

JAN 24 2019

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# A BILL FOR AN ACT

RELATING TO INDIVIDUAL HOUSING ACCOUNTS.

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

1           SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§235-    Individual housing accounts; open at birth. (a)

5 A taxpayer may establish an individual housing account pursuant  
6 to section 235-5.5 in the name of a dependent of the taxpayer  
7 upon providing the dependent's birth certificate to the director  
8 of taxation. The individual housing account established  
9 pursuant to this section may be opened upon the birth of the  
10 dependent.

11           (b) The director of taxation shall prepare any forms that  
12 may be necessary to establish an individual housing account in  
13 the name of a dependent of the taxpayer and may require proof of  
14 claim of the dependent. The director of taxation may adopt  
15 rules necessary to effectuate the purposes of this section  
16 pursuant to chapter 91."



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

3 **"§235-5.5 Individual housing accounts.** (a) There shall  
4 be allowed as a deduction from gross income the amount, not to  
5 exceed \$5,000, paid in cash during the taxable year by an  
6 individual taxpayer to an individual housing account established  
7 for the individual's benefit to provide funding for the purchase  
8 of the individual's first principal residence. A deduction not  
9 to exceed \$10,000 shall be allowed for a married couple filing a  
10 joint return. No deduction shall be allowed on any amounts  
11 distributed less than three hundred sixty-five days from the  
12 date on which a contribution is made to the account. Any  
13 deduction claimed for a previous taxable year for amounts  
14 distributed less than three hundred sixty-five days from the  
15 date on which a contribution was made shall be disallowed and  
16 the amount deducted shall be included in the previous taxable  
17 year's gross income and the tax reassessed. The interest paid  
18 or accrued within the taxable year on the account shall not be  
19 included in the individual's gross income. For purposes of this  
20 section, the term "first principal residence" means a  
21 residential property purchased with the payment or distribution



1 from the individual housing account which shall be owned and  
2 occupied as the only home by an individual who did not have any  
3 interest in, individually, or whose spouse did not have any  
4 interest in, if the individual is married, a residential  
5 property within the last five years of opening the individual  
6 housing account.

7 In the case of a married couple filing separate returns,  
8 the sum of the deductions allowable to each of them for the  
9 taxable year shall not exceed \$5,000, or \$10,000 for a joint  
10 return, for amounts paid in cash, excluding interest paid or  
11 accrued thereon.

12 The amounts paid in cash allowable as a deduction under  
13 this section to an individual for all taxable years shall not  
14 exceed \$25,000, excluding interest paid or accrued. In the case  
15 of married individuals having separate individual housing  
16 accounts, the sum of the separate accounts and the deduction  
17 under this section shall not exceed \$25,000, excluding interest  
18 paid or accrued thereon.

19 (b) There shall be allowed as a deduction from gross  
20 income of low-income residents the amount, not to exceed  
21 \$ \_\_\_\_\_, paid in cash during the taxable year by an



1 individual taxpayer to an individual housing account established  
2 for the individual's benefit to provide funding for the first  
3 month's rent or a rental deposit on a dwelling place that is to  
4 be used by the individual or the individual's immediate family  
5 as the principal residence, or to provide funding for  
6 downpayment assistance or fund closing costs. No deduction  
7 shall be allowed on any amounts distributed within twenty-four  
8 months from the date on which the first contribution is made to  
9 the account. The interest paid or accrued within the taxable  
10 year on the account shall not be included in the individual's  
11 gross income.

12 If the individual for whose benefit the individual housing  
13 account was established uses the account as provided by this  
14 subsection with the distribution from the individual housing  
15 account, the individual shall report of the total  
16 distribution from the individual housing account used to obtain  
17 the rental housing or provide downpayment assistance or fund  
18 closing costs as gross income in the taxable year in which the  
19 distribution is completed and in each taxable year thereafter  
20 until all of the distribution has been included in the  
21 individual's gross income.



1        For purposes of this subsection:

2        "Low-income resident" means an individual who is a resident  
3 of the State and:

4        (1) Is the only member of a family of one and has an  
5 income of not more than eighty per cent of the area  
6 median income for a family of one; or

7        (2) Is part of a family with an income of not more than  
8 eighty per cent of the area median income for a family  
9 of the same size.

