
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. Chapter 235, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§235-A Operation of certain Internal Revenue Code
7 provisions not operative under section 235-2.3. Notwithstanding
8 the meaning of "Internal Revenue Code" as that term is used in
9 section 231-2.3, beginning April 1, 2010, the following Sections
10 of the federal Internal Revenue Code of 1986, as amended as of
11 April 1, 2010, shall be operative for purposes of this chapter:

12 (1) Section 6041 as applicable to persons under Section
13 6041(h) (with respect to information returns at the
14 source for certain corporations);

15 (2) Section 6038D (with respect to information with
16 respect to foreign financial assets). With respect to
17 persons required to report information under this



1 Section, Section 6662(j) (with respect to imposition
2 of accuracy-related penalties on underpayments) and
3 Section 6501(e)(1)(A)(ii) (with respect to limitations
4 on assessment and collection) shall also be operative
5 for purposes of this chapter and shall be applied
6 consistently with the correlating provisions of 231-
7 36.6 and 235-111;

8 (3) Section 6045B (with respect to returns relating to
9 actions affecting basis in securities); and

10 (4) Section 6050W (with respect to returns relating to
11 payments made in settlement of payment card and third
12 party network transactions)."

13 SECTION 3. Section 232-24, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§232-24 Taxes paid pending appeal.** The tax paid upon the
16 amount of any assessment, actually in dispute and in excess of
17 that admitted by the taxpayer, and covered by an appeal to the
18 tax appeal court duly taken, shall, pending the final
19 determination of the appeal, be paid by the director of finance
20 into the "litigated claims fund". If the final determination is
21 in whole or in part in favor of the appealing taxpayer, the
22 director of finance shall repay to the taxpayer out of the fund,



1 or if investment of the fund should result in a deficit therein,
2 out of the general fund of the State, the amount of the tax paid
3 upon the amount held by the court to have been excessive or
4 nontaxable, together with [~~interest at the rate of eight per~~
5 ~~cent a year~~] from the date of each payment into the litigated
6 claims fund, the interest to be paid from the general fund of
7 the State. For purposes of this section, the rate of interest
8 shall be computed by reference to Section 6621(a) (with respect
9 to interest rate determination) of the Internal Revenue Code of
10 1986, as of January 1, 2010. The balance, if any, of the
11 payment made by the appealing taxpayer, or the whole of the
12 payment, in case the decision is wholly in favor of the
13 assessor, shall, upon the final determination become a
14 realization under the tax law concerned.

15 In a case of an appeal to a board of review, the tax paid,
16 if any, upon the amount of the assessment actually in dispute
17 and in excess of that admitted by the taxpayer, shall during the
18 pendency of the appeal and until and unless an appeal is taken
19 to the tax appeal court, be held by the director of finance in a
20 special deposit. In the event of final determination of the
21 appeal in the board of review, the director of finance shall
22 repay to the appealing taxpayer out of the deposit the amount of



1 the tax paid upon the amount held by the board to have been
2 excessive or nontaxable, if any, the balance, if any, or the
3 whole of the deposit, in case the decision is wholly in favor of
4 the assessor, to become a realization under the tax law
5 concerned."

6 SECTION 4. Section 235-2.3, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "§235-2.3 Conformance to the federal Internal Revenue
9 Code; general application. (a) For all taxable years beginning
10 after December 31, [~~2008~~] 2009, as used in this chapter, except
11 as provided in section 235-A, "Internal Revenue Code" means
12 subtitle A, chapter 1, of the federal Internal Revenue Code of
13 1986, as amended as of December 31, [~~2008~~] 2009, as it applies
14 to the determination of gross income, adjusted gross income,
15 ordinary income and loss, and taxable income, except those
16 provisions of the Internal Revenue Code and federal public laws
17 which, pursuant to this chapter, do not apply or are otherwise
18 limited in application and except for the provisions of Public
19 Law 109-001 which apply to [~~section~~] Section 170 of the Internal
20 Revenue Code. The provisions of Public Law 109-001 to
21 accelerate the deduction for charitable cash contributions for
22 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 (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~~] Sections 1 to 59A) (with
18 respect to determination of tax liability), except
19 [~~section~~] Section 1(h) (2) (relating to net capital
20 gain reduced by the amount taken into account as
21 investment income), except [~~sections~~] Sections 2(a),
22 2(b), and 2(c) (with respect to the definition of



