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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. In 1996, Congress enacted Section 529 of the  
2 Internal Revenue Code of 1986, as amended, authorizing tax-  
3 deferred college savings plans now referred to as "529 Plans".  
4 Section 529 authorizes states to establish these programs to  
5 assist and encourage families to set aside funds for future  
6 higher education expenses. Most states with an income tax offer  
7 some kind of in-state tax deduction or credit for contributions  
8 as an incentive for residents to participate in these college  
9 savings plans.

10           The purpose of this Act is to encourage Hawaii families to  
11 save for college and to increase participation rates in college  
12 savings plans by providing a state income tax deduction for  
13 contributions to a qualified 529 college savings plan.

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

16           "§235-7 Other provisions as to gross income, adjusted  
17 gross income, and taxable income. (a) There shall be excluded  
18 from gross income, adjusted gross income, and taxable income:



- 1           (1) Income not subject to taxation by the State under the  
2                    Constitution and laws of the United States;
- 3           (2) Rights, benefits, and other income exempted from  
4                    taxation by section 88-91, having to do with the state  
5                    retirement system, and the rights, benefits, and other  
6                    income, comparable to the rights, benefits, and other  
7                    income exempted by section 88-91, under any other  
8                    public retirement system;
- 9           (3) Any compensation received in the form of a pension for  
10                   past services;
- 11          (4) Compensation paid to a patient affected with Hansen's  
12                   disease employed by the State or the United States in  
13                   any hospital, settlement, or place for the treatment  
14                   of Hansen's disease;
- 15          (5) Except as otherwise expressly provided, payments made  
16                   by the United States or this State, under an act of  
17                   Congress or a law of this State, which by express  
18                   provision or administrative regulation or  
19                   interpretation are exempt from both the normal and  
20                   surtaxes of the United States, even though not so  
21                   exempted by the Internal Revenue Code itself;

- 1           (6) Any income expressly exempted or excluded from the  
2           measure of the tax imposed by this chapter by any  
3           other law of the State, it being the intent of this  
4           chapter not to repeal or supersede any express  
5           exemption or exclusion;
- 6           (7) Income received by each member of the reserve  
7           components of the Army, Navy, Air Force, Marine Corps,  
8           or Coast Guard of the United States of America, and  
9           the Hawaii National Guard as compensation for  
10          performance of duty, equivalent to pay received for  
11          forty-eight drills (equivalent of twelve weekends) and  
12          fifteen days of annual duty, at an:
- 13           (A) E-1 pay grade after eight years of service;  
14           provided that this subparagraph shall apply to  
15           taxable years beginning after December 31, 2004;
- 16           (B) E-2 pay grade after eight years of service;  
17           provided that this subparagraph shall apply to  
18           taxable years beginning after December 31, 2005;
- 19           (C) E-3 pay grade after eight years of service;  
20           provided that this subparagraph shall apply to  
21           taxable years beginning after December 31, 2006;



- 1 (D) E-4 pay grade after eight years of service;
- 2 provided that this subparagraph shall apply to
- 3 taxable years beginning after December 31, 2007;
- 4 and
- 5 (E) E-5 pay grade after eight years of service;
- 6 provided that this subparagraph shall apply to
- 7 taxable years beginning after December 31, 2008;
- 8 (8) Income derived from the operation of ships or aircraft
- 9 if the income is exempt under the Internal Revenue
- 10 Code pursuant to the provisions of an income tax
- 11 treaty or agreement entered into by and between the
- 12 United States and a foreign country; provided that the
- 13 tax laws of the local governments of that country
- 14 reciprocally exempt from the application of all of
- 15 their net income taxes, the income derived from the
- 16 operation of ships or aircraft that are documented or
- 17 registered under the laws of the United States;
- 18 (9) The value of legal services provided by a legal
- 19 service plan to a taxpayer, the taxpayer's spouse, and
- 20 the taxpayer's dependents;
- 21 (10) Amounts paid, directly or indirectly, by a legal
- 22 service plan to a taxpayer as payment or reimbursement



