

ACT 27

S.B. NO. 2821

A Bill for an Act Relating to Conformity to the Internal Revenue Code.

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

PART I

SECTION 1. The purpose of this Act is to conform Hawaii income and estate and generation-skipping transfer tax laws to the Internal Revenue Code, except as provided by this Act.

PART II

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

“§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, ~~[2016,]~~ 2017, as used in this chapter, except as provided in section 235-2.35, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of ~~[December 31, 2016,]~~ February 9, 2018, 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 and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for

the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

Prior law 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 prior law applies; and
 - (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which prior law applies.
- (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 59A) (with respect to determination of tax liability), except section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of “surviving spouse” and “head of household”), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property), and except section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
 - (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 91 (with respect to certain foreign branch losses transferred to specified 10-percent owned foreign corporations);
 - ~~[(4)]~~ (5) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
 - ~~[(5)]~~ (6) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
 - ~~[(6)]~~ (7) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
 - ~~[(7)]~~ (8) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
 - ~~[(8)]~~ (9) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
 - ~~[(9)]~~ (10) Section 139C (with respect to COBRA premium assistance);
 - ~~[(10)]~~ (11) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
 - ~~[(11)]~~ (12) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
 - ~~[(12)]~~ (13) Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);

- ~~(13)~~ (14) Section 181 (with respect to special rules for certain film and television productions);
- ~~(14)~~ (15) Section 196 (with respect to deduction for certain unused investment credits);
- ~~(15)~~ (16) Section 199 (with respect to the U.S. production activities deduction);
- (17) Section 199A (with respect to qualified business income);
- ~~(16)~~ (18) Section 222 (with respect to qualified tuition and related expenses);
- ~~(17)~~ (19) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- (20) Section 250 (with respect to foreign-derived intangible income and global intangible low-taxed income);
- (21) Section 267A (with respect to certain related party amounts paid or accrued in hybrid transactions or with hybrid entities);
- ~~(18)~~ (22) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- ~~(19)~~ (23) Section 291 (with respect to special rules relating to corporate preference items);
- ~~(20)~~ (24) Section 367 (with respect to foreign corporations);
- ~~(21)~~ (25) Section 501(c)(12), (15), (16) (with respect to exempt organizations); except that section 501(c)(12) shall be operative for companies that provide potable water to residential communities that lack any access to public utility water services;
- ~~(22)~~ (26) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- ~~(23)~~ (27) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- ~~(24)~~ (28) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- ~~(25)~~ (29) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- ~~(26)~~ (30) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- ~~(27)~~ (31) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- ~~(28)~~ (32) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- ~~(29)~~ (33) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- ~~(30)~~ (34) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- ~~(31)~~ (35) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- ~~(32)~~ (36) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- ~~(33)~~ (37) Section 1055 (with respect to redeemable ground rents);
- ~~(34)~~ (38) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);

- [(35)] (39) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- [(36)] (40) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- [(37)] (41) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- [(38)] (42) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;
- [(39)] (43) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- [(40)] (44) Section 1400O (with respect to education tax benefits);
- [(41)] (45) Section 1400P (with respect to housing tax benefits);
- [(42)] (46) Section 1400R (with respect to employment relief);
- [(43)] (47) Section 1400T (with respect to special rules for mortgage revenue bonds);
- [(44)] (48) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- [(45)] (49) Section 1400U-2 (with respect to recovery zone economic development bonds); [~~and~~]
- [(46)] (50) Section 1400U-3 (with respect to recovery zone facility bonds) [~~;~~ and
- (51) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with respect to opportunity zones).”

SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 **Operation of certain Internal Revenue Code provisions; sections 63 to 530.** (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Section 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(1)(E) (relating to the motor vehicle sales tax deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), 63(c)(9) (defining the motor vehicle sales tax deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;
- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction amounts provided therein shall instead mean:
 - (A) \$4,400 in the case of:
 - (i) A joint return as provided by section 235-93; or
 - (ii) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
 - (B) \$3,212 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
 - (C) \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or

(D) \$2,200 in the case of a married individual filing a separate return;

- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code shall be operative, except that the limitation shall be the greater of \$500 or the individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 67 (with respect to the 2-percent floor on miscellaneous itemized deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the suspension in section 67(g) shall not be operative for purposes of this chapter.

