

JAN 19 2018

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# A BILL FOR AN ACT

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RELATING TO INDIVIDUAL HOUSING ACCOUNTS.

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

1       SECTION 1. The legislature finds that Hawaii has one of  
2       the lowest rates of homeownership in the nation. The 2016  
3       Hawaii housing planning study identified the cost of a down  
4       payment as a major barrier for Hawaii residents seeking to  
5       purchase a home. As such, the 2017 state housing functional  
6       plan includes assisting first-time homebuyers with down payment  
7       savings and financial capacity building as a major policy goal.

8       The legislature also finds that Hawaii has the highest rate  
9       of homelessness in the nation. To address this situation, the  
10      state homelessness strategic plan identifies increasing the  
11      economic stability and self-sufficiency of homeless individuals  
12      as one of the State's four strategic goals for homelessness.

13      The legislature further finds that individual housing  
14      accounts can support asset building for low- to moderate-income  
15      families and assist them in saving for a down payment on a first  
16      home or for a deposit and first month's rent for a rental unit.  
17      The legislature finds that maximizing the use and benefits of



1 individual housing accounts will assist more people in achieving  
2 economic self-sufficiency and housing stability.

3 To encourage the use of individual housing accounts, the  
4 State has provided a state income tax deduction for deposits  
5 into individual housing accounts, up to a specified amount, when  
6 the accounts are held by a federally-insured bank, credit union,  
7 or similar traditional financial institution, and when the  
8 savings are used for the purpose of purchasing a first home.

9 However, the legislature finds that a deduction is not available  
10 for deposits made into individual housing accounts held by  
11 community development financial institutions, which have proven  
12 to be particularly successful at incentivizing savings and  
13 assisting taxpayers in purchasing a home. In addition, there is  
14 no deduction for deposits made into individual housing accounts  
15 intended to help account holders secure a rental housing unit.  
16 The legislature further finds that the maximum allowable state  
17 income tax deduction for individual housing accounts has not  
18 been updated since 1982.

19 The purpose of this Act is to assist the State in meeting  
20 its strategic priorities for housing and homelessness, by  
21 building the economic self-sufficiency of low- to moderate-



1 income individuals through the greater use of individual housing  
2 accounts. This Act seeks to better incentivize the  
3 establishment and use of individual housing accounts by:

4 (1) Authorizing a state income tax deduction for savings  
5 in individual housing accounts held by community  
6 development financial institutions;

7 (2) Updating the income limits for the individual housing  
8 account deduction to reflect current dollar values as  
9 well as the savings necessary for a down payment on a  
10 home;

11 (3) Allowing certain amounts that are paid into an  
12 individual housing account and are to be used for  
13 obtaining rental housing to qualify for a tax  
14 deduction; and

15 (4) Removing requirements that individuals pay taxes on  
16 individual housing account distributions used to  
17 purchase a first principal residence or secure rental  
18 housing.

19 SECTION 2. Section 235-5.5, Hawaii Revised Statutes, is  
20 amended to read as follows:



1       "§235-5.5 Individual housing accounts. (a) There shall  
2 be allowed as a deduction from gross income the amount, not to  
3 exceed ~~[\$5,000,]~~ \$15,000, excluding interest paid or accrued  
4 thereon, paid in cash during the taxable year by an individual  
5 taxpayer to an individual housing account established for the  
6 individual's benefit to provide funding for the purchase of the  
7 individual's first principal residence. [A deduction not to  
8 exceed \$10,000 shall be allowed for a married couple filing a  
9 joint return.]

10       In the case of a married couple filing separate returns,  
11 the sum of the deductions allowable to each of them for amounts  
12 paid in cash for the taxable year shall not exceed \$15,000,  
13 excluding interest paid or accrued thereon. In the case of a  
14 married couple filing a joint return, the sum of the deduction  
15 allowable for amounts paid in cash for the taxable year shall  
16 not exceed \$30,000, excluding interest paid or accrued thereon.

17       No deduction shall be allowed on any amounts distributed  
18 less than three hundred sixty-five days from the date on which a  
19 contribution is made to the account. Any deduction claimed for  
20 a previous taxable year for amounts distributed less than three  
21 hundred sixty-five days from the date on which a contribution



1 was made shall be disallowed and the amount deducted shall be  
2 included in the previous taxable year's gross income and the tax  
3 reassessed. The interest paid or accrued within the taxable  
4 year on the account shall not be included in the individual's  
5 gross income. For purposes of this section, the term "first  
6 principal residence" means a residential property purchased with  
7 the payment or distribution from the individual housing account  
8 which shall be owned and occupied as the only home by an  
9 individual who did not have any interest in, individually, or  
10 whose spouse did not have any interest in, if the individual is  
11 married, a residential property within the last five years of  
12 opening the individual housing account.

