

## CHAPTER 236E

### ESTATE AND GENERATION-SKIPPING TRANSFER TAX

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This is an unofficial compilation of the Hawaii Revised Statutes.

#### Note

Chapter applies to decedents dying or taxable transfers occurring after January 25, 2012. L 2012, c 220, §7.

**[§236E-1] Short title.** This chapter shall be known and may be cited as the Estate and Generation-Skipping Transfer Tax Reform Act. [L 2012, c 220, pt of §1]

**§236E-2 Definitions.** As used in this chapter:

“Applicable generation-skipping transfer tax rate” means 2.25 per cent multiplied by the inclusion ratio with respect to any property transferred in a generation-skipping transfer as determined under section 2642 of the Internal Revenue Code as amended as of December 21, 2017.

“Decedent” means a deceased individual owning property in the State.

“Department” means the department of taxation.

“Federal estate tax” means the tax due to the United States with respect to a taxable transfer under chapter 11 of the Internal Revenue Code.

“Federal generation-skipping transfer tax” means the tax due to the United States with respect to a taxable transfer under chapter 13 of the Internal Revenue Code.

“Federal return” means the federal estate tax return with respect to the federal estate tax and means the federal generation-skipping transfer tax return with respect to the federal generation-skipping transfer tax.

“Federal taxable estate” means the gross estate less allowable deductions, as determined under chapter 11 of the Internal Revenue Code.

“Federal transfer tax” means the federal estate tax or the federal generation-skipping transfer tax.

“Generation-skipping transfer” means a generation-skipping transfer as defined and used in section 2611 of the Internal Revenue Code.

“Gross estate” means gross estate as defined and used in sections 2031 to 2046 of the Internal Revenue Code.

“Hawaii estate tax” means the tax due to the State with respect to a taxable transfer, unless the context clearly indicates otherwise.

“Hawaii generation-skipping transfer tax” means the tax due to the State with respect to a taxable transfer that gives rise to a federal generation-skipping transfer tax.

“Hawaii net taxable estate” means Hawaii taxable estate less the applicable exclusion amount as set forth in section 236E-6.

“Hawaii transfer tax” means the Hawaii estate tax or the Hawaii generation-skipping transfer tax.

“Nonresident” means a decedent who was not domiciled in the State at time of death.

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

“Nonresident trust” means a trust other than a resident trust as defined in this section.

“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 as defined under section 2203 of the Internal Revenue Code, 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.

“Qualified heir” means a qualified heir as defined in section 2032A(e)(1) of the Internal Revenue Code.

“Release” means a document issued by the department that certifies that all taxes have been paid or the estate is released from all taxes due under this chapter.

“Resident” means a decedent who was domiciled in the State at the time of death.

“Resident trust” means a resident trust as defined under section 235-1; or if the administration is partly carried on in the State and partly outside the State, a trust where one-half or more of the fiduciaries reside in the State.

“Situs” means, with respect to a decedent not a resident or citizen of the United States, the location of the 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”.

“State” means any state or territory of the United States and the District of Columbia.

“Transfer” or “taxable transfer” means:

- (1) A transfer as used in section 2001(a) of the Internal Revenue Code and shall include the disposition of or failure to use property for a qualified use under section 2032A(c) of the Internal Revenue Code; or
- (2) A generation-skipping transfer as defined and used in section 2611 of the Internal Revenue Code; provided that a direct skip that is a transfer subject to the tax imposed by chapter 12 of the Internal Revenue Code shall not be treated as a taxable transfer.

“Transferee” means a transferee within the meaning of sections 2603(a)(1) and 6901(h) of the Internal Revenue Code.

“Transferred property” means:

- (1) With respect to a taxable transfer subject to the federal estate tax, the deceased individual’s gross estate as defined in section 2031 of the Internal Revenue Code;
- (2) With respect to a taxable transfer occurring as a result of a taxable termination as defined in section 2612(a) of the Internal Revenue Code, the taxable amount determined under section 2622(a) of the Internal Revenue Code;
- (3) With respect to a taxable transfer occurring as a result of a taxable distribution as defined in section 2612(b) of the Internal Revenue Code, the taxable amount determined under section 2621(a) of the Internal Revenue Code;
- (4) With respect to a taxable transfer occurring as a result of a direct skip, as defined in section 2612(c) of the Internal Revenue Code, the taxable amount determined under section 2623 of the Internal Revenue Code; and
- (5) With respect to an event which causes the imposition of an additional federal estate tax under section 2032A(c) of the Internal Revenue Code, the qualified real property that was disposed of or which ceased to be used for the qualified use, within the meaning of section 2032A(c)(1) of the Internal Revenue Code. [L 2012, c 220, pt of §1; am L 2013, c 60, §2; am L 2018, c 27, §6]

#### Note

The 2013 amendment shall take effect April 30, 2013 and shall apply to decedents dying or taxable transfers occurring after December 31, 2012. L 2013, c 60, §7.

