

ACT 217

H.B. NO. 80

A Bill for an Act Relating to Taxation.

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:

**“CHAPTER
ESTATE AND TRANSFER TAX**

§ -1 **Short title.** This chapter may be cited as the “Estate and Transfer Tax Reform Act of 1983”.

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

“Decedent” means a deceased individual;

“Department” means the department of taxation;

“Federal credit” means the maximum amount of the credit for estate death taxes allowed by section 2011 for the decedent’s adjusted taxable estate;

“Gross estate” means gross estate as defined and used in sections 2031 to 2045 of the federal Internal Revenue Code of 1954, as amended or renumbered;

“Nonresident” means a decedent who was not domiciled in Hawaii at time of death;

“Person” means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or

other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

“Personal representative” means the personal representative of a decedent appointed under chapter 560, and includes an executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status;

“Property” means property included in the gross estate;

“Release” means a document issued by the department which certifies that all taxes have either been paid or which releases the estate from all taxes due under this chapter;

“Resident” means a decedent who was domiciled in Hawaii at time of death;

“Section 2011” means section 2011 of the federal Internal Revenue Code of 1954, as amended or renumbered; and

“Taxable estate” means taxable estate as defined in sections 2051 to 2056 of the federal Internal Revenue Code of 1954, as amended or renumbered;

“Transfer” means transfer as defined and used in section 2001 of the federal Internal Revenue Code of 1954, as amended or renumbered.

§ -3 **Residents; tax imposed; credit for tax paid other state.** (a) A tax in an amount equal to the federal credit is imposed on the transfer of the taxable estate of every resident.

(b) If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by section 2011; and, if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent’s domicile, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the death tax paid the other state and credited against the federal estate 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 death tax imposed by the other state, and the denominator of which is the value of the decedent’s gross estate.

§ -4 **Nonresidents; tax imposed; exemption.** (a) A tax in an amount computed as provided in this section is imposed on the transfer of the taxable estate located in Hawaii of every nonresident.

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

(c) The transfer of the property of a nonresident 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 is domiciled, except that:

- (1) Real property having an actual situs in this State, whether or not held in a trust the corpus of which is included in a decedent’s gross estate for federal estate tax purposes;
- (2) A beneficial interest in a land trust which owns real property located in the State; and

(3) Tangible personal property having an actual situs in this State; shall be subject to tax under this section.

§ -5 Tax reports; date to be filed; extensions. (a) The personal representative of every estate subject to the 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 taxes due under this chapter; and
- (2) A true copy of the federal estate tax return.

(b) If the personal representative has obtained an extension of time for filing the federal return, the filing required by subsection (a) 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) No Hawaii report need be filed if the estate is not subject to the tax imposed by this chapter.

(d) If the estate is not subject to the 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 tax and that the estate and the personal representative are free of any claim by the State for taxes owed under this chapter.

§ -6 Date payment due; date deemed received. (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 -5.

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

§ -7 Interest on amount due; extension of time to file federal return. (a) Any tax due under this chapter which is not paid by the time prescribed for the filing of the report as provided in section -5, not including any extension in respect to the filing of the report or the payment of the tax, shall bear interest at the rate in section 231-39(b)(4) from the date any tax is due until paid.

(b) If the report provided for in section -5 is not filed within the time periods specified, then the personal representative shall pay, 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 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 has obtained an extension of time for payment of the federal tax, the personal representative 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 -5.

§ -8 Department to issue release; final settlement of account. (a) The department shall issue an automatic release to the personal representative when:

(1) No 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 taxes due under this chapter have been paid as prescribed in section -5, and the request for a release includes the sworn statement of the personal representative that in fact all taxes due have been paid.

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

§ -9 Amended returns; final determination. (a) If the personal representative files an amended federal return, the personal representative immediately shall file 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 pursuant to the amended return, the personal representative shall pay the additional tax, together with interest as provided in section -7, at the same time the personal representative files the amended return, subject to any extension election under section -7.

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

§ -10 Administration; rules. The department shall adopt such rules under chapter 91 as may be necessary to carry into effect this chapter, including rules relating to the return for taxes due under this chapter.

§ -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 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 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.

§ -12 Liability for failure to pay tax before distribution or delivery.

(a) Any personal representative who distributes any property without first paying, securing another's payment of, or furnishing security for payment of the 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 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 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 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.

(c) For the purpose of this section, persons who do not have possession of a decedent's property include anyone not primarily responsible for paying the tax due under this section or their transferees, which includes but is not limited to mortgagees or pledgees, stockbrokers or stock transfer agents, banks, and other depositories of checking and savings accounts, safe-deposit companies, and life insurance companies.

(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 taxes due under this chapter.

§ -13 Refund for overpayment. Whenever the tax due under this chapter is proved to have been overpaid, the department shall refund the amount of the overpayment, together with interest at the then existing statutory rate of interest in the manner provided in section 231-23(d). No claim for refund may be initiated more than two years after the date the federal tax has been finally determined.

