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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 [~~2012,~~] 2013, 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 [~~January 2, 2013,~~] December 31, 2013, as it  
10 applies to the determination of gross income, adjusted gross  
11 income, ordinary income and loss, and taxable income, except  
12 those provisions of the Internal Revenue Code and federal public  
13 laws which, pursuant to this chapter, do not apply or are  
14 otherwise limited in application and except for the provisions  
15 of Public Law 109-001 which apply to section 170 of the Internal  
16 Revenue Code. The provisions of Public Law 109-001 to  
17 accelerate the deduction for charitable cash contributions for  
18 the relief of victims of the 2004 Indian Ocean tsunami are

1 applicable for the calendar year that ended December 31, 2004,  
2 and the calendar year ending December 31, 2005.

3 Sections 235-2, 235-2.1, and 235-2.2 shall continue to be  
4 used to determine:

5 (1) The basis of property, if a taxpayer first determined  
6 the basis of property in a taxable year to which such  
7 sections apply, and if such determination was made  
8 before January 1, 1978; and

9 (2) Gross income, adjusted gross income, ordinary income  
10 and loss, and taxable income for a taxable year to  
11 which such sections apply where such taxable year  
12 begins before January 1, 1978."

13 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 **"§235-2.4 Operation of certain Internal Revenue Code**  
16 **provisions; sections 63 to 530.** (a) Section 63 (with respect  
17 to taxable income defined) of the Internal Revenue Code shall be  
18 operative for the purposes of this chapter, subject to the  
19 following:

20 (1) [~~Sections~~] Section 63(c)(1)(B) (relating to the  
21 additional standard deduction), 63(c)(1)(C) (relating  
22 to the real property tax deduction), 63(c)(1)(D)

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1 (relating to the disaster loss deduction), 63(c)(1)(E)  
2 (relating to the motor vehicle sales tax deduction),  
3 63(c)(4) (relating to inflation adjustments), 63(c)(7)  
4 (defining the real property tax deduction), 63(c)(8)  
5 (defining the disaster loss deduction), 63(c)(9)  
6 (defining the motor vehicle sales tax deduction), and  
7 63(f) (relating to additional amounts for the aged or  
8 blind) of the Internal Revenue Code shall not be  
9 operative for purposes of this chapter;

10 (2) Section 63(c)(2) (relating to the basic standard  
11 deduction) of the Internal Revenue Code shall be  
12 operative, except that the standard deduction amounts  
13 provided therein shall instead mean:

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

15 (i) A joint return as provided by section 235-  
16 93; or

17 (ii) A surviving spouse (as defined in section  
18 2(a) of the Internal Revenue Code);

19 (B) \$3,212 in the case of a head of household (as  
20 defined in section 2(b) of the Internal Revenue  
21 Code);

1 (C) \$2,200 in the case of an individual who is not  
2 married and who is not a surviving spouse or head  
3 of household; or  
4 (D) \$2,200 in the case of a married individual filing  
5 a separate return;

6 (3) Section 63(c)(5) (limiting the basic standard  
7 deduction in the case of certain dependents) of the  
8 Internal Revenue Code shall be operative, except that  
9 the limitation shall be the greater of \$500 or such  
10 individual's earned income; and

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

13 (b) Section 68 (with respect to the overall limitation on  
14 itemized deductions) of the Internal Revenue Code shall be  
15 operative [~~except that sections 68(f) and 68(g) shall not be~~  
16 ~~operative~~]; provided that the thresholds shall be those that  
17 were operative for federal tax year 2009.

18 (c) Section 72 (with respect to annuities; certain  
19 proceeds of endowment and life insurance contracts) of the  
20 Internal Revenue Code shall be operative for purposes of this  
21 chapter and be interpreted with due regard to section 235-7(a),  
22 except that the ten per cent additional tax on early

1 distributions from retirement plans in section 72(t) shall not  
2 be operative for purposes of this chapter.

3 (d) Section 85 (with respect to unemployment compensation)  
4 of the Internal Revenue Code shall be operative for purposes of  
5 this chapter, except that section 85(c) shall not be operative  
6 for purposes of this chapter.

7 (e) Section 108 (with respect to income from discharge of  
8 indebtedness) of the Internal Revenue Code shall be operative  
9 for purposes of this chapter, except that section 108(i)  
10 (relating to deferral and ratable inclusion of income arising  
11 from business indebtedness discharged by the reacquisition of a  
12 debt instrument) shall not be operative for purposes of this  
13 chapter.

