
A BILL FOR AN ACT

RELATING TO THE ESTATE TAX.

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

1 SECTION 1. The legislature finds that there are
2 significant challenges to running a business in Hawaii and, as a
3 result, many local family-owned businesses are having difficulty
4 maintaining their operations in Hawaii. Specifically, family
5 businesses in Hawaii face an uncertain future maintaining their
6 business and local roots in Hawaii due to significant tax
7 burdens.

8 The legislature also finds that, in addition to the federal
9 estate tax, Hawaii levies an additional state estate tax. Many
10 other states do not impose state estate taxes or have
11 significantly raised the exemption levels, in recognition that
12 the imposition of state estate taxes, especially when an estate
13 is not subject to the payment of federal estate taxes,
14 negatively impact a state's economy and competitiveness by
15 discouraging family business investment and encouraging the
16 owners of these businesses to relocate to other states without
17 an estate tax. Further, having to pay significant estate taxes



1 diverts funds that could otherwise be reinvested in the
2 businesses or community. If these funds were to remain as part
3 of the state economy, additional jobs could be created.

4 The legislature further finds that Hawaii has one of the
5 highest estate taxes in the nation due to its high estate tax
6 rate and low exclusion amount. In contrast, the current federal
7 exclusion amount applicable to gift and estate transfers is more
8 than double the amount of the Hawaii estate tax exclusion
9 amount. This difference has resulted in the need for
10 complicated and technical estate planning. Further, because of
11 the different exclusion amounts, the department of taxation must
12 independently monitor and examine the filings of estate tax
13 returns. In the past, the department of taxation could more
14 easily rely upon determinations made by the Internal Revenue
15 Service with respect to estate tax returns. Until 2018, the
16 Hawaii estate tax exclusion amount had been coupled with the
17 federal exclusion amount.

18 Under current law, the federal exclusion amount will be
19 decreased by approximately one-half for decedents dying after
20 December 31, 2025. Therefore, it is likely that the difference
21 between the federal exclusion amount and the current Hawaii



1 estate tax exclusion amount will not be significant. Instead,
2 having the Hawaii estate tax exclusion amount conform with the
3 federal exclusion amount would benefit the state economy because
4 costs to monitor and audit for differences could be avoided.

5 It is of critical importance to the state economy to
6 support our family businesses by ensuring that their owners are
7 not overly burdened by a combined federal and state estate tax
8 that could effectively cause the closure of family businesses or
9 the sale of family businesses to an entity owned by persons
10 outside of Hawaii.

11 Hawaii Business Magazine conducted a groundbreaking survey
12 of owners of approximately one hundred forty family-owned local
13 companies in 2017. The results of the survey found that family
14 businesses are facing a huge challenge in the coming years,
15 which impacts the state economy because Hawaii has so many
16 family businesses. If the companies are not able to manage this
17 transition well, they may be acquired by mainland corporations
18 or, even worse, be forced to close down entirely.

19 Family businesses that are based in Hawaii are a critically
20 important part of the state economy. As many economists have
21 observed, small and medium-sized businesses, which are usually



1 family businesses, are the biggest generators of jobs in the
2 economy.

3 Family businesses also benefit the Hawaii community in
4 other important ways. The companies and their employees provide
5 a substantial portion of tax revenues to the State in income and
6 excise taxes. Unlike companies that are based outside of the
7 State, Hawaii family businesses attract, employ, and develop
8 middle managers and executives who contribute to the
9 intellectual capital of the Hawaii community and keep it
10 vibrant. The owners of family businesses bring innovative
11 ideas, high energy, and collaboration, and often serve
12 voluntarily on governmental bodies and nonprofit boards. Family
13 businesses also regularly support nonprofit organizations in
14 donations and nonmonetary assistance to a far greater extent
15 than companies owned by nonresidents and based outside of
16 Hawaii.

17 Families who own family businesses typically have their
18 family identities rooted in those businesses, see themselves as
19 custodians of those businesses, and, as all healthy businesses
20 must do, reinvest the great bulk of their profits into the
21 family businesses to keep the companies competitive and growing.



1 As a result, most of the profits received by family businesses
2 are reinvested into more employees, better facilities, and
3 smarter technology, all of which are illiquid. The imposition
4 of estate taxes upon the death of the owner of a family business
5 has sometimes resulted in the sale of that business, as that is
6 the only way sufficient cash can be raised to pay those taxes.
7 In other cases, family businesses have sold key assets or
8 operating divisions to raise cash for those taxes. Even if a
9 family has prepared for those taxes by procuring life insurance
10 for its members, the life insurance premiums are a major
11 diversion of capital from the family businesses. This capital
12 could be put to far better use by creating jobs and buildings in
13 Hawaii, rather than being sent outside of the state economy to
14 life insurance companies.

