

## ACT 10

S.B. NO. 2829

A Bill for an Act Relating to Income Taxation.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended as follows:

1. By adding a new section to be appropriately designated and to read as follows:

**“§235- Alternative tax for corporations.** Section 1201 (with respect to alternative tax for corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter and shall be applied as set forth in this section. If for any taxable year a corporation, regulated investment company, or real estate investment trust has a net capital gain, then, in lieu of the tax imposed by section 235-71, there is hereby imposed a tax (if such tax is less than the tax imposed under section 235-71) which shall consist of the sum of:

- (1) A tax computed on the taxable income reduced by the amount of the net capital gain, at the rates and in the manner as if this section had not been enacted, plus
- (2) The sum of:
  - (A) 3.08 per cent of the lesser of:
    - (i) The net capital gain determined by including only the gain or loss which is properly taken into account for the portion of the taxable year before April 1, 1987 (i.e., the amount in paragraph (1)), or
    - (ii) The net capital gain for the taxable year, plus
  - (B) 4 per cent of the excess (if any) of:
    - (i) The net capital gain for the taxable year, over
    - (ii) The amount of the net capital gain taken into account under subparagraph (A).”

2. Section 235-2.3 is amended by amending subsection (b) to read as follows:

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

- (1) Subchapter A (sections 1 to 59) (with respect to determination of tax liability), except sections 47 and 48, as amended, as of December 31, 1984<sup>1</sup> (with respect to certain depreciable tangible personal property). For treatment, see section 235-110.7.
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see sections 235-2.4 and 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- (8) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (9) Section 169 (with respect to amortization of pollution control facilities). For treatment, see section 235-11.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations), except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13) Section 280C (with respect to certain expenses for which credits are allowable).
- (14) Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- (15) Section 291 (with respect to special rules relating to corporate preference items).
- (16) Section 367 (with respect to foreign corporations).
- (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- (19) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- (20) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (21) Subchapter H (sections 581 to 596) (with respect to banking institutions). For treatment, see chapter 241.
- (22) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).

- (24) Subchapter L (sections 801 to 846) (with respect to insurance companies). For treatment, see sections 431-318 and 431-320.
- (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- (26) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- (27) Section 1055 (with respect to redeemable ground rents).
- (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- [(29) Section 1201 (with respect to alternative tax). For treatment, see section 235-71(a).
- (30)] ~~(29)~~ Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- [(31)] ~~(30)~~ Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.”

3. Section 235-71 is amended by amending subsections (a) and (b) to read as follows:

“(a) A tax at the rates herein provided shall be assessed, levied, collected, and paid for each taxable year on the taxable income of every corporation, including a corporation carrying on business in partnership, except that in the case of a regulated investment company the tax is as provided by subsection (b) and further that in the case of a real estate investment trust as defined in section 856 of the Internal Revenue Code of 1954 the tax is as provided in subsection (d). “Corporation” includes any professional corporation incorporated pursuant to chapter 415A.

The tax on all taxable income [other than income from capital gains] shall be at the rate of 4.4 per cent if the taxable income is not over \$25,000, 5.4 per cent if over \$25,000, but not over \$100,000, and on all over \$100,000, 6.4 per cent[; provided that the tax imposed on capital gain entitled to the alternate tax treatment under the Internal Revenue Code shall be imposed at the rate of 3.08 per cent on the amount of capital gain received before April 1, 1987, and 4 per cent of the amount of capital gain received after March 31, 1987].

(b) In the case of a regulated investment company there is imposed on the taxable income, computed as provided in sections 852 and 855 of the Internal Revenue Code but with the changes and adjustments made by this chapter (without prejudice to the generality of the foregoing, the deduction for dividends paid is limited to such amount of dividends as is attributable to income taxable under this chapter), a tax consisting in the sum of the following: 4.4 per cent if the taxable income is not over \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and on all over \$100,000, 6.4 per cent[; provided that the tax imposed on the amount of capital gain which is taxed under section 852(b)(3)(A) of the Internal Revenue Code shall be 3.08 per cent of the amount received before April 1, 1987, and 4 per cent of the amount received after March 31, 1987].”

4. Section 235-71 is amended by amending subsection (d) to read as follows:

“(d) In the case of a real estate investment trust there is imposed on the taxable income, computed as provided in sections 857 and 858 of the Internal Revenue Code but with the changes and adjustments made by this chapter (without prejudice to the generality of the foregoing, the deduction for dividends paid is limited to such amount of dividends as is attributable to income taxable under this chapter), a tax consisting in the sum of the following: 4.4 per cent if the taxable income is not over \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and on all over \$100,000, 6.4 per cent[; provided that the tax imposed on the amount of capital gain which is taxed under section 857(b)(3)(A) of the Internal

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Revenue Code shall be 3.08 per cent of the amount received before April 1, 1987, and 4 per cent of the amount received after March 31, 1987]. In addition to any other penalty provided by law any real estate investment trust whose tax liability for any taxable year is deemed to be increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December 31, 1978 (relating to interest and additions to tax determined with respect to the amount of the deduction for deficiency dividends allowed) of the Internal Revenue Code shall pay a penalty in an amount equal to the amount of interest for which such trust is liable that is attributable solely to such increase. The penalty payable under this subsection with respect to any determination shall not exceed one-half of the amount of the deduction allowed by section 859(a), or 860(a) after December 31, 1978, of the Internal Revenue Code for such taxable year.”

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after, or parts of taxable years occurring after, December 31, 1987.

(Approved April 11, 1988.)

### Notes

1. Prior to amendment, “,” appeared here.
2. Edited pursuant to HRS §23G-16.5.