



GOV. MSG. NO. 1156

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

June 5, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

✓The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on June 5, 2023, the following bill was signed into law:

HB1100 HD1 SD2

RELATING TO CONFORMITY TO THE INTERNAL
REVENUE CODE.
ACT 056

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

on JUN 5 2023

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1100
H.D. 1
S.D. 2

A BILL FOR AN ACT

RELATING TO CONFORMITY TO THE INTERNAL REVENUE CODE.

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

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

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

6 **"§235-2.3 Conformance to the federal Internal Revenue**

7 **Code; general application.** (a) For all taxable years beginning
8 after December 31, [~~2021~~] 2022, as used in this chapter, except
9 as provided in this section and sections 235-2.35, 235-2.4, and
10 235-2.45, "Internal Revenue Code" means subtitle A, chapter 1,
11 of the federal Internal Revenue Code of 1986, as amended as of
12 December 31, [~~2021~~] 2022, as it applies to the determination of
13 gross income, adjusted gross income, ordinary income and loss,
14 and taxable income, except those provisions of the Internal
15 Revenue Code which, pursuant to this chapter, do not apply or
16 are otherwise limited in application.



1 Sections 9672(1) (relating to tax treatment of targeted
2 EIDL advances) and 9673(1) (relating to tax treatment of
3 restaurant revitalization grants) of Public Law 117-2 shall be
4 operative for purposes of this chapter. No amount received
5 under section 9601 (relating to 2021 recovery rebates to
6 individuals) of Public Law 117-2 shall be included in gross
7 income for purposes of this chapter.

8 Sections 276(b)(1) (relating to subsequent paycheck
9 protection program loans), 277 (relating to emergency financial
10 aid grants), 278(b)(1) (relating to emergency EIDL grants and
11 targeted EIDL advances), 278(c)(1) (relating to subsidy for
12 certain loan payments), and 278(d)(1) (relating to grants for
13 shuttered venue operators) of Division N of Public Law 116-260
14 shall be operative for purposes of this chapter. Sections 213
15 (relating to modification of limitations on charitable
16 contributions) and 214 (relating to temporary special rules for
17 health and dependent care flexible spending arrangements) of
18 Division EE of Public Law 116-260 shall be operative for
19 purposes of this chapter. Sections 301, 302, and 304 (relating
20 to disaster tax relief) of Division EE of Public Law 116-260
21 shall be operative for purposes of this chapter. No amount



1 received under section 272 (relating to additional 2020 recovery
2 rebates for individuals) of Division N of Public Law 116-260
3 shall be included in gross income for purposes of this chapter.

4 Sections 1106(i) (relating to exclusion of loan forgiveness
5 from gross income), 2202(b) (relating to loans from retirement
6 plans), and 2205 (relating to charitable contributions) of
7 Public Law 116-136 shall be operative for purposes of this
8 chapter. No amount received under section 2201 (relating to
9 recovery rebates) of Public Law 116-136 shall be included in
10 gross income for purposes of this chapter.

11 Section 2202(a) (relating to tax-favored withdrawals from
12 retirement plans) of Public Law 116-136 shall be operative for
13 purposes of this chapter and shall apply to taxable years
14 beginning after December 31, 2019.

15 Prior law shall continue to be used to determine:

- 16 (1) The basis of property, if a taxpayer first determined
17 the basis of property in a taxable year to which prior
18 law applies; and
- 19 (2) Gross income, adjusted gross income, ordinary income
20 and loss, and taxable income for a taxable year to
21 which prior law applies.



1 (b) The following Internal Revenue Code subchapters, parts
2 of subchapters, sections, subsections, and parts of subsections
3 shall not be operative for the purposes of this chapter, unless
4 otherwise provided:

5 (1) Subchapter A (sections 1 to 59A) (with respect to
6 determination of tax liability), except section
7 1(h)(2) (relating to net capital gain reduced by the
8 amount taken into account as investment income),
9 except sections 2(a), 2(b), and 2(c) (with respect to
10 the definition of "surviving spouse" and "head of
11 household"), except section 41 (with respect to the
12 credit for increasing research activities), except
13 section 42 (with respect to low-income housing
14 credit), except sections 47 and 48, as amended, as of
15 December 31, 1984 (with respect to certain depreciable
16 tangible personal property), and except section
17 48(d)(3), as amended, as of February 17, 2009 (with
18 respect to the treatment of United States Department
19 of Treasury grants made under section 1603 of the
20 American Recovery and Reinvestment Tax Act of 2009).



- 1 For treatment, see sections 235-110.91, 235-110.7, and
2 235-110.8;
- 3 (2) Section 78 (with respect to dividends received from
4 certain foreign corporations by domestic corporations
5 choosing foreign tax credit);
- 6 (3) Section 86 (with respect to social security and tier 1
7 railroad retirement benefits);
- 8 (4) Section 91 (with respect to certain foreign branch
9 losses transferred to specified 10-percent owned
10 foreign corporations);
- 11 (5) Section 103 (with respect to interest on state and
12 local bonds). For treatment, see section 235-7(b);
- 13 (6) Section 114 (with respect to extraterritorial income).
14 For treatment, any transaction as specified in the
15 transitional rule for 2005 and 2006 as specified in
16 the American Jobs Creation Act of 2004 section 101(d)
17 and any transaction that has occurred pursuant to a
18 binding contract as specified in the American Jobs
19 Creation Act of 2004 section 101(f) are inoperative;



- 1 (7) Section 120 (with respect to amounts received under
2 qualified group legal services plans). For treatment,
3 see section 235-7(a) (9) to (11);
- 4 (8) Section 122 (with respect to certain reduced uniformed
5 services retirement pay). For treatment, see
6 section 235-7(a) (3);
- 7 (9) Section 135 (with respect to income from United States
8 savings bonds used to pay higher education tuition and
9 fees). For treatment, see section 235-7(a) (1);
- 10 (10) Section 139C (with respect to COBRA premium
11 assistance);
- 12 (11) Subchapter B (sections 141 to 150) (with respect to
13 tax exemption requirements for state and local bonds);
- 14 (12) Section 151 (with respect to allowance of deductions
15 for personal exemptions). For treatment, see
16 section 235-54;
- 17 (13) Section 179B (with respect to expensing of capital
18 costs incurred in complying with Environmental
19 Protection Agency sulphur regulations);
- 20 (14) Section 181 (with respect to special rules for certain
21 film and television productions);



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



- 1 (23) Section 291 (with respect to special rules relating to
2 corporate preference items);
- 3 (24) Section 367 (with respect to foreign corporations);
- 4 (25) Section 501(c)(12), (15), (16) (with respect to exempt
5 organizations); except that section 501(c)(12) shall
6 be operative for companies that provide potable water
7 to residential communities that lack any access to
8 public utility water services;
- 9 (26) Section 515 (with respect to taxes of foreign
10 countries and possessions of the United States);
- 11 (27) Subchapter G (sections 531 to 565) (with respect to
12 corporations used to avoid income tax on
13 shareholders);
- 14 (28) Subchapter H (sections 581 to 597) (with respect to
15 banking institutions), except section 584 (with
16 respect to common trust funds). For treatment, see
17 chapter 241;
- 18 (29) Section 642(a) and (b) (with respect to special rules
19 for credits and deductions applicable to trusts). For
20 treatment, see sections 235-54(b) and 235-55;



- 1 (30) Section 646 (with respect to tax treatment of electing
2 Alaska Native settlement trusts);
- 3 (31) Section 668 (with respect to interest charge on
4 accumulation distributions from foreign trusts);
- 5 (32) Subchapter L (sections 801 to 848) (with respect to
6 insurance companies). For treatment, see sections
7 431:7-202 and 431:7-204;
- 8 (33) Section 853 (with respect to foreign tax credit
9 allowed to shareholders). For treatment, see
10 section 235-55;
- 11 (34) Section 853A (with respect to credits from tax credit
12 bonds allowed to shareholders);
- 13 (35) Subchapter N (sections 861 to 999) (with respect to
14 tax based on income from sources within or without the
15 United States), except sections 985 to 989 (with
16 respect to foreign currency transactions). For
17 treatment, see sections 235-4, 235-5, and 235-7(b),
18 and 235-55;
- 19 (36) Section 1042(g) (with respect to sales of stock in
20 agricultural refiners and processors to eligible farm
21 cooperatives);



- 1 (37) Section 1055 (with respect to redeemable ground
2 rents);
- 3 (38) Section 1057 (with respect to election to treat
4 transfer to foreign trust, etc., as taxable exchange);
- 5 (39) Sections 1291 to 1298 (with respect to treatment of
6 passive foreign investment companies);
- 7 (40) Subchapter Q (sections 1311 to 1351) (with respect to
8 readjustment of tax between years and special
9 limitations) [+], except for section 1341 (with respect
10 to computation of tax where taxpayer restores
11 substantial amount held under claim of right);
- 12 (41) Subchapter R (sections 1352 to 1359) (with respect to
13 election to determine corporate tax on certain
14 international shipping activities using per ton rate);
- 15 (42) Subchapter U (sections 1391 to 1379F) (with respect to
16 designation and treatment of empowerment zones,
17 enterprise communities, and rural development
18 investment areas). For treatment, see chapter 209E;
- 19 (43) Subchapter W (sections 1400 to 1400C) (with respect to
20 District of Columbia enterprise zone);



- 1 (44) Section 14000 (with respect to education tax
2 benefits);
- 3 (45) Section 1400P (with respect to housing tax benefits);
- 4 (46) Section 1400R (with respect to employment relief);
- 5 (47) Section 1400T (with respect to special rules for
6 mortgage revenue bonds);
- 7 (48) Section 1400U-1 (with respect to allocation of
8 recovery zone bonds);
- 9 (49) Section 1400U-2 (with respect to recovery zone
10 economic development bonds); and
- 11 (50) Section 1400U-3 (with respect to recovery zone
12 facility bonds)."

13 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is
14 amended by amending subsection (m) to read as follows:

15 "(m) Section 168 (with respect to the accelerated cost
16 recovery system) of the Internal Revenue Code shall be operative
17 for purposes of this chapter, except that sections 168(j)
18 (relating to property on Indian reservations), 168(k) (relating
19 to the special allowance for certain property acquired during
20 the period specified therein), and 168(m) (relating to the
21 special allowance for certain reuse and recycling property) [7



1 ~~and 168(n) (relating to the special allowance for qualified~~
2 ~~disaster assistance property)] of the Internal Revenue Code~~
3 shall not be operative for purposes of this chapter."

4 SECTION 4. Section 235-2.5, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Reference in provisions of the Internal Revenue Code
7 which are operative in this State to provisions in the Internal
8 Revenue Code which are not operative in this State shall be
9 considered inoperative for the purposes of determining gross
10 income, adjusted gross income, ordinary income and loss, and
11 taxable income; provided that:

12 (1) References to time limits and other administrative
13 provisions in subtitle F (sections 6001 to 7873) of
14 the Internal Revenue Code contained in operative
15 sections of the Internal Revenue Code shall be deemed
16 references to applicable provisions of this chapter or
17 chapter 231 or 232, and in the absence of applicable
18 provisions in this chapter or chapters 231 or 232,
19 then to rules adopted by the director of taxation
20 under subsection (b);



1 (2) If inoperative provisions of the Internal Revenue Code
2 have been codified in this chapter such references
3 shall be deemed references to the codified provisions
4 in this chapter. Transitory and savings provisions in
5 federal Public Laws amending sections of the Internal
6 Revenue Code operative in this chapter shall be
7 operative for the purposes of this chapter.
8 Provisions in this chapter or chapter 231 or 232 in
9 conflict with the Internal Revenue Code or transitory
10 or savings provisions in federal Public Law shall
11 control; and

12 (3) Retroactive and prospective provisions in federal
13 Public Laws amending sections of the federal Internal
14 Revenue Code operative in this chapter and retroactive
15 and prospective provisions in federal Public Laws that
16 are operative in this chapter affecting taxable years
17 beginning or ending before the December 31 date in
18 section 235-2.3 shall be operative for the purposes of
19 this chapter; provided that the effective dates in
20 Public Law 96-471 placing it in effect for the taxable



1 year 1980 shall be operative for the purposes of this
2 chapter."

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

5 "**§236E-3 Conformance to the Internal Revenue Code; general**
6 **application.** For all decedents dying, or transfers occurring,
7 after December 31, [~~2021,~~] 2022, as used in this chapter,
8 "Internal Revenue Code" means subtitle B of the federal Internal
9 Revenue Code of 1986, as amended as of December 31, [~~2021,~~]
10 2022, as it applies to the determination of gross estate,
11 adjusted gross estate, federal taxable estate, and
12 generation-skipping transfers, except those provisions of the
13 Internal Revenue Code and federal public laws that, pursuant to
14 this chapter, do not apply or are otherwise limited in
15 application."

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

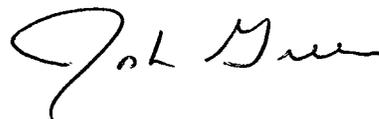
18 SECTION 7. This Act shall take effect upon its approval;
19 provided that:

20 (1) Section 2 shall apply to taxable years beginning after
21 December 31, 2022; provided that the amendment to



- 1 section 235-2.3(b)(40) (with respect to computation of
2 tax where taxpayer restores substantial amount held
3 under claim of right), Hawaii Revised Statutes, shall
4 apply to taxable years beginning after December 31,
5 2021;
- 6 (2) Sections 3 and 4 shall apply to taxable years
7 beginning after December 31, 2022; and
- 8 (3) Section 5 shall apply to decedents dying or taxable
9 transfers occurring after December 31, 2022.

APPROVED this 5th day of June , 2023



GOVERNOR OF THE STATE OF HAWAII



HB No. 1100, HD 1, SD 2

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 27, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 5, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate