
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 ESTATE AND GENERATION-SKIPPING TRANSFER TAX

6 § -1 **Short title.** This chapter shall be known and may
7 be cited as the Estate and Generation-Skipping Transfer Tax
8 Reform Act.

9 § -2 **Definitions.** As used in this chapter:

10 "Applicable generation-skipping transfer tax rate" means
11 2.25 per cent multiplied by the inclusion ratio with respect to
12 any property transferred in a generation-skipping transfer as
13 determined under section 2642 of the Internal Revenue Code.

14 "Decedent" means a deceased individual who has title to
15 property in the State.

16 "Department" means the department of taxation.



1 "Federal estate tax" means the tax due to the United States
2 with respect to a taxable transfer under chapter 11 of the
3 Internal Revenue Code.

4 "Federal generation-skipping transfer tax" means the tax
5 due to the United States with respect to a taxable transfer
6 under chapter 13 of the Internal Revenue Code.

7 "Federal return" means the federal estate tax return with
8 respect to the federal estate tax and means the federal
9 generation-skipping transfer tax return with respect to the
10 federal generation-skipping transfer tax.

11 "Federal taxable estate" means the gross estate less
12 allowable deductions, as determined under chapter 11 of the
13 Internal Revenue Code.

14 "Federal transfer tax" means the federal estate tax or the
15 federal generation-skipping transfer tax.

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

19 "Gross estate" means gross estate as defined and used in
20 sections 2031 to 2046 of the Internal Revenue Code.



1 "Hawaii estate tax" means the tax due to the State with
2 respect to a taxable transfer, unless the context clearly
3 indicates otherwise.

4 "Hawaii generation-skipping transfer tax" means the tax due
5 to the State with respect to a taxable transfer that gives rise
6 to a federal generation-skipping transfer tax.

7 "Hawaii net taxable estate" means Hawaii taxable estate
8 less the applicable exclusion amount as set forth in section
9 -6.

10 "Hawaii transfer tax" means the Hawaii estate tax or the
11 Hawaii generation-skipping transfer tax.

12 "Nonresident" means a decedent who was not domiciled in the
13 State at time of death.

14 "Nonresident trust" means a trust other than a resident
15 trust as defined in this section.

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



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

7 "Property" means property included in the gross estate.

8 "Qualified heir" means a qualified heir as defined in
9 section 2032A(e)(1) of the Internal Revenue Code.

10 "Release" means a document issued by the department that
11 certifies that all taxes have been paid or the estate is
12 released from all taxes due under this chapter.

13 "Resident" means a decedent who was domiciled in the State
14 at the time of death.

15 "Resident trust" means a resident trust as defined under
16 section 235-1; or if the administration is partly carried on in
17 the State and partly outside the State, a trust where one-half
18 or more of the fiduciaries reside in the State.

19 "Situs" means, with respect to a decedent not a resident or
20 citizen of the United States, the location of the decedent's
21 property within the meaning of section 2104 of the Internal



1 Revenue Code, including regulations and other guidance issued
2 thereunder, substituting "Hawaii" for "the United States".

3 "State" means any state or territory of the United States
4 and the District of Columbia.

5 "Transfer" or "taxable transfer" means:

6 (1) A transfer as defined and used in section 2001(a) of
7 the Internal Revenue Code and shall include the
8 disposition of or failure to use property for a
9 qualified use under section 2032A(c) of the Internal
10 Revenue Code; or

11 (2) A generation-skipping transfer as defined and used in
12 section 2611 of the Internal Revenue Code; provided
13 that a direct skip that is transfer subject to the tax
14 imposed by chapter 12 of the Internal Revenue Service
15 shall not be treated as a taxable transfer.

16 "Transferee" means a transferee within the meaning of
17 sections 2603(a)(1) and 6901(h) of the Internal Revenue Code.

18 "Transferred property" means:

19 (1) With respect to a taxable transfer subject to the
20 federal estate tax, the deceased individual's gross
21 estate as defined in section 2031 of the Internal
22 Revenue Code;



- 1 (2) With respect to a taxable transfer occurring as a
2 result of a taxable termination as defined in section
3 2612(a) of the Internal Revenue Code, the taxable
4 amount determined under section 2622(a) of the
5 Internal Revenue Code;
- 6 (3) With respect to a taxable transfer occurring as a
7 result of a taxable distribution as defined in section
8 2612(b) of the Internal Revenue Code, the taxable
9 amount determined under section 2621(a) of the
10 Internal Revenue Code;
- 11 (4) With respect to a taxable transfer occurring as a
12 result of a direct skip, as defined in section 2612(c)
13 of the Internal Revenue Code, the taxable amount
14 determined under section 2623 of the Internal Revenue
15 Code; and
- 16 (5) With respect to an event which causes the imposition
17 of an additional federal estate tax under section
18 2032A(c) of the Internal Revenue Code, the qualified
19 real property that was disposed of or which ceased to
20 be used for the qualified use, within the meaning of
21 section 2032A(c)(1) of the Internal Revenue Code.



