

JAN 25 2023

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.

17 Sections 9672(1) (relating to tax treatment of targeted
18 EIDL advances) and 9673(1) (relating to tax treatment of

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1 restaurant revitalization grants) of Public Law 117-2 shall be
2 operative for purposes of this chapter. No amount received
3 under section 9601 (relating to 2021 recovery rebates to
4 individuals) of Public Law 117-2 shall be included in gross
5 income for purposes of this chapter.

6 Sections 276(b)(1) (relating to subsequent paycheck
7 protection program loans), 277 (relating to emergency financial
8 aid grants), 278(b)(1) (relating to emergency EIDL grants and
9 targeted EIDL advances), 278(c)(1) (relating to subsidy for
10 certain loan payments), and 278(d)(1) (relating to grants for
11 shuttered venue operators) of Division N of Public Law 116-260
12 shall be operative for purposes of this chapter. Sections 213
13 (relating to modification of limitations on charitable
14 contributions) and 214 (relating to temporary special rules for
15 health and dependent care flexible spending arrangements) of
16 Division EE of Public Law 116-260 shall be operative for
17 purposes of this chapter. Sections 301, 302, and 304 (relating
18 to disaster tax relief) of Division EE of Public Law 116-260
19 shall be operative for purposes of this chapter. No amount
20 received under section 272 (relating to additional 2020 recovery
21 rebates for individuals) of Division N of Public Law 116-260
22 shall be included in gross income for purposes of this chapter.

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

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

12 Prior law shall continue to be used to determine:

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

16 (2) Gross income, adjusted gross income, ordinary income
17 and loss, and taxable income for a taxable year to
18 which prior law applies.

19 (b) The following Internal Revenue Code subchapters, parts
20 of subchapters, sections, subsections, and parts of subsections
21 shall not be operative for the purposes of this chapter, unless
22 otherwise provided:

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- 1 (1) Subchapter A (sections 1 to 59A) (with respect to
2 determination of tax liability), except section
3 1(h)(2) (relating to net capital gain reduced by the
4 amount taken into account as investment income),
5 except sections 2(a), 2(b), and 2(c) (with respect to
6 the definition of "surviving spouse" and "head of
7 household"), except section 41 (with respect to the
8 credit for increasing research activities), except
9 section 42 (with respect to low-income housing
10 credit), except sections 47 and 48, as amended, as of
11 December 31, 1984 (with respect to certain depreciable
12 tangible personal property), and except section
13 48(d)(3), as amended, as of February 17, 2009 (with
14 respect to the treatment of United States Department
15 of Treasury grants made under section 1603 of the
16 American Recovery and Reinvestment Tax Act of
17 2009). For treatment, see sections 235-110.91, 235-
18 110.7, and 235-110.8;
- 19 (2) Section 78 (with respect to dividends received from
20 certain foreign corporations by domestic corporations
21 choosing foreign tax credit);

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- 1 (3) Section 86 (with respect to social security and tier 1
2 railroad retirement benefits);
- 3 (4) Section 91 (with respect to certain foreign branch
4 losses transferred to specified 10-percent owned
5 foreign corporations);
- 6 (5) Section 103 (with respect to interest on state and
7 local bonds). For treatment, see section 235-7(b);
- 8 (6) Section 114 (with respect to extraterritorial income).
9 For treatment, any transaction as specified in the
10 transitional rule for 2005 and 2006 as specified in
11 the American Jobs Creation Act of 2004 section 101(d)
12 and any transaction that has occurred pursuant to a
13 binding contract as specified in the American Jobs
14 Creation Act of 2004 section 101(f) are inoperative;
- 15 (7) Section 120 (with respect to amounts received under
16 qualified group legal services plans). For treatment,
17 see section 235-7(a)(9) to (11);
- 18 (8) Section 122 (with respect to certain reduced uniformed
19 services retirement pay). For treatment, see section
20 235-7(a)(3);

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- 1 (9) Section 135 (with respect to income from United States
2 savings bonds used to pay higher education tuition and
3 fees). For treatment, see section 235-7(a)(1);
- 4 (10) Section 139C (with respect to COBRA premium
5 assistance);
- 6 (11) Subchapter B (sections 141 to 150) (with respect to
7 tax exemption requirements for state and local bonds);
- 8 (12) Section 151 (with respect to allowance of deductions
9 for personal exemptions). For treatment, see section
10 235-54;
- 11 (13) Section 179B (with respect to expensing of capital
12 costs incurred in complying with Environmental
13 Protection Agency sulphur regulations);
- 14 (14) Section 181 (with respect to special rules for certain
15 film and television productions);
- 16 (15) Section 196 (with respect to deduction for certain
17 unused investment credits);
- 18 (16) Section 199 (with respect to the U.S. production
19 activities deduction);
- 20 (17) Section 199A (with respect to qualified business
21 income);

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- 1 (18) Section 222 (with respect to qualified tuition and
2 related expenses);
- 3 (19) Sections 241 to 247 (with respect to special
4 deductions for corporations). For treatment, see
5 section 235-7(c);
- 6 (20) Section 250 (with respect to foreign-derived
7 intangible income and global intangible low-taxed
8 income);
- 9 (21) Section 267A (with respect to certain related party
10 amounts paid or accrued in hybrid transactions or with
11 hybrid entities);
- 12 (22) Section 280C (with respect to certain expenses for
13 which credits are allowable). For treatment, see
14 section 235-110.91;
- 15 (23) Section 291 (with respect to special rules relating to
16 corporate preference items);
- 17 (24) Section 367 (with respect to foreign corporations);
- 18 (25) Section 501(c)(12), (15), (16) (with respect to exempt
19 organizations); except that section 501(c)(12) shall
20 be operative for companies that provide potable water
21 to residential communities that lack any access to
22 public utility water services;

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- 1 (26) Section 515 (with respect to taxes of foreign
2 countries and possessions of the United States);
- 3 (27) Subchapter G (sections 531 to 565) (with respect to
4 corporations used to avoid income tax on
5 shareholders);
- 6 (28) Subchapter H (sections 581 to 597) (with respect to
7 banking institutions), except section 584 (with
8 respect to common trust funds). For treatment, see
9 chapter 241;
- 10 (29) Section 642(a) and (b) (with respect to special rules
11 for credits and deductions applicable to trusts). For
12 treatment, see sections 235-54(b) and 235-55;
- 13 (30) Section 646 (with respect to tax treatment of electing
14 Alaska Native settlement trusts);
- 15 (31) Section 668 (with respect to interest charge on
16 accumulation distributions from foreign trusts);
- 17 (32) Subchapter L (sections 801 to 848) (with respect to
18 insurance companies). For treatment, see sections
19 431:7-202 and 431:7-204;
- 20 (33) Section 853 (with respect to foreign tax credit
21 allowed to shareholders). For treatment, see section
22 235-55;

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- 1 (34) Section 853A (with respect to credits from tax credit
2 bonds allowed to shareholders);
- 3 (35) Subchapter N (sections 861 to 999) (with respect to
4 tax based on income from sources within or without the
5 United States), except sections 985 to 989 (with
6 respect to foreign currency transactions). For
7 treatment, see sections 235-4, 235-5, and 235-7(b),
8 and 235-55;
- 9 (36) Section 1042(g) (with respect to sales of stock in
10 agricultural refiners and processors to eligible farm
11 cooperatives);
- 12 (37) Section 1055 (with respect to redeemable ground
13 rents);
- 14 (38) Section 1057 (with respect to election to treat
15 transfer to foreign trust, etc., as taxable exchange);
- 16 (39) Sections 1291 to 1298 (with respect to treatment of
17 passive foreign investment companies);
- 18 (40) Subchapter Q (sections 1311 to 1351) (with respect to
19 readjustment of tax between years and special
20 limitations) [+], except for section 1341 (with respect
21 to computation of tax where taxpayer restores
22 substantial amount held under claim of right);

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- 1 (41) Subchapter R (sections 1352 to 1359) (with respect to
2 election to determine corporate tax on certain
3 international shipping activities using per ton rate);
- 4 (42) Subchapter U (sections 1391 to 1379F) (with respect to
5 designation and treatment of empowerment zones,
6 enterprise communities, and rural development
7 investment areas). For treatment, see chapter 209E;
- 8 (43) Subchapter W (sections 1400 to 1400C) (with respect to
9 District of Columbia enterprise zone);
- 10 (44) Section 14000 (with respect to education tax
11 benefits);
- 12 (45) Section 1400P (with respect to housing tax benefits);
- 13 (46) Section 1400R (with respect to employment relief);
- 14 (47) Section 1400T (with respect to special rules for
15 mortgage revenue bonds);
- 16 (48) Section 1400U-1 (with respect to allocation of
17 recovery zone bonds);
- 18 (49) Section 1400U-2 (with respect to recovery zone
19 economic development bonds); and
- 20 (50) Section 1400U-3 (with respect to recovery zone
21 facility bonds)."

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

3 "(m) 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), and 168(m) (relating to the
9 special allowance for certain reuse and recycling property) [~~7~~
10 ~~and 168(n) (relating to the special allowance for qualified~~
11 ~~disaster assistance property)] of the Internal Revenue Code
12 shall not be operative for purposes of this chapter."~~

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

15 "(a) Reference in provisions of the Internal Revenue Code
16 which are operative in this State to provisions in the Internal
17 Revenue Code which are not operative in this State shall be
18 considered inoperative for the purposes of determining gross
19 income, adjusted gross income, ordinary income and loss, and
20 taxable income; provided that:

21 (1) References to time limits and other administrative
22 provisions in subtitle F (sections 6001 to 7873) of

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1 the Internal Revenue Code contained in operative
2 sections of the Internal Revenue Code shall be deemed
3 references to applicable provisions of this chapter
4 231 or 232, and in the absence of applicable
5 provisions in this chapter or chapters 231 or 232,
6 then to rules adopted by the director of taxation
7 under subsection (b);

8 (2) If inoperative provisions of the Internal Revenue Code
9 have been codified in this chapter such references
10 shall be deemed references to the codified provisions
11 in this chapter. Transitory and savings provisions in
12 federal Public Laws amending sections of the Internal
13 Revenue Code operative in this chapter shall be
14 operative for the purposes of this chapter.

