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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       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, except as provided by this Act.

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) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with  
8               respect to opportunity 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



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

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

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

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

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

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

(2) Suspension in section 68(f) shall not be operative for 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)]~~ 235-2.4(v)  
3 in effect for 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]~~:

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

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

16 ~~[(h)]~~ (i) Section 163 (with respect to interest) of the  
17 Internal Revenue Code shall be operative for the purposes of  
18 this chapter, except that the following provisions [in section]  
19 shall not be operative for purposes of this chapter:

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



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

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

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

8        ~~[(i)]~~ (j) Section 164 (with respect to taxes) of the  
9 Internal Revenue Code shall be operative for the purposes of  
10 this chapter, except that:

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

14        (2) The deductions under section 164(a)(3) and (b)(5)  
15        shall not be operative for corporate taxpayers and  
16        shall be operative only for the following individual  
17        taxpayers:

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



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

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

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

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

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

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





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

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

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

19       [~~(l)~~] (m) Section 172 (with respect to net operating loss  
20       deductions) of the Internal Revenue Code shall be operative for  
21       purposes of this chapter, as further provided in section



1 235-7(d), except that section 172(b)(1)(J) and (j) (both of  
2 which relate to qualified disaster losses) of the Internal  
3 Revenue Code shall not be operative for purposes of this  
4 chapter.

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

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

12 (2) The amount at which the reduction in limitation  
13 provided in section 179(b)(2) begins shall exceed  
14 \$200,000 for any taxable year; and

15 (3) The following shall not be operative for purposes of  
16 this chapter:

17 (A) Defining section 179 property to include computer  
18 software in section 179(d)(1);

19 (B) Inflation adjustments in section 179(b)(5);

20 (C) Irrevocable election in section 179(c)(2); and



1 (D) Special rules for qualified disaster assistance  
2 property in section 179(e).

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

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

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

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



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

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

13        [~~(r)~~] (u) Section 280E (with respect to expenditures in  
14 connection with the illegal sale of drugs) of the Internal  
15 Revenue Code shall be operative for the purposes of this  
16 chapter, except that section 280E shall not be operative with  
17 respect to the production and sale of medical cannabis and  
18 manufactured cannabis products by dispensaries licensed under  
19 chapter 329D and their subcontractors, as defined in section  
20 329D-1.



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

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

18        [~~u~~] (x) In administering the provisions of sections 410  
19 to 417 (with respect to special rules relating to pensions,  
20 profit sharing, stock bonus plans, etc.), sections 418 to 418E  
21 (with respect to special rules for multiemployer plans), and



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

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

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

19 [~~(v)~~] (y) In administering section 403 (with respect to  
20 taxation of employee annuities) of the Internal Revenue Code,  
21 any funds that represent pre-tax employee deferrals or



1 contributions that are distributed from the annuity and used  
2 solely to obtain retirement credits under the state employees'  
3 retirement system shall not be treated as a rollover for  
4 purposes of section 403(b)(8)(A) of the Internal Revenue Code,  
5 and those funds shall be subject to income tax under this  
6 chapter.

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

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



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

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

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

18        "Unrelated business taxable income" means the same as in  
19 the Internal Revenue Code, except that in the computation  
20 thereof sections 235-3 to 235-5, and 235-7 (except subsection  
21 (c)), shall apply, and in the determination of the net operating





1 loss deduction there shall not be taken into account any amount  
2 of income or deduction that is excluded in computing the  
3 unrelated business taxable income. Unrelated business taxable  
4 income shall not include any income from a legal service plan.

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

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

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



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

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

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

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

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



1       "(h) Subchapter S (sections 1361 to 1379) (with respect to  
2 tax treatment of S corporations and their shareholders) of  
3 chapter 1 of the Internal Revenue Code shall be operative for  
4 the purposes of this chapter as provided in part VII[~~; except~~  
5 ~~that section 1374(d)(7)(B), (C), and (D) shall not be operative~~  
6 ~~for purposes of this chapter]~~."

