



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

June 7, 2018

GOV. MSG. NO. 1127

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 7, 2018, the following bill was signed into law:

SB2821 SD1 HD1 CD1

RELATING TO CONFORMITY TO THE INTERNAL
REVENUE CODE
ACT 027 (18)

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige".

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO CONFORMITY TO THE INTERNAL REVENUE CODE.

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

1 PART I

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

5 PART II

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

8 **"§235-2.3 Conformance to the federal Internal Revenue**
9 **Code; general application.** (a) For all taxable years beginning
10 after December 31, [~~2016,~~] 2017, as used in this chapter, except
11 as provided in section 235-2.35, "Internal Revenue Code" means
12 subtitle A, chapter 1, of the federal Internal Revenue Code of
13 1986, as amended as of [~~December 31, 2016,~~] February 9, 2018, as
14 it applies to the determination of gross income, adjusted gross
15 income, ordinary income and loss, and taxable income, except
16 those provisions of the Internal Revenue Code and federal public
17 laws which, pursuant to this chapter, do not apply or are
18 otherwise limited in application and except for the provisions



1 of Public Law 109-001 which apply to section 170 of the Internal
2 Revenue Code. The provisions of Public Law 109-001 to
3 accelerate the deduction for charitable cash contributions for
4 the relief of victims of the 2004 Indian Ocean tsunami are
5 applicable for the calendar year that ended December 31, 2004,
6 and the calendar year ending December 31, 2005.

7 Prior law shall continue to be used to determine:

8 (1) The basis of property, if a taxpayer first determined
9 the basis of property in a taxable year to which prior
10 law applies; and

11 (2) Gross income, adjusted gross income, ordinary income
12 and loss, and taxable income for a taxable year to
13 which prior law applies.

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

18 (1) Subchapter A (sections 1 to 59A) (with respect to
19 determination of tax liability), except section
20 1(h)(2) (relating to net capital gain reduced by the
21 amount taken into account as investment income),



1 except sections 2(a), 2(b), and 2(c) (with respect to
2 the definition of "surviving spouse" and "head of
3 household"), except section 41 (with respect to the
4 credit for increasing research activities), except
5 section 42 (with respect to low-income housing
6 credit), except sections 47 and 48, as amended, as of
7 December 31, 1984 (with respect to certain depreciable
8 tangible personal property), and except section
9 48(d)(3), as amended, as of February 17, 2009 (with
10 respect to the treatment of United States Department
11 of Treasury grants made under section 1603 of the
12 American Recovery and Reinvestment Tax Act of 2009).
13 For treatment, see sections 235-110.91, 235-110.7, and
14 235-110.8;

15 (2) Section 78 (with respect to dividends received from
16 certain foreign corporations by domestic corporations
17 choosing foreign tax credit);

18 (3) Section 86 (with respect to social security and tier 1
19 railroad retirement benefits);



1 (4) Section 91 (with respect to certain foreign branch
2 losses transferred to specified 10-percent owned
3 foreign corporations);

4 [~~4~~] (5) Section 103 (with respect to interest on state
5 and local bonds). For treatment, see section 235-
6 7(b);

7 [~~5~~] (6) Section 114 (with respect to extraterritorial
8 income). For treatment, any transaction as specified
9 in the transitional rule for 2005 and 2006 as
10 specified in the American Jobs Creation Act of 2004
11 section 101(d) and any transaction that has occurred
12 pursuant to a binding contract as specified in the
13 American Jobs Creation Act of 2004 section 101(f) are
14 inoperative;

15 [~~6~~] (7) Section 120 (with respect to amounts received
16 under qualified group legal services plans). For
17 treatment, see section 235-7(a)(9) to (11);

18 [~~7~~] (8) Section 122 (with respect to certain reduced
19 uniformed services retirement pay). For treatment,
20 see section 235-7(a)(3);



