
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
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~~] Environmental Protection Agency
18 sulphur regulations);
- 19 (12) Section 181 (with respect to special rules for certain
20 film and television productions);
- 21 (13) Section 196 (with respect to deduction for certain
22 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 235-2.45, Hawaii Revised Statutes, is
 8 amended to read as follows:

9 **"§235-2.45 Operation of certain Internal Revenue Code**

10 **provisions; sections 641 to 7518.** (a) Section 641 (with
 11 respect to imposition of tax) of the Internal Revenue Code shall
 12 be operative for the purposes of this chapter subject to the
 13 following:

- 14 (1) The deduction for exemptions shall be allowed as
- 15 provided in section 235-54(b);
- 16 (2) The deduction for contributions and gifts in
- 17 determining taxable income shall be limited to the
- 18 amount allowed in the case of an individual, unless
- 19 the contributions and gifts are to be used exclusively
- 20 in the State; and
- 21 (3) The tax imposed by section 1(e) of the Internal
- 22 Revenue Code as applied by section 641 of the Internal



1 Revenue Code is hereby imposed by this chapter at the
2 rate and amount as determined under section 235-51 on
3 estates and trusts.

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

13 (c) Section 685 (with respect to treatment of qualified
14 funeral trusts) of the Internal Revenue Code shall be operative
15 for purposes of this chapter, except that the tax imposed under
16 this chapter shall be computed at the tax rates provided under
17 section 235-51, and no deduction for the exemption amount
18 provided in section 235-54(b) shall be allowed. The cost-of-
19 living adjustment determined under section 1(f)(3) of the
20 Internal Revenue Code shall be operative for the purpose of
21 applying section 685(c)(3) under this chapter.



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

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

7 (2) Allocations of net operating loss pursuant to section
8 235-111.5;

9 (3) Allocations of the attractions and educational
10 facilities tax credit allowed by section 235-110.46;
11 or

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

14 (e) Section 1212 (with respect to capital loss carrybacks
15 and carryforwards) of the Internal Revenue Code shall be
16 operative for the purposes of this chapter; except that for the
17 purposes of this chapter the capital loss carryback provisions
18 of section 1212 shall not be operative and the capital loss
19 carryforward allowed by section 1212(a) shall be limited to five
20 years; except for a qualified high technology business as
21 defined in section 235-7.3, which shall be limited to fifteen
22 years.



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

5 (g) Section 1400N (with respect to tax benefits for Gulf
6 Opportunity Zone) of the Internal Revenue Code shall be
7 operative for the purposes of this chapter, except that sections
8 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)
9 (with respect to advance refundings of certain tax-exempt
10 bonds); 1400N(d) (with respect to special allowance for certain
11 property acquired on or after August 28, 2005); 1400N(e) (with
12 respect to increase in expensing under section 179); 1400N(h)
13 (with respect to increase in rehabilitation credit); 1400N(l)
14 (with respect to credit to holders of Gulf tax credit bonds);
15 1400N(m) (with respect to application of new markets tax credit
16 to investments in community development entities serving Gulf
17 Opportunity Zone); 1400N(n) (with respect to treatment of
18 representations regarding income eligibility for purposes of
19 qualified residential rental project requirements) shall not be
20 operative for purposes of this chapter.

21 (h) Section 1400S (with respect to additional tax relief
22 provisions) of the Internal Revenue Code shall be operative for



1 the purposes of this chapter, except that section 1400S(d) (with
2 respect to the special rule for determining earned income) shall
3 not be operative for the purposes of this chapter.

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

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

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

19 [~~j~~] (l) Subchapter D (sections 6240 to 6255) (with
20 respect to simplified audit procedures for electing large
21 partnerships) of the Internal Revenue Code shall be operative

1 for the purposes of this chapter, with due regard to chapter 232
2 relating to tax appeals.

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

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

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 4. This Act shall take effect on July 1, 2050 and
21 shall apply to taxable years beginning after December 31, 2050;
22 provided that section 235-2.45(h), Hawaii Revised Statutes,



- 1 shall apply to contributions made between August 29, 2005 to
- 2 December 31, 2005.



Report Title:

Taxes; IRC Conformance

Description:

Amends Hawaii's income tax law to conform with changes to the Internal Revenue Code. (SD1)

