

ACT 9

H.B. NO. 2216-74

A Bill for an Act Relating to Joint Returns of Income Tax by Husband and Wife.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-4, Hawaii Revised Statutes, is amended to read:

“Sec. 235-4 Income taxes by the State; residents, nonresidents, corporation, estates, and trusts. (a) The tax imposed by this chapter applies to the entire income of a resident, computed without regard to source in the State; provided, that in the case of an individual who takes up residence in the State after attaining the age of sixty-five years the tax imposed by this chapter applies to the income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State.

(b) In the case of a nonresident, the tax applies to the income received or derived from property owned, personal services performed, trade, or business carried on, and any and every other source in the State.

In the case of a nonresident spouse filing a joint return with a resident spouse, the tax applies to the entire income of the nonresident spouse computed without regard to source in the State.

(c) When the status of a taxpayer changes during the taxable year from resident to nonresident, or from nonresident to resident, there shall be attributed to the State such portion of the income dependent upon the residence of the taxpayer as is determined by applying to such income for the whole taxable year the ratio which the period of residence in the State bears to the whole taxable year, unless the taxpayer shows to the satisfaction of the department of taxation that the result is to attribute to the state income, dependent upon residence, received or derived during the period of nonresidence, in which event the amount of income as to which such showing is made shall be excluded.

(d) A corporation, foreign or domestic, is taxable upon the income received or derived from property owned, trade or business carried on, and any and every other source in the State. In addition thereto a domestic corporation is taxable upon its income from property owned, trade or business carried on, and any and every other source outside the State, unless subjected to income tax thereon in any other jurisdiction. Subjection to federal tax does

ACT 9

not constitute subjection to income tax in another jurisdiction. 'Corporation' includes any professional corporation incorporated pursuant to part VIII of chapter 416.

- (e) (1) The income of a resident estate or trust shall be computed without regard to source in the State. The income of a nonresident estate or trust shall be that received or derived from sources in the State.
- (2) A beneficiary of an estate or trust, or person treated as the owner of any portion of a trust, who is taxable upon income thereof under the Internal Revenue Code, shall be taxed thereon as herein provided, irrespective of the taxability of the estate or trust or whether it is required to make a fiduciary return under this chapter. If all such income consists of income which would be taxable under this chapter if received directly by the beneficiary or person, he shall be taxed upon all of it. If some of it consists of income which would not be taxable if received directly by the beneficiary or person, then unless the trust instrument provides otherwise the income of each such beneficiary or person shall be conclusively presumed to have been received or derived out of each class of income of the estate or trust, and he shall be taxed upon such part of it as would be taxable if received directly by him.
- (3) Each estate or trust shall include in its return all of the information necessary to determine the taxability of the income of the estate or trust, regardless of source. Only in the case of a nonresident estate or trust of which all the beneficiaries are nonresidents and no part of which is treated as owned by a resident shall the return be confined to income from sources in the State. This paragraph shall not cause income to be taxed to an estate or trust that otherwise would not have been so taxed."

SECTION 2. Section 235-93, Hawaii Revised Statutes, is amended to read:

"Sec. 235-93 Joint returns. A husband and wife, having that status for purposes of the Internal Revenue Code and entitled to make a joint federal return for the taxable year, may make a single return jointly of taxes under this chapter for the taxable year. In that case the tax shall be computed on the aggregate income as provided in section 235-52, and the liability with respect to the tax shall be joint and several. For purposes of this chapter 'aggregate income' means the income of both spouses without regard to source in the State.

If an individual has filed a separate return for a taxable year for which a joint return could have been made by him and his spouse, an election thereafter to make a joint return for the taxable year shall be made only upon compliance with regulations of the department of taxation, which may limit the election and prescribe the terms and provisions applicable in such cases as nearly as may be in conformity with the Internal Revenue Code."

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored. In printing this Act, the revisor of statutes need not include

the brackets, the bracketed material or the underscoring.*

SECTION 4. This Act upon its approval shall apply to taxable years beginning on or after January 1, 1974.

(Approved April 4, 1974.)

*Edited accordingly.