

STAND. COM. REP. NO.

2649

Honolulu, Hawaii

MAR 02 2018

RE: S.B. No. 2821
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Ways and Means, to which was referred S.B. No. 2821 entitled:

"A BILL FOR AN ACT RELATING TO CONFORMITY TO THE INTERNAL REVENUE CODE,"

begs leave to report as follows:

The purpose and intent of this measure is to conform Hawaii's income and estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of December 31, 2017.

Your Committee received testimony in support of this measure from the Department of Taxation and one individual.

Your Committee received testimony in opposition to this measure from the Civic Education Council, Hawaii Appleseed Center for Law & Economic Justice, Hawaiian Community Assets, Young Progressives Demanding Action – Hawaii, and nine individuals.

Your Committee received comments on this measure from the Tax Foundation of Hawaii.

Your Committee finds that this annual conformity measure is submitted by the Department of Taxation in compliance with section 235-2.5, Hawaii Revised Statutes, which requires the department to annually submit a measure to maintain state income tax conformity with the federal Internal Revenue Code. This measure is also



intended to comply with section 236E-4, Hawaii Revised Statutes, which requires the department to annually submit a measure to maintain state estate and generation-skipping transfer tax conformity with the federal Internal Revenue Code. The purpose of conformity is to update the state tax laws with those changes made to the federal Internal Revenue Code during the past year and to adopt those changes that are appropriate for Hawaii law.

However, your Committee believes that although close conformance of the Hawaii Revised Statutes to the Internal Revenue Code is normally recommended to ease the administration of state taxes, in light of multiple changes that have recently come into effect at the federal level, it is appropriate that the Hawaii Revised Statutes not conform with a number of provisions of the Internal Revenue Code.

More specifically, your Committee finds that provisions of the federal Bipartisan Budget Act of 2015, P.L. 114-74, that became effective for taxable years beginning after December 31, 2017, have affected the manner in which partnerships are audited. Your Committee finds that although conforming the Hawaii Revised Statutes to the substance of these new auditing standards is appropriate, the Department of Taxation should be allowed to maintain its own timing and administrative provisions.

Furthermore, the federal Tax Cuts and Jobs Act, P.L. 115-97, enacted on December 22, 2017, made extensive changes to individual income taxes, corporate income taxes, and the estate tax. Your Committee believes that it is important to maintain current state law in numerous key areas. For example, the State's current allowance of individual itemized deductions should be maintained to ensure that individual taxpayers are not burdened with increased income tax obligations. Your Committee also believes that, in light of Hawaii's corporate tax structure and rates, it is not appropriate to conform to the Internal Revenue Code's twenty percent tax rate for pass-through entities.

Your Committee also finds that it is appropriate for the State to decline to conform state estate and generation-skipping transfer tax law to recent changes to federal law.

Accordingly, your Committee has amended this measure by:



- (1) Further amending section 235-2.3, Hawaii Revised Statutes, to specify that the following provisions of the Internal Revenue Code are not operative for state income tax purposes:
 - (A) Section 91, with respect to certain foreign branch losses;
 - (B) Section 199A, with respect to the deduction for qualified business income;
 - (C) Section 250, with respect to foreign-derived intangible income and global intangible low-taxed income;
 - (D) Section 267A, with respect to certain related party amounts paid or accrued in hybrid transactions or with hybrid entities; and
 - (E) Subchapter Z (sections 1400Z-1 to 1400Z-2), with respect to opportunity zones;

- (2) Amending section 235-2.4, Hawaii Revised Statutes, by:
 - (A) Specifying that section 67 of the Internal Revenue Code, with respect to the two percent floor on miscellaneous itemized deductions, shall be operative for state income tax purposes, except that the suspension in section 67(g) shall not be operative;
 - (B) Inserting a proviso that specifies that the suspension in section 68(f) of the Internal Revenue Code shall not be operative for state income tax purposes;
 - (C) Repealing an existing proviso that specifies that the provision in section 132(f)(2) of the Internal Revenue Code that equalizes the dollar amounts for section 132(f)(2)(A) and (B) regarding qualified transportation fringe benefits shall not be operative for state income tax purposes;



