

ACT 142

S.B. NO. 2965

A Bill for an Act Relating to a State Generation-Skipping Transfer Tax.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 236D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§236D- 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."

SECTION 2. Section 236D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Generation-skipping transfer" means a generation-skipping transfer as defined and used in section 2611 of the federal Internal Revenue Code of 1986, as amended or renumbered.

"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 3. Section 236D-2, Hawaii Revised Statutes, is amended by amending the definitions of "federal credit", "gross estate", "personal representative", "property", "section 2011", "taxable estate", and "transfer" to read as follows:

"Federal credit" means:

- (1) For a transfer, the maximum amount of the credit for [estate] state death taxes allowed by section 2011 for the decedent's adjusted taxable estate[.]; and
- (2) For a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the federal Internal Revenue Code of 1986, as amended or renumbered.

"Gross estate" means gross estate as defined and used in sections 2031 to 2045 of the federal Internal Revenue Code of [1954,] 1986, as amended or renumbered.

"Personal representative" means the personal representative of a decedent appointed under chapter 560, and includes an executor (as defined under section 2203 of the federal Internal Revenue Code of [1954,] 1986, as amended or renumbered), 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.

"Section 2011" means section 2011 of the federal Internal Revenue Code of [1954,] 1986, as amended or renumbered.

"Taxable estate" means taxable estate as defined in sections 2051 to 2056 of the federal Internal Revenue Code of [1954,] 1986, as amended or renumbered.

"Transfer" means transfer as defined and used in section 2001 of the federal Internal Revenue Code of [1954,] 1986, as amended or renumbered."

SECTION 4. Section 236D-5, Hawaii Revised Statutes, is amended to read as follows:

"[§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-_____ ; and
- (2) A true copy of the federal generation-skipping transfer tax return.

[(b)] (c) If the [personal representative] 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.

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

[(d)] (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."

SECTION 5. Section 236D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The taxes imposed by this chapter shall be paid [by the personal representative] to the department on or before the date the return for the taxes is required to be filed under section 236D-5."

SECTION 6. Section 236D-7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If the report provided for in section 236D-5 is not filed within the time periods specified, then [the personal representative shall pay,] 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 [personal representative] person required to pay the tax has obtained an extension of time for payment of the federal tax, the [personal representative] 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.”

SECTION 7. Section 236D-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.”

SECTION 8. Section 236D-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§236D-9] Amended returns; final determination.** (a) If [the personal representative files] an amended federal return[, the personal representative immediately shall file] is filed, there immediately shall be filed with the department an amended Hawaii report with a true copy of the amended federal return. If [the personal representative is required to pay] an additional tax under this chapter is required to be paid pursuant to the amended return, the [personal representative] 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 personal representative files] the amended return[, is filed, subject to any extension election under section 236D-7.

(b) Upon final determination of the federal tax due [with respect to any transfer], the [personal representative,] 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 [personal representative] person shall pay the tax, together with interest as provided in section 236D-7, at the same time [the personal representative files] the notice[, is filed, subject to any extension election under section 236D-7.”

SECTION 9. Section 236D-11, Hawaii Revised Statutes, is amended to read as follows:

“**[§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."

SECTION 10. Section 236D-12, Hawaii Revised Statutes, is amended:

1. By amending subsections (a) and (b) to read as follows:

"(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 [due under this chapter] 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."

2. By amending subsection (d) to read as follows:

"(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.”

SECTION 11. Section 236D-14, Hawaii Revised Statutes, is amended to read as follows:

“§236D-14 Criminal acts relating to estate and generation-skipping transfer tax returns. Any person who wilfully fails to file [an] a Hawaii estate or generation-skipping transfer tax return when required by this chapter or who wilfully files a false return commits a misdemeanor.”

SECTION 12. Section 236D-15, Hawaii Revised Statutes, is amended to read as follows:

“§236D-15 Administration by department; action for collection of tax; appeal. The department may collect the [tax] 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 [this tax] the taxes and any interest and penalties on the [tax.] 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; provided the tax so assessed shall have been paid. The distribution of taxes paid pending the appeal shall be as provided in chapter 232.”

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 14. This Act, upon its approval, shall apply to generation-skipping transfers after June 30, 1994.

(Approved June 8, 1994.)

Note

1. Edited pursuant to HRS §23G-16.5.