10        [~~(b)~~] (c) For purposes of this section, the term  
11 "individual housing account" means a trust created or organized  
12 in Hawaii for the exclusive benefit of an individual, or, in the  
13 case of a married individual, for the exclusive benefit of the  
14 individual and spouse jointly, but only if the written governing  
15 instrument creating the trust meets the following requirements:

16        (1) Contributions shall not be accepted for the taxable  
17 year in excess of \$5,000 (or \$10,000 in the case of a  
18 joint return) or in excess of \$25,000 for all taxable  
19 years, exclusive of interest paid or accrued;

20        (2) Contributions into the trust may be made via direct  
21 deposit;



1        [~~(2)~~] (3)    The trustee is a bank, a savings and loan  
2                    association, a credit union, [~~or~~] a depository  
3                    financial services loan company, or a community  
4                    development financial institution, chartered,  
5                    certified, licensed, or supervised under federal or  
6                    state law, whose accounts are insured by the Federal  
7                    Deposit Insurance Corporation, the National Credit  
8                    Union Administration, or any agency of this State or  
9                    any federal agency established for the purpose of  
10                   insuring accounts in these financial institutions.

11                   The financial institution must actively make  
12                   residential real estate mortgage loans in Hawaii;

13        [~~(3)~~] (4)    The assets of the trust shall be invested only in  
14                    fully insured savings or time deposits. Funds held in  
15                    the trust may be commingled for purposes of  
16                    investment, but individual records shall be maintained  
17                    by the trustee for each individual housing account  
18                    holder that show all transactions in detail;

19        [~~(4)~~] (5)    The entire interest of an individual or married  
20                    couple for whose benefit the trust is maintained shall  
21                    be distributed to the individual or couple not later



1 than one hundred twenty months after the date on which  
2 the first contribution is made to the trust;

3 ~~[(5)]~~ (6) Except as provided in subsection ~~[(g)]~~, (h), the  
4 trustee shall not distribute the funds in the account  
5 unless the trustee:

6 (A) Verifies that the money is to be used for the  
7 purchase of a first principal residence located  
8 in Hawaii~~[\_]~~ or for the authorized uses under  
9 subsection (b), and provides that the instrument  
10 of payment is payable to the ~~[mortgagor]~~:

11 (i) Mortgagor, construction contractor, or other  
12 vendor of the property purchased; or

13 (ii) Landlord or landlord's assignee or owner or  
14 owner's assignee; or

15 (B) Withholds an amount equal to ten per cent of the  
16 amount withdrawn from the account and remits this  
17 amount to the director within ten days after the  
18 date of the withdrawal. The amount withheld  
19 shall be applied to the liability of the taxpayer  
20 under subsections ~~[(e)]~~ (d) and ~~[(e)]~~, (f); and



1        [~~(6)~~] (7) If any amounts are distributed before the  
2                    expiration of three hundred sixty-five days from the  
3                    date on which a contribution is made to the account,  
4                    the trustee shall so notify in writing the taxpayer  
5                    and the director. If the trustee makes the  
6                    verification required in paragraph (5) (A), then the  
7                    department shall disallow the deduction under  
8                    subsection (a) and subsections [~~(e)~~, ~~(e)~~, and ~~(f)~~]  
9                    (d), (f), and (g) shall not apply to that amount. If  
10                   the trustee withholds an amount under paragraph  
11                   (5) (B), then the department shall disallow the  
12                   deduction under subsection (a) and subsection [~~(e)~~]  
13                   (f) shall apply, but subsection [~~(e)~~] (d) shall not  
14                   apply.

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





1 for the authorized uses under subsection (b) for the individual  
2 for whose benefit the account was established.

3 ~~[(d)]~~ (e) The transfer of an individual's interest in an  
4 individual housing account to a spouse under a dissolution of  
5 marriage decree or under a written instrument incident to a  
6 dissolution of marriage shall not be considered a taxable  
7 transfer made by the individual, and the interest, at the time  
8 of the transfer, shall be treated as part of an individual  
9 housing account of the transferee, and not of the transferor.  
10 After the transfer, the account shall be treated, for purposes  
11 of this section, as maintained for the benefit of the  
12 transferee.

13 ~~[(e)]~~ (f) If a distribution from an individual housing  
14 account to an individual for whose benefit the account was  
15 established is made and not used in connection with the purchase  
16 of the first principal residence in Hawaii or for the authorized  
17 uses under subsection (b) for the individual, the tax liability  
18 of the individual under this chapter for the taxable year in  
19 which the distribution is received shall be increased by an  
20 amount equal to ten per cent of the amount of the distribution



1 which is includable in the individual's gross income for the  
2 taxable year.