- 1 ~~[(8)]~~ (9) Section 135 (with respect to income from United
2 States savings bonds used to pay higher education
3 tuition and fees). For treatment, see section 235-
4 7(a)(1);
- 5 ~~[(9)]~~ (10) Section 139C (with respect to COBRA premium
6 assistance);
- 7 ~~[(10)]~~ (11) Subchapter B (sections 141 to 150) (with respect
8 to tax exemption requirements for state and local
9 bonds);
- 10 ~~[(11)]~~ (12) Section 151 (with respect to allowance of
11 deductions for personal exemptions). For treatment,
12 see section 235-54;
- 13 ~~[(12)]~~ (13) Section 179B (with respect to expensing of
14 capital costs incurred in complying with Environmental
15 Protection Agency sulphur regulations);
- 16 ~~[(13)]~~ (14) Section 181 (with respect to special rules for
17 certain film and television productions);
- 18 ~~[(14)]~~ (15) Section 196 (with respect to deduction for
19 certain unused investment credits);
- 20 ~~[(15)]~~ (16) Section 199 (with respect to the U.S. production
21 activities deduction);



- 1 (17) Section 199A (with respect to qualified business
2 income);
- 3 [~~+16~~] (18) Section 222 (with respect to qualified tuition
4 and related expenses);
- 5 [~~+17~~] (19) Sections 241 to 247 (with respect to special
6 deductions for corporations). For treatment, see
7 section 235-7(c);
- 8 (20) Section 250 (with respect to foreign-derived
9 intangible income and global intangible low-taxed
10 income);
- 11 (21) Section 267A (with respect to certain related party
12 amounts paid or accrued in hybrid transactions or with
13 hybrid entities);
- 14 [~~+18~~] (22) Section 280C (with respect to certain expenses
15 for which credits are allowable). For treatment, see
16 section 235-110.91;
- 17 [~~+19~~] (23) Section 291 (with respect to special rules
18 relating to corporate preference items);
- 19 [~~+20~~] (24) Section 367 (with respect to foreign
20 corporations);



1 ~~[(21)]~~ (25) Section 501(c)(12), (15), (16) (with respect to
2 exempt organizations); except that section 501(c)(12)
3 shall be operative for companies that provide potable
4 water to residential communities that lack any access
5 to public utility water services;

6 ~~[(22)]~~ (26) Section 515 (with respect to taxes of foreign
7 countries and possessions of the United States);

8 ~~[(23)]~~ (27) Subchapter G (sections 531 to 565) (with respect
9 to corporations used to avoid income tax on
10 shareholders);

11 ~~[(24)]~~ (28) Subchapter H (sections 581 to 597) (with respect
12 to banking institutions), except section 584 (with
13 respect to common trust funds). For treatment, see
14 chapter 241;

15 ~~[(25)]~~ (29) Section 642(a) and (b) (with respect to special
16 rules for credits and deductions applicable to
17 trusts). For treatment, see sections 235-54(b) and
18 235-55;

19 ~~[(26)]~~ (30) Section 646 (with respect to tax treatment of
20 electing Alaska Native settlement trusts);



- 1 [~~(27)~~] (31) Section 668 (with respect to interest charge on
2 accumulation distributions from foreign trusts);
- 3 [~~(28)~~] (32) Subchapter L (sections 801 to 848) (with respect
4 to insurance companies). For treatment, see sections
5 431:7-202 and 431:7-204;
- 6 [~~(29)~~] (33) Section 853 (with respect to foreign tax credit
7 allowed to shareholders). For treatment, see section
8 235-55;
- 9 [~~(30)~~] (34) Section 853A (with respect to credits from tax
10 credit bonds allowed to shareholders);
- 11 [~~(31)~~] (35) Subchapter N (sections 861 to 999) (with respect
12 to tax based on income from sources within or without
13 the United States), except sections 985 to 989 (with
14 respect to foreign currency transactions). For
15 treatment, see sections 235-4, 235-5, and 235-7(b),
16 and 235-55;
- 17 [~~(32)~~] (36) Section 1042(g) (with respect to sales of stock
18 in agricultural refiners and processors to eligible
19 farm cooperatives);
- 20 [~~(33)~~] (37) Section 1055 (with respect to redeemable ground
21 rents);



