
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 Code;**
4 **general application.** (a) For all taxable years beginning after
5 December 31, [~~2004~~] 2005, as used in this chapter "Internal
6 Revenue Code" means subtitle A, chapter 1 of the federal
7 Internal Revenue Code of 1986, as amended as of December 31,
8 [~~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
22 the definition of "surviving spouse" and "head of



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

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

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

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

16 (5) Section 114 (with respect to extraterritorial income).

17 For treatment, any transaction as specified in the
18 transitional rule for 2005 and 2006 as specified in
19 the American Jobs Creation Act of 2004 section 101(d)
20 and any transaction that has occurred pursuant to a
21 binding contract as specified in the American Jobs
22 Creation Act of 2004 section 101(f) are inoperative;



- 1 (6) Section 120 (with respect to amounts received under
2 qualified group legal services plans). For treatment,
3 see section 235-7(a)(9) to (11);
- 4 (7) Section 122 (with respect to certain reduced uniformed
5 services retirement pay). For treatment, see section
6 235-7(a)(3);
- 7 (8) Section 135 (with respect to income from United States
8 savings bonds used to pay higher education tuition and
9 fees). For treatment, see section 235-7(a)(1);
- 10 (9) Subchapter B (sections 141 to 150) (with respect to
11 tax exemption requirements for state and local bonds);
- 12 (10) Section 151 (with respect to allowance of deductions
13 for personal exemptions). For treatment, see section
14 235-54;
- 15 (11) Section 179B (with respect to expensing of capital
16 costs incurred in complying with environmental
17 protection agency sulphur regulations);
- 18 (12) Section 181 (with respect to special rules for certain
19 film and television productions);
- 20 (13) Section 196 (with respect to deduction for certain
21 unused investment credits);



- 1 (14) Section 199 (with respect to the U.S. production
2 activities deduction);
- 3 (15) Section 222 (with respect to qualified tuition and
4 related expenses);
- 5 (16) Sections 241 to 247 (with respect to special
6 deductions for corporations). For treatment, see
7 section 235-7(c);
- 8 (17) Section 280C (with respect to certain expenses for
9 which credits are allowable). For treatment, see
10 section 235-110.91;
- 11 (18) Section 291 (with respect to special rules relating to
12 corporate preference items);
- 13 (19) Section 367 (with respect to foreign corporations);
- 14 (20) Section 501(c)(12), (15), (16) (with respect to exempt
15 organizations);
- 16 (21) Section 515 (with respect to taxes of foreign
17 countries and possessions of the United States);
- 18 (22) Subchapter G (sections 531 to 565) (with respect to
19 corporations used to avoid income tax on
20 shareholders);
- 21 (23) Subchapter H (sections 581 to 597) (with respect to
22 banking institutions), except section 584 (with



- 1 respect to common trust funds). For treatment, see
2 chapter 241;
- 3 (24) Section 642(a) and (b) (with respect to special rules
4 for credits and deductions applicable to trusts). For
5 treatment, see sections 235-54(b) and 235-55;
- 6 (25) Section 646 (with respect to tax treatment of electing
7 Alaska Native settlement trusts);
- 8 (26) Section 668 (with respect to interest charge on
9 accumulation distributions from foreign trusts);
- 10 (27) Subchapter L (sections 801 to 848) (with respect to
11 insurance companies). For treatment, see sections
12 431:7-202 and 431:7-204;
- 13 (28) Section 853 (with respect to foreign tax credit
14 allowed to shareholders). For treatment, see section
15 235-55;
- 16 (29) Subchapter N (sections 861 to 999) (with respect to
17 tax based on income from sources within or without the
18 United States), except sections 985 to 989 (with
19 respect to foreign currency transactions). For
20 treatment, see sections 235-4, 235-5, and 235-7(b),
21 and 235-55;



