
A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to impose the income
2 tax on real property capital improvements made and surrendered
3 by a lessee to a lessor at the termination of a real property
4 lease. The legislature find that, if a lessor receives the
5 benefit of those surrendered improvements, that benefit should
6 be taxable as income under the law.

7 The legislature further finds that this Act is of statewide
8 concern and within the legislature's power under article VIII,
9 section 6, of the Constitution of the State of Hawaii.

10 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§235- Taxable income; leased real property. At the
14 termination of a real property lease, the value of capital
15 improvements made by a lessee to the leased real property shall
16 be taxable under this chapter to the lessor of the property.

17 The department of taxation may adopt rules pursuant to
18 chapter 91 to effectuate this section."



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

3 "(b) The following Internal Revenue Code subchapters,
4 parts of subchapters, sections, subsections, and parts of
5 subsections shall not be operative for the purposes of this
6 chapter, unless otherwise provided:

7 (1) Subchapter A (sections 1 to 59A) (with respect to
8 determination of tax liability), except section
9 1(h)(2) (relating to net capital gain reduced by the
10 amount taken into account as investment income),
11 except sections 2(a), 2(b), and 2(c) (with respect to
12 the definition of "surviving spouse" and "head of
13 household"), except section 41 (with respect to the
14 credit for increasing research activities), except
15 section 42 (with respect to low-income housing
16 credit), and except sections 47 and 48, as amended, as
17 of December 31, 1984 (with respect to certain
18 depreciable tangible personal property). For
19 treatment, see sections 235-110.91, 235-110.7, and
20 235-110.8;



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- 1 (2) Section 78 (with respect to dividends received from
2 certain foreign corporations by domestic corporations
3 choosing foreign tax credit);
- 4 (3) Section 86 (with respect to social security and tier 1
5 railroad retirement benefits);
- 6 (4) Section 103 (with respect to interest on state and
7 local bonds). For treatment, see section 235-7(b);
- 8 (5) Section 109 (with respect to improvements by lessee on
9 lessor's property). For treatment, see section
10 235- ;
- 11 ~~[(5)]~~ (6) Section 114 (with respect to extraterritorial
12 income). For treatment, any transaction as specified
13 in the transitional rule for 2005 and 2006 as
14 specified in the American Jobs Creation Act of 2004
15 section 101(d) and any transaction that has occurred
16 pursuant to a binding contract as specified in the
17 American Jobs Creation Act of 2004 section 101(f) are
18 inoperative;
- 19 ~~[(6)]~~ (7) Section 120 (with respect to amounts received
20 under qualified group legal services plans). For
21 treatment, see section 235-7(a)(9) to (11);



- 1 ~~[(7)]~~ (8) Section 122 (with respect to certain reduced
2 uniformed services retirement pay). For treatment,
3 see section 235-7(a) (3);
- 4 ~~[(8)]~~ (9) Section 135 (with respect to income from United
5 States savings bonds used to pay higher education
6 tuition and fees). For treatment, see section 235-
7 7(a) (1);
- 8 ~~[(9)]~~ (10) Subchapter B (sections 141 to 150) (with respect
9 to tax exemption requirements for state and local
10 bonds);
- 11 ~~[(10)]~~ (11) Section 151 (with respect to allowance of
12 deductions for personal exemptions). For treatment,
13 see section 235-54;
- 14 ~~[(11)]~~ (12) Section 179B (with respect to expensing of
15 capital costs incurred in complying with Environmental
16 Protection Agency sulphur regulations);
- 17 ~~[(12)]~~ (13) Section 181 (with respect to special rules for
18 certain film and television productions);
- 19 ~~[(13)]~~ (14) Section 196 (with respect to deduction for
20 certain unused investment credits);
- 21 ~~[(14)]~~ (15) Section 199 (with respect to the U.S. production
22 activities deduction);