3 If, during any taxable year, the individual uses the  
4 account or any portion thereof as security for a loan, the  
5 portion so used shall be treated as if it had been distributed  
6 to that individual.

7 [~~(f)~~] (g) If the individual for whose benefit the  
8 individual housing account was established purchases a  
9 residential property in Hawaii with the distribution from the  
10 individual housing account:

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



1           ten per cent of the total distribution from the  
2           individual housing account; or  
3       (2) After December 31, 1989, the individual shall report  
4           one-tenth of the total distribution from the  
5           individual housing account used to purchase the  
6           residential property as gross income in the taxable  
7           year in which the distribution is completed and in  
8           each taxable year thereafter until all of the  
9           distribution has been included in the individual's  
10          gross income at the end of the tenth taxable year  
11          after the purchase of the residential property. If  
12          the individual sells in any manner or method or by use  
13          of any instrument conveying or transferring the  
14          residential property, the gross income of the  
15          individual under this chapter for the taxable year in  
16          which the residential property is sold, conveyed, or  
17          transferred, whichever is applicable, shall include an  
18          amount equal to the amount of the distribution from  
19          the individual housing account not previously reported  
20          as gross income, and in addition, the tax liability of  
21          the individual shall be increased by an amount equal



1 to ten per cent of the total distribution from the  
2 individual housing account. If the individual sells  
3 the residential property in any manner as provided in  
4 this paragraph after all of the distribution has been  
5 included in the individual's gross income at the end  
6 of the tenth taxable year after the purchase of the  
7 residential property, the tax liability of the  
8 individual shall not be increased by an amount equal  
9 to ten per cent of the total distribution from the  
10 individual housing account.

11 An individual who purchased a residential property in Hawaii  
12 with the distribution from an individual housing account before  
13 January 1, 1990, who is subject to paragraph (1) may elect to  
14 report as provided in paragraph (2). The election shall be made  
15 before January 1, 1991. If the individual makes the election,  
16 the individual shall report one-tenth of the total distribution  
17 from the individual housing account as gross income in the  
18 taxable year in which the election occurs and in each taxable  
19 year thereafter until all of the distribution has been included  
20 in gross income as provided by paragraph (2). If the individual  
21 making the election sells the residential property in any manner



1 as provided in paragraph (2), then the individual shall include  
2 as income the amount of the distribution not previously reported  
3 as income and increase the individual's tax liability as  
4 provided in the second sentence of paragraph (2), except when  
5 the third sentence of paragraph (2) applies.

6 In the alternative, any individual subject to paragraph (2)  
7 who established the individual housing account before January 1,  
8 1990, may elect within one year after the date of purchase, to  
9 be subject to paragraph (1).

10 ~~[(g)]~~ (h) No tax liability shall be imposed under this  
11 section if:

- 12 (1) The payment or distribution is attributable to the  
13 individual dying or becoming totally disabled; or  
14 (2) Residential property subject to subsection ~~[(f)]~~ (g)  
15 is transferred by will or by operation of law or sold  
16 due to the death or total disability of an individual  
17 or individual's spouse,

18 subject to the following:

19 An individual shall not be considered to be totally  
20 disabled unless proof is furnished of the total disability in  
21 the form and manner as the director may require.



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

17           ~~(h)~~ (i) If the individual for whose benefit the  
18 individual housing account was established subsequently marries  
19 a person who has or has had any interest in residential  
20 property, the individual's housing account shall be terminated,  
21 the funds therein shall be distributed to the individual, and



1 the amount of the funds shall be includable in the individual's  
 2 gross income for the taxable year in which ~~[such]~~ the marriage  
 3 took place; provided that the tax liability defined under  
 4 subsection ~~[(f)]~~ (g) shall not be imposed.

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

14 SECTION 3. Statutory material to be repealed is bracketed  
 15 and stricken. New statutory material is underscored.

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

18

INTRODUCED BY:

The image shows two handwritten signatures in black ink, written over a horizontal line. The top signature is more stylized and appears to be 'S. G.', while the bottom signature is more legible and appears to be 'D. K.'. The line extends across the width of the text area.



# S.B. NO. 1311

**Report Title:**

Individual Housing Accounts; Housing Assistance; Tax Deduction

**Description:**

Allows taxpayers to open an individual housing account in the name of the taxpayer's dependent. Authorizes low-income residents to establish an individual housing account to make payments for first month's rent or a rental deposit or to provide funding for downpayment assistance or fund closing costs. Includes community development financial institutions as an authorized trustee. Authorizes direct deposits into an individual housing account.

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