- 1 ~~[(34)]~~ (38) Section 1057 (with respect to election to treat
2 transfer to foreign trust, etc., as taxable exchange);
- 3 ~~[(35)]~~ (39) Sections 1291 to 1298 (with respect to treatment
4 of passive foreign investment companies);
- 5 ~~[(36)]~~ (40) Subchapter Q (sections 1311 to 1351) (with
6 respect to readjustment of tax between years and
7 special limitations);
- 8 ~~[(37)]~~ (41) Subchapter R (sections 1352 to 1359) (with
9 respect to election to determine corporate tax on
10 certain international shipping activities using per
11 ton rate);
- 12 ~~[(38)]~~ (42) Subchapter U (sections 1391 to 1397F) (with
13 respect to designation and treatment of empowerment
14 zones, enterprise communities, and rural development
15 investment areas). For treatment, see chapter 209E;
- 16 ~~[(39)]~~ (43) Subchapter W (sections 1400 to 1400C) (with
17 respect to District of Columbia enterprise zone);
- 18 ~~[(40)]~~ (44) Section 14000 (with respect to education tax
19 benefits);
- 20 ~~[(41)]~~ (45) Section 1400P (with respect to housing tax
21 benefits);



1 property tax deduction), 63(c)(1)(D) (relating to the
 2 disaster loss deduction), 63(c)(1)(E) (relating to the
 3 motor vehicle sales tax deduction), 63(c)(4) (relating
 4 to inflation adjustments), 63(c)(7) (defining the real
 5 property tax deduction), 63(c)(8) (defining the
 6 disaster loss deduction), 63(c)(9) (defining the motor
 7 vehicle sales tax deduction), and 63(f) (relating to
 8 additional amounts for the aged or blind) of the
 9 Internal Revenue Code shall not be operative for
 10 purposes of this chapter;

11 (2) Section 63(c)(2) (relating to the basic standard
 12 deduction) of the Internal Revenue Code shall be
 13 operative, except that the standard deduction amounts
 14 provided therein shall instead mean:

- 15 (A) \$4,400 in the case of:
 - 16 (i) A joint return as provided by section
 - 17 235-93; or
 - 18 (ii) A surviving spouse (as defined in section
 - 19 2(a) of the Internal Revenue Code);



1 (B) \$3,212 in the case of a head of household (as
2 defined in section 2(b) of the Internal Revenue
3 Code);

4 (C) \$2,200 in the case of an individual who is not
5 married and who is not a surviving spouse or head
6 of household; or

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

9 (3) Section 63(c)(5) (limiting the basic standard
10 deduction in the case of certain dependents) of the
11 Internal Revenue Code shall be operative, except that
12 the limitation shall be the greater of \$500 or the
13 individual's earned income; and

14 (4) The standard deduction amount for nonresidents shall
15 be calculated pursuant to section 235-5.

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



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

4 (1) Thresholds shall be those that were operative for
5 federal tax year 2009[-]; and

6 (2) Suspension in section 68(f) shall not be operative for
7 purposes of this chapter.

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

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

19 [~~(e)~~] (f) Section 108 (with respect to income from
20 discharge of indebtedness) of the Internal Revenue Code shall be
21 operative for purposes of this chapter, except that section



1 108(i) (relating to deferral and ratable inclusion of income
2 arising from business indebtedness discharged by the
3 reacquisition of a debt instrument) shall not be operative for
4 purposes of this chapter.

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

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

14 (1) The suspensions in [section 132(f)(2) that equalizes
15 the dollar amounts for section 132(f)(2)(A) and (B)]
16 section 132(f)(8) and 132(g)(2) shall not be operative
17 for purposes of this chapter; and [except that
18 section]

19 (2) Section 132(n) shall not apply to United States
20 Department of Defense Homeowners Assistance Program



1 payments authorized by the American Recovery and
2 Reinvestment Act of 2009.

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

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

14 (1) Section 163(d)(4)(B) (defining net investment income
15 to exclude dividends) [~~section~~];

16 (2) Section 163(e)(5)(F) (suspension of applicable high-
17 yield discount obligation (AHYDO) rules);

18 (3) Section 163(h)(3)(F) (limiting mortgage interest); and
19 [section]



1 (4) Section 163(i)(1) as it applies to debt instruments
2 issued after January 1, 2010, (defining AHYDO) [~~shall~~
3 ~~not be operative for the purposes of this chapter~~].

