

ACT 73

S.B. NO. 1454

A Bill for an Act Relating to Conformity to the Internal Revenue Code.

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

SECTION 1. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For all taxable years beginning after December 31, [1991,] 1992, 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, [1991,] 1992, 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, this section, and sections 235-2.4 and 235-2.5 do not apply or are otherwise limited in application; provided that section 1202 (with respect to deductions for capital gains) of the Internal Revenue Code of 1954 as amended as of December 31, 1986, shall be operative for the purposes of this chapter until March 31, 1987, and shall apply to any capital gains properly taken before April 1, 1987, except that the deduction provided in section 1202(a) shall be fifty-five per cent of the net capital gain.

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.”

SECTION 2. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Definitions of qualifying individual and employment-related expenses. For purposes of this section:

- (1) Qualifying individual. The term “qualifying individual” means:
 - (A) A dependent of the taxpayer who is under the age of thirteen and with respect to whom the taxpayer is entitled to a deduction under section 235-54(a),
 - (B) A dependent of the taxpayer who is physically or mentally incapable of caring for oneself, or
 - (C) The spouse of the taxpayer, if the spouse is physically or mentally incapable of caring for oneself.
- (2) Employment-related expenses.
 - (A) In general. The term “employment-related expenses” means amounts paid for the following expenses, but only if such expenses are incurred to enable the taxpayer to be gainfully employed for any period for which there are one or more qualifying individuals with respect to the taxpayer:
 - (i) Expenses for household services, and
 - (ii) Expenses for the care of a qualifying individual.

Such term shall not include any amount paid for services outside the taxpayer's household at a camp where the qualifying individual stays overnight.

- (B) Exception. Employment-related expenses described in subparagraph (A) which are incurred for services outside the taxpayer's household shall be taken into account only if incurred for the care of:
 - (i) A qualifying individual described in paragraph (1)(A), or
 - (ii) A qualifying individual (not described in paragraph (1)(A)) who regularly spends at least eight hours each day in the taxpayer's household.
- (C) Dependent care centers. Employment-related expenses described in subparagraph (A) which are incurred for services provided outside the taxpayer's household by a dependent care center (as defined in subparagraph (D)) shall be taken into account only if:
 - (i) Such center complies with all applicable laws, rules, and regulations of this State, [and] if the center is located within the jurisdiction of this State; or
 - (ii) Such center complies with all applicable laws, rules, and regulations of the jurisdiction in which the center is located, if the center is located outside the State; and
 - [(ii)] (iii) The requirements of subparagraph (B) are met.
- (D) Dependent care center defined. For purposes of this paragraph, the term "dependent care center" means any facility which:
 - (i) Provides care for more than six individuals (other than individuals who reside at the facility), and
 - (ii) Receives a fee, payment, or grant for providing services for any of the individuals (regardless of whether such facility is operated for profit)."

SECTION 3. Section 235-55.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- “(e) Special rules. For purposes of this section:
 - (1) Maintaining household. An individual shall be treated as maintaining a household for any period only if over half the cost of maintaining the household for such period is furnished by such individual (or, if such individual is married during such period, is furnished by such individual and the individual's spouse).
 - (2) Married couples must file joint return. If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.
 - (3) Marital status. An individual legally separated from the individual's spouse under a decree of divorce or of separate maintenance shall not be considered as married.
 - (4) Certain married individuals living apart. If:
 - (A) An individual who is married and who files a separate return:
 - (i) Maintains as the individual's home a household which constitutes for more than one-half of the taxable year the principal place of abode of a qualifying individual, and
 - (ii) Furnishes over half of the cost of maintaining such household during the taxable year, and

- (B) During the last six months of such taxable year such individual's spouse is not a member of such household, such individual shall not be considered as married.
- (5) Special dependency test in case of divorced parents, etc. If:
- (A) Paragraph (2) or (4) of