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

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

6 "**§235-2.3 Conformance to the federal Internal Revenue**
7 **Code; general application.** (a) For all taxable years beginning
8 after December 31, [~~2016,~~] 2017, as used in this chapter, except
9 as provided in section 235-2.35, "Internal Revenue Code" means
10 subtitle A, chapter 1, of the federal Internal Revenue Code of
11 1986, as amended as of December 31, [~~2016,~~] 2017, as it applies
12 to the determination of gross income, adjusted gross income,
13 ordinary income and loss, and taxable income, except those
14 provisions of the Internal Revenue Code and federal public laws
15 which, pursuant to this chapter, do not apply or are otherwise
16 limited in application and except for the provisions of Public
17 Law 109-001 which apply to section 170 of the Internal Revenue



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

6 Prior law shall continue to be used to determine:

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

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

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

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



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

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

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

19 (4) Section 91 (with respect to certain foreign branch
20 losses);



1 ~~[(4)]~~ (5) Section 103 (with respect to interest on state
2 and local bonds). For treatment, see section 235-
3 7(b);

4 ~~[(5)]~~ (6) Section 114 (with respect to extraterritorial
5 income). For treatment, any transaction as specified
6 in the transitional rule for 2005 and 2006 as
7 specified in the American Jobs Creation Act of 2004
8 section 101(d) and any transaction that has occurred
9 pursuant to a binding contract as specified in the
10 American Jobs Creation Act of 2004 section 101(f) are
11 inoperative;

12 ~~[(6)]~~ (7) Section 120 (with respect to amounts received
13 under qualified group legal services plans). For
14 treatment, see section 235-7(a)(9) to (11);

15 ~~[(7)]~~ (8) Section 122 (with respect to certain reduced
16 uniformed services retirement pay). For treatment,
17 see section 235-7(a)(3);

18 ~~[(8)]~~ (9) Section 135 (with respect to income from United
19 States savings bonds used to pay higher education
20 tuition and fees). For treatment, see section 235-
21 7(a)(1);



1 ~~[(9)]~~ (10) Section 139C (with respect to COBRA premium
2 assistance);

3 ~~[(10)]~~ (11) Subchapter B (sections 141 to 150) (with respect
4 to tax exemption requirements for state and local
5 bonds);

6 ~~[(11)]~~ (12) Section 151 (with respect to allowance of
7 deductions for personal exemptions). For treatment,
8 see section 235-54;

9 ~~[(12)]~~ (13) Section 179B (with respect to expensing of
10 capital costs incurred in complying with Environmental
11 Protection Agency sulphur regulations);

12 ~~[(13)]~~ (14) Section 181 (with respect to special rules for
13 certain film and television productions);

14 ~~[(14)]~~ (15) Section 196 (with respect to deduction for
15 certain unused investment credits);

16 ~~[(15)]~~ (16) Section 199 (with respect to the U.S. production
17 activities deduction);

18 (17) Section 199A (with respect to the deduction for
19 qualified business income);

20 ~~[(16)]~~ (18) Section 222 (with respect to qualified tuition
21 and related expenses);



1 ~~[(17)]~~ (19) Sections 241 to 247 (with respect to special
2 deductions for corporations). For treatment, see
3 section 235-7(c);

4 (20) Section 250 (with respect to foreign-derived
5 intangible income and global intangible low-taxed
6 income);

7 (21) Section 267A (with respect to certain related party
8 amounts paid or accrued in hybrid transactions or with
9 hybrid entities);

10 ~~[(18)]~~ (22) Section 280C (with respect to certain expenses
11 for which credits are allowable). For treatment, see
12 section 235-110.91;

13 ~~[(19)]~~ (23) Section 291 (with respect to special rules
14 relating to corporate preference items);

15 ~~[(20)]~~ (24) Section 367 (with respect to foreign
16 corporations);

17 ~~[(21)]~~ (25) Section 501(c)(12), (15), (16) (with respect to
18 exempt organizations); except that section 501(c)(12)
19 shall be operative for companies that provide potable
20 water to residential communities that lack any access
21 to public utility water services;