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

7 (1) Section [~~164(a)(6) and (b)(6)~~] 164(b)(6)(B) (limiting
8 the deduction for state and local taxes) shall not be
9 operative for the purposes of this chapter;

10 (2) The deductions under section 164(a)(3) and (b)(5)
11 shall not be operative for corporate taxpayers and
12 shall be operative only for the following individual
13 taxpayers:

14 (A) A taxpayer filing a single return or a married
15 person filing separately with a federal adjusted
16 gross income of less than \$100,000;

17 (B) A taxpayer filing as a head of household with a
18 federal adjusted gross income of less than
19 \$150,000; and



1 (C) A taxpayer filing a joint return or as a
2 surviving spouse with a federal adjusted gross
3 income of less than \$200,000; and

4 (3) Section 164(a)(3) shall not be operative for any
5 amounts for which the credit under section 235-55 has
6 been claimed.

7 [~~++~~] (1) Section 165 (with respect to losses) of the
8 Internal Revenue Code shall be operative for purposes of this
9 chapter, except that [~~the~~]:

10 (1) The amount prescribed by sections 165(h)(1) (relating
11 to the limitation per casualty) of the Internal
12 Revenue Code shall be a \$100 limitation per casualty[~~-~~
13 ~~and section~~];

14 (2) Section 165(h)(3)(A) and (B) (both of which relate to
15 special rules for personal casualty gains and losses
16 in federally declared disasters) of the Internal
17 Revenue Code shall not be operative for the purposes
18 of this chapter[~~-~~];

19 (3) Section 165(h)(5) (relating to the limitation on the
20 deductibility of personal casualty losses that are not



1 attributable to federally declared disasters) shall
2 not be operative for purposes of this chapter; and

3 (4) Section 165 as operative for this chapter shall also
4 apply to losses sustained from the sale of stocks or
5 other interests issued through the exercise of the
6 stock options or warrants granted by a qualified high
7 technology business as defined in section 235-7.3.

8 [~~(k)~~] (m) Section 168 (with respect to the accelerated
9 cost recovery system) of the Internal Revenue Code shall be
10 operative for purposes of this chapter, except that sections
11 168(j) (relating to property on Indian reservations), 168(k)
12 (relating to the special allowance for certain property acquired
13 during the period specified therein), 168(m) (relating to the
14 special allowance for certain reuse and recycling property), and
15 168(n) (relating to the special allowance for qualified disaster
16 assistance property) of the Internal Revenue Code shall not be
17 operative for purposes of this chapter.

18 [~~(l)~~] (n) Section 172 (with respect to net operating loss
19 deductions) of the Internal Revenue Code shall be operative for
20 purposes of this chapter, as further provided in section
21 235-7(d), except that section 172(b)(1)(J) and (j) (both of



1 which relate to qualified disaster losses) of the Internal
2 Revenue Code shall not be operative for purposes of this
3 chapter.

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

- 8 (1) The aggregate cost provided in section 179(b)(1),
9 which may be taken into account under section 179(a)
10 for any taxable year, shall not exceed \$25,000;
- 11 (2) The amount at which the reduction in limitation
12 provided in section 179(b)(2) begins shall exceed
13 \$200,000 for any taxable year; and
- 14 (3) The following shall not be operative for purposes of
15 this chapter:
- 16 (A) Defining section 179 property to include computer
17 software in section 179(d)(1);
- 18 (B) Inflation adjustments in section 179(b)(5);
- 19 (C) Irrevocable election in section 179(c)(2); and
- 20 (D) Special rules for qualified disaster assistance
21 property in section 179(e).



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

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

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

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

20 [~~q~~] (t) Section 265 (with respect to expenses and
21 interest relating to tax-exempt income) of the Internal Revenue



1 Code shall be operative for purposes of this chapter; except
2 that section 265(b)(3)(G) and (7) shall not be operative and
3 section 265 shall not apply to expenses for royalties and other
4 income derived from any patents, copyrights, and trade secrets
5 by an individual or a qualified high technology business as
6 defined in section 235-7.3. These expenses shall be deductible.

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

11 [~~(r)~~] (v) Section 280E (with respect to expenditures in
12 connection with the illegal sale of drugs) of the Internal
13 Revenue Code shall be operative for the purposes of this
14 chapter, except that section 280E shall not be operative with
15 respect to the production and sale of medical cannabis and
16 manufactured cannabis products by dispensaries licensed under
17 chapter 329D and their subcontractors, as defined in section
18 329D-1.

