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

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



1 of victims of the 2004 Indian Ocean tsunami are applicable for
2 the calendar year that ended December 31, 2004, and the calendar
3 year ending December 31, 2005.

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

- 6 (1) The basis of property, if a taxpayer first determined
7 the basis of property in a taxable year to which such
8 sections apply, and if such determination was made
9 before January 1, 1978; and
- 10 (2) Gross income, adjusted gross income, ordinary income
11 and loss, and taxable income for a taxable year to
12 which such sections apply where such taxable year
13 begins before January 1, 1978."

14 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§235-2.4 Operation of certain Internal Revenue Code**
17 **provisions; sections 63 to 530.** (a) Section 63 (with respect to
18 taxable income defined) of the Internal Revenue Code shall be
19 operative for the purposes of this chapter, subject to the
20 following:

- 21 (1) Sections 63(c)(1)(B) (relating to the additional
22 standard deduction), 63(c)(1)(C) (relating to the real



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

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

14 ~~[-1-]~~ (A) \$4,000 in the case of:

15 ~~[-A-]~~ (i) A joint return as provided by section
16 235-93; or

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

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



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

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

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

7 ~~[(1)]~~ (3) Section 63(c)(5) (limiting the basic standard
8 deduction in the case of certain dependents) of the
9 Internal Revenue Code shall be operative, except that
10 ~~the limitation on basic standard deduction in the case~~
11 ~~of certain dependents~~ shall be the greater of \$500 or
12 such individual's earned income. ~~Section 63(f) shall~~
13 ~~not be operative in this State.~~

14 ~~[(2)]~~ (4) The standard deduction amount for nonresidents
15 shall be calculated pursuant to section 235-5.

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



1 (c) Section 121 (with respect to exclusion of gain from
2 sale of principal residence) of the Internal Revenue Code shall
3 be operative for purposes of this chapter, except that for the
4 election under section 121(f), a reference to section 1034
5 treatment means a reference to section 235-2.4(n) in effect for
6 taxable year 1997.

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

12 (e) Section 165 (with respect to losses) of the Internal
13 Revenue Code shall be operative for purposes of this chapter,
14 except that the amount prescribed by section 165(h)(1) (relating
15 to the limitation per casualty) of the Internal Revenue Code
16 shall be a \$100 limitation per casualty, and sections
17 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to special
18 rules for losses in federally declared disasters) of the
19 Internal Revenue Code shall not be operative for purposes of
20 this chapter. Section 165 as operative for this chapter shall
21 also apply to losses sustained from the sale of stocks or other
22 interests issued through the exercise of the stock options or



1 warrants granted by a qualified high technology business as
2 defined in section 235-7.3.

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

16 (g) Section 172 (with respect to net operating loss
17 deductions) of the Internal Revenue Code shall be operative for
18 purposes of this chapter, as further provided in section 235-
19 7(d), except that sections 172(b)(1)(J) and 172(j) (both of
20 which relate to qualified disaster losses) of the Internal
21 Revenue Code shall not be operative for purposes of this
22 chapter.



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

5 (1) The increase of the maximum deduction to \$100,000 for
6 taxable years beginning after 2002 and before 2008,
7 and the increase of the maximum deduction to \$125,000
8 for taxable years beginning after 2006 and before
9 2011, in 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, and the increase of the qualifying
13 investment amount to \$500,000 for taxable years
14 beginning after 2006 and before 2011, in section
15 179(b) (2);

16 (3) The increase of the maximum deduction to \$250,000 and
17 the increase of the qualifying investment amount to
18 \$800,000 for taxable years beginning in 2008, in
19 section 179(b) (7);

20 ~~[(3)]~~ (4) Defining section 179 property to include computer
21 software in section 179(d) (1);

22 ~~[(4)]~~ (5) Inflation adjustments in section 179(b) (5); ~~[and]~~



1 ~~[(5)]~~ (6) Irrevocable election in section 179(c)(2); and
2 (7) Special rules for qualified disaster assistance
3 property in section 179(e)

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

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

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

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

20 ~~[(j)]~~ (l) Section 265 (with respect to expenses and interest
21 relating to tax-exempt income) of the Internal Revenue Code
22 shall be operative for purposes of this chapter; except that it



1 shall not apply to expenses for royalties and other income
2 derived from any patents, copyrights, and trade secrets by an
3 individual or a qualified high technology business as defined in
4 section 235-7.3. Such expenses shall be deductible.

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

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



1 necessary for the efficient administration of sections 410 to
2 419A.

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

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

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

19 [~~m~~] (p) Section 468B (with respect to special rules for
20 designated settlement funds) of the Internal Revenue Code shall
21 be operative for the purposes of this chapter and the tax
22 imposed therein is hereby imposed by this chapter at a rate



1 equal to the maximum rate in effect for the taxable year imposed
2 on estates and trusts under section 235-51.

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

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

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



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

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

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

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

21 [~~s~~](v) Section 530 (with respect to education individual
22 retirement accounts) of the Internal Revenue Code shall be



1 operative for the purposes of this chapter. For the purpose of
2 determining the maximum amount that a contributor could make to
3 an education individual retirement account for state income tax
4 purposes, modified adjusted gross income as used in section 530
5 as operative for this chapter means federal modified adjusted
6 gross income as defined in section 530."

7 SECTION 4. 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 respect
11 to imposition of tax) of the Internal Revenue Code shall be
12 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 the
19 contributions and gifts are to be used exclusively in
20 the State; and

21 (3) The tax imposed by section 1(e) of the Internal Revenue
22 Code as applied by section 641 of the Internal Revenue



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

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

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



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

12 ~~(f)~~ (g) Subchapter S (sections 1361 to 1379) (with respect
13 to 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)~~ (h) Section 1400N (with respect to tax benefits for
17 Gulf 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(c) (with respect to the low income housing
22 credit); 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)]~~ (i) Section 1400S (with respect to additional tax
12 relief provisions) of the Internal Revenue Code shall be
13 operative for the purposes of this chapter, except that section
14 1400S(d) (with respect to the special rule for determining
15 earned income) shall not be operative for the purposes of this
16 chapter.

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

20 ~~[-(j)]~~ (k) Sections 6103(i)(3)(C) and 6103(i)(7) (with
21 respect to disclosures of information to the United States
22 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 ~~[(k)]~~ (l) Subchapter C (sections 6221 to 6233) (with respect
7 to tax treatment of partnership items) of chapter 63 of the
8 Internal Revenue Code shall be operative for the purposes of
9 this chapter.

10 ~~[(l)]~~ (m) 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 ~~[(m)]~~ (n) 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.

21 ~~[(n)]~~ (o) Section 7518 (with respect to capital construction
22 fund for commercial fishers) of the Internal Revenue Code shall



1 be operative for the purposes of this chapter. Qualified
2 withdrawals for the acquisition, construction, or reconstruction
3 of any qualified asset that is attributable to deposits made
4 before the effective date of this section shall not reduce the
5 basis of the asset when withdrawn. Qualified withdrawals shall
6 be treated on a first-in-first-out basis."

7 SECTION 5. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 6. This Act shall take effect upon its approval.



Report Title:

Income Tax; Conformity to the Internal Revenue Code for 2008

Description:

Provides a short form measure for conforming amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2008. (HB1153 HD1)