§ -14 Criminal acts relating to estate tax returns. Any person who wilfully fails to file an Hawaii estate tax return when required by this chapter or who wilfully files a false return commits a misdemeanor.

§ -15 Administration by department; action for collection of tax; appeal. The department may collect the tax 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 and any interest and penalties on the tax.

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 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.

§ -16 Expenses of court proceeding. Whenever a circuit court certifies that there was probable cause for issuing a citation and taking proceedings under this chapter, the director of finance shall pay from the tax reserve fund provided in section 231-23(d)(2), or allow, all expenses incurred for services of citation and other lawful disbursements that have not otherwise been paid.

§ -17 Who liable, amount. Every person who fails or refuses to perform, within a reasonable time, any and every duty required by this chapter, or who fails or refuses to make and deliver within a reasonable time any statement or record required by this chapter, shall forfeit to the State the sum of \$1,000, to be recovered in an action brought by the attorney general in the name of the State.

§ -18 Disposition of revenues. All moneys collected under this chapter shall be state realizations, to be kept and accounted for as provided by law."

SECTION 2. Section 231-1, Hawaii Revised Statutes, is amended to read:

"§231-1 Definitions. Whenever used in chapters 231 to 249[:] and :

"Assessor" or "assistant assessor" means the assessor or an assistant assessor appointed for the taxation district concerned. Whenever there is more than one assessor for the first district, with respect to that district "assessor" or "assistant assessor" means the assessor or assistant assessor for a particular tax.

"Comptroller" means the comptroller of the State.

"Department" means the department of taxation, unless the context clearly indicates otherwise.

"Property" or "real property" has the meaning defined by section 246-1, and, to the extent required by provisions making applicable to other chapters, this chapter, or chapters 232, 233, 235 to 239, 241 to 246, and , also means and includes other subjects or measures of tax."

SECTION 3. Section 231-3, Hawaii Revised Statutes, is amended to read:

"§231-3 Department, general duties and powers. The department of taxation shall have the following duties and powers, in addition to any others prescribed or granted by this chapter:

- (1) **Assessment:** To assess, pursuant to law, all real property for taxation and to make any other assessment by law to be made by the department;
- (2) **Collections:** To be responsible for the collection of all taxes imposed by chapters 231 to 249[,] and , except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) **Construction of revenue laws:** To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under such laws, or by an interested person;
- (4) **Enforcement of penalties:** To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of his deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures, liabilities, and punishments for violation of the laws in respect to the assessment and taxation of property;
- (5) **Forms:** To prescribe forms to be used in or in connection with such assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) **Inspection, examination of records:** To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) **Recommendations for legislation:** To recommend to the governor such amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of property for taxation or any other assessment of or for taxes;
- (8) **Report to governor:** To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and such other matters of information concerning taxation as may be deemed of general interest;
- (9) **Rules and regulations:** To make such rules and regulations as the department may deem proper effectually to carry out the purposes for

which the department is constituted and to regulate matters of procedure by or before the department;

- (10) **Compromises:** With the approval of the governor, to compromise any claim arising under any tax law the administration of which is within the scope of the department's duties; and in any such case there shall be placed on file in the department's office a statement of (A) the amount of tax assessed, or proposed to be assessed, (B) the amount of penalties and interest imposed or which could have been imposed by law with respect to the preceding item, as computed by the department, (C) the total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof, and (D) the reasons for the compromise;
- (11) **Retroactivity of rulings:** To prescribe the extent, if any, to which any ruling, regulation, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) **Remission of delinquency penalties and interest:** Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent for not more than ninety days, in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in any such case there shall be placed on file in the department's office a statement showing the name of the person receiving such remission, the principal amount of the tax, and the year or period involved;
- (13) **Closing agreements:** To enter into an agreement in writing with any taxpayer or other person relating to the liability of such taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; such agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact, (A) the matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State, and (B) in any suit, action, or proceeding, such agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) **Other powers and duties:** In addition to the powers and duties contained in this chapter, the powers and duties contained in chapter 246 for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised

for levying, assessing, collecting, and receiving and enforcing payment of the taxes imposed under the authority of chapters 235, 237 to 239, [and] 243 to 245, and , as far as the provisions of chapter 246 are not superseded by and are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions and regulations prescribed under chapter 246, except as aforesaid, shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

SECTION 4. Section 231-6, Hawaii Revised Statutes, is amended to read:

"§231-6 Oaths, power to administer. The department of taxation may administer all oaths or affirmations required to be taken or be administered under chapters 231 to 249 and with respect to any matters coming within the scope of the duties of the department."

