

JAN 24 2018

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# A BILL FOR AN ACT

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RELATING TO TAXATION.

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

1       SECTION 1.   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



Internal Revenue Code shall not be operative for purposes of this chapter;

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

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

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

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

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

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



1 Internal Revenue Code shall be operative, except that  
2 the limitation shall be the greater of \$500 or the  
3 individual's earned income; and

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

6 (b) Section 68 (with respect to the overall limitation on  
7 itemized deductions) of the Internal Revenue Code shall be  
8 operative; provided that the thresholds shall be those that were  
9 operative for federal tax year 2009.

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

17 (d) Section 85 (with respect to unemployment compensation)  
18 of the Internal Revenue Code shall be operative for purposes of  
19 this chapter, except that section 85(c) shall not be operative  
20 for purposes of this chapter.



1           (e) Section 108 (with respect to income from discharge of  
2 indebtedness) of the Internal Revenue Code shall be operative  
3 for purposes of this chapter, except that section 108(i)  
4 (relating to deferral and ratable inclusion of income arising  
5 from business indebtedness discharged by the reacquisition of a  
6 debt instrument) shall not be operative for purposes of this  
7 chapter.

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

14           (g) Section 132 (with respect to certain fringe benefits)  
15 of the Internal Revenue Code shall be operative for purposes of  
16 this chapter, except that the provision in section 132(f)(2)  
17 that equalizes the dollar amounts for section 132(f)(2)(A) and  
18 (B) shall not be operative and except that section 132(n) shall  
19 not apply to United States Department of Defense Homeowners  
20 Assistance Program payments authorized by the American Recovery  
21 and Reinvestment Act of 2009.



1           (h) Section 163 (with respect to interest) of the Internal  
2 Revenue Code shall be operative for the purposes of this  
3 chapter, except that provisions in section 163(d)(4)(B)  
4 (defining net investment income to exclude dividends), section  
5 163(e)(5)(F) (suspension of applicable high-yield discount  
6 obligation (AHYDO) rules) and section 163(i)(1) as it applies to  
7 debt instruments issued after January 1, 2010, (defining AHYDO)  
8 shall not be operative for the purposes of this chapter.

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

12           (1) Section 164(a)(6) and (b)(6) shall not be operative  
13 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) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that 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 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. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the



1 exercise of the stock options or warrants granted by a qualified  
2 high technology business as defined in section 235-7.3.

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

13 (l) Section 172 (with respect to net operating loss  
14 deductions) of the Internal Revenue Code shall be operative for  
15 purposes of this chapter, as further provided in section  
16 235-7(d), except that section 172(b)(1)(J) and (j) (both of  
17 which relate to qualified disaster losses) of the Internal  
18 Revenue Code shall not be operative for purposes of this  
19 chapter.

20 (m) Section 179 (with respect to the election to expense  
21 certain depreciable business assets) of the Internal Revenue



1 Code shall be operative for purposes of this chapter, except as  
2 provided in this subsection:

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

6 (2) The amount at which the reduction in limitation  
7 provided in section 179(b)(2) begins shall exceed  
8 \$200,000 for any taxable year; and

9 (3) The following shall not be operative for purposes of  
10 this chapter:

11 (A) Defining section 179 property to include computer  
12 software in section 179(d)(1);

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

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

15 (D) Special rules for qualified disaster assistance  
16 property in section 179(e).

17 (n) Section 198A (with respect to the expensing of  
18 qualified disaster assistance expenses) of the Internal Revenue  
19 Code shall not be operative for purposes of this chapter.

20 (o) Section 199A (with respect to qualified business  
21 income) shall be operative for purposes of this chapter.





1        [~~(e)~~] (p) Section 219 (with respect to retirement savings)  
2 of the Internal Revenue Code shall be operative for the purpose  
3 of this chapter. For the purpose of computing the limitation on  
4 the deduction for active participants in certain pension plans  
5 for state income tax purposes, adjusted gross income as used in  
6 section 219 as operative for this chapter means federal adjusted  
7 gross income.

8        [~~(f)~~] (q) Section 220 (with respect to medical savings  
9 accounts) of the Internal Revenue Code shall be operative for  
10 the purpose of this chapter, but only with respect to medical  
11 services accounts that have been approved by the Secretary of  
12 the Treasury of the United States.

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



1        [~~(r)~~] (s) Section 280E (with respect to expenditures in  
2 connection with the illegal sale of drugs) of the Internal  
3 Revenue Code shall be operative for the purposes of this  
4 chapter, except that section 280E shall not be operative with  
5 respect to the production and sale of medical cannabis and  
6 manufactured cannabis products by dispensaries licensed under  
7 chapter 329D and their subcontractors, as defined in section  
8 329D-1.

9        [~~(s)~~] (t) Section 382 (with respect to limitation on net  
10 operating loss carryforwards and certain built-in losses  
11 following ownership change) of the Internal Revenue Code shall  
12 be operative for the purposes of this chapter, except that  
13 section 382(n) shall not be operative for purposes of this  
14 chapter.