13 ~~[In the case of a married couple filing separate returns,~~  
14 ~~the sum of the deductions allowable to each of them for the~~  
15 ~~taxable year shall not exceed \$5,000, or \$10,000 for a joint~~  
16 ~~return, for amounts paid in cash, excluding interest paid or~~  
17 ~~accrued thereon.]~~

18 The amounts paid in cash allowable as a deduction under  
19 this section to an individual for all taxable years shall not  
20 exceed ~~[\$25,000,]~~ \$75,000, excluding interest paid or accrued.

21 In the case of married individuals ~~[having separate individual~~



1 ~~housing accounts,~~ regardless if filing separately or jointly,  
2 the sum of ~~[the separate accounts and the deduction]~~ their  
3 deductions under this section for all taxable years shall not  
4 exceed ~~[\$25,000,]~~ \$75,000, excluding interest paid or accrued  
5 thereon.

6 (b) There shall be allowed as a deduction from gross  
7 income the amount, not to exceed \$2,500, paid in cash during the  
8 taxable year by an individual taxpayer to an individual housing  
9 account established for the individual's benefit to provide  
10 funding to obtain rental housing. No deduction shall be allowed  
11 on any amounts distributed more than twenty-four months from the  
12 date on which the first contribution is made to the account.

13 The interest paid or accrued within the taxable year on the  
14 account shall not be included in the individual's gross income.

15 For the purposes of this section, the term "rental housing"  
16 means a unit that is leased, rented, or occupied by the  
17 individual or tenant for whom the deduction will apply.

18 ~~[-(b)-]~~ (c) For purposes of this section, the term  
19 "individual housing account" means a trust created or organized  
20 in Hawaii for the exclusive benefit of an individual, or, in the  
21 case of a married individual, for the exclusive benefit of the



1 individual and spouse jointly, but only if the written governing  
2 instrument creating the trust meets the following requirements:

3 ~~[(1) Contributions shall not be accepted for the taxable~~  
4 ~~year in excess of \$5,000 (or \$10,000 in the case of a~~  
5 ~~joint return) or in excess of \$25,000 for all taxable~~  
6 ~~years, exclusive of interest paid or accrued;~~

7 ~~+(2)]~~ (1) The trustee is a bank, a savings and loan  
8 association, a credit union, ~~[or]~~ a depository  
9 financial services loan company, or a community  
10 development financial institution, chartered,  
11 licensed, certified, or supervised under federal or  
12 state law, whose accounts are insured by the Federal  
13 Deposit Insurance Corporation, the National Credit  
14 Union Administration, or any agency of this State or  
15 any federal agency established for the purpose of  
16 insuring accounts in these financial institutions.

17 The financial institution ~~[must]~~ may actively make  
18 residential real estate mortgage loans in Hawaii;

19 ~~[(3)]~~ (2) The assets of the trust shall be invested only in  
20 fully insured savings or time deposits. Funds held in  
21 the trust may be commingled for purposes of



1 investment, but individual records shall be maintained  
2 by the trustee for each individual housing account  
3 holder that show all transactions in detail;

4 ~~[(4)]~~ (3) The entire interest of an individual or married  
5 couple for whose benefit the trust is maintained shall  
6 be distributed to the individual or couple not later  
7 than one hundred twenty months after the date on which  
8 the first contribution is made to the trust;

9 ~~[(5)]~~ (4) Except as provided in subsection (g), the trustee  
10 shall not distribute the funds in the account unless  
11 the trustee:

12 (A) Verifies that the money is to be used for the  
13 purchase of a first principal residence or to  
14 obtain rental housing located in Hawaii, and  
15 provides that the instrument of payment is  
16 payable to the mortgagor, construction  
17 contractor, property owner, property manager, or  
18 other vendor of the property purchased~~[-]~~ or  
19 rented; or

20 (B) Withholds an amount equal to ten per cent of the  
21 amount withdrawn from the account and remits this