- 1 for the provision of legal services to the taxpayer,  
2 the taxpayer's spouse, and the taxpayer's dependents;
- 3 (11) Contributions by an employer to a legal service plan  
4 for compensation (through insurance or otherwise) to  
5 the employer's employees for the costs of legal  
6 services incurred by the employer's employees, their  
7 spouses, and their dependents;
- 8 (12) Amounts received in the form of a monthly surcharge by  
9 a utility acting on behalf of an affected utility  
10 under section 269-16.3; provided that amounts retained  
11 by the acting utility for collection or other costs  
12 shall not be included in this exemption;
- 13 (13) Amounts received in the form of a cable surcharge by  
14 an electric utility company acting on behalf of a  
15 certified cable company under section 269-134;  
16 provided that any amounts retained by that electric  
17 utility company for collection or other costs shall  
18 not be included in this exemption; and
- 19 (14) One hundred per cent of the gain realized by a fee  
20 simple owner from the sale of a leased fee interest in  
21 units within a condominium project, cooperative  
22 project, or planned unit development to the



1 association of owners under chapter 514A or 514B, or  
2 the residential cooperative corporation of the  
3 leasehold units.

4 For purposes of this paragraph:

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

8 "Legal and equitable owner", and "leased fee  
9 interest" shall have the same meanings as provided  
10 under section 516-1; and

11 "Condominium project" and "cooperative project"  
12 shall have the same meanings as provided under section  
13 514C-1.

14 (b) There shall be included in gross income, adjusted  
15 gross income, and taxable income:

16 (1) Unless excluded by this chapter relating to the  
17 uniformed services of the United States, cost-of-  
18 living allowances and other payments exempted by  
19 section 912 of the Internal Revenue Code, but section  
20 119 of the Internal Revenue Code nevertheless shall  
21 apply; and



1           (2) Unless expressly exempted or excluded as provided by  
2           subsection (a)(6), interest on the obligations of a  
3           State or a political subdivision thereof.

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

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



1           subjection to federal tax does not constitute  
2           subjection to income tax in another jurisdiction); and  
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) of the Internal Revenue Code  
12 shall be operative for the purposes of this chapter;  
13 provided that no taxpayer shall make such an election  
14 as to a net operating loss of a business where such  
15 net operating loss occurred in the taxpayer's business  
16 prior to the taxpayer entering business in this State;  
17 and

18 (6) The five-year carryback period for net operating  
19 losses for any taxable year ending during 2001 and  
20 2002 in section 172(b)(1)(H) of the Internal Revenue  
21 Code as it read on December 31, 2008, shall not be  
22 operative for purposes of this chapter; and



1           (7) The election for the carryback for 2008 or 2009 net  
2           operating losses of small businesses as provided in  
3           section 172(b)(1)(H) of the Internal Revenue Code as  
4           it read on December 31, 2009, shall not be operative  
5           for purposes of this chapter.

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

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



1 first such year to be the calendar year or fiscal year of the  
2 taxpayer in which such loss occurred.

3 (g) The following annual deductions from gross income  
4 shall be allowed for contributions to a qualified tuition plan  
5 established pursuant to section 529 of the Internal Revenue  
6 Code:

7 (1) Up to \$5,000 for individual taxpayers;

8 (2) Up to \$5,000 for married couples filing separate  
9 returns; provided that each spouse may claim a  
10 deduction up to \$5,000; and

11 (3) Up to \$10,000 for married couples filing joint  
12 returns, individuals filing as the head of households,  
13 or individuals filing as surviving spouses.

14 If the amount of the deduction exceeds the taxpayer's taxable  
15 income for the taxable year the contribution is made, the excess  
16 deduction may be used as a deduction against the taxpayer's  
17 taxable income in subsequent tax years until the excess  
18 deduction is exhausted."

19 SECTION 3. New statutory material is underscored.

20 SECTION 4. This Act, upon its approval, shall apply to  
21 taxable years beginning after December 31, 2013; provided that  
22 amendments made to section 235-7, Hawaii Revised Statutes, by



1 section 2 of this Act, shall not be repealed when that section  
 2 is reenacted on January 1, 2018, by section 3 of Act 166,  
 3 Session Laws of Hawaii 2007, as amended by section 5 of Act 220,  
 4 Session Laws of Hawaii 2012.

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# H.B. NO. 2612

**Report Title:**

529 College Savings Plan; Tax Deduction

**Description:**

Provides an annual deduction of \$5,000 per individual or \$10,000 for a married couple filing jointly against their taxable income for contributions made to a college savings plan established under section 529 of the Internal Revenue Code.

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