1 **§ -3 Conformance to the Internal Revenue Code;**
2 **general application.** For all decedents dying after December 31,
3 2011, as used in this chapter, "Internal Revenue Code" means
4 subtitle B of the federal Internal Revenue Code of 1986, as
5 amended as of December 31, 2011, as it applies to the
6 determination of gross estate, adjusted gross estate, federal
7 taxable estate, and generation-skipping transfers, except those
8 provisions of the Internal Revenue Code and federal public laws
9 that, pursuant to this chapter, do not apply or are otherwise
10 limited in application.

11 **§ -4 Administration, adoption, and interrelationship of**
12 **Internal Revenue Code and federal public laws with this chapter.**

13 (a) Reference in provisions of the Internal Revenue Code that
14 are operative in this State to provisions in the Internal
15 Revenue Code that are not operative in this State shall be
16 considered inoperative for the purposes of determining the gross
17 estate, federal taxable estate, and generation-skipping
18 transfers; provided that:

19 (1) References to time limits and other administrative
20 provisions in subtitle F (sections 6001 to 7874) of
21 the Internal Revenue Code contained in operative
22 sections of the Internal Revenue Code shall be deemed



1 references to applicable provisions of this chapter or
2 chapter 231 or 232, and in the absence of applicable
3 provisions in this chapter or chapter 231 or 232, then
4 to rules adopted by the director of taxation under
5 subsection (b);

6 (2) If inoperative provisions of the Internal Revenue Code
7 have been codified in this chapter, the references
8 shall be deemed references to the codified provisions
9 in this chapter. Transitory and savings provisions in
10 federal public laws amending sections of the Internal
11 Revenue Code operative in this chapter shall be
12 operative for the purposes of this chapter.

13 Provisions in this chapter or chapter 231 or 232 in
14 conflict with the Internal Revenue Code or transitory
15 or savings provisions in federal public law shall
16 control; and

17 (3) Retroactive and prospective provisions in federal
18 public laws amending sections of the Internal Revenue
19 Code operative in this chapter affecting taxable years
20 beginning or ending before December 31, 2011, shall be
21 operative for the purposes of this chapter.



1 (b) The director of taxation may adopt the rules and
2 regulations promulgated by the United States Secretary of
3 Treasury or a delegate of the Secretary relating to the
4 provisions of subtitle B of the Internal Revenue Code operative
5 in this chapter and any administrative provisions of subtitle F,
6 sections 6001 to 7874 of the Internal Revenue Code not in
7 conflict with or similar to provisions contained in this chapter
8 or chapter 231 or 232 either by reference or by setting them
9 forth in full; provided that any rule adopted pursuant to this
10 subsection shall be adopted pursuant to chapter 91.

11 (c) The department shall submit to the legislature, no
12 later than twenty days prior to the convening of each regular
13 session, proposed legislation to amend section -3 and any
14 other sections and subsections of this chapter as may be
15 necessary to adopt the Internal Revenue Code as it exists on the
16 December 31 preceding the regular session. In submitting the
17 proposed legislation, the department may provide that certain
18 amendments made to the Internal Revenue Code by Congress during
19 the preceding calendar year shall not be operative in this State
20 or shall be limited in their operation. The department shall
21 also prepare a digest and explanation of the amended provisions
22 of the Internal Revenue Code recommended for operation, as well



1 as those provisions that are recommended to be limited in their
 2 operation, or that are not recommended for operation, and shall
 3 submit with the proposed legislation required by this subsection
 4 the digest, explanation, and a statement of revenue impact of
 5 the adoption of the proposed legislation. In preparing the
 6 proposed legislation, digest, and explanation, the department
 7 may request the assistance of the legislative reference bureau.

8 It is the intent of the legislature to adopt all amendments
 9 made to the Internal Revenue Code during the calendar year
 10 preceding each regular session; provided that the legislature
 11 may choose to adopt none of the amendments to the Internal
 12 Revenue Code or may provide that certain amendments are limited
 13 in their operation.

14 **§ -5 Legislative intent; application of Internal Revenue**
 15 **Code.** (a) It is the intent of this chapter, in addition to the
 16 essential purpose of raising revenue, to conform the estate and
 17 generation-skipping transfer tax law of the State as closely as
 18 possible to the Internal Revenue Code, in order to simplify the
 19 filing of returns and minimize the taxpayers' burdens in
 20 complying with the estate and generation-skipping transfer tax
 21 law. The rules and regulations, forms, and procedures adopted
 22 and established under this chapter shall conform as nearly as



1 possible, unless there is good reason to the contrary, to the
2 rules and regulations, forms, and procedures adopted and
3 established under the Internal Revenue Code.

