

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. In 1996, the United States Congress enacted
2 section 529 (with respect to qualified tuition programs) of the
3 Internal Revenue Code, authorizing tax-deferred college savings
4 plans now referred to as "529 Plans". Section 529 authorizes
5 states to establish these programs to assist and encourage
6 families to set aside funds for future higher education
7 expenses.

8 Most states that assess an income tax on their resident
9 taxpayers offer those taxpayers a state income tax deduction or
10 tax credit for the contributions a taxpayer makes to a qualified
11 tuition program as an incentive and encouragement for resident
12 taxpayers to participate in those programs, such as a 529 plan.

13 The purpose of this Act is to provide a state income tax
14 deduction for contributions to any qualified tuition program to
15 encourage and provide an incentive for Hawaii families to save
16 for college by using the qualified tuition program of their
17 choice. The state income tax deduction shall apply to qualified



1 tuition program contributions made in taxable years beginning
2 after December 31, 2008.

3 SECTION 2. Section 235-7, Hawaii Revised Statutes, is
4 amended to read as follows:

5 **"§235-7 Other provisions as to gross income, adjusted**
6 **gross income, and taxable income.** (a) There shall be excluded
7 from gross income, adjusted gross income, and taxable income:

8 (1) Income not subject to taxation by the State under the
9 Constitution and laws of the United States;

10 (2) Rights, benefits, and other income exempted from
11 taxation by section 88-91, having to do with the state
12 retirement system, and the rights, benefits, and other
13 income, comparable to the rights, benefits, and other
14 income exempted by section 88-91, under any other
15 public retirement system;

16 (3) Any compensation received in the form of a pension for
17 past services;

18 (4) Compensation paid to a patient affected with Hansen's
19 disease employed by the State or the United States in
20 any hospital, settlement, or place for the treatment
21 of Hansen's disease;



- 1 (5) Except as otherwise expressly provided, payments made
2 by the United States or this State, under an act of
3 Congress or a law of this State, which by express
4 provision or administrative regulation or
5 interpretation are exempt from both the normal and
6 surtaxes of the United States, even though not so
7 exempted by the Internal Revenue Code itself;
- 8 (6) Any income expressly exempted or excluded from the
9 measure of the tax imposed by this chapter by any
10 other law of the State, it being the intent of this
11 chapter not to repeal or supersede any express
12 exemption or exclusion;
- 13 (7) Income received by each member of the reserve
14 components of the Army, Navy, Air Force, Marine Corps,
15 or Coast Guard of the United States of America, and
16 the Hawaii national guard as compensation for
17 performance of duty, equivalent to pay received for
18 forty-eight drills (equivalent of twelve weekends) and
19 fifteen days of annual duty, at an:
- 20 (A) E-1 pay grade after eight years of service;
21 provided that this subparagraph shall apply to
22 taxable years beginning after December 31, 2004;



- 1 (B) E-2 pay grade after eight years of service;
2 provided that this subparagraph shall apply to
3 taxable years beginning after December 31, 2005;
- 4 (C) E-3 pay grade after eight years of service;
5 provided that this subparagraph shall apply to
6 taxable years beginning after December 31, 2006;
- 7 (D) E-4 pay grade after eight years of service;
8 provided that this subparagraph shall apply to
9 taxable years beginning after December 31, 2007;
10 and
- 11 (E) E-5 pay grade after eight years of service;
12 provided that this subparagraph shall apply to
13 taxable years beginning after December 31, 2008;
- 14 (8) Income derived from the operation of ships or aircraft
15 if the income is exempt under the Internal Revenue
16 Code pursuant to the provisions of an income tax
17 treaty or agreement entered into by and between the
18 United States and a foreign country; provided that the
19 tax laws of the local governments of that country
20 reciprocally exempt from the application of all of
21 their net income taxes, the income derived from the



- 1 operation of ships or aircraft that are documented or
2 registered under the laws of the United States;
- 3 (9) The value of legal services provided by a prepaid
4 legal service plan to a taxpayer, the taxpayer's
5 spouse, and the taxpayer's dependents;
- 6 (10) Amounts paid, directly or indirectly, by a prepaid
7 legal service plan to a taxpayer as payment or
8 reimbursement for the provision of legal services to
9 the taxpayer, the taxpayer's spouse, and the
10 taxpayer's dependents;
- 11 (11) Contributions by an employer to a prepaid legal
12 service plan for compensation (through insurance or
13 otherwise) to the employer's employees for the costs
14 of legal services incurred by the employer's
15 employees, their spouses, and their dependents;
- 16 (12) Amounts received in the form of a monthly surcharge by
17 a utility acting on behalf of an affected utility
18 under section 269-16.3 shall not be gross income,
19 adjusted gross income, or taxable income for the
20 acting utility under this chapter. Any amounts
21 retained by the acting utility for collection or other
22 costs shall not be included in this exemption; and



1 (13) One hundred per cent of the gain realized by a fee
2 simple owner from the sale of a leased fee interest in
3 units within a condominium project, cooperative
4 project, or planned unit development to the
5 association of owners under chapter 514A or 514B, or
6 the residential cooperative corporation of the
7 leasehold units.

8 For purposes of this paragraph:

9 "Fee simple owner" shall have the same meaning as
10 provided under section 516-1; provided that it shall
11 include legal and equitable owners;

12 "Legal and equitable owner" [7] and "leased fee
13 interest" shall have the same meanings as provided
14 under section 516-1; and

15 "Condominium project" and "cooperative project"
16 shall have the same meanings as provided under section
17 514C-1.

18 (b) There shall be included in gross income, adjusted
19 gross income, and taxable income: (1) unless excluded by this
20 chapter relating to the uniformed services of the United States,
21 cost-of-living allowances and other payments exempted by section
22 912 of the Internal Revenue Code, but section 119 of the



1 Internal Revenue Code nevertheless shall apply; (2) unless
2 expressly exempted or excluded as provided by subsection (a)(6),
3 interest on the obligations of a State or a political
4 subdivision thereof.

5 (c) The deductions of or based on dividends paid or
6 received, allowed to a corporation under chapter 1, subchapter
7 B, Part VIII of the Internal Revenue Code, shall not be allowed.
8 In lieu thereof there shall be allowed as a deduction the entire
9 amount of dividends received by any corporation upon the shares
10 of stock of a national banking association, qualifying
11 dividends, as defined in section 243(b) of the Internal Revenue
12 Code, received by members of an affiliated group, or dividends
13 received by a small business investment company operating under
14 the Small Business Investment Act of 1958 (Public Law 85-699)
15 upon shares of stock qualifying under paragraph (3), seventy per
16 cent of the amount received by any corporation as dividends:

17 (1) Upon the shares of stock of another corporation, if at
18 the date of payment of the dividend at least ninety-
19 five per cent of the other corporation's capital stock
20 is owned by one or more corporations doing business in
21 this State and if the other corporation is subjected
22 to an income tax in another jurisdiction (but



- 1 subjection to federal tax does not constitute
2 subjection to income tax in another jurisdiction);
- 3 (2) Upon the shares of stock of a bank or insurance
4 company organized and doing business under the laws of
5 the State;
- 6 (3) Upon the shares of stock of another corporation, if at
7 least fifteen per cent of the latter corporation's
8 business, for the taxable year of the latter
9 corporation preceding the payment of the dividend, has
10 been attributed to this State.

11 However, except for national bank dividends, the deductions
12 under this subsection are not allowed when they would not have
13 been allowed under section 243 of the Internal Revenue Code, as
14 amended by Public Law 85-866, by reason of subsections (b) and
15 (c) of section 246 of the Internal Revenue Code. For the
16 purposes of this subsection fifteen per cent of a corporation's
17 business shall be deemed to have been attributed to this State
18 if fifteen per cent or more of the entire gross income of the
19 corporation as defined in this chapter (which for the purposes
20 of this subsection shall be computed without regard to source in
21 the State and shall include income not taxable by reason of the
22 fact that it is from property not owned in the State or from a



1 trade or business not carried on in the State in whole or in
2 part), under section 235-5 and the other provisions of this
3 chapter, shall have been attributed to the State and subjected
4 to assessment of the taxable income therefrom (including the
5 determination of the resulting net loss, if any).

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

19 (2) (A) With respect to net operating loss deductions
20 resulting from net operating losses for taxable
21 years ending after December 31, 1966, the net
22 operating loss deduction provisions of the



1 Internal Revenue Code shall apply; provided that
2 there shall be no net operating loss deduction
3 carried back to any taxable year ending prior to
4 January 1, 1967;

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

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

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



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

6 (4) No net operating loss carryback or carryover shall be
7 allowed by this chapter if not allowed under section
8 172 of the Internal Revenue Code;

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

19 (6) The five-year carryback period for net operating
20 losses for any taxable year ending during 2001 and
21 2002 in section 172(b)(1)(H) of the Internal Revenue



1 Code shall not be operative for purposes of this
2 chapter.

3 (e) There shall be disallowed as a deduction the amount of
4 interest paid or accrued within the taxable year on indebtedness
5 incurred or continued, (1) to purchase or carry bonds the
6 interest upon which is excluded from gross income by subsection
7 (a); or (2) to purchase or carry property owned without the
8 State, or to carry on trade or business without the State, if
9 the taxpayer is a person taxable only upon income from sources
10 in the State.