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

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

15       (n) [~~Subchapter D (sections 6240 to 6255) (with respect to~~  
16 ~~simplified audit procedures for electing large partnerships)]  
17 Section 6241 (with respect to consistency between a partner's  
18 return and the partnership's return) of the Internal Revenue  
19 Code shall be operative for the purposes of this chapter[~~;~~ ~~with~~  
20 ~~due regard to chapter 232 relating to tax appeals.~~]; except that~~



1 the definitions that appear in items numbered (1), (3), and (5)  
2 shall not be operative for purposes of this chapter."

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

6 "Applicable generation-skipping transfer tax rate" means  
7 2.25 per cent multiplied by the inclusion ratio with respect to  
8 any property transferred in a generation-skipping transfer as  
9 determined under section 2642 of the Internal Revenue Code[~~-~~] as  
10 amended as of December 31, 2017."

11 SECTION 6. Section 236E-3, Hawaii Revised Statutes, is  
12 amended to read as follows:

13 **"§236E-3 Conformance to the Internal Revenue Code; general**  
14 **application.** For all decedents dying after December 31, [~~2016,~~]  
15 2017, as used in this chapter, "Internal Revenue Code" means  
16 subtitle B of the federal Internal Revenue Code of 1986, as  
17 amended as of December 31, [~~2016,~~] 2017, as it applies to the  
18 determination of gross estate, adjusted gross estate, federal  
19 taxable estate, and generation-skipping transfers, except those  
20 provisions of the Internal Revenue Code and federal public laws



1 that, pursuant to this chapter, do not apply or are otherwise  
2 limited in application."

3 SECTION 7. Section 236E-6, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§236E-6 Applicable exclusion amounts. (a) An exclusion  
6 from a Hawaii taxable estate shall be allowed to the estate of  
7 every decedent against the tax imposed by section 236E-8. For  
8 the purpose of this section, the applicable exclusion amount is  
9 ~~[the same as the]~~ equal to:

- 10 (1) The federal applicable exclusion amount ~~[, the]~~ ;  
11 (2) The exemption equivalent of the unified credit reduced  
12 by the amount of taxable gifts made by the decedent  
13 that reduces the amount of the federal applicable  
14 exclusion amount ~~[,]~~ ; or ~~[the]~~  
15 (3) The exemption equivalent of the unified credit on the  
16 decedent's federal estate tax return,  
17 as set forth for the decedent in chapter 11 of the Internal  
18 Revenue Code as amended as of December 31, 2017, and as further  
19 adjusted ~~[below:]~~ pursuant to subsection (b).

20 (b) The applicable exclusion amount calculated in  
21 subsection (a) shall be further adjusted as follows:



- 1           (1) For residents, 100 per cent of the applicable  
2           exclusion amount;
- 3           (2) For nonresidents, an amount computed by multiplying  
4           the applicable exclusion amount by a fraction, the  
5           numerator of which is the value of the property in the  
6           State subject to tax under this chapter, and the  
7           denominator of which is the federal gross estate; and
- 8           (3) For nonresidents not citizens, an amount computed by  
9           multiplying the exemption equivalent of the unified  
10          credit by a fraction, the numerator of which is the  
11          value of the property in the State subject to tax  
12          under this chapter, and the denominator of which is  
13          the federal gross estate.
- 14    ~~[(b)(1)]~~ (c)(1)       For the purposes of this chapter, every  
15          decedent having property in the State shall be  
16          presumed to have died a resident of the State. The  
17          burden of proof in an estate tax proceeding shall be  
18          upon any decedent's estate claiming exemption from the  
19          tax imposed by this chapter by reason of the  
20          decedent's alleged nonresidency;



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

7       (A) The person has filed the return required under  
8       this chapter;

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

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

18       (D) The department has not previously determined  
19       whether the decedent died a resident of the  
20       State;



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





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

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

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

16 "(a) ~~[A state estate tax return shall be filed in the case~~  
17 ~~of every decedent whose estate is required by the laws of the~~  
18 ~~United States to file a federal estate tax return.]~~ This  
19 section shall apply to a decedent who, at the time of death was:

20 (1) A resident of the State; or



(2) A nonresident of the State whose gross estate includes any real property situated in the State or tangible personal property having a situs in the State. Where the decedent is the sole owner of a single member limited liability company that has not elected to be taxed as a corporation, the single member limited liability company shall be disregarded for purposes of this chapter and this chapter shall be applied as if the sole member is the owner of the property."