- 1 (30) Section 1042(g) (with respect to sales of stock in
2 agricultural refiners and processors to eligible farm
3 cooperatives);
- 4 (31) Section 1055 (with respect to redeemable ground
5 rents);
- 6 (32) Section 1057 (with respect to election to treat
7 transfer to foreign trust, etc., as taxable exchange);
- 8 (33) Sections 1291 to 1298 (with respect to treatment of
9 passive foreign investment companies);
- 10 (34) Subchapter Q (sections 1311 to 1351) (with respect to
11 readjustment of tax between years and special
12 limitations);
- 13 (35) Subchapter R (sections 1352 to 1359) (with respect to
14 election to determine corporate tax on certain
15 international shipping activities using per ton rate);
- 16 (36) Subchapter U (sections 1391 to 1397F) (with respect to
17 designation and treatment of empowerment zones,
18 enterprise communities, and rural development
19 investment areas). For treatment, see chapter 209E;
20 [~~and~~];
- 21 (37) Subchapter W (sections 1400 to 1400C) (with respect to
22 District of Columbia enterprise zone) [~~-~~];



1 (38) Section 14000 (with respect to education tax
2 benefits);

3 (39) Section 1400P (with respect to housing tax benefits);

4 (40) Section 1400R (with respect to employment relief); and

5 (41) Section 1400T (with respect to special rules for
6 mortgage revenue bonds."

7 SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§235-2.4 Operation of certain Internal Revenue Code**

10 **provisions; sections 63 to 530.** (a) Section 63 (with respect to
11 taxable income defined) of the Internal Revenue Code shall be
12 operative for the purposes of this chapter, except that the
13 standard deduction amount in section 63(c) of the Internal
14 Revenue Code shall instead mean:

15 (1) \$1,900 in the case of:

16 (A) A joint return as provided by section 235-93; or

17 (B) A surviving spouse (as defined in section 2(a) of
18 the Internal Revenue Code);

19 (2) \$1,650 in the case of a head of household (as defined
20 in section 2(b) of the Internal Revenue Code);



1 (3) \$1,500 in the case of an individual who is not married
2 and who is not a surviving spouse or head of
3 household; or

4 (4) \$950 in the case of a married individual filing a
5 separate return.

6 Section 63(c)(4) shall not be operative in this State.

7 Section 63(c)(5) shall be operative, except that the limitation
8 on basic standard deduction in the case of certain dependents
9 shall be the greater of \$500 or such individual's earned income.

10 Section 63(f) shall not be operative in this State.

11 The standard deduction amount for nonresidents shall be
12 calculated pursuant to section 235-5.

13 (b) Section 72 (with respect to annuities; certain proceeds
14 of endowment and life insurance contracts) of the Internal
15 Revenue Code shall be operative for purposes of this chapter and
16 be interpreted with due regard to section 235-7(a), except that
17 the ten per cent additional tax on early distributions from
18 retirement plans in section 72(t) shall not be operative for
19 purposes of this chapter.

20 (c) Section 121 (with respect to exclusion of gain from
21 sale of principal residence) of the Internal Revenue Code shall
22 be operative for purposes of this chapter, except that for the



1 election under section 121(f), a reference to section 1034
2 treatment means a reference to section 235-2.4(n) in effect for
3 taxable year 1997.

4 (d) Section 163 (with respect to interest) of the Internal
5 Revenue Code shall be operative for the purposes of this
6 chapter, except that provisions in section 163(d)(4)(B)
7 (defining net investment income to exclude dividends) shall not
8 be operative for the purposes of this chapter.

9 (e) Section 165 (with respect to losses) of the Internal
10 Revenue Code shall be operative for purposes of this chapter.
11 Section 165 as operative for this chapter shall also apply to
12 losses sustained from the sale of stocks or other interests
13 issued through the exercise of the stock options or warrants
14 granted by a qualified high technology business as defined in
15 section 235-7.3.

16 (f) Section 168 (with respect to the accelerated cost
17 recovery system) of the Internal Revenue Code shall be operative
18 for purposes of this chapter, except that provisions relating to
19 property on Indian reservations in section 168(j) and special
20 allowance for certain property acquired after September 10,
21 2001, and before January 1, 2005 (including the extension of the
22 qualifying aircraft placed in service before January 1, 2006),



1 in section 168(k) shall not be operative for purposes of this
2 chapter.

