



GOV. MSG. NO. 1194

EXECUTIVE CHAMBERS
HONOLULU

NEIL ABERCROMBIE
GOVERNOR

June 9, 2011

The Honorable Shan Tsutsui, President
and Members of the Senate
Twenty-Sixth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

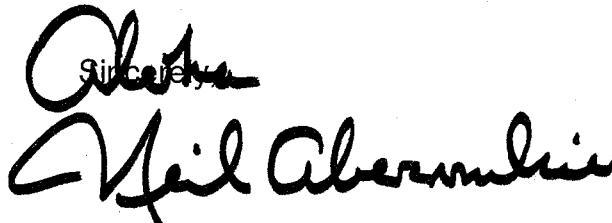
The Honorable Calvin Say, Speaker
and Members of the House
Twenty-Sixth State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 9, 2011, the following bill was signed into law:

HB1089 HD1 SD1 CD1

RELATING TO CONFORMITY OF THE HAWAII
INCOME TAX LAW TO THE INTERNAL
REVENUE CODE
Act 091 (11)


Sincerely,

NEIL ABERCROMBIE
Governor, State of Hawaii

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 by amending subsection (a) to read as follows:
- 5 "(a) For all taxable years beginning after December 31,
6 [~~2009~~] 2010, as used in this chapter, except as provided in
7 section 235-2.35, "Internal Revenue Code" means subtitle A,
8 chapter 1, of the federal Internal Revenue Code of 1986, as
9 amended as of December 31, [~~2009~~] 2010, as it applies to the
10 determination of gross income, adjusted gross income, ordinary
11 income and loss, and taxable income, except those provisions of
12 the Internal Revenue Code and federal public laws which,
13 pursuant to this chapter, do not apply or are otherwise limited
14 in application and except for the provisions of Public Law 109-
15 001 which apply to section 170 of the Internal Revenue Code.
16 The provisions of Public Law 109-001 to accelerate the deduction
17 for charitable cash contributions for the relief of victims of



1 the 2004 Indian Ocean tsunami are applicable for the calendar
2 year that ended December 31, 2004, and the calendar year ending
3 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 SECTION 3. Section 235-2.35, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "[+]§235-2.35[+] Operation of certain Internal Revenue
17 Code provisions not operative under section 235-2.3.

18 [~~Notwithstanding the meaning of "Internal Revenue Code" as that~~
19 ~~term is used in section [235-2.3], beginning April 1, 2010, the]~~

20 The following sections of the federal Internal Revenue Code of
21 1986, as amended [as of April 1, 2010], shall be operative for
22 purposes of this chapter:



- 1 (1) Section 6041 as applicable to persons under section
- 2 6041(h) (with respect to information returns at the
- 3 source for certain corporations);
- 4 (2) Section 6038D (with respect to information with
- 5 respect to foreign financial assets). With respect to
- 6 persons required to report information under this
- 7 section, section 6662(j) (with respect to imposition
- 8 of accuracy-related penalties on underpayments) and
- 9 section 6501(e)(1)(A)(ii) (with respect to limitations
- 10 on assessment and collection) shall also be operative
- 11 for purposes of this chapter and shall be applied
- 12 consistently with the correlating provisions of
- 13 [§]sections[§] 231-36.6 and 235-111;
- 14 (3) Section 6045B (with respect to returns relating to
- 15 actions affecting basis in securities); and
- 16 (4) Section 6050W (with respect to returns relating to
- 17 payments made in settlement of payment card and third
- 18 party network transactions)."