4 (b) The Internal Revenue Code, so far as made operative by
5 this chapter, is a statute adopted and incorporated by
6 reference. The Internal Revenue Code shall be applied using
7 changes in nomenclature and other language, including the
8 omission of inapplicable language, where necessary to effectuate
9 the intent of this section. References to the following terms
10 in the Internal Revenue Code shall have the following meanings:

11 (1) "Secretary or his delegate" means the director of
12 taxation or the director's duly authorized
13 subordinates; and

14 (2) "Interest at the underpayment rate" or "interest at the
15 overpayment rate" means the interest rate set forth in
16 section 231-39(b)(4) or section 231-23(d)(1), as the
17 case may be.

18 **§ -6 Applicable exclusion amounts.** (a) An exclusion
19 from a Hawaii taxable estate shall be allowed to the estate of
20 every decedent against the tax imposed by section -8. For
21 the purpose of this section, the applicable exclusion amount is
22 the same as the federal applicable exclusion amount, or the



1 exemption equivalent of the unified credit, without reduction
2 for taxable gifts, as set forth for the decedent in chapter 11
3 of the Internal Revenue Code as further adjusted below:

4 (1) For residents, 100 per cent of the applicable
5 exclusion amount;

6 (2) For nonresidents, an amount computed by multiplying
7 the applicable exclusion amount by a fraction, the
8 numerator of which is the value of the property in the
9 State subject to tax under this chapter, and the
10 denominator of which is the federal gross estate; and

11 (3) For nonresidents who are not citizens, an amount
12 computed by multiplying the exemption equivalent of
13 the unified credit by a fraction, the numerator of
14 which is the value of the property in the State
15 subject to tax under this chapter, and the denominator
16 of which is the federal gross estate.

17 (b) (1) For the purposes of this chapter, every decedent
18 having property in the State shall be presumed to have
19 died a resident of the State. The burden of proof in
20 an estate tax proceeding shall be upon any decedent's
21 estate claiming exemption from the tax imposed by this



1 chapter by reason of the decedent's alleged
2 nonresidency;

3 (2) Any person required to make and file a tax return
4 under this chapter, who believes that the decedent
5 died a nonresident of the State, may file a request
6 for determination of domicile in writing with the
7 department, stating the specific grounds upon which
8 the request is founded, provided:

9 (A) The person has filed the return required under
10 this chapter;

11 (B) At least two hundred seventy days, but no more
12 than three years, has elapsed since the due date
13 of the return or, if applicable, the extended due
14 date of the return;

15 (C) The person has not been notified, in writing, by
16 the department that a written agreement of
17 compromise with the taxing authorities of another
18 jurisdiction, under section -24, is being
19 negotiated; and

20 (D) The department has not previously determined
21 whether the decedent died a resident of the
22 State;



1 (3) Not later than one hundred eighty days following
2 receipt of a request for determination, the department
3 shall determine whether the decedent died a resident
4 or a nonresident of the State. If the department
5 commences negotiations over a written agreement of
6 compromise with the taxing authorities of another
7 jurisdiction after a request for determination of
8 domicile is filed, the one hundred eighty day period
9 shall be tolled for the duration of the negotiations.
10 If, before the expiration of the one hundred eighty
11 day period, both the department and the person
12 required to make and file a tax return under this
13 chapter have consented in writing to the making of a
14 determination after such time, the determination may
15 be made at any time prior to the expiration of the
16 period agreed upon. The period agreed upon may be
17 extended by subsequent agreements; provided that the
18 agreements are made in writing before the expiration
19 of the period previously agreed upon;

20 (4) The department shall mail notice of the proposed
21 determination to the person required to make and file
22 a tax return under this chapter. The notice shall



1 briefly set forth the department's findings of fact
 2 and the basis of decision in each case decided
 3 adversely to the person. Sixty days after the date on
 4 which it is mailed, a notice of proposed determination
 5 shall constitute a final determination, unless the
 6 person required to make and file a tax return under
 7 this chapter has filed an appeal of the determination
 8 as provided in section -18; and

9 (5) Nothing in this subsection shall be construed to
 10 relieve any person filing a request for determination
 11 of domicile of the obligation to pay the correct
 12 amount of tax on or before the due date of the tax.

13 § -7 **Hawaii taxable estate.** For the purposes of this
 14 chapter, "Hawaii taxable estate" means:

15 (1) For residents, the federal taxable estate under
 16 section 2051, et. seq., of the Internal Revenue Code
 17 but without regard for the deduction for state death
 18 taxes paid under section 2058 of the Internal Revenue
 19 Code;

20 (2) For nonresidents, the federal taxable estate under
 21 section 2051, et. seq., of the Internal Revenue Code,
 22 but without regard for the deduction for state death



1 taxes paid under section 2058 of the Internal Revenue
2 Code, multiplied by a fraction, the numerator of which
3 is the value of the property in the State subject to
4 tax under this chapter, and the denominator of which
5 is the federal gross estate; and

6 (3) For nonresidents not citizens, the federal taxable
7 estate determined under section 2106 of the Internal
8 Revenue, but without regard for the deduction for
9 state death taxes paid under section 2106(a)(4) of the
10 Internal Revenue Code, multiplied by a fraction, the
11 numerator of which is the value of the property with a
12 situs in the State subject to tax under this chapter,
13 and the denominator of which is the federal gross
14 estate.

15 **§ -8 Tax imposed; credit for tax paid other state. (a)**

16 A state tax return shall be filed in the case of every decedent
17 whose estate is required by the laws of the United States to
18 file a federal estate tax return. This section shall apply to a
19 decedent who, at the time of death was:

20 (1) A resident of the State; or



1 (2) A nonresident of the State whose gross estate includes
 2 any real property situated in the State or tangible
 3 personal property having a situs in the State.

4 (b) With respect to the estates of decedents dying on or
 5 after January 1, 2012, the tax based on the Hawaii net taxable
 6 estate shall be as provided in the following schedule:

7	If the Hawaii net taxable estate is:	The tax shall be:
8	\$1,000,000 or less	10.0 per cent of
9		the Hawaii net
10		taxable estate
11	Over \$1,000,000 but	\$100,000 plus 11.0
12		per cent
13	not over \$2,000,000	of the amount by
14		which the Hawaii
15		net taxable estate
16		exceeds \$1,000,000
17	Over \$2,000,000 but	\$210,000 plus 12
18		per cent
19	not over \$3,000,000	of the amount by
20		which the Hawaii
21		net taxable estate
22		exceeds \$2,000,000



1 Over \$3,000,000 but \$330,000 plus 13
2 per cent
3 not over \$4,000,000 of the amount by
4 which the Hawaii
5 net taxable estate
6 exceeds \$3,000,000

7 Over \$4,000,000 but \$460,000 plus 14
8 per cent
9 not over \$5,000,000 of the amount by
10 which the Hawaii
11 net taxable estate
12 exceeds \$4,000,000

13 Over \$5,000,000 \$600,000 plus 15.7
14 per cent
15 of the amount by
16 which the Hawaii
17 net taxable estate
18 exceeds \$5,000,000.

19 (c) If any property of a resident is subject to a death
20 tax imposed by another state and if the tax imposed by the other
21 state is not qualified by a reciprocal provision allowing the
22 property to be taxed in the state of the decedent's domicile,



1 the amount of the tax due under this section shall be credited
2 with the lesser of:

3 (1) The amount of the death tax actually paid to the other
4 state; or

5 (2) An amount computed by multiplying the Hawaii estate
6 tax by a fraction, the numerator of which is the value
7 of the property subject to the death tax imposed by
8 the other state, and the denominator of which is the
9 total value of the decedent's gross estate.

10 (d) Except as otherwise expressly provided, for purposes
11 of this chapter, the gross value of transferred property shall
12 be its value as finally determined for purposes of the federal
13 transfer tax.

14 **§ -9 Returns; time to file return and pay tax.** (a) The
15 Hawaii transfer tax return, including any supplemental or
16 amended return, is required to be filed pursuant to this chapter
17 whenever a federal estate tax return is required to be filed.
18 The return shall be filed, and the Hawaii transfer tax,
19 including any additional tax that may become due, shall be paid
20 by the same person or persons, respectively, who are required to
21 pay the federal transfer tax and file the federal return,
22 including any duly authorized executor or administrator. If



1 there is more than one executor or administrator, the return
2 shall be made jointly by all. If there is no executor or
3 administrator appointed, qualified, and acting, each person in
4 actual or constructive possession of any property of the
5 decedent is constituted an executor for purposes of the tax and
6 shall make and file a return. If in any case the executor is
7 unable to make a complete return as to any part of the gross
8 estate, the executor shall provide all the information available
9 to the executor with respect to the property, including a full
10 description and the name of every person holding a legal or
11 beneficial interest in the property. If the executor is unable
12 to make a return as to any property, each person holding a legal
13 or equitable interest in the property shall, upon notice from
14 the department, make a return as to that part of the gross
15 estate.

16 (b) The executed Hawaii transfer tax return shall be filed
17 with the department on or before the date the federal estate tax
18 return is required to be filed, including any extension of time
19 for filing the federal estate tax return.