1 ~~[(22)]~~ (26) Section 515 (with respect to taxes of foreign
2 countries and possessions of the United States);
3 ~~[(23)]~~ (27) Subchapter G (sections 531 to 565) (with respect
4 to corporations used to avoid income tax on
5 shareholders);
6 ~~[(24)]~~ (28) Subchapter H (sections 581 to 597) (with respect
7 to banking institutions), except section 584 (with
8 respect to common trust funds). For treatment, see
9 chapter 241;
10 ~~[(25)]~~ (29) Section 642(a) and (b) (with respect to special
11 rules for credits and deductions applicable to
12 trusts). For treatment, see sections 235-54(b) and
13 235-55;
14 ~~[(26)]~~ (30) Section 646 (with respect to tax treatment of
15 electing Alaska Native settlement trusts);
16 ~~[(27)]~~ (31) Section 668 (with respect to interest charge on
17 accumulation distributions from foreign trusts);
18 ~~[(28)]~~ (32) Subchapter L (sections 801 to 848) (with respect
19 to insurance companies). For treatment, see sections
20 431:7-202 and 431:7-204;



1 ~~[(29)]~~ (33) Section 853 (with respect to foreign tax credit
2 allowed to shareholders). For treatment, see section
3 235-55;

4 ~~[(30)]~~ (34) Section 853A (with respect to credits from tax
5 credit bonds allowed to shareholders);

6 ~~[(31)]~~ (35) Subchapter N (sections 861 to 999) (with respect
7 to tax based on income from sources within or without
8 the United States), except sections 985 to 989 (with
9 respect to foreign currency transactions). For
10 treatment, see sections 235-4, 235-5, and 235-7(b),
11 and 235-55;

12 ~~[(32)]~~ (36) Section 1042(g) (with respect to sales of stock
13 in agricultural refiners and processors to eligible
14 farm cooperatives);

15 ~~[(33)]~~ (37) Section 1055 (with respect to redeemable ground
16 rents);

17 ~~[(34)]~~ (38) Section 1057 (with respect to election to treat
18 transfer to foreign trust, etc., as taxable exchange);

19 ~~[(35)]~~ (39) Sections 1291 to 1298 (with respect to treatment
20 of passive foreign investment companies);



1 ~~[(36)]~~ (40) Subchapter Q (sections 1311 to 1351) (with
2 respect to readjustment of tax between years and
3 special limitations);

4 ~~[(37)]~~ (41) Subchapter R (sections 1352 to 1359) (with
5 respect to election to determine corporate tax on
6 certain international shipping activities using per
7 ton rate);

8 ~~[(38)]~~ (42) Subchapter U (sections 1391 to 1397F) (with
9 respect to designation and treatment of empowerment
10 zones, enterprise communities, and rural development
11 investment areas). For treatment, see chapter 209E;

12 ~~[(39)]~~ (43) Subchapter W (sections 1400 to 1400C) (with
13 respect to District of Columbia enterprise zone);

14 ~~[(40)]~~ (44) Section 1400O (with respect to education tax
15 benefits);

16 ~~[(41)]~~ (45) Section 1400P (with respect to housing tax
17 benefits);

18 ~~[(42)]~~ (46) Section 1400R (with respect to employment
19 relief);

20 ~~[(43)]~~ (47) Section 1400T (with respect to special rules for
21 mortgage revenue bonds);



1 ~~[(44)]~~ (48) Section 1400U-1 (with respect to allocation of
2 recovery zone bonds);

3 ~~[(45)]~~ (49) Section 1400U-2 (with respect to recovery zone
4 economic development bonds); ~~[and~~

5 ~~+(46)]~~ (50) Section 1400U-3 (with respect to recovery zone
6 facility bonds) ~~[-]~~; and

7 (51) Section 1400Z (with respect to qualified opportunity
8 zones) ."

