

JAN 24 2019

A BILL FOR AN ACT

RELATING TO CONFORMITY 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 and estate and generation-skipping transfer tax laws to
3 the Internal Revenue Code.

4 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§235-2.3 Conformance to the federal Internal Revenue Code;**
7 **general application.** (a) For all taxable years beginning after
8 December 31, [~~2017,~~] 2018, as used in this chapter, except as
9 provided in section 235-2.35, "Internal Revenue Code" means
10 subtitle A, chapter 1, of the federal Internal Revenue Code of
11 1986, as amended as of [~~February 9, 2018,~~] December 31, 2018, as
12 it applies to the determination of gross income, adjusted gross
13 income, ordinary income and loss, and taxable income, except
14 those provisions of the Internal Revenue Code and federal public
15 laws which, pursuant to this chapter, do not apply or are
16 otherwise limited in application and except for the provisions
17 of Public Law 109-001 which apply to section 170 of the Internal
18 Revenue Code. The provisions of Public Law 109-001 to

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1 accelerate the deduction for charitable cash contributions for
2 the relief of victims of the 2004 Indian Ocean tsunami are
3 applicable for the calendar year that ended December 31, 2004,
4 and the calendar year ending December 31, 2005.

5 Prior law shall continue to be used to determine:

6 (1) The basis of property, if a taxpayer first determined
7 the basis of property in a taxable year to which prior
8 law applies; and

9 (2) Gross income, adjusted gross income, ordinary income
10 and loss, and taxable income for a taxable year to
11 which prior law applies.

12 (b) The following Internal Revenue Code subchapters, parts
13 of subchapters, sections, subsections, and parts of subsections
14 shall not be operative for the purposes of this chapter, unless
15 otherwise provided:

16 (1) Subchapter A (sections 1 to 59A) (with respect to
17 determination of tax liability), except section
18 1(h)(2) (relating to net capital gain reduced by the
19 amount taken into account as investment income),
20 except sections 2(a), 2(b), and 2(c) (with respect to
21 the definition of "surviving spouse" and "head of
22 household"), except section 41 (with respect to the

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1 credit for increasing research activities), except
2 section 42 (with respect to low-income housing
3 credit), except sections 47 and 48, as amended, as of
4 December 31, 1984 (with respect to certain depreciable
5 tangible personal property), and except section
6 48(d)(3), as amended, as of February 17, 2009 (with
7 respect to the treatment of United States Department
8 of Treasury grants made under section 1603 of the
9 American Recovery and Reinvestment Tax Act of
10 2009). For treatment, see sections 235-110.91, 235-
11 110.7, and 235-110.8;

12 (2) Section 78 (with respect to dividends received from
13 certain foreign corporations by domestic corporations
14 choosing foreign tax credit);

15 (3) Section 86 (with respect to social security and tier 1
16 railroad retirement benefits);

17 (4) Section 91 (with respect to certain foreign branch
18 losses transferred to specified 10-percent owned
19 foreign corporations);

20 (5) Section 103 (with respect to interest on state and
21 local bonds). For treatment, see section 235-7(b);

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- 1 (6) Section 114 (with respect to extraterritorial income).
2 For treatment, any transaction as specified in the
3 transitional rule for 2005 and 2006 as specified in
4 the American Jobs Creation Act of 2004 section 101(d)
5 and any transaction that has occurred pursuant to a
6 binding contract as specified in the American Jobs
7 Creation Act of 2004 section 101(f) are inoperative;
- 8 (7) Section 120 (with respect to amounts received under
9 qualified group legal services plans). For treatment,
10 see section 235-7(a) (9) to (11);
- 11 (8) Section 122 (with respect to certain reduced uniformed
12 services retirement pay). For treatment, see section
13 235-7(a) (3);
- 14 (9) Section 135 (with respect to income from United States
15 savings bonds used to pay higher education tuition and
16 fees). For treatment, see section 235-7(a) (1);
- 17 (10) Section 139C (with respect to COBRA premium
18 assistance);
- 19 (11) Subchapter B (sections 141 to 150) (with respect to
20 tax exemption requirements for state and local bonds);