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



1 be operative for the purposes of this chapter, except that
2 section 382(n) shall not be operative for purposes of this
3 chapter.

4 ~~(+)~~ (x) Section 408A (with respect to Roth Individual
5 Retirement Accounts) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter, except that section
7 408A(d)(3)(A)(iii) shall not be operative for purposes of this
8 chapter. For the purposes of determining the aggregate amount
9 of contributions to a Roth Individual Retirement Account or
10 qualified rollover contribution to a Roth Individual Retirement
11 Account from an individual retirement plan other than a Roth
12 Individual Retirement Account, adjusted gross income as used in
13 section 408A as operative for this chapter means federal
14 adjusted gross income.

15 ~~(+)~~ (y) In administering the provisions of sections 410
16 to 417 (with respect to special rules relating to pensions,
17 profit sharing, stock bonus plans, etc.), sections 418 to 418E
18 (with respect to special rules for multiemployer plans), and
19 sections 419 and 419A (with respect to treatment of welfare
20 benefit funds) of the Internal Revenue Code, the department of
21 taxation shall adopt rules under chapter 91 relating to the



1 specific requirements under those sections and to other
2 administrative requirements under those sections as may be
3 necessary for the efficient administration of sections 410 to
4 419A.

5 In administering sections 401 to 419A (with respect to
6 deferred compensation) of the Internal Revenue Code, Public Law
7 93-406, section 1017(i), shall be operative for the purposes of
8 this chapter.

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

16 [~~(v)~~] (z) In administering section 403 (with respect to
17 taxation of employee annuities) of the Internal Revenue Code,
18 any funds that represent pre-tax employee deferrals or
19 contributions that are distributed from the annuity and used
20 solely to obtain retirement credits under the state employees'
21 retirement system shall not be treated as a rollover for



1 purposes of section 403(b)(8)(A) of the Internal Revenue Code,
2 and those funds shall be subject to income tax under this
3 chapter.

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

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

19 ~~[(y)]~~ (cc) Section 468B (with respect to special rules for
20 designated settlement funds) of the Internal Revenue Code shall
21 be operative for the purposes of this chapter and the tax



1 imposed therein is hereby imposed by this chapter at a rate
2 equal to the maximum rate in effect for the taxable year imposed
3 on estates and trusts under section 235-51.

4 ~~[(z)]~~ (dd) Section 469 (with respect to passive activities
5 and credits limited) of the Internal Revenue Code shall be
6 operative for the purposes of this chapter. For the purpose of
7 computing the offset for rental real estate activities for state
8 income tax purposes, adjusted gross income as used in section
9 469 as operative for this chapter means federal adjusted gross
10 income.

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

15 "Unrelated business taxable income" means the same as in
16 the Internal Revenue Code, except that in the computation
17 thereof sections 235-3 to 235-5, and 235-7 (except subsection
18 (c)), shall apply, and in the determination of the net operating
19 loss deduction there shall not be taken into account any amount
20 of income or deduction that is excluded in computing the



1 unrelated business taxable income. Unrelated business taxable
2 income shall not include any income from a legal service plan.

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

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

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

20 [~~dd~~] (hh) Section 529 (with respect to qualified tuition
21 programs) shall be operative for the purposes of this chapter,



1 except that sections 529(c)(6), 529(c)(7), and 529(e)(3)(A)(iii)
2 shall not be operative.

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

8 ~~(ff)~~ (jj) Section 530 (with respect to Coverdell
9 education savings accounts) of the Internal Revenue Code shall
10 be operative for the purposes of this chapter. For the purpose
11 of determining the maximum amount that a contributor could make
12 to an education individual retirement account for state income
13 tax purposes, modified adjusted gross income as used in section
14 530 as operative for this chapter means federal modified
15 adjusted gross income as defined in section 530."

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

18 1. By amending subsection (h) to read:

19 "(h) Subchapter S (sections 1361 to 1379) (with respect to
20 tax treatment of S corporations and their shareholders) of
21 chapter 1 of the Internal Revenue Code shall be operative for



1 the purposes of this chapter as provided in part VII[~~—except~~
2 ~~that section 1374(d)(7)(B), (C), and (D) shall not be operative~~
3 ~~for purposes of this chapter~~]."

