

A Bill for an Act Relating to Taxation.

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

SECTION 1. The Legislature finds that Congress has enacted major income tax legislation during the 1980 calendar year and that the State must continue in its efforts towards conforming the state income tax law with the Internal Revenue Code. The legislature also finds that during the interim since the regular session of 1980, the department of taxation has found additional amendments which should be made to the state tax law to fulfill the efforts of the legislative and executive branches in maintaining income tax conformity.

The purpose of this Act is to continue the efforts of the State in maintaining the conformity of the state income tax law with the federal Internal Revenue Code.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended as follows:

1. Section 235-2.2 is amended to read as follows:

“§235-2.2 Internal Revenue Code, further amendments adopted. For each taxable year specified in column 1 below, the Internal Revenue Code meant is the Internal Revenue Code of 1954 as amended as of June 7, 1957 and as further amended by the acts of Congress, or portions thereof, enumerated in column 2 (section num-

bers in column 2 are inclusive). Amendments to the Code not enumerated in section 235-2, 235-2.1, or herein shall not be operative for the purposes of this chapter unless specifically adopted.

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Taxable years beginning on or after January 1, 1977.

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Public Law 629, 84th Cong., 2d Session, section 5(a) (with respect to nontaxable exchanges for taxable years beginning after December 31, 1976).

Public Law 86-779, section 10(h) (with respect to constructive ownership of stock for taxable years beginning after December 31, 1976).

Public Law 86-781, section 6(a) (with respect to limitation on acceleration of accrual of taxes for taxable years beginning after December 31, 1976).

Public Law 87-876, section 3(a) (with respect to dividends or interest paid on certain deposits or withdrawable accounts for taxable years beginning after December 31, 1976).

Public Law 88-272, sections 218(a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976) and 226(a) and (b) (with respect to treatment in case of oil and gas wells for taxable years beginning after December 31, 1976).

Public Law 88-484, section 1(b) (1) and (2) (with respect to corporate distributions in taxable years beginning after December 31, 1976).

Public Law 88-539, section 3(a) and (b) (with respect to the installment method of accounting for taxable years beginning after December 31, 1976).

Public Law 88-554, section 4(a) (with respect to constructive ownership of stock for taxable years beginning after December 31, 1976).

Public Law 88-563, section 5 (with respect to original issue discount for taxable years beginning after December 31,

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1976).

Public Law 89-97, sections 106(a), (b), (c), and (d)(1) (with respect to medical deductions for taxable years beginning after December 31, 1976) and 313(b) (with respect to employee tips for taxable years beginning after December 31, 1976).

Public Law 89-570, section 1(b)(2) and (4) (with respect to corporate distributions in taxable years beginning after December 31, 1976).

Public Law 89-809, section 202(c) (with respect to methods of accounting for taxable years beginning after December 31, 1976).

Public Law 90-621, section 1(a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976).

Public Law 91-172, sections 211(a) and (b)(1) to (6) (with respect to gain from disposition of property used in farming where farm losses offset nonfarm income for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply), 214(a) (with respect to gain from disposition of farm land for taxable years beginning after December 31, 1976), 215(a) (with respect to crop insurance proceeds for taxable years beginning after December 31, 1976), 216(a) (with respect to capitalization of costs of planting and developing citrus groves for taxable years beginning after December 31, 1976), 221(a) (with respect to limitation on interest deduction attributable to investment indebtedness for taxable years beginning after December 31, 1976), 413(a) and (b) (with respect to bonds and other evidences of indebtedness for taxable years beginning after

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December 31, 1976), 511(a) (with respect to definition of terms applicable to capital gains and losses for taxable years beginning after December 31, 1976), 802(b)(1) and (2) (with respect to the determination of marital status for taxable years beginning after December 31, 1976), and 916(a) (with respect to methods of accounting for taxable years beginning after December 31, 1976).

Public Law 91-680, section 1(a) (with respect to capitalization of costs of planting and developing almond groves for taxable years beginning after December 31, 1976).

Public Law 91-687, section 1 (with respect to determining when stock of a corporation shall not be treated as a capital asset for taxable years beginning after December 31, 1976).

Public Law 91-693, section (a) and (b) (with respect to corporate reorganizations for taxable years beginning after December 31, 1976).

