

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) 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 that owns real property located in the state; and
- (3) Tangible and intangible personal property having a situs in this state.

(d) “Situs” as used in this section means the location of a decedent’s property within the meaning of Section 2104 of the Internal Revenue Code, including regulations and other guidance issued thereunder, substituting “Hawaii” for “the United States”.

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

2. By amending the definitions of “federal credit”, “generation-skipping transfer”, “gross estate”, “personal representative”, “section 2011”, “taxable estate”; and “transfer” to read:

““Federal credit” means:

- (1) For a transfer, the maximum amount of the credit for state death taxes allowed by ~~[section]~~ Section 2011 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent’s adjusted taxable estate; ~~[and]~~
- (2) For a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by ~~[section]~~ Section 2604 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered.] as it existed on December 31, 2000; and
- (3) For a noncitizen transfer, the maximum amount of the credit for state death taxes allowed by Section 2102 of the Internal Revenue Code, as it existed on December 31, 2000, for the decedent’s adjusted taxable estate.

“Generation-skipping transfer” means a generation-skipping transfer as defined and used in ~~[section]~~ Section 2611 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered].

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

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

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

“Taxable estate” means taxable estate as defined in ~~[sections]~~ Sections 2051 to 2056 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered]. For purposes of section 236D-A, “taxable estate” means taxable estate as defined and used in Section 2106 of the Internal Revenue Code, with situs in Hawaii.

“Transfer” means transfer as defined and used in ~~[section]~~ Section 2001 of the [federal] Internal Revenue Code [of 1986, as amended or renumbered].”

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

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

## **ACT 74**

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

(Vetoed by Governor and veto overridden by Legislature on April 29, 2010.)

### **Note**

1. Edited pursuant to HRS §23G-16.5.