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

5 " (m) Sections 6221, 6222, 6223, 6225, and [6231] 6226
6 (with respect to [~~tax treatment of~~] partnership [~~items~~]) audits
7 of subchapter C of chapter 63 of the Internal Revenue Code shall
8 be operative for the purposes of this chapter[~~—~~]; provided that
9 if a taxpayer makes the election under section 6221(b) for
10 federal income tax purposes, that taxpayer shall also make the
11 same election for Hawaii income tax purposes.

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



1 PART III

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

5 "§236E- Audit of return; procedure upon failure to file
6 return; additional taxes; limitation period. (a) The director
7 of taxation, or the director's designee, is authorized and
8 empowered to examine all account books, bank books, bank
9 statements, records, vouchers, copies of federal tax returns,
10 and any and all other documents and evidence having any
11 relevance to the determination of any amount relevant to the
12 Hawaii transfer tax, as required to be returned under this
13 chapter, and the director may employ the director's powers under
14 section 231-7 for these purposes.

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

19 (c) If the person required to file the return required
20 under this chapter fails to file the return or declines to
21 authenticate a return, the department shall make a return for



1 the person based upon the best information obtainable and shall
2 levy and assess against the person the tax as shown on the
3 return.

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

15 (e) In the case of an audit commenced under this section,
16 the amount of Hawaii transfer tax imposed by this chapter shall
17 be assessed or levied within three years after the return was
18 filed, or within three years of the due date prescribed for the
19 filing of that return, whichever is later. In the case of a
20 false or fraudulent return with intent to evade tax, or of a
21 failure to file a return, the tax may be assessed or levied at



1 any time; provided that the burden of proof with respect to the
2 issues of falsity or intent to evade tax shall be upon the
3 State. The limitation period shall be suspended if the person
4 required to file the return agrees to suspend the period."

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

8 "Applicable generation-skipping transfer tax rate" means
9 2.25 per cent multiplied by the inclusion ratio with respect to
10 any property transferred in a generation-skipping transfer as
11 determined under section 2642 of the Internal Revenue Code[~~-~~] as
12 amended as of December 21, 2017."

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

15 "**§236E-3 Conformance to the Internal Revenue Code; general**
16 **application.** For all decedents dying after December 31, [~~2016~~]
17 2017, as used in this chapter, "Internal Revenue Code" means
18 subtitle B of the federal Internal Revenue Code of 1986, as
19 amended as of December 31, [~~2016~~] 2017, as it applies to the
20 determination of gross estate, adjusted gross estate, federal
21 taxable estate, and generation-skipping transfers, except those



1 provisions of the Internal Revenue Code and federal public laws
2 that, pursuant to this chapter, do not apply or are otherwise
3 limited in application."

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

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

11 (1) The federal applicable exclusion amount [~~the~~];

12 (2) The exemption equivalent of the unified credit reduced
13 by the amount of taxable gifts made by the decedent
14 that reduces the amount of the federal applicable
15 exclusion amount [~~the~~]; or [~~the~~]

16 (3) The exemption equivalent of the unified credit on the
17 decedent's federal estate tax return,

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



1 (b) The applicable exclusion amount calculated in

2 subsection (a) shall be further adjusted as follows:

3 (1) For residents, 100 per cent of the applicable
4 exclusion amount;

5 (2) For nonresidents, an amount computed by multiplying
6 the applicable exclusion amount by a fraction, the
7 numerator of which is the value of the property in the
8 State subject to tax under this chapter, and the
9 denominator of which is the federal gross estate; and

10 (3) For nonresidents not citizens, an amount computed by
11 multiplying the exemption equivalent of the unified
12 credit by a fraction, the numerator of which is the
13 value of the property in the State subject to tax
14 under this chapter, and the denominator of which is
15 the federal gross estate.