~~[(b)]~~ (c) Section 68 (with respect to the overall limitation on itemized deductions) of the Internal Revenue Code shall be operative; provided that the ~~thresholds~~:

- (1) Thresholds shall be those that were operative for federal tax year 2009~~[-]; and~~
- (2) Suspension in section 68(f) shall not be operative for purposes of this chapter.

~~[(e)]~~ (d) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

~~[(d)]~~ (e) Section 85 (with respect to unemployment compensation) of the Internal Revenue Code shall be operative for purposes of this chapter, except that section 85(c) shall not be operative for purposes of this chapter.

~~[(e)]~~ (f) Section 108 (with respect to income from discharge of indebtedness) of the Internal Revenue Code shall be operative for purposes of this chapter, except that section 108(i) (relating to deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument) shall not be operative for purposes of this chapter.

~~[(f)]~~ (g) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section ~~[235-2.4(s)]~~ 235-2.4(n) in effect for taxable year 1997.

~~[(g)]~~ (h) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that ~~the provision~~:

- (1) The suspensions in [section 132(f)(2) that equalizes the dollar amounts for section 132(f)(2)(A) and (B)] section 132(f)(8) and 132(g)(2) shall not be operative for purposes of this chapter; and [except that section]
- (2) Section 132(n) shall not apply to United States Department of Defense Homeowners Assistance Program payments authorized by the American Recovery and Reinvestment Act of 2009.

(i) Section 162 (with respect to trade or business expenses) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 162(f)(2), (3), and (4) (all of which relate to exceptions to the general rule, established in section 162(f)(1), that no deduction is allowed for the payment of fines or penalties) shall not be operative for purposes of this chapter.

~~[(h)]~~ (j) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the following provisions ~~[in section]~~ shall not be operative for purposes of this chapter:

- (1) Section 163(d)(4)(B) (defining net investment income to exclude dividends)~~[-section]~~;
- (2) Section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules);
- (3) Section 163(h)(3)(F) (limiting mortgage interest); and ~~[section]~~
- (4) Section 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO) ~~[shall not be operative for the purposes of this chapter]~~.

~~[(i)]~~ (k) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:

- (1) Section ~~[164(a)(6) and (b)(6)]~~ 164(b)(6)(B) (limiting the deduction for state and local taxes) shall not be operative for the purposes of this chapter;
- (2) The deductions under section 164(a)(3) and (b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000; and
- (3) Section 164(a)(3) shall not be operative for any amounts for which the credit under section 235-55 has been claimed.

~~[(j)]~~ (l) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that ~~[the]~~:

- (1) The amount prescribed by sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty~~[-and section]~~;
- (2) Section 165(h)(3)(A) and (B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for the purposes of this chapter~~[-]~~;
- (3) Section 165(h)(5) (relating to the limitation on the deductibility of personal casualty losses that are not attributable to federally declared disasters) shall not be operative for purposes of this chapter; and
- (4) Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

~~[(k)]~~ (m) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(h)]~~ (n) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that section 172(b)(1)(J) and (j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(m)]~~ (o) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except as provided in this subsection:

- (1) The aggregate cost provided in section 179(b)(1), which may be taken into account under section 179(a) for any taxable year, shall not exceed \$25,000;
- (2) The amount at which the reduction in limitation provided in section 179(b)(2) begins shall exceed \$200,000 for any taxable year; and
- (3) The following shall not be operative for purposes of this chapter:
 - (A) Defining section 179 property to include computer software in section 179(d)(1);
 - (B) Inflation adjustments in section 179(b)(5);
 - (C) Irrevocable election in section 179(c)(2); and
 - (D) Special rules for qualified disaster assistance property in section 179(e).

~~[(n)]~~ (p) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(q) Section 217 (with respect to moving expenses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the suspension in section 217(k) shall not be operative for purposes of this chapter.

~~[(o)]~~ (r) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in section 219 as operative for this chapter means federal adjusted gross income.

~~[(p)]~~ (s) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

~~[(q)]~~ (t) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that section 265(b)(3)(G) and (7) shall not be operative and section 265 shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. These expenses shall be deductible.

(u) Section 274 (with respect to the disallowance of certain entertainment, etc., expenses) of the Internal Revenue Code shall be operative for this chapter in the form that it existed as of December 21, 2017.

~~[(r)]~~ (v) Section 280E (with respect to expenditures in connection with the illegal sale of drugs) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 280E shall not be operative with respect to the production and sale of medical cannabis and manufactured cannabis products by dispensaries licensed under chapter 329D and their subcontractors, as defined in section 329D-1.