Public Law 92-178, sections 304(a)(2), (c), and (d) (with respect to excess investment interest for taxable years beginning after December 31, 1976) and 305(a) (with respect to farm losses of electing small business corporations for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply).

Public Law 93-406, sections 1013(c)(2) (with respect to when certain contributions may be made for taxable years beginning after December 31, 1976) and 2004(a)(2) (with respect to limitations on benefits and contributions under qualified plans for taxable years beginning after December 31, 1976).

Public Law 93-483, sections 4 (with re-

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spect to application of section 117 of the Internal Revenue Code to certain educational programs for members of the uniformed services for taxable years beginning after December 31, 1976) and 6(a) (with respect to penalties forfeited because of premature withdrawal of funds from time-savings accounts or deposits for taxable years beginning after December 31, 1976).

Public Law 94-12, section 207 (with respect to extension of period for replacing old residence for purpose of non-recognition of gain for taxable years beginning after December 31, 1976).

Public Law 94-267, sections (a)(1), (2), and (3) and (b)(1), (2), and (3) (with respect to termination of employee trusts and annuity plans for taxable years beginning after December 31, 1976).

Public Law 94-455, sections 201(a) (with respect to the capitalization and amortization of real property construction period interest and taxes, in the case of (1) nonresidential real property, for taxable years beginning after December 31, 1976, (2) residential real property, other than low-income housing, for taxable years beginning after December 31, 1977, and (3) low-income housing, for taxable years beginning after December 31, 1981; provided that the transitional rule for 1976 (section 189(f) of the Internal Revenue Code as added by section 201(a) shall not apply)), 202(a), (b), and (c) (with respect to the recapture of depreciation on real property for taxable years beginning after December 31, 1976; provided that section 202(b) shall apply with respect to proceedings and operations of law referred to in section 1250(d) (10) of the Internal Revenue Code which begins after December 31, 1976), 203(a) (with respect to the depre-

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ciation of expenditures to rehabilitate low-income rental housing for taxable years beginning after December 31, 1976; provided that (1) section 167(k) of the Internal Revenue Code as adopted by this State is amended by striking out "January 1, 1975" in paragraph (1) and inserting in lieu thereof "January 1, 1978", (2) the amendments made by section 203(a)(1), (3), and (4) shall apply to expenditures paid or incurred after December 31, 1976, and before January 1, 1978, and expenditures made pursuant to a binding contract entered into before January 1, 1978, and (3) the amendment made by section 203(a)(2) shall apply to expenditures incurred after December 31, 1976), 204(a) and (c)(2) and (3)(A) and (B) (with respect to limitations on deductions for expenses for taxable years beginning after December 31, 1976; provided that the amendments made by section 204(a) shall apply to losses attributable to amounts paid or incurred in taxable years beginning after December 31, 1976, and for this purpose, any amount allowed or allowable for depreciation or amortization for any period shall be treated as an amount paid or incurred in such period; provided further that as adopted by this State (1) the date September 11, 1975 in section 204 (c)(2)(A) shall read January 1, 1977, (2) the dates December 31, 1975 and September 10, 1975, respectively, in section 204(c)(2)(B) shall read December 31, 1976 and January 1, 1977, respectively, (3) the date January 1, 1976 in section 204(c)(3)(A) shall read January 1, 1977, (4) the date December 31, 1975 in section 204(c)(3)(B) shall read December 31, 1976, and (5) the dates contained in section 204(c)(3)(C) shall be disregarded), 205(a), (b), and (c) (with respect to gain

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from the disposition of interest in oil or gas property for taxable years beginning after December 31, 1976; provided that section 1254 of the Internal Revenue Code as adopted by this State is amended by striking out "December 31, 1975" therein and inserting in lieu thereof "December 31, 1976"), 206(a) and (b) (with respect to gain from disposition of property used in farming where farm losses offset nonfarm income for taxable years beginning after December 31, 1976; provided that the adoption of section 206(a) shall not result in application of the excess deduction account for taxable years beginning before January 1, 1977), 207(a)(1), (b)(1) and (2) and (c)(1)(A), and (c)(3) (with respect to limitations on deductions in case of farming syndicates; capitalization of certain orchard and vineyard expenses; and method of accounting for corporations engaged in farming for taxable years beginning after December 31, 1976), 208(a) (with respect to prepaid interest for taxable years beginning after December 31, 1976), 209(a) and (b)(2) (with respect to limitation on interest deduction for taxable years beginning after December 31, 1976, except where otherwise provided in section 209(b)(2); provided that as adopted by this State (1) the date "September 11, 1975" in section 209(b)(2) shall read "January 1, 1977", and (2) the date "September 10, 1975" in section 209(b)(2) shall read "December 31, 1976"), 210(a) (with respect to amortization of motion pictures, books, records, and other similar property for taxable years beginning after December 31, 1976), 212(a)(1) and (b)(1) (with respect to basis limitation for and recapture of depreciation on player contracts for taxable years beginning after December