16 [~~(b)(1)~~] (c)(1) For the purposes of this chapter, every
17 decedent having property in the State shall be
18 presumed to have died a resident of the State. The
19 burden of proof in an estate tax proceeding shall be
20 upon any decedent's estate claiming exemption from the



1 tax imposed by this chapter by reason of the
2 decedent's alleged nonresidency;

3 (2) Any person required to make and file a tax return
4 under this chapter, who believes that the decedent
5 died a nonresident of the State, may file a request
6 for determination of domicile in writing with the
7 department, stating the specific grounds upon which
8 the request is founded, provided:

9 (A) The person has filed the return required under
10 this chapter;

11 (B) At least two hundred seventy days, but no more
12 than three years, have elapsed since the due date
13 of the return or, if applicable, the extended due
14 date of the return;

15 (C) The person has not been notified, in writing, by
16 the department that a written agreement of
17 compromise with the taxing authorities of another
18 jurisdiction, under section 236E-24, is being
19 negotiated; and



1 (D) The department has not previously determined
2 whether the decedent died a resident of the
3 State;
4 (3) Not later than one hundred eighty days following
5 receipt of a request for determination, the department
6 shall determine whether the decedent died a resident
7 or a nonresident of the State. If the department
8 commences negotiations over a written agreement of
9 compromise with the taxing authorities of another
10 jurisdiction after a request for determination of
11 domicile is filed, the one hundred eighty day period
12 shall be tolled for the duration of the negotiations.
13 If, before the expiration of the one hundred eighty
14 day period, both the department and the person
15 required to make and file a tax return under this
16 chapter have consented in writing to the making of a
17 determination after such time, the determination may
18 be made at any time prior to the expiration of the
19 period agreed upon. The period agreed upon may be
20 extended by subsequent agreements; provided that the



1 agreements are made in writing before the expiration
2 of the period previously agreed upon;

3 (4) The department shall mail notice of the proposed
4 determination to the person required to make and file
5 a tax return under this chapter. The notice shall
6 briefly set forth the department's findings of fact
7 and the basis of decision in each case decided
8 adversely to the person. Sixty days after the date on
9 which it is mailed, a notice of proposed determination
10 shall constitute a final determination, unless the
11 person required to make and file a tax return under
12 this chapter has filed an appeal of the determination
13 as provided in section 236E-18; and

14 (5) Nothing in this subsection shall be construed to
15 relieve any person filing a request for determination
16 of domicile of the obligation to pay the correct
17 amount of tax on or before the due date of the tax."

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

20 " (a) ~~[A state estate tax return shall be filed in the case~~
21 ~~of every decedent whose estate is required by the laws of the~~



1 ~~United States to file a federal estate tax return.]~~ This
2 section shall apply to a decedent who, at the time of death was:
3 (1) A resident of the State; or
4 (2) A nonresident of the State whose gross estate includes
5 any real property situated in the State or tangible
6 personal property having a situs in the State. Where
7 the decedent is the sole owner of a single member
8 limited liability company that has not elected to be
9 taxed as a corporation, the single member limited
10 liability company shall be disregarded for purposes of
11 this chapter and this chapter shall be applied as if
12 the sole member is the owner of the property."

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

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

16 "(a) The Hawaii transfer tax return, including any
17 supplemental or amended return, is required to be filed pursuant
18 to this chapter whenever a federal estate tax return or
19 applicable generation-skipping transfer tax return is required
20 to be filed[-] or any tax is owed under this chapter. The



1 return shall be filed, and the Hawaii transfer tax, including
2 any additional tax that may become due, shall be paid by ~~the~~:

3 (1) The same person or persons, respectively, who are
4 required to pay the federal transfer tax and file the
5 federal return, including any duly authorized executor
6 or administrator[-]; or

7 (2) If no federal transfer tax or federal return is due,
8 the person who would be required to pay the federal
9 transfer tax and file the federal return if any were
10 due.

11 If there is more than one executor or administrator, the
12 return shall be made jointly by all. If there is no executor or
13 administrator appointed, qualified, and acting, each person in
14 actual or constructive possession of any property of the
15 decedent is constituted an executor for purposes of the tax and
16 shall make and file a return. If in any case the executor is
17 unable to make a complete return as to any part of the gross
18 estate, the executor shall provide all the information available
19 to the executor with respect to the property, including a full
20 description and the name of every person holding a legal or
21 beneficial interest in the property. If the executor is unable



1 to make a return as to any property, each person holding a legal
2 or equitable interest in the property shall, upon notice from
3 the department, make a return as to that part of the gross
4 estate.

