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# 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 to read as follows:

5           "**§235-2.3 Conformance to the federal Internal Revenue**  
6 **Code; general application.** (a) For all taxable years beginning  
7 after December 31, [~~2008~~] 2009, as used in this chapter,  
8 "Internal Revenue Code" means subtitle A, chapter 1, of the  
9 federal Internal Revenue Code of 1986, as amended as of December  
10 31, [~~2008~~] 2009, as it applies to the determination of gross  
11 income, adjusted gross income, ordinary income and loss, and  
12 taxable income, except those provisions of the Internal Revenue  
13 Code and federal public laws which, pursuant to this chapter, do  
14 not apply or are otherwise limited in application and except for  
15 the provisions of Public Law 109-001 which apply to section 170  
16 of the Internal Revenue Code. The provisions of Public Law 109-  
17 001 to accelerate the deduction for charitable cash

1 contributions for the relief of victims of the 2004 Indian Ocean  
2 tsunami are applicable for the calendar year that ended December  
3 31, 2004, and the calendar 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 (b) The following Internal Revenue Code subchapters, parts  
15 of subchapters, sections, subsections, and parts of subsections  
16 shall not be operative for the purposes of this chapter, unless  
17 otherwise provided:

18 (1) Subchapter A (sections 1 to 59A) (with respect to  
19 determination of tax liability), except section  
20 1(h)(2) (relating to net capital gain reduced by the  
21 amount taken into account as investment income),  
22 except sections 2(a), 2(b), and 2(c) (with respect to

- 1 the definition of "surviving spouse" and "head of  
2 household"), except section 41 (with respect to the  
3 credit for increasing research activities), except  
4 section 42 (with respect to low-income housing  
5 credit), and except sections 47 and 48, as amended, as  
6 of December 31, 1984 (with respect to certain  
7 depreciable tangible personal property). For  
8 treatment, see sections 235-110.91, 235-110.7, and  
9 235-110.8;
- 10 (2) Section 78 (with respect to dividends received from  
11 certain foreign corporations by domestic corporations  
12 choosing foreign tax credit);
- 13 (3) Section 86 (with respect to social security and tier 1  
14 railroad retirement benefits);
- 15 (4) Section 103 (with respect to interest on state and  
16 local bonds). For treatment, see section 235-7(b);
- 17 (5) Section 114 (with respect to extraterritorial income).  
18 For treatment, any transaction as specified in the  
19 transitional rule for 2005 and 2006 as specified in  
20 the American Jobs Creation Act of 2004 section 101(d)  
21 and any transaction that has occurred pursuant to a

- 1 binding contract as specified in the American Jobs  
2 Creation Act of 2004 section 101(f) are inoperative;
- 3 (6) Section 120 (with respect to amounts received under  
4 qualified group legal services plans). For treatment,  
5 see section 235-7(a) (9) to (11);
- 6 (7) Section 122 (with respect to certain reduced uniformed  
7 services retirement pay). For treatment, see section  
8 235-7(a) (3);
- 9 (8) Section 135 (with respect to income from United States  
10 savings bonds used to pay higher education tuition and  
11 fees). For treatment, see section 235-7(a) (1);
- 12 (9) Section 139C (with respect to COBRA premium  
13 assistance);
- 14 [~~+9~~] (10) Subchapter B (sections 141 to 150) (with respect  
15 to tax exemption requirements for state and local  
16 bonds);
- 17 [~~+10~~] (11) Section 151 (with respect to allowance of  
18 deductions for personal exemptions). For treatment,  
19 see section 235-54;
- 20 [~~+11~~] (12) Section 179B (with respect to expensing of  
21 capital costs incurred in complying with Environmental  
22 Protection Agency sulphur regulations);