11 (f) Losses of property as the result of tidal wave,
12 hurricane, earthquake, or volcanic eruption, or as a result of
13 flood waters overflowing the banks or walls of a river or
14 stream, or from any other natural disaster, to the extent of the
15 amount deductible, under this chapter, not compensated for by
16 insurance or otherwise, may be deducted in the taxable year in
17 which sustained, or at the option of the taxpayer may be
18 deducted in equal installments over a period of five years, the
19 first such year to be the calendar year or fiscal year of the
20 taxpayer in which such loss occurred.

21 (g) In computing taxable income there shall be allowed as
22 a deduction:



1 (1) Political contributions by any taxpayer not in excess
2 of \$250 in any year; provided that such contributions
3 are made to a central or county committee of a
4 political party whose candidates shall have qualified
5 by law to be voted for at the immediately previous
6 general election; or

7 (2) Political contributions by any individual taxpayer in
8 an aggregate amount not to exceed \$1,000 in any year;
9 provided that such contributions are made to
10 candidates as defined in section 11-191, who have
11 agreed to abide by the campaign expenditure limits as
12 set forth in section 11-209; and provided further that
13 not more than \$250 of an individual's total
14 contribution to any single candidate shall be
15 deductible for purposes of this section.

16 (h) The following annual deductions from gross income
17 shall be allowed for contributions to a qualified tuition
18 program, established pursuant to section 529 (with respect to
19 qualified tuition programs) of the Internal Revenue Code, that
20 prominently disclose in its offering or marketing documents
21 language substantially to the effect that, before investing in
22 any qualified tuition program, an investor should consider the



1 features and benefits of their home state's qualified tuition
2 program prior to investing and contributing to any plan:

3 (1) Up to \$5,000 for individual taxpayers with a filing
4 status of single, but not more than the amount
5 contributed during the taxable or prior year as
6 provided herein;

7 (2) Up to \$5,000 for married couples filing separate
8 returns, but not more than the amount contributed
9 during the taxable or prior year as provided herein,
10 provided that each spouse may claim a deduction of up
11 to \$5,000; and

12 (3) Up to \$10,000 for married couples filing joint
13 returns, individuals filing as the head of the
14 household, or individuals filing as qualifying widower
15 with dependent child, but not more than the amount
16 contributed during the taxable or prior year as
17 provided herein;

18 If the amount of the taxpayer's contribution in paragraph
19 (1), (2), or (3) for the taxable year exceeds the taxpayer's
20 gross income for the taxable year that the contributions are
21 made, or if the amount contributed to the qualified tuition
22 program exceeds the amount allowed to be deducted from gross



1 income for the taxable year, then excess contributions may be
2 used as a deduction against the taxpayer's gross income for up
3 to five subsequent tax years or until the excess contributions
4 are exhausted, whichever occurs first. Amounts deducted shall
5 be for contributions made by December 31 of the tax year or
6 prior to April 16 of the succeeding tax year. No deduction
7 shall be allowed for any amounts derived from a withdrawal or
8 rollover from any qualified tuition program. No deduction shall
9 be allowed for contributions to an account made in the same tax
10 year that a withdrawal from that same account has occurred. Any
11 deduction taken under this subsection shall be subject to
12 recapture in the taxable year or years in which any distribution
13 or any other withdrawal is made from a savings account in
14 connection with a qualified tuition program for any reason other
15 than:

- 16 (1) To pay qualified higher education expenses;
17 (2) To rollover to another qualified tuition program
18 established pursuant to section 529 (with respect to
19 qualified tuition programs) of the Internal Revenue
20 Code;
21 (3) As a result of the beneficiary's death or disability;



- 1 (4) As a result of the beneficiary receiving a scholarship
- 2 as long as the aggregate amount of distributions or
- 3 withdrawals made pursuant to this paragraph do not
- 4 exceed the amount of the excess qualified higher
- 5 education expenses over the scholarship received for
- 6 that tax year; or
- 7 (5) Amounts withdrawn during any year that is in excess of
- 8 amounts contributed and taken as deductions."

9 SECTION 3. Statutory material to be repealed is bracketed
 10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act, upon its approval, shall apply to
 12 taxable years beginning after December 31, 2008; provided that
 13 amendments made to section 235-7, Hawaii Revised Statutes, by
 14 this Act shall not be repealed when that section is repealed and
 15 reenacted on January 1, 2013, pursuant to section 3 of Act 166,
 16 Session Laws of Hawaii 2007.

17

INTRODUCED BY: Norman Sakomura

Chris ...
Ronald de ...
Jim
[Signature]

Report Title:

Qualified Tuition Programs; Maximum Annual Deduction

Description:

Provides an annual maximum deduction of \$5,000 per individual or \$10,000 for a married couple filing jointly against gross income for contributions made to a qualified tuition program for taxable years beginning after December 31, 2008.