20 (c) (1) The personal representative, without assessment,
21 notice, or demand, shall pay any tax due thereon to
22 the department on or before the date fixed for filing



1 the return, out of any moneys belonging to the estate
2 in the personal representative's hands; and

3 (2) The personal representative shall have the same powers
4 and duties with respect to the raising of funds for
5 the payment of the tax as conferred upon an executor
6 under sections 2205, 2206, 2207, 2207A, and 2207B of
7 the Internal Revenue Code, and pursuant to the laws of
8 the State in the case of raising funds for the payment
9 of a decedent's debts generally. Any provision in a
10 decedent's will or revocable trust, in which a
11 decedent effectively waives a right of recovery under
12 a section of the Internal Revenue Code specified in
13 this paragraph shall be deemed a waiver of the
14 corresponding right of recovery under this section,
15 unless the will or revocable trust specifically states
16 otherwise.

17 (d) For the purposes of this chapter, the timely filing of
18 any tax return, claim, statement, report, or other document
19 required or authorized to be filed with, or the timeliness of
20 any payment made to, the department and any notice required or
21 authorized to be given by the department shall be governed by
22 chapter 231.



1 (e) If any portion of the federal transfer tax is deferred
2 or to be paid in installments under the provisions of the
3 Internal Revenue Code, the portion of the Hawaii transfer tax
4 that is subject to deferral or payable in installments shall be
5 determined by multiplying the Hawaii transfer tax by a fraction,
6 the numerator of which is the gross value of the assets included
7 in the transferred property having a tax situs in the State and
8 that give rise to the deferred or installment payment under the
9 Internal Revenue Code, and the denominator of which is the gross
10 value of all assets included in the transferred property having
11 a tax situs in the State.

12 Deferred payments and installment payments, with interest,
13 shall be paid at the same time and in the same manner as
14 payments of the federal transfer tax are required to be made
15 under the applicable sections of the Internal Revenue Code;
16 provided that the rate of interest on unpaid amounts of Hawaii
17 transfer tax shall be determined under this chapter.

18 Acceleration of payment under this section shall occur
19 under the same circumstances and in the same manner as provided
20 in the Internal Revenue Code.

21 (f) No return shall be required to be filed unless the
22 estate files or is required to file a federal estate tax return.



1 **§ -10 Interest on amount due; penalties.** (a) Any tax
2 due under this chapter that is not paid by the time prescribed
3 for the filing of the return as provided in section -9, not
4 including any extension with respect to the filing of the report
5 or the payment of the tax, shall bear interest at the rate in
6 section 231-39(b)(4) from the date any tax is due until paid.

7 (b) If the return provided for in section -9 is not
8 filed within the time period specified, unless it is shown that
9 the failure to file is due to a reasonable cause, then there
10 shall be paid, in addition to the interest provided in this
11 section, a penalty equal to five per cent of the tax due in
12 respect to the transfer, or five per cent of the additional tax
13 due in the case of a supplemental return, for each month beyond
14 the time periods that the return has not been filed; provided
15 that no penalty so imposed shall exceed a total of twenty-five
16 per cent of the tax.

17 (c) If the Internal Revenue Service waives the penalty
18 provided in the Internal Revenue Code for failure to timely file
19 the federal return or the penalty for failure to timely pay the
20 federal transfer tax liability, the waiver shall be deemed to
21 constitute reasonable cause for the purposes of this section.



1 **§ -11 Extension of time to file return.** If the date for
2 filing the federal return or the date for payment of the federal
3 transfer tax is extended by the Internal Revenue Service, the
4 filing of the return and payment of the tax imposed by this
5 chapter shall be due on the respective dates specified by the
6 Internal Revenue Service in granting a request for extension.
7 If the request for extension is granted by the Internal Revenue
8 Service, the person required to file the Hawaii transfer tax
9 return shall file along with the return required under this
10 chapter a copy of the request for extension showing approval of
11 the extension by the Internal Revenue Service. If a request for
12 extension of time to file the federal return is denied by the
13 Internal Revenue Service, no penalty shall be due under this
14 chapter if the return required by this chapter is filed within
15 the time specified by the Internal Revenue Service for filing
16 the federal return. If a request for extension of time to pay
17 the federal transfer tax is denied by the Internal Revenue
18 Service, no penalty shall be due under this chapter if the tax
19 is paid within the time specified by the Internal Revenue
20 Service for paying the federal transfer tax. The extension
21 shall be made by filing a true copy of the federal extension or



1 extensions of time for filing or payment, or both, with the
2 return required under section -9.

3 **§ -12 Department to issue release; final settlement of**
4 **account.** (a) The department shall issue an automatic release
5 of estate tax liability to the personal representative when:

6 (1) No estate tax is imposed by this chapter and upon the
7 receipt of a request for a release, if the release
8 includes the sworn statement of the personal
9 representative or agent that in fact no taxes are due;
10 or

11 (2) The estate taxes due under this chapter have been paid
12 as prescribed in section -9, and the request for a
13 release includes the sworn statement of the personal
14 representative that in fact all taxes due have been
15 paid.