14 (f) Section 121 (with respect to exclusion of gain from  
15 sale of principal residence) of the Internal Revenue Code shall  
16 be operative for purposes of this chapter, except that for the  
17 election under section 121(f), a reference to section 1034  
18 treatment means a reference to section 235-2.4(s) in effect for  
19 taxable year 1997.

20 (g) Section 132 (with respect to certain fringe benefits)  
21 of the Internal Revenue Code shall be operative for purposes of  
22 this chapter, except that the provision in section 132(f)(2)

1 that equalizes the dollar amounts for sections 132(f)(2)(A) and  
2 (B) [~~after February 17, 2009, until January 1, 2011,~~] shall not  
3 be operative and except that section 132(n) shall not apply to  
4 United States Department of Defense Homeowners Assistance  
5 Program payments authorized by the American Recovery and  
6 Reinvestment Act of 2009.

7 (h) Section 163 (with respect to interest) of the Internal  
8 Revenue Code shall be operative for the purposes of this  
9 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) Section 164 (with respect to taxes) of the Internal  
16 Revenue Code shall be operative for the purposes of this  
17 chapter, except that:

18 (1) [~~Sections~~] Section 164(a)(6) and [~~164(b)(6)~~] (b)(6)  
19 shall not be operative for the purposes of this  
20 chapter; and

21 (2) The deductions under [~~sections~~] section 164(a)(3) and  
22 [~~164(b)(5)~~] (b)(5) shall not be operative for

1 corporate taxpayers and shall be operative only for  
2 the following individual 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) Section 165 (with respect to losses) of the Internal  
13 Revenue Code shall be operative for purposes of this chapter,  
14 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]~~ section 165(h) (3) (A) and ~~[165(h)(3)(B)]~~ (B) (both of  
18 which relate to special rules for personal casualty gains and  
19 losses in federally declared disasters) of the Internal Revenue  
20 Code shall not be operative for the purposes of this chapter.

21 Section 165 as operative for this chapter shall also apply to  
22 losses sustained from the sale of stocks or other interests

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

4 (k) Section 168 (with respect to the accelerated cost  
5 recovery system) of the Internal Revenue Code shall be operative  
6 for purposes of this chapter, except that sections 168(j)  
7 (relating to property on Indian reservations), 168(k) (relating  
8 to the special allowance for certain property acquired during  
9 the period specified therein), 168(m) (relating to the special  
10 allowance for certain reuse and recycling property), and 168(n)  
11 (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 (l) 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]~~ section 172(b)(1)(J) and ~~[172(j)]~~  
18 (j) (both of which relate to qualified disaster losses) of the  
19 Internal Revenue Code shall not be operative for purposes of  
20 this chapter.

21 (m) Section 179 (with respect to the election to expense  
22 certain depreciable business assets) of the Internal Revenue



1 Code shall be operative for purposes of this chapter, except as  
2 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) 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 (o) Section 219 (with respect to retirement savings) of  
21 the Internal Revenue Code shall be operative for the purpose of  
22 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) Section 220 (with respect to medical savings accounts)  
6 of the Internal Revenue Code shall be operative for the purpose  
7 of this chapter, but only with respect to medical services  
8 accounts that have been approved by the Secretary of the  
9 Treasury of the United States.

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

19 (r) Section 275 (with respect to limitation on deductions  
20 for taxes paid) of the Internal Revenue Code shall be operative  
21 for purposes of this chapter; except that the disallowance of  
22 deduction at section 275(a)(4) shall apply if the taxpayer

1 elects to take to any extent the benefits of section 235-55 or  
2 section 901 of the Internal Revenue Code.

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

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

20 ~~[(t)]~~ (u) In administering the provisions of sections 410  
21 to 417 (with respect to special rules relating to pensions,  
22 profit sharing, stock bonus plans, etc.), sections 418 to 418E

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

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

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

20 [~~(u)~~] (v) In administering section 403 (with respect to  
21 taxation of employee annuities) of the Internal Revenue Code,  
22 any funds that represent pre-tax employee deferrals or

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

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

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

1           ~~[(x)]~~ (y) 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           ~~[(y)]~~ (z) 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           ~~[(z)]~~ (aa) Sections 512 to 514 (with respect to taxation  
15 of business income of certain exempt organizations) of the  
16 Internal Revenue Code shall be operative for the purposes of  
17 this chapter 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 legal service plan.