15 Provisions in this chapter or chapter 231 or 232 in
16 conflict with the Internal Revenue Code or transitory
17 or savings provisions in federal Public Law shall
18 control; and

19 (3) Retroactive and prospective provisions in federal
20 Public Laws amending sections of the federal Internal
21 Revenue Code operative in this chapter and retroactive
22 and prospective provisions in federal Public Laws that

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1 are operative in this chapter affecting taxable years
2 beginning or ending before the December 31 date in
3 section 235-2.3 shall be operative for the purposes of
4 this chapter; provided that the effective dates in
5 Public Law 96-471 placing it in effect for the taxable
6 year 1980 shall be operative for the purposes of this
7 chapter."

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

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

20 SECTION 6. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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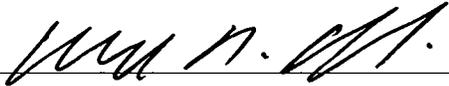
1 SECTION 7. This Act shall take effect upon its approval;
2 provided that:

3 (1) Section 2 shall apply to taxable years beginning after
4 December 31, 2022; provided that the amendment to
5 section 235-2.3(b)(40) (with respect to computation of
6 tax where taxpayer restores substantial amount held
7 under claim of right) shall apply to taxable years
8 beginning after December 31, 2021; and

9 (2) Section 5 shall apply to decedents dying or taxable
10 transfers occurring after December 31, 2022.

11

INTRODUCED BY:



BY REQUEST

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Report Title:

Conformity to the Internal Revenue Code for 2022; Income Tax;
Estate and Generation-skipping Transfer Tax

Description:

Conforms Hawaii income and estate and generation-skipping
transfer tax laws to the Internal Revenue Code of 1986, as
amended as of December 31, 2022.

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

DEPARTMENT: Taxation.

TITLE: A BILL FOR AN ACT RELATING TO CONFORMITY TO THE INTERNAL REVENUE CODE.

PURPOSE: To amend Hawaii's income and estate and generation-skipping transfer tax laws to conform to changes made to the Internal Revenue Code in calendar year 2022.

MEANS: Amend sections 235-2.3, 235-2.4(m), 235-2.5(a), and 236E-3, Hawaii Revised Statutes (HRS).

JUSTIFICATION: This bill amends section 235-2.3(a), HRS, by changing the date as of which Hawaii adopts the Internal Revenue Code to December 31, 2022. This bill also amends section 236E-3, HRS, by changing the date as of which Hawaii adopts the Internal Revenue Code to December 31, 2022. These changes adopt income and estate and generation-skipping transfer tax law changes made in the 2022 calendar year.

Additionally, the bill makes a minor cleanup change to section 235-2.4(m) and amends section 235-2.5(a)(3) to clarify that certain retroactive and prospective provisions in federal Public Law that are operative in chapter 235 are operative for purposes of this chapter.

It also amends section 235-2.3(b)(40) to conform to Internal Revenue Code section 1341, which provides relief to taxpayers when an item of income reported in an earlier tax year (at a higher tax rate) is returned in a subsequent year (at a lower tax rate) if it is determined that the taxpayer did not have an unrestricted right to the item of income when reported.

Sections 235-2.5(c) and 236E-4(c), HRS, mandate that the Department of Taxation submit to each regular session of the

Legislature a bill that amends Hawaii's income and estate and generation-skipping transfer tax laws to conform to changes in the Internal Revenue Code.

Impact on the public: Conformity to all amendments to operative provisions of the Internal Revenue Code will minimize the burden on taxpayers in complying with the requirements of Hawaii's income and estate and generation-skipping transfer tax laws. Allowing relief to taxpayers under section 1341 of Internal Revenue Code provides an alternative computation of tax that attempts to place the taxpayer in roughly the same economic position it would have been in had it not included the item as gross income in the earlier year.

Impact on the department and other agencies: Conforming Hawaii's income and estate and generation-skipping transfer tax laws to those of the Internal Revenue Code will increase consistency between the state and federal jurisdictions.

GENERAL FUND: Indeterminate revenue loss.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

EFFECTIVE DATE: Upon approval, income tax changes shall apply to taxable years beginning after December 31, 2022, except that the amendment to section 235-2.3(b)(40) shall apply to taxable years beginning after December 31, 2021, and estate and generation-skipping transfer tax changes shall apply to decedents dying or taxable transfers occurring after December 31, 2022.