- (D) Inserting a proviso that specifies that the suspensions in section 132(f)(8) and 132(g)(2) of the Internal Revenue Code shall not be operative for state income tax purposes;
 - (E) Inserting a proviso that specifies that section 163(h)(3)(F) of the Internal Revenue Code, which inserts limits relating to mortgage interest, shall not be operative for state income tax purposes;
 - (F) Repealing a reference to a repealed provision of section 164(a) of the Internal Revenue Code;
 - (G) Inserting a proviso that specifies that section 164(b)(6)(B) of the Internal Revenue Code, which limits the deduction for state and local taxes, shall not be operative for state income tax purposes;
 - (H) Inserting a proviso that specifies that section 165(h)(5) of the Internal Revenue Code, which inserts limits relating to federally declared disasters, shall not be operative for state income tax purposes;
 - (I) Specifying that section 217 of the Internal Revenue Code, with respect to moving expenses, shall be operative for state income tax purposes, except that the suspension in section 217(k) shall not be operative; and
 - (J) Specifying that section 274 of the Internal Revenue Code, with respect to the disallowance of certain expenses, shall be operative for state income tax purposes, but in the form in which that section existed as of December 21, 2017;
- (3) Amending section 235-2.45, Hawaii Revised Statutes, by:
- (A) Repealing the existing proviso that renders certain provisions of section 1374 of the Internal Revenue Code, which relates to certain built-in gains, inoperative for state income tax purposes;



- (B) Inserting a proviso that specifies that if a partnership elects the opt-out provision under section 6221(b) of the Internal Revenue Code for federal income tax purposes, that partnership shall also make the same election for Hawaii income tax purposes;
 - (C) Specifying that sections 6223, 6225, and 6226 of the Internal Revenue Code, with respect to partnership audits, shall be operative for state income tax purposes;
 - (D) Repealing existing language that makes operative for state income tax purposes section 6231 of the Internal Revenue Code, which addresses definitions and special rules relating to tax treatment of partnership items;
 - (E) Repealing existing language that makes operative for state income tax purposes sections 6240 and 6242 to 6255 of the Internal Revenue Code, which address simplified audit procedures for electing large partnerships; and
 - (F) Inserting a proviso that specifies that certain definitions listed in section 6241 of the Internal Revenue Code, with respect to consistency between a partner's return and the partnership's return, shall not be operative for state income tax purposes;
- (4) Limiting the application of the Internal Revenue Code to state tax law to the version of the Internal Revenue Code as amended as of December 31, 2017, for:
- (A) The definition of "applicable generation-skipping transfer tax rate" in section 236E-2, Hawaii Revised Statutes; and
 - (B) The applicable exclusion amounts for Hawaii taxable estates, as calculated pursuant to section 236E-6, Hawaii Revised Statutes;



- (5) Making amendments to sections 236E-8, 236E-9, 236E-11, 236E-17, and 236E-21, Hawaii Revised Statutes, to make a taxpayer's obligation to file returns and make payments under the state estate and generation-skipping transfer tax law independent of the taxpayer's obligation to file returns and make payments under corresponding federal law;
- (6) Making the amendments to sections 235-2.4 and 235-2.45, Hawaii Revised Statutes, applicable to taxable years beginning after December 31, 2017;
- (7) Making the amendments to sections 236E-2, 236E-6, 236E-8, 236E-9, 236E-11, 236E-17, and 236E-21, Hawaii Revised Statutes, applicable to decedents dying or taxable transfers occurring after December 31, 2017; and
- (8) Making technical nonsubstantive changes for purposes of clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Ways and Means that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2821, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2821, S.D. 1, and be placed on the calendar for Third Reading.


Respectfully submitted on
behalf of the members of the
Committee on Ways and Means,


DONOVAN M. DELA CRUZ, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB2821	Committee Referral: WAM	Date: 2/8/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
ENGLISH, J. Kalani	X			
GALUTERIA, Brickwood	X			
HARIMOTO, Breene	X			
INOUYE, Lorraine R.	X			
KAHELE, Kaiali'i	X			
KIDANI, Michelle N.				X
RIVIERE, Gil				X
SHIMABUKURO, Maile S.L.				X
WAKAI, Glenn	X			
TOTAL	8			3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes