

ACT 11

S.B. NO. 1844

A Bill for an Act Relating to the Income Taxation of Certain Income.

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

SECTION 1. Section 235-5, Hawaii Revised Statutes, is amended to read as follows:

“§235-5 Allocation of income of persons not taxable upon entire income.
(a) [Subject to part II of this chapter, this section applies to persons who are not

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required to include in their returns their entire income from every source whether within or without the State.] This section applies to income not subject to part II of this chapter, including nonbusiness income and certain section 235-22 income.

(b) Income (including gains), also losses, from property owned in the State and from any other source in the State shall be determined by an allocation and separate accounting so far as practicable. Losses from property owned outside the State and from other sources outside the State shall not be deducted.

(c) Deductions connected with income taxable under this chapter shall be allowed, but deductions connected with income not taxable under this chapter shall not be allowed. Deductions from adjusted gross income that are not connected with particular property or income, such as medical expenses, shall be allowed only to the extent of the ratio of the adjusted gross income attributed to this State to the entire adjusted gross income computed without regard to source in the State.

Deductions by individual taxpayers from gross income for alimony and separate maintenance payments under section 215 of the Internal Revenue Code shall be allowed only to the extent of the ratio of gross income attributed to this State to the entire gross income computed without regard to source in this State; provided that as used in this sentence "gross income" means gross income as defined in the Internal Revenue Code, minus the deductions allowed by section 62 of the Internal Revenue Code, other than the deductions for alimony and separate maintenance payments under section 215 of the Internal Revenue Code.

Deductions by individual taxpayers from gross income for pension, profit-sharing, stock bonus plans, and other plans qualified under sections 401 to 409 of the Internal Revenue Code, as such sections are operative for the purposes of this chapter, shall be allowed only to the extent that such deductions are attributed to compensation earned in this State.

- [(d) (1) Income or loss from a trade or business carried on in the State shall be attributed to the State. Every person shall be deemed to be carrying on a trade or business in the State if the person's income therefrom is subject to the taxing jurisdiction of this State by reason of the person's engaging in activities in this State, or causing transactions to be conducted in this State, with the object of gain, profit, or economic benefit, whether or not such activities or transactions are in or connected with interstate or foreign commerce.
- (2) Where a person's trade or business is carried on both within and without the State, the portion of the income attributable to the State shall, so far as practicable, be determined by an allocation and separate accounting, whenever the person's trade or business within the State is not an integral part of a unitary business conducted within and without the State; provided that the department of taxation may permit an allocation and separate accounting whenever it is satisfied that the use of such method will properly reflect the income taxable by this State.
- (3) In all cases in which, as to all or a part of a person's income, allocation and separate accounting is not permissible, such income shall be apportioned to this State on the basis of the ratio obtained by taking the arithmetical average of the ratios prescribed in subsection (e).
- (e) (1) If a person's principal business in this State is producing or manufacturing tangible personal property, including without limitation the business of fishing, or raising or producing agricultural, animal, poultry, or natural resource products, or canning, packing, milling, preserving, and other forms of compounding, processing, or preparing commodities for sale or use, the ratios used shall be:

- (A) The ratio of the value of the tangible property (real, personal, and mixed, inclusive of leasehold interests) owned by the person in this State on the last day of the taxable year in connection with the trade or business, exclusive of property the income of which is separately allocated, to the total of the property everywhere (hereinafter called the property ratio); and
 - (B) The ratio of the wages, salaries, commissions, and other compensation of the person's employees for services performed in this State, exclusive of services in connection with business the income of which is separately allocated, to the total of such compensation for employees' services everywhere (hereinafter called the payroll ratio).
- (2) If paragraph (1) does not apply and a person's principal business in this State is selling tangible personal property, the ratios used shall be the property ratio, the payroll ratio, and the ratio of gross sales attributable to this State to the total of gross sales everywhere. There shall be attributed to this State all sales of such tangible personal property (A) delivered to a purchaser at a point within this State, or (B) shipped to a purchaser at a point within this State, or (C) delivered to a purchaser at a point outside this State or shipped to a purchaser at a point outside this State, if such point is located in a state, territory, or similar taxing jurisdiction in which the person is not doing business, and the sale was made on an order secured or received by an office or branch in this State or a representative residing or stationed in this State.
- (3) In all other cases the ratios used shall be the property ratio, the payroll ratio, and the ratio of the person's gross receipts in the State from such trade or business to the person's gross receipts everywhere from such trade or business. As used in this paragraph "gross receipts in the State" shall include all receipts received or derived from persons and other sources within the State, wherever paid, and all receipts from sales attributed to this State in accordance with paragraph (2).
- (f) (d) If in the opinion of the department the [methods of allocation and apportionment] allocations hereinabove provided do not clearly and accurately reflect the actual amount of the adjusted gross income and taxable income received or derived from all property owned [and every trade or business carried on] and any and every other source in the State, or if any person shows that the [methods of allocation and apportionment] allocations hereinabove provided result in adjusted gross income or taxable income being attributed to the State in a larger amount than is just and equitable, then the same shall be determined, allocated, and apportioned under such rules [and regulations], processes, and formulas as the department prescribes as being just and equitable."

SECTION 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning, or parts of taxable years occurring, after December 31, 1988.

(Approved April 11, 1989.)