3 (g) Section 179 (with respect to the election to expense
4 certain depreciable business assets) of the Internal Revenue
5 Code shall be operative for purposes of this chapter, except
6 that provisions relating to:

7 (1) The increase of the maximum deduction to \$100,000 for
8 taxable years beginning after 2002 and before 2008 in
9 section 179(b) (1);

10 (2) The increase of the qualifying investment amount to
11 \$400,000 for taxable years beginning after 2002 and
12 before 2008 in section 179(b) (2);

13 (3) Defining section 179 property to include computer
14 software in section 179(d) (1);

15 (4) Inflation adjustments in section 179(b) (5); and

16 (5) Irrevocable election in section 179(c) (2);

17 shall not be operative for the purposes of this chapter.

18 (h) Section 219 (with respect to retirement savings) of the
19 Internal Revenue Code shall be operative for the purpose of this
20 chapter. For the purpose of computing the limitation on the
21 deduction for active participants in certain pension plans for
22 state income tax purposes, adjusted gross income as used in



1 section 219 as operative for this chapter means federal adjusted
2 gross income.

3 (i) Section 220 (with respect to medical savings accounts)
4 of the Internal Revenue Code shall be operative for the purpose
5 of this chapter, but only with respect to medical services
6 accounts that have been approved by the Secretary of the
7 Treasury of the United States.

8 (j) Section 265 (with respect to expenses and interest
9 relating to tax-exempt income) of the Internal Revenue Code
10 shall be operative for purposes of this chapter; except that it
11 shall not apply to expenses for royalties and other income
12 derived from any patents, copyrights, and trade secrets by an
13 individual or a qualified high technology business as defined in
14 section 235-7.3. Such expenses shall be deductible.

15 (k) Section 408A (with respect to Roth Individual
16 Retirement Accounts) of the Internal Revenue Code shall be
17 operative for the purposes of this chapter. For the purposes of
18 determining the aggregate amount of contributions to a Roth
19 Individual Retirement Account or qualified rollover contribution
20 to a Roth Individual Retirement Account from an individual
21 retirement plan other than a Roth Individual Retirement Account,



1 adjusted gross income as used in section 408A as operative for
2 this chapter means federal adjusted gross income.

3 (1) In administering the provisions of sections 410 to 417
4 (with respect to special rules relating to pensions, profit
5 sharing, stock bonus plans, etc.), sections 418 to 418E (with
6 respect to special rules for multiemployer plans), and sections
7 419 and 419A (with respect to treatment of welfare benefit
8 funds) of the Internal Revenue Code, the department of taxation
9 shall adopt rules under chapter 91 relating to the specific
10 requirements under such sections and to such other
11 administrative requirements under those sections as may be
12 necessary for the efficient administration of sections 410 to
13 419A.

14 In administering sections 401 to 419A (with respect to
15 deferred compensation) of the Internal Revenue Code, Public Law
16 93-406, section 1017(i), shall be operative for the purposes of
17 this chapter.

18 In administering section 402 (with respect to the
19 taxability of beneficiary of employees' trust) of the Internal
20 Revenue Code, the tax imposed on lump sum distributions by
21 section 402(e) of the Internal Revenue Code shall be operative
22 for the purposes of this chapter and the tax imposed therein is



1 hereby imposed by this chapter at the rate determined under this
2 chapter.

3 (m) Section 468B (with respect to special rules for
4 designated settlement funds) of the Internal Revenue Code shall
5 be operative for the purposes of this chapter and the tax
6 imposed therein is hereby imposed by this chapter at a rate
7 equal to the maximum rate in effect for the taxable year imposed
8 on estates and trusts under section 235-51.