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31, 1976), 213(a) (with respect to dollar limitations in the case of partnerships with respect to additional first-year depreciation allowance for taxable years beginning after December 31, 1976), (b)(1) and (3) (with respect to treatment of organization and syndication fees for taxable years after December 31, 1976), (c)(1) and (2) (with respect to allocation of partnership income and losses for taxable years beginning after December 31, 1976), (d) (with respect to determination of partner's distributive shares for taxable years beginning after December 31, 1976), and (e) (with respect to treatment of partnership liabilities with respect to which the partner is not personally liable for taxable years beginning after December 31, 1976), 214(a) (with respect to scope of waiver of statute of limitations in case of activities not engaged in for profit for taxable years beginning after December 31, 1976), 502(a) (with respect to deductions for alimony allowed in determining adjusted gross income for taxable years beginning after December 31, 1976), 506(a), (b), and (c) (with respect to moving expenses for taxable years beginning after December 31, 1976), 601(a) (with respect to deductions for expenses attributable to business use of home, rental of vacation homes, etc., for taxable years beginning after December 31, 1976), 602(a) (with respect to deductions for attending conventions for taxable years beginning after December 31, 1976), 605(a) (with respect to deductions for guarantees of business bad debts to guarantors not involved in business for taxable years beginning after December 31, 1976), 701 (a)(2) and (3), (b), (c), (d), and (e)(2) (with respect to accumulation trusts for taxable years beginning after December 31, 1976; pro-

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vided that the reference in section 668 of the Internal Revenue Code to section 667 of the Internal Revenue Code shall be deemed a reference to section 235-58.1 relating to the treatment of amounts deemed distributed by trust in preceding years and the reference in section 641 of the Internal Revenue Code to section 644(b) of the Internal Revenue Code shall be deemed a reference to section 235-58.2(b) relating to the special rule for gain on property transferred to trusts at less than fair market value), 806 (e), (f), as to special limitations on capital losses, and (g)(2) (with respect to limitations on net operating loss carryovers and capital losses effective for taxable years as provided in section 806(g)(2)), 1401(a) and (b) (with respect to amounts of ordinary income against which capital loss may be offset for taxable years beginning after December 31, 1976), 1402(a), (b), (c), and (d) (with respect to increases in holding period required for capital gain or loss to be long term from six to nine months for taxable years beginning after December 31, 1976 and from nine months to one year for taxable years beginning after December 31, 1977), 1404(a) (with respect to sales of residences by the elderly for taxable years beginning after December 31, 1976), 1501 (a) and (b)(1) to (6) and (10) (with respect to retirement savings for certain married individuals for taxable years beginning after December 31, 1976), 1502(a)(1) and (2) (with respect to limitations on contributions to certain pension, etc., plans for taxable years beginning after December 31, 1976), 1503(a) (with respect to participation by members of reserves or national guard, and volunteer firefighters in individual retirement accounts, etc., for taxable years beginning after