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

11 **"§235-2.4 Operation of certain Internal Revenue Code**

12 **provisions; sections 63 to 530.** (a) Section 63 (with respect
13 to taxable income defined) of the Internal Revenue Code shall be
14 operative for the purposes of this chapter, subject to the
15 following:

16 (1) Section 63(c)(1)(B) (relating to the additional
17 standard deduction), 63(c)(1)(C) (relating to the real
18 property tax deduction), 63(c)(1)(D) (relating to the
19 disaster loss deduction), 63(c)(1)(E) (relating to the
20 motor vehicle sales tax deduction), 63(c)(4) (relating
21 to inflation adjustments), 63(c)(7) (defining the real



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

7 (2) Section 63(c)(2) (relating to the basic standard
8 deduction) of the Internal Revenue Code shall be
9 operative, except that the standard deduction amounts
10 provided therein shall instead mean:

11 (A) \$4,400 in the case of:

12 (i) A joint return as provided by section
13 235-93; or

14 (ii) A surviving spouse (as defined in section
15 2(a) of the Internal Revenue Code);

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

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



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

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

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

10 (b) Section 67 (with respect to the two per cent floor on
11 miscellaneous itemized deductions) of the Internal Revenue Code
12 shall be operative for purposes of this chapter except that the
13 suspension in section 67(g) shall not be operative for purposes
14 of this chapter.

15 ~~[(b)]~~ (c) Section 68 (with respect to the overall limitation
16 on itemized deductions) of the Internal Revenue Code shall be
17 operative; provided that the thresholds shall be those that were
18 operative for federal tax year 2009~~[-]~~; and provided further
19 that the suspension in section 68(f) shall not be operative for
20 purposes of this chapter.



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

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

12 [~~(e)~~] (f) Section 108 (with respect to income from
13 discharge of indebtedness) of the Internal Revenue Code shall be
14 operative for purposes of this chapter, except that section
15 108(i) (relating to deferral and ratable inclusion of income
16 arising from business indebtedness discharged by the
17 reacquisition of a debt instrument) shall not be operative for
18 purposes of this chapter.

19 [~~(f)~~] (g) Section 121 (with respect to exclusion of gain
20 from sale of principal residence) of the Internal Revenue Code
21 shall be operative for purposes of this chapter, except that for



1 the election under section 121(f), a reference to section 1034
2 treatment means a reference to section 235-2.4(s) in effect for
3 taxable year 1997.

4 ~~[(g)]~~ (h) Section 132 (with respect to certain fringe
5 benefits) of the Internal Revenue Code shall be operative for
6 purposes of this chapter, except that ~~[the provision in section~~
7 ~~132(f)(2) that equalizes the dollar amounts for section~~
8 ~~132(f)(2)(A) and (B) shall not be operative and except that~~
9 ~~section]~~:

10 (1) The suspension in section 132(f)(8) shall not be
11 operative for purposes of this chapter;

12 (2) The suspension in section 132(g)(2) shall not be
13 operative for purposes of this chapter; and

14 (3) Section 132(n) shall not apply to United States
15 Department of Defense Homeowners Assistance Program
16 payments authorized by the American Recovery and
17 Reinvestment Act of 2009.

18 ~~[(h)]~~ (i) Section 163 (with respect to interest) of the
19 Internal Revenue Code shall be operative for the purposes of
20 this chapter, except that ~~[provisions in section]~~ the following



provisions shall not be operative for the purposes of this
chapter:

(1) Section 163(d) (4) (B) (defining net investment income
to exclude dividends) [7-section];

(2) Section 163(e) (5) (F) (suspension of applicable high-
yield discount obligation (AHYDO) rules) [and-section];

(3) 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.];

and

(4) Section 163(h) (3) (F) (limiting mortgage interest).

~~[(i)]~~ (j) 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:



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

4 (B) A taxpayer filing as a head of household with a
5 federal adjusted gross income of less than
6 \$150,000; and

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

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

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

16 (1) The amount prescribed by sections 165(h)(1) (relating
17 to the limitation per casualty) of the Internal
18 Revenue Code shall be a \$100 limitation per casualty~~[7~~
19 ~~and section]~~;

20 (2) Section 165(h)(3)(A) and (B) (both of which relate to
21 special rules for personal casualty gains and losses



1 in federally declared disasters) of the Internal
2 Revenue Code shall not be operative for the purposes
3 of this chapter~~[+]~~;

4 (3) Section 165(h) (5) (relating to the limitation to
5 federally declared disasters) shall not be operative
6 for purposes of this chapter; and

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

12 ~~[(+)]~~ (1) Section 168 (with respect to the accelerated
13 cost recovery system) of the Internal Revenue Code shall be
14 operative for purposes of this chapter, except that sections
15 168(j) (relating to property on Indian reservations), 168(k)
16 (relating to the special allowance for certain property acquired
17 during the period specified therein), 168(m) (relating to the
18 special allowance for certain reuse and recycling property), and
19 168(n) (relating to the special allowance for qualified disaster
20 assistance property) of the Internal Revenue Code shall not be
21 operative for purposes of this chapter.



