

**"CHAPTER 241
TAXATION OF BANKS AND OTHER FINANCIAL
CORPORATIONS**

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Note

Prior law: RL 1945, c 97; am L 1951, c 258; am L 1953, c 125.

" **§241-1 Definitions.** As used in this chapter unless a different meaning appears from the context:

"Bank" means and includes any national banking association and any bank chartered or licensed pursuant to chapter 412.

"Building and loan association" means any corporation that has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.

"Building and loan association" means any corporation or mutual association which has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.

"Chapter 235" means the provisions thereof as amended and applicable to the tax imposed by the chapter in respect of income derived or received on and after the franchise tax date prescribed by this chapter, for example, for the computation of the franchise tax imposed by this chapter as of January 1, 1958, references to chapter 235 signify the provisions thereof as amended and applicable to income derived or received on or after January 1, 1958, in the case of a taxpayer whose taxable year under chapter 235 commences January 1, 1958.

"Development company" means a company approved by the federal Small Business Administration to operate under the provisions of Title V of the federal Small Business Investment Act of 1958, Public Law 699, as amended.

"Financial corporation" means (1) any corporation, domestic or foreign, other than a bank or building and loan association, which is a financial corporation within the meaning of section 5219 of the Revised Statutes of the United States, as amended (12 U.S.C. 548), or other similar law, doing business in the State and not subject to the taxes imposed by chapter 235, but shall not include an insurance company which pays the tax on premiums imposed by chapter 431, and (2) an interbank broker doing business in the State and not subject to the taxes imposed by chapter 235.

"Financial holding company" means any corporation registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Home Owners' Loan Act of 1933, as amended.

"Financial services loan company" means any company which has been authorized to engage in the business of a financial services loan company pursuant to chapter 412.

"Income year" means that year, either the calendar year or fiscal year, the income of which is the measure of the tax for the franchise tax year involved.

"Interbank broker" means a person, who for a fee, brokerage, or other compensation, either directly or indirectly, provides brokerage services as an intermediary or agent in transactions between financial institutions where one financial institution (1) supplies funds to another financial institution by making a loan, placing funds in a deposit account, or otherwise extending credit to the other institution, (2) buys, sells, trades, or swaps currency, commercial paper, banker's acceptances, negotiable certificates of deposit, treasury bills, notes, or bonds with another financial institution, or (3) enters into interest rate swaps, forward rate agreements, or interest rate futures contracts with another financial institution. A "financial institution", as used in this paragraph, means a bank, a savings bank, a building and loan association, a trust company, a financial services loan company, an insurance company, a pension and profit sharing trust, an investment company as defined in the federal Investment Company Act of 1940, an Edge or Agreement Corporation, an international banking facility, and similar United States or foreign institutions.

"Mortgage loan company" means a mortgage loan originator company licensed under chapter 454F.

"Small business investment company" means a company approved by the federal Small Business Administration to operate under the provisions of the federal Small Business Investment Act of 1958 (72 U.S. Statutes at Large 689 et seq.; 15 U.S.C. 661 et seq.), as amended, and issued a license as provided thereunder.

"Subsidiary" means any corporation doing business in Hawaii engaged in activities set forth in Title 12 of the Code of Federal Regulations, sections 225.22 and 225.25 (1990) (Regulation Y) and sections 584.2-1 and 584.2-2 (1990) (Office of Thrift Supervision) and whose voting stock is more than eighty per cent owned, directly or indirectly, by a financial holding company, bank, building and loan association, financial services loan company, financial corporation, or trust company.

"Trust company" means a corporation or joint stock company authorized to conduct business as a trust company under article 8 of chapter 412. [L Sp 1957, c 1, pt of §10(a); am L 1959, c 277, §17; am L 1965, c 224, §5; Supp, §127-1; HRS §241-1; am L 1976, c 203, §3(1); am L 1982, c 92, §3(1); am L 1987, c 168, §2; am L 1989, c 266, §3; am L 1990, c 109, §2; am L 1992, c 106, §10; am L 1993, c 350, §§11, 35; am L 2006, c 228, §2; am L 2010, c 84, §6]

Cross References

Legislative intent re meaning of "financial corporation". L Sp 1957, c 1, §24(c).

" **§241-1.5 Time of application of tax and other provisions.**

(a) The tax imposed by this chapter applies to every bank, building and loan association, development company, financial corporation, financial services loan company, trust company, mortgage loan company, financial holding company, small business investment company, or subsidiary as defined in section 241-1:

- (1) Which is in business at the commencement of a calendar year, as of January 1 of that year;
- (2) Which begins business after the commencement of a calendar year, as of the commencement of business.