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- 1 (12) Section 151 (with respect to allowance of deductions
2 for personal exemptions). For treatment, see section
3 235-54;
- 4 (13) Section 179B (with respect to expensing of capital
5 costs incurred in complying with Environmental
6 Protection Agency Sulphur regulations);
- 7 (14) Section 181 (with respect to special rules for certain
8 film and television productions);
- 9 (15) Section 196 (with respect to deduction for certain
10 unused investment credits);
- 11 (16) Section 199 (with respect to the U.S. production
12 activities deduction);
- 13 (17) Section 199A (with respect to qualified business
14 income);
- 15 (18) Section 222 (with respect to qualified tuition and
16 related expenses);
- 17 (19) Sections 241 to 247 (with respect to special
18 deductions for corporations). For treatment, see
19 section 235-7(c);
- 20 (20) Section 250 (with respect to foreign-derived
21 intangible income and global intangible low-taxed
22 income);

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- 1 (21) Section 267A (with respect to certain related party
2 amounts paid or accrued in hybrid transactions or with
3 hybrid entities);
- 4 (22) Section 280C (with respect to certain expenses for
5 which credits are allowable). For treatment, see
6 section 235-110.91;
- 7 (23) Section 291 (with respect to special rules relating to
8 corporate preference items);
- 9 (24) Section 367 (with respect to foreign corporations);
- 10 (25) Section 501(c)(12), (15), (16) (with respect to exempt
11 organizations); except that section 501(c)(12) shall
12 be operative for companies that provide potable water
13 to residential communities that lack any access to
14 public utility water services;
- 15 (26) Section 515 (with respect to taxes of foreign
16 countries and possessions of the United States);
- 17 (27) Subchapter G (sections 531 to 565) (with respect to
18 corporations used to avoid income tax on
19 shareholders);
- 20 (28) Subchapter H (sections 581 to 597) (with respect to
21 banking institutions), except section 584 (with

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- 1 respect to common trust funds). For treatment, see
2 chapter 241;
- 3 (29) Section 642(a) and (b) (with respect to special rules
4 for credits and deductions applicable to trusts). For
5 treatment, see sections 235-54(b) and 235-55;
- 6 (30) Section 646 (with respect to tax treatment of electing
7 Alaska Native settlement trusts);
- 8 (31) Section 668 (with respect to interest charge on
9 accumulation distributions from foreign trusts);
- 10 (32) Subchapter L (sections 801 to 848) (with respect to
11 insurance companies). For treatment, see sections
12 431:7-202 and 431:7-204;
- 13 (33) Section 853 (with respect to foreign tax credit
14 allowed to shareholders). For treatment, see section
15 235-55;
- 16 (34) Section 853A (with respect to credits from tax credit
17 bonds allowed to shareholders);
- 18 (35) Subchapter N (sections 861 to 999) (with respect to
19 tax based on income from sources within or without the
20 United States), except sections 985 to 989 (with
21 respect to foreign currency transactions). For

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- 1 treatment, see sections 235-4, 235-5, and 235-7(b),
- 2 and 235-55;
- 3 (36) Section 1042(g) (with respect to sales of stock in
- 4 agricultural refiners and processors to eligible farm
- 5 cooperatives);
- 6 (37) Section 1055 (with respect to redeemable ground
- 7 rents);
- 8 (38) Section 1057 (with respect to election to treat
- 9 transfer to foreign trust, etc., as taxable exchange);
- 10 (39) Sections 1291 to 1298 (with respect to treatment of
- 11 passive foreign investment companies);
- 12 (40) Subchapter Q (sections 1311 to 1351) (with respect to
- 13 readjustment of tax between years and special
- 14 limitations);
- 15 (41) Subchapter R (sections 1352 to 1359) (with respect to
- 16 election to determine corporate tax on certain
- 17 international shipping activities using per ton rate);
- 18 (42) Subchapter U (sections 1391 to 1379F) (with respect to
- 19 designation and treatment of empowerment zones,
- 20 enterprise communities, and rural development
- 21 investment areas). For treatment, see chapter 209E;

