

ACT 60

S.B. NO. 1188

A Bill for an Act Relating to the Estate and Generation-Skipping Transfer Taxes.

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

SECTION 1. Act 220, Session Laws of Hawaii 2012, enacted the Estate and Generation-Skipping Transfer Tax Reform Act, designated as chapter 236E, Hawaii Revised Statutes, that established the estate and generation-skipping transfer taxes based on the valuations, deduction, and expenses allowed for federal transfer tax purposes, but with tax rates independent of the federal transfer taxes.

The purpose of this Act is to make technical, nonsubstantive corrections to chapter 236E, Hawaii Revised Statutes, and make clear that a decedent who was in a civil union or recognized equivalent under the laws of the State computes the amount of any transfer tax due to the State as if the civil union or recognized equivalent were recognized as a marriage under the Internal Revenue Code.

SECTION 2. Section 236E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Nonresident not citizen” means a decedent required to file under subchapter B of chapter 11 of the Internal Revenue Code.”

SECTION 3. Section 236E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An exclusion from a Hawaii taxable estate shall be allowed to the estate of every decedent against the tax imposed by section 236E-8. For the purpose of this section, the applicable exclusion amount is the same as the federal applicable exclusion amount, or the exemption equivalent of the unified credit, without reduction for taxable gifts, as set forth for the decedent in chapter 11 of the Internal Revenue Code as further adjusted below:

- (1) For residents, 100 per cent of the applicable exclusion amount;
- (2) For nonresidents, an amount computed by multiplying the applicable exclusion amount by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate; and
- (3) For ~~[nonresidents who are not citizens,]~~ nonresidents not citizens, an amount computed by multiplying the exemption equivalent of the unified credit by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate.”

SECTION 4. Section 236E-7, Hawaii Revised Statutes, is amended as follows:

“~~[[~~§236E-7~~]]~~ **Hawaii taxable estate.** For the purposes of this chapter, “Hawaii taxable estate” means:

- (1) For residents, the federal taxable estate under section 2051, et seq., of the Internal Revenue Code but without regard for the deduction for state death taxes paid under section 2058 of the Internal Revenue Code;
- (2) For nonresidents, the federal taxable estate under section 2051, et seq., of the Internal Revenue Code, but without regard for the deduction for state death taxes paid under section 2058 of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate; and
- (3) For nonresidents not citizens, the federal taxable estate determined under section 2106 of the Internal Revenue ~~[[Code]]~~, but without regard for the deduction for state death taxes paid under section 2106(a)(4) of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the value of the property with a situs in the State subject to tax under this chapter, and the denominator of which is the federal gross estate.”

SECTION 5. Section 236E-21, Hawaii Revised Statutes is amended by amending subsection (a) to read as follows:

“(a) If the amount paid with respect to any taxable transfer is less than the amount due under this chapter, the department shall assess the underpayment from the person responsible for payment; provided that a proceeding to assess the underpayment amount shall commence within:

- (1) Three years from the date the federal estate tax return was filed; or
- (2) One year after the date of final determination of the related federal transfer tax,

whichever is later.

Amounts set forth on a duly filed and accepted federal return for valuations of property, the gross estate, federal taxable estate, and applicable exclusion amount shall be conclusive for purposes of this chapter, and the return required under this chapter shall use the same amounts as the corresponding amounts on

the federal return[-]; provided that with regard to a decedent who was in a valid civil union or recognized equivalent under the laws of the State, but that is not recognized by the Internal Revenue Code as a marriage for federal tax purposes, computations of the valuations of property, the gross estate, federal taxable estate, and applicable exclusion amount shall be made as if the civil union or recognized equivalent under the laws of the State were recognized as a marriage.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act shall take effect upon its approval and shall apply to decedents dying or taxable transfers occurring after December 31, 2012.

(Approved April 30, 2013.)