1 "surviving spouse" and "head of household"), except
2 [~~section~~] Section 41 (with respect to the credit for
3 increasing research activities), except [~~section~~]
4 Section 42 (with respect to low-income housing
5 credit), [~~and~~] except [~~sections~~] Sections 47 and 48,
6 as amended, as of December 31, 1984 (with respect to
7 certain depreciable tangible personal property) [~~-~~],
8 and except Section 48(d)(3), as amended, as of
9 February 17, 2009 (with respect to the treatment of
10 United States Department of Treasury grants made under
11 Section 1603 of the American Recovery and Reinvestment
12 Tax Act of 2009). For treatment, see sections 235-
13 110.91, 235-110.7, and 235-110.8;

14 (2) Section 78 (with respect to dividends received from
15 certain foreign corporations by domestic corporations
16 choosing foreign tax credit);

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

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

21 (5) Section 114 (with respect to extraterritorial income).
22 For treatment, any transaction as specified in the



- 1 transitional rule for 2005 and 2006 as specified in
2 the American Jobs Creation Act of 2004 [~~section~~]
3 Section 101(d) and any transaction that has occurred
4 pursuant to a binding contract as specified in the
5 American Jobs Creation Act of 2004 [~~section~~] Section
6 101(f) are inoperative;
- 7 (6) Section 120 (with respect to amounts received under
8 qualified group legal services plans). For treatment,
9 see section 235-7(a)(9) to (11);
- 10 (7) Section 122 (with respect to certain reduced uniformed
11 services retirement pay). For treatment, see section
12 235-7(a)(3);
- 13 (8) Section 135 (with respect to income from United States
14 savings bonds used to pay higher education tuition and
15 fees). For treatment, see section 235-7(a)(1);
- 16 (9) Section 139C (with respect to COBRA premium
17 assistance);
- 18 [~~(9)~~] (10) Subchapter B [~~(sections)~~] (Sections 141 to 150)
19 (with respect to tax exemption requirements for state
20 and local bonds);



- 1 ~~[(10)]~~ (11) Section 151 (with respect to allowance of
2 deductions for personal exemptions). For treatment,
3 see section 235-54;
- 4 ~~[(11)]~~ (12) Section 179B (with respect to expensing of
5 capital costs incurred in complying with Environmental
6 Protection Agency sulphur regulations);
- 7 ~~[(12)]~~ (13) Section 181 (with respect to special rules for
8 certain film and television productions);
- 9 ~~[(13)]~~ (14) Section 196 (with respect to deduction for
10 certain unused investment credits);
- 11 ~~[(14)]~~ (15) Section 199 (with respect to the U.S. production
12 activities deduction);
- 13 ~~[(15)]~~ (16) Section 222 (with respect to qualified tuition
14 and related expenses);
- 15 ~~[(16)]~~ (17) Sections 241 to 247 (with respect to special
16 deductions for corporations). For treatment, see
17 section 235-7(c);
- 18 ~~[(17)]~~ (18) Section 280C (with respect to certain expenses
19 for which credits are allowable). For treatment, see
20 section 235-110.91;
- 21 ~~[(18)]~~ (19) Section 291 (with respect to special rules
22 relating to corporate preference items);



- 1 [~~(19)~~] (20) Section 367 (with respect to foreign
2 corporations);
- 3 [~~(20)~~] (21) Section 501(c)(12), (15), (16) (with respect to
4 exempt organizations);
- 5 [~~(21)~~] (22) Section 515 (with respect to taxes of foreign
6 countries and possessions of the United States);
- 7 [~~(22)~~] (23) Subchapter G (sections 531 to 565) (with respect
8 to corporations used to avoid income tax on
9 shareholders);
- 10 [~~(23)~~] (24) Subchapter H (sections 581 to 597) (with respect
11 to banking institutions), except [~~section~~] Section 584
12 (with respect to common trust funds). For treatment,
13 see chapter 241;
- 14 [~~(24)~~] (25) Section 642(a) and (b) (with respect to special
15 rules for credits and deductions applicable to
16 trusts). For treatment, see sections 235-54(b) and
17 235-55;
- 18 [~~(25)~~] (26) Section 646 (with respect to tax treatment of
19 electing Alaska Native settlement trusts);
- 20 [~~(26)~~] (27) Section 668 (with respect to interest charge on
21 accumulation distributions from foreign trusts);