SECTION 5. Section 231-12, Hawaii Revised Statutes, is amended to read:

"§231-12 District judges; jurisdiction over misdemeanors and actions for tax collections. Except as otherwise specifically provided by chapters 231 to 249[,] and , the several district judges shall have jurisdiction to try misdemeanors arising under such chapters and all complaints for the violation of such chapters and to impose any of the penalties therein prescribed, and shall also have jurisdiction to hear and determine all civil actions and proceedings for the collection and enforcement of collection and payment of all taxes assessed thereunder, and all actions or judgments obtained in tax actions and proceedings, notwithstanding the amount claimed."

SECTION 6. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (d) to read:

"(d) This subsection shall apply to all taxes.

- (1) All refunds shall be paid only upon a form to be known as a "refund voucher" prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue his warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a special fund to be known as the tax reserve fund. All refunds of taxes collected under chapters 235 to 239, 241, [and] 243 to 246, and , heretofore made out of the reserve funds in chapters 235[, 236,]

and 237 or from the general fund shall be made out of the tax reserve fund. The director of taxation may, from time to time, deposit taxes collected by him under the chapters enumerated in the immediately preceding sentence in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made, but in the case of a real property tax refund, from the next collection of real property taxes of the taxation division in which the property which was the subject of the refund is situated."

SECTION 7. Section 235-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) The Internal Revenue Code, so far as made applicable by this chapter, is a statute adopted and incorporated by reference. Whenever, in the Internal Revenue Code, the words "Secretary or his delegate", or words of like import are used, such words [shall be deemed to] mean the director of taxation and his duly authorized subordinates, and the words "estate taxes" [shall be deemed to] mean the [inheritance and] estate [taxes] and transfer tax imposed by chapter [236.] ."

2. By amending subsection (e) to read:

"(e) In the determination of the basis or adjusted basis of any stock, securities, or other property:

- (1) If the property was acquired by an exchange (including an involuntary conversion or the sale of an old residence and purchase of a new residence where both occur within a one-year period) the "cost" thereof to the taxpayer shall be deemed to include among other things, any income of the taxpayer recognized by the income tax laws of 1901 and 1932 as a result of the exchange;
- (2) If the basis is dependent upon acquisition from a decedent, the property shall be deemed to have been acquired from a decedent if deemed so acquired for the purposes of chapter 236 prior to July 1, 1983 or after June 30, 1983 under this chapter but not otherwise, and the residence or nonresidence of the decedent, the location of the property, and chapter 236 [as it read at the time of the acquisition] for property acquired prior to July 1, 1983 or this chapter where the property has been acquired after June 30, 1983 shall be considered;¹
- (3) If the basis is dependent upon deductions, exclusions, or exemptions taken or allowable, under the Internal Revenue Code or a prior applicable federal income tax law, in a prior year, it shall depend upon deductions, exclusions, or exemptions taken or allowable under the income tax law of the State governing such prior years;
- (4) If the basis is dependent upon the election provided for by section 307, Internal Revenue Code, it shall be governed by the election actually made under the Internal Revenue Code for the taxable year, whether or not the taxable year was governed by the income tax law of 1957."

SECTION 8. Section 560:6-108, Hawaii Revised Statutes, is amended to read:

“§560:6-108 Financial institution protection; payment on signature of one party. Financial institutions may enter into multiple-party accounts to the same extent that they may enter into single-party accounts. Subject to the provision of sections [236-24] -12 and 560:6-107, any multiple-party account may be paid, on request and according to its terms, to any one or more of the parties. A financial institution shall not be required to inquire as to the source of funds received for deposit to a multiple-party account, or to inquire as to the proposed application of any sum withdrawn from an account.”

SECTION 9. Section 560:6-109, Hawaii Revised Statutes, is amended to read:

“§560:6-109 Financial institution protection; payment after death or disability; joint account. Subject to the provisions of sections [236-24] -12 and 560:6-107 any sums in a joint account may be paid, on request and according to its terms, to any party without regard to whether any other party is incapacitated or deceased at the time the payment is demanded; but payment may not be made to the personal representative or heirs of a deceased party unless proofs of death are presented to the financial institution showing that the decedent was the last surviving party or unless there is no right of survivorship under section 560:6-104.”

SECTION 10. Chapter 236, Hawaii Revised Statutes, is repealed.

SECTION 11. The substantive provisions of this Act shall amend any other conflicting Act enacted by the regular session of 1983, but nonsubstantive amendments made by this Act shall not supersede any substantive amendments made to the Hawaii Revised Statutes, by any other Act enacted by this regular session of 1983.

SECTION 12. Statutory material to be repealed is bracketed. New material, other than in Section 1, is underscored.

SECTION 13. This Act, upon its approval, shall apply only to property or interests subject to the estate and transfer tax under the new chapter enacted in section 1 of this Act that passes from any person who dies after June 30, 1983.

(Approved June 8, 1983.)

Note

1. Incorrect underscoring.