(b) The measure of the tax for the year in which the taxpayer begins business is an estimate of the net income of the taxpayer for that year or for the part of that year in which it is in business.

The tax for the year in which the taxpayer begins business shall be at the tax rate provided in section 241-4.

The estimate shall be made on forms provided by the department and shall be subject to adjustment by the filing of an amended return as provided in subsection (e). The tax shall be paid on or before the twentieth day of the third month after the month in which the taxpayer begins business. Payment of the tax shall accompany the return unless time for the payment is extended by the director of taxation. The extension may be granted by the director in order to provide for payment of the tax in installments during the remainder of the calendar year.

(c) The measure of the tax for the year following the year in which the taxpayer began business is an estimate, utilizing the average monthly net income of the first taxable year of doing business multiplied by twelve. The tax shall be at the rate provided by section 241-4. A return shall be made and the tax returned and paid on or before the twentieth day of the fourth month following the close of the first taxable year of doing business and shall be subject to adjustment by the filing of an amended return as provided in subsection (e).

(d) If the taxpayer is in business at the commencement of the calendar year, and was in business during the whole of the preceding year and prior thereto, the tax shall be returned and paid as provided in section 241-4.

(e) An amended return shall be filed after the close of the applicable taxable year for each year for which an estimated tax return was filed under subsection (b) or (c).

If subsection (b) or (c) applies, any variance between the estimate and the actual net income for that year shall be adjusted and a credit or refund made, or payment of additional tax due, depending upon whether the estimate was in excess of, or less than, the actual net income of the taxpayer for the year.

The amended return shall be made and filed and any additional tax due paid on or before the twentieth day of the fourth month following the close of the taxable year in which the taxpayer commenced business.

The adjustment of the tax imposed under this chapter and the making of an amended return as provided under this section shall apply only to the first and second taxable years of doing business.

(f) Whenever any taxpayer subject for any year to the tax imposed by this chapter shall have acquired by purchase or otherwise during the preceding year the business or any part thereof of another taxpayer liable to tax under this chapter for such preceding year but not liable for the year following such sale or disposition, and the acquiring taxpayer continues the operation of the business so acquired, the net income to be reported by the acquiring taxpayer for the purpose of determining the amount of its tax under this chapter for the year following the year in which the business was so acquired shall include, in addition to the net income of the acquiring taxpayer during the year ending December 31 or fiscal year preceding, whichever is applicable, the net income of the business or part thereof so acquired for such portion of such preceding year as such business was not operated by the acquiring company.

This subsection shall not apply to any taxpayer whose tax for the year involved is measured under subsection (b) by an estimate of gross income for such year subject to adjustment after the close of the year.

If the first paragraph of this subsection applies but the tax of the acquiring taxpayer for the year is governed by subsection (c) and adjusted under subsection (e), then in determining the average monthly net income for that purpose there shall be included in addition to the net income of the acquiring taxpayer for the period involved in the determination of the average, the net income of the business or part thereof acquired by the taxpayer for the portion of that period in which the business was not operated by the acquiring taxpayer.

(g) Whenever there is a consolidation or merger of taxpayers subject to the tax imposed by this chapter, the tax shall attach to the taxpayer thus formed and the net income which shall be used for measuring the tax of the taxpayer thus formed shall include the net income of the taxpayers which were consolidated or merged.

(h) If a taxpayer subject to the tax imposed by this chapter terminates business operations during the calendar or fiscal year and other than in an acquisition by another company, or merger, or consolidation, the tax shall apply to the actual net income for the taxable year or part of the taxable year the taxpayer continued business operations.

If a taxpayer subject to the tax imposed by this chapter terminates business operations during the taxable year:

- (1) Before the tax return is filed as required under section 241-5, a short year return shall be made and filed and the tax shall apply to the actual net income for the taxable year or part of the taxable year during which the taxpayer continued business operations; or
- (2) After the return has been made and filed as provided in section 241-5, an amended return shall be made and filed to show the actual net income for the taxable year or part of the taxable year during which the taxpayer continued business operations. Any variance between the tax computed and paid on the basis of the entire net income of the preceding calendar or fiscal year and the actual net income for the final year or part of a year of business operations shall be adjusted and a credit or refund made, or the payment of additional tax shall be made.

The return made under paragraph (1) or (2) shall be filed and the tax imposed by this chapter shall be paid on or before the twentieth day of the fourth month following the month business operations ceased or the close of the taxable year, whichever is earlier.