1 [~~(l)~~] (m) Section 172 (with respect to net operating loss
2 deductions) of the Internal Revenue Code shall be operative for
3 purposes of this chapter, as further provided in section
4 235-7(d), except that section 172(b)(1)(J) and (j) (both of
5 which relate to qualified disaster losses) of the Internal
6 Revenue Code shall not be operative for purposes of this
7 chapter.

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

12 (1) The aggregate cost provided in section 179(b)(1),
13 which may be taken into account under section 179(a)
14 for any taxable year, shall not exceed \$25,000;

15 (2) The amount at which the reduction in limitation
16 provided in section 179(b)(2) begins shall exceed
17 \$200,000 for any taxable year; and

18 (3) The following shall not be operative for purposes of
19 this chapter:

20 (A) Defining section 179 property to include computer
21 software in section 179(d)(1);



- 1 (B) Inflation adjustments in section 179(b)(5);
2 (C) Irrevocable election in section 179(c)(2); and
3 (D) Special rules for qualified disaster assistance
4 property in section 179(e).

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

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

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

19 ~~[(p)]~~ (r) Section 220 (with respect to medical savings
20 accounts) of the Internal Revenue Code shall be operative for
21 the purpose of this chapter, but only with respect to medical



1 services accounts that have been approved by the Secretary of
2 the Treasury of the United States.

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

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

15 ~~[(r)]~~ (u) Section 280E (with respect to expenditures in
16 connection with the illegal sale of drugs) of the Internal
17 Revenue Code shall be operative for the purposes of this
18 chapter, except that section 280E shall not be operative with
19 respect to the production and sale of medical cannabis and
20 manufactured cannabis products by dispensaries licensed under



1 chapter 329D and their subcontractors, as defined in section
2 329D-1.

3 ~~[(s)]~~ (v) Section 382 (with respect to limitation on net
4 operating loss carryforwards and certain built-in losses
5 following ownership change) of the Internal Revenue Code shall
6 be operative for the purposes of this chapter, except that
7 section 382(n) shall not be operative for purposes of this
8 chapter.

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

20 ~~[(u)]~~ (x) In administering the provisions of sections 410
21 to 417 (with respect to special rules relating to pensions,



1 profit sharing, stock bonus plans, etc.), sections 418 to 418E
2 (with respect to special rules for multiemployer plans), and
3 sections 419 and 419A (with respect to treatment of welfare
4 benefit funds) of the Internal Revenue Code, the department of
5 taxation shall adopt rules under chapter 91 relating to the
6 specific requirements under those sections and to other
7 administrative requirements under those sections as may be
8 necessary for the efficient administration of sections 410 to
9 419A.

10 In administering sections 401 to 419A (with respect to
11 deferred compensation) of the Internal Revenue Code, Public Law
12 93-406, section 1017(i), shall be operative for the purposes of
13 this chapter.

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



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

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

15 [~~(x)~~] (aa) In administering section 457 (with respect to
16 compensation plans of state and local governments and tax-exempt
17 organizations) of the Internal Revenue Code, any funds that
18 represent pre-tax employee deferrals or contributions that are
19 distributed from the deferred compensation plan and used solely
20 to obtain retirement credits under the state employees'
21 retirement system shall not be treated as a rollover for



1 purposes of section 457(e)(16)(A) of the Internal Revenue Code
2 and those funds shall be subject to income tax under this
3 chapter.

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

10 ~~[(z)]~~ (cc) Section 469 (with respect to passive activities
11 and credits limited) of the Internal Revenue Code shall be
12 operative for the purposes of this chapter. For the purpose of
13 computing the offset for rental real estate activities for state
14 income tax purposes, adjusted gross income as used in section
15 469 as operative for this chapter means federal adjusted gross
16 income.