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15.

**§236E-3 Conformance to the Internal Revenue Code; general application.** For all decedents dying after December 31, 2017, 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, 2017, 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. [L 2012, c 220, pt of §1; am L 2013, c 45, §2; am L 2014, c 44, §2; am L 2015, c 23, §2; am L 2016, c 33, §3, am L 2017, c 95, §3; am L 2018, c 27, §7]

**Note**

The 2017 amendment applies to decedents dying or taxable transfers occurring after December 31, 2016. L 2017, c 95, §5(2).

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15.

**§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 contained 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 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 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. [L 2012, c 220, pt of §1; L 2013, c 45, §3, am L 2015, c 23, §3]

**Note**

The 2015 amendment applies to decedents dying or taxable transfers occurring after December 31, 2014. L 2015, c 23, §5.

**[§236E-5] Legislative intent; application of Internal Revenue Code.** (a) It is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the estate and generation-skipping transfer tax law of the State as closely as possible to the Internal Revenue Code, in order to simplify the filing of returns and minimize the taxpayers’ burdens in complying with the estate and generation-skipping transfer tax law. The rules and regulations, forms, and

procedures adopted and established under this chapter shall conform as nearly as possible, unless there is good reason to the contrary, to the rules and regulations, forms, and procedures adopted and established under the Internal Revenue Code.

(b) The Internal Revenue Code, so far as made operative by this chapter, is a statute adopted and incorporated by reference. The Internal Revenue Code shall be applied using changes in nomenclature and other language, including the omission of inapplicable language, where necessary to effectuate the intent of this section. References to the following terms in the Internal Revenue Code shall have the following meanings:

“Interest at the underpayment rate” or “interest at the overpayment rate” means the interest rate set forth in section 231-39(b)(4) or section 231-23(d)(1), as the case may be.

“Secretary or his delegate” means the director of taxation or the director’s duly authorized subordinates. [L 2012, c 220, pt of §1; am L 2017, c 12, §47]

**§236E-6 Applicable exclusion amounts.** (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 equal to:

- (1) The federal applicable exclusion amount;
- (2) The exemption equivalent of the unified credit, reduced by the amount of taxable gifts made by the decedent that reduces the amount of the federal applicable exclusion amount; or
- (3) 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 amended as of December 21, 2017, and as further adjusted pursuant to subsection (b).

(b) The applicable exclusion amount calculated in subsection (a) shall be further adjusted as follows:

- (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.

(c)(1) For the purposes of this chapter, every decedent having property in the State shall be presumed to have died a resident of the State. The burden of proof in an estate tax proceeding shall be upon any decedent’s estate claiming exemption from the tax imposed by this chapter by reason of the decedent’s alleged nonresidency;

(2) Any person required to make and file a tax return under this chapter, who believes that the decedent died a nonresident of the State, may file a request for determination of domicile in writing with the department, stating the specific grounds upon which the request is founded, provided:

- (A) The person has filed the return required under this chapter;
- (B) At least two hundred seventy days, but no more than three years, have elapsed since the due date of the return or, if applicable, the extended due date of the return;
- (C) The person has not been notified, in writing, by the department that a written agreement of compromise with the taxing authorities of another jurisdiction, under section 236E-24, is being negotiated; and
- (D) The department has not previously determined whether the decedent died a resident of the State;

(3) Not later than one hundred eighty days following receipt of a request for determination, the department shall determine whether the decedent died a resident or a nonresident of the State. If the department commences negotiations over a written agreement of compromise with the taxing authorities of another jurisdiction after a request for determination of domicile is filed, the one hundred eighty day period shall be tolled for the duration of the negotiations. If, before the expiration of the one hundred eighty day period, both the department and the person required to make and file a tax return under this chapter have consented in writing to the making of a determination after such time, the determination may be made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements; provided that the agreements are made in writing before the expiration of the period previously agreed upon;

