

ACT 18

S. B. 113.

A Bill for an Act Relating to the Net Income Tax and Repealing Section 121-5(h), Revised Laws of Hawaii 1955, as Amended.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. This Act is hereby declared to be an urgency measure

within the meaning of section 11 of Article III of the State Constitution.

The following is a statement of facts constituting such urgency:

Upon passage of the Revenue Act of 1962 by Congress, taxpayers were allowed a credit against the federal income tax equal to a certain percentage of the taxpayer's investment of his capital in purchases of certain properties. (Such properties are frequently referred to as "section 38 properties," which term is more particularly defined in section 48 of the Internal Revenue Code.) This is called investment credit. However, the Revenue Act of 1962 also required that the bases of such properties be reduced by the amounts of allowed tax credits (sometimes referred to as the "mandatory reduction in basis"), and that depreciation deductions must be computed upon such reduced bases.

The State of Hawaii did not adopt the investment credit system, but in lieu thereof, enacted subsection 121-5(h) of the Revised Laws, which permits taxpayers to take additional depreciation deductions, equal to the percentage used for the purpose of computing the investment credit. It should be observed, however, that the beneficial effect of such additional depreciation allowed by subsection 121-5(h) to the Hawaii taxpayers, is not mathematically proportionate to the investment credit allowed under the Internal Revenue Code. This is because the former is an item of deduction which merely reduces a taxpayer's taxable net income, while the latter is a credit allowed against, and which directly reduces, the tax itself.

Thus, despite the beneficial effect of the additional depreciation deduction allowed by subsection 121-5(h), a more important reason for its enactment was the Legislature's desire "to minimize the taxpayer's burden in complying with the income tax law," by enabling him to use "the same basis and depreciation schedule for both Federal and State purposes." See Standing Committee Report 758 and H.B. No. 56, House Journal 1963, pages 786 and 787. More particularly, subsection 121-5(h) relieved Hawaii taxpayers taking advantage of the investment credit, from being forced to maintain two separate methods of accounting—one for federal income tax purposes (reflecting the reduced bases) and the other for Hawaii income tax purposes (without such reductions).

By Public Law 88-272, Congress repealed the mandatory reduction in basis for property relating to investment credit. As a consequence, the main purpose of subsection 121-5(h) has ceased to exist. Failure to repeal subsection 121-5(h) would now impose upon all Hawaii taxpayers taking advantage of the investment credit, the requirement for maintaining two separate methods of accounting, contrary to the main intent of its original enactment. Additionally, failure to repeal subsection 121-5(h) would allow such taxpayers an additional depreciation deduction not permitted under the Internal Revenue Code. Accordingly, this Act is considered an urgency measure deemed necessary in the public interest.

SECTION 2. Section 121-5(h) of the Revised Laws of Hawaii 1955, as amended, is repealed.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning on or after January 1, 1968.

(Approved April 30, 1968.)