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December 31, 1976), 1901(a)(22) (with respect to determination of marital status for taxable years beginning after December 31, 1976), (a)(66) (with respect to accounting methods for taxable years beginning after December 31, 1976), (a)(87) (with respect to the definition of property for taxable years beginning after December 31, 1976), (a)(128) (with respect to involuntary conversion for taxable years beginning after December 31, 1976), and (a)(136) (with respect to definition of terms applicable to capital gains and losses for taxable years beginning after December 31, 1976), and (b)(3)(I) (with respect to taxable years beginning after December 31, 1976), and (b)(3)(K) (with respect to ordinary income for taxable years beginning after December 31, 1976; provided that provisions relating to the excess deduction account shall not apply), and (b)(14)(D) (with respect to taxable years beginning after December 31, 1976), 1904(b)(10)(C) (with respect to taxable years beginning after January 31, 1977), 1951(b)(7) (with respect to accounting methods for taxable years beginning after December 31, 1976; provided that notwithstanding the amendment made by section 1951(b)(7), in the case of installment payments received during taxable years beginning after December 31, 1976, on account of a sale or other disposition made during a taxable year beginning before January 1, 1954, subsection (b)(1) of section 453 of the Internal Revenue Code (relating to sales of realty and casual sales of personalty) shall apply only if the income was (by reason of section 44(b) of the Internal Revenue Code of 1939) returnable on the basis and in the manner prescribed in section 44(a) of the Internal Revenue Code of 1939), 2004(e) (with respect to

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requirements for capital gain on stock redemptions to pay estate taxes for taxable years beginning after December 31, 1976; provided that the references in section 303(b)(1) of the Internal Revenue Code to the time limits in sections 6213, 6501(a), 6166, and 6166A of the Internal Revenue Code or the election under sections 6166 and 6166A of the Internal Revenue Code shall be followed by the State even though the State has not adopted such sections), 2005[(a) (with respect to carryover basis of inherited property for taxable years beginning after December 31, 1976; provided that the amendment of section 1014(d) of the Internal Revenue Code made by section 2005(a) shall for the purposes of this State be considered an addition of a new subsection (d) to section 1014 of the Internal Revenue Code as adopted by this State),] (b) (with respect to the use of certain appreciated carryover basis property to satisfy pecuniary request for taxable years beginning after December 31, 1976), and (c) (with respect to increases in basis for gift tax paid to that portion of gift tax attributable to net appreciation in value for taxable years beginning after December 31, 1976), 2101(b) (with respect to allowances of depreciation deduction by a cooperative housing corporation for taxable years beginning after December 31, 1976), 2102(a) and (b) (with respect to treatment of certain disaster payments for taxable years beginning after December 31, 1976), 2104(a) (with respect to deductions for bad debts owed by a political party for taxable years beginning after December 31, 1976), 2110(a) (with respect to application of franchise rules to partnerships for taxable years beginning after December 31, 1976; provided that the amendments made by section

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2110(a) shall apply to transactions described in section 731, 736, 741, or 751 of the Internal Revenue Code which occur after December 31, 1976, in taxable years ending after that date), 2118(a) (with respect to treatment of gain or loss on sales or exchanges in connection with simultaneous liquidation of a parent or subsidiary corporation for taxable years beginning after December 31, 1976), 2122(a) and (b)(2), (3), and (4) (with respect to allowances of deduction for eliminating architectural and transportation barriers for the handicapped for taxable years beginning after December 31, 1976 and before January 1, 1980), 2124(a)(1), (2), and (3) (with respect to the rehabilitation of certified historic structures with respect to additions to capital accounts made after December 31, 1976 and before June 15, 1981), (b)(1) (with respect to demolition of certain historic structures commencing after December 31, 1976 and before January 1, 1981), (c)(1) (with respect to depreciation of rehabilitation expenditures of certified historical structures on that portion of the basis which is attributable to construction, reconstruction, or erection after December 31, 1976 and before January 1, 1981; provided that section 167(n) of the Internal Revenue Code as adopted by this State is amended by striking out "June 30, 1976" and inserting in lieu thereof "January 1, 1977"), (d)(1) (with respect to depreciation of rehabilitation expenditures of certified historical structures with respect to additions to capital account occurring after December 31, 1976 and before July 1, 1981), and (e)(1) (with respect to deductions for charitable contributions of partial interests in property for conservation purposes with respect to contributions made after December

