

JAN 18 2008

S.B. NO. 2660

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# A BILL FOR AN ACT

RELATING TO COLLEGE SAVINGS PROGRAMS.

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

1           SECTION 1. In 1996, Congress enacted section 529 of the  
2 Internal Revenue Code of 1986, as amended, authorizing tax-  
3 deferred college savings plans now referred to as "529 Plans".  
4 Section 529 authorizes states to establish these programs to  
5 assist and encourage families to set aside funds for future  
6 higher education expenses.

7           Most states with an income tax offer some kind of in-state  
8 tax deduction or credit for contributions as an incentive for  
9 their residents to participate in these college savings  
10 programs. To encourage Hawaii families to save for college in  
11 the plan of their choice and to increase their participation in  
12 these programs, the purpose of this Act is to provide a state  
13 income tax deduction for contributions to any qualified program.  
14 This income tax deduction shall apply to program contributions  
15 made in calendar year 2008 and beyond.

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



1           "§235-7 Other provisions as to gross income, adjusted  
2 gross income, and taxable income. (a) There shall be excluded  
3 from gross income, adjusted gross income, and taxable income:

4           (1) Income not subject to taxation by the State under the  
5 Constitution and laws of the United States;

6           (2) Rights, benefits, and other income exempted from  
7 taxation by section 88-91, having to do with the state  
8 retirement system, and the rights, benefits, and other  
9 income, comparable to the rights, benefits, and other  
10 income exempted by section 88-91, under any other  
11 public retirement system;

12           (3) Any compensation received in the form of a pension for  
13 past services;

14           (4) Compensation paid to a patient affected with Hansen's  
15 disease employed by the State or the United States in  
16 any hospital, settlement, or place for the treatment  
17 of Hansen's disease;

18           (5) Except as otherwise expressly provided, payments made  
19 by the United States or this State, under an act of  
20 Congress or a law of this State, which by express  
21 provision or administrative regulation or  
22 interpretation are exempt from both the normal and



1           surtaxes of the United States, even though not so  
2           exempted by the Internal Revenue Code itself;

3           (6) Any income expressly exempted or excluded from the  
4           measure of the tax imposed by this chapter by any  
5           other law of the State, it being the intent of this  
6           chapter not to repeal or supersede any express  
7           exemption or exclusion;

8           (7) Income received by each member of the reserve  
9           components of the Army, Navy, Air Force, Marine Corps,  
10          or Coast Guard of the United States of America, and  
11          the Hawaii national guard as compensation for  
12          performance of duty, equivalent to pay received for  
13          forty-eight drills (equivalent of twelve weekends) and  
14          fifteen days of annual duty, at an:

15          (A) E-1 pay grade after eight years of service;  
16                provided that this subparagraph shall apply to  
17                taxable years beginning after December 31, 2004;

18          (B) E-2 pay grade after eight years of service;  
19                provided that this subparagraph shall apply to  
20                taxable years beginning after December 31, 2005;

- 1 (C) E-3 pay grade after eight years of service;
- 2 provided that this subparagraph shall apply to
- 3 taxable years beginning after December 31, 2006;
- 4 (D) E-4 pay grade after eight years of service;
- 5 provided that this subparagraph shall apply to
- 6 taxable years beginning after December 31, 2007;
- 7 and
- 8 (E) E-5 pay grade after eight years of service;
- 9 provided that this subparagraph shall apply to
- 10 taxable years beginning after December 31, 2008;
- 11 (8) Income derived from the operation of ships or aircraft
- 12 if the income is exempt under the Internal Revenue
- 13 Code pursuant to the provisions of an income tax
- 14 treaty or agreement entered into by and between the
- 15 United States and a foreign country; provided that the
- 16 tax laws of the local governments of that country
- 17 reciprocally exempt from the application of all of
- 18 their net income taxes, the income derived from the
- 19 operation of ships or aircraft that are documented or
- 20 registered under the laws of the United States;



- 1           (9) The value of legal services provided by a prepaid  
2           legal service plan to a taxpayer, the taxpayer's  
3           spouse, and the taxpayer's dependents;
- 4           (10) Amounts paid, directly or indirectly, by a prepaid  
5           legal service plan to a taxpayer as payment or  
6           reimbursement for the provision of legal services to  
7           the taxpayer, the taxpayer's spouse, and the  
8           taxpayer's dependents;
- 9           (11) Contributions by an employer to a prepaid legal  
10          service plan for compensation (through insurance or  
11          otherwise) to the employer's employees for the costs  
12          of legal services incurred by the employer's  
13          employees, their spouses, and their dependents;
- 14          (12) Amounts received in the form of a monthly surcharge by  
15          a utility acting on behalf of an affected utility  
16          under section 269-16.3 shall not be gross income,  
17          adjusted gross income, or taxable income for the  
18          acting utility under this chapter. Any amounts  
19          retained by the acting utility for collection or other  
20          costs shall not be included in this exemption; and
- 21          (13) One hundred per cent of the gain realized by a fee  
22          simple owner from the sale of a leased fee interest in



1 units within a condominium project, cooperative  
2 project, or planned unit development to the  
3 association of apartment owners or the residential  
4 cooperative corporation of the leasehold units.

5 For purposes of this paragraph:

6 "Fee simple owner" shall have the same meaning as  
7 provided under section 516-1; provided that it shall  
8 include legal and equitable owners;

9 "Legal and equitable owner", and "leased fee  
10 interest" shall have the same meanings as provided  
11 under section 516-1; and

12 "Condominium project" and "cooperative project"  
13 shall have the same meanings as provided under section  
14 514C-1.

15 (b) There shall be included in gross income, adjusted  
16 gross income, and taxable income: (1) unless excluded by this  
17 chapter relating to the uniformed services of the United States,  
18 cost-of-living allowances and other payments exempted by  
19 section 912 of the Internal Revenue Code, but section 119 of the  
20 Internal Revenue Code nevertheless shall apply; (2) unless  
21 expressly exempted or excluded as provided by subsection (a)(6),

1 interest on the obligations of a State or a political  
2 subdivision thereof.

3 (c) The deductions of or based on dividends paid or  
4 received, allowed to a corporation under chapter 1, subchapter  
5 B, Part VIII of the Internal Revenue Code, shall not be allowed.  
6 In lieu thereof there shall be allowed as a deduction the entire  
7 amount of dividends received by any corporation upon the shares  
8 of stock of a national banking association, qualifying  
9 dividends, as defined in section 243(b) of the Internal Revenue  
10 Code, received by members of an affiliated group, or dividends  
11 received by a small business investment company operating under  
12 the Small Business Investment Act of 1958 (Public Law 85-699)  
13 upon shares of stock qualifying under paragraph (3), seventy per  
14 cent of the amount received by any corporation as dividends:

15 (1) Upon the shares of stock of another corporation, if at  
16 the date of payment of the dividend at least ninety-  
17 five per cent of the other corporation's capital stock  
18 is owned by one or more corporations doing business in  
19 this State and if the other corporation is subjected  
20 to an income tax in another jurisdiction (but  
21 subsection to federal tax does not constitute  
22 subsection to income tax in another jurisdiction);



1           (2) Upon the shares of stock of a bank or insurance  
2           company organized and doing business under the laws of  
3           the State;

4           (3) Upon the shares of stock of another corporation, if at  
5           least fifteen per cent of the latter corporation's  
6           business, for the taxable year of the latter  
7           corporation preceding the payment of the dividend, has  
8           been attributed to this State.

9   However, except for national bank dividends, the deductions  
10   under this subsection are not allowed when they would not have  
11   been allowed under section 243 of the Internal Revenue Code, as  
12   amended by Public Law 85-866, by reason of subsections (b) and  
13   (c) of section 246 of the Internal Revenue Code. For the  
14   purposes of this subsection fifteen per cent of a corporation's  
15   business shall be deemed to have been attributed to this State  
16   if fifteen per cent or more of the entire gross income of the  
17   corporation as defined in this chapter (which for the purposes  
18   of this subsection shall be computed without regard to source in  
19   the State and shall include income not taxable by reason of the  
20   fact that it is from property not owned in the State or from a  
21   trade or business not carried on in the State in whole or in  
22   part), under section 235-5 and the other provisions of this





1 chapter, shall have been attributed to the State and subjected  
2 to assessment of the taxable income therefrom (including the  
3 determination of the resulting net loss, if any).

4 (d) (1) For taxable years ending before January 1, 1967,  
5 the net operating loss deductions allowed as  
6 carrybacks and carryovers by the Internal Revenue Code  
7 shall not be allowed. In lieu thereof the net  
8 operating loss deduction shall consist of the excess  
9 of the deductions allowed by this chapter over the  
10 gross income, computed with the modifications  
11 specified in paragraphs (1) to (4) of section 172(d)  
12 of the Internal Revenue Code, and with the further  
13 modification stated in paragraph (3) hereof; and shall  
14 be allowed as a deduction in computing the taxable  
15 income of the taxpayer for the succeeding taxable  
16 year;

17 (2) (A) With respect to net operating loss deductions  
18 resulting from net operating losses for taxable  
19 years ending after December 31, 1966, the net  
20 operating loss deduction provisions of the  
21 Internal Revenue Code shall apply; provided that  
22 there shall be no net operating loss deduction



1 carried back to any taxable year ending prior to  
2 January 1, 1967;

3 (B) In the case of a taxable year beginning in 1966  
4 and ending in 1967, the entire amount of all net  
5 operating loss deductions carried back to the  
6 taxable year shall be limited to that portion of  
7 taxable income for such taxable year which the  
8 number of days in 1967 bears to the total days in  
9 the taxable year ending in 1967; and

10 (C) The computation of any net operating loss  
11 deduction for a taxable year covered by this  
12 subsection shall require the further  
13 modifications stated in paragraphs (3), (4), and  
14 (5) of this subsection;

15 (3) In computing the net operating loss deduction allowed  
16 by this subsection, there shall be included in gross  
17 income the amount of interest which is excluded from  
18 gross income by subsection (a), decreased by the  
19 amount of interest paid or accrued which is disallowed  
20 as a deduction by subsection (e). In determining the  
21 amount of the net operating loss deduction under this  
22 subsection of any corporation, there shall be



1           disregarded the net operating loss of such corporation  
2           for any taxable year for which the corporation is an  
3           electing small business corporation;

4           (4) No net operating loss carryback or carryover shall be  
5           allowed by this chapter if not allowed under section  
6           172 of the Internal Revenue Code;

7           (5) The election to relinquish the entire carryback period  
8           with respect to a net operating loss allowed under  
9           section 172(b)(3)(C) of the Internal Revenue Code  
10          shall be operative for the purposes of this chapter;  
11          provided that no taxpayer shall make such an election  
12          as to a net operating loss of a business where such  
13          net operating loss occurred in the taxpayer's business  
14          prior to the taxpayer entering business in this State;  
15          and

16          (6) The five-year carryback period for net operating  
17          losses for any taxable year ending during 2001 and  
18          2002 in section 172(b)(1)(H) of the Internal Revenue  
19          Code shall not be operative for purposes of this  
20          chapter.

21          (e) There shall be disallowed as a deduction the amount of  
22          interest paid or accrued within the taxable year on indebtedness



1 incurred or continued, (1) to purchase or carry bonds the  
2 interest upon which is excluded from gross income by subsection  
3 (a); or (2) to purchase or carry property owned without the  
4 State, or to carry on trade or business without the State, if  
5 the taxpayer is a person taxable only upon income from sources  
6 in the State.

7 (f) Losses of property as the result of tidal wave,  
8 hurricane, earthquake, or volcanic eruption, or as a result of  
9 flood waters overflowing the banks or walls of a river or  
10 stream, or from any other natural disaster, to the extent of the  
11 amount deductible, under this chapter, not compensated for by  
12 insurance or otherwise, may be deducted in the taxable year in  
13 which sustained, or at the option of the taxpayer may be  
14 deducted in equal installments over a period of five years, the  
15 first such year to be the calendar year or fiscal year of the  
16 taxpayer in which such loss occurred.

17 (g) In computing taxable income there shall be allowed as  
18 a deduction:

19 (1) Political contributions by any taxpayer not in excess  
20 of \$250 in any year; provided that such contributions  
21 are made to a central or county committee of a  
22 political party whose candidates shall have qualified



1 by law to be voted for at the immediately previous  
2 general election; or

- 3 (2) Political contributions by any individual taxpayer in  
4 an aggregate amount not to exceed \$1,000 in any year;  
5 provided that such contributions are made to  
6 candidates as defined in section 11-191, who have  
7 agreed to abide by the campaign expenditure limits as  
8 set forth in section 11-209; and provided further that  
9 not more than \$250 of an individual's total  
10 contribution to any single candidate shall be  
11 deductible for purposes of this section.

12 (h) The following annual deductions from gross income  
13 shall be allowed for contributions to a qualified tuition  
14 program established pursuant to section 529 of the Internal  
15 Revenue Code:

- 16 (1) Up to \$5,000 for individual taxpayers;  
17 (2) Up to \$5,000 for married couples filing separate  
18 returns; provided that each spouse may claim a  
19 deduction up to \$5,000; and  
20 (3) Up to \$10,000 for married couples filing joint  
21 returns, individuals filing as the head of the  
22 household, or individuals filing as surviving spouses.



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1 If the amount of the deduction exceeds the taxpayer's taxable  
2 income for the taxable year the contribution is made, the excess  
3 deduction may be used as a deduction against the taxpayer's  
4 taxable income in subsequent tax years until the excess  
5 deduction is exhausted."

6 SECTION 3. New statutory material is underscored.

7 SECTION 4. This Act, upon its approval, shall apply to  
8 taxable years beginning after December 31, 2007.

9

INTRODUCED BY: Norman Sakuma  
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**Report Title:**

College Savings Programs

**Description:**

Provides an annual maximum deduction of \$5,000 per individual or \$10,000 for a married couple filing jointly against their taxable income for contributions made to a section 529 college savings program in calendar year 2008 and beyond.

