

ACT 44

S.B. NO. 2887

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, which 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 purposes of this Act are to:

- (1) Fulfill the requirement to make annual conforming amendments to chapter 236E; and
- (2) Amend the definition of “applicable exclusion amount” to close a loophole that allows a decedent to completely or substantially avoid the estate and generation-skipping transfer taxes by gifting away property prior to death, even on the eve of death.

SECTION 2. Section 236E-3, Hawaii Revised Statutes, is amended to read as follows:

“§236E-3 Conformance to the Internal Revenue Code; general application. For all decedents dying after January 25, 2012, as used in this chapter, “Internal Revenue Code” means subtitle B of the federal Internal Revenue Code of 1986, as amended as of ~~January 2, 2013,~~ December 31, 2013, as it applies to the

determination of gross estate, adjusted gross estate, federal taxable estate, and generation-skipping transfers, except those provisions of the Internal Revenue Code and federal public laws that, pursuant to this chapter, do not apply or are otherwise limited in application.”

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,]~~ 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 federal estate tax return, 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 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval and shall apply to decedents dying or taxable transfers occurring after December 31, 2013.

(Approved April 23, 2014.)