16 (b) The obtaining of a release shall confer upon the
17 personal representative sufficient authority to effectuate the
18 transfer of all property composing the decedent's estate.

19 **§ -13 Amended returns; final determination.** If the
20 amount of the federal taxable estate reported on an estate's
21 federal estate tax return is changed or corrected by the
22 Internal Revenue Service, the person required to make and file



1 the estate tax return under this chapter shall provide notice of
 2 the change or correction to the department by filing, within
 3 ninety days after the final determination of the change or
 4 correction, or as otherwise required by the department, an
 5 amended return under this chapter, and shall furnish to the
 6 department any information, schedules, records, documents or
 7 papers relating to the change or correction. The time for
 8 filing the return may be extended by the department upon a
 9 showing of due cause. If an additional tax under this chapter
 10 is required to be paid pursuant to the changed or amended
 11 return, the person required to pay the tax shall pay the
 12 additional tax, together with interest as provided in section
 13 -10, at the same time the supplemental or amended return is
 14 filed.

15 § -14 Administration; rules. The department may adopt
 16 rules under chapter 91 to implement this chapter.

17 § -15 Sale of property to pay tax; creation of lien.

18 (a) Subject to chapter 560 and section 531-29, as applicable, a
 19 personal representative may sell any property as necessary to
 20 pay the estate taxes due under this chapter. A personal
 21 representative may sell any property specifically bequeathed or
 22 devised as necessary to pay the proportionate amount of the



1 taxes due on the transfer of the property and the fees and
2 expenses of the sale, unless the legatee or devisee thereof pays
3 the personal representative the proportionate amount of the
4 taxes due.

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

- 13 (1) The limitation period, as described in this
14 subsection, in each case shall be extended for a
15 period of time equal to the period of pendency of
16 litigation of questions affecting the determination of
17 the amount of tax due; provided that a lis pendens has
18 been filed with the bureau of conveyances or land
19 court in the county in which the property is located;
- 20 (2) Any part of the gross estate that is transferred to a
21 bona fide purchaser shall be divested of the lien and



1 the lien shall be transferred to the proceeds arising
2 out of the transfer; and

3 (3) A mortgage on property pursuant to an order of court
4 for payment of charges against the estate and expenses
5 of administration shall constitute a lien upon the
6 property prior and superior to the tax lien.

7 **§ -16 Liability for failure to pay tax before**

8 **distribution or delivery.** (a) Any personal representative who
9 distributes any property without first paying, securing
10 another's payment of, or furnishing security for payment of the
11 estate taxes due under this chapter shall be personally liable
12 for the taxes due to the extent of the value of any property
13 that may come or may have come into the possession of the
14 personal representative. Security for payment of the estate
15 taxes due under this chapter shall be in an amount not less than
16 the value of all property that is or has come into the
17 possession of the personal representative, as of the time the
18 security is furnished.

19 (b) Any person who has the control, custody, or possession
20 of any property and who delivers any of the property to the
21 personal representative or legal representative of the decedent
22 outside the State without first paying, securing another's



1 payment of, or furnishing security for payment of the estate
2 taxes due under this chapter shall be liable for the taxes to
3 the extent of the value of the property delivered. Security for
4 payment of the estate taxes due under this chapter shall be in
5 an amount not less than the value of all property delivered to
6 the personal representative or legal representative of the
7 decedent outside the State by the person.

8 (c) For the purpose of this section, a person does not
9 have control, custody, or possession of a decedent's property,
10 if the person is not responsible for paying the tax due under
11 this section.

12 For the purposes of this subsection, "person" may include
13 but is not limited to a stockbroker or stock transfer agent,
14 bank or other depository of checking and savings account, safe-
15 deposit company, or life insurance company.

16 (d) For the purposes of this section, any person who has
17 the control, custody, or possession of any property and who
18 delivers any of the property to the personal representative or
19 legal representative of the decedent may rely upon the release
20 furnished by the department to the personal representative as
21 evidence of compliance with the requirements of this chapter,
22 and make any delivery and transfer as the personal



1 representative may direct without being liable for any estate
2 taxes due under this chapter.

3 **§ -17 Generation-skipping transfers; tax imposed. (a)**

4 A Hawaii generation-skipping transfer tax is imposed on every
5 taxable transfer involving:

- 6 (1) Transferred property located in the State; and
- 7 (2) Transferred property from a resident trust.

8 (b) The tax shall be the applicable generation-skipping
9 transfer tax rate multiplied by the taxable amount as determined
10 under chapter 13 of the Internal Revenue Code, multiplied by a
11 fraction, the numerator of which is the taxable transfer subject
12 to the tax under subsection (a) and the denominator of which is
13 the total amount of taxable transfers subject to the federal
14 generation-skipping transfer tax.

