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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. 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



1 Internal Revenue Code shall not be operative for  
2 purposes of this chapter;

3 (2) Section 63(c) (2) (relating to the basic standard  
4 deduction) of the Internal Revenue Code shall be  
5 operative, except that the standard deduction amounts  
6 provided therein shall instead mean:

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

8 (i) A joint return as provided by section 235-  
9 93; or

10 (ii) A surviving spouse (as defined in section  
11 2(a) of the Internal Revenue Code);

12 (B) \$2,920 in the case of a head of household (as  
13 defined in section 2(b) of the Internal Revenue  
14 Code);

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

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

20 (3) Section 63(c) (5) (limiting the basic standard  
21 deduction in the case of certain dependents) of the  
22 Internal Revenue Code shall be operative, except that

1 the limitation shall be the greater of \$500 or such  
2 individual's earned income; and

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

5 (b) Section 68 (with respect to the overall limitation on  
6 itemized deductions) of the Internal Revenue Code shall be  
7 operative, except that sections 68(f) and 68(g) shall not be  
8 operative; provided that the thresholds shall be those that were  
9 operative for federal tax year 2009.

10 (c) Section 72 (with respect to annuities; certain  
11 proceeds of endowment and life insurance contracts) of the  
12 Internal Revenue Code shall be operative for purposes of this  
13 chapter and be interpreted with due regard to section 235-7(a),  
14 except that the ten per cent additional tax on early  
15 distributions from retirement plans in section 72(t) shall not  
16 be operative for purposes of this chapter.

17 (d) Section 85 (with respect to unemployment compensation)  
18 of the Internal Revenue Code shall be operative for purposes of  
19 this chapter, except that section 85(c) shall not be operative  
20 for purposes of this chapter.

21 (e) Section 108 (with respect to income from discharge of  
22 indebtedness) of the Internal Revenue Code shall be operative



1 for purposes of this chapter, except that section 108(i)  
2 (relating to deferral and ratable inclusion of income arising  
3 from business indebtedness discharged by the reacquisition of a  
4 debt instrument) shall not be operative for purposes of this  
5 chapter.

6 (f) Section 121 (with respect to exclusion of gain from  
7 sale of principal residence) of the Internal Revenue Code shall  
8 be operative for purposes of this chapter, except that for the  
9 election under section 121(f), a reference to section 1034  
10 treatment means a reference to section 235-2.4(s) in effect for  
11 taxable year 1997.

12 (g) Section 132 (with respect to certain fringe benefits)  
13 of the Internal Revenue Code shall be operative for purposes of  
14 this chapter, except that the provision in section 132(f)(2)  
15 that equalizes the dollar amounts for sections 132(f)(2)(A) and  
16 (B) after February 17, 2009, until January 1, 2011, shall not be  
17 operative and except that section 132(n) shall not apply to  
18 United States Department of Defense Homeowners Assistance  
19 Program payments authorized by the American Recovery and  
20 Reinvestment Act of 2009.

21 (h) Section 162 (with respect to trade or business  
22 expenses) of the Internal Revenue Code shall be operative for



1 purposes of this chapter, except that, for taxable years  
2 beginning after December 31, 2011, no deduction shall be allowed  
3 for the provision of employee benefits to the extent that the  
4 value of the benefits provided to an employee exceeds an amount  
5 calculated by multiplying the State's median household income  
6 for the taxable year by fifty.

7       ~~(h)~~ (i) Section 163 (with respect to interest) of the  
8 Internal Revenue Code shall be operative for the purposes of  
9 this chapter, except that provisions in section 163(d)(4)(B)  
10 (defining net investment income to exclude dividends), section  
11 163(e)(5)(F) (suspension of applicable high-yield discount  
12 obligation (AHYDO) rules) and section 163(i)(1) as it applies to  
13 debt instruments issued after January 1, 2010, (defining AHYDO)  
14 shall not be operative for the purposes of this chapter.