- 1 ~~[(27)]~~ (28) Subchapter L (sections 801 to 848) (with respect
2 to insurance companies). For treatment, see sections
3 431:7-202 and 431:7-204;
- 4 ~~[(28)]~~ (29) Section 853 (with respect to foreign tax credit
5 allowed to shareholders). For treatment, see section
6 235-55;
- 7 (30) Section 853A (with respect to credits from tax credit
8 bonds allowed to shareholders);
- 9 ~~[(29)]~~ (31) Subchapter N ~~[(sections)]~~ (Sections 861 to 999)
10 (with respect to tax based on income from sources
11 within or without the United States), except
12 ~~[sections]~~ Sections 985 to 989 (with respect to
13 foreign currency transactions). For treatment, see
14 sections 235-4, 235-5, and 235-7(b), and 235-55;
- 15 ~~[(30)]~~ (32) Section 1042(g) (with respect to sales of stock
16 in agricultural refiners and processors to eligible
17 farm cooperatives);
- 18 ~~[(31)]~~ (33) Section 1055 (with respect to redeemable ground
19 rents);
- 20 ~~[(32)]~~ (34) Section 1057 (with respect to election to treat
21 transfer to foreign trust, etc., as taxable exchange);



- 1 ~~[(33)]~~ (35) Sections 1291 to 1298 (with respect to treatment
2 of passive foreign investment companies);
- 3 ~~[(34)]~~ (36) Subchapter Q (sections 1311 to 1351) (with
4 respect to readjustment of tax between years and
5 special limitations);
- 6 ~~[(35)]~~ (37) Subchapter R (sections 1352 to 1359) (with
7 respect to election to determine corporate tax on
8 certain international shipping activities using per
9 ton rate);
- 10 ~~[(36)]~~ (38) Subchapter U ~~[-sections]~~ (Sections 1391 to
11 1397F) (with respect to designation and treatment of
12 empowerment zones, enterprise communities, and rural
13 development investment areas). For treatment, see
14 chapter 209E;
- 15 ~~[(37)]~~ (39) Subchapter W ~~[-sections]~~ (Sections 1400 to
16 1400C) (with respect to District of Columbia
17 enterprise zone);
- 18 ~~[(38)]~~ (40) Section 14000 (with respect to education tax
19 benefits);
- 20 ~~[(39)]~~ (41) Section 1400P (with respect to housing tax
21 benefits);



1 ~~[(40)]~~ (42) Section 1400R (with respect to employment
2 relief); ~~[and~~
3 ~~-(41)]~~ (43) Section 1400T (with respect to special rules for
4 mortgage revenue bonds) ~~[-]~~ ;
5 (44) Section 1400U-1 (with respect to allocation of
6 recovery zone bonds) ;
7 (45) Section 1400U-2 (with respect to recovery zone
8 economic development bonds); and
9 (46) Section 1400U-3 (with respect to recovery zone
10 facility bonds)."

11 SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "§235-2.4 Operation of certain Internal Revenue Code
14 provisions; ~~[sections]~~ Sections 63 to 530. (a) Section 63
15 (with respect to taxable income defined) of the Internal Revenue
16 Code shall be operative for the purposes of this chapter,
17 subject to the following:

18 (1) Sections 63(c)(1)(B) (relating to the additional
19 standard deduction), 63(c)(1)(C) (relating to the real
20 property tax deduction), 63(c)(1)(D) (relating to the
21 disaster loss deduction), 63(c)(1)(E) (relating to the
22 motor vehicle sales tax deduction, 63(c)(4) (relating

1 to inflation adjustments), 63(c).(7) (defining the real
2 property tax deduction), 63(c) (8) (defining the
3 disaster loss deduction), 63(c) (9) (defining the motor
4 vehicle sales tax 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 amounts
11 provided therein shall instead mean:

12 (A) \$4,000 in the case of:

13 (i) A joint return as provided by section 235-
14 93; or

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

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

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



1 (D) \$2,000 in the case of a married individual filing
2 a separate return;

3 (3) Section 63(c)(5) (limiting the basic standard
4 deduction in the case of certain dependents) of the
5 Internal Revenue Code shall be operative, except that
6 the limitation shall be the greater of \$500 or such
7 individual's earned income; and

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

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

17 (c) Section 85 (with respect to unemployment compensation)
18 of the Internal Revenue Code shall be operative for purposes of
19 this chapter, except that Section 85(c) shall not be operative
20 for purposes of this chapter.

21 (d) Section 108 (with respect to income from discharge of
22 indebtedness) of the Internal Revenue Code shall be operative



1 for purposes of this chapter, except that Section 108(i)
2 (relating to deferral and ratable inclusion of income arising
3 from business indebtedness discharged by the reacquisition of a
4 debt instrument) shall not be operative for purposes of this
5 chapter.

6 ~~[(e)]~~ (e) Section 121 (with respect to exclusion of gain
7 from sale of principal residence) of the Internal Revenue Code
8 shall be operative for purposes of this chapter, except that for
9 the election under ~~[section]~~ Section 121(f), a reference to
10 ~~[section]~~ Section 1034 treatment means a reference to section
11 ~~[235-2.4(n)]~~ 235-2.4(s) in effect for taxable year 1997.

12 (f) Section 132 (with respect to certain fringe benefits)
13 of the Internal Revenue Code shall be operative for purposes of
14 this chapter, except that the provision in Section 132(f)(2)
15 that equalizes the dollar amounts for Sections 132(f)(2)(A) and
16 (B) after February 17, 2009, until January 1, 2011, shall not be
17 operative and except that Section 132(n) shall not apply to
18 United States Department of Defense Homeowners Assistance
19 program payments authorized by the American Recovery and
20 Reinvestment Act of 2009.

21 ~~[(d)]~~ (g) Section 163 (with respect to interest) of the
22 Internal Revenue Code shall be operative for the purposes of



1 this chapter, except that provisions in [~~section~~] Section
2 163(d)(4)(B) (defining net investment income to exclude
3 dividends), Section 163(e)(5)(F) (suspension of applicable high-
4 yield discount obligation (AHYDO) rules) and Section 163(i)(1)
5 as it applies to debt instruments issued after January 1, 2010,
6 (defining AHYDO) shall not be operative for the purposes of this
7 chapter.

8 (h) Section 164 (with respect to taxes) of the Internal
9 Revenue Code shall be operative for the purposes of this
10 chapter, except that Sections 164(a)(6) and 164(b)(6) shall not
11 be operative for the purposes of this chapter.

12 [~~e~~] (i) Section 165 (with respect to losses) of the
13 Internal Revenue Code shall be operative for purposes of this
14 chapter, except that the amount prescribed by [~~section~~] Sections
15 165(h)(1) (relating to the limitation per casualty) of the
16 Internal Revenue Code shall be a \$100 limitation per casualty,
17 and [~~sections~~] Sections 165(h)(3)(A) and 165(h)(3)(B) (both of
18 which relate to special rules for personal casualty gains and
19 losses in federally declared disasters) of the Internal Revenue
20 Code shall not be operative for the purposes of this chapter.

21 Section 165 as operative for this chapter shall also apply to
22 losses sustained from the sale of stocks or other interests



1 issued through the exercise of the stock options or warrants
2 granted by a qualified high technology business as defined in
3 section 235-7.3.

4 ~~[(f)]~~ (j) Section 168 (with respect to the accelerated
5 cost recovery system) of the Internal Revenue Code shall be
6 operative for purposes of this chapter, except that ~~[sections]~~
7 Sections 168(j) (relating to property on Indian reservations),
8 168(k) (relating to the special allowance for certain property
9 acquired during the period specified therein), 168(m) (relating
10 to the special allowance for certain reuse and recycling
11 property), and 168(n) (relating to the special allowance for
12 qualified disaster assistance property) of the Internal Revenue
13 Code shall not be operative for purposes of this chapter.