The tax computed under this subsection shall not be duplicated with respect to the tax of an acquiring taxpayer as determined under subsection (f) or (g). [L 1988, c 69, §1; am L 1989, c 266, §3; am L 1992, c 106, §11]

" **§241-2 Imposition of tax on national banking associations; construction; exemption from other taxes, except real property tax.** (a) Every national banking association located or doing business in the State shall annually pay a franchise tax according to, or measured by, its net income, to be computed as provided in section 241-4, at the rate there prescribed. The

State is hereby adhering to the prescriptions of section 5219, Revised Statutes of the United States, as amended (12 U.S.C. 548), or other similar law.

(b) Nothing in this chapter shall be construed (1) to exclude the application of other taxes imposed by the State or any political division thereof on national banking associations, their activities, property, income, shares or dividends when such taxes may be imposed in addition to those authorized by the above cited section 5219 of the Revised Statutes, or other similar law, or (2) to exempt the real property of national banking associations from taxation to the same extent, according to its value, as other real property is taxed, or (3) to preclude the inclusion of the dividends from national banking associations in the income of individuals taxable under chapter 235 to the same extent as are included dividends from domestic corporations.

(c) If the tax imposed by this chapter at the rate provided in section 241-4 is, for any year, higher than is authorized by law, then in such event the rate of the tax imposed by this chapter shall, for national banking associations only, be reduced for that year to such per cent (to be computed to the nearest hundredth of one per cent) as will cause the amount of the tax imposed on national banking associations under this chapter not to exceed the authorized amount. [L Sp 1957, c 1, pt of §10(a); Supp, §127-2; HRS §241-2; am L 1968, c 7, §3; am L 1992, c 106, §12]

" **§241-3 Imposition of tax on other banks, building and loan associations, financial services loan companies, financial corporations, small business investment companies, trust companies, mortgage loan companies, financial holding companies, development companies, and subsidiaries.** Every bank, other than a national banking association, every building and loan association, every financial services loan company, financial corporation, small business investment company, trust company, mortgage loan company, financial holding company, development company, and subsidiary located or doing business in the State, shall annually pay a franchise tax measured as, and at the rate, provided in section 241-4. [L Sp 1957, c 1, pt of §10(a); am L 1965, c 224, §6; Supp, §127-3; HRS §241-3; am L 1976, c 203, §3(2); am L 1982, c 92, §3(2); am L 1989, c 266, §3; am L 1992, c 106, §13]

" **§241-3.5 Deduction from entire net income.** There shall be allowed as a deduction from entire net income to the extent not deductible in determining federal taxable income, the adjusted

eligible net income of an international banking facility, as defined in section 412:5-206, determined as follows:

- (1) The eligible net income of an international banking facility shall be the amount remaining after subtracting from the eligible gross income the applicable expenses.
- (2) Eligible gross income shall be the gross income derived by an international banking facility from:
 - (A) Making, arranging for, placing, or servicing loans to foreign persons; provided that in the case of a foreign person which is an individual, or which is a foreign branch of a domestic corporation (other than a bank), or which is a foreign corporation or foreign partnership which is eighty per cent or more owned or controlled, either directly or indirectly, by one or more domestic corporations (other than a bank), domestic partnership, or resident individual, substantially all the proceeds of the loan shall be for use outside of the United States;
 - (B) Making or placing deposits with foreign persons which are banks or foreign branches of banks (including foreign subsidiaries or foreign branches of the taxpayer) or with other international banking facilities; or
 - (C) Entering into foreign exchange trading or hedging transactions related to any of the transactions described in this paragraph.
- (3) Applicable expenses shall be any expense or other deduction attributable, directly or indirectly, to the eligible gross income described in paragraph (2).
- (4) Adjusted eligible net income shall be determined by subtracting from eligible net income the ineligible funding amount, and by subtracting from the amount then remaining the floor amount.
- (5) The ineligible funding amount shall be the amount, if any, determined by multiplying eligible net income by a fraction, the numerator of which is the average aggregate amount for the taxable year of all liabilities, including deposits, and other sources of funds to the international banking facility which were not owed to or received from foreign persons, and the denominator of which is the average aggregate amount from the taxable year of all liabilities, including deposits and other sources of funds of the international banking facility.

