
A BILL FOR AN ACT

RELATING TO CONFORMITY OF THE INCOME TAX LAW TO THE FEDERAL
INTERNAL REVENUE CODE.

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

1 SECTION 1. The purpose of this Act is to adopt "moving
2 date conformity," which is in place in twenty-two jurisdictions.
3 Under this system, changes in federal tax law automatically
4 apply to the Hawaii income tax law as they occur, but the State
5 may pass specific legislation to decouple from any new federal
6 law it disagrees with.

7 Under the current system, known as "fixed date conformity,"
8 taxpayers attempting to prepare and file their income tax
9 returns in the first half of the year are forced to assume that
10 no federal amendments have been adopted until the annual
11 conformity bill is passed and signed into law. When the annual
12 conformity bill is signed into law, it is normally retroactive
13 to the beginning of the taxable year to which it pertains.
14 Thus, such taxpayers might file an incorrect return that is
15 later validated when the conformity bill is enacted, or could



1 file a correct return that may have to be amended when the
2 conformity bill is enacted.

3 Moving date conformity will give relief to taxpayers and
4 the department of taxation while avoiding constitutional
5 delegation issues by providing prompt review and ratification of
6 any federal amendments.

7 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) [~~For all taxable years beginning after December 31,~~
10 ~~2015, as]~~ Subtitle A, chapter 1, of the Internal Revenue Code,
11 as it applies to the determination of gross income, adjusted
12 gross income, ordinary income and loss, and taxable income,
13 shall be operative for the purposes of this chapter, unless
14 provided otherwise by law.

15 As used in this chapter, except as provided in section 235-
16 2.35, "Internal Revenue Code" means [~~subtitle A, chapter 1, of]~~
17 the federal Internal Revenue Code of 1986, as amended [~~as of~~
18 ~~December 31, 2015, as it applies to the determination of gross~~
19 ~~income, adjusted gross income, ordinary income and loss, and~~
20 ~~taxable income, except those provisions of the Internal Revenue~~
21 ~~Code and federal public laws which, pursuant to this chapter, do~~



1 ~~not apply or are otherwise limited in application and except for~~
2 ~~the provisions of Public Law 109-001, which apply to section 170~~
3 ~~of the Internal Revenue Code. The provisions of Public Law 109-~~
4 ~~001 to accelerate the deduction for charitable cash~~
5 ~~contributions for the relief of victims of the 2004 Indian Ocean~~
6 ~~tsunami are applicable for the calendar year that ended December~~
7 ~~31, 2004, and the calendar year ending December 31, 2005.], as~~
8 ~~the same may become effective at any time or from time to time,~~
9 ~~for the taxable year.~~

10 Prior law shall continue to be used to determine:

- 11 (1) The basis of property, if a taxpayer first determined
12 the basis of property in a taxable year to which prior
13 law applies; and
- 14 (2) Gross income, adjusted gross income, ordinary income
15 and loss, and taxable income for a taxable year to
16 which prior law applies."

17 SECTION 3. Section 235-2.5, Hawaii Revised Statutes, is
18 amended to read as follows:

19 "§235-2.5 Administration, adoption, and interrelationship
20 of Internal Revenue Code and Public Laws with this chapter. (a)
21 Reference in provisions of the Internal Revenue Code which are



1 operative in this State to provisions in the Internal Revenue
2 Code which are not operative in this State shall be considered
3 inoperative for the purposes of determining gross income,
4 adjusted gross income, ordinary income and loss, and taxable
5 income; provided that:

6 (1) References to time limits and other administrative
7 provisions in subtitle F (sections 6001 to 7873) of
8 the Internal Revenue Code contained in operative
9 sections of the Internal Revenue Code shall be deemed
10 references to applicable provisions of this chapter or
11 chapter 231 or 232, and in the absence of applicable
12 provisions in this chapter or chapter 231 or 232, then
13 to rules adopted by the director of taxation under
14 subsection (b);

15 (2) If inoperative provisions of the Internal Revenue Code
16 have been codified in this chapter such references
17 shall be deemed references to the codified provisions
18 in this chapter. Transitory and savings provisions in
19 federal Public Laws amending sections of the Internal
20 Revenue Code operative in this chapter shall be
21 operative for the purposes of this chapter.



H.B. NO. 146

1 Provisions in this chapter or chapter 231 or 232 in
2 conflict with the Internal Revenue Code or transitory
3 or savings provisions in federal Public Law shall
4 control; and

- 5 (3) Retroactive and prospective provisions in federal
6 Public Laws amending sections of the federal Internal
7 Revenue Code operative in this chapter [~~affecting~~
8 ~~taxable years beginning or ending before the December~~
9 ~~31 date in section 235-2.3]~~ shall be operative for the
10 purposes of this chapter [~~; provided that the effective~~
11 ~~dates in Public Law 96-471 placing it in effect for~~
12 ~~the taxable year 1980 shall be operative for the~~
13 ~~purposes of this chapter.] as of the date they are
14 effective for federal purposes, unless provided
15 otherwise by law.~~

16 (b) The director of taxation may adopt by rule under
17 chapter 91 the rules and regulations promulgated by the United
18 States Secretary of Treasury or a delegate of the Secretary
19 relating to the provisions of subtitle A, chapter 1 or 6, of the
20 Internal Revenue Code operative in this chapter and any
21 administrative provisions of the Internal Revenue Code (subtitle



1 F, sections 6001 to [~~7873~~ 7874) not in conflict with or similar
2 to provisions contained in this chapter or chapter 231 or 232
3 either by reference or by setting them forth in full.

4 (c) The department of taxation shall submit to each
5 regular session of the legislature a bill to amend sections 235-
6 2.3, 235-2.4, and 235-2.45 and such other sections and
7 subsections of this chapter as may be necessary to adopt the
8 Internal Revenue Code as it exists on the December 31 preceding
9 such regular session. In submitting the bill the department may
10 provide that certain amendments to the Internal Revenue Code by
11 Congress during the preceding calendar year shall not be
12 operative in this State or as operative are limited in their
13 operation. The department shall also prepare a digest and
14 explanation of the amended provisions of the Internal Revenue
15 Code recommended for operation, as well as those provisions that
16 are limited in their operation, or that are not recommended for
17 operation, and shall submit with the bill required by this
18 subsection the digest, explanation, and a statement of revenue
19 impact of the adoption of the bill. In preparing the bill,
20 digest, and explanation the department may request the
21 assistance of the office of the legislative reference bureau.



H.B. NO. 146

1 It is the intent of the legislature that it shall each year
2 adopt all amendments to the Internal Revenue Code for the
3 calendar year preceding the year in which the legislature meets;
4 provided that the legislature may choose to adopt none of the
5 amendments to the Internal Revenue Code or may provide that
6 certain amendments are limited in their operation[-] as of the
7 time those amendments are or were effective for federal
8 purposes."

9 SECTION 4. Section 235-3, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "**§235-3 Legislative intent, how Internal Revenue Code**
12 **shall apply, in general.** (a) It is the intent of this chapter,
13 in addition to the essential purpose of raising revenue, to
14 conform the income tax law of the State as closely as may be
15 with the Internal Revenue Code in order to simplify the filing
16 of returns and minimize the taxpayer's burdens in complying with
17 the income tax law. The rules and regulations, forms and
18 procedures adopted and established under this chapter shall
19 conform as nearly as possible, and unless there is good reason
20 to the contrary, to the rules and regulations, forms and



1 procedures adopted and established under the Internal Revenue
2 Code.

3 (b) The Internal Revenue Code, so far as made operative by
4 this chapter, is a statute adopted and incorporated by
5 reference. The Internal Revenue Code shall be applied using
6 changes in nomenclature and other language, including the
7 omission of inapplicable language, where necessary to effectuate
8 the intent of this section. In the Internal Revenue Code,
9 references to terms such as:

10 (1) "Secretary or his delegate" shall refer to the
11 director of taxation and the director's duly
12 authorized subordinates;

13 (2) "Estate taxes" shall refer to the estate and transfer
14 tax imposed by chapter 236D or the estate and
15 generation-skipping tax imposed by chapter 236E, as
16 applicable;

17 (3) "The highest rate of tax imposed upon individuals" or
18 "39.6 per cent" shall refer to the highest rate
19 imposed upon individuals under section 235-51;



H.B. NO. 146

1 (4) "The highest rate of tax imposed upon corporations"
2 shall refer to the highest rate imposed upon
3 corporations under section 235-71; and

4 (5) "Interest at the underpayment rate" or "interest at
5 the overpayment rate" shall refer to the interest rate
6 set forth in section 231-39(b)(4) or section 231-
7 23(d)(1), as the case may be.

8 (c) Where, under a provision of the Internal Revenue Code
9 made operative in this chapter, the allowance or disallowance to
10 a taxpayer of a deduction, exclusion, adjustment, credit, or
11 exemption is dependent on whether, under the Internal Revenue
12 Code or a prior applicable federal income tax law, the following
13 was or was not, is or is not, in relation to the same taxpayer
14 or another taxpayer, for the same taxable year or a prior
15 taxable year, an operative factor: the imposition or payment of
16 an income tax, an inclusion in gross income, an exclusion from
17 gross income, or a deduction from gross income--the allowance or
18 disallowance under this chapter of such deduction, exclusion,
19 adjustment, credit, or exemption shall depend on the
20 operativeness of such factor or factors under this chapter or a
21 prior applicable income tax law of the State. This subsection



1 shall govern the application of such sections of the Internal
2 Revenue Code as, for example, sections 111, 215, 668(b), and
3 7852(c) and all matters of a similar nature.

4 ~~[(d) Whenever, in a taxable year of a corporation or its~~
5 ~~shareholders not governed by the income tax law of 1957, a~~
6 ~~distribution of money, stock, securities, or other property~~
7 ~~(whether in complete or partial liquidation or otherwise) has~~
8 ~~been made by a corporation to shareholders owning such shares in~~
9 ~~the State, or stock, securities, or other property has been~~
10 ~~transferred to a corporation, or corporate stock or securities~~
11 ~~exchanged, in the course of a corporate organization or~~
12 ~~reorganization effected under the laws of the State, in the~~
13 ~~application of the income tax law of 1957 effect shall be given~~
14 ~~to the recognition of income by the income tax laws of 1901 and~~
15 ~~1932, if any, to the extent necessary to avoid double taxation,~~
16 ~~for example, in determining the earnings and profits of any~~
17 ~~corporation involved or the basis of any stock, securities, or~~
18 ~~other property so received, transferred, or exchanged. No~~
19 ~~increase in basis shall be allowed on account of such events in~~
20 ~~taxable years not governed by the income tax law of 1957, except~~
21 ~~as provided by this subsection. As used in this subsection the~~



1 ~~words "double taxation" mean and refer to double taxation of the~~
2 ~~same taxpayer, or taxation of both a corporation and its~~
3 ~~shareholders when the taxation of both would not have occurred~~
4 ~~had the income tax law of 1957 governed prior taxable years.~~

5 ~~(c) In the determination of the basis or adjusted basis of~~
6 ~~any stock, securities, or other property:~~

7 ~~(1) If the property was acquired by an exchange (including~~
8 ~~an involuntary conversion or the sale of an old~~
9 ~~residence and purchase of a new residence where both~~
10 ~~occur within a one year period) the "cost" thereof to~~
11 ~~the taxpayer shall be deemed to include among other~~
12 ~~things, any income of the taxpayer recognized by the~~
13 ~~income tax laws of 1901 and 1932 as a result of the~~
14 ~~exchange;~~

15 ~~(2) If the basis is dependent upon acquisition from a~~
16 ~~decedent, the property shall be deemed to have been~~
17 ~~acquired from a decedent if deemed so acquired for the~~
18 ~~purposes of chapter 236 prior to July 1, 1983, or~~
19 ~~after June 30, 1983, under this chapter but not~~
20 ~~otherwise, and the residence or nonresidence of the~~
21 ~~decedent, the location of the property, and chapter~~



H.B. NO. 146

1 ~~236 for property acquired prior to July 1, 1983, or~~
 2 ~~this chapter where the property has been acquired~~
 3 ~~after June 30, 1983, shall be considered;~~

4 ~~(3) If the basis is dependent upon deductions, exclusions,~~
 5 ~~or exemptions taken or allowable, under the Internal~~
 6 ~~Revenue Code or a prior applicable federal income tax~~
 7 ~~law, in a prior year, it shall depend upon deductions,~~
 8 ~~exclusions, or exemptions taken or allowable under the~~
 9 ~~income tax law of the State governing such prior~~
 10 ~~years;~~

11 ~~(4) If the basis is dependent upon the election provided~~
 12 ~~for by section 307, Internal Revenue Code, it shall be~~
 13 ~~governed by the election actually made under the~~
 14 ~~Internal Revenue Code for the taxable year, whether or~~
 15 ~~not the taxable year was governed by the income tax~~
 16 ~~law of 1957.] "~~

17 SECTION 5. Statutory material to be repealed is bracketed
 18 and stricken. New statutory material is underscored.



H.B. NO. 146

1 SECTION 6. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2016.

3

INTRODUCED BY: _____

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JAN 19 2017



H.B. NO. 146

Report Title:

Income Tax; Internal Revenue Code

Description:

Adopts moving date conformity, which will allow changes in the Federal Internal Revenue Code to automatically apply to State income tax law.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

