition of revenues.** All moneys collected under this chapter shall be state realizations, to be kept and accounted for as provided by law. [L 1983, c 217, pt of §1]