- (6) The floor amount shall be the amount, if any, determined by multiplying the amount remaining after subtracting the ineligible funding amount from the eligible net income by a fraction, not greater than one, which is determined as follows:
- (A) The numerator shall be:
 - (i) The percentage, as set forth in subparagraph (C), of the average aggregate amount of the taxpayer's loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, or savings and loan associations or foreign branches of savings and loan associations, as the case may be, (including foreign subsidiaries or foreign branches of the taxpayer), which loans and deposits were recorded in the financial accounts of the taxpayer for its branches, agencies, and offices within the State for taxable years 1980, 1981, and 1982, minus;
 - (ii) The average aggregate amount of such loans and such deposits for the taxable year of the taxpayer (other than such loans and deposits to an international banking facility); provided that in no case shall the amount determined in this clause exceed the amount determined in this subparagraph;
 - (B) The denominator shall be the average aggregate amount of the loans to foreign persons and deposits with foreign persons which are banks or foreign branches of banks, including foreign subsidiaries or foreign branches of the bank, (or savings and loan associations, as the case may be) which loans and deposits were recorded in the financial accounts of the taxpayer's international banking facility for the taxable year;
 - (C) The percentage shall be one hundred per cent for the first taxable year in which the taxpayer establishes an international banking facility and for the next succeeding four taxable years. The percentage shall be eighty per cent for the sixth, sixty per cent for the seventh, forty per cent for the eighth, and twenty per cent for the ninth and tenth taxable years next succeeding the year such bank or savings and loan association

establishes such facility, and zero in the eleventh succeeding year and thereafter.

- (7) If adjusted eligible net income is a loss, the amount of such loss shall be added to entire net income.
- (8) As used in this section, the term "foreign person" means:
 - (A) An individual who is not a resident of the United States,
 - (B) A foreign corporation, a foreign partnership, or a foreign trust, as defined in section 7701 of the federal Internal Revenue Code of 1954, as amended, other than a domestic branch thereof,
 - (C) A foreign branch of a domestic corporation (including the taxpayer),
 - (D) A foreign government or an international organization or an agency of either, or
 - (E) An international banking facility.

For the purposes of this paragraph, the term "foreign" and "domestic" have the same meaning as set forth in section 7701 of the federal Internal Revenue Code of 1954, as amended. [L 1983, c 278, §3; am L 1993, c 350, §12]

" **§241-4 Measure and rate of tax.** (a) The measure of the tax imposed by this chapter is the entire net income from all sources for the preceding calendar year, or in the case of a taxpayer operating on a fiscal year basis, for the preceding fiscal year. The tax shall be at the rate of seven and ninety-two one hundredths per cent of the entire net income from all sources.

(b) The "entire net income from all sources" shall be determined in the same manner as the "taxable income" of a corporation, as provided by chapter 235, with the following changes and adjustments:

- (1) There is included in gross income interest received upon the obligations of the United States or its possessions, or upon securities issued under the authority of an act of Congress, or upon state, territorial, municipal, county, or other bonds or securities whether or not the income from such obligations, bonds, or securities, is tax free. Section 235-7(a)(1), (5), and (6) does not apply.
- (2) Deductions connected with income which by this chapter are required to be included in the computation of net income shall be allowed, but deductions connected with income which by this chapter are not to be included in the computation of net income shall not be allowed. Section 235-7(e)(1) does not apply.

- (3) Debts ascertained to be worthless and charged off on the books of the taxpayer within the income year may be deducted, or in the discretion of the department of taxation may be treated as a reasonable addition to a reserve for bad debts; provided that when satisfied that a debt is recoverable only in part, the department may allow the debt to be charged off in part.
- (4) In the case of any life insurance company (as defined by the Internal Revenue Code), which is determined to be a financial corporation as defined by this chapter, sections 801, 811, and 812 of the Internal Revenue Code do not apply. The total of the deductions allowed by sections 807 and 810 of the Internal Revenue Code shall not exceed the amount of the required interest, as defined by section 807 of the Internal Revenue Code.
- (5) Section 582 (with respect to bonds, etc., losses and gains of financial institutions) of the Internal Revenue Code shall be operative for the purposes of this chapter. [L Sp 1957, c 1, pt of §10(a); am L Sp 1959 2d, c 1, §16; am L 1965, c 155, §21; Supp, §127-4; HRS §241-4; am L 1975, c 52, §1; am L 1978, c 173, §3; am L 1979, c 62, §3; am L 1985, c 19, §3; am L 1987, c 39, §6; am L 1988, c 69, §2; am L 1992, c 106, §14; am L 1995, c 85, §1]

" **[\$241-4.3] Alternative tax.** Section 1201 (with respect to alternative tax for corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter and shall be applied as set forth in this section. If for any taxable year a bank, building and loan association, development company, financial corporation, financial services loan company, small business investment company, mortgage loan company, financial holding company, or trust company has a net capital gain, then, in lieu of the tax imposed by section 241-4, there is hereby imposed a tax (if such tax is less than the tax imposed under section 241-4) which shall consist of the sum of:

- (1) A tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this section had not been enacted; plus
- (2) Four per cent of the net capital gain for the taxable year. [L 1992, c 106, §9]

" **[\$241-4.4] Capital infrastructure tax credit.** The capital infrastructure tax credit established by section 235-17.5 shall

be operative for this chapter for taxable years beginning after December 31, 2013. [L 2014, c 200, §3]

Note

Section applies to taxable years beginning after December 31, 2013. L 2014, c 200, §6.

