

ACT 231

H.B. NO. 55

A Bill for an Act Relating to Housing.

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

SECTION 1. The purpose of this Act is to exempt from increased tax liability those individuals for whose benefit individual housing accounts were established who marry individuals who have or have had interests in real property in an amount equal to ten per cent of the distribution from the individual housing account upon the termination of their housing account. This Act also makes this provision retroactive to the implementation of section 235-5.5, Hawaii Revised Statutes. In addition, certain nonsubstantive changes were made to eliminate redundancy and an erroneous reference to subsection (f) where subsection (g) was intended.

SECTION 2. Section 235-5.5, Hawaii Revised Statutes, is amended to read as follows:

“[ [ ]§235-5.5[ ] ] **Individual housing accounts.** (a) There shall be allowed as a deduction from gross income the amount, not to exceed \$5,000, paid in cash during the taxable year by an individual taxpayer to an individual housing account established for the individual’s benefit to provide funding for

the purchase of the individual's first principal residence. The interest paid or accrued within the taxable year on the account shall not be included in the individual's gross income. For purposes of this section, the term "first principal residence" means a residential property purchased with the payment or distribution from the individual housing account which shall be owned and occupied as the only home by an individual who did not have any interest in, individually, or whose spouse did not have any interest in, if the individual is married, a residential property prior thereto.

In the case of a married couple filing separate returns, the sum of the deductions allowable to each of them for the taxable year shall not exceed \$5,000, for amounts paid in cash, excluding interest paid or accrued thereon.

The amounts paid in cash allowable as a deduction under this section to an individual for all taxable years shall not exceed \$25,000, excluding interest paid or accrued. In the case of married individuals having separate individual housing accounts, the sum of such separate accounts and the deduction under this section shall not exceed \$25,000, excluding interest paid or accrued thereon.

(b) For purposes of this section, the term "individual housing account" means a trust created or organized in Hawaii for the exclusive benefit of an individual, or, in the case of a married individual, for the exclusive benefit of the individual and spouse jointly, but only if the written governing instrument creating the trust meets the following requirements:

- (1) Contributions shall not be accepted for the taxable year in excess of \$5,000 or in excess of \$25,000 for all taxable years, exclusive of interest paid or accrued;
- (2) The trustee is a bank, a savings and loan association, or a credit union, chartered or supervised under federal or state law, whose accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, the National Credit Union Administration, or any agency of this State or any federal agency established for the purpose of insuring accounts in these financial institutions. The financial institution must actively make residential real estate mortgage loans in Hawaii;
- (3) The assets of the trust shall be invested only in fully insured savings or time deposits. Funds held in the trust may be commingled for purposes of investment, but individual records shall be maintained by the trustee for each individual housing account holder which show all transactions in detail;
- (4) The entire interest of an individual or married couple for whose benefit the trust is maintained shall be distributed to the individual or couple not later than one hundred twenty months after the date on which the first contribution is made to the trust; and
- (5) Except as provided in subsection [(f) in the case of a total disability or death,] (g), the trustee shall not distribute the funds in the account unless it (A) verifies that the money is to be used for the purchase of a first principal residence located in Hawaii, and provides that the instrument of payment is payable to the mortgagor, construction contractor, or other vendor of the property purchased; or (B) withholds an amount equal to ten per cent of the amount withdrawn from the account and remits this amount to the director within ten days after the date of the

withdrawal. The amount so withheld shall be applied to the liability of the taxpayer under subsections (c) and (e).

(c) Any contributions paid or distributed out of an individual housing account shall be included in gross income by the individual for whose benefit the account was established for the taxable year in which the payment or distribution is received, unless the amount is used exclusively in connection with the purchase of the first principal residence in Hawaii for the individual for whose benefit the account was established.

(d) The transfer of an individual's interest in an individual housing account to a spouse under a dissolution of marriage decree or under a written instrument incident to a dissolution of marriage shall not be considered a taxable transfer made by the individual, and the interest, at the time of the transfer, shall be treated as part of an individual housing account of the transferee, and not of the transferor. After the transfer, the account shall be treated, for purposes of this section, as maintained for the benefit of the transferee.

(e) If a distribution from an individual housing account to an individual for whose benefit the account was established is made and not used in connection with the purchase of the first principal residence in Hawaii for the individual, the tax liability of the individual under this chapter for the taxable year in which the distribution is received shall be increased by an amount equal to ten per cent of the amount of the distribution which is includable in the individual's gross income for the taxable year.

If, during any taxable year, the individual uses the account or any portion thereof as security for a loan, the portion so used shall be treated as if it had been distributed to that individual.

(f) If the individual for whose benefit the individual housing account was established purchases a residential property in Hawaii with the distribution from the individual housing account and thereafter sells in any manner or method or by use of any instrument conveying or transferring such residential property, the gross income of the individual under this chapter for the taxable year in which the residential property is sold, conveyed, or transferred, whichever is applicable, shall include an amount equal to the amount of the distribution from the individual housing account, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the distribution from the individual housing account.

(g) No tax liability shall be imposed under this section if:

- (1) The payment or distribution is attributable to the individual dying or becoming totally disabled; or
- (2) Residential property subject to subsection (f) is sold due to the death or total disability of an individual or individual's spouse,

subject to the following:

An individual shall not be considered to be totally disabled unless proof is furnished of the total disability in the form and manner as the director may require.

Upon the death of an individual for whose benefit an individual housing account has been established, the funds in the account shall be payable to the estate of the individual; provided that if the account was held jointly by the decedent and a spouse of the decedent, the account shall terminate and be paid to the surviving spouse; or, if the surviving spouse so elects, such spouse may continue the account as an individual housing account. Upon the total disability of an individual for whose benefit an individual housing account has been established, the individual or the individ-

ual's authorized representative may elect to continue the account or terminate the account and be paid the assets; provided that if the account was held jointly by a totally disabled person and a spouse of such person, then the spouses or an authorized representative may elect to continue the account or terminate the account and be paid the assets.

(h) If the individual for whose benefit the individual housing account was established subsequently marries a person who has or has had any interest in residential property, the individual's housing account shall be terminated, the funds therein shall be distributed to the individual, and the amount of the funds shall be includable in the individual's gross income for the taxable year in which such marriage took place; provided that the tax liability defined under subsection (f) shall not be imposed.

[(h)] (i) The trustee of an individual housing account shall make reports regarding the account to the director and to the individual for whom the account is maintained with respect to contributions, distributions, and other matters as the director may require under rules. The reports shall be filed at a time and in a manner as may be required by rules adopted under chapter 91. A person who fails to file a required report shall be subject to a penalty of \$10 to be paid to the director for each instance of failure to file."

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

SECTION 4. This Act, upon its approval, shall apply retroactively to taxable years beginning after December 31, 1981.

(Approved May 28, 1986.)