~~[(s)]~~ (w) Section 382 (with respect to limitation on net operating loss carryforwards and certain built-in losses following ownership change) of the

Internal Revenue Code shall be operative for the purposes of this chapter, except that section 382(n) shall not be operative for purposes of this chapter.

~~[(t)]~~ (x) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 408A(d)(3)(A)(iii) shall not be operative for purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

~~[(u)]~~ (y) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under those sections and to other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

In administering sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

In administering section 402 (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by section 402(e) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

~~[(v)]~~ (z) In administering section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 403(b)(8)(A) of the Internal Revenue Code, and those funds shall be subject to income tax under this chapter.

~~[(w)]~~ (aa) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that section 451(j)¹(3) and (6), as it relates to a qualified electric utility, shall not be operative for purposes of this chapter.

~~[(x)]~~ (bb) In administering section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state employees' retirement system shall not be treated as a rollover for purposes of section 457(e)(16)(A) of the Internal Revenue Code and those funds shall be subject to income tax under this chapter.

~~[(y)]~~ (cc) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(z)]~~ (dd) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities

for state income tax purposes, adjusted gross income as used in section 469 as operative for this chapter means federal adjusted gross income.

~~[(aa)]~~ (ee) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a legal service plan.

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

~~[(bb)]~~ (ff) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of section 421-23, except that Internal Revenue Code section 521 cooperatives need not be organized in Hawaii.

~~[(ee)]~~ (gg) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(dd)]~~ (hh) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that sections 529(c)(6), 529(c)(7), and 529(e)(3)(A)(iii) shall not be operative.

~~[(ee)]~~ (ii) Section 529A (with respect to qualified ABLE programs) shall be operative for the purposes of this chapter, except that section 529A(c)(3) (with respect to additional tax for distributions not used for disability expenses) shall not be operative.

~~[(ff)]~~ (jj) Section 530 (with respect to Coverdell education savings accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.”

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

1. By amending subsection (h) to read:

“(h) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII[; except that section 1374(d)(7)(B), (C), and (D) shall not be operative for purposes of this chapter].”

2. By amending subsections (m) and (n) to read:

“(m) Sections 6221, 6222, 6223, 6225, and ~~[6234]~~ 6226 (with respect to ~~[tax treatment of]~~ partnership ~~[items]~~ audits) of subchapter C of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter[-]; provided that if a taxpayer makes the election under section 6221(b) for federal

income tax purposes, that taxpayer shall also make the same election for Hawaii income tax purposes.

(n) [Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships)] Section 6241 (with respect to definitions and special rules regarding partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter[-with due regard to chapter 232 relating to tax appeals.], except that the definitions that appear in items numbered (1), (3), and (5) shall not be operative for purposes of this chapter.”

PART III

SECTION 5. Chapter 236E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§236E- Audit of return; procedure upon failure to file return; additional taxes; limitation period. (a) The director of taxation, or the director’s designee, is authorized and empowered to examine all account books, bank books, bank statements, records, vouchers, copies of federal tax returns, and any and all other documents and evidence having any relevance to the determination of any amount relevant to the Hawaii transfer tax, as required to be returned under this chapter, and the director may employ the director’s powers under section 231-7 for these purposes.

(b) If the department discovers from the examination of the return or otherwise that any amount has not been assessed or otherwise properly included in determining any amount relevant to the Hawaii transfer tax, it may assess those amounts.

(c) If the person required to file the return required under this chapter fails to file the return or declines to authenticate a return, the department shall make a return for the person based upon the best information obtainable and shall levy and assess against the person the tax as shown on the return.

(d) For the purposes of this section, the department shall give notice of the assessment to the person required to file the return required under this chapter. The person put on notice shall have thirty days to confer with the department as to the proposed assessment. After the expiration of thirty days from the notification, the department shall finalize the assessment and give notice to the person of the tax and interest and penalties, if any. The amount shall be paid within twenty days after the date the notice, properly addressed to the person required to file the return required to be filed under this chapter, is mailed to the person’s last known address.

(e) In the case of an audit commenced under this section, the amount of Hawaii transfer tax imposed by this chapter shall be assessed or levied within three years after the return was filed, or within three years of the due date prescribed for the filing of that return, whichever is later. In the case of a false or fraudulent return with intent to evade tax, or of a failure to file a return, the tax may be assessed or levied at any time; provided that the burden of proof with respect to the issues of falsity or intent to evade tax shall be upon the State. The limitation period shall be suspended if the person required to file the return agrees to suspend the period.”

SECTION 6. Section 236E-2, Hawaii Revised Statutes, is amended by amending the definition of “applicable generation-skipping transfer tax rate” to read as follows:

“Applicable generation-skipping transfer tax rate” means 2.25 per cent multiplied by the inclusion ratio with respect to any property transferred in a

generation-skipping transfer as determined under section 2642 of the Internal Revenue Code[~~;~~] as amended as of December 21, 2017.”

SECTION 7. Section 236E-3, Hawaii Revised Statutes, is amended to read as follows:

“§236E-3 Conformance to the Internal Revenue Code; general application. For all decedents dying after December 31, [~~2016;~~] 2017, as used in this chapter, “Internal Revenue Code” means subtitle B of the federal Internal Revenue Code of 1986, as amended as of December 31, [~~2016;~~] 2017, as it applies to the determination of gross estate, adjusted gross estate, federal taxable estate, and generation-skipping transfers, except those provisions of the Internal Revenue Code and federal public laws that, pursuant to this chapter, do not apply or are otherwise limited in application.”

SECTION 8. Section 236E-6, Hawaii Revised Statutes, is amended to read as follows:

“§236E-6 Applicable exclusion amounts. (a) An exclusion from a Hawaii taxable estate shall be allowed to the estate of every decedent against the tax imposed by section 236E-8. For the purpose of this section, the applicable exclusion amount is [~~the same as the~~] equal to:

- (1) The federal applicable exclusion amount[~~;~~];
- (2) The exemption equivalent of the unified credit reduced by the amount of taxable gifts made by the decedent that reduces the amount of the federal applicable exclusion amount[~~;~~]; or [the]
- (3) The exemption equivalent of the unified credit on the decedent’s federal estate tax return,

as set forth for the decedent in chapter 11 of the Internal Revenue Code as amended as of December 21, 2017, and as further adjusted [below:] pursuant to subsection (b).

(b) The applicable exclusion amount calculated in subsection (a) shall be further adjusted as follows:

- (1) For residents, 100 per cent of the applicable exclusion amount;
- (2) For nonresidents, an amount computed by multiplying the applicable exclusion amount by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate; and
- (3) For nonresidents not citizens, an amount computed by multiplying the exemption equivalent of the unified credit by a fraction, the numerator of which is the value of the property in the State subject to tax under this chapter, and the denominator of which is the federal gross estate.

~~[(b)(1)]~~ (c)(1) For the purposes of this chapter, every decedent having property in the State shall be presumed to have died a resident of the State. The burden of proof in an estate tax proceeding shall be upon any decedent’s estate claiming exemption from the tax imposed by this chapter by reason of the decedent’s alleged nonresidency;

- (2) Any person required to make and file a tax return under this chapter, who believes that the decedent died a nonresident of the State, may file a request for determination of domicile in writing with the department, stating the specific grounds upon which the request is founded:
 - (A) The person has filed the return required under this chapter;

- (B) At least two hundred seventy days, but no more than three years, have elapsed since the due date of the return or, if applicable, the extended due date of the return;
 - (C) The person has not been notified, in writing, by the department that a written agreement of compromise with the taxing authorities of another jurisdiction, under section 236E-24, is being negotiated; and
 - (D) The department has not previously determined whether the decedent died a resident of the State;
- (3) Not later than one hundred eighty days following receipt of a request for determination, the department shall determine whether the decedent died a resident or a nonresident of the State. If the department commences negotiations over a written agreement of compromise with the taxing authorities of another jurisdiction after a request for determination of domicile is filed, the one hundred eighty day period shall be tolled for the duration of the negotiations. If, before the expiration of the one hundred eighty day period, both the department and the person required to make and file a tax return under this chapter have consented in writing to the making of a determination after such time, the determination may be made at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements; provided that the agreements are made in writing before the expiration of the period previously agreed upon;
- (4) The department shall mail notice of the proposed determination to the person required to make and file a tax return under this chapter. The notice shall briefly set forth the department's findings of fact and the basis of decision in each case decided adversely to the person. Sixty days after the date on which it is mailed, a notice of proposed determination shall constitute a final determination, unless the person required to make and file a tax return under this chapter has filed an appeal of the determination as provided in section 236E-18; and
- (5) Nothing in this subsection shall be construed to relieve any person filing a request for determination of domicile of the obligation to pay the correct amount of tax on or before the due date of the tax."

SECTION 9. Section 236E-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) ~~[A state estate tax return shall be filed in the case of every decedent whose estate is required by the laws of the United States to file a federal estate tax return.]~~ This section shall apply to a decedent who, at the time of death was:

- (1) A resident of the State; or
- (2) A nonresident of the State whose gross estate includes any real property situated in the State or tangible personal property having a situs in the State. Where the decedent is the sole owner of a single member limited liability company that has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of this chapter and this chapter shall be applied as if the sole member is the owner of the property."

SECTION 10. Section 236E-9, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsections (a) and (b) to read:

“(a) The Hawaii transfer tax return, including any supplemental or amended return, is required to be filed pursuant to this chapter whenever a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed~~[-]~~ or any tax is owed under this chapter. The return shall be filed, and the Hawaii transfer tax, including any additional tax that may become due, shall be paid by ~~the~~:

- (1) The same person or persons, respectively, who are required to pay the federal transfer tax and file the federal return, including any duly authorized executor or administrator~~[-]~~; or
- (2) If no federal transfer tax or federal return is due, the person who would be required to pay the federal transfer tax and file the federal return if any were due.

If there is more than one executor or administrator, the return shall be made jointly by all. If there is no executor or administrator appointed, qualified, and acting, each person in actual or constructive possession of any property of the decedent is constituted an executor for purposes of the tax and shall make and file a return. If in any case the executor is unable to make a complete return as to any part of the gross estate, the executor shall provide all the information available to the executor with respect to the property, including a full description and the name of every person holding a legal or beneficial interest in the property. If the executor is unable to make a return as to any property, each person holding a legal or equitable interest in the property shall, upon notice from the department, make a return as to that part of the gross estate.

(b) ~~[The executed Hawaii transfer tax return]~~ Any return required to be filed by this section shall be filed with the department on or before the date prescribed by section 6075 of the Internal Revenue Code for the federal estate tax return or section 2662 of the Internal Revenue Code for the applicable generation-skipping transfer tax return [is required to be filed], including any extension of time for filing the federal estate tax return or applicable generation-skipping transfer tax return.”

2. By amending subsection (e) to read:

“(e) If a federal transfer tax return is due and any portion of the federal transfer tax is deferred or to be paid in installments under the provisions of the Internal Revenue Code, the portion of the Hawaii transfer tax that is subject to deferral or payable in installments shall be determined by multiplying the Hawaii transfer tax by a fraction, the numerator of which is the gross value of the assets included in the transferred property having a tax situs in the State and that give rise to the deferred or installment payment under the Internal Revenue Code, and the denominator of which is the gross value of all assets included in the transferred property having a tax situs in the State.

If a federal transfer tax return is not due, the executor may elect to defer or pay in installments the Hawaii transfer tax in any situation where, if a federal transfer tax return was due, any portion of the federal transfer tax could have been deferred or allowed to be paid in installments under the provisions of the Internal Revenue Code; provided that the director of taxation shall determine the eligibility for deferral or installment payments.

Deferred payments and installment payments, with interest, shall be paid at the same time and in the same manner as payments of the federal transfer tax are required to be made under the applicable sections of the Internal Revenue Code; provided that the rate of interest on unpaid amounts of Hawaii transfer tax shall be determined under this chapter.

Acceleration of payment under this section shall occur under the same circumstances and in the same manner as provided in the Internal Revenue Code.”

SECTION 11. Section 236E-11, Hawaii Revised Statutes, is amended to read as follows:

“[§236E-11] Extension of time to file return. If a federal transfer tax return is due and the date for filing the federal return or the date for payment of the federal transfer tax is extended by the Internal Revenue Service, the filing of the return and payment of the tax imposed by this chapter shall be due on the respective dates specified by the Internal Revenue Service in granting a request for extension. If the request for extension is granted by the Internal Revenue Service, the person required to file the Hawaii transfer tax return shall file along with the return required under this chapter a copy of the request for extension showing approval of the extension by the Internal Revenue Service. If a request for extension of time to file the federal return is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the return required by this chapter is filed within the time specified by the Internal Revenue Service for filing the federal return. If a request for extension of time to pay the federal transfer tax is denied by the Internal Revenue Service, no penalty shall be due under this chapter if the tax is paid within the time specified by the Internal Revenue Service for paying the federal transfer tax. The extension shall be made by filing a true copy of the federal extension or extensions of time for filing or payment, or both, with the return required under section 236E-9.