15        [~~(t)~~] (u) Section 408A (with respect to Roth Individual  
16 Retirement Accounts) of the Internal Revenue Code shall be  
17 operative for the purposes of this chapter, except that section  
18 408A(d)(3)(A)(iii) shall not be operative for purposes of this  
19 chapter. For the purposes of determining the aggregate amount  
20 of contributions to a Roth Individual Retirement Account or  
21 qualified rollover contribution to a Roth Individual Retirement



1 Account from an individual retirement plan other than a Roth  
2 Individual Retirement Account, adjusted gross income as used in  
3 section 408A as operative for this chapter means federal  
4 adjusted gross income.

5 ~~[(u)]~~ (v) In administering the provisions of sections 410  
6 to 417 (with respect to special rules relating to pensions,  
7 profit sharing, stock bonus plans, etc.), sections 418 to 418E  
8 (with respect to special rules for multiemployer plans), and  
9 sections 419 and 419A (with respect to treatment of welfare  
10 benefit funds) of the Internal Revenue Code, the department of  
11 taxation shall adopt rules under chapter 91 relating to the  
12 specific requirements under those sections and to other  
13 administrative requirements under those sections as may be  
14 necessary for the efficient administration of sections 410 to  
15 419A.

16 In administering sections 401 to 419A (with respect to  
17 deferred compensation) of the Internal Revenue Code, Public Law  
18 93-406, section 1017(i), shall be operative for the purposes of  
19 this chapter.

20 In administering section 402 (with respect to the  
21 taxability of beneficiary of employees' trust) of the Internal



1 Revenue Code, the tax imposed on lump sum distributions by  
2 section 402(e) of the Internal Revenue Code shall be operative  
3 for the purposes of this chapter and the tax imposed therein is  
4 hereby imposed by this chapter at the rate determined under this  
5 chapter.

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

15       ~~[(w)]~~ (x) Section 451 (which provides general rules for  
16 taxable year of inclusion) of the Internal Revenue Code shall be  
17 operative, except that section 451(i)(3) and (6), as it relates  
18 to a qualified electric utility, shall not be operative for  
19 purposes of this chapter.

20       ~~[(x)]~~ (y) In administering section 457 (with respect to  
21 compensation plans of state and local governments and tax-exempt



1 organizations) of the Internal Revenue Code, any funds that  
2 represent pre-tax employee deferrals or contributions that are  
3 distributed from the deferred compensation plan and used solely  
4 to obtain retirement credits under the state employees'  
5 retirement system shall not be treated as a rollover for  
6 purposes of section 457(e)(16)(A) of the Internal Revenue Code  
7 and those funds shall be subject to income tax under this  
8 chapter.

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

15       ~~[-(z)]~~ (aa) Section 469 (with respect to passive activities  
16 and credits limited) of the Internal Revenue Code shall be  
17 operative for the purposes of this chapter. For the purpose of  
18 computing the offset for rental real estate activities for state  
19 income tax purposes, adjusted gross income as used in section  
20 469 as operative for this chapter means federal adjusted gross  
21 income.



1        [~~(aa)~~] (bb) Sections 512 to 514 (with respect to taxation  
2 of business income of certain exempt organizations) of the  
3 Internal Revenue Code shall be operative for the purposes of  
4 this chapter as provided in this subsection.

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

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

17        [~~(bb)~~] (cc) Section 521 (with respect to cooperatives) and  
18 subchapter T (sections 1381 to 1388, with respect to  
19 cooperatives and their patrons) of the Internal Revenue Code  
20 shall be operative for the purposes of this chapter as to any  
21 cooperative fully meeting the requirements of section 421-23,



1 except that Internal Revenue Code section 521 cooperatives need  
2 not be organized in Hawaii.

3       ~~[(ee)]~~ (dd) Sections 527 (with respect to political  
4 organizations) and 528 (with respect to certain homeowners  
5 associations) of the Internal Revenue Code shall be operative  
6 for the purposes of this chapter and the taxes imposed in each  
7 section are hereby imposed by this chapter at the rates  
8 determined under section 235-71.

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

13       ~~[(ee)]~~ (ff) Section 529A (with respect to qualified ABLE  
14 programs) shall be operative for the purposes of this chapter,  
15 except that section 529A(c)(3) (with respect to additional tax  
16 for distributions not used for disability expenses) shall not be  
17 operative.

18       ~~[(ff)]~~ (gg) Section 530 (with respect to Coverdell  
19 education savings accounts) of the Internal Revenue Code shall  
20 be operative for the purposes of this chapter. For the purpose  
21 of determining the maximum amount that a contributor could make



7       SECTION 3. This Act, upon its approval, shall apply to  
8 taxable years beginning after December 31, 2017.

INTRODUCED BY:

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# S.B. NO. 3073

**Report Title:**

Taxation; Qualified Business Income

**Description:**

Adopts section 199A of the Internal Revenue Code pertaining to qualified business income.

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

