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## A BILL FOR AN ACT

RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE  
INTERNAL REVENUE CODE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is  
2 amended to read as follows:  
3 **"§235-2.3 Conformance to the federal Internal Revenue**  
4 **Code; general application.** (a) For all taxable years beginning  
5 after December 31, [~~2004~~] 2005, as used in this chapter,  
6 "Internal Revenue Code" means subtitle A, chapter 1, of the  
7 federal Internal Revenue Code of 1986, as amended as of December  
8 31, [~~2004~~] 2005, as it applies to the determination of gross  
9 income, adjusted gross income, ordinary income and loss, and  
10 taxable income, except those provisions of the Internal Revenue  
11 Code and federal public laws which, pursuant to this chapter, do  
12 not apply or are otherwise limited in application and except for  
13 the provisions of Public Law 109-001 which apply to section 170  
14 of the Internal Revenue Code. The provisions of Public Law 109-  
15 001 to accelerate the deduction for charitable cash  
16 contributions for the relief of victims of the 2004 Indian Ocean



1 tsunami are applicable for the calendar year that ended December  
2 31, 2004, and the calendar year ending December 31, 2005.

3 Sections 235-2, 235-2.1, and 235-2.2 shall continue to be  
4 used to determine:

5 (1) The basis of property, if a taxpayer first determined  
6 the basis of property in a taxable year to which such  
7 sections apply, and if such determination was made  
8 before January 1, 1978; and

9 (2) Gross income, adjusted gross income, ordinary income  
10 and loss, and taxable income for a taxable year to  
11 which such sections apply where such taxable year  
12 begins before January 1, 1978.

13 (b) The following Internal Revenue Code subchapters, parts  
14 of subchapters, sections, subsections, and parts of subsections  
15 shall not be operative for the purposes of this chapter, unless  
16 otherwise provided:

17 (1) Subchapter A (sections 1 to 59A) (with respect to  
18 determination of tax liability), except section  
19 1(h)(2) (relating to net capital gain reduced by the  
20 amount taken into account as investment income),  
21 except sections 2(a), 2(b), and 2(c) (with respect to

1 the definition of "surviving spouse" and "head of  
2 household"), except section 41 (with respect to the  
3 credit for increasing research activities), except  
4 section 42 (with respect to low-income housing  
5 credit), and except sections 47 and 48, as amended, as  
6 of December 31, 1984 (with respect to certain  
7 depreciable tangible personal property). For  
8 treatment, see sections 235-110.91, 235-110.7, and  
9 235-110.8;

10 (2) Section 78 (with respect to dividends received from  
11 certain foreign corporations by domestic corporations  
12 choosing foreign tax credit);

13 (3) Section 86 (with respect to social security and tier 1  
14 railroad retirement benefits);

15 (4) Section 103 (with respect to interest on state and  
16 local bonds). For treatment, see section 235-7(b);

17 (5) Section 114 (with respect to extraterritorial income).  
18 For treatment, any transaction as specified in the  
19 transitional rule for 2005 and 2006 as specified in  
20 the American Jobs Creation Act of 2004 section 101(d)  
21 and any transaction that has occurred pursuant to a

- 1 binding contract as specified in the American Jobs  
2 Creation Act of 2004 section 101(f) are inoperative;
- 3 (6) Section 120 (with respect to amounts received under  
4 qualified group legal services plans). For treatment,  
5 see section 235-7(a)(9) to (11);
- 6 (7) Section 122 (with respect to certain reduced uniformed  
7 services retirement pay). For treatment, see section  
8 235-7(a)(3);
- 9 (8) Section 135 (with respect to income from United States  
10 savings bonds used to pay higher education tuition and  
11 fees). For treatment, see section 235-7(a)(1);
- 12 (9) Subchapter B (sections 141 to 150) (with respect to  
13 tax exemption requirements for state and local bonds);
- 14 (10) Section 151 (with respect to allowance of deductions  
15 for personal exemptions). For treatment, see section  
16 235-54;
- 17 (11) Section 179B (with respect to expensing of capital  
18 costs incurred in complying with [~~environmental~~  
19 ~~protection agency~~] Environmental Protection Agency  
20 sulphur regulations);

- 1 (12) Section 181 (with respect to special rules for certain
- 2 film and television productions);
- 3 (13) Section 196 (with respect to deduction for certain
- 4 unused investment credits);
- 5 (14) Section 199 (with respect to the U.S. production
- 6 activities deduction);
- 7 (15) Section 222 (with respect to qualified tuition and
- 8 related expenses);
- 9 (16) Sections 241 to 247 (with respect to special
- 10 deductions for corporations). For treatment, see
- 11 section 235-7(c);
- 12 (17) Section 280C (with respect to certain expenses for
- 13 which credits are allowable). For treatment, see
- 14 section 235-110.91;
- 15 (18) Section 291 (with respect to special rules relating to
- 16 corporate preference items);
- 17 (19) Section 367 (with respect to foreign corporations);
- 18 (20) Section 501(c)(12), (15), (16) (with respect to exempt
- 19 organizations);
- 20 (21) Section 515 (with respect to taxes of foreign
- 21 countries and possessions of the United States);

- 1 (22) Subchapter G (sections 531 to 565) (with respect to  
2 corporations used to avoid income tax on  
3 shareholders);
- 4 (23) Subchapter H (sections 581 to 597) (with respect to  
5 banking institutions), except section 584 (with  
6 respect to common trust funds). For treatment, see  
7 chapter 241;
- 8 (24) Section 642(a) and (b) (with respect to special rules  
9 for credits and deductions applicable to trusts). For  
10 treatment, see sections 235-54(b) and 235-55;
- 11 (25) Section 646 (with respect to tax treatment of electing  
12 Alaska Native settlement trusts);
- 13 (26) Section 668 (with respect to interest charge on  
14 accumulation distributions from foreign trusts);
- 15 (27) Subchapter L (sections 801 to 848) (with respect to  
16 insurance companies). For treatment, see sections  
17 431:7-202 and 431:7-204;
- 18 (28) Section 853 (with respect to foreign tax credit  
19 allowed to shareholders). For treatment, see section  
20 235-55;

- 1 (29) Subchapter N (sections 861 to 999) (with respect to  
2 tax based on income from sources within or without the  
3 United States), except sections 985 to 989 (with  
4 respect to foreign currency transactions). For  
5 treatment, see sections 235-4, 235-5, and 235-7(b),  
6 and 235-55;
- 7 (30) Section 1042(g) (with respect to sales of stock in  
8 agricultural refiners and processors to eligible farm  
9 cooperatives);
- 10 (31) Section 1055 (with respect to redeemable ground  
11 rents);
- 12 (32) Section 1057 (with respect to election to treat  
13 transfer to foreign trust, etc., as taxable exchange);
- 14 (33) Sections 1291 to 1298 (with respect to treatment of  
15 passive foreign investment companies);
- 16 (34) Subchapter Q (sections 1311 to 1351) (with respect to  
17 readjustment of tax between years and special  
18 limitations);
- 19 (35) Subchapter R (sections 1352 to 1359) (with respect to  
20 election to determine corporate tax on certain  
21 international shipping activities using per ton rate);

- 1 (36) Subchapter U (sections 1391 to 1397F) (with respect to  
2 designation and treatment of empowerment zones,  
3 enterprise communities, and rural development  
4 investment areas). For treatment, see chapter 209E;  
5 [~~and~~]
- 6 (37) Subchapter W (sections 1400 to 1400C) (with respect to  
7 District of Columbia enterprise zone) [-];
- 8 (38) Section 14000 (with respect to education tax  
9 benefits);
- 10 (39) Section 1400P (with respect to housing tax benefits);
- 11 (40) Section 1400R (with respect to employment relief); and
- 12 (41) Section 1400T (with respect to special rules for  
13 mortgage revenue bonds)."

14 SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§235-2.45 Operation of certain Internal Revenue Code**  
17 **provisions; sections 641 to 7518.** (a) Section 641 (with  
18 respect to imposition of tax) of the Internal Revenue Code shall  
19 be operative for the purposes of this chapter subject to the  
20 following:





1 (c) Section 685 (with respect to treatment of qualified  
2 funeral trusts) of the Internal Revenue Code shall be operative  
3 for purposes of this chapter, except that the tax imposed under  
4 this chapter shall be computed at the tax rates provided under  
5 section 235-51, and no deduction for the exemption amount  
6 provided in section 235-54(b) shall be allowed. The cost-of-  
7 living adjustment determined under section 1(f)(3) of the  
8 Internal Revenue Code shall be operative for the purpose of  
9 applying section 685(c)(3) under this chapter.

10 (d) Section 704 of the Internal Revenue Code (with respect  
11 to a partner's distributive share) shall be operative for  
12 purposes of this chapter; except that section 704(b)(2) shall  
13 not apply to:

14 (1) Allocations of the high technology business investment  
15 tax credit allowed by section 235-110.9;

16 (2) Allocations of net operating loss pursuant to section  
17 235-111.5;

18 (3) Allocations of the attractions and educational  
19 facilities tax credit allowed by section 235-110.46;

20 or

1 (4) Allocations of low-income housing tax credits among  
2 partners under section 235-110.8.

3 (e) Section 1212 (with respect to capital loss carrybacks  
4 and carryforwards) of the Internal Revenue Code shall be  
5 operative for the purposes of this chapter; except that for the  
6 purposes of this chapter the capital loss carryback provisions  
7 of section 1212 shall not be operative and the capital loss  
8 carryforward allowed by section 1212(a) shall be limited to five  
9 years; except for a qualified high technology business as  
10 defined in section 235-7.3, which shall be limited to fifteen  
11 years.

12 (f) Subchapter S (sections 1361 to 1379) (with respect to  
13 tax treatment of S corporations and their shareholders) of  
14 chapter 1 of the Internal Revenue Code shall be operative for  
15 the purposes of this chapter as provided in part VII.

16 (g) Section 1400N (with respect to tax benefits for Gulf  
17 Opportunity Zone) of the Internal Revenue Code shall be  
18 operative for the purposes of this chapter, except that sections  
19 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)  
20 (with respect to advance refundings of certain tax-exempt  
21 bonds); 1400N(d) (with respect to special allowance for certain

1 property acquired on or after August 28, 2005); 1400N(e) (with  
2 respect to increase in expensing under section 179); 1400N(h)  
3 (with respect to increase in rehabilitation credit); 1400N(l)  
4 (with respect to credit to holders of Gulf tax credit bonds);  
5 1400N(m) (with respect to application of new markets tax credit  
6 to investments in community development entities serving Gulf  
7 Opportunity Zone); 1400N(n) (with respect to treatment of  
8 representations regarding income eligibility for purposes of  
9 qualified residential rental project requirements) shall not be  
10 operative for purposes of this chapter.

11 (h) Section 1400S (with respect to additional tax relief  
12 provisions) of the Internal Revenue Code shall be operative for  
13 the purposes of this chapter, except that section 1400S(d) (with  
14 respect to the special rule for determining earned income) shall  
15 not be operative for the purposes of this chapter.

16 [+g+] (i) Section 6015 (with respect to relief from joint  
17 and several liability on joint return) of the Internal Revenue  
18 Code is operative for purposes of this chapter.

19 [+h+] (j) Sections 6103(i)(3)(C) and 6103(i)(7) (with  
20 respect to disclosures of information to the United States  
21 Justice Department or appropriate federal or state law

1 enforcement agency for purposes of investigating terrorist  
2 incidents, threats, or activities, and for analyzing  
3 intelligence concerning investigating terrorist incidents,  
4 threats, or activities) of the Internal Revenue Code shall be  
5 operative for the purposes of this chapter.

6 ~~[(i)]~~ (k) Subchapter C (sections 6221 to 6233) (with  
7 respect to tax treatment of partnership items) of chapter 63 of  
8 the Internal Revenue Code shall be operative for the purposes of  
9 this chapter.

10 ~~[(j)]~~ (l) Subchapter D (sections 6240 to 6255) (with  
11 respect to simplified audit procedures for electing large  
12 partnerships) of the Internal Revenue Code shall be operative  
13 for the purposes of this chapter, with due regard to chapter 232  
14 relating to tax appeals.

15 ~~[(k)]~~ (m) Section 6511(h) (with respect to running of  
16 periods of limitation suspended while taxpayer is unable to  
17 manage financial affairs due to disability) of the Internal  
18 Revenue Code shall be operative for purposes of this chapter,  
19 with due regard to section 235-111 relating to the limitation  
20 period for assessment, levy, collection, or credit.

1            [~~1~~] (n) Section 7518 (with respect to capital  
2 construction fund for commercial fishers) of the Internal  
3 Revenue Code shall be operative for the purposes of this  
4 chapter. Qualified withdrawals for the acquisition,  
5 construction, or reconstruction of any qualified asset that is  
6 attributable to deposits made before the effective date of this  
7 section shall not reduce the basis of the asset when withdrawn.  
8 Qualified withdrawals shall be treated on a first-in-first-out  
9 basis."

10            SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12            SECTION 4. This Act shall take effect upon its approval  
13 and shall apply to taxable years beginning after December 31,  
14 2005; provided that section 235-2.45(h), Hawaii Revised  
15 Statutes, shall apply to contributions made between August 28,  
16 2005, to December 31, 2005.

HB 2412 HD1

SD1

CD1

**Report Title:**

Taxes; IRC Conformity

**Description:**

Amends Hawaii's income tax law to conform with changes to the Internal Revenue Code. Effective date upon approval. (HB2412 CD1)