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31, 1976 and before June 14, 1977), 2127(a) (with respect to outdoor advertising displays for taxable years beginning after December 31, 1976), 2129 (a) (with respect to gain from sale of depreciable property between related parties for taxable years beginning after December 31, 1976; provided the amendments made by section 2129(a) shall apply to sales or exchanges after December 31, 1976; and provided that a sale or exchange is considered to have occurred on or before such date if such sale or exchange is made pursuant to a binding contract entered into on or before such date), 2130 (with respect to application of section 117 of the Internal Revenue Code to certain education programs for members of the uniformed services), 2131 (a), (b), (c), (d), and (e)(1) (with respect to exchange fund transfers made in taxable years ending after December 31, 1976; provided that (1) except as provided in (2) following, the amendment made by section 2131(a) shall apply to transfers made after December 31, 1976, in taxable years ending after such date; provided further that (2) the amendment made by section 2131(a) shall not apply to transfers made in accordance with a ruling issued by the Internal Revenue Service before February 18, 1976, holding that a proposed transaction would be a reorganization described in paragraph (1) of section 368(a) of the Internal Revenue Code; and (3) except as provided in (4) following, the amendments made by section 2131(b) and (c) shall apply to transfers made after December 31, 1976, in taxable years ending after such date; provided further that (4) the amendments made by section 2131(b) and (c) shall not apply to transfers made on or before January 2, 1977 if: (A) either (i) a ruling request with re-

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spect to such transfers was filed with the federal Internal Revenue Service before March 27, 1976, or (ii) a registration statement with respect to such transfers was filed with the federal Securities and Exchange Commission before March 27, 1976 (B) the securities transferred were deposited on or before December 3, 1976, and (C) either (i) the aggregate value (determined as of the close of December 3, 1976, or, if earlier, the close of the deposit period) of the securities so transferred does not exceed \$100,000,000, or (ii) the securities transferred were all on deposit on February 29, 1976, pursuant to a registration statement referred to in (A)(ii) preceding; provided further that (5) if no registration statement was required to be filed with the federal Securities and Exchange Commission with respect to the transfer of securities to any partnership, then (4) preceding shall be applied to such transfers [(a)] (A) as if (4) preceding did not contain (4)(A)(ii) preceding, and (B) by substituting "\$25,000,000" for "\$100,000,000" in (4)(C)(i) preceding; and provided further that (6) the amendments made by section 2131(d) and (e) shall take effect on January 1, 1977, in taxable years ending on or after such date), 2132(a) (with respect to contributions of certain government publications for taxable years beginning after December 31, 1976), 2135 (a) (with respect to charitable contributions of inventory and other property for taxable years beginning after December 31, 1976), 2136(a) (with respect to treatment of grantor of options of stock, securities, and commodities for taxable years beginning after December 31, 1976), 2139(a) (with respect to support test for dependent children of divorced, etc., parents for taxable years beginning after December

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For taxable years beginning on or after January 1, 1978.

31, 1976), 2140(a) (with respect to involuntary conversions of real property for taxable years beginning after December 31, 1976; provided that the amendments made by section 2140(a) shall apply with respect to any disposition of converted property (within the meaning of section 1033(a)(2) of the Internal Revenue Code) after December 31, 1976, unless a condemnation proceeding with respect to such property began before such effective date), and 2141 (a) (with respect to livestock sold on account of drought for taxable years beginning after December 31, 1976).

Public Law 94-455, section 505(a) and (b) (with respect to changes in exclusions for sick pay and certain military, etc., disability pensions; certain disability income for taxable years beginning after December 31, 1977; provided that where disability or annuity payments are excluded from taxation by section 235-7 the adoption of section 505(a) and (b) shall not make such payments taxable under this chapter)."

2. Section 235-2.3 is amended to read:

"§235-2.3 Conformance to the federal Internal Revenue Code. (a) For all taxable years beginning after December 31, [1979,] 1980, as used in this chapter "Internal Revenue Code" means subtitle A, chapter 1 of the federal Internal Revenue Code of 1954 as amended as of December 31, [1979] 1980 as it applies to the determination of gross income, adjusted gross income, ordinary income and loss, and taxable income, except those provisions of the Internal Revenue Code and federal Public Law which pursuant to this chapter and this section do not apply or are otherwise limited in application [and except that amendments to the Internal Revenue Code made by Public Law 95-600, section 702 (with respect to technical, clerical, and conforming amendments to estate and gift tax provisions) shall be operative for the purposes of this chapter on the effective dates set forth in section 702].

Sections 235-2, 235-2.1, and 235-2.2 shall continue to be used to determine (1) the basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978, and (2) gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978[, except that amendments to the Internal Revenue Code made by Public Law 95-600, section 702 (with respect to technical,

clerical, and conforming amendments to estate and gift tax provisions) shall be operative for the purposes of (1) and (2) of this subsection even if such determination was made or such taxable year begins before January 1, 1978].

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

- (1) Subchapter A (sections 1 to 58) (with respect to determination of tax liability).
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 103 (with respect to interest on certain governmental obligations). For treatment, see section 235-7(b).
- (4) Section 116 (with respect to partial exclusion of dividends and interest received by individuals). For treatment, see section 235-7(c).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see subsection (g) of this section and sections 235-7(a)(10) to (12) and 235-9(a)(2) and (5).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (8) Section 169 (with respect to amortization of pollution control facilities). For treatment, see section 235-11.
- (9) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations, except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- (10) Section 280C (with respect to portion of wages for which credit is claimed under section 44B).
- (11) Section 367 (with respect to foreign corporations).
- (12) Section 457 (with respect to deferred compensation plans with respect to service for state and local governments).
- (13) Subchapter F (sections 501 to 528) (with respect to exempt organizations), except as provided in subsection (g) of this section. For treatment, see section 235-9.
- (14) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (15) Subchapter H (sections 581 to 596) (with respect to banking institutions). For treatment, see chapter 241.
- (16) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- (17) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- (18) Subchapter L (sections 801 to 844) (with respect to insurance companies). For treatment, see sections 431-318 and 431-320.
- (19) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.

- (20) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States)[.], except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- (21) Section 1055 (with respect to redeemable ground rents).
- (22) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (23) Section 1201 (with respect to alternative tax). For treatment, see section 235-71(a).
- (24) Subchapter Q (sections 1301 to 1351) (with respect to readjustment of tax between years and special limitations).
- (25) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.

(c) The determinations, provisions, and requirements relating to zero-bracket amounts in the amendments to the Internal Revenue Code by Public Law 95-30, sections 101 (with respect to change in tax rates and tax tables to reflect permanent increase in standard deduction) and 102 (with respect to change in definition of taxable income to reflect change in tax rates and tables) and Public Law 95-600, section 101(b) (with respect to increase in zero-bracket amount) and any other present or future amendments to the Internal Revenue Code relating to zero-bracket amounts shall not be operative for the purposes of this chapter.

(d) Sections 141 (with respect to standard deduction), 142 (with respect to individuals not eligible for standard deduction), and 144 (with respect to election of standard deduction) of the Internal Revenue Code, as amended, as of June 7, 1957, shall be operative for the purposes of this chapter, subsection (a) of this section to the contrary notwithstanding.

(e) Section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code shall be operative for the purposes of this chapter; except the amendments to section 403 by Public Law 87-370, section 3 (with respect to employees of certain educational organizations) shall not be operative.

(f) In administering the provisions of sections 410 to 415 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.) and sections 418 to 418E (with respect to special rules for multiemployer plans) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to [415.] 418E.

In administering sections 401 to [415] 418E (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, section 1017(i), shall be operative for the purposes of this chapter.

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

(g) Sections 512 to 515 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative

for the purposes of this chapter as provided in this subsection.

The persons and organizations exempted by section 235-9 shall, if subject to tax under the Internal Revenue Code upon their "unrelated business taxable income", be taxed thereon under this chapter. For the purposes of this subsection the term "taxable income" as used in subsection(h)(2) of this section and section 235-71 shall be read as "unrelated business taxable income."

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

(h) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b).
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State.
- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount on individuals as determined under section 235-51(a).

(i) Section 644 (with respect to special rule for gain on property transferred to trust at less than market value) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the determination of the interest rate established under section 6621 of the Internal Revenue Code referred to in section 644(a)(2) of the Internal Revenue Code shall instead be the interest rate established under section 231-39(b)(4).

(j) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which section 103 of the Internal Revenue Code applies in section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(k) Sections 991 to 997 (with respect to domestic international sales corporations) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that any corporation electing to be an international sales corporation under this chapter shall be incorporated and have its principal place of business in this State.

[(k)] (l) Section 1034 (with respect to rollover of gain on sale of principal residence) of the Internal Revenue Code shall be operative for the purpose of this chapter [subject to the following:

- (1) Section]; provided section 1034(a) (with respect to nonrecognition of gain)

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of the Internal Revenue Code shall apply only to:

[(A)] (1) A taxpayer who purchases a replacement residence which is located within the State, or

[(B)] (2) A taxpayer who is a resident of the State, taxable upon the taxpayer's entire income, computed without regard to source within the State.