19 SECTION 4. Section 235-2.4, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "§235-2.4 Operation of certain Internal Revenue Code
 22 provisions; sections 63 to 530. (a) Section 63 (with respect



1 to taxable income defined) of the Internal Revenue Code shall be
2 operative for the purposes of this chapter, subject to the
3 following:

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

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

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

21 (i) A joint return as provided by section 235-
22 93; or



1 (ii) A surviving spouse (as defined in section
2 2(a) of the Internal Revenue Code);
3 (B) \$3,212 in the case of a head of household (as
4 defined in section 2(b) of the Internal Revenue
5 Code);
6 (C) \$2,200 in the case of an individual who is not
7 married and who is not a surviving spouse or head
8 of household; or
9 (D) \$2,200 in the case of a married individual filing
10 a separate return;
11 (3) Section 63(c)(5) (limiting the basic standard
12 deduction in the case of certain dependents) of the
13 Internal Revenue Code shall be operative, except that
14 the limitation shall be the greater of \$500 or such
15 individual's earned income; and
16 (4) The standard deduction amount for nonresidents shall
17 be calculated pursuant to section 235-5.
18 (b) Section 68 (with respect to the overall limitation on
19 itemized deductions) of the Internal Revenue Code shall be
20 operative, except that sections 68(f) and 68(g) shall not be
21 operative; provided that the thresholds shall be those that were
22 operative for federal tax year 2009.

1 [~~(b)~~] (c) 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 [~~(e)~~] (d) Section 85 (with respect to unemployment
9 compensation) of the Internal Revenue Code shall be operative
10 for purposes of this chapter, except that section 85(c) shall
11 not be operative for purposes of this chapter.

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

19 [~~(e)~~] (f) 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(s) in effect for
2 taxable year 1997.

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

12 ~~[(g)]~~ (h) 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 (AHYDO) rules) and section 163(i)(1) as it applies to
18 debt instruments issued after January 1, 2010, (defining AHYDO)
19 shall not be operative for the purposes of this chapter.

20 ~~[(h)]~~ (i) Section 164 (with respect to taxes) of the
21 Internal Revenue Code shall be operative for the purposes of
22 this chapter, except that sections 164(a)(6), 164(b)(5), and



1 164(b)(6) shall not be operative for the purposes of this
2 chapter.

3 ~~[(i)]~~ (j) 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 sections 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 sections 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to
9 special rules for personal casualty gains and losses in
10 federally declared disasters) of the Internal Revenue Code shall
11 not be operative for the purposes of this chapter. Section 165
12 as operative for this chapter shall also apply to losses
13 sustained from the sale of stocks or other interests issued
14 through the exercise of the stock options or warrants granted by
15 a qualified high technology business as defined in section 235-
16 7.3.

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



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

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

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

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

21 ~~(2) The increase of the qualifying investment amount to~~
22 ~~\$400,000 for taxable years beginning after 2002 and~~



1 ~~before 2008, and the increase of the qualifying~~
2 ~~investment amount to \$500,000 for taxable years~~
3 ~~beginning after 2006 and before 2011, in section~~
4 ~~179(b)(2);~~

5 ~~(3) The increase of the maximum deduction to \$250,000 and~~
6 ~~the increase of the qualifying investment amount to~~
7 ~~\$800,000 for taxable years beginning in 2008 or 2009,~~
8 ~~in section 179(b)(7);] as provided in this subsection:~~

9 (1) The aggregate cost provided in section 179(b)(1) which
10 may be taken into account under section 179(a) for any
11 taxable year shall not exceed \$25,000;

12 (2) The amount at which the reduction in limitation
13 provided in section 179(b)(2) begins shall exceed
14 \$200,000 for any taxable year; and

15 (3) The following shall not be operative for purposes of
16 this chapter:

17 ~~[+4)]~~ (A) Defining section 179 property to include computer
18 software in section 179(d)(1);

19 ~~[+5)]~~ (B) Inflation adjustments in section 179(b)(5);

20 ~~[+6)]~~ (C) Irrevocable election in section 179(c)(2); and

21 ~~[+7)]~~ (D) Special rules for qualified disaster assistance
22 property in section 179(e)[-



1 ~~shall not be operative for the purposes of this chapter].~~

2 ~~[(m)]~~ (n) Section 198A (with respect to the expensing of
3 qualified disaster assistances expenses) of the Internal Revenue
4 Code shall not be operative for purposes of this chapter.

5 ~~[(n)]~~ (o) Section 219 (with respect to retirement savings)
6 of the Internal Revenue Code shall be operative for the purpose
7 of this chapter. For the purpose of computing the limitation on
8 the deduction for active participants in certain pension plans
9 for state income tax purposes, adjusted gross income as used in
10 section 219 as operative for this chapter means federal adjusted
11 gross income.

12 ~~[(o)]~~ (p) Section 220 (with respect to medical savings
13 accounts) of the Internal Revenue Code shall be operative for
14 the purpose of this chapter, but only with respect to medical
15 services accounts that have been approved by the Secretary of
16 the Treasury of the United States.

17 ~~[(p)]~~ (q) Section 265 (with respect to expenses and
18 interest relating to tax-exempt income) of the Internal Revenue
19 Code shall be operative for purposes of this chapter; except
20 that sections 265(b)(3)(G) and 265(b)(7) shall not be operative
21 and that section 265 shall not apply to expenses for royalties
22 and other income derived from any patents, copyrights, and trade



1 secrets by an individual or a qualified high technology business
2 as defined in section 235-7.3. Such expenses shall be
3 deductible.

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

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

21 [~~(s)~~] (t) In administering the provisions of sections 410
22 to 417 (with respect to special rules relating to pensions,



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

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

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

21 [~~+~~] (u) In administering section 403 (with respect to
22 taxation of employee annuities) of the Internal Revenue Code,



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

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

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



1 [~~w~~] (x) Section 468B (with respect to special rules for
2 designated settlement funds) of the Internal Revenue Code shall
3 be operative for the purposes of this chapter and the tax
4 imposed therein is hereby imposed by this chapter at a rate
5 equal to the maximum rate in effect for the taxable year imposed
6 on estates and trusts under section 235-51.

7 [~~x~~] (y) Section 469 (with respect to passive activities
8 and credits limited) of the Internal Revenue Code shall be
9 operative for the purposes of this chapter. For the purpose of
10 computing the offset for rental real estate activities for state
11 income tax purposes, adjusted gross income as used in section
12 469 as operative for this chapter means federal adjusted gross
13 income.

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

18 "Unrelated business taxable income" means the same as in
19 the Internal Revenue Code, except that in the computation
20 thereof sections 235-3 to 235-5, and 235-7 (except subsection
21 (c)), shall apply, and in the determination of the net operating
22 loss deduction there shall not be taken into account any amount



1 of income or deduction that is excluded in computing the
2 unrelated business taxable income. Unrelated business taxable
3 income shall not include any income from a prepaid legal service
4 plan.

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

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

16 [~~aa~~] (bb) Sections 527 (with respect to political
17 organizations) and 528 (with respect to certain homeowners
18 associations) of the Internal Revenue Code shall be operative
19 for the purposes of this chapter and the taxes imposed in each
20 section are hereby imposed by this chapter at the rates
21 determined under section 235-71.



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

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

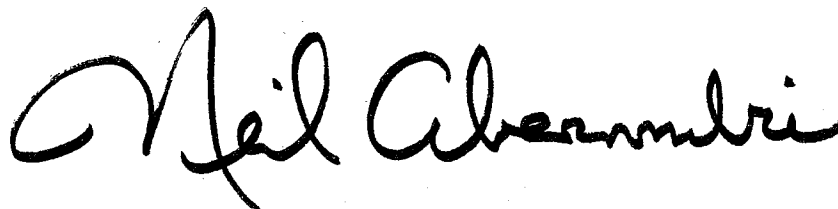
13 SECTION 5. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 6. This Act shall take effect upon its approval;
16 provided that the amendments made to section 235-2.4, Hawaii
17 Revised Statutes, by section 4 of this Act shall not be repealed
18 when section 235-2.4(a), Hawaii Revised Statutes, is repealed
19 and reenacted on December 31, 2015, pursuant to section 6 of Act
20 60, Session Laws of Hawaii 2009.



H.B. NO. 1089
H.D. 1
S.D. 1
C.D. 1

APPROVED this 9 day of JUN , 2011

A handwritten signature in black ink, reading "Neil Abernethy". The signature is written in a cursive style with a large initial "N".

GOVERNOR OF THE STATE OF HAWAII