

ACT 183

H.B. NO. 3157

A Bill for an Act Relating to Individual Housing Account Deductions.

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

SECTION 1. Section 235-5.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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. A deduction not to exceed \$10,000 shall be allowed for a married couple filing a joint return. No deduction shall be allowed on any amounts distributed less than three hundred sixty-five days from the date on which a contribution is made to

the account. Any deduction claimed for a previous taxable year for amounts distributed less than three hundred sixty-five days from the date on which a contribution was made shall be disallowed and the amount deducted shall be included in the previous taxable year's gross income and the tax reassessed. 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.] within the last five years of opening the individual housing account.

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, or \$10,000 for a joint return, 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] the 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 \$10,000 in the case of a joint return) 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 (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)[.]; and

- (6) If any amounts are distributed before the expiration of three hundred sixty-five days from the date on which a contribution is made to the account, the trustee shall so notify in writing the taxpayer and the director. If the trustee makes the verification required in paragraph (5)(A), then the department shall disallow the deduction under subsection (a) and subsections (c), (e), and (f) shall not apply to that amount. If the trustee withholds an amount under paragraph (5)(B), then the department shall disallow the deduction under subsection (a) and subsection (e) shall apply, but subsection (c) shall not apply.

SECTION 2. Section 235-5.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(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:

- (1) Before January 1, 1990, and if the individual sells in any manner or method or by use of any instrument conveying or transferring the 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 total distribution from the individual housing account.
- (2) After December 31, 1989, the individual shall report one-tenth of the total distribution from the individual housing account used to purchase the residential property as gross income in the taxable year in which the distribution is completed and in each taxable year thereafter until all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property. If the individual sells in any manner or method or by use of any instrument conveying or transferring the 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 not previously reported as gross income, and in addition, the tax liability of the individual shall be increased by an amount equal to ten per cent of the total distribution from the individual housing account. If the individual sells the residential property in any manner as provided in this paragraph after all of the distribution has been included in the individual's gross income at the end of the tenth taxable year after the purchase of the residential property, the tax liability of the individual shall not be increased by an amount equal to ten per cent of the total distribution from the individual housing account.

An individual who purchased a residential property in Hawaii with the distribution from an individual housing account before January 1, 1990, who is subject to paragraph (1) may elect to report as provided in paragraph (2). The election shall be made before January 1, 1991. If the individual makes the election, the individual shall report one-tenth of the total distribution from the individual housing account as gross income in the taxable year in which the election occurs and in each taxable year thereafter until all of the distribution has been included in gross income as provided by paragraph (2). If the individual making the election sells the residential property in any manner as provided in paragraph (2), then the individual shall include as income the amount of the distribution not previously reported as income and increase the individual's tax liability as provided in the second sentence of paragraph (2)[.], except when the third sentence of paragraph (2) applies."

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1992.

(Approved June 12, 1992.)