If a federal transfer tax return is not due, the director of taxation may grant a reasonable extension of time for filing returns under rules as the department shall prescribe.”

SECTION 12. Section 236E-17, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The person required to report and pay the federal generation-skipping transfer tax, or, if no federal generation-skipping transfer tax is due, the person who would be required to report and pay the federal generation-skipping transfer tax if any were due, shall file with the department ~~[on or before]~~ [date the federal generation-skipping transfer tax return is required to be filed, including any extension of time for filing the federal return:] following:

- (1) A report for the generation-skipping transfer tax due under this section; and
- (2) A true copy of the federal generation-skipping transfer tax return~~[-]~~, if any is due.

The information required under this subsection shall be filed with the department on or before the date prescribed in section 2662 of the Internal Revenue Code and the regulations promulgated thereunder.

(d) If a federal transfer tax is due and the person required to file the return has obtained an extension of time for filing the federal return, the filing required by subsection (c) shall be extended similarly until the end of the time period granted in the extension of time for the federal return. A true copy of the extension shall be filed with the department along with the report required under subsection (c).

If a federal transfer tax is not due, the director of taxation may grant a reasonable extension of time for filing returns under rules as the department shall prescribe.”

SECTION 13. Section 236E-21, Hawaii Revised Statutes, is amended to read as follows:

“§236E-21 Statute of limitations; claims for refund. (a) If the amount paid with respect to any taxable transfer is less than the amount due under this chapter, the department shall assess the underpayment from the person responsible for payment[; ~~provided that a proceeding to assess the underpayment amount shall commence within:~~], as follows:

- (1) If a federal transfer tax return is due, a proceeding to assess the underpayment amount shall commence within:
 - ~~[(1)]~~ (A) Three years from the date the federal [estate] transfer tax return was filed; or
 - ~~[(2)]~~ (B) One year after the date of final determination of the related federal transfer tax,

whichever is later[-]; or
- (2) If a federal transfer tax return is not due, a proceeding to assess the underpayment amount shall commence within:
 - (A) Three years from the date the Hawaii transfer tax return was filed; or
 - (B) One year after the date of final determination of the related Hawaii transfer tax,

whichever is later.²

(b) Amounts set forth on a duly filed and accepted federal return for valuations of property, the gross estate, federal taxable estate, and applicable exclusion amount shall be conclusive for purposes of this chapter, and the return required under this chapter shall use the same amounts as the corresponding amounts on the federal return; provided that with regard to a decedent who was in a valid civil union or recognized equivalent under the laws of the State, but that is not recognized by the Internal Revenue Code as a marriage for federal tax purposes, computations of the valuations of property, the gross estate, federal taxable estate, and applicable exclusion amount shall be made as if the civil union or recognized equivalent under the laws of the State were recognized as a marriage.

~~[(b)]~~ (c) If the amount paid with respect to any taxable transfer is more than the amount due under this chapter, the department shall refund the excess to the person entitled to the refund together with interest at the existing statutory rate of interest in the manner provided in section 231-23[; ~~provided that no amount shall be refunded unless application for the refund is filed with the department within:~~], as follows:

- (1) If a federal transfer tax return was due, an application for refund shall be filed with the department within:
 - ~~[(1)]~~ (A) One year after the last date allowable under the Internal Revenue Code for filing a claim for refund of any part of the related federal transfer tax; or
 - ~~[(2)]~~ (B) One year after the date of final determination of the related federal transfer tax,

whichever is later[-]; or
- (2) If a federal transfer tax return was not due, an application for refund shall be filed with the department within:
 - (A) Three years from the date the Hawaii transfer tax return was filed; or
 - (B) One year after the date of final determination of the related Hawaii transfer tax,

whichever is later.

(d) As to all tax payments for which a refund or credit is not authorized by this section, including, without prejudice to the generality of the foregoing,

ACT 27

cases of unconstitutionality, the remedies provided by appeal or by section 40-35 are exclusive.”

PART IV

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

SECTION 15. This Act shall take effect upon its approval; provided that:

- (1) Part II shall apply to taxable years beginning after December 31, 2017; and
- (2) Part III shall apply to decedents dying or taxable transfers occurring after December 31, 2017.

(Approved June 7, 2018.)

Notes

1. Prior to amendment “(i)” appeared here.
2. “whichever is later.” should be underscored.
3. Edited pursuant to HRS §23G-16.5.