

ACT 199

S.B. NO. 854

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [~~1999,~~ 2000], as used in this chapter “Internal Revenue Code” means subtitle A, chapter I of the federal Internal Revenue Code of 1986, as amended as of December 31, [~~1999,~~ 2000], as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income except those provisions of the Internal Revenue Code and federal public laws which pursuant to this chapter do not apply or are otherwise limited in application.

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine:

- (1) The basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978.”

SECTION 2. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department of taxation shall submit to each regular session of the legislature a bill to amend sections 235-2.3 [and], 235-2.4, and 235-2.45 and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.”

SECTION 3. Section 235-7.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For the purpose of this section:

- (1) The term “allocable parental tax” means the excess of:
 - (A) The tax which would be imposed by section 235-51 on the parent’s taxable income if such income included the net unearned income of all children of the parent to whom this section applies, over,
 - (B) The tax imposed by section 235-51 on the parent without regard to this section.

For purposes of subparagraph (A), net unearned income of all children of the parent shall not be taken into account in computing any exclusion, deduction, or credit of the parent.

- (2) A child’s share of any allocable parental tax of a parent shall be equal to an amount which bears the same ratio to the total allocable parental tax as the child’s net unearned income bears to the aggregate net unearned income of all children of such parent to whom this section applies.
- [3] ~~If tax is imposed under section 644(a)(1) (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code with respect to the sale or exchange of any property of which the parent was the transferor, for purposes of applying paragraph (1) to the taxable year of the parent in which such sale or exchange occurs:~~

- (A) Taxable income of the parent shall be increased by the amount treated as included in gross income under section 644(a)(2)(A)(i) of the Internal Revenue Code, and
- (B) The amount described in paragraph (1)(B) shall be increased by the amount of the excess referred to in section 644(a)(2)(A) of the Internal Revenue Code.

Section 644 (with respect to special rule for gain on property transferred to trust at less than fair market value) of the Internal Revenue Code shall be operative for this section as provided in section 235-2.4.

- (4) (3) Except as provided in rules, if the parent does not have the same taxable year as the child, the allocable parental tax shall be determined on the basis of the taxable year of the parent ending in the child's taxable year."

SECTION 4. Section 235-51, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The tax imposed by section [235-2.4] 235-2.45 on estates and trusts shall be determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1998:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.60% of taxable income
Over \$2,000 but not over \$4,000	\$32.00 plus 3.90% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$110.00 plus 6.80% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$382.00 plus 7.20% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$670.00 plus 7.50% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$970.00 plus 7.80% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,282.00 plus 8.20% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,102.00 plus 8.50% of excess over \$30,000
Over \$40,000	\$2,952.00 plus 8.75% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.50% of taxable income
Over \$2,000 but not over \$4,000	\$30.00 plus 3.70% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$104.00 plus 6.40% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$360.00 plus 6.90% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$636.00 plus 7.30% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$928.00 plus 7.60% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,232.00 plus 7.90% of excess over \$20,000

Over \$30,000 but not over \$40,000	\$2,022.00 plus 8.20% of excess over \$30,000
Over \$40,000	\$2,842.00 plus 8.50% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.40% of taxable income
Over \$2,000 but not over \$4,000	\$28.00 plus 3.20% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$92.00 plus 5.50% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$312.00 plus 6.40% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$568.00 plus 6.80% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$840.00 plus 7.20% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,128.00 plus 7.60% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$1,888.00 plus 7.90% of excess over \$30,000
Over \$40,000	\$2,678.00 plus 8.25% of excess over \$40,000'

SECTION 5. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) In determining the deduction allowed by subsection (c)(4) an employee shall be entitled to withholding allowances or additional reductions in withholding under this subsection. In determining the number of additional withholding allowances or the amount of additional reductions in withholding under this subsection, the employee may take into account (to the extent and in the manner provided by rules) estimated itemized deductions and tax credits allowable under this chapter; and such additional deductions and other items as may be specified by the director in rules. For the purposes of this subsection a fractional number shall not be taken into account unless it amounts to one-half or more, in which case it shall be increased to the next whole number.

(1) As used in this subsection, unless the context otherwise requires:

(A) “Estimated itemized deductions” means the aggregate amount which the employee reasonably expects will be allowed as deductions under sections 235-2.3, 235-2.4, 235-2.45, and 235-7, other than the deductions referred to in Internal Revenue Code section 151 and those deductions required to be taken into account in determining adjusted gross income under Internal Revenue Code section 62(a) (with the exception of paragraph 10 thereof) for the estimation year. In no case shall the aggregate amount be greater than the sum of:

(i) The amount of the deductions reflected in the employee’s net income tax return for the taxable year preceding the estimation year of (if a return has not been filed for the preceding taxable year at the time the withholding exemption certificate is furnished the employer) the second taxable year preceding the estimation year; or

- (ii) The amount of estimated itemized deductions and tax credits allowable under this chapter and any additional deductions to which entitled; and
 - (iii) The amount of the employee's determinable additional deductions for the estimation year.
 - (B) "Estimated wages" means the aggregate amount which the employee reasonably expects will constitute wages for the estimation year;
 - (C) "Determinable additional deductions" means those estimated itemized deductions which:
 - (i) Are in excess of the deductions referred to in subparagraph (A) reflected on the employee's net income tax return for the taxable year preceding the estimation year; and
 - (ii) Are demonstrably attributable to an identifiable event during the estimation year or the preceding taxable year which can reasonably be expected to cause an increase in the amount of such deductions on the net income tax return for the estimation year.
 - (D) "Estimation year", in the case of an employee who files the employee's return on the basis of a calendar year, means the calendar year in which the wages are paid; provided that in the case of an employee who files the employee's return on a basis other than the calendar year, the employee's estimation year, and the amounts deducted and withheld to be governed by the estimation year, shall be determined under rules prescribed by the director of taxation.
- (2) Under this subsection, the following special rules shall apply:
- (A) Married individuals. The number of withholding allowances to which a husband and wife are entitled under this subsection shall be determined on the basis of their combined wages and deductions. This subparagraph shall not apply to a husband and wife who filed separate returns for the taxable year preceding the estimation year and who reasonably expect to file separate returns for the estimation year;
 - (B) Limitation. In the case of employees whose estimated wages are at levels at which the amounts deducted and withheld under this chapter generally are insufficient (taking into account a reasonable allowance for deductions and exceptions) to offset the liability for tax under this chapter with respect to the wages from which the amounts are deducted and withheld, the director may by rule reduce the withholding allowances to which those employees would, but for this subparagraph, be entitled under this subsection;
 - (C) Treatment of allowances. For purposes of this chapter, any withholding allowance under this subsection shall be treated as if it were denominated a withholding exemption.
- (3) The director may prescribe tables by rule under chapter 91 pursuant to which employees shall determine the number of withholding allowances to which they are entitled under this subsection."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2000.

(Approved May 31, 2001.)