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

21 ~~[(h)]~~ (l) 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~~] 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 Section 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[~~7~~] or
17 2009, in [~~section~~] Section 179(b)(7);

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

20 (5) Inflation adjustments in [~~section~~] Section 179(b)(5);

21 (6) Irrevocable election in [~~section~~] Section 179(c)(2);

22 and



1 (7) Special rules for qualified disaster assistance
2 property in ~~[section]~~ Section 179(e),
3 shall not be operative for the purposes of this chapter.

4 ~~[(i)]~~ (m) 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 ~~[(j)]~~ (n) 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]~~ Section 219 as operative for this chapter means
13 federal adjusted gross income.

14 ~~[(k)]~~ (o) 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 ~~[(l)]~~ (p) 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 Sections 265(b)(3)(G) and 265(b)(7) shall not be operative



1 and that [it] Section 265 shall not apply to expenses for
2 royalties and other income derived from any patents, copyrights,
3 and trade secrets by an individual or a qualified high
4 technology business as defined in section 235-7.3. Such
5 expenses shall be deductible.

6 (q) Section 382 (with respect to limitation on net
7 operating loss carryforwards and certain built-in losses
8 following ownership change) of the Internal Revenue Code shall
9 be operative for the purposes of this chapter, except that
10 Section 382(n) shall not be operative for purposes of this
11 chapter.

12 [~~m~~] (r) Section 408A (with respect to Roth Individual
13 Retirement Accounts) of the Internal Revenue Code shall be
14 operative for the purposes of this chapter[-], except that
15 Section 408A(d)(3)(A)(iii) shall not be operative for purposes
16 of this chapter. For the purposes of determining the aggregate
17 amount of contributions to a Roth Individual Retirement Account
18 or qualified rollover contribution to a Roth Individual
19 Retirement Account from an individual retirement plan other than
20 a Roth Individual Retirement Account, adjusted gross income as
21 used in [~~section~~] Section 408A as operative for this chapter
22 means federal adjusted gross income.



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

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

16 In administering [~~section~~] Section 402 (with respect to the
17 taxability of beneficiary of employees' trust) of the Internal
18 Revenue Code, the tax imposed on lump sum distributions by
19 [~~section~~] Section 402(e) of the Internal Revenue Code shall be
20 operative for the purposes of this chapter and the tax imposed
21 therein is hereby imposed by this chapter at the rate determined
22 under this chapter.



1 ~~[(t)]~~ (t) In administering ~~[section]~~ Section 403 (with
2 respect to taxation of employee annuities) of the Internal
3 Revenue Code, any funds that represent pre-tax employee
4 deferrals or contributions that are distributed from the annuity
5 and used solely to obtain retirement credits under the state
6 ~~[(e)]~~ employees' ~~[(e)]~~ retirement system shall not be treated as a
7 rollover for purposes of ~~[section]~~ Section 403(b)(8)(A) of the
8 Internal Revenue Code, and such funds shall be subject to income
9 tax under this chapter.

10 ~~[(p)]~~ (u) Section 451 (which provides general rules for
11 taxable year of inclusion) of the Internal Revenue Code shall be
12 operative, except that the provisions of ~~[sections]~~ Sections
13 451(i)(3) and 451(i)(6), as they relate to a qualified electric
14 utility, shall not be operative for purposes of this chapter.

15 ~~[(q)]~~ (v) In administering ~~[section]~~ Section 457 (with
16 respect to compensation plans of state and local governments and
17 tax-exempt organizations) of the Internal Revenue Code, any
18 funds that represent pre-tax employee deferrals or contributions
19 that are distributed from the deferred compensation plan and
20 used solely to obtain retirement credits under the state
21 ~~[(e)]~~ employees' ~~[(e)]~~ retirement system shall not be treated as a
22 rollover for purposes of ~~[section]~~ Section 457(e)(16)(A) of the



1 Internal Revenue Code and such funds shall be subject to income
2 tax under this chapter.

3 ~~[(r)]~~ (w) Section 468B (with respect to special rules
4 for designated settlement funds) of the Internal Revenue Code
5 shall 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 ~~[(s)]~~ (x) Section 469 (with respect to passive
10 activities and credits limited) of the Internal Revenue Code
11 shall be operative for the purposes of this chapter. For the
12 purpose of computing the offset for rental real estate
13 activities for state income tax purposes, adjusted gross income
14 as used in section 469 as operative for this chapter means
15 federal adjusted gross income.