- 1       ~~[(+12)]~~ (13) Section 181 (with respect to special rules for  
2                   certain film and television productions);
- 3       ~~[(+13)]~~ (14) Section 196 (with respect to deduction for  
4                   certain unused investment credits);
- 5       ~~[(+14)]~~ (15) Section 199 (with respect to the U.S. production  
6                   activities deduction);
- 7       ~~[(+15)]~~ (16) Section 222 (with respect to qualified tuition  
8                   and related expenses);
- 9       ~~[(+16)]~~ (17) Sections 241 to 247 (with respect to special  
10                  deductions for corporations). For treatment, see  
11                  section 235-7(c);
- 12       ~~[(+17)]~~ (18) Section 280C (with respect to certain expenses  
13                  for which credits are allowable). For treatment, see  
14                  section 235-110.91;
- 15       ~~[(+18)]~~ (19) Section 291 (with respect to special rules  
16                  relating to corporate preference items);
- 17       ~~[(+19)]~~ (20) Section 367 (with respect to foreign  
18                  corporations);
- 19       ~~[(+20)]~~ (21) Section 501(c)(12), (15), (16) (with respect to  
20                  exempt organizations);
- 21       ~~[(+21)]~~ (22) Section 515 (with respect to taxes of foreign  
22                  countries and possessions of the United States);

- 1        [~~(22)~~] (23) Subchapter G (sections 531 to 565) (with respect  
2                    to corporations used to avoid income tax on  
3                    shareholders);
- 4        [~~(23)~~] (24) Subchapter H (sections 581 to 597) (with respect  
5                    to banking institutions), except section 584 (with  
6                    respect to common trust funds). For treatment, see  
7                    chapter 241;
- 8        [~~(24)~~] (25) Section 642(a) and (b) (with respect to special  
9                    rules for credits and deductions applicable to  
10                   trusts). For treatment, see sections 235-54(b) and  
11                   235-55;
- 12       [~~(25)~~] (26) Section 646 (with respect to tax treatment of  
13                   electing Alaska Native settlement trusts);
- 14       [~~(26)~~] (27) Section 668 (with respect to interest charge on  
15                   accumulation distributions from foreign trusts);
- 16       [~~(27)~~] (28) Subchapter L (sections 801 to 848) (with respect  
17                   to insurance companies). For treatment, see sections  
18                   431:7-202 and 431:7-204;
- 19       [~~(28)~~] (29) Section 853 (with respect to foreign tax credit  
20                   allowed to shareholders). For treatment, see section  
21                   235-55;

- 1        (30)    Section 853A (with respect to credits from tax credit  
2        bonds allowed to shareholders).
- 3        [~~+29~~] (31)    Subchapter N (sections 861 to 999) (with respect  
4        to tax based on income from sources within or without  
5        the United States), except sections 985 to 989 (with  
6        respect to foreign currency transactions). For  
7        treatment, see sections 235-4, 235-5, and 235-7(b),  
8        and 235-55;
- 9        [~~+30~~] (32)    Section 1042(g) (with respect to sales of stock  
10        in agricultural refiners and processors to eligible  
11        farm cooperatives);
- 12        [~~+31~~] (33)    Section 1055 (with respect to redeemable ground  
13        rents);
- 14        [~~+32~~] (34)    Section 1057 (with respect to election to treat  
15        transfer to foreign trust, etc., as taxable exchange);
- 16        [~~+33~~] (35)    Sections 1291 to 1298 (with respect to treatment  
17        of passive foreign investment companies);
- 18        [~~+34~~] (36)    Subchapter Q (sections 1311 to 1351) (with  
19        respect to readjustment of tax between years and  
20        special limitations);
- 21        [~~+35~~] (37)    Subchapter R (sections 1352 to 1359) (with  
22        respect to election to determine corporate tax on

1 certain international shipping activities using per  
2 ton rate);

3 ~~[(36)]~~ (38) Subchapter U (sections 1391 to 1397F) (with  
4 respect to designation and treatment of empowerment  
5 zones, enterprise communities, and rural development  
6 investment areas). For treatment, see chapter 209E;

7 ~~[(37)]~~ (39) Subchapter W (sections 1400 to 1400C) (with  
8 respect to District of Columbia enterprise zone);

9 ~~[(38)]~~ (40) Section 14000 (with respect to education tax  
10 benefits);

11 ~~[(39)]~~ (41) Section 1400P (with respect to housing tax  
12 benefits);

13 ~~[(40)]~~ (42) Section 1400R (with respect to employment  
14 relief); and

15 ~~[(41)]~~ (43) Section 1400T (with respect to special rules for  
16 mortgage revenue bonds) ~~[-]~~ ;

17 (44) Section 1400U-1 (with respect to allocation of  
18 recovery zone bonds);

19 (45) Section 1400U-2 (with respect to recovery zone  
20 economic development bonds); and

21 (46) Section 1400U-3 (with respect to recovery zone  
22 facility bonds)."