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- 1 (43) Subchapter W (sections 1400 to 1400C) (with respect to
2 District of Columbia enterprise zone);
3 (44) Section 14000 (with respect to education tax
4 benefits);
5 (45) Section 1400P (with respect to housing tax benefits);
6 (46) Section 1400R (with respect to employment relief);
7 (47) Section 1400T (with respect to special rules for
8 mortgage revenue bonds);
9 (48) Section 1400U-1 (with respect to allocation of
10 recovery zone bonds);
11 (49) Section 1400U-2 (with respect to recovery zone
12 economic development bonds); and
13 (50) Section 1400U-3 (with respect to recovery zone
14 facility bonds) [~~and~~
15 ~~(51) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with~~
16 ~~respect to opportunity zones)] ."~~

17 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is
18 amended by amending subsection (ee) to read as follows:

19 "(ee) Sections 512 to 514 (with respect to taxation of
20 business income of certain exempt organizations) of the Internal
21 Revenue Code shall be operative for the purposes of this chapter
22 as provided in this subsection.

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1 "Unrelated business taxable income" means the same as in
2 the Internal Revenue Code, except that ~~in~~:

3 (1) In the computation ~~thereof sections~~ of unrelated
4 business taxable income:

5 (A) Sections 235-3 to 235-5, and 235-7 (except
6 subsection (c)), shall apply~~[-]~~; and ~~in~~

7 (B) Section 512(a)(7) shall not apply;

8 (2) In the determination of the net operating loss
9 deduction there shall not be taken into account any
10 amount of income or deduction that is excluded in
11 computing the unrelated business taxable income~~[-]~~;
12 and

13 (3) Unrelated business taxable income shall not include
14 any income from a legal service plan.

15 For a person described in section 401 or 501 of the
16 Internal Revenue Code, as modified by section 235-2.3, the tax
17 imposed by section 235-51 or 235-71 shall be imposed upon the
18 person's unrelated business taxable income."

19 SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is
20 amended to read as follows:

21 "§235-2.45 Operation of certain Internal Revenue Code
22 provisions; sections 641 to 7518. (a) Section 641 (with

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1 respect to imposition of tax) of the Internal Revenue Code shall
2 be operative for the purposes of this chapter subject to the
3 following:

4 (1) The deduction for exemptions shall be allowed as
5 provided in section 235-54(b);

6 (2) The deduction for contributions and gifts in
7 determining taxable income shall be limited to the
8 amount allowed in the case of an individual, unless
9 the contributions and gifts are to be used exclusively
10 in the State; and

11 (3) The tax imposed by section 1(e) of the Internal
12 Revenue Code as applied by section 641 of the Internal
13 Revenue Code is hereby imposed by this chapter at the
14 rate and amount as determined under section 235-51 on
15 estates and trusts.

16 (b) Section 667 (with respect to treatment of amounts
17 deemed distributed by trusts in preceding years) of the Internal
18 Revenue Code shall be operative for the purposes of this chapter
19 and the tax imposed therein is hereby imposed by this chapter at
20 the rate determined under this chapter; except that the
21 reference to tax-exempt interest to which section 103 of the
22 Internal Revenue Code applies in section 667(a) of the Internal

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1 Revenue Code shall instead be a reference to tax-exempt interest
2 to which section 235-7(b) applies.

3 (c) Section 685 (with respect to treatment of qualified
4 funeral trusts) of the Internal Revenue Code shall be operative
5 for purposes of this chapter, except that the tax imposed under
6 this chapter shall be computed at the tax rates provided under
7 section 235-51, and no deduction for the exemption amount
8 provided in section 235-54(b) shall be allowed. The cost-of-
9 living adjustment determined under section 1(f)(3) of the
10 Internal Revenue Code shall be operative for the purpose of
11 applying section 685(c)(3) under this chapter.

12 (d) Section 704 of the Internal Revenue Code (with respect
13 to a partner's distributive share) shall be operative for
14 purposes of this chapter; except that section 704(b)(2) shall
15 not apply to:

- 16 (1) Allocations of the high technology business investment
17 tax credit allowed by section 235-110.9 for
18 investments made before May 1, 2009;
- 19 (2) Allocations of net operating loss pursuant to section
20 235-111.5; or
- 21 (3) Allocations of low-income housing tax credits among
22 partners under section 235-110.8.

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

6 (f) Section 1212 (with respect to capital loss carrybacks
7 and carryforwards) of the Internal Revenue Code shall be
8 operative for the purposes of this chapter; except that for the
9 purposes of this chapter the capital loss carryback provisions
10 of section 1212 shall not be operative and the capital loss
11 carryforward allowed by section 1212(a) shall be limited to five
12 years; except for a qualified high technology business as
13 defined in section 235-7.3, which shall be limited to fifteen
14 years.