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

20 "Unrelated business taxable income" means the same as in
21 the Internal Revenue Code, except that in the computation
22 thereof sections 235-3 to 235-5, and 235-7 (except subsection



1 (c)), shall apply, and in the determination of the net operating
2 loss deduction there shall not be taken into account any amount
3 of income or deduction that is excluded in computing the
4 unrelated business taxable income. Unrelated business taxable
5 income shall not include any income from a prepaid legal service
6 plan.

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

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

18 [~~(v)~~] (aa) Sections 527 (with respect to political
19 organizations) and 528 (with respect to certain homeowners
20 associations) of the Internal Revenue Code shall be operative
21 for the purposes of this chapter and the taxes imposed in each



1 section are hereby imposed by this chapter at the rates
2 determined under section 235-71.

3 ~~[(w)]~~ (bb) Section 529 (with respect to qualified
4 tuition programs) shall be operative for the purposes of this
5 chapter, except that ~~[section]~~ Sections 529(c)(6) and
6 529(e)(3)(A)(iii) shall not be operative.

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

16 SECTION 6. Section 235-2.4, Hawaii Revised Statutes, is
17 amended by amending its title and subsection (a) to read as
18 follows:

19 "\$235-2.4 Operation of certain Internal Revenue Code
20 provisions; ~~[sections]~~ Sections 63 to 530. (a) Section 63
21 (with respect to taxable income defined) of the Internal Revenue



1 Code shall be operative for the purposes of this chapter,
2 subject to the following:

3 (1) Sections 63(c)(1)(B) (relating to the additional
4 standard deduction), 63(c)(1)(C) (relating to the real
5 property tax deduction), 63(c)(1)(D) (relating to the
6 disaster loss deduction), 63(c)(1)(E) (relating to the
7 motor vehicle sales tax deduction), 63(c)(4) (relating
8 to inflation adjustments), 63(c)(7) (defining the real
9 property tax deduction), 63(c)(8) (defining the
10 disaster loss deduction), 63(c)(9) (defining the motor
11 vehicle sales tax deduction), and 63(f) (relating to
12 additional amounts for the aged or blind) of the
13 Internal Revenue Code shall not be operative for
14 purposes of this chapter;

15 (2) Section 63(c)(2) (relating to the basic standard
16 deduction) of the Internal Revenue Code shall be
17 operative, except that the standard deduction amounts
18 provided therein shall instead mean:

19 (A) \$4,400 in the case of:

20 (i) A joint return as provided by section 235-
21 93; or



- 1 (ii) A surviving spouse (as defined in section
2 2(a) of the Internal Revenue Code);
- 3 (B) \$3,212 in the case of a head of household (as
4 defined in [~~section~~] Section 2(b) of the Internal
5 Revenue Code);
- 6 (C) \$2,200 in the case of an individual who is not
7 married and who is not a surviving spouse or head
8 of household; or
- 9 (D) \$2,200 in the case of a married individual filing
10 a separate return;
- 11 (3) Section 63(c)(5) (limiting the basic standard
12 deduction in the case of certain dependents) of the
13 Internal Revenue Code shall be operative, except that
14 the limitation shall be the greater of \$500 or such
15 individual's earned income; and
- 16 (4) The standard deduction amount for nonresidents shall
17 be calculated pursuant to section 235-5."

18 SECTION 7. Section 235-2.45, Hawaii Revised Statutes, is
19 amended to read as follows:

20 "§235-2.45 Operation of certain Internal Revenue Code
21 provisions; sections 641 to 7518. (a) Section 641 (with
22 respect to imposition of tax) of the Internal Revenue Code shall



1 be operative for the purposes of this chapter subject to the
2 following:

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

5 (2) The deduction for contributions and gifts in
6 determining taxable income shall be limited to the
7 amount allowed in the case of an individual, unless
8 the contributions and gifts are to be used exclusively
9 in the [~~State~~] state; and

10 (3) The tax imposed by [~~section~~] Section 1(e) of the
11 Internal Revenue Code as applied by [~~section~~] Section
12 641 of the Internal Revenue Code is hereby imposed by
13 this chapter at the rate and amount as determined
14 under section 235-51 on estates and trusts.