15 (c) The person required to report and pay the federal
16 generation-skipping transfer tax shall file with the department
17 on or before the date the federal generation-skipping transfer
18 tax return is required to be filed, including any extension of
19 time for filing the federal return:

- 20 (1) A report for the generation-skipping transfer tax due
- 21 under this section; and



1 (2) A true copy of the federal generation-skipping
2 transfer tax return.

3 (d) If the person required to file the return has obtained
4 an extension of time for filing the federal return, the filing
5 required by subsection (c) shall be extended similarly until the
6 end of the time period granted in the extension of time for the
7 federal return. A true copy of the extension shall be filed
8 with the department along with the report required under
9 subsection (c).

10 (e) If a taxable transfer subject to the Hawaii
11 generation-skipping transfer tax is subject to a generation-
12 skipping transfer tax imposed by another state and if the tax
13 imposed by the other state is not qualified by a reciprocal
14 provision allowing the property to be taxed in this State, the
15 amount of the tax due under this section shall be credited with
16 the lesser of:

17 (1) The amount of the generation-skipping transfer tax
18 actually paid the other state; or

19 (2) An amount computed by multiplying the Hawaii
20 generation-skipping transfer tax by a fraction, the
21 numerator of which is the taxable transfer subject to
22 the generation-skipping transfer tax imposed by the



1 other state, and the denominator of which is the total
2 amount of the taxable transfers subject to the federal
3 generation-skipping transfer tax.

4 (f) For the purposes of this section, the term "trust"
5 includes a trust as defined in section 2652(b)(1) of the
6 Internal Revenue Code.

7 **§ -18 Administration by department; action for**
8 **collection of tax; appeal.** The department may collect the taxes
9 provided for in this chapter, including applicable interest and
10 penalties, and shall represent the State in all matters
11 pertaining to this chapter, before any court or in any other
12 manner. The department, through the attorney general, may
13 institute proceedings for the collection of the taxes and any
14 interest and penalties on the taxes.

15 The circuit court for any county that has assumed lawful
16 jurisdiction over the property of the decedent for general
17 probate or administration purposes under the laws of the State
18 shall have jurisdiction to hear and determine all questions in
19 relation to the Hawaii estate tax and Hawaii generation-skipping
20 transfer tax arising under this chapter. If there are no
21 probate or administration proceedings in any court of the State,
22 the following court shall have jurisdiction:



- 1 (1) If the decedent was a resident, the circuit court for
2 the county in which the decedent was a resident; or
3 (2) If the decedent was a nonresident, any court that has
4 jurisdiction over the property of the decedent, the
5 transfer of which is taxable, to issue probate or
6 administration proceedings thereon, had the same been
7 justified by the legal status of the property or had
8 the same been applied for.

9 Any court first acquiring jurisdiction shall retain the
10 same to the exclusion of every other. The tax appeal court
11 shall have jurisdiction to hear and determine all questions in
12 relation to the generation-skipping transfer tax arising under
13 this chapter.

14 Any person aggrieved by any assessment of the tax imposed
15 by this chapter may appeal from the assessment to a court of
16 competent jurisdiction within the time set forth in section 235-
17 114. The distribution of taxes paid pending the appeal shall be
18 as provided in chapter 232.

19 **§ -19 Parent as natural guardian for purposes of**
20 **sections 2032A and 2057 of the Internal Revenue Code.** A parent,
21 without being appointed guardian of the person or guardian of
22 the estate, or a guardian of the estate, or, if no guardian of



1 the estate has been appointed, a guardian of the person, of any
2 minor or disabled person whose interest is not adverse to the
3 minor or disabled person, may make any election and sign,
4 without court approval, any agreement on behalf of the minor or
5 disabled person under:

6 (1) Section 2032A of the Internal Revenue Code for the
7 valuation of property under that section; or

8 (2) Section 2057 of the Internal Revenue Code relating to
9 deduction of the value of certain property under that
10 section.

11 Any election so made, and any agreement so signed, shall have
12 the same legal force and effect as if the election had been made
13 and the agreement had been signed by the minor or disabled
14 person and the minor or disabled person had been legally
15 competent.

16 § -20 Reimbursement. If a person who pays the Hawaii
17 transfer tax arising from a taxable transfer is entitled under
18 the Internal Revenue Code or any other state or federal statute
19 or rule of law to reimbursement of a portion of the federal
20 transfer tax from any other person who has received transferred
21 property, then, unless the governing document directs otherwise,
22 the person who paid the Hawaii transfer tax shall be entitled to



1 reimbursement from that other person of a portion of the Hawaii
2 transfer tax. The amount of reimbursement shall be determined
3 by multiplying the total Hawaii transfer tax by a fraction, the
4 numerator of which shall be the gross value of the transferred
5 property received by that other person and having a tax situs in
6 the State that gives rise to a right of reimbursement of the
7 federal transfer tax, and the denominator of which shall be the
8 gross value of all transferred property having a tax situs in
9 the State.

