

ACT 138

H. B. NO. 1656-72

A Bill for an Act Relating to the Revised Uniform Estate Tax Apportionment Act.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding a new

chapter to be appropriately designated and to read as follows:

“CHAPTER
REVISED UNIFORM ESTATE TAX APPORTIONMENT ACT

Sec. -1 Definitions. In this chapter:

- (1) “Estate” means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State;
- (2) “Fiduciary” means executor, administrator of any description, and trustee;
- (3) “Person” means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;
- (4) “Person interested in the estate” means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent’s taxable estate;
- (5) “State” means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and
- (6) “Tax” means the federal estate tax and the estate tax payable to this State and interest and penalties imposed in addition to the tax.

Sec. -2 Apportionment. Unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment shall be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax shall be used for that purpose.

Sec. -3 Procedure for determining apportionment. (a) The circuit court having jurisdiction over the administration of the estate of a decedent shall determine the apportionment of the tax. If there are no probate proceedings, the circuit court of the county wherein the decedent was domiciled at death shall determine the apportionment of the tax upon the application of the person required to pay the tax.

(b) If the circuit court finds that it is inequitable to apportion interest and penalties in the manner provided in this chapter because of special circumstances, it may direct apportionment thereon in the manner it finds equitable.

(c) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in section -2 and charged and collected as a part of the tax apportioned. If the circuit court finds it is inequitable to apportion the expenses as provided in section -2, it may direct apportionment thereof equitably.

(d) If the circuit court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest.

(e) In any suit or judicial proceeding to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter, the determination of the circuit court in respect thereto is prima facie correct.

Sec. -4 Method of Proration. (a) The fiduciary or other person required to pay the tax may withhold from any property of the decedent in his possession, distributable to any person interested in the estate, the amount of tax attributable to his interest. If the property in possession of the fiduciary or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the fiduciary or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the fiduciary or other person required to pay the tax the fiduciary or other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter.

(b) If property held by the fiduciary or other person is distributed prior to final apportionment of the tax, the fiduciary or other person may require the distributee to provide a bond or other security for the apportionment liability in the form and amount prescribed by the fiduciary, with the approval of the circuit court having jurisdiction of the administration of the estate.

Sec. -5 Allowance for exemptions, deductions, and credits. (a) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax.

(b) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing that relationship or receiving the gift. When an interest is subject to a prior present interest which is not allowable as a deduction the tax apportionable against the present interest shall be paid from principal.

(c) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or his estate inures to the proportionate benefit of all persons liable to apportionment.

(d) Any credit for inheritance, succession, or estate taxes or taxes in the nature thereof in respect to property or interests includable in the estate inures to the benefit of the persons or interests chargeable with the payment thereof to the extent that, or in proportion as the credit reduces the tax.

(e) To the extent that property passing to or in trust for a surviving spouse or any charitable, public, or similar gift or bequest does not constitute an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property shall not be included in the computation provided for in this chap-

ter, and to that extent no apportionment shall be made against the property. This does not apply in any instance where the result will be to deprive the estate of a deduction otherwise allowable under section 2053 (d) of the Internal Revenue Code of 1954 of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

Sec. -6 No apportionment between temporary and remainder interests. No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

Sec. -7 Exoneration of fiduciary. Neither the fiduciary nor other person required to pay the tax is under any duty to institute any suit or proceeding to recover from any person interested in the estate the amount of the tax apportioned to that person until the expiration of the three months next following final determination of the tax. A fiduciary or other person required to pay the tax who institutes the suit or proceeding after the three months' period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the fiduciary or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be paid from the residuary estate. To the extent that the residuary estate is not adequate, the balance shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

Sec. -8 Action by non-resident, reciprocity. Subject to this section a fiduciary acting in another state or a person required to pay the tax who is resident in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax or an estate tax payable to another state or of a death duty due by a decedent's estate to another state from a person interested in the estate who is either resident in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct. The provisions of this section apply only if the state in which the determination of apportionment was made affords a substantially similar remedy.

Sec. -9 Short title. This chapter may be cited as the revised uniform estate tax apportionment Act."

SECTION 2. This Act shall take effect on January 1, 1973 and shall not apply to taxes due on account of the death of persons dying prior to January 1, 1973.

(Approved May 30, 1972.)