15       ~~(i)~~ (j) Section 164 (with respect to taxes) of the  
16 Internal Revenue Code shall be operative for the purposes of  
17 this chapter, except that:

- 18       (1) Sections 164(a)(6), 164(b)(5), and 164(b)(6) shall not  
19       be operative for the purposes of this chapter; and  
20       (2) The deductions under sections 164(a)(3) and 164(b)(5)  
21       shall not be operative for corporate taxpayers and



1 shall be operative only for the following individual  
2 taxpayers:

3 (A) A taxpayer filing a single return or a married  
4 person filing separately with a federal adjusted  
5 gross income of less than \$100,000;

6 (B) A taxpayer filing as a head of household with a  
7 federal adjusted gross income of less than  
8 \$150,000; and

9 (C) A taxpayer filing a joint return or as a  
10 surviving spouse with a federal adjusted gross  
11 income of less than \$200,000.

12 [~~(j)~~] (k) Section 165 (with respect to losses) of the  
13 Internal Revenue Code shall be operative for purposes of this  
14 chapter, except that the amount prescribed by sections 165(h)(1)  
15 (relating to the limitation per casualty) of the Internal  
16 Revenue Code shall be a \$100 limitation per casualty, and  
17 sections 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to  
18 special rules for personal casualty gains and losses in  
19 federally declared disasters) of the Internal Revenue Code shall  
20 not be operative for the purposes of this chapter. Section 165  
21 as operative for this chapter shall also apply to losses  
22 sustained from the sale of stocks or other interests issued

1 through the exercise of the stock options or warrants granted by  
2 a qualified high technology business as defined in section 235-  
3 7.3.

4 ~~[(\*)]~~ (l) Section 168 (with respect to the accelerated  
5 cost recovery system) of the Internal Revenue Code shall be  
6 operative for purposes of this chapter, except that sections  
7 168(j) (relating to property on Indian reservations), 168(k)  
8 (relating to the special allowance for certain property acquired  
9 during the period specified therein), 168(m) (relating to the  
10 special allowance for certain reuse and recycling property), and  
11 168(n) (relating to the special allowance for qualified disaster  
12 assistance property) of the Internal Revenue Code shall not be  
13 operative for purposes of this chapter.

14 ~~[(+)]~~ (m) Section 172 (with respect to net operating loss  
15 deductions) of the Internal Revenue Code shall be operative for  
16 purposes of this chapter, as further provided in section 235-  
17 7(d), except that sections 172(b)(1)(J) and 172(j) (both of  
18 which relate to qualified disaster losses) of the Internal  
19 Revenue Code shall not be operative for purposes of this  
20 chapter.

21 ~~[(+)]~~ (n) Section 179 (with respect to the election to  
22 expense certain depreciable business assets) of the Internal



1 Revenue Code shall be operative for purposes of this chapter,  
2 except as provided in this subsection:

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

6 (2) The amount at which the reduction in limitation  
7 provided in section 179(b)(2) begins shall exceed  
8 \$200,000 for any taxable year; and

9 (3) The following shall not be operative for purposes of  
10 this chapter:

11 (A) Defining section 179 property to include computer  
12 software in section 179(d)(1);

13 (B) Inflation adjustments in section 179(b)(5);

14 (C) Irrevocable election in section 179(c)(2); and

15 (D) Special rules for qualified disaster assistance  
16 property in section 179(e).

17 [~~(n)~~] (o) Section 198A (with respect to the expensing of  
18 qualified disaster assistances expenses) of the Internal Revenue  
19 Code shall not be operative for purposes of this chapter.

20 [~~(e)~~] (p) Section 219 (with respect to retirement savings)  
21 of the Internal Revenue Code shall be operative for the purpose  
22 of this chapter. For the purpose of computing the limitation on





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

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

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

19 ~~[(r)]~~ (s) Section 382 (with respect to limitation on net  
20 operating loss carryforwards and certain built-in losses  
21 following ownership change) of the Internal Revenue Code shall  
22 be operative for the purposes of this chapter, except that



1 section 382(n) shall not be operative for purposes of this  
2 chapter.

3 ~~(s)~~ (t) Section 408A (with respect to Roth Individual  
4 Retirement Accounts) of the Internal Revenue Code shall be  
5 operative for the purposes of this chapter, except that section  
6 408A(d)(3)(A)(iii) shall not be operative for purposes of this  
7 chapter. For the purposes of determining the aggregate amount  
8 of contributions to a Roth Individual Retirement Account or  
9 qualified rollover contribution to a Roth Individual Retirement  
10 Account from an individual retirement plan other than a Roth  
11 Individual Retirement Account, adjusted gross income as used in  
12 section 408A as operative for this chapter means federal  
13 adjusted gross income.

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



1 necessary for the efficient administration of sections 410 to  
2 419A.

3 In administering sections 401 to 419A (with respect to  
4 deferred compensation) of the Internal Revenue Code, Public Law  
5 93-406, section 1017(i), shall be operative for the purposes of  
6 this chapter.

7 In administering section 402 (with respect to the  
8 taxability of beneficiary of employees' trust) of the Internal  
9 Revenue Code, the tax imposed on lump sum distributions by  
10 section 402(e) of the Internal Revenue Code shall be operative  
11 for the purposes of this chapter and the tax imposed therein is  
12 hereby imposed by this chapter at the rate determined under this  
13 chapter.

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



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

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

16        [~~(x)~~] (y) Section 468B (with respect to special rules for  
17 designated settlement funds) of the Internal Revenue Code shall  
18 be operative for the purposes of this chapter and the tax  
19 imposed therein is hereby imposed by this chapter at a rate  
20 equal to the maximum rate in effect for the taxable year imposed  
21 on estates and trusts under section 235-51.



1           ~~[(y)]~~ (z) Section 469 (with respect to passive activities  
2 and credits limited) of the Internal Revenue Code shall be  
3 operative for the purposes of this chapter. For the purpose of  
4 computing the offset for rental real estate activities for state  
5 income tax purposes, adjusted gross income as used in section  
6 469 as operative for this chapter means federal adjusted gross  
7 income.

8           ~~[(z)]~~ (aa) Sections 512 to 514 (with respect to taxation  
9 of business income of certain exempt organizations) of the  
10 Internal Revenue Code shall be operative for the purposes of  
11 this chapter as provided in this subsection.

12           "Unrelated business taxable income" means the same as in  
13 the Internal Revenue Code, except that in the computation  
14 thereof sections 235-3 to 235-5, and 235-7 (except subsection  
15 (c)), shall apply, and in the determination of the net operating  
16 loss deduction there shall not be taken into account any amount  
17 of income or deduction that is excluded in computing the  
18 unrelated business taxable income. Unrelated business taxable  
19 income shall not include any income from a prepaid legal service  
20 plan.

21           For a person described in section 401 or 501 of the  
22 Internal Revenue Code, as modified by section 235-2.3, the tax



1 imposed by section 235-51 or 235-71 shall be imposed upon the  
2 person's unrelated business taxable income.

3 ~~[(aa)]~~ (bb) Section 521 (with respect to cooperatives) and  
4 subchapter T (sections 1381 to 1388, with respect to  
5 cooperatives and their patrons) of the Internal Revenue Code  
6 shall be operative for the purposes of this chapter as to any  
7 cooperative fully meeting the requirements of section 421-23,  
8 except that Internal Revenue Code section 521 cooperatives need  
9 not be organized in Hawaii.

10 ~~[(bb)]~~ (cc) Sections 527 (with respect to political  
11 organizations) and 528 (with respect to certain homeowners  
12 associations) of the Internal Revenue Code shall be operative  
13 for the purposes of this chapter and the taxes imposed in each  
14 section are hereby imposed by this chapter at the rates  
15 determined under section 235-71.

16 ~~[(ee)]~~ (dd) Section 529 (with respect to qualified tuition  
17 programs) shall be operative for the purposes of this chapter,  
18 except that sections 529(c)(6) and 529(e)(3)(A)(iii) shall not  
19 be operative.

20 ~~[(dd)]~~ (ee) Section 530 (with respect to education  
21 individual retirement accounts) of the Internal Revenue Code  
22 shall be operative for the purposes of this chapter. For the



1 purpose of determining the maximum amount that a contributor  
 2 could make to an education individual retirement account for  
 3 state income tax purposes, modified adjusted gross income as  
 4 used in section 530 as operative for this chapter means federal  
 5 modified adjusted gross income as defined in section 530."

6 SECTION 2. Statutory material to be repealed is bracketed  
 7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act, upon its approval, shall apply to  
 9 taxable years beginning after December 31, 2011.

10

INTRODUCED BY: Kal Rusk  
T. Staker

JAN 19 2012



**Report Title:**

Taxation; Employee Benefits; Deduction

**Description:**

Limits the amount that an employer may deduct for benefits provided to an employee to 50 times the State's median household income.

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