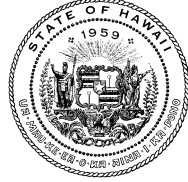


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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 2602, Relating to Estate Tax Inflation Adjustment

Date: Tuesday, February 11, 2020

Time: 10:30 A.M.

Place: Conference Room 211, State Capitol

The Department of Taxation (Department) provides the following comments regarding S.B. 2602. The measure indexes the Hawaii estate tax applicable exclusion amount to inflation by applying the Internal Revenue Service inflation adjustment mechanism. The measure is effective upon approval and applies to decedents dying after December 31, 2019 but not to decedents dying on or after December 21, 2017 and before January 1, 2020.

For the purpose of clarity, the Department suggests the amending the language at the end of subsection (a) to read:

as set forth for the decedent in chapter 11 of the Internal Revenue Code as amended as of December 21, 2017, [~~as if the decedent died on December 31, 2017,~~] and, for decedents dying after December 31, 2020, to include the inflation adjustment under section 2010(c)(3)(B) of the Internal Revenue Code of 1986, as amended as of December 21, 2017, but as computed by the department, and as further adjusted pursuant to subsection (b).

The Department also suggests the following conforming amendment to the definition of “applicable generation-skipping transfer tax rate so that the inflation adjustment applies to the generation-skipping transfer tax.:

“Applicable generation-skipping transfer tax rate” means 2.5 per cent multiplied by the inclusion ratio with respect to any property transferred in a generation-skipping transfer as determined under section 2642 of the Internal Revenue Code as amended as of December 21, 2017, and, for generation-skipping transfers occurring after December 31, 2020, the basic

exclusion amount used shall include the inflation adjustment under section 2010(c)(3)(B) of the Internal Revenue Code of 1986, as amended as of December 21, 2017, but as computed by the department.

Finally, to prevent the retroactive application of this increase of the exclusion amount and allow sufficient time to make the necessary form and instruction changes, the Department respectfully request that the effective date be amended to read as follows:

Section 3. This Act, upon its approval, shall apply to decedents dying and taxable transfers occurring after December 31, 2020.

Thank you for the opportunity to provide comments.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: ESTATE, Index Applicable Exclusion Amounts for Inflation

BILL NUMBER: SB 2602

INTRODUCED BY: RIVIERE, S. Chang, Fevella, Shimabukuro

EXECUTIVE SUMMARY: Requires Hawaii's estate tax applicable exclusion amount to be calculated by utilizing the federal Internal Revenue Service inflation adjustment mechanism. Applies only to decedents dying after December 31, 2019.

SYNOPSIS: Amends section 236E-6, HRS, to provide that the applicable exclusion amount includes the inflation adjustment under section 2010(c)(3)(B) of the Internal Revenue Code, as amended as of December 21, 2017, but as computed by the department.

EFFECTIVE DATE: This Act, upon its approval, shall apply to decedents dying after December 31, 2019, and shall not apply to decedents dying on or after December 21, 2017, and before January 1, 2020.

STAFF COMMENTS: The apparent intent of this measure is to index for inflation the applicable exclusion amount, which is the amount of wealth that can be transferred free of Hawaii estate tax.

The language as proposed can be interpreted as being a static amount. If the intent is to index the amount every year for inflation, language such as that in SB2624 can be used.

Digested 2/6/2020



HAWAII APPLESEED

CENTER FOR LAW & ECONOMIC JUSTICE

Testimony of the Hawai‘i Appleseed Center for Law and Economic Justice
Comments on SB 2602 – Relating to Estate Tax Inflation Adjustment
Senate Committee on Ways and Means
Tuesday, February 11, 2020, 10:30 AM, conference room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Thank you for the opportunity to provide **COMMENTS** on **SB 2602**, which would require Hawai‘i’s estate tax applicable exclusion amount to be calculated by utilizing the federal Internal Revenue Service inflation adjustment mechanism.

Mahalo for acting in 2018 to decouple Hawai‘i from the federal estate tax exemption levels, which doubled from \$5.5 million to \$11.2 million at the end of 2017.ⁱ By doing so, Hawai‘i’s exemption is now held at \$5.5 million.

Even so, Hawai‘i still has the fourth-highest estate exemption amount among the states that have estate taxes.ⁱⁱ The exemption amount was only \$675,000 in 2001, or more than eight times *less* than the amount today (please see the federal chart on the next page).ⁱⁱⁱ

Even with the decoupling from the federal exemption level, Hawai‘i’s wealthy taxpayers are no longer be required to pay between 18 and 40 percent of their estate values between \$5.5 million and \$11.2 million for singles (and between \$11 million and \$22 million for couples) in federal tax.

This is a tremendous tax break for literally the richest among us. Therefore, your committee could reasonably consider dropping our state’s exemption level lower, since it has increased so sharply over the past two decades.

In addition, we are **concerned that the bill’s striking of the language, “[as if the decedent died on December 31, 2017,]” may inadvertently lead to ambiguity about the level of our state’s estate tax exemption and recouple it to the relevant federal law.**

While the key date to keep our estate tax exemption decoupled from the federal level is Dec. 21, 2017 (the day before the federal tax law changed), the Internal Revenue Code (IRC) seems to also apply the doubled exemption amount to people who die on December 31, 2017 or later.^{iv}

Striking the above-mentioned language reduces the clarity of this section of the law and arguably

The Hawai‘i Appleseed Center for Law and Economic Justice is committed to a more socially just Hawai‘i, where everyone has genuine opportunities to achieve economic security and fulfill their potential. We change systems that perpetuate inequality and injustice through policy development, advocacy, and coalition building.

allows for the exemption to be modified as the referenced chapter of the federal IRC is further amended. Therefore, we **respectfully suggest that your committee reintroduce the struck language and also modify it further, for clarity, to "[as applied as if the decedent died on December 31, 2017,]"**.

Year	Exclusion Amount	Max/Top tax rate
2001	\$675,000	55%
2002	\$1 million	50%
2003	\$1 million	49%
2004	\$1.5 million	48%
2005	\$1.5 million	47%
2006	\$2 million	46%
2007	\$2 million	45%
2008	\$2 million	45%
2009	\$3.5 million	45%
2010	Repealed	
2011	\$5 million	35%
2012	\$5.12 million	35%
2013	\$5.25 million ^[29]	40%
2014	\$5.34 million ^[30]	40%
2015	\$5.43 million ^[31]	40%
2016	\$5.45 million ^[6]	40%
2017	\$5.49 million	40%
2018	\$11.2 million	40%

We appreciate your consideration of these comments.

ⁱ https://www.capitol.hawaii.gov/session2018/bills/GM1127_.PDF

ⁱⁱ <https://www.nerdwallet.com/blog/taxes/which-states-have-estate-inheritance-taxes/>

ⁱⁱⁱ https://en.wikipedia.org/wiki/Estate_tax_in_the_United_States

^{iv} <https://www.law.cornell.edu/uscode/text/26/2010>