[(l)] (m) Section 1212 (with respect to capital loss carrybacks or carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a), shall be limited to five years.

[(m)] (n) Subchapter S (sections 1371 to 1379) with respect to the election of certain small business corporations as to taxable status) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

(1) The term small business corporation as defined in section 1371 of the Internal Revenue Code means a corporation which does not have:

(A) A nonresident as a shareholder; or

(B) A resident who is an individual who has taken up residence in the State after attaining the age of sixty-five years and before July 1, 1976 and who is taxed under this chapter only on the basis of income received or derived from property owned, personal services performed, trade or business carried on, and any and every other source in the State;

unless the individual resident in subparagraph (B) shall have waived the benefit of section 3, Act 60, Session Laws of Hawaii 1976, as to income includible in the individual's gross income under this chapter and as to such gross income shall have consented to the taxation thereof in the same manner as if the individual had taken up residence in the State after June 30, 1976.

(2) An election under section 1372(a) of the Internal Revenue Code made by a small business corporation shall terminate, if for any taxable year of the corporation for which the election is in effect such corporation derives more than eighty per cent of its gross receipts from sources outside the State of Hawaii. Such termination shall be effective for the taxable year of the corporation in which it derives more than eighty per cent of its gross income from sources outside the State and for all succeeding taxable years;

(3) An election under section 1372 of the Internal Revenue Code shall not be effective for any taxable year of the corporation unless there is also in effect for such taxable year an election for federal income tax purposes under Subchapter S of chapter 1 of the Internal Revenue Code.

(4) The tax imposed by section 1378(a) of the Internal Revenue Code is hereby imposed by this chapter at an amount equal to 3.08 per cent on the amount by which the net capital gain of the corporation exceeds \$25,000. For the purposes of section 1378(c)(3) of the Internal Revenue Code the amount of tax to be determined shall not exceed 3.08 per cent on the net

capital gain attributable to property acquired as provided in section 1378(c)(3)(B) of the Internal Revenue Code and having a basis described in section 1378(c)(3)(C) of the Internal Revenue Code.

[(n)] (o) References in provisions of subtitle A, chapter 1, of the Internal Revenue Code which are operative in this State to provisions in the Internal Revenue Code which are not operative in this State shall be considered inoperative for the purposes of determining gross income, adjusted gross income, ordinary income, and loss, and taxable income; provided that references to time limits and other administrative provisions in subtitle F (sections 6001 to 7852) of the Internal Revenue Code shall be deemed references to applicable provisions of this chapter or chapter 231 or 232, and in the absence of applicable provisions in this chapter or chapter 231 or 232, then to rules adopted by the director of taxation under this subsection [(n).] (p). If operative provisions of subtitle A, chapter 1, of the Internal Revenue Code have been codified in this chapter such references shall be deemed references to the codified provisions in this chapter. Transitory and savings provisions in federal Public Laws amending sections of the Internal Revenue Code operative in this chapter shall be operative for the purposes of this chapter. Provisions in this chapter or chapter 231 or 232 in conflict with the Internal Revenue Code or transitory or savings provisions in federal Public Law shall control.

Retroactive provisions in federal Public Laws amending sections of the federal Internal Revenue Code operative in this chapter affecting taxable years beginning or ending before the December 31 date in subsection (a) shall be operative for the purposes of this chapter; provided that the effective dates in Public Law 96-471 placing it effect for the taxable year 1980 shall be operative for the purposes of this chapter.

[(o)] (p) The director of taxation may adopt by rule under chapter 91 the rules and regulations promulgated by the United States Secretary of Treasury or a delegate of the Secretary relating to the provisions of subtitle A, chapter 1 or 6, of the Internal Revenue Code operative in this chapter and any administrative provisions of the Internal Revenue Code (subtitle F, sections 6001 to 7852) not in conflict with or similar to provisions contained in this chapter or chapter 231 or 232 either by reference or by setting them forth in full.

[(p)] (q) The department of taxation shall submit to each regular session of the legislature a bill to amend subsection (a) of this section and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions which are limited in their operation, or which are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of such bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the

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legislature meets; provided that the legislature may choose to adopt none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.”

SECTION 3. Statutory material to be repealed is bracketed. New material is underscored.

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1980, except as otherwise provided in this Act.

(Approved April 14, 1981.)