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# 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



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

8 Prior law shall continue to be used to determine:

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

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

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

19 (1) Subchapter A (sections 1 to 59A) (with respect to  
20 determination of tax liability), except section  
21 1(h)(2) (relating to net capital gain reduced by the



1 amount taken into account as investment income),  
2 except sections 2(a), 2(b), and 2(c) (with respect to  
3 the definition of "surviving spouse" and "head of  
4 household"), except section 41 (with respect to the  
5 credit for increasing research activities), except  
6 section 42 (with respect to low-income housing  
7 credit), except sections 47 and 48, as amended, as of  
8 December 31, 1984 (with respect to certain depreciable  
9 tangible personal property), and except section  
10 48(d)(3), as amended, as of February 17, 2009 (with  
11 respect to the treatment of United States Department  
12 of Treasury grants made under section 1603 of the  
13 American Recovery and Reinvestment Tax Act of 2009).  
14 For treatment, see sections 235-110.91, 235-110.7, and  
15 235-110.8;

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

19 (3) Section 86 (with respect to social security and tier 1  
20 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        [~~(14)~~] (16) Section 196 (with respect to deduction for  
2                    certain unused investment credits);
- 3        [~~(15)~~] (17) Section 199 (with respect to the U.S. production  
4                    activities deduction);
- 5        (18) Section 199A (with respect to qualified business  
6                    income);
- 7        [~~(16)~~] (19) Section 222 (with respect to qualified tuition  
8                    and related expenses);
- 9        [~~(17)~~] (20) Sections 241 to 247 (with respect to special  
10                    deductions for corporations). For treatment, see  
11                    section 235-7(c);
- 12        (21) Section 250 (with respect to foreign-derived  
13                    intangible income and global intangible low-taxed  
14                    income);
- 15        (22) Section 267A (with respect to certain related party  
16                    amounts paid or accrued in hybrid transactions or with  
17                    hybrid entities);
- 18        [~~(18)~~] (23) Section 280C (with respect to certain expenses  
19                    for which credits are allowable). For treatment, see  
20                    section 235-110.91;



1        [~~(19)~~] (24) Section 291 (with respect to special rules  
2                    relating to corporate preference items);  
3        [~~(20)~~] (25) Section 367 (with respect to foreign  
4                    corporations);  
5        [~~(21)~~] (26) Section 501(c)(12), (15), (16) (with respect to  
6                    exempt organizations); except that section 501(c)(12)  
7                    shall be operative for companies that provide potable  
8                    water to residential communities that lack any access  
9                    to public utility water services;  
10       [~~(22)~~] (27) Section 515 (with respect to taxes of foreign  
11                    countries and possessions of the United States);  
12        (28) Section 529 (with respect to qualified tuition  
13                    programs);  
14        (29) Section 529A (with respect to qualified ABLE  
15                    programs);  
16        [~~(23)~~] (30) Subchapter G (sections 531 to 565) (with respect  
17                    to corporations used to avoid income tax on  
18                    shareholders);  
19        [~~(24)~~] (31) Subchapter H (sections 581 to 597) (with respect  
20                    to banking institutions), except section 584 (with



1           respect to common trust funds). For treatment, see  
2           chapter 241;

3       ~~[(25)]~~ (32) Section 642(a) and (b) (with respect to special  
4           rules for credits and deductions applicable to  
5           trusts). For treatment, see sections 235-54(b) and  
6           235-55;

7       ~~[(26)]~~ (33) Section 646 (with respect to tax treatment of  
8           electing Alaska Native settlement trusts);

9       ~~[(27)]~~ (34) Section 668 (with respect to interest charge on  
10          accumulation distributions from foreign trusts);

11       ~~[(28)]~~ (35) Subchapter L (sections 801 to 848) (with respect  
12          to insurance companies). For treatment, see sections  
13          431:7-202 and 431:7-204;

14       ~~[(29)]~~ (36) Section 853 (with respect to foreign tax credit  
15          allowed to shareholders). For treatment, see section  
16          235-55;

17       ~~[(30)]~~ (37) Section 853A (with respect to credits from tax  
18          credit bonds allowed to shareholders);

19       ~~[(31)]~~ (38) Subchapter N (sections 861 to 999) (with respect  
20          to tax based on income from sources within or without  
21          the United States), except sections 985 to 989 (with



1           respect to foreign currency transactions). For  
2           treatment, see sections 235-4, 235-5, and 235-7(b),  
3           and 235-55;

4       ~~[(32)]~~ (39) Section 1042(g) (with respect to sales of stock  
5           in agricultural refiners and processors to eligible  
6           farm cooperatives);

7       ~~[(33)]~~ (40) Section 1055 (with respect to redeemable ground  
8           rents);

9       ~~[(34)]~~ (41) Section 1057 (with respect to election to treat  
10          transfer to foreign trust, etc., as taxable exchange);

11       ~~[(35)]~~ (42) Sections 1291 to 1298 (with respect to treatment  
12          of passive foreign investment companies);

13       ~~[(36)]~~ (43) Subchapter Q (sections 1311 to 1351) (with  
14          respect to readjustment of tax between years and  
15          special limitations);

16       ~~[(37)]~~ (44) Subchapter R (sections 1352 to 1359) (with  
17          respect to election to determine corporate tax on  
18          certain international shipping activities using per  
19          ton rate);

20       ~~[(38)]~~ (45) Subchapter U (sections 1391 to 1397F) (with  
21          respect to designation and treatment of empowerment