1 amount to the director within ten days after the  
2 date of the withdrawal. The amount withheld  
3 shall be applied to the liability of the taxpayer  
4 under subsections ~~[(e)]~~ (d) and ~~[(e); and]~~ (f);  
5 ~~[(6)]~~ (5) If any amounts are distributed before the  
6 expiration of three hundred sixty-five days from the  
7 date on which a contribution is made to the account ~~[7]~~  
8 established for the purpose of purchasing the  
9 individual's first principal residence, the trustee  
10 shall so notify in writing the taxpayer and the  
11 director. If the trustee makes the verification  
12 required in paragraph ~~[(5)(A);]~~ (4)(A), then the  
13 department shall disallow the deduction under  
14 subsection (a) and subsections ~~[(e); (e);]~~ (d) and (f)  
15 shall not apply to that amount. If the trustee  
16 withholds an amount under paragraph ~~[(5)(B);]~~ (4)(B),  
17 then the department shall disallow the deduction under  
18 subsection (a) and subsection ~~[(e)]~~ (f) shall apply,  
19 but subsection ~~[(e)]~~ (d) shall not apply ~~[7]; and~~  
20 (6) A custodial account that is not a trust shall be  
21 treated as a trust for purposes of this section if:



1           (A) The assets of the custodial account are held by a  
2                   bank, savings and loan association, credit union,  
3                   depository financial services loan company, or  
4                   community development financial institution that  
5                   administers the custodial account consistent with  
6                   the requirements of this section; and

7           (B) The custodial account would otherwise constitute  
8                   an individual housing account;  
9                   provided that the custodian of a custodial account  
10                  treated as a trust under this paragraph shall be  
11                  treated as the trustee of the account.

12           ~~[(e)]~~ (d) Any contributions paid or distributed out of an  
13 individual housing account shall be included in gross income by  
14 the individual for whose benefit the account was established for  
15 the taxable year in which the payment or distribution is  
16 received, unless the amount is used exclusively in connection  
17 with the purchase of the first principal residence or to obtain  
18 rental housing in Hawaii for the individual for whose benefit  
19 the account was established.

20           ~~[(d)]~~ (e) The transfer of an individual's interest in an  
21 individual housing account to a spouse under a dissolution of



1 marriage decree or under a written instrument incident to a  
2 dissolution of marriage shall not be considered a taxable  
3 transfer made by the individual, and the interest, at the time  
4 of the transfer, shall be treated as part of an individual  
5 housing account of the transferee, and not of the transferor.  
6 After the transfer, the account shall be treated, for purposes  
7 of this section, as maintained for the benefit of the  
8 transferee.

9       ~~[(e)]~~ (f) If a distribution from an individual housing  
10 account to an individual for whose benefit the account was  
11 established is made and not used in connection with the purchase  
12 of the first principal residence or obtaining rental housing in  
13 Hawaii for the individual, the tax liability of the individual  
14 under this chapter for the taxable year in which the  
15 distribution is received shall be increased by an amount equal  
16 to ten per cent of the amount of the distribution which is  
17 includable in the individual's gross income for the taxable  
18 year.

19       If, during any taxable year, the individual uses the  
20 account or any portion thereof as security for a loan, the



1 portion so used shall be treated as if it had been distributed  
2 to that individual.

3 ~~[(f) If the individual for whose benefit the individual~~  
4 ~~housing account was established purchases a residential property~~  
5 ~~in Hawaii with the distribution from the individual housing~~  
6 ~~account:~~

7 ~~(1) Before January 1, 1990, and if the individual sells in~~  
8 ~~any manner or method or by use of any instrument~~  
9 ~~conveying or transferring the residential property,~~  
10 ~~the gross income of the individual under this chapter~~  
11 ~~for the taxable year in which the residential property~~  
12 ~~is sold, conveyed, or transferred, whichever is~~  
13 ~~applicable, shall include an amount equal to the~~  
14 ~~amount of the distribution from the individual housing~~  
15 ~~account, and in addition, the gross income of the~~  
16 ~~individual shall be increased by an amount equal to~~  
17 ~~ten per cent of the total distribution from the~~  
18 ~~individual housing account, or~~

19 ~~(2) After December 31, 1989, the individual shall report~~  
20 ~~one tenth of the total distribution from the~~  
21 ~~individual housing account used to purchase the~~



~~residential property as gross income in the taxable year in which the distribution is completed and in each taxable year thereafter until all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property. If the individual sells in any manner or method or by use of any instrument conveying or transferring the residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account not previously reported as gross income, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account. If the individual sells the residential property in any manner as provided in this paragraph after all of the distribution has been included in the individual's gross income at the end~~