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

3 **"§235-2.4 Operation of certain Internal Revenue Code**

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

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

20 (2) Section 63(c)(2) (relating to the basic standard  
21 deduction) of the Internal Revenue Code shall be

1           operative, except that the standard deduction amounts  
2           provided therein shall instead mean:

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

4                   (i)   A joint return as provided by section 235-  
5                           93; or

6                   (ii) A surviving spouse (as defined in section  
7                           2(a) of the Internal Revenue Code);

8           (B)   \$2,920 in the case of a head of household (as  
9                   defined in section 2(b) of the Internal Revenue  
10                   Code);

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

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

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

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

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

8 (c) Section 85 (with respect to unemployment compensation)  
9 of the Internal Revenue Code shall be operative for purposes of  
10 this chapter, except that section 85(c) shall not be operative  
11 for purposes of this chapter.

12 (d) Section 108 (with respect to income from discharge of  
13 indebtedness) of the Internal Revenue Code shall be operative  
14 for purposes of this chapter, except that section 108(i)  
15 (relating to deferral and ratable inclusion of income arising  
16 from business indebtedness discharged by the reacquisition of a  
17 debt instrument) shall not be operative for purposes of this  
18 chapter.

19 [~~e~~] (e) Section 121 (with respect to exclusion of gain  
20 from sale of principal residence) of the Internal Revenue Code  
21 shall be operative for purposes of this chapter, except that for  
22 the election under section 121(f), a reference to section 1034

1 treatment means a reference to section 235-2.4(n) in effect for  
2 taxable year 1997.

3 (f) Section 132 (with respect to certain fringe benefits)  
4 of the Internal Revenue Code shall be operative for purposes of  
5 this chapter, except that provisions in section 132(f)(2) that  
6 equalize the dollar amounts for 132(f)(2)(A) and (B) after  
7 February 17, 2009, and until January 1, 2011, shall not be  
8 operative and except that section 132(n) shall not apply to  
9 United States Department of Defense Homeowners Assistance  
10 program payments authorized by the American Recovery and  
11 Reinvestment Act of 2009.

12 [~~(d)~~] (g) Section 163 (with respect to interest) of the  
13 Internal Revenue Code shall be operative for the purposes of  
14 this chapter, except that provisions in section 163(d)(4)(B)  
15 (defining net investment income to exclude dividends), section  
16 163(e)(5)(F) (suspension of applicable high-yield discount  
17 obligation rules), and section 163(i)(1) as it applies to debt  
18 instruments issued after January 1, 2010 (defining applicable  
19 high-yield discount obligation), shall not be operative for the  
20 purposes of this chapter.

21 (h) Section 164 (with respect to taxes) of the Internal  
22 Revenue Code shall be operative for the purposes of this

1 chapter, except that section 164(a)(6) and 164(b)(6) shall not  
2 be operative for the purposes of this chapter.

3       ~~(e)~~ (i) Section 165 (with respect to losses) of the  
4 Internal Revenue Code shall be operative for purposes of this  
5 chapter, except that the amount prescribed by section 165(h)(1)  
6 (relating to the limitation per casualty) of the Internal  
7 Revenue Code shall be a \$100 limitation per casualty, and  
8 section 165(d) (with respect to wagering losses) ~~and~~  
9 sections 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to  
10 special rules for personal casualty gains and losses in  
11 federally declared disasters) of the Internal Revenue Code shall  
12 not be operative for the purposes of this chapter. Section 165  
13 as operative for this chapter shall also apply to losses  
14 sustained from the sale of stocks or other interests issued  
15 through the exercise of the stock options or warrants granted by  
16 a qualified high technology business as defined in section 235-  
17 7.3.

18       ~~(f)~~ (j) Section 168 (with respect to the accelerated  
19 cost recovery system) of the Internal Revenue Code shall be  
20 operative for purposes of this chapter, except that sections  
21 168(j) (relating to property on Indian reservations), 168(k)  
22 (relating to the special allowance for certain property acquired

1 during the period specified therein), 168(m) (relating to the  
2 special allowance for certain reuse and recycling property), and  
3 168(n) (relating to the special allowance for qualified disaster  
4 assistance property) of the Internal Revenue Code shall not be  
5 operative for purposes of this chapter.

6 ~~(g)~~ (k) Section 172 (with respect to net operating loss  
7 deductions) of the Internal Revenue Code shall be operative for  
8 purposes of this chapter, as further provided in section 235-  
9 7(d), except that sections 172(b)(1)(J) and 172(j) (both of  
10 which relate to qualified disaster losses) of the Internal  
11 Revenue Code shall not be operative for purposes of this  
12 chapter.

13 ~~(h)~~ (l) Section 179 (with respect to the election to  
14 expense certain depreciable business assets) of the Internal  
15 Revenue Code shall be operative for purposes of this chapter,  
16 except that provisions relating to:

17 (1) The increase of the maximum deduction to \$100,000 for  
18 taxable years beginning after 2002 and before 2008,  
19 and the increase of the maximum deduction to \$125,000  
20 for taxable years beginning after 2006 and before  
21 2011, in section 179(b)(1);

- 1 (2) The increase of the qualifying investment amount to  
2 \$400,000 for taxable years beginning after 2002 and  
3 before 2008, and the increase of the qualifying  
4 investment amount to \$500,000 for taxable years  
5 beginning after 2006 and before 2011, in section  
6 179(b) (2);
- 7 (3) The increase of the maximum deduction to \$250,000 and  
8 the increase of the qualifying investment amount to  
9 \$800,000 for taxable years beginning in 2008~~[r]~~ or  
10 2009, in section 179(b) (7);
- 11 (4) Defining section 179 property to include computer  
12 software in section 179(d) (1);
- 13 (5) Inflation adjustments in section 179(b) (5);
- 14 (6) Irrevocable election in section 179(c) (2); and
- 15 (7) Special rules for qualified disaster assistance  
16 property in section 179(e),  
17 shall not be operative for the purposes of this chapter.
- 18 [~~(i)~~] (m) Section 198A (with respect to the expensing of  
19 qualified disaster assistances expenses) of the Internal Revenue  
20 Code shall not be operative for purposes of this chapter.
- 21 [~~(j)~~] (n) Section 219 (with respect to retirement savings)  
22 of the Internal Revenue Code shall be operative for the purpose

1 of this chapter. For the purpose of computing the limitation on  
2 the deduction for active participants in certain pension plans  
3 for state income tax purposes, adjusted gross income as used in  
4 section 219 as operative for this chapter means federal adjusted  
5 gross income.

6 ~~[(k)]~~ (o) Section 220 (with respect to medical savings  
7 accounts) of the Internal Revenue Code shall be operative for  
8 the purpose of this chapter, but only with respect to medical  
9 services accounts that have been approved by the Secretary of  
10 the Treasury of the United States.

11 ~~[(l)]~~ (p) Section 265 (with respect to expenses and  
12 interest relating to tax-exempt income) of the Internal Revenue  
13 Code shall be operative for purposes of this chapter; except  
14 that sections 265(b) (3) (G) and 265(b) (7) shall not be operative  
15 and that ~~[(i)]~~ section 265 shall not apply to expenses for  
16 royalties and other income derived from any patents, copyrights,  
17 and trade secrets by an individual or a qualified high  
18 technology business as defined in section 235-7.3. Such  
19 expenses shall be deductible.