10 **§ -21 Statute of limitations; claims for refund.** (a)

11 If the amount paid with respect to any taxable transfer is less
12 than the amount due under this chapter, the department shall
13 assess the underpayment from the person responsible for payment;
14 provided that a proceeding to assess the underpayment amount
15 shall commence within:

16 (1) Three years from the date the federal estate tax
17 return was filed; or

18 (2) One year after the date of final determination of the
19 related federal transfer tax,

20 whichever is later.

21 Amounts set forth on a duly filed and accepted federal
22 return for valuations of property, the gross estate, federal



1 taxable estate, and applicable exclusion amount shall be
2 conclusive for purposes of this chapter, and the return required
3 under this chapter shall use the same amounts as the
4 corresponding amounts on the federal return.

5 (b) If the amount paid with respect to any taxable
6 transfer is more than the amount due under this chapter, the
7 department shall refund the excess to the person entitled to the
8 refund together with interest at the existing statutory rate of
9 interest in the manner provided in section 231-23(c); provided
10 that no amount shall be refunded unless application for the
11 refund is filed with the department within:

12 (1) One year after the last date allowable under the
13 Internal Revenue Code for filing a claim for refund of
14 any part of the related federal transfer tax; or

15 (2) One year after the date of final determination of the
16 related federal transfer tax,

17 whichever is later.

18 As to all tax payments for which a refund or credit is not
19 authorized by this section, including, without prejudice to the
20 generality of the foregoing, cases of unconstitutionality, the
21 remedies provided by appeal or by section 40-35 are exclusive.



1 **§ -22 Expenses of court proceeding.** Whenever a circuit
2 court certifies that probable cause exists for issuing a
3 citation and taking proceedings under this chapter, the director
4 of finance shall pay from the tax reserve fund provided in
5 section 231-23(c)(2), or allow, all expenses incurred for
6 services of citation and other lawful disbursements that have
7 not otherwise been paid.

8 **§ -23 Who liable, amount.** In addition to the amount of
9 tax determined to be due under this chapter, every person who
10 fails or refuses to perform, within a reasonable time, any duty
11 required by this chapter, or who fails or refuses to make and
12 deliver within a reasonable time any statement or record
13 required by this chapter, shall forfeit to the State the
14 additional sum of \$10,000, to be recovered in an action brought
15 by the attorney general in the name of the State.

16 **§ -24 Agreements with other states for payment of tax**
17 **imposed by this chapter.** Where the department claims that
18 transferred property has a tax situs in this State and the
19 taxing authority of any other state claims the same transferred
20 property is subject to a transfer tax in the other state, the
21 department may enter into a written agreement with the taxing
22 authority in the other state and with the person required to



1 file the Hawaii transfer tax return or pay the Hawaii transfer
2 tax that a certain sum shall be accepted in full payment of the
3 tax imposed by this chapter; provided that the agreement also
4 fixes the amount to be paid in full payment to the other state.
5 The person required to file the Hawaii transfer tax return or
6 pay the Hawaii transfer tax shall be authorized to enter into
7 the agreement provided for in this section.

8 **§ -25 Disclosure of federal return information.** When
9 receipt of estate tax information from the Internal Revenue
10 Service under the Agreement on Coordination of Tax
11 Administration between the Internal Revenue Service and the
12 department discloses possible Hawaii estate tax liability, any
13 person possessing federal estate tax information shall be
14 required to submit the information to the department upon
15 request to enable the department to audit the return or Internal
16 Revenue Service audit adjustments and to determine whether any
17 tax, penalty, or interest is due the State where such return
18 information has not been filed with the department. A claim of
19 confidentiality shall not prohibit the dissemination of tax
20 information required under this section and shall not constitute
21 grounds for failing or refusing to surrender the tax information
22 to the department in the administration and enforcement of this



1 chapter. Any tax information submitted in compliance with this
2 section shall be treated and afforded with the same
3 confidentiality as a return filed under section 235-116.

4 **§ -26 Disposition of revenues.** All moneys collected
5 under this chapter shall be state realizations, to be kept and
6 accounted for as provided by law."

7 SECTION 2. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun before its effective date.

10 SECTION 3. This Act, upon its approval, shall apply to any
11 taxable transfers that occur after December 31, 2011, for
12 decedents dying or taxable transfers occurring after December
13 31, 2011.



Report Title:

Taxation; Estate and Transfer Tax

Description:

Establishes the Estate and Generation-Skipping Transfer Tax as a new chapter within the Hawaii Revised Statutes. (HB2328 HD1)

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