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

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

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

21 [~~(ee)~~] (dd) Section 529 (with respect to qualified tuition  
22 programs) shall be operative for the purposes of this chapter,

1 except that sections 529(c)(6) and 529(e)(3)(A)(iii) shall not  
2 be operative.

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

12       SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is  
13 amended by amending subsection (e) to read as follows:

14       "(e) Section 1202 (with respect to partial exclusion for  
15 gain from certain small business stock) of the Internal Revenue  
16 Code shall be operative for purposes of this chapter, except  
17 that section 1202(a)(3) and (4) shall not be operative for  
18 purposes of this chapter."

19       SECTION 5. Section 235-2.45, Hawaii Revised Statutes, is  
20 amended by amending subsection (h) to read as follows:

21       "(h) Subchapter S (sections 1361 to 1379) (with respect to  
22 tax treatment of S corporations and their shareholders) of



1 chapter 1 of the Internal Revenue Code shall be operative for  
2 the purposes of this chapter as provided in part VII; except  
3 that [~~sections~~] section 1374(d)(7)(B) [~~and 1374(d)(7)(C)~~] , (C),  
4 and (D) shall not be operative for purposes of this chapter."

5 SECTION 6. Section 235-2.45, Hawaii Revised Statutes, is  
6 amended by amending subsection (m) to read as follows:

7 "(m) [~~Subchapter C (sections 6221 to 6233)]~~ Sections 6221,  
8 6222, and 6231 (with respect to tax treatment of partnership  
9 items) of subchapter C of chapter 63 of the Internal Revenue  
10 Code shall be operative for the purposes of this chapter."

11 SECTION 7. Section 235-2.5, Hawaii Revised Statutes, is  
12 amended by amending subsection (c) to read as follows:

13 "(c) The department of taxation shall submit to each  
14 regular session of the legislature a bill to amend sections 235-  
15 2.3, 235-2.4, and 235-2.45 and such other sections and  
16 subsections of this chapter as may be necessary to adopt the  
17 Internal Revenue Code as it exists on [~~January 2, 2013.~~] the  
18 December 31 preceding such regular session. In submitting the  
19 bill the department may provide that certain amendments to the  
20 Internal Revenue Code by Congress during the preceding calendar  
21 year shall not be operative in this State or as operative are  
22 limited in their operation. The department shall also prepare a

1 digest and explanation of the amended provisions of the Internal  
2 Revenue Code recommended for operation, as well as those  
3 provisions which are limited in their operation, or which are  
4 not recommended for operation, and shall submit with the bill  
5 required by this subsection the digest, explanation, and a  
6 statement of revenue impact of the adoption of such bill. In  
7 preparing the bill, digest, and explanation the department may  
8 request the assistance of the office of the legislative  
9 reference bureau.

10 It is the intent of the legislature that it shall each year  
11 adopt all amendments to the Internal Revenue Code for the  
12 calendar year preceding the year in which the legislature meets;  
13 provided that the legislature may choose to adopt none of the  
14 amendments to the Internal Revenue Code or may provide that  
15 certain amendments are limited in their operation."

16 SECTION 8. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

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1 SECTION 9. This Act shall take effect upon its approval  
2 and shall apply to taxable years beginning after December 31,  
3 2013.

4  
5 INTRODUCED BY:  \_\_\_\_\_

6 BY REQUEST

JAN 21 2014

# H.B. NO. 2336

**Report Title:**

Income Tax; Conformity to the Internal Revenue Code for 2013

**Description:**

Conforms Hawaii income tax law with amendments made to the Internal Revenue Code as of December 31, 2013, and makes various technical amendments.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE.

PURPOSE: To amend Hawaii's income tax law to conform with changes to the Internal Revenue Code made in calendar year 2013.

MEANS: Amend sections 235-2.3(a), 235-2.4, 235-2.45(e), (h), and (m), and 235-2.5(c), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 235-2.5(c), HRS, mandates that the Department of Taxation submit to each regular session of the Legislature a bill that amends Hawaii's income tax law to conform to changes in the Internal Revenue Code. This bill amends section 235-2.3(a), HRS, by changing the date from 2012 to 2013 to reflect tax law changes made in the 2013 calendar year.

Impact on the public: Conformity through amendments to the operative provisions of the Internal Revenue Code will minimize the burden on taxpayers to comply with the requirements of Hawaii's income tax law.

Impact on the department and other agencies: Conforming Hawaii's income tax law to that of the Internal Revenue Code will increase consistency between the state and federal jurisdictions.

GENERAL FUND: Pending.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.