15 Finally, as a matter of tax policy, the Hawaii estate tax
16 may not be the most efficient way to raise long-term revenue.
17 While the estate tax does yield revenue, it does so by depriving
18 growth capital from businesses and, in some cases, destroying
19 those businesses. Over time, the income and excise tax revenues
20 provided by a growing, healthy family business and its employees
21 will exceed the immediate revenues produced by the estate tax.



1 Accordingly, the State should take reasonable steps to ensure
2 that family businesses in Hawaii are able to continue their
3 operations upon the death of their owners.

4 The purpose of this Act is to:

- 5 (1) Conform Hawaii estate tax laws to the operative
6 provisions of the Internal Revenue Code to decrease
7 the burden on taxpayers and increase efficiencies in
8 the department of taxation's monitoring and auditing
9 of estate tax returns; and
- 10 (2) Establish an estate tax deduction for the value of
11 closely held business interests that will help ensure
12 that locally-owned family businesses can continue to
13 contribute to the Hawaii economy and assist families
14 to retain the ownership interest in their family
15 businesses.

16 SECTION 2. Chapter 236E, Hawaii Revised Statutes, is
17 amended by adding a new section to be appropriately designated
18 and to read as follows:

19 "§236E- Deductions. (a) For all taxable years
20 beginning after December 31, 2023, and for the purposes of
21 determining a tax due under this chapter, a deduction is allowed



1 for the value of the decedent's qualified family-owned business
2 interests. The estate of a decedent shall be allowed a
3 deduction from the gross estate of the decedent for the value of
4 any qualified family-owned business interest held by the
5 decedent at the time of death; provided that:

6 (1) Interest in a closely held business was owned by the
7 decedent or a qualified heir of the decedent; and

8 (2) There was material participation by the decedent or
9 the decedent's qualified heir in the operation of the
10 trade or business to which the interest relates.

11 (b) If the estate tax due on an estate includes tax
12 attributable to the value of a qualified family-owned business
13 interest, the estate shall be allowed a deduction from the gross
14 estate of the decedent equal to the value of the interest in a
15 closely held business.

16 (c) For the purpose of this section:

17 "Interest in a closely held business" means the same as it
18 is used in section 6166 of the Internal Revenue Code.

19 "Material participation" means the same as it is used in
20 section 2032A(e)(6) of the Internal Revenue Code.



1 "Qualified family-owned business interest" means any
2 interest in a closely held business that meets the following
3 requirements:

4 (1) The decedent had a material participation in the trade
5 or business for at least five of the eight years
6 preceding the date of death;

7 (2) The value of the trade or business, including the
8 value of the decedent's interest in the trade or
9 business, shall be at least thirty-five per cent of
10 the adjusted gross estate of the decedent; and

11 (3) At least fifty-one per cent of the voting stock of the
12 corporation shall be owned by members of two or more
13 families who are related by blood, marriage, or
14 adoption."

15 SECTION 3. Section 236E-6, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) An exclusion from a Hawaii taxable estate shall be
18 allowed to the estate of every decedent against the tax imposed
19 by section 236E-8. For the purpose of this section, the
20 applicable exclusion amount is equal to:

21 (1) The federal applicable exclusion amount;



1 (2) The exemption equivalent of the unified credit reduced
2 by the amount of taxable gifts made by the decedent
3 that reduces the amount of the federal applicable
4 exclusion amount; or

5 (3) The exemption equivalent of the unified credit on the
6 decedent's federal estate tax return,
7 as set forth for the decedent in chapter 11 of the Internal
8 Revenue Code [~~as amended as of December 21, 2017, as if the~~
9 ~~decedent died on December 31, 2017, and~~] as further adjusted
10 pursuant to subsection (b)."

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect on July 1, 3000, and
14 shall apply to decedents dying or taxable transfers occurring
15 after December 31, 2023.



Report Title:

Estate Tax; DOTAX; Exclusion Amount; Deduction; Family
Businesses

Description:

Conforms Hawaii estate tax laws to the operative provisions of the Internal Revenue Code to decrease the burden on taxpayers and increase efficiencies in the Department of Taxation's monitoring and auditing of estate tax returns. Establishes an estate tax deduction for the value of closely held business interests that will help ensure that locally-owned family businesses can continue to contribute to the Hawaii economy and assist families to retain the ownership interest in their family businesses. Effective 7/1/3000. (HD1)

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

