
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~~[7]~~ 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)

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