- 1 ~~[(15)]~~ (16) Section 222 (with respect to qualified tuition
2 and related expenses);
- 3 ~~[(16)]~~ (17) Sections 241 to 247 (with respect to special
4 deductions for corporations). For treatment, see
5 section 235-7(c);
- 6 ~~[(17)]~~ (18) Section 280C (with respect to certain expenses
7 for which credits are allowable). For treatment, see
8 section 235-110.91;
- 9 ~~[(18)]~~ (19) Section 291 (with respect to special rules
10 relating to corporate preference items);
- 11 ~~[(19)]~~ (20) Section 367 (with respect to foreign
12 corporations);
- 13 ~~[(20)]~~ (21) Section 501(c)(12), (15), (16) (with respect to
14 exempt organizations);
- 15 ~~[(21)]~~ (22) Section 515 (with respect to taxes of foreign
16 countries and possessions of the United States);
- 17 ~~[(22)]~~ (23) Subchapter G (sections 531 to 565) (with respect
18 to corporations used to avoid income tax on
19 shareholders);
- 20 ~~[(23)]~~ (24) Subchapter H (sections 581 to 597) (with respect
21 to banking institutions), except section 584 (with



1 respect to common trust funds). For treatment, see
2 chapter 241;

3 ~~[(24)]~~ (25) Section 642(a) and (b) (with respect to special
4 rules for credits and deductions applicable to
5 trusts). For treatment, see sections 235-54(b) and
6 235-55;

7 ~~[(25)]~~ (26) Section 646 (with respect to tax treatment of
8 electing Alaska Native settlement trusts);

9 ~~[(26)]~~ (27) Section 668 (with respect to interest charge on
10 accumulation distributions from foreign trusts);

11 ~~[(27)]~~ (28) Subchapter L (sections 801 to 848) (with respect
12 to insurance companies). For treatment, see sections
13 431:7-202 and 431:7-204;

14 ~~[(28)]~~ (29) Section 853 (with respect to foreign tax credit
15 allowed to shareholders). For treatment, see section
16 235-55;

17 ~~[(29)]~~ (30) Subchapter N (sections 861 to 999) (with respect
18 to tax based on income from sources within or without
19 the United States), except sections 985 to 989 (with
20 respect to foreign currency transactions). For
21 treatment, see sections 235-4, 235-5, and 235-7(b),
22 and 235-55;



- 1 ~~[(30)]~~ (31) Section 1042(g) (with respect to sales of stock
2 in agricultural refiners and processors to eligible
3 farm cooperatives);
- 4 ~~[(31)]~~ (32) Section 1055 (with respect to redeemable ground
5 rents);
- 6 ~~[(32)]~~ (33) Section 1057 (with respect to election to treat
7 transfer to foreign trust, etc., as taxable exchange);
- 8 ~~[(33)]~~ (34) Sections 1291 to 1298 (with respect to treatment
9 of passive foreign investment companies);
- 10 ~~[(34)]~~ (35) Subchapter Q (sections 1311 to 1351) (with
11 respect to readjustment of tax between years and
12 special limitations);
- 13 ~~[(35)]~~ (36) Subchapter R (sections 1352 to 1359) (with
14 respect to election to determine corporate tax on
15 certain international shipping activities using per
16 ton rate);
- 17 ~~[(36)]~~ (37) Subchapter U (sections 1391 to 1397F) (with
18 respect to designation and treatment of empowerment
19 zones, enterprise communities, and rural development
20 investment areas). For treatment, see chapter 209E;
- 21 ~~[(37)]~~ (38) Subchapter W (sections 1400 to 1400C) (with
22 respect to District of Columbia enterprise zone);



1 [~~38~~] (39) Section 14000 (with respect to education tax
2 benefits);

3 [~~39~~] (40) Section 1400P (with respect to housing tax
4 benefits);

5 [~~40~~] (41) Section 1400R (with respect to employment
6 relief); and

7 [~~41~~] (42) Section 1400T (with respect to special rules for
8 mortgage revenue bonds)."

9 SECTION 4. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 5. This Act shall take effect upon its approval
12 and shall apply to taxable years beginning after December 31,
13 2009.

14

INTRODUCED BY: Calvin K. By

JAN 27 2010



Report Title:

Income Tax; Leasehold Property

Description:

Imposes the income tax on a lessor of real property for capital improvements made by a lessee upon the termination of a lease.

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