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

14 2. By amending subsection (e) to read:

15 "(e) If a federal transfer tax return is due and any
16 portion of the federal transfer tax is deferred or to be paid in
17 installments under the provisions of the Internal Revenue Code,
18 the portion of the Hawaii transfer tax that is subject to
19 deferral or payable in installments shall be determined by
20 multiplying the Hawaii transfer tax by a fraction, the numerator
21 of which is the gross value of the assets included in the



1 transferred property having a tax situs in the State and that
2 give rise to the deferred or installment payment under the
3 Internal Revenue Code, and the denominator of which is the gross
4 value of all assets included in the transferred property having
5 a tax situs in the State.

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

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



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

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

6 "[+]§236E-11[+] **Extension of time to file return.** If a
7 federal transfer tax return is due and the date for filing the
8 federal return or the date for payment of the federal transfer
9 tax is extended by the Internal Revenue Service, the filing of
10 the return and payment of the tax imposed by this chapter shall
11 be due on the respective dates specified by the Internal Revenue
12 Service in granting a request for extension. If the request for
13 extension is granted by the Internal Revenue Service, the person
14 required to file the Hawaii transfer tax return shall file along
15 with the return required under this chapter a copy of the
16 request for extension showing approval of the extension by the
17 Internal Revenue Service. If a request for extension of time to
18 file the federal return is denied by the Internal Revenue
19 Service, no penalty shall be due under this chapter if the
20 return required by this chapter is filed within the time
21 specified by the Internal Revenue Service for filing the federal



1 return. If a request for extension of time to pay the federal
2 transfer tax is denied by the Internal Revenue Service, no
3 penalty shall be due under this chapter if the tax is paid
4 within the time specified by the Internal Revenue Service for
5 paying the federal transfer tax. The extension shall be made by
6 filing a true copy of the federal extension or extensions of
7 time for filing or payment, or both, with the return required
8 under section 236E-9.

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

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

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



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

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

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

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

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



1 "~~§236E-21~~ Statute of limitations; claims for refund. (a)

2 If the amount paid with respect to any taxable transfer is less
3 than the amount due under this chapter, the department shall
4 assess the underpayment from the person responsible for
5 payment[~~; provided that a proceeding to assess the underpayment~~
6 ~~amount shall commence within~~], as follows:

7 (1) If a federal transfer tax return is due, a proceeding
8 to assess the underpayment amount shall commence
9 within:

10 [~~+1~~] (A) Three years from the date the federal
11 [~~estate~~] transfer tax return was filed; or

12 [~~+2~~] (B) One year after the date of final
13 determination of the related federal transfer
14 tax,

15 whichever is later[~~-~~]; or

16 (2) If a federal transfer tax return is not due, a
17 proceeding to assess the underpayment amount shall
18 commence within:

19 (A) Three years from the date the Hawaii transfer tax
20 return was filed; or



1 (B) One year after the date of final determination of
2 the related Hawaii transfer tax,
3 whichever is later.

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

18 ~~(b)~~ (c) If the amount paid with respect to any taxable
19 transfer is more than the amount due under this chapter, the
20 department shall refund the excess to the person entitled to the
21 refund together with interest at the existing statutory rate of



1 interest in the manner provided in section 231-23[~~;~~ provided
2 ~~that no amount shall be refunded unless application for the~~
3 ~~refund is filed with the department within.~~], as follows:

4 (1) If a federal transfer tax return was due, an
5 application for refund shall be filed with the
6 department within:

7 [~~1~~] (A) One year after the last date allowable under
8 the Internal Revenue Code for filing a claim for
9 refund of any part of the related federal
10 transfer tax; or

11 [~~2~~] (B) One year after the date of final
12 determination of the related federal transfer
13 tax,

14 whichever is later[~~;~~]; or

15 (2) If a federal transfer tax return was not due, an
16 application for refund shall be filed with the
17 department within:

18 (A) Three years from the date the Hawaii transfer tax
19 return was filed; or

20 (B) One year after the date of final determination of
21 the related Hawaii transfer tax,



SB No. 2821, SD 1, HD 1, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2018
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2018.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 27, 2018
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawai'i, Regular Session of 2018.



President of the Senate



Clerk of the Senate