



GOV. MSG. NO. 532

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 25, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB2866 HD1 SD1 CD1, without my approval, and with the statement of objections relating to the measure.

HB2866 HD1 SD1 CD1

A BILL FOR AN ACT
RELATING TO TAXATION.

Sincerely,



LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 25, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 2866

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 2866, entitled "A Bill for an Act Relating to Taxation."

The purpose of this bill is to reestablish the Hawaii estate tax on property, holdings, and assets of persons who pass away after April 30, 2010. This measure also taxes non-citizen and non-resident assets in Hawaii.

The bill is objectionable because it would effectively increase taxes on those most likely to invest in businesses and properties in Hawaii. It would also impose a tax on families with valuable land holdings who may not be wealthy, but whose estate meets the statutory thresholds.

Hawaii has not had an estate tax since 2005, when the federal credit for state death taxes was eliminated by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). Moreover, there is also no federal estate tax for tax year 2010 as a result of the EGTRRA. This measure targets individuals who are most capable of stimulating Hawaii's economy, and provides a disincentive for residents and non-residents looking to accumulate capital in the State or invest in the State.

Moreover, it is unfair to apply this estate tax to persons who die after April 30, 2010 with little notice or time to inform the public. This measure does not provide enough time

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 2866
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for individuals to adequately plan their estate or modify their current estate plan. It would be unfortunate if a person who passes away on May 1, 2010, who may or may not know of the estate tax's existence, cannot distribute his estate as planned to his heirs and charities.

For the foregoing reasons, I am returning House Bill No. 2866 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'L. Lingle', written over the printed name.

LINDA LINGLE
Governor of Hawaii

VETO

HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2866
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

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

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

"§236D-A Nonresidents not citizens; tax imposed; exemption. (a) A tax in an amount computed as provided in this section is imposed on the noncitizen transfer of the taxable estate located in Hawaii of every nonresident decedent who was not a citizen at the time of their death.

(b) The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property with a situs in Hawaii, and the denominator of which is the value of the decedent's gross estate.

(c) The noncitizen transfer of the property of a nonresident not a citizen is exempt from the tax imposed by this section to the extent that the property of residents is exempt from taxation under the laws of the state in which the nonresident not a citizen is domiciled; except that the following shall be subject to tax under this section:



1 (1) Real property having an actual situs in this state,
2 whether or not held in a trust the corpus of which is
3 included in a decedent's gross estate for federal
4 estate tax purposes;

5 (2) A beneficial interest in a land trust that owns real
6 property located in the state; and

7 (3) Tangible and intangible personal property having a
8 situs in this state.

9 (d) "Situs" as used in this section means the location of
10 a decedent's property within the meaning of Section 2104 of the
11 Internal Revenue Code, including regulations and other guidance
12 issued thereunder, substituting "Hawaii" for "the United
13 States".

14 §236D-B Taxation under chapter 236D; applicable exclusion
15 amount. Notwithstanding any other law to the contrary, a
16 decedent shall be entitled to all applicable exclusion or
17 exemption amounts as determined under the Internal Revenue Code
18 as of December 31, 2009, before being subject to any taxes
19 imposed under this chapter, including up to a \$3,500,000
20 applicable exclusion amount allowed by Section 2010 of the
21 Internal Revenue Code on December 31, 2009, as further adjusted
22 by law."



SECTION 2. Section 236D-2, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

"Internal Revenue Code" means the Internal Revenue Code of 1986, as amended and renumbered, as of December 31, 2009; provided that Sections 2011, 2102, and 2604 of the Internal Revenue Code shall mean those Sections as of December 31, 2000; and provided further that Section 2058 shall not be operative for purposes of this chapter. "Internal Revenue Code" includes the federal tax principles of alter ego, nominee, sham transaction, substance over form, economic substance, or business purpose, as those principles are developed by statute or common law. The Internal Revenue Code, for purposes of this chapter, shall be applied using changes in nomenclature and other language, including the omission of inapplicable language or the insertion of interpretive language, where necessary to effectuate the intent of this chapter.

"Noncitizen transfer" means a transfer within the meaning of Section 2101 of the Internal Revenue Code.

"Nonresident not a citizen" means a nonresident who is not a citizen of the United States."



1 2. By amending the definitions of "federal credit",
2 "generation-skipping transfer", "gross estate", "personal
3 representative", "section 2011", "taxable estate", and
4 "transfer" to read:

5 "'Federal credit" means:

6 (1) For a transfer, the maximum amount of the credit for
7 state death taxes allowed by ~~[section]~~ Section 2011 of
8 the Internal Revenue Code, as it existed on December
9 31, 2000, for the decedent's adjusted taxable estate;

10 ~~[and]~~

11 (2) For a generation-skipping transfer, the maximum amount
12 of the credit for state taxes allowed by ~~[section]~~
13 Section 2604 of the [federal] Internal Revenue Code
14 [of 1986, as amended or renumbered.] as it existed on
15 December 31, 2000; and

16 (3) For a noncitizen transfer, the maximum amount of the
17 credit for state death taxes allowed by Section 2102
18 of the Internal Revenue Code, as it existed on
19 December 31, 2000, for the decedent's adjusted taxable
20 estate.

21 "Generation-skipping transfer" means a generation-skipping
22 transfer as defined and used in ~~[section]~~ Section 2611 of the



1 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~
2 ~~renumbered]~~.

3 "Gross estate" means gross estate as defined and used in
4 ~~[sections]~~ Sections 2031 to ~~[2045]~~ 2046 of the ~~[federal]~~
5 Internal Revenue Code ~~[of 1986, as amended or renumbered]~~. For
6 purposes of section 236D-A, "gross estate" means gross estate as
7 defined and used in Section 2103 of the Internal Revenue Code.

8 "Personal representative" means the personal representative
9 of a decedent appointed under chapter 560, and includes an
10 executor (as defined under ~~[section]~~ Section 2203 of the
11 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~
12 ~~renumbered]~~), administrator, successor personal representative,
13 special administrator, and persons who perform substantially the
14 same function under the law governing their status.

15 "Section 2011" means ~~[section]~~ Section 2011 of the
16 ~~[federal]~~ Internal Revenue Code ~~[of 1986, as amended or~~
17 ~~renumbered.]~~ as it existed on December 31, 2000.

18 "Taxable estate" means taxable estate as defined in
19 ~~[sections]~~ Sections 2051 to 2056 of the ~~[federal]~~ Internal
20 Revenue Code ~~[of 1986, as amended or renumbered]~~. For purposes
21 of section 236D-A, "taxable estate" means taxable estate as



1 defined and used in Section 2106 of the Internal Revenue Code,
2 with situs in Hawaii.

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

6 SECTION 3. In codifying the new sections added by section
7 1 of this Act, the revisor of statutes shall substitute
8 appropriate section numbers for the letters used in designating
9 the new sections in this Act.

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

12 SECTION 5. This Act, upon its approval, shall apply to
13 property interests of persons who die after April 30, 2010.