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

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

"(a) The Hawaii transfer tax return, including any supplemental or amended return, is required to be filed pursuant to this chapter whenever a federal estate tax return or applicable generation-skipping transfer tax return is required to be filed~~[,]~~ or any tax is owed under this chapter. The return shall be filed, and the Hawaii transfer tax, including any additional tax that may become due~~[, shall]~~ :

(1) Shall be paid by the same person or persons, respectively, who are required to pay the federal



1 transfer tax and file the federal return, including  
2 any duly authorized executor or administrator[-]; or

3 (2) If no federal transfer tax or federal return is due,  
4 shall be paid by the person who would be required to  
5 pay the federal transfer tax and file the federal  
6 return if any were due.

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



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

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

10           "(e) If a federal transfer tax return is due and any  
11 portion of the federal transfer tax is deferred or to be paid in  
12 installments under the provisions of the Internal Revenue Code,  
13 the portion of the Hawaii transfer tax that is subject to  
14 deferral or payable in installments shall be determined by  
15 multiplying the Hawaii transfer tax by a fraction, the numerator  
16 of which is the gross value of the assets included in the  
17 transferred property having a tax situs in the State and that  
18 give rise to the deferred or installment payment under the  
19 Internal Revenue Code, and the denominator of which is the gross  
20 value of all assets included in the transferred property having  
21 a tax situs in the State.



1       If a federal transfer tax return is not due, the executor  
2       may elect to defer or pay in installments the Hawaii transfer  
3       tax under section 6166 of the Internal Revenue Code as if a  
4       federal transfer tax return was due and any portion of the  
5       federal transfer tax was deferred or allowed to be paid in  
6       installments under the provisions of the Internal Revenue Code;  
7       provided that the director of taxation shall determine the  
8       eligibility for deferral or installment payment.

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

15      Acceleration of payment under this section shall occur  
16      under the same circumstances and in the same manner as provided  
17      in the Internal Revenue Code."

18      SECTION 10. Section 236E-11, Hawaii Revised Statutes, is  
19      amended to read as follows:

20      "~~+~~§236E-11~~+~~ Extension of time to file return. If a  
21      federal transfer tax return is due and the date for filing the



1 federal return or the date for payment of the federal transfer  
2 tax is extended by the Internal Revenue Service, the filing of  
3 the return and payment of the tax imposed by this chapter shall  
4 be due on the respective dates specified by the Internal Revenue  
5 Service in granting a request for extension. If the request for  
6 extension is granted by the Internal Revenue Service, the person  
7 required to file the Hawaii transfer tax return shall file along  
8 with the return required under this chapter a copy of the  
9 request for extension showing approval of the extension by the  
10 Internal Revenue Service. If a request for extension of time to  
11 file the federal return is denied by the Internal Revenue  
12 Service, no penalty shall be due under this chapter if the  
13 return required by this chapter is filed within the time  
14 specified by the Internal Revenue Service for filing the federal  
15 return. If a request for extension of time to pay the federal  
16 transfer tax is denied by the Internal Revenue Service, no  
17 penalty shall be due under this chapter if the tax is paid  
18 within the time specified by the Internal Revenue Service for  
19 paying the federal transfer tax. The extension shall be made by  
20 filing a true copy of the federal extension or extensions of



1 time for filing or payment, or both, with the return required  
2 under section 236E-9.

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

6 SECTION 11. Section 236E-17, Hawaii Revised Statutes, is  
7 amended by amending subsections (c) and (d) to read as follows:

8 "(c) The person required to report and pay the federal  
9 generation-skipping transfer tax, or, if no federal generation-  
10 skipping transfer tax is due, the person who would be required  
11 to report and pay the federal generation-skipping transfer tax  
12 if any were due, shall file with the department [on or before]  
13 the [date the federal generation skipping transfer tax return is  
14 required to be filed, including any extension of time for filing  
15 the federal return:] following:

16 (1) A report for the generation-skipping transfer tax due  
17 under this section; and

18 (2) A true copy of the federal generation-skipping  
19 transfer tax return[-], if any is due.