20 (q) Section 382 (with respect to limitation on net  
21 operating loss carryforwards and certain built-in losses  
22 following ownership change) of the Internal Revenue Code shall



1 be operative for the purposes of this chapter, except that  
2 section 382(n) shall not be operative for purposes of this  
3 chapter.

4 ~~[(m)]~~ (r) 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~~[-]~~, except that  
7 section 408A(d) (3) (A) (iii) shall not be operative for purposes  
8 of this chapter. For the purposes of determining the aggregate  
9 amount of contributions to a Roth Individual Retirement Account  
10 or qualified rollover contribution to a Roth Individual  
11 Retirement Account from an individual retirement plan other than  
12 a Roth Individual Retirement Account, adjusted gross income as  
13 used in section 408A as operative for this chapter means federal  
14 adjusted gross income.

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

1 administrative requirements under those sections as may be  
2 necessary for the efficient administration of sections 410 to  
3 419A.

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 [~~+~~+] (t) In administering section 403 (with respect to  
16 taxation of employee annuities) of the Internal Revenue Code,  
17 any funds that represent pre-tax employee deferrals or  
18 contributions that are distributed from the annuity and used  
19 solely to obtain retirement credits under the state  
20 [~~+~~]employees' [~~+~~] retirement system shall not be treated as a  
21 rollover for purposes of section 403(b)(8)(A) of the Internal

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

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

8 ~~[(q)]~~ (v) In administering section 457 (with respect to  
9 compensation plans of state and local governments and tax-exempt  
10 organizations) of the Internal Revenue Code, any funds that  
11 represent pre-tax employee deferrals or contributions that are  
12 distributed from the deferred compensation plan and used solely  
13 to obtain retirement credits under the state ~~[(r)]~~employees' ~~[(s)]~~  
14 retirement system shall not be treated as a rollover for  
15 purposes of section 457(e)(16)(A) of the Internal Revenue Code  
16 and such funds shall be subject to income tax under this  
17 chapter.

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

10 ~~[(t)]~~ (y) Sections 512 to 514 (with respect to taxation  
11 of business income of certain exempt organizations) of the  
12 Internal Revenue Code shall be operative for the purposes of  
13 this chapter 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 [~~(u)~~] (z) 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 [~~(v)~~] (aa) 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 section are hereby imposed by this chapter at the rates  
17 determined under section 235-71.

18 [~~(w)~~] (bb) Section 529 (with respect to qualified  
19 tuition programs) shall be operative for the purposes of this  
20 chapter, except that section 529(c)(6) and section  
21 529(e)(3)(A)(iii) shall not be operative.

1           ~~[(\*)]~~ (cc) 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 for  
9 investments made before May 1, 2009;

10 (2) Allocations of net operating loss pursuant to section  
11 235-111.5;

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

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

17 (e) Section 1202 (with respect to partial exclusion for  
18 gain from certain small business stock) of the Internal Revenue  
19 Code shall be operative for purposes of this chapter, except  
20 that section 1202(a)(3) shall not be operative for purposes of  
21 this chapter.



1        [~~(e)~~] (f) Section 1212 (with respect to capital loss  
2 carrybacks and carryforwards) of the Internal Revenue Code shall  
3 be operative for the purposes of this chapter; except that for  
4 the purposes of this chapter, the capital loss carryback  
5 provisions of section 1212 shall not be operative and the  
6 capital loss carryforward allowed by section 1212(a) shall be  
7 limited to five years; except for a qualified high technology  
8 business as defined in section 235-7.3, which shall be limited  
9 to fifteen years.

10       [~~(f)~~] (g) Section 1221 (with respect to the definition of  
11 capital assets) is operative; provided that the provisions of  
12 section 301 of Public Law 110-343, which provide that gain or  
13 loss from the sale or exchange of any applicable preferred stock  
14 by any applicable financial institution (such terms being  
15 defined by Public Law 110-343) shall be treated as ordinary  
16 income or loss, shall not be operative. A sale or exchange of  
17 any applicable preferred stock by any applicable financial  
18 institution (as those terms are defined by section 301 of Public  
19 Law 110-343) shall be treated as a sale of a capital asset and  
20 taxed accordingly.