(4) The department shall mail notice of the proposed determination to the person required to make and file a tax return under this chapter. The notice shall briefly set forth the department’s findings of fact and the basis of decision in each case decided adversely to the person. Sixty days after the date on which it is mailed, a notice of proposed determination shall constitute a final determination, unless the person required to make and file a tax return under this chapter has filed an appeal of the determination as provided in section 236E-18; and

(5) Nothing in this subsection shall be construed to relieve any person filing a request for determination of domicile of the obligation to pay the correct amount of tax on or before the due date of the tax. [L 2012, c 220, pt of §1; am L 2013, c 60, §3; am L 2014, c 44, §3; am L 2018, c 27, §8]

**Note**

The 2014 amendment applies to decedents dying or taxable transfers occurring after December 31, 2013. L 2014, c 44, §5.

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15.

**§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. [L 2012, c 220, pt of §1; am L 2013, c 60, §4]

**Note**

The 2013 amendment applies to decedents dying or taxable transfers occurring after December 31, 2012. L 2013, c 60, §7.

**§236E-8 Tax imposed; credit for tax paid other state.** (a) This section shall apply to a decedent who, at the time of death was:

- (1) A resident of the State; or
- (2) A nonresident of the State whose gross estate includes any real property situated in the State or tangible personal property having a situs in the State. Where the decedent is the sole owner of a single member limited liability company that has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of this chapter and this chapter shall be applied as if the sole member is the owner of the property.

(b) With respect to the estates of decedents dying after January 25, 2012, the tax based on the Hawaii net taxable estate shall be as provided in the following schedule:

If the Hawaii net taxable estate is:	The tax shall be:
\$1,000,000 or less	10% of the Hawaii net taxable estate
Over \$1,000,000 but not over \$2,000,000	\$100,000 plus 11% of the amount by which the Hawaii net taxable estate exceeds \$1,000,000
Over \$2,000,000 but not over \$3,000,000	\$210,000 plus 12% of the amount by which the Hawaii net taxable estate exceeds \$2,000,000
Over \$3,000,000 but not over \$4,000,000	\$330,000 plus 13% of the amount by which the Hawaii net taxable estate exceeds \$3,000,000
Over \$4,000,000 but not over \$5,000,000	\$460,000 plus 14% of the amount by which the Hawaii net taxable estate exceeds \$4,000,000
Over \$5,000,000	\$600,000 plus 15.7% of the amount by which the Hawaii net taxable estate exceeds \$5,000,000

(c) If any property of a resident is subject to a death tax imposed by another state 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 the 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 actually paid to the other state; or
- (2) An amount computed by multiplying the Hawaii estate tax 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 total value of the decedent’s gross estate.

(d) Except as otherwise expressly provided, for purposes of this chapter, the gross value of transferred property shall be its value as finally determined for purposes of the federal transfer tax. [L 2012, c 220, pt of §1; am L 2017, c 156, §1; am L 2018, c 27, §9]

**Note**

The 2017 amendment shall take effect July 10, 2017 and shall apply to decedents dying or taxable transfers occurring after December 31, 2016. L 2017, c 156, §3.

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15.

**§236E-9 Returns; time to file return and pay tax.** (a) The Hawaii transfer tax return, including any supplemental or amended return, is required to be filed pursuant to this chapter whenever a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed or any tax is owed under this chapter. The return shall be filed, and the Hawaii transfer tax, including any additional tax that may become due, shall be paid by:

- (1) The same person or persons, respectively, who are required to pay the federal transfer tax and file the federal return, including any duly authorized executor or administrator; or
- (2) If no federal transfer tax or federal return is due, the person who would be required to pay the federal transfer tax and file the federal return if any were due.

If there is more than one executor or administrator, the return shall be made jointly by all. If there is no executor or administrator appointed, qualified, and acting, each person in actual or constructive possession of any property of the decedent is constituted an executor for purposes of the tax and shall make and file a return. If in any case the executor is unable to make a complete return as to any part of the gross estate, the executor shall provide all the information available to the executor with respect to the property, including a full description and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, each person holding a legal or equitable interest in the property shall, upon notice from the department, make a return as to that part of the gross estate.

(b) Any return required to be filed by this section shall be filed with the department on or before the date prescribed by section 6075 of the Internal Revenue Code for the federal estate tax return or section 2662 of the Internal Revenue Code for the applicable generation-skipping transfer tax return, including any extension of time for filing the federal estate tax return or applicable generation-skipping transfer tax return.

- (c)(1) The personal representative, without assessment, notice, or demand, shall pay any tax due thereon to the department on or before the date fixed for filing the return, out of any moneys belonging to the estate in the personal representative's hands; and
- (2) The personal representative shall have the same powers and duties with respect to the raising of funds for the payment of the tax as conferred upon an executor under sections 2205, 2206, 2207, 2207A, and 2207B of the Internal Revenue Code, and pursuant to the laws of the State in the case of raising funds for the payment of a decedent's debts generally. Any provision in a decedent's will or revocable trust in which a decedent effectively waives a right of recovery under a section of the Internal Revenue Code specified in this paragraph shall be deemed a waiver of the corresponding right of recovery under this section, unless the will or revocable trust specifically states otherwise.

(d) 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.

(e) If a federal transfer tax return is due and any portion of the federal transfer tax is deferred or to be paid in installments under the provisions of the Internal Revenue Code, the portion of the Hawaii transfer tax that is subject to deferral or payable in installments shall be determined by multiplying the Hawaii transfer tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a tax situs in the State and that give rise to the deferred or installment payment under the Internal Revenue Code, and the denominator of which is the gross value of all assets included in the transferred property having a tax situs in the State.

If a federal transfer tax return is not due, the executor may elect to defer or pay in installments the Hawaii transfer tax in any situation where, if a federal transfer tax return was due, any portion of the federal transfer tax could have been deferred or allowed to be paid in installments under the provisions of the Internal Revenue Code; provided that the director of taxation shall determine the eligibility for deferral or installment payments.

Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable sections of the Internal Revenue Code; provided that the rate of interest on unpaid amounts of Hawaii transfer tax shall be determined under this chapter.

Acceleration of payment under this section shall occur under the same circumstances and in the same manner as provided in the Internal Revenue Code.

(f) No return shall be required to be filed unless a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed. [L 2012, c 220, pt of §1; am L 2018, c 27, §10]

**Note**

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15(2).

**[§236E-10] Interest on amount due; penalties.** (a) Any tax due under this chapter that is not paid by the time prescribed for the filing of the return as provided in section 236E-9, not including any extension with 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 return provided for in section 236E-9 is not filed within the time period specified, unless it is shown that the failure to file is due to a reasonable cause, then there shall be paid, 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, or five per cent of the additional tax due in the case of a supplemental return, for each month beyond the time periods that the return has not been filed; provided that no penalty so imposed shall exceed a total of twenty-five per cent of the tax.

(c) If the Internal Revenue Service waives the penalty provided in the Internal Revenue Code for failure to timely file the federal return or the penalty for failure to timely pay the federal transfer tax liability, the waiver shall be deemed to constitute reasonable cause for the purposes of this section. [L 2012, c 220, pt of §1]

**§236E-11 Extension of time to file return.** (a) If a federal transfer tax return is due and the date for filing the federal return or the date for payment of the federal transfer tax is extended by the Internal Revenue Service, the filing of the return and payment of the tax imposed by this chapter shall be due on the respective dates specified by the Internal Revenue Service in granting a request for extension. If the request for extension is granted by the Internal Revenue Service, the person required to file the Hawaii transfer tax return shall file along with the return required under this chapter a copy of the request for extension showing approval of the extension by the Internal Revenue Service. If a request for extension of time to file the federal return is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the return required by this chapter is filed within the time specified by the Internal Revenue Service for filing the federal return. If a request for extension of time to pay the federal transfer tax is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the tax is paid within the time specified by the Internal Revenue Service for paying the federal transfer tax. The extension shall be made by filing a true copy of the federal extension or extensions of time for filing or payment, or both, with the return required under section 236E-9.

If a federal transfer tax return is not due, the director of taxation may grant a reasonable extension of time for filing returns under rules as the department shall prescribe. [L 2012, c 220, pt of §1; am L 2018, c 27, §11]

**Note**

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15(2).

**[§236E-12] Department to issue release; final settlement of account.** (a) The department shall issue an automatic release of estate tax liability to the personal representative when:

- (1) No estate 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 estate taxes due under this chapter have been paid as prescribed in section 236E-9, 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 confer upon the personal representative sufficient authority to effectuate the transfer of all property composing the decedent's estate. [L 2012, c 220, pt of §1]

**[§236E-13] Amended returns; final determination.** If the amount of the federal taxable estate reported on an estate's federal estate tax return is changed or corrected by the Internal Revenue Service, the person required to make and file the estate tax return under this chapter shall provide notice of the change or correction to the department by filing, within ninety days after the final determination of the change or correction, or as otherwise required by the department, an amended return under this chapter, and shall furnish to the department any information, schedules, records, documents or papers relating to the change or correction. The time for filing the return may be extended by the department upon a showing of due cause. If an additional tax under this chapter is required to be paid pursuant to the changed or amended return, the person required to pay the tax shall pay the additional tax, together with interest as provided in section 236E-10, at the same time the supplemental or amended return is filed. [L 2012, c 220, pt of §1]

**[§236E-14] Administration; rules.** The department may adopt rules under chapter 91 to implement this chapter. [L 2012, c 220, pt of §1]

**[§236E-15] 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 any property necessary to pay the estate taxes due under this chapter. A personal representative may sell any property specifically bequeathed or devised as 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 estate 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 any part of the gross estate that 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 that 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 that 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. [L 2012, c 220, pt of §1]

**[§236E-16] 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 estate taxes due under this chapter shall be 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 estate taxes due under this chapter shall be in an amount not less 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 the State without first paying, securing another's payment of, or furnishing security for payment of the estate taxes due under this chapter shall be liable for the taxes to the extent of the value of the property delivered. Security for payment of the estate taxes due under this chapter shall be in an amount not less than the value of all property delivered to the personal representative or legal representative of the decedent outside the State by the person.

(c) For the purposes of this section, a person does not have control, custody, or possession of a decedent's property, if the person is not responsible for paying the tax due under this section.

For the purposes of this subsection, "person" may include but is not limited to a stockbroker or stock transfer agent, bank or other depository of checking and savings account, safe-deposit company, or life insurance company.

(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 any delivery and transfer as the personal representative may direct without being liable for any estate taxes due under this chapter. [L 2012, c 220, pt of §1]

**§236E-17 Generation-skipping transfers; tax imposed.** (a) A Hawaii generation-skipping transfer tax is imposed on every taxable transfer involving:

- (1) Transferred property located in the State; and
- (2) Transferred property from a resident trust.

(b) The tax shall be the applicable generation-skipping transfer tax rate multiplied by the taxable amount as determined under chapter 13 of the Internal Revenue Code, multiplied by a fraction, the numerator of which is the taxable transfer subject to the tax under subsection (a) and the denominator of which is the total amount of taxable transfers subject to the federal generation-skipping transfer tax.

(c) The person required to report and pay the federal generation-skipping transfer tax, or, if no federal generation-skipping transfer tax is due, the person who would be required to report and pay the federal generation-skipping transfer tax if any were due, shall file with the department following:

- (1) A report for the generation-skipping transfer tax due under this section; and
- (2) A true copy of the federal generation-skipping transfer tax return, if any is due.

The information required under this subsection shall be filed with the department on or before the date prescribed in section 2662 of the Internal Revenue Code and the regulations promulgated thereunder.

(d) If a federal transfer tax is due and the person required to file the return has obtained an extension of time for filing the federal return, the filing required by subsection (c) 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 along with the report required under subsection (c).

If a federal transfer tax is not due, the director of taxation may grant a reasonable extension of time for filing returns under rules as the department shall prescribe.

(e) If a taxable transfer subject to the Hawaii generation-skipping transfer tax is subject to a generation-skipping transfer tax imposed by another state and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in this State, the amount of the tax due under this section shall be credited with the lesser of:

- (1) The amount of the generation-skipping transfer tax actually paid the other state; or
- (2) An amount computed by multiplying the Hawaii generation-skipping transfer tax by a fraction, the numerator of which is the taxable transfer subject to the generation-skipping transfer tax imposed by the other state, and the denominator of which is the total amount of the taxable transfers subject to the federal generation-skipping transfer tax.