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



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

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

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

20 [~~(ee)~~] (ff) Sections 527 (with respect to political
21 organizations) and 528 (with respect to certain homeowners



1 associations) of the Internal Revenue Code shall be operative
2 for the purposes of this chapter and the taxes imposed in each
3 section are hereby imposed by this chapter at the rates
4 determined under section 235-71.

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

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

14 [~~ff~~] (ii) Section 530 (with respect to Coverdell
15 education savings accounts) of the Internal Revenue Code shall
16 be operative for the purposes of this chapter. For the purpose
17 of determining the maximum amount that a contributor could make
18 to an education individual retirement account for state income
19 tax purposes, modified adjusted gross income as used in section
20 530 as operative for this chapter means federal modified
21 adjusted gross income as defined in section 530."



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

"235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518. (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

(1) The deduction for exemptions shall be allowed as provided in section 235-54(b);

(2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State; and

(3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235- 51 on estates and trusts.

(b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal



1 Revenue Code shall be operative for the purposes of this chapter
2 and the tax imposed therein is hereby imposed by this chapter at
3 the rate determined under this chapter; except that the
4 reference to tax-exempt interest to which section 103 of the
5 Internal Revenue Code applies in section 667(a) of the Internal
6 Revenue Code shall instead be a reference to tax-exempt interest
7 to which section 235-7(b) applies.

8 (c) Section 685 (with respect to treatment of qualified
9 funeral trusts) of the Internal Revenue Code shall be operative
10 for purposes of this chapter, except that the tax imposed under
11 this chapter shall be computed at the tax rates provided under
12 section 235-51, and no deduction for the exemption amount
13 provided in section 235-54(b) shall be allowed. The cost-of-
14 living adjustment determined under section 1(f)(3) of the
15 Internal Revenue Code shall be operative for the purpose of
16 applying section 685(c)(3) under this chapter.

17 (d) Section 704 of the Internal Revenue Code (with respect
18 to a partner's distributive share) shall be operative for
19 purposes of this chapter; except that section 704(b)(2) shall
20 not apply to:



1 (1) Allocations of the high technology business investment
2 tax credit allowed by section 235-110.9 for
3 investments made before May 1, 2009;

4 (2) Allocations of net operating loss pursuant to section
5 235-111.5;

6 (3) Allocations of the attractions and educational
7 facilities tax credit allowed by section 235-110.46;
8 or

9 (4) Allocations of low-income housing tax credits among
10 partners under section 235-110.8.

11 (e) Section 1202 (with respect to partial exclusion for
12 gain from certain small business stock) of the Internal Revenue
13 Code shall be operative for purposes of this chapter, except
14 that section 1202(a) (3) and (4) shall not be operative for
15 purposes of this chapter.

16 (f) Section 1212 (with respect to capital loss carrybacks
17 and carryforwards) of the Internal Revenue Code shall be
18 operative for the purposes of this chapter; except that for the
19 purposes of this chapter the capital loss carryback provisions
20 of section 1212 shall not be operative and the capital loss
21 carryforward allowed by section 1212(a) shall be limited to five



1 years; except for a qualified high technology business as
2 defined in section 235-7.3, which shall be limited to fifteen
3 years.

4 (g) Section 1221 (with respect to the definition of
5 capital assets) is operative; provided that the provisions of
6 section 301 of Public Law 110-343, which provide that gain or
7 loss from the sale or exchange of any applicable preferred stock
8 by any applicable financial institution (such terms being
9 defined by Public Law 110-343) shall be treated as ordinary
10 income or loss, shall not be operative. A sale or exchange of
11 any applicable preferred stock by any applicable financial
12 institution (as those terms are defined by section 301 of Public
13 Law 110-343) shall be treated as a sale of a capital asset and
14 taxed accordingly.