1       ~~of the tenth taxable year after the purchase of the~~  
2       ~~residential property, the tax liability of the~~  
3       ~~individual shall not be increased by an amount equal~~  
4       ~~to ten per cent of the total distribution from the~~  
5       ~~individual housing account.~~

6   ~~An individual who purchased a residential property in Hawaii~~  
7   ~~with the distribution from an individual housing account before~~  
8   ~~January 1, 1990, who is subject to paragraph (1) may elect to~~  
9   ~~report as provided in paragraph (2). The election shall be made~~  
10   ~~before January 1, 1991. If the individual makes the election,~~  
11   ~~the individual shall report one-tenth of the total distribution~~  
12   ~~from the individual housing account as gross income in the~~  
13   ~~taxable year in which the election occurs and in each taxable~~  
14   ~~year thereafter until all of the distribution has been included~~  
15   ~~in gross income as provided by paragraph (2). If the individual~~  
16   ~~making the election sells the residential property in any manner~~  
17   ~~as provided in paragraph (2), then the individual shall include~~  
18   ~~as income the amount of the distribution not previously reported~~  
19   ~~as income and increase the individual's tax liability as~~  
20   ~~provided in the second sentence of paragraph (2), except when~~  
21   ~~the third sentence of paragraph (2) applies.~~



1       ~~In the alternative, any individual subject to paragraph (2)~~  
2       ~~who established the individual housing account before January 1,~~  
3       ~~1990, may elect within one year after the date of purchase, to~~  
4       ~~be subject to paragraph (1).~~

5       ~~(g) No tax liability shall be imposed under this section~~  
6       ~~if:~~

7       ~~(1) The payment or distribution is attributable to the~~  
8       ~~individual dying or becoming totally disabled; or~~

9       ~~(2) Residential property subject to subsection (f) is~~  
10       ~~transferred by will or by operation of law or sold due~~  
11       ~~to the death or total disability of an individual or~~  
12       ~~individual's spouse,~~

13       ~~subject to the following:~~

14       ~~An individual shall not be considered to be totally~~  
15       ~~disabled unless proof is furnished of the total disability in~~  
16       ~~the form and manner as the director may require.]~~

17       (g) Upon the death of an individual for whose benefit an  
18       individual housing account has been established, the funds in  
19       the account shall be payable to the estate of the individual;  
20       provided that if the account was held jointly by the decedent  
21       and a spouse of the decedent, the account shall terminate and be



1 paid to the surviving spouse; or, if the surviving spouse so  
2 elects, the spouse may continue the account as an individual  
3 housing account. Upon the total disability of an individual for  
4 whose benefit an individual housing account has been  
5 established, the individual or the individual's authorized  
6 representative may elect to continue the account or terminate  
7 the account and be paid the assets; provided that if the account  
8 was held jointly by a totally disabled person and a spouse of  
9 that person, then the spouse or an authorized representative may  
10 elect to continue the account or terminate the account and be  
11 paid the assets.

12 (h) If the individual for whose benefit the individual  
13 housing account was established subsequently marries a person  
14 who has or has had any interest in residential property, the  
15 individual's housing account shall be terminated, the funds  
16 therein shall be distributed to the individual, and the amount  
17 of the funds shall be includable in the individual's gross  
18 income for the taxable year in which ~~[such]~~ the marriage took  
19 place~~[, provided that the tax liability defined under subsection~~  
20 ~~(f) shall not be imposed]~~.





1           (i) The trustee of an individual housing account shall  
2 make reports regarding the account to the director and to the  
3 individual for whom the account is maintained with respect to  
4 contributions, distributions, and other matters as the director  
5 may require under rules. The reports shall be filed at a time  
6 and in a manner as ~~[may be]~~ required by rules adopted under  
7 chapter 91. A person who fails to file a required report shall  
8 be subject to a penalty of \$10 to be paid to the director for  
9 each instance of failure to file."

10           SECTION 3. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12           SECTION 4. This Act, upon its approval, shall apply to  
13 taxable years beginning after December 31, 2018.

14  
INTRODUCED BY: \_\_\_\_\_

  
By Request



# S.B. NO. 2135

**Report Title:**

OHA Package; Individual Housing Accounts; Tax Deduction

**Description:**

Increases the cap amounts of the tax deduction for individual housing accounts. Authorizes certain funds from an individual housing account to be used to obtain rental housing. Authorizes the accounts to be placed in a community development financial institution. Repeals requirements for the payment of taxes on distributions used for the purchase of a first principal residence or to secure rental housing.

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