

ACT 23

S.B. NO. 1134

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 (1) to make adopt¹ operative Internal Revenue Code sections as of December 31, 2014, and (2) to make technical nonsubstantive changes to ensure uniformity throughout.

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 December 31, [2013,] 2014, 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-4, Hawaii Revised Statutes, is amended to read as follows:

“§236E-4 Administration, adoption, and interrelationship of Internal Revenue Code and federal public laws with this chapter. (a) Reference in provisions of the Internal Revenue Code that are operative in this State to provisions in the Internal Revenue Code that are not operative in this State shall be considered inoperative for the purposes of determining the gross estate, federal taxable estate, and generation-skipping transfers; provided that:

- (1) References to time limits and other administrative provisions in subtitle F (sections 6001 to 7874) of the Internal Revenue Code con-

tained in operative sections of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under subsection (b);

- (2) If inoperative provisions of the Internal Revenue Code have been codified in this chapter, the references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal public laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal public law shall control; and
- (3) Retroactive and prospective provisions in federal public laws amending sections of the Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 [~~2011,~~] date in section 236E-3 shall be operative for the purposes of this chapter.

(b) The director of taxation may adopt the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle B of the Internal Revenue Code operative in this chapter and any administrative provisions of subtitle F, sections 6001 to 7874, of the Internal Revenue Code not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full; provided that any rule adopted pursuant to this subsection shall be adopted pursuant to chapter 91.

(c) The department shall submit to the legislature, no later than twenty days prior to the convening of each regular session, proposed legislation to amend section 236E-3 and any other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on [~~January 2, 2013,~~] the December 31 preceding the regular session. In submitting the proposed legislation, the department may provide that certain amendments made to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or shall be limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions that are recommended to be limited in their operation, or that are not recommended for operation, and shall submit with the proposed legislation required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of the proposed legislation. In preparing the proposed legislation, digest, and explanation, the department may request the assistance of the legislative reference bureau.

It is the intent of the legislature to adopt all amendments made to the Internal Revenue Code during the calendar year preceding each regular session; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.

All provisions of the Internal Revenue Code referred to in this chapter that apply to a husband and wife, spouses, or persons in a legal marital relationship shall be deemed to apply in this chapter to partners in a civil union with the same force and effect as if they were "husband and wife", "spouses", or other terms that describe persons in a legal marital relationship."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act, upon its approval, shall apply to decedents dying or taxable transfers occurring after December 31, 2014.

(Approved May 1, 2015.)

Note

1. So in original.