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



(i) Section 1400N (with respect to tax benefits for Gulf Opportunity Zone) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain tax-exempt bonds); 1400N(c) (with respect to the low income housing credit); 1400N(d) (with respect to special allowance for certain property acquired on or after August 28, 2005); 1400N(e) (with respect to increase in expensing under section 179); 1400N(h) (with respect to increase in rehabilitation credit); 1400N(l) (with respect to credit to holders of Gulf tax credit bonds); 1400N(m) (with respect to application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone); 1400N(n) (with respect to treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements) shall not be operative for purposes of this chapter.

(j) Section 1400S (with respect to additional tax relief provisions) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 1400S(d) (with



1 respect to the special rule for determining earned income) shall
2 not be operative for the purposes of this chapter.

3 (k) Section 6015 (with respect to relief from joint and
4 several liability on joint return) of the Internal Revenue Code
5 is operative for purposes of this chapter.

6 (l) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to
7 disclosures of information to the United States Justice
8 Department or appropriate federal or state law enforcement
9 agency for purposes of investigating terrorist incidents,
10 threats, or activities, and for analyzing intelligence
11 concerning investigating terrorist incidents, threats, or
12 activities) of the Internal Revenue Code shall be operative for
13 the purposes of this chapter.

14 (m) Sections 6221, 6222, ~~[and 6231]~~ 6223, 6225, and 6226
15 (with respect to ~~[tax treatment of partnership items]~~
16 partnership audits) of subchapter C of chapter 63 of the
17 Internal Revenue Code shall be operative for the purposes of
18 this chapter; provided that if a taxpayer makes the election
19 under section 6221(b) for federal income tax purposes, that
20 taxpayer must make the same election for Hawaii income tax
21 purposes.



1 (n) ~~[Subchapter D (sections 6240 to 6255) (with respect to~~
2 ~~simplified audit procedures for electing large partnerships)]~~
3 Section 6241 of the Internal Revenue Code shall be operative for
4 the purposes of this chapter~~[, with due regard to Chapter 232~~
5 ~~relating to tax appeals.];~~ except that subsections (1), (3), and
6 (5) shall not be operative for purposes of this chapter.

7 (o) Section 6501(e) (with respect to limitation on
8 assessment and collection where there is a substantial omission
9 of items) of the Internal Revenue Code shall be operative for
10 purposes of this chapter.

11 (p) Section 6511(h) (with respect to running of periods of
12 limitation suspended while taxpayer is unable to manage
13 financial affairs due to disability) of the Internal Revenue
14 Code shall be operative for purposes of this chapter, with due
15 regard to section 235-111 relating to the limitation period for
16 assessment, levy, collection, or credit.

17 (q) Section 7518 (with respect to capital construction
18 fund for commercial fishers) of the Internal Revenue Code shall
19 be operative for the purposes of this chapter. Qualified
20 withdrawals for the acquisition, construction, or reconstruction
21 of any qualified asset that is attributable to deposits made



1 before the effective date of this section shall not reduce the
2 basis of the asset when withdrawn. Qualified withdrawals shall
3 be treated on a first-in-first-out basis."

4 SECTION 5. Section 236E-3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§236E-3 Conformance to the Internal Revenue Code; general**
7 **application.** For all decedents dying after December 31, [~~2016,~~]
8 2017, as used in this chapter, "Internal Revenue Code" means
9 subtitle B of the federal Internal Revenue Code of 1986, as
10 amended as of December 31, [~~2016,~~ 2017, as it applies to the
11 determination of gross estate, adjusted gross estate, federal
12 taxable estate, and generation-skipping transfers, except those
13 provisions of the Internal Revenue Code and federal public laws
14 that, pursuant to this chapter, do not apply or are otherwise
15 limited in application."

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

18 SECTION 7. This Act shall take effect upon its approval;
19 provided that:

20 (1) Section 2 shall apply to taxable years beginning after
21 December 31, 2017; and



1 (2) Section 3 shall apply to decedents dying or taxable
2 transfers occurring after December 31, 2017.



Report Title:

Conformity to the Internal Revenue Code for 2017; Income Tax;
Estate and Generation-skipping Transfer Tax

Description:

Conforms Hawaii income and estate and generation-skipping
transfer tax laws to the Internal Revenue Code of 1986, as
amended as of December 31, 2017. (HB2394 HD1 PROPOSED)

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not legislation or evidence of legislative intent.*

