
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. The purpose of this Act is to conform Hawaii
2 income tax law to the Internal Revenue Code.

3 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) For all taxable years beginning after December 31,
6 [~~2007~~] 2008, as used in this chapter, "Internal Revenue Code"
7 means subtitle A, chapter 1, of the federal Internal Revenue
8 Code of 1986, as amended as of December 31, [~~2007~~] 2008, as it
9 applies to the determination of gross income, adjusted gross
10 income, ordinary income and loss, and taxable income, except
11 those provisions of the Internal Revenue Code and federal public
12 laws which, pursuant to this chapter, do not apply or are
13 otherwise limited in application and except for the provisions
14 of Public Law 109-001 which apply to section 170 of the Internal
15 Revenue Code. The provisions of Public Law 109-001 to
16 accelerate the deduction for charitable cash contributions for
17 the relief of victims of the 2004 Indian Ocean tsunami are

1 applicable for the calendar year that ended December 31, 2004,
2 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 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is
14 amended to read as follows:

15 **"§235-2.4 Operation of certain Internal Revenue Code**

16 **provisions; sections 63 to 530.** (a) Section 63 (with respect
17 to taxable income defined) of the Internal Revenue Code shall be
18 operative for the purposes of this chapter, subject to the
19 following:

20 (1) Sections 63(c)(1)(B) (relating to the additional
21 standard deduction), 63(c)(1)(C) (relating to the real
22 property tax deduction), 63(c)(1)(D) (relating to the

1 disaster loss deduction), 63(c)(4) (relating to
 2 inflation adjustments), 63(c)(7) (defining the real
 3 property tax deduction), 63(c)(8) (defining the
 4 disaster loss deduction), and 63(f) (relating to
 5 additional amounts for the aged or blind) of the
 6 Internal Revenue Code shall not be operative for
 7 purposes of this chapter.

8 (2) Section 63(c)(2) (relating to the basic standard
 9 deduction) of the Internal Revenue Code shall be
 10 operative, except that the standard deduction [~~amount~~
 11 in section 63(c) of the Internal Revenue Code] amounts
 12 provided therein shall instead mean:

13 [~~(1)~~] (A) \$4,000 in the case of:

14 [~~(A)~~] (i) A joint return as provided by section 235-
 15 93; or

16 [~~(B)~~] (ii) A surviving spouse (as defined in section
 17 2(a) of the Internal Revenue Code);

18 [~~(2)~~] (B) \$2,920 in the case of a head of household (as
 19 defined in section 2(b) of the Internal Revenue Code);

20 [~~(3)~~] (C) \$2,000 in the case of an individual who is not
 21 married and who is not a surviving spouse or head of
 22 household; or

1 ~~[(4)]~~ (D) \$2,000 in the case of a married individual filing
2 a separate return.

3 ~~[Section 63(c)(4) shall not be operative in this State.]~~

4 (3) Section 63(c)(5) (limiting the basic standard
5 deduction in the case of certain dependents) of the
6 Internal Revenue Code shall be operative, except that
7 the limitation ~~[on basic standard deduction in the~~
8 ~~ease of certain dependents]~~ shall be the greater of
9 \$500 or such individual's earned income. ~~[Section~~
10 ~~63(f) shall not be operative in this State.]~~

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

13 (b) Section 72 (with respect to annuities; certain
14 proceeds of endowment and life insurance contracts) of the
15 Internal Revenue Code shall be operative for purposes of this
16 chapter and be interpreted with due regard to section 235-7(a),
17 except that the ten per cent additional tax on early
18 distributions from retirement plans in section 72(t) shall not
19 be operative for 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 except that the amount prescribed by section 165(h)(1) (relating
12 to the limitation per casualty) of the Internal Revenue Code
13 shall be a \$100 limitation per casualty, and sections
14 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to special
15 rules for personal casualty gains and losses in federally
16 declared disasters) of the Internal Revenue Code shall not be
17 operative for purposes of this chapter. Section 165 as
18 operative for this chapter shall also apply to losses sustained
19 from the sale of stocks or other interests issued through the
20 exercise of the stock options or warrants granted by a qualified
21 high technology business as defined in section 235-7.3.

1 (f) Section 168 (with respect to the accelerated cost
2 recovery system) of the Internal Revenue Code shall be operative
3 for purposes of this chapter, except that [~~provisions relating~~
4 sections 168(j) (relating to property on Indian [reservations in
5 section 168(j) and] reservations), 168(k) (relating to the
6 special allowance for certain property acquired [after September
7 10, 2001, and before January 1, 2005 (including the extension of
8 the qualifying aircraft placed in service before January 1,
9 2006),] during the period specified therein in section [~~168(k)]~~
10 168(m) relating to the special allowance for certain reuse and
11 recycling property), and 168(n) (relating to the special
12 allowance for qualified disaster assistance property) of the
13 Internal Revenue Code shall not be operative for purposes of
14 this chapter.