15 (g) Section 1221 (with respect to the definition of
16 capital assets) is operative; provided that the provisions of
17 section 301 of Public Law 110-343, which provide that gain or
18 loss from the sale or exchange of any applicable preferred stock
19 by any applicable financial institution (such terms being
20 defined by Public Law 110-343) shall be treated as ordinary
21 income or loss, shall not be operative. A sale or exchange of
22 any applicable preferred stock by any applicable financial

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1 institution (as those terms are defined by section 301 of Public
2 Law 110-343) shall be treated as a sale of a capital asset and
3 taxed accordingly.

4 (h) Subchapter S (sections 1361 to 1379) (with respect to
5 tax treatment of S corporations and their shareholders) of
6 chapter 1 of the Internal Revenue Code shall be operative for
7 the purposes of this chapter as provided in part VII.

8 (i) Section 1400N (with respect to tax benefits for Gulf
9 Opportunity Zone) of the Internal Revenue Code shall be
10 operative for the purposes of this chapter, except that sections
11 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)
12 (with respect to advance refundings of certain tax-exempt
13 bonds); 1400N(c) (with respect to the low income housing
14 credit); 1400N(d) (with respect to special allowance for certain
15 property acquired on or after August 28, 2005); 1400N(e) (with
16 respect to increase in expensing under section 179); 1400N(h)
17 (with respect to increase in rehabilitation credit); 1400N(l)
18 (with respect to credit to holders of Gulf tax credit bonds);
19 1400N(m) (with respect to application of new markets tax credit
20 to investments in community development entities serving Gulf
21 Opportunity Zone); 1400N(n) (with respect to treatment of
22 representations regarding income eligibility for purposes of

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1 qualified residential rental project requirements) shall not be
2 operative for purposes of this chapter.

3 (j) Section 1400S (with respect to additional tax relief
4 provisions) of the Internal Revenue Code shall be operative for
5 the purposes of this chapter, except that section 1400S(d) (with
6 respect to the special rule for determining earned income) shall
7 be operative for the purposes of this chapter.

8 (k) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with
9 respect to opportunity zones) shall be operative for purposes of
10 this chapter; except that for purposes of this chapter
11 subchapter Z shall only apply to qualified opportunity zones, as
12 defined in section 1400Z-1, that are designated as such by the
13 chief executive officer of this State.

14 [~~(k)~~] (l) Section 6015 (with respect to relief from joint
15 and several liability on joint return) of the Internal Revenue
16 Code is operative for purposes of this chapter.

17 [~~(l)~~] (m) Sections 6103(i)(3)(C) and 6103(i)(7) (with
18 respect to disclosures of information to the United States
19 Justice Department or appropriate federal or state law
20 enforcement agency for purposes of investigating terrorist
21 incidents, threats, or activities, and for analyzing
22 intelligence concerning investigating terrorist incidents,

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1 threats, or activities) of the Internal Revenue Code shall be
2 operative for the purposes of this chapter.

3 ~~(m)~~ (n) Sections 6221, 6222, 6223, 6225, and 6226 (with
4 respect to partnership audits) of subchapter C of chapter 63 of
5 the Internal Revenue Code shall be operative for the purposes of
6 this chapter; provided that if a taxpayer makes the election
7 under section 6221(b) for federal income tax purposes, that
8 taxpayer shall also make the same election for Hawaii income tax
9 purposes.

10 ~~(n)~~ (o) Section 6241 (with respect to definitions and
11 special rules regarding partnerships) of the Internal Revenue
12 Code shall be operative for the purposes of this chapter, except
13 that the definitions that appear in items numbered (1), (3), and
14 (5) shall not be operative for purposes of this chapter.

15 ~~(o)~~ (p) Section 6501(e) (with respect to limitation on
16 assessment and collection where there is a substantial omission
17 of items) of the Internal Revenue Code shall be operative for
18 purposes of this chapter.

19 ~~(p)~~ (q) Section 6511(h) (with respect to running of
20 periods of limitation suspended while taxpayer is unable to
21 manage financial affairs due to disability) of the Internal
22 Revenue Code shall be operative for purposes of this chapter,

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1 with due regard to section 235-111 relating to the limitation
2 period for assessment, levy, collection, or credit.