1 zones, enterprise communities, and rural development  
2 investment areas). For treatment, see chapter 209E;  
3 ~~[(39)]~~ (46) Subchapter W (sections 1400 to 1400C) (with  
4 respect to District of Columbia enterprise zone);  
5 ~~[(40)]~~ (47) Section 14000 (with respect to education tax  
6 benefits);  
7 ~~[(41)]~~ (48) Section 1400P (with respect to housing tax  
8 benefits);  
9 ~~[(42)]~~ (49) Section 1400R (with respect to employment  
10 relief);  
11 ~~[(43)]~~ (50) Section 1400T (with respect to special rules for  
12 mortgage revenue bonds);  
13 ~~[(44)]~~ (51) Section 1400U-1 (with respect to allocation of  
14 recovery zone bonds);  
15 ~~[(45)]~~ (52) Section 1400U-2 (with respect to recovery zone  
16 economic development bonds); ~~[and]~~  
17 ~~[(46)]~~ (53) Section 1400U-3 (with respect to recovery zone  
18 facility bonds) ~~[-]~~; and  
19 (54) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with  
20 respect to opportunity zones)."



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

3 "§235-2.4 Operation of certain Internal Revenue Code  
4 provisions; sections 63 to 530. (a) Section 63 (with respect  
5 to taxable income defined) of the Internal Revenue Code shall be  
6 operative for the purposes of this chapter, subject to the  
7 following:

8 (1) Section 63(c)(1)(B) (relating to the additional  
9 standard deduction), 63(c)(1)(C) (relating to the real  
10 property tax deduction), 63(c)(1)(D) (relating to the  
11 disaster loss deduction), 63(c)(1)(E) (relating to the  
12 motor vehicle sales tax deduction), 63(c)(4) (relating  
13 to inflation adjustments), 63(c)(7) (defining the real  
14 property tax deduction), 63(c)(8) (defining the  
15 disaster loss deduction), 63(c)(9) (defining the motor  
16 vehicle sales tax deduction), and 63(f) (relating to  
17 additional amounts for the aged or blind) of the  
18 Internal Revenue Code shall not be operative for  
19 purposes of this chapter;

20 (2) Section 63(c)(2) (relating to the basic standard  
21 deduction) of the Internal Revenue Code shall be



1           operative, except that the standard deduction amounts  
2           provided therein shall instead mean:

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

4                   (i)   A joint return as provided by section  
5                           235-93; or

6                   (ii)  A surviving spouse (as defined in section  
7                           2(a) of the Internal Revenue Code);

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

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

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

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



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

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

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

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

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

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



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

5           ~~[(e)]~~ (f) Section 108 (with respect to income from  
6 discharge of indebtedness) of the Internal Revenue Code shall be  
7 operative for purposes of this chapter, except that section  
8 108(i) (relating to deferral and ratable inclusion of income  
9 arising from business indebtedness discharged by the  
10 reacquisition of a debt instrument) shall not be operative for  
11 purposes of this chapter.

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

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



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

6        (2) Section 132(n) shall not apply to United States  
7        Department of Defense Homeowners Assistance Program  
8        payments authorized by the American Recovery and  
9        Reinvestment Act of 2009.

10        [~~h~~] (i) 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)~~] (j)    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 [~~j~~] (k) 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~~[7~~  
13 ~~and section]~~ i

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~~[7]~~ i

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)]~~ (l) 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)]~~ (m) 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~~] (n) 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)]~~ (o) 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       (p) 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)]~~ (q) 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)]~~ (r) 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)]~~ (s) 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 (t) 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 [~~s~~] (u) 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~~] (v) 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 ~~[(t)]~~ (w) 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 ~~[(u)]~~ (x) 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)~~] (y) 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)]~~ (z) 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)]~~ (aa) 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)]~~ (bb) 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)]~~ (cc) 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)]~~ (dd) 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~~] (ee) 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~~] (ff) 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~~] (gg) 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) and 529(e)(3)(A)(iii) shall not  
2 be operative.

3 [~~ee~~] (hh) 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~~] (ii) 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."~~

20 PART III



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

4 "§236E- Audit of return; procedure upon failure to file  
5 return; additional taxes; limitation period. (a) The director  
6 of taxation, or the director's designee, is authorized and  
7 empowered to examine all account books, bank books, bank  
8 statements, records, vouchers, copies of federal tax returns,  
9 and any and all other documents and evidence having any  
10 relevancy to the determination of any amount relevant to the  
11 Hawaii transfer tax, as required to be returned under this  
12 chapter, and the director may employ the director's powers under  
13 section 231-7 for these purposes.

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

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



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

3 (d) For the purposes of this section, the department shall  
4 give notice of the assessment to the person required to file the  
5 return required under this chapter. The person put on notice  
6 shall have thirty days to confer with the department as to the  
7 proposed assessment. After the expiration of thirty days from  
8 such notification the department shall finalize the assessment  
9 and shall give notice to the person required to file the return  
10 required under this chapter of the tax and interest and  
11 penalties, if any. The amount shall be paid within twenty days  
12 after the date the notice was mailed, properly addressed to the  
13 person required to file the return required to be filed under  
14 this chapter at that 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 said 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 31, 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 ~~[,]~~; 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[~~7~~]; or

15           whichever is later.

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,





**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 12/31/2017, except as provided. (SB2821 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is  
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