15 (g) Section 172 (with respect to net operating loss
16 deductions) of the Internal Revenue Code shall be operative for
17 purposes of this chapter, except that sections 172(b)(1)(J) and
18 172(j) (both of which relate to qualified disaster losses) of
19 the Internal Revenue Code shall not be operative for purposes of
20 this chapter.

21 [~~g~~] (h) Section 179 (with respect to the election to
22 expense certain depreciable business assets) of the Internal

1 Revenue Code shall be operative for purposes of this chapter,
2 except that provisions relating to:

3 (1) The increase of the maximum deduction to \$100,000 for
4 taxable years beginning after 2002 and before 2008,
5 and the increase of the maximum deduction to \$125,000
6 for taxable years beginning after 2006 and before
7 2011, in section 179(b) (1);

8 (2) The increase of the qualifying investment amount to
9 \$400,000 for taxable years beginning after 2002 and
10 before 2008, and the increase of the qualifying
11 investment amount to \$500,000 for taxable years
12 beginning after 2006 and before 2011, in section
13 179(b) (2);

14 (3) The increase of the maximum deduction to \$250,000 and
15 the increase of the qualifying investment amount to
16 \$800,000 for taxable years beginning in 2008, in
17 section 179(b) (7);

18 ~~(3)~~ (4) Defining section 179 property to include computer
19 software in section 179(d) (1);

20 ~~(4)~~ (5) Inflation adjustments in section 179(b) (5); ~~and~~

21 ~~(5)~~ (6) Irrevocable election in section 179(c) (2); and

1 (7) Special rules for qualified disaster assistance
2 property in section 179(e);

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

4 (i) Section 198A (with respect to the expensing of
5 qualified disaster assistances expenses) of the Internal Revenue
6 Code shall not be operative for purposes of this chapter.

7 [~~(h)~~] (j) Section 219 (with respect to retirement savings)
8 of the Internal Revenue Code shall be operative for the purpose
9 of this chapter. For the purpose of computing the limitation on
10 the deduction for active participants in certain pension plans
11 for state income tax purposes, adjusted gross income as used in
12 section 219 as operative for this chapter means federal adjusted
13 gross income.

14 [~~(i)~~] (k) Section 220 (with respect to medical savings
15 accounts) of the Internal Revenue Code shall be operative for
16 the purpose of this chapter, but only with respect to medical
17 services accounts that have been approved by the Secretary of
18 the Treasury of the United States.

19 [~~(j)~~] (l) Section 265 (with respect to expenses and
20 interest relating to tax-exempt income) of the Internal Revenue
21 Code shall be operative for purposes of this chapter; except
22 that it shall not apply to expenses for royalties and other

1 income derived from any patents, copyrights, and trade secrets
2 by an individual or a qualified high technology business as
3 defined in section 235-7.3. Such expenses shall be deductible.

4 ~~[(k)]~~ (m) Section 408A (with respect to Roth Individual
5 Retirement Accounts) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter. For the purposes of
7 determining the aggregate amount of contributions to a Roth
8 Individual Retirement Account or qualified rollover contribution
9 to a Roth Individual Retirement Account from an individual
10 retirement plan other than a Roth Individual Retirement Account,
11 adjusted gross income as used in section 408A as operative for
12 this chapter means federal adjusted gross income.

13 ~~[(l)]~~ ~~[(n)]~~ (n) Except as provided herein, in administering
14 the provisions of sections 410 to 417 (with respect to special
15 rules relating to pensions, profit sharing, stock bonus plans,
16 etc.), sections 418 to 418E (with respect to special rules for
17 multiemployer plans), and sections 419 and 419A (with respect to
18 treatment of welfare benefit funds) of the Internal Revenue
19 Code, the department of taxation shall adopt rules under chapter
20 91 relating to the specific requirements under such sections and
21 to such other administrative requirements under those sections
22 as may be necessary for the efficient administration of sections

1 410 to 419A[-]; provided that, except for the first \$50,000,
2 each year, employer paid pension income shall be taxable under
3 this chapter.

4 In administering sections 401 to 419A (with respect to
5 deferred compensation) of the Internal Revenue Code, Public Law
6 93-406, section 1017(i), shall be operative for the purposes of
7 this chapter.

8 In administering section 402 (with respect to the
9 taxability of beneficiary of employees' trust) of the Internal
10 Revenue Code, the tax imposed on lump sum distributions by
11 section 402(e) of the Internal Revenue Code shall be operative
12 for the purposes of this chapter and the tax imposed therein is
13 hereby imposed by this chapter at the rate determined under this
14 chapter.

15 (o) Section 451 (which provides general rules for taxable
16 year of inclusion) of the Internal Revenue Code shall be
17 operative, except that the provisions of 451(i)(3) and
18 451(i)(6), as they relate to a qualified electric utility, shall
19 not be operative for purposes of this chapter.

20 [~~m~~] (p) Section 468B (with respect to special rules for
21 designated settlement funds) of the Internal Revenue Code shall
22 be operative for the purposes of this chapter and the tax

1 imposed therein is hereby imposed by this chapter at a rate
2 equal to the maximum rate in effect for the taxable year imposed
3 on estates and trusts under section 235-51.

4 ~~[(n)]~~ (q) Section 469 (with respect to passive activities
5 and credits limited) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter. For the purpose of
7 computing the offset for rental real estate activities for state
8 income tax purposes, adjusted gross income as used in section
9 469 as operative for this chapter means federal adjusted gross
10 income.

11 ~~[(o)]~~ (r) Sections 512 to 514 (with respect to taxation of
12 business income of certain exempt organizations) of the Internal
13 Revenue Code shall be operative for the purposes of this chapter
14 as provided in this subsection.

15 "Unrelated business taxable income" means the same as in
16 the Internal Revenue Code, except that in the computation
17 thereof sections 235-3 to 235-5, and 235-7 (except subsection
18 (c)), shall apply, and in the determination of the net operating
19 loss deduction there shall not be taken into account any amount
20 of income or deduction that is excluded in computing the
21 unrelated business taxable income. Unrelated business taxable

1 income shall not include any income from a prepaid legal service
2 plan.

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

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

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

20 [~~(r)~~] (u) Section 529 (with respect to qualified tuition
21 programs) shall be operative for the purposes of this chapter,
22 except that section 529(c)(6) shall not be operative.

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

9 SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§235-2.45 Operation of certain Internal Revenue Code**
12 **provisions; sections 641 to 7518.** (a) Section 641 (with
13 respect to imposition of tax) of the Internal Revenue Code shall
14 be operative for the purposes of this chapter subject to the
15 following:

- 16 (1) The deduction for exemptions shall be allowed as
17 provided in section 235-54(b);
- 18 (2) The deduction for contributions and gifts in
19 determining taxable income shall be limited to the
20 amount allowed in the case of an individual, unless
21 the contributions and gifts are to be used exclusively
22 in the State; and

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

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

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

1 Internal Revenue Code shall be operative for the purpose of
2 applying section 685(c)(3) under this chapter.

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

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

9 (2) Allocations of net operating loss pursuant to section
10 235-111.5;

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

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

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

1 defined in section 235-7.3, which shall be limited to fifteen
2 years.

3 (f) Section 1221 (with respect to the definition of
4 capital assets) is operative; provided that the provisions of
5 section 301 of Public Law 110-343, which provide that gain or
6 loss from the sale or exchange of any applicable preferred stock
7 by any applicable financial institution (such terms being
8 defined by Public Law 110-343) shall be treated as ordinary
9 income or loss, shall not be operative. A sale or exchange of
10 any applicable preferred stock by any applicable financial
11 institution (as those terms are defined by section 301 of Public
12 Law 110-343) shall be treated as a sale of a capital asset and
13 taxed accordingly.

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

19 [~~g~~] (h) Section 1400N (with respect to tax benefits for
20 Gulf Opportunity Zone) of the Internal Revenue Code shall be
21 operative for the purposes of this chapter, except that sections
22 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)

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

14 [~~(h)~~] (i) Section 1400S (with respect to additional tax
15 relief provisions) of the Internal Revenue Code shall be
16 operative for the purposes of this chapter, except that section
17 1400S(d) (with respect to the special rule for determining
18 earned income) shall not be operative for the purposes of this
19 chapter.

20 [~~(i)~~] (j) Section 6015 (with respect to relief from joint
21 and several liability on joint return) of the Internal Revenue
22 Code is operative for purposes of this chapter.

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

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

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

18 ~~[(m)]~~ (n) Section 6511(h) (with respect to running of
19 periods of limitation suspended while taxpayer is unable to
20 manage financial affairs due to disability) of the Internal
21 Revenue Code shall be operative for purposes of this chapter,

1 with due regard to section 235-111 relating to the limitation
2 period for assessment, levy, collection, or credit.

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

12 SECTION 5. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 6. This Act shall take effect on July 1, 2050 and
15 shall apply to taxable years beginning after December 31, 2008.

Report Title:

Income Tax; Conformity to the Internal Revenue Code for 2008

Description:

Conforms amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2008.
(SD2)