21       [~~(g)~~] (h) Subchapter S (sections 1361 to 1379) (with  
22 respect to tax treatment of S corporations and their

1 shareholders) of chapter 1 of the Internal Revenue Code shall be  
2 operative for the purposes of this chapter as provided in part  
3 VII[-]; except that section 1374(d)(7)(B) and 1374(d)(7)(C)  
4 shall not be operative for purposes of this chapter.

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

1        [~~(i)~~] (j) Section 1400S (with respect to additional tax  
2 relief provisions) of the Internal Revenue Code shall be  
3 operative for the purposes of this chapter, except that section  
4 1400S(d) (with respect to the special rule for determining  
5 earned income) shall not be operative for the purposes of this  
6 chapter.

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

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

18        [~~(l)~~] (m) Subchapter C (sections 6221 to 6233) (with  
19 respect to tax treatment of partnership items) of chapter 63 of  
20 the Internal Revenue Code shall be operative for the purposes of  
21 this chapter.

1       ~~(m)~~ (n) Subchapter D (sections 6240 to 6255) (with  
2 respect to simplified audit procedures for electing large  
3 partnerships) of the Internal Revenue Code shall be operative  
4 for the purposes of this chapter, with due regard to chapter 232  
5 relating to tax appeals.

6       ~~(n)~~ (o) Section 6501(e) (with respect to limitation on  
7 assessment and collection where there is a substantial omission  
8 of items) of the Internal Revenue Code shall be operative for  
9 purposes of this chapter.

10       ~~(o)~~ (p) Section 6511(h) (with respect to running of  
11 periods of limitation suspended while taxpayer is unable to  
12 manage financial affairs due to disability) of the Internal  
13 Revenue Code shall be operative for purposes of this chapter,  
14 with due regard to section 235-111 relating to the limitation  
15 period for assessment, levy, collection, or credit.

16       ~~(p)~~ (q) Section 7518 (with respect to capital  
17 construction fund for commercial fishers) of the Internal  
18 Revenue Code shall be operative for the purposes of this  
19 chapter. Qualified withdrawals for the acquisition,  
20 construction, or reconstruction of any qualified asset that is  
21 attributable to deposits made before the effective date of this  
22 section shall not reduce the basis of the asset when withdrawn.

1 Qualified withdrawals shall be treated on a first-in-first-out  
2 basis."

3 SECTION 5. Section 235-7, Hawaii Revised Statutes, is  
4 amended by amending subsection (d) to read as follows:

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

18 (2) (A) With respect to net operating loss deductions  
19 resulting from net operating losses for taxable  
20 years ending after December 31, 1966, the net  
21 operating loss deduction provisions of the  
22 Internal Revenue Code shall apply; provided that

1           there shall be no net operating loss deduction  
2           carried back to any taxable year ending prior to  
3           January 1, 1967;

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

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

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

1 subsection of any corporation, there shall be  
2 disregarded the net operating loss of such corporation  
3 for any taxable year for which the corporation is an  
4 electing small business corporation;

5 (4) No net operating loss carryback or carryover shall be  
6 allowed by this chapter if not allowed under section  
7 172 of the Internal Revenue Code;

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

17 (6) The five-year carryback period for net operating  
18 losses for any taxable year ending during 2001 and  
19 2002 in section 172(b)(1)(H) of the Internal Revenue  
20 Code, as it read on December 31, 2008, shall not be  
21 operative for purposes of this chapter~~[ ]~~; and

1        (7) The election for the carryback for 2008 or 2009 net  
2        operating losses of small businesses as provided in  
3        section 172(b)(1)(H) of the Internal Revenue Code, as  
4        it read on December 31, 2009, shall not be operative  
5        for purposes of this chapter."

6        SECTION 6. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8        SECTION 7. This Act shall take effect upon its approval.



**Report Title:**

Income Tax; Conformity to the Internal Revenue Code for 2009

**Description:**

Provides a measure for conforming amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2009. (SD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*