(f) For the purposes of this section, the term “trust” includes a trust as defined in section 2652(b)(1) of the Internal Revenue Code. [L 2012, c 220, pt of §1; am L 2018, c 27, §12]

**Note**

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15(2).

**[§236E-18] Administration by department; action for collection of tax; appeal.** The department may collect the taxes provided for in this chapter, including applicable interest and penalties, and shall represent the State in all matters pertaining to this chapter, before any court or in any other manner. The department, through the attorney general, may institute proceedings for the collection of the taxes and any interest and penalties on the taxes.

The circuit court for any county that has assumed lawful jurisdiction over the property of the decedent for general probate or administration purposes under the laws of the State shall have jurisdiction to hear and determine all questions in relation to the Hawaii estate tax arising under this chapter. If there are no probate or administration proceedings in any court of the State, the following court shall have jurisdiction:

- (1) If the decedent was a resident, the circuit court for the county in which the decedent was a resident; or
- (2) If the decedent was a nonresident, any court that has 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.

Any court first acquiring jurisdiction shall retain the same to the exclusion of every other. The tax appeal court shall have jurisdiction to hear and determine all questions in relation to the generation-skipping transfer tax arising under this chapter.

Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment to a court of competent jurisdiction within the time set forth in section 235-114. The distribution of taxes paid pending the appeal shall be as provided in chapter 232. [L 2012, c 220, pt of §1]

**[§236E-18.5] Audit of return; procedure upon failure to file return; additional taxes; limitation period.** (a) The director of taxation, or the director’s designee, is authorized and empowered to examine all account books, bank books, bank statements, records, vouchers, copies of federal tax returns, and any and all other documents and evidence having any relevance to the determination of any amount relevant to the Hawaii transfer tax, as required to be returned under this chapter, and the director may employ the director’s powers under section 231-7 for these purposes.

(b) If the department discovers from the examination of the return or otherwise that any amount has not been assessed or otherwise properly included in determining any amount relevant to the Hawaii transfer tax, it may assess those amounts.

(c) If the person required to file the return required under this chapter fails to file the return or declines to authenticate a return, the department shall make a return for the person based upon the best information obtainable and shall levy and assess against the person the tax as shown on the return.

(d) For the purposes of this section, the department shall give notice of the assessment to the person required to file the return required under this chapter. The person put on notice shall have thirty days to confer with the department as to the proposed assessment. After the expiration of thirty days from the notification, the department shall finalize the assessment and give notice to the person of the tax and interest and penalties, if any. The amount shall be paid within twenty days after the date the notice, properly addressed to the person required to file the return required to be filed under this chapter, is mailed to the person’s last known address.

(e) In the case of an audit commenced under this section, the amount of Hawaii transfer tax imposed by this chapter shall be assessed or levied within three years after the return was filed, or within three years of the due date prescribed for the filing of that return, whichever is later. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or intent to evade tax shall be upon the State. The limitation period shall be suspended if the person required to file the return agrees to suspend the period. [L 2018, c 27, §5]

**Note**

Section applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15(2).

**[§236E-19] Parent as natural guardian for purposes of sections 2032A and 2057 of the Internal Revenue Code.** A parent, without being appointed guardian of the person or conservator of the estate, or a conservator of the estate, or, if no conservator of the estate has been appointed, a guardian of the person, of any minor or disabled person whose interest is not adverse to the minor or disabled person, may make any election and sign, without court approval, any agreement on behalf of the minor or disabled person under:

- (1) Section 2032A of the Internal Revenue Code for the valuation of property under that section; or
- (2) Section 2057 of the Internal Revenue Code relating to deduction of the value of certain property under that section.

Any election so made, and any agreement so signed, shall have the same legal force and effect as if the election had been made and the agreement had been signed by the minor or disabled person and the minor or disabled person had been legally competent. [L 2012, c 220, pt of §1]

**[§236E-20] Reimbursement.** If a person who pays the Hawaii transfer tax arising from a taxable transfer is entitled under the Internal Revenue Code or any other state or federal statute or rule of law to reimbursement of a portion of the federal transfer tax from any other person who has received transferred property, then, unless the governing document directs otherwise, the person who paid the Hawaii transfer tax shall be entitled to reimbursement from that other person of a portion of the Hawaii transfer tax. The amount of reimbursement shall be determined by multiplying the total Hawaii transfer tax by a fraction, the numerator of which shall be the gross value of the transferred property received by that other person and having a tax situs in the State that gives rise to a right of reimbursement of the federal transfer tax, and the denominator of which shall be the gross value of all transferred property having a tax situs in the State. [L 2012, c 220, pt of §1]

**§236E-21 Statute of limitations; claims for refund.** (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, as follows:

- (1) If a federal transfer tax return is due, a proceeding to assess the underpayment amount shall commence within:
  - (A) Three years from the date the federal transfer tax return was filed; or
  - (B) One year after the date of final determination of the related federal transfer tax,
 whichever is later; or
- (2) If a federal transfer tax return is not due, a proceeding to assess the underpayment amount shall commence within:
  - (A) Three years from the date the Hawaii transfer tax return was filed; or
  - (B) One year after the date of final determination of the related Hawaii transfer tax,
 whichever is later.

(b) 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.

(c) If the amount paid with respect to any taxable transfer is more than the amount due under this chapter, the department shall refund the excess to the person entitled to the refund together with interest at the existing statutory rate of interest in the manner provided in section 231-23, as follows:

- (1) If a federal transfer tax return was due, an application for refund shall be filed with the department within:
  - (A) One year after the last date allowable under the Internal Revenue Code for filing a claim for refund of any part of the related federal transfer tax; or
  - (B) One year after the date of final determination of the related federal transfer tax,
 whichever is later; or
- (2) If a federal transfer tax return was not due, an application for refund shall be filed with the department within:
  - (A) Three years from the date the Hawaii transfer tax return was filed; or
  - (B) One year after the date of final determination of the related Hawaii transfer tax,
 whichever is later.

(d) As to all tax payments for which a refund or credit is not authorized by this section, including, without prejudice to the generality of the foregoing, cases of unconstitutionality, the remedies provided by appeal or by section 40-35 are exclusive. [L 2012, c 220, pt of §1; am L 2013, c 60, §5; am L 2018, c 27, §13]

#### Note

The 2018 amendment applies to decedents dying or taxable transfers occurring after December 31, 2017. L 2018, c 27, §15.

The 2013 amendment shall take effect April 30, 2013 and shall apply to decedents dying or taxable transfers occurring after December 31, 2012. L 2013, c 60, §7.

**[§236E-22] Expenses of court proceeding.** Whenever a circuit court certifies that probable cause exists 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(c)(2), or allow all expenses incurred for services of citation and other lawful disbursements that have not otherwise been paid. [L 2012, c 220, pt of §1]

**[§236E-23] Who liable; amount.** In addition to the amount of tax determined to be due under this chapter, every person who fails or refuses to perform, within a reasonable time, any 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 additional sum of \$10,000, to be recovered in an action brought by the attorney general in the name of the State. [L 2012, c 220, pt of §1]

**[§236E-24] Agreements with other states for payment of tax imposed by this chapter.** Where the department claims that transferred property has a tax situs in this State and the taxing authority of any other state claims the same transferred property is subject to a transfer tax in the other state, the department may enter into a written agreement with the taxing authority in the other state and with the person required to file the Hawaii transfer tax return or pay the Hawaii transfer tax that a certain sum shall be accepted in full payment of the tax imposed by this chapter; provided that the agreement also fixes the amount to be paid in full payment to the other state. The person required to file the Hawaii transfer tax return or pay the Hawaii transfer tax shall be authorized to enter into the agreement provided for in this section. [L 2012, c 220, pt of §1]

**[§236E-25] Disclosure of federal return information.** When receipt of estate tax information from the Internal Revenue Service under section 6103(d) of the Internal Revenue Code discloses possible Hawaii estate tax liability, any person possessing federal estate tax information shall be required to submit the information to the department upon request to enable the department to audit the return or Internal Revenue Service audit adjustments and to determine whether any tax, penalty, or interest is due the State where such return information has not been filed with the department. A claim of confidentiality shall not prohibit the dissemination of tax information required under this section and shall not constitute grounds for failing or refusing to surrender the tax information to the department in the administration and enforcement of this chapter. Any tax information submitted in compliance with this section shall be treated and afforded with the same confidentiality as a return filed under section 235-116. [L 2012, c 220, pt of §1]

**[§236E-26] Disposition of revenues.** All moneys collected under this chapter shall be state realizations, to be kept and accounted for as provided by law. [L 2012, c 220, pt of §1]

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