" **§241-4.5 Capital goods excise tax credit.** The capital goods excise tax credit provided under section 235-110.7 shall be operative for this chapter after December 31, 1987; provided that the capital goods excise tax credit shall be inoperative after December 31, 2008, and before January 1, 2010. [L 1987, c 239, §8; am L 2009, c 178, §5]

Note

The 2009 amendment applies to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009. L 2009, c 178, §10.

" **§241-4.6 Renewable energy technologies; income tax credit.** The renewable energy technologies income tax credit provided under section 235-12.5 shall be operative for this chapter for taxable years beginning after December 31, 2002; provided that the system was installed after June 30, 2003. [L 1991, c 99, §2; am L 2004, c 97, §2]

" **[§241-4.7] Low-income housing; income tax credit.** The low-income housing tax credit provided under section 235-110.8 shall be operative for this chapter. [L 1992, c 145, §2]

" **§241-4.8 High technology business investment tax credit.**
(a) The high technology business investment tax credit provided under section 235-110.9 shall be operative for this chapter on July 1, 1999.

(b) For investments made on or after May 1, 2009, this section shall be subject to section 235-109.5. [L 1999, c 178, §26; am L 2009, c 178, §6]

Note

The 2009 amendment applies to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009. L 2009, c 178, §10.

Revision Note

"July 1, 1999" substituted for "the effective date of this Act".

" **§241-5 Returns; payment of tax.** Returns made on the basis of the calendar year shall be made and filed, and the tax imposed by this chapter shall be paid, on or before April 20 following the close of the calendar year. Returns made on the basis of a fiscal year shall be made and filed, and in such case the tax imposed by this chapter shall be paid, on or before the twentieth day of the fourth month following the close of the fiscal year.

A taxpayer may elect to pay the tax in four equal installments, in which case the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on the twentieth day of the second month, the third installment on the twentieth day of the fifth month, and the fourth installment on the twentieth day of the eighth month after such date. Notwithstanding the preceding, if the total tax liability under this chapter for the taxable year exceeds \$100,000, the taxes so levied shall be payable in twelve equal installments, in which case the first installment shall be paid on or before the tenth day of the first month following the close of the taxable year, and the remaining installments shall be paid on or before the tenth day of each calendar month after such date. If any installment is not paid on or before the date fixed for its payment, the department, at its election, may cause the balance of the tax unpaid to become payable upon not less than ten days' notice and demand, and this amount shall be paid upon the date so fixed in the notice and demand from the department. The department shall prescribe the forms in which returns shall be made.

The provisions of chapter 235 regarding the limitation period for assessment and refunds shall run from the filing of the return for the taxable year, or the due date prescribed for the filing of the return, whichever is later. [L Sp 1957, c 1, pt of §10(a); Supp, §127-5; HRS §241-5; am L 1992, c 38, §3]

" **§241-6 Chapter 235 applicable.** All of the provisions of chapter 235 not inconsistent with this chapter, and which may be appropriately applied to the taxes, persons, circumstances, and

situations involved in this chapter, including without prejudice to the generality of the foregoing, sections 235-92, 235-98, 235-99, and 235-101 to 235-118, shall be applicable to the taxes imposed by this chapter, and to the assessment and collection thereof. Any tax refund payable under section 235-110, hereby made applicable to the taxes imposed by this chapter, shall be made in the manner provided in section 231-23(c).

The filing of a consolidated return under section 235-92 applies only to a bank, building and loan association, financial services loan company, financial corporation, small business investment company, development company, mortgage loan companies, trust company, or financial holding company, and their subsidiaries as defined in section 241-1. [L Sp 1957, c 1, pt of §10(a); am L 1963, c 45, §9; Supp, §127-6; HRS §241-6; am L 1986, c 339, §19; am L 1992, c 106, §15]

" **§241-7 Disposition of funds.** All taxes collected under this chapter shall be state realizations; provided that, by June 30 of each fiscal year, the sum of \$2,000,000 shall be deposited with the director of finance to the credit of the compliance resolution fund as established pursuant to section 26-9(o). [L Sp 1957, c 1, pt of §10(a); Supp, §127-7; HRS §241-7; am L 1999, c 182, §1; am L 2001, c 28, §1]