9 (n) Section 469 (with respect to passive activities and
10 credits limited) of the Internal Revenue Code shall be operative
11 for the purposes of this chapter. For the purpose of computing
12 the offset for rental real estate activities for state income
13 tax purposes, adjusted gross income as used in section 469 as
14 operative for this chapter means federal adjusted gross income.

15 (o) Sections 512 to 514 (with respect to taxation of
16 business income of certain exempt organizations) of the Internal
17 Revenue Code shall be operative for the purposes of this chapter
18 as provided in this subsection.

19 "Unrelated business taxable income" means the same as in
20 the Internal Revenue Code, except that in the computation
21 thereof sections 235-3 to 235-5, and 235-7 (except subsection
22 (c)), shall apply, and in the determination of the net operating



1 loss deduction there shall not be taken into account any amount
2 of income or deduction that is excluded in computing the
3 unrelated business taxable income. Unrelated business taxable
4 income shall not include any income from a prepaid legal service
5 plan.

6 For a person described in section 401 or 501 of the
7 Internal Revenue Code, as modified by section 235-2.3, the tax
8 imposed by section 235-51 or 235-71 shall be imposed upon the
9 person's unrelated business taxable income.

10 (p) Section 521 (with respect to cooperatives) and
11 subchapter T (sections 1381 to 1388, with respect to
12 cooperatives and their patrons) of the Internal Revenue Code
13 shall be operative for the purposes of this chapter as to any
14 cooperative fully meeting the requirements of section 421-23,
15 except that Internal Revenue Code section 521 cooperatives need
16 not be organized in Hawaii.

17 (q) Sections 527 (with respect to political organizations)
18 and 528 (with respect to certain homeowners associations) of the
19 Internal Revenue Code shall be operative for the purposes of
20 this chapter and the taxes imposed in each such section are
21 hereby imposed by this chapter at the rates determined under
22 section 235-71.



1 (r) Section 529 (with respect to qualified tuition
2 programs) shall be operative for the purposes of this chapter,
3 except that section 529(c)(6) shall not be operative.

4 (s) Section 530 (with respect to education individual
5 retirement accounts) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter. For the purpose of
7 determining the maximum amount that a contributor could make to
8 an education individual retirement account for state income tax
9 purposes, modified adjusted gross income as used in section 530
10 as operative for this chapter means federal modified adjusted
11 gross income as defined in section 530."

12 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§235-2.45 Operation of certain Internal Revenue Code**
15 **provisions; sections 641 to 7518.** (a) Section 641 (with respect
16 to imposition of tax) of the Internal Revenue Code shall be
17 operative for the purposes of this chapter subject to the
18 following:

19 (1) The deduction for exemptions shall be allowed as
20 provided in section 235-54(b);

21 (2) The deduction for contributions and gifts in
22 determining taxable income shall be limited to the



1 amount allowed in the case of an individual, unless
2 the contributions and gifts are to be used exclusively
3 in the State; and

4 (3) The tax imposed by section 1(e) of the Internal
5 Revenue Code as applied by section 641 of the Internal
6 Revenue Code is hereby imposed by this chapter at the
7 rate and amount as determined under section 235-51 on
8 estates and trusts.

9 (b) Section 667 (with respect to treatment of amounts
10 deemed distributed by trusts in preceding years) of the Internal
11 Revenue Code shall be operative for the purposes of this chapter
12 and the tax imposed therein is hereby imposed by this chapter at
13 the rate determined under this chapter; except that the
14 reference to tax-exempt interest to which section 103 of the
15 Internal Revenue Code applies in section 667(a) of the Internal
16 Revenue Code shall instead be a reference to tax-exempt interest
17 to which section 235-7(b) applies.

18 (c) Section 685 (with respect to treatment of qualified
19 funeral trusts) of the Internal Revenue Code shall be operative
20 for purposes of this chapter, except that the tax imposed under
21 this chapter shall be computed at the tax rates provided under
22 section 235-51, and no deduction for the exemption amount



1 provided in section 235-54(b) shall be allowed. The cost-of-
2 living adjustment determined under section 1(f)(3) of the
3 Internal Revenue Code shall be operative for the purpose of
4 applying section 685(c)(3) under this chapter.

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

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

11 (2) Allocations of net operating loss pursuant to section
12 235-111.5;

13 (3) Allocations of the attractions and educational
14 facilities tax credit allowed by section 235-110.46;
15 or

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

18 (e) Section 1212 (with respect to capital loss carrybacks
19 and carryforwards) of the Internal Revenue Code shall be
20 operative for the purposes of this chapter; except that for the
21 purposes of this chapter the capital loss carryback provisions
22 of section 1212 shall not be operative and the capital loss



1 carryforward allowed by section 1212(a) shall be limited to five
2 years; except for a qualified high technology business as
3 defined in section 235-7.3, which shall be limited to fifteen
4 years.

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

9 (g) Section 1400N (with respect to tax benefits for Gulf
10 Opportunity Zone) of the Internal Revenue Code shall be
11 operative for the purposes of this chapter, except that sections
12 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)
13 (with respect to advance refundings of certain tax-exempt
14 bonds); 1400N(d) (with respect to special allowance for certain
15 property acquired on or after August 28, 2005); 1400N(e) (with
16 respect to increase in expensing under section 179); 1400N(h)
17 (with respect to increase in rehabilitation credit); 1400N(l)
18 (with respect to credit to holders of Gulf tax credit bonds);
19 1400N(m) (with respect to application of new markets tax credit
20 to investments in community development entities serving Gulf
21 Opportunity Zone); 1400N(n) (with respect to treatment of
22 representations regarding income eligibility for purposes of



1 qualified residential rental project requirements) shall not be
2 operative for purposes of this chapter.

3 (h) Section 1400S (with respect to additional tax relief
4 provisions) of the Internal Revenue Code shall be operative for
5 the purposes of this chapter, except that section 1400S(d)
6 (special rule for determining earned income) shall not be
7 operative for the purposes of this chapter.

8 [~~g~~] (i) Section 6015 (with respect to relief from joint
9 and several liability on joint return) of the Internal Revenue
10 Code is operative for purposes of this chapter.

11 [~~h~~] (j) Sections 6103(i)(3)(C) and 6103(i)(7) (with
12 respect to disclosures of information to the United States
13 Justice Department or appropriate federal or state law
14 enforcement agency for purposes of investigating terrorist
15 incidents, threats, or activities, and for analyzing
16 intelligence concerning investigating terrorist incidents,
17 threats, or activities) of the Internal Revenue Code shall be
18 operative for the purposes of this chapter.

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



1 ~~(j)~~ (l) Subchapter D (sections 6240 to 6255) (with
2 respect to simplified audit procedures for electing large
3 partnerships) of the Internal Revenue Code shall be operative
4 for the purposes of this chapter, with due regard to chapter 232
5 relating to tax appeals.

6 ~~(k)~~ (m) Section 6511(h) (with respect to running of
7 periods of limitation suspended while taxpayer is unable to
8 manage financial affairs due to disability) of the Internal
9 Revenue Code shall be operative for purposes of this chapter,
10 with due regard to section 235-111 relating to the limitation
11 period for assessment, levy, collection, or credit.

12 ~~(l)~~ (n) Section 7518 (with respect to capital
13 construction fund for commercial fishers) of the Internal
14 Revenue Code shall be operative for the purposes of this
15 chapter. Qualified withdrawals for the acquisition,
16 construction, or reconstruction of any qualified asset that is
17 attributable to deposits made before the effective date of this
18 section shall not reduce the basis of the asset when withdrawn.
19 Qualified withdrawals shall be treated on a first-in-first-out
20 basis."

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



1 SECTION 5. This Act shall take effect on July 1, 2006.



HB 2412 HD1

Report Title:

Taxes; IRC conformance

Description:

Amends Hawaii's income tax law to conform with changes to the Internal Revenue Code. (HB2412 HD1)

HB2412 HD1 HMS 2006-1820

