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To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: Thursday, March 27, 2014
Time: 2:00 p.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: S.B. No. 2887, S.D. 1, Relating to the Estate and Generation Skipping Transfer Taxes

The Department of Taxation (Department) stands in strong **support** of S.B. 2887, S.D. 1, an Administration measure.

S.B. 2887, S.D. 1, conforms chapter 236E, Hawaii Revised Statutes (HRS), to the Internal Revenue Code of 1986, as amended as of December 31, 2013, and amends the definition of the applicable exclusion amount to close an existing loophole. The measure is effective upon approval, and applies to decedents dying or taxable transfers occurring after December 31, 2013.

The Department strongly supports this measure because conformance with the federal estate tax greatly simplifies a taxpayer's burden in complying with a very technical tax. The Department also strongly supports the proposed revision to the definition of the Hawaii applicable exclusion amount, which closes a loophole that currently allows a decedent to completely or substantially avoid estate and generation skipping transfer taxes by gifting away property prior to death, even on the eve of death.

The Department notes such taxable gifts also reduced the applicable exclusion amount under chapter 236D, HRS. Chapter 236D, HRS, applies to decedents dying or taxable transfers occurring after June 30, 1983 and before January 25, 2012.

Thank you for the opportunity to provide comments.

SUBJECT: ESTATE AND GENERATION-SKIPPING TRANSFER TAX, Clarify application

BILL NUMBER: SB 2887, SD-1

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Amends HRS section 236E-3 to update the December 31, 2011 date to December 31, 2013 to conform HRS chapter 236E to the Internal Revenue Code (IRC) as it was amended on December 31, 2013.

Amends HRS section 236E-6 to provide that the applicable exclusion amount for Hawaii income tax purposes shall be the same as the federal applicable exclusion amount, or the 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 the exemption equivalent of the unified credit on the decedent's tax return.

EFFECTIVE DATE: Upon approval; applicable to decedents dying or taxable transfers occurring after December 31, 2013.

STAFF COMMENTS: This is an administration measure submitted by the department of taxation TAX-02 (2014). With the adoption of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the federal estate tax was phased out and repealed over a ten-year period. This necessitated the legislature to establish an estate and generation-skipping transfer tax by Act 220, SLH 2012, as HRS chapter 236E. HRS section 236E-4 requires the department of taxation to submit a measure to update HRS chapter 236E to changes in the federal IRC. The adoption of this measure would amend the definition of "applicable exclusion amount" to close a loophole that allows a decedent to avoid the Hawaii estate and generation-skipping transfer tax by gifting away property prior to death.

Digested 3/24/14