20 The information required under this subsection shall be  
21 filed with the department on or before the date prescribed in



1 section 2662 of the Internal Revenue Code and the regulations  
2 promulgated thereunder.

3 (d) If a federal transfer tax is due the person required  
4 to file the return has obtained an extension of time for filing  
5 the federal return, the filing required by subsection (c) shall  
6 be extended similarly until the end of the time period granted  
7 in the extension of time for the federal return. A true copy of  
8 the extension shall be filed with the department along with the  
9 report required under subsection (c).

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

13 SECTION 12. Section 236E-21, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "§236E-21 Statute of limitations; claims for refund. (a)  
16 If the amount paid with respect to any taxable transfer is less  
17 than the amount due under this chapter, the department shall  
18 assess the underpayment from the person responsible for  
19 payment[; ~~provided that a proceeding to assess the underpayment~~  
20 ~~amount shall commence within:~~].





1        (b) If a federal tax return is due, a proceeding to assess  
2 the underpayment amount shall commence within:

3        (1) Three years from the date the federal [estate]  
4        transfer tax return was filed; or

5        (2) One year after the date of final determination of the  
6        related federal transfer tax,  
7 whichever is later.

8        (c) If a federal tax return is not due, a proceeding to  
9 assess the underpayment amount shall commence within:

10       (1) Three years from the date the Hawaii transfer tax  
11       return was filed; or

12       (2) One year after the date of final determination of the  
13       related Hawaii transfer tax,  
14 whichever is later.

15       (d) Amounts set forth on a duly filed and accepted federal  
16 return for valuations of property, the gross estate, federal  
17 taxable estate, and applicable exclusion amount shall be  
18 conclusive for purposes of this chapter, and the return required  
19 under this chapter shall use the same amounts as the  
20 corresponding amounts on the federal return; provided that with  
21 regard to a decedent who was in a valid civil union or



1 recognized equivalent under the laws of the State, but that is  
2 not recognized by the Internal Revenue Code as a marriage for  
3 federal tax purposes, computations of the valuations of  
4 property, the gross estate, federal taxable estate, and  
5 applicable exclusion amount shall be made as if the civil union  
6 or recognized equivalent under the laws of the State were  
7 recognized as a marriage.

8       ~~[(b)]~~ (e) If the amount paid with respect to any taxable  
9 transfer is more than the amount due under this chapter, the  
10 department shall refund the excess to the person entitled to the  
11 refund together with interest at the existing statutory rate of  
12 interest in the manner provided in section 231-23 ~~[; provided~~  
13 ~~that no amount shall be refunded unless application for the~~  
14 ~~refund is filed with the department within:]~~.

15       (f) If a federal transfer tax return was due, an  
16 application for refund shall be filed with the department  
17 within:

- 18       (1) One year after the last date allowable under the  
19               Internal Revenue Code for filing a claim for refund of  
20               any part of the related federal transfer tax; or



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

4           (g) If a federal transfer tax return was not due, an  
5           application for refund shall be filed with the department  
6           within:

7           (1) Three years from the date the Hawaii transfer tax  
8           return was filed; or

9           (2) One year after the date of final determination of the  
10           related Hawaii transfer tax,  
11           whichever is later.

12           (h) As to all tax payments for which a refund or credit is  
13           not authorized by this section, including, without prejudice to  
14           the generality of the foregoing, cases of unconstitutionality,  
15           the remedies provided by appeal or by section 40-35 are  
16           exclusive."

17           SECTION 13. Statutory material to be repealed is bracketed  
18           and stricken. New statutory material is underscored.

19           SECTION 14. This Act shall take effect upon its approval;  
20           provided that:



- 1           (1) Sections 2, 3, and 4 shall apply to taxable years  
2           beginning after December 31, 2017; and  
3           (2) Sections 5, 6, 7, 8, 9, 10, 11, and 12 shall apply to  
4           decedents dying or taxable transfers occurring after  
5           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 12/31/2017, except as provided. (SD1)

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