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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 721, Relating to the Estate Tax

BEFORE THE:

Senate Committee on Ways and Means

DATE: Wednesday, February 12, 2025

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 211

Chair Dela Cruz, Vice-Chair Moriwaki, and Members of the Committee:

The Department of Taxation (DOTAX) offers the following comments on S.B. 721 for your consideration.

Section 2 of the bill repeals section 236D-4(c), Hawaii Revised Statutes (HRS), which provides a reciprocity exemption for the transfer of a nonresident's taxable estate located in Hawai'i. Specifically, section 236D-4(c), HRS, provides that the transfer of property of a nonresident is exempt from the estate tax to the extent that the property is exempt from tax under the laws of the state in which the nonresident is domiciled, provided that the exemption does not apply to real property having an actual situs in the State, a beneficial interest in a land trust that owns real property located in the State, and tangible personal property having an actual situs in the State.

Section 3 of the bill repeals section 236D-4.5(c), HRS, which provides a reciprocity exemption for the transfer of a taxable estate of a nonresident who is not a citizen. Specifically, section 236D-4.5(c), HRS, provides that the transfer of property of a nonresident who is not a citizen is exempt from the estate tax to the extent that the property is exempt from tax under the laws of the state in which the nonresident who is not a citizen is domiciled, provided that the exemption does not apply to real property having an actual situs in the State, a beneficial interest in a land trust that owns real property located in the State, and tangible personal property having an actual situs in

the State.

Section 4 of the bill amends section 236E-6, HRS, to amend the exclusion amount under the Estate and Generation-Skipping Transfer Tax, which is currently based on the federal exclusion amount as of December 21, 2017 (i.e., \$5,490,000) to an unspecified amount.

This measure is effective on January 1, 2026, and applies to decedents dying or taxable transfers occurring after December 31, 2024.

With respect to the amendments in sections 2 and 3 of the bill, DOTAX notes that chapter 236D, HRS, applies to decedents dying or taxable transfers occurring on or before January 25, 2012, while chapter 236E, HRS, applies to those occurring after January 25, 2012. Thus, amendments to chapter 236D, HRS, may have minimal impact regardless of the effective date.

DOTAX will be able to administer the amendment to the exclusion amount for decedents dying or taxable transfers occurring after December 31, 2024.

Thank you for the opportunity to provide comments on this measure.

To: Senate Committee on Ways and Means
Re: **SB 721 – Relating to the Estate Tax**
Hawai'i State Capitol & Via Videoconference
February 12, 2024, 10:00 AM

LATE

Dear Chair Dela Cruz, Vice Chair Moriwaki, and Committee Members,

On behalf of Hawai'i Children's Action Network Speaks!, I am writing in **SUOPRT OF SB 721**. This bill amends the exclusion amount of Hawaii's estate tax and repeals exemption for tax imposed on transfer of taxable estate located in Hawaii for nonresidents and nonresidents who are not citizens.

This bill would ensure that the estates of **ultra-wealthy non-residents would no longer get an exemption from Hawai'i's estate tax**, based on their home state's tax treatment. This would result in more non-resident estates being subject to Hawaii's estate tax.

This bill also proposes an unspecified change to the amount of an estate that is exempt from the estate tax. Currently, **Hawai'i residents can pass up to \$5.5 million per single person or \$11 million per couple to their heirs entirely tax-free.**¹

Hawai'i has an outsized concentration of extreme wealth, relative to the size of our population. While we have 0.4 percent of the nationwide population, we have 0.7 percent of the households with wealth over \$30 million, ranking **Hawai'i seventh in the nation for extreme wealth.**² The estate tax is intended to slow down the concentration of wealth at the top, by taxing multimillion dollar estates when they are passed on to heirs.

When the federal estate tax exemption was where Hawai'i's is now, only **the top 2 in 1,000 estates** were taxed.³ Fewer wealthy people have to pay the estate tax because the amount that is exempt is now more than 8 times larger than it was in 2001, when the amount of an estate that could be passed on tax-free was \$675,000 for a single person and \$1.35 million for a couple.⁴

In addition, **the estate tax is applied only to the amounts *above* the exemption level.** For example, a couple's estate worth \$12 million pays only \$100,000 in estate tax, for an effective tax rate of less than one percent (0.83 percent). The wealthiest among us can easily afford to pay more.

Mahalo for the opportunity to provide this testimony. We respectfully request that you defer this bill.

Thank you,

Nicole Woo
Director of Research and Economic Policy

¹ <https://files.hawaii.gov/tax/forms/2024/m6ins.pdf>

² <https://itep.org/the-geographic-distribution-of-extreme-wealth-in-the-u-s/>

³ <https://www.irs.gov/statistics/soi-tax-stats-historical-table-17>

⁴ https://en.wikipedia.org/wiki/Estate_tax_in_the_United_States

TAX FOUNDATION OF HAWAII

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SUBJECT: ESTATE TAX; Amend exemptions when decedent is nonresident, change exclusion amount

BILL NUMBER: SB 721

INTRODUCED BY: RHOADS

LATE

EXECUTIVE SUMMARY: Amends the exclusion amount of Hawai'i's estate tax. Repeals exemption for tax imposed on transfer of taxable estate located in Hawai'i for nonresidents and nonresidents who are not citizens. Applicable to decedents dying or taxable transfers occurring after 12/31/2024.

SYNOPSIS: Under section 236D-4, HRS, if the decedent is a nonresident, and if the state of which the decedent was a resident exempted certain property from its estate tax, then Hawaii's estate tax law will respect the exemption granted by the resident state except for: (1) real property in Hawaii, (2) a beneficial interest in a land trust owning real property in Hawaii, and (3) tangible personal property physically located in Hawaii. The bill would repeal these exemptions.

Amends section 236D-4.5, HRS, to repeal the comparable exemption for nonresidents not citizens.

Amends section 236E-6(a), HRS, by replacing the current exclusions for 1) the federal applicable exclusion amount, 2) exemption equivalent of the unified credit reduced by the amount of taxable gifts made by the decedent that reduces the amount of the federal applicable exclusion amount, or 3) exemption equivalent of the unified credit on decedent's federal estate tax return with an unspecified exclusion amount.

EFFECTIVE DATE: January 1, 2026, shall apply to decedents dying or taxable transfers occurring after December 31, 2024.

STAFF COMMENTS: Act 220, SLH 2012, enacted Hawaii's current Estate and Generation-Skipping Transfer Tax, which was then codified as HRS Chapter 236E. Section 3 of Act 220 provides that Chapter 236D, the previous Hawaii Estate Tax, shall not apply to decedents dying or taxable transfers occurring after January 25, 2012.

We wonder why there is a need to amend provisions of chapter 236D. We recommend that the entire chapter 236D be repealed to prevent confusion as to what law applies today.

The next part of the bill deals with the exclusion amount, which is the amount of wealth that can be transferred between generations free of estate tax. Between 2012 and 2017, the Hawaii law generally followed federal estate tax law. By Act 27, SLH 2018, the legislature froze the exclusion amount at the federal exclusion amount as of December 21, 2017, before the federal Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97, doubled the federal exclusion amount.

Re: HB 1592

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Today, the federal estate tax exclusion amount is \$13.99 million, while the Hawaii exclusion amount is \$5.49 million. The Tax Cuts and Jobs Act changes are set to expire at the end of 2025 absent further federal legislative action.

The bill currently does not specify a new exclusion amount, making it impossible to comment further on it.

Digested: 2/10/2025