
A BILL FOR AN ACT

RELATING TO CORPORATION INCOME TAX.

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

1 SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (o) to read:

4 "(o) Sections 512 to 514 (with respect to taxation of
5 business income of certain exempt organizations) of the Internal
6 Revenue Code shall be operative for the purposes of this chapter
7 as provided in this subsection.

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

17 For a person described in section 401 or 501 of the
18 Internal Revenue Code, as modified by section 235-2.3, the tax



1 imposed by section 235-51 [~~or 235-71~~] shall be imposed upon the
2 person's unrelated business taxable income."

3 2. By amending subsection (q) to read:

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

10 SECTION 2. Section 235-3, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The Internal Revenue Code, so far as made operative
13 by this chapter, is a statute adopted and incorporated by
14 reference. The Internal Revenue Code shall be applied using
15 changes in nomenclature and other language, including the
16 omission of inapplicable language, where necessary to effectuate
17 the intent of this section. In the Internal Revenue Code,
18 references to terms such as:

19 (1) "Secretary or his delegate" shall refer to the
20 director of taxation and the director's duly
21 authorized subordinates;



1 (2) "Estate taxes" shall refer to the estate and transfer
2 tax imposed by chapter 236D;

3 (3) "The highest rate of tax imposed upon individuals" or
4 "39.6 per cent" shall refer to the highest rate
5 imposed upon individuals under section 235-51; and

6 [~~(4)~~ ~~"The highest rate of tax imposed upon corporations"~~
7 ~~shall refer to the highest rate imposed upon~~
8 ~~corporations under section 235-71; and~~

9 ~~(5)]~~ (4) "Interest at the underpayment rate" or "interest
10 at the overpayment rate" shall refer to the interest
11 rate set forth in section 231-39(b)(4) or section 231-
12 23(d)(1), as the case may be."

13 SECTION 3. Section 235-110, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) This section does not apply in the case of a payment
16 made pursuant to an assessment by the department of taxation
17 under section 235-107 or 235-108(b). No refund or overpayment
18 credit may be had under this section in any event unless the
19 original payment of the tax was due to the law having been
20 interpreted or applied in respect of the taxpayer concerned
21 differently than in respect of the taxpayers generally. As to
22 all tax payments for which a refund or credit is not authorized



1 by this section (including without prejudice to the generality
2 of the foregoing cases of unconstitutionality) the remedies
3 provided by appeal or under section 40-35 are exclusive.
4 However, nothing in this subsection shall be deemed applicable
5 to a credit or refund authorized by sections 235-55[7] or
6 235-66[~~7~~, ~~or 235-71~~,] or resulting from the tax as returned being
7 less than the tax as estimated; in any of these cases a credit
8 or refund is authorized even though the tax for the taxable year
9 remains subject to determination by the department and
10 assessment as provided by law."

11 SECTION 4. Section 235-111.5, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A qualified high technology business as defined in
14 section 235-7.3 may apply to the department to sell its unused
15 net operating loss carryover to another taxpayer. If approved
16 by the department, a qualified high technology business may sell
17 its unused net operating loss carryover to another taxpayer in
18 an amount equal to at least seventy-five per cent of the amount
19 of the surrendered tax benefit[~~, computed at the corporate rate~~
20 ~~pursuant to section 235-71~~]; provided that the qualified high
21 technology business may sell no more than \$500,000 of its unused
22 net operating loss carryover to another taxpayer per year. In



1 the case of partnerships, limited liability partnerships,
2 limited liability companies classified as partnerships, and S
3 corporations, each partner, member, or shareholder may sell its
4 share of the entity's total net operating loss. The tax benefit
5 purchased by the buyer shall be claimed in the year for which
6 the sale is approved by the department. Any use of the
7 purchased net operating loss carryover for tax carryback or
8 carryforward purposes shall comply with applicable law. The
9 income from the sale of the net operating loss carryover
10 received by the seller shall be reported on its tax return in
11 the taxable year received but shall not be considered taxable
12 income."

13 SECTION 5. Section 235-122, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) [~~Except as provided in the following sentence, an S~~
16 ~~corporation shall not be subject to the tax imposed by section~~
17 ~~235-71.]~~ If income of an S corporation is subject to federal
18 income tax, then such income as modified by section 235-123, to
19 the extent it constitutes income attributable to the State,
20 shall be taxed [~~at the highest marginal rate of tax imposed on~~
21 ~~the net income of corporations.] accordingly. If an S
22 corporation is required to pay a tax to this State by reason of~~



1 the preceding sentence, then the income attributable to the
2 State of the S corporation shall be reduced by the amount of the
3 tax."

4 SECTION 6. Section 235-129, Hawaii Revised Statutes, is
5 amended by amending subsection (b) to read as follows:

6 "(b) Each shareholder of an S corporation shall be allowed
7 a credit against the tax imposed by section 235-51 in an amount
8 equal to the shareholder's pro rata share of the tax credits
9 described in sections 209E-10, 235-12, [~~235-71(e)~~], 235-55.91,
10 235-110.6, 235-110.7, and 235-110.8. With the exception of the
11 credit allowed by section 235-12, nonresident shareholders shall
12 be allowed the credits allowed to resident shareholders which
13 are earned by the S corporation in this State. The credit
14 allowed by section 235-12 shall be allowed to nonresident
15 shareholders to the extent the credit is earned by virtue of
16 property purchased and placed in service in this State."

17 SECTION 7. Section 235-130, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "[+]§235-130[+] **LIFO recapture.** If an S corporation is
20 subject to last in first out (LIFO) recapture pursuant to
21 section 1363 of the Internal Revenue Code, then:



1 (1) Any increase in the tax [~~imposed by section 235-71~~] by
2 reason of the inclusion of the LIFO recapture amount
3 in its income shall be payable in four equal
4 installments;

5 (2) The first installment shall be paid on or before the
6 due date (determined without regard to extensions) for
7 filing the return for the first taxable year for which
8 the corporation was subject to the LIFO recapture;

9 (3) The three succeeding installments shall be paid on or
10 before the due date (determined without regard to
11 extensions) for filing the corporation's return for
12 the three succeeding taxable years; and

13 (4) For purposes of computing interest on underpayments,
14 the last three installments shall not be considered
15 underpayments until after the payment due date
16 specified above."

17 SECTION 8. Chapter 235, part IV, Hawaii Revised Statutes,
18 is repealed.

19 SECTION 9. The revisor of statutes shall submit a report
20 to the legislature not less than twenty days prior to the
21 convening of the regular session of 2008, identifying other

1 conforming statutory amendments, if any, that should be made in
2 response to the enactment of this Act.

3 SECTION 10. This Act does not affect rights and duties
4 that matured, penalties that were incurred, and proceedings that
5 were begun, before its effective date.

6 SECTION 11. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 12. This Act shall take effect upon its approval
9 and shall apply to taxable years beginning after December 31,
10 2006.

11

INTRODUCED BY: Maui B. Lee

JAN 24 2007



port Title:

Corporation Income Tax

Description:

Repeals the corporate income tax.