15 (b) Section 667 (with respect to treatment of amounts
16 deemed distributed by trusts in preceding years) of the Internal
17 Revenue Code shall be operative for the purposes of this chapter
18 and the tax imposed therein is hereby imposed by this chapter at
19 the rate determined under this chapter; except that the
20 reference to tax-exempt interest to which [~~section~~] Section 103
21 of the Internal Revenue Code applies in [~~section~~] Section 667(a)



1 of the Internal Revenue Code shall instead be a reference to
2 tax-exempt interest to which section 235-7(b) applies.

3 (c) Section 685 (with respect to treatment of qualified
4 funeral trusts) of the Internal Revenue Code shall be operative
5 for purposes of this chapter, except that the tax imposed under
6 this chapter shall be computed at the tax rates provided under
7 section 235-51, and no deduction for the exemption amount
8 provided in section 235-54(b) shall be allowed. The cost-of-
9 living adjustment determined under [~~section~~] Section 1(f)(3) of
10 the Internal Revenue Code shall be operative for the purpose of
11 applying [~~section~~] Section 685(c)(3) under this chapter.

12 (d) Section 704 of the Internal Revenue Code (with respect
13 to a partner's distributive share) shall be operative for
14 purposes of this chapter; except that [~~section~~] Section
15 704(b)(2) shall not apply to:

16 (1) Allocations of the high technology business investment
17 tax credit allowed by section 235-110.9 for
18 investments made before May 1, 2009;

19 (2) Allocations of net operating loss pursuant to section
20 235-111.5;



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

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

6 (e) Section 1202 (with respect to partial exclusion for
7 gain from certain small business stock) of the Internal Revenue
8 Code shall be operative for purposes of this chapter, except
9 that Section 1202(a)(3) shall not be operative for purposes of
10 this chapter.

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

20 [~~f~~] (g) Section 1221 (with respect to the definition of
21 capital assets) is operative; provided that the provisions of
22 [~~section~~] Section 301 of Public Law 110-343, which provide that



1 gain or loss from the sale or exchange of any applicable
2 preferred stock by any applicable financial institution (such
3 terms being defined by Public Law 110-343) shall be treated as
4 ordinary income or loss, shall not be operative. A sale or
5 exchange of any applicable preferred stock by any applicable
6 financial institution (as those terms are defined by [~~section~~]
7 Section 301 of Public Law 110-343) shall be treated as a sale of
8 a capital asset and taxed accordingly.

9 [~~(g)~~] (h) Subchapter S (sections 1361 to 1379) (with
10 respect to tax treatment of S corporations and their
11 shareholders) of [~~chapter~~] Chapter 1 of the Internal Revenue
12 Code shall be operative for the purposes of this chapter as
13 provided in part VII [~~-~~]; except that Sections 1374(d)(7)(B) and
14 1374(d)(7)(C) shall not be operative for purposes of this
15 chapter.

16 [~~(h)~~] (i) 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
19 [~~sections~~] Sections 1400N(a) (with respect to tax-exempt bond
20 financing); 1400N(b) (with respect to advance refundings of
21 certain tax-exempt bonds); 1400N(c) (with respect to the low
22 income housing credit); 1400N(d) (with respect to special



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

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

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

21 ~~[(k)]~~ (l) Sections 6103(i)(3)(C) and 6103(i)(7) (with
22 respect to disclosures of information to the United States



1 Justice Department or appropriate federal or state law
2 enforcement agency for purposes of investigating terrorist
3 incidents, threats, or activities, and for analyzing
4 intelligence concerning investigating terrorist incidents,
5 threats, or activities) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter.

7 ~~[(1)]~~ (m) Subchapter C (sections 6221 to 6233) (with
8 respect to tax treatment of partnership items) of ~~[chapter]~~
9 Chapter 63 of the Internal Revenue Code shall be operative for
10 the purposes of this chapter.

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

16 ~~[(n)]~~ (o) Section 6501(e) (with respect to limitation on
17 assessment and collection where there is a substantial omission
18 of items) of the Internal Revenue Code shall be operative for
19 purposes of this chapter.

20 ~~[(o)]~~ (p) Section 6511(h) (with respect to running of
21 periods of limitation suspended while taxpayer is unable to
22 manage financial affairs due to disability) of the Internal



1 Revenue Code shall be operative for purposes of this chapter,
2 with due regard to section 235-111 relating to the limitation
3 period for assessment, levy, collection, or credit.

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

13 SECTION 8. Section 235-7, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

15 "(d) (1) For taxable years ending before January 1, 1967,
16 the net operating loss deductions allowed as
17 carrybacks and carryovers by the Internal Revenue Code
18 shall not be allowed. In lieu thereof the net
19 operating loss deduction shall consist of the excess
20 of the deductions allowed by this chapter over the
21 gross income, computed with the modifications
22 specified in paragraphs (1) to (4) of [~~section~~]



1 Section 172(d) of the Internal Revenue Code, and with
2 the further modification stated in paragraph (3)
3 hereof; and shall be allowed as a deduction in
4 computing the taxable income of the taxpayer for the
5 succeeding taxable year;

6 (2) (A) With respect to net operating loss deductions
7 resulting from net operating losses for taxable
8 years ending after December 31, 1966, the net
9 operating loss deduction provisions of the
10 Internal Revenue Code shall apply; provided that
11 there shall be no net operating loss deduction
12 carried back to any taxable year ending prior to
13 January 1, 1967;

14 (B) In the case of a taxable year beginning in 1966
15 and ending in 1967, the entire amount of all net
16 operating loss deductions carried back to the
17 taxable year shall be limited to that portion of
18 taxable income for such taxable year which the
19 number of days in 1967 bears to the total days in
20 the taxable year ending in 1967; and

21 (C) The computation of any net operating loss
22 deduction for a taxable year covered by this



1 subsection shall require the further
2 modifications stated in paragraphs (3), (4), and
3 (5) of this subsection;

4 (3) In computing the net operating loss deduction allowed
5 by this subsection, there shall be included in gross
6 income the amount of interest which is excluded from
7 gross income by subsection (a), decreased by the
8 amount of interest paid or accrued which is disallowed
9 as a deduction by subsection (e). In determining the
10 amount of the net operating loss deduction under this
11 subsection of any corporation, there shall be
12 disregarded the net operating loss of such corporation
13 for any taxable year for which the corporation is an
14 electing small business corporation;

15 (4) No net operating loss carryback or carryover shall be
16 allowed by this chapter if not allowed under ~~[section]~~
17 Section 172 of the Internal Revenue Code;

18 (5) The election to relinquish the entire carryback period
19 with respect to a net operating loss allowed under
20 ~~[section]~~ Section 172(b)(3)(C) of the Internal Revenue
21 Code shall be operative for the purposes of this
22 chapter; provided that no taxpayer shall make such an



1 election as to a net operating loss of a business
2 where such net operating loss occurred in the
3 taxpayer's business prior to the taxpayer entering
4 business in this [~~State, and~~] state;

5 (6) The five-year carryback period for net operating
6 losses for any taxable year ending during 2001 and
7 2002 in [~~section~~] Section 172(b)(1)(H) of the Internal
8 Revenue Code as it read on December 31, 2008, shall
9 not be operative for purposes of this chapter[-]; and

10 (7) The election for the carryback for 2008 or 2009 net
11 operating losses of small businesses as provided in
12 Section 172(b)(1)(H) of the Internal Revenue Code as
13 it read on December 31, 2009, shall not be operative
14 for purposes of this chapter."

15 SECTION 9. In codifying the new section added by section 2
16 of this Act, the revisor of statutes shall substitute the
17 appropriate section number for the letters used in designating
18 the new section in this Act.

19 SECTION 10. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 11. This Act shall take effect upon its approval;
22 provided that section 6 shall take effect on January 1, 2011.



Report Title:

Income Tax; Conformity to the Internal Revenue Code for 2009

Description:

Conforming amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2009. Effective upon its approval. (HB2594 CD1)

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