3 [~~(q)~~] (r) Section 7518 (with respect to capital
4 construction fund for commercial fishers) of the Internal
5 Revenue Code shall be operative for the purposes of this
6 chapter. Qualified withdrawals for the acquisition,
7 construction, or reconstruction of any qualified asset that is
8 attributable to deposits made before the effective date of this
9 section shall not reduce the basis of the asset when withdrawn.
10 Qualified withdrawals shall be treated on a first-first-out
11 basis."

12 SECTION 5. Section 236E-3, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "**§236E-3 Conformance to the Internal Revenue Code; general**
15 **application.** For all decedents dying, or transfers occurring,
16 after December 31, [~~2017~~] 2018, as used in this chapter,
17 "Internal Revenue Code" means subtitle B of the federal Internal
18 Revenue Code of 1986, as amended as of December 31, [~~2017~~]
19 2018, as it applies to the determination of gross estate,
20 adjusted gross estate, federal taxable estate, and generation-
21 skipping transfers, except those provisions of the Internal

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1 Revenue Code and federal public laws that, pursuant to this
2 chapter, do not apply or are otherwise limited in application."

3 SECTION 6. Section 236E-6, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) An exclusion from a Hawaii taxable estate shall be
6 allowed to the estate of every decedent against the tax imposed
7 by section 236E-8. For the purpose of this section, the
8 applicable exclusion amount is equal to:

9 (1) The federal applicable exclusion amount;

10 (2) The exemption equivalent of the unified credit reduced
11 by the amount of taxable gifts made by the decedent
12 that reduces the amount of the federal applicable
13 exclusion amount; or

14 (3) The exemption equivalent of the unified credit on the
15 decedent's federal estate tax return,

16 as set forth for the decedent in chapter 11 of the Internal
17 Revenue Code as amended as of December 21, 2017, as if the
18 decedent died on December 31, 2017, and as further adjusted
19 pursuant to subsection (b)."

20 SECTION 7. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 8. This Act shall take effect upon its approval;

2 provided that:

3 (1) Sections 2, 3, and 4 shall apply to taxable years
4 beginning after December 31, 2018; and

5 (2) Sections 5 and 6 shall apply to decedents dying or
6 taxable transfers occurring after December 31, 2018.

7

INTRODUCED BY: 

BY REQUEST

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Report Title:

Conformity to the Internal Revenue Code for 2018; Income Tax;
Estate and Generation-skipping Transfer Tax

Description:

Conforms Hawaii income and estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of December 31, 2018. Clarifies wording regarding the Hawaii applicable exclusion amount.

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 TO THE INTERNAL REVENUE CODE.

PURPOSE: To amend Hawaii's income and estate and generation-skipping transfer tax laws to conform to changes made to the Internal Revenue Code in calendar year 2018.

MEANS: Amend sections 235-2.3, 235-2.4(ee), 235-2.45, 236E-3, and 236E-6(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Sections 235-2.5(c) and 236E-4(c), HRS, mandate that the Department of Taxation submit to each regular session of the Legislature a bill that amends Hawaii's income and estate and generation-skipping transfer tax laws to conform to changes in the Internal Revenue Code. This bill amends section 235-2.3(a), HRS, by changing the date as of which Hawaii adopts the Internal Revenue Code to December 31, 2018. This bill also amends section 236E-3, HRS, by changing the date as of which Hawaii adopts the Internal Revenue Code to December 31, 2018. These changes adopt income and estate and generation-skipping transfer tax law changes made in the 2018 calendar year.

This bill also amends sections 235-2.4 and 235-2.45, HRS, to make a minor change to the computation of unrelated business taxable income and to allow Hawaii tax benefits to opportunity zones.

This bill also amends section 236E-6, HRS, to clarify the exemption amount for Hawaii estate and generation-skipping transfer tax law.

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 and estate and generation-skipping transfer tax laws.

Impact on the department and other agencies: Conforming Hawaii's income and estate and generation-skipping transfer tax laws 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, income tax changes shall apply to taxable years beginning after December 31, 2018, and estate and generation-skipping transfer tax changes shall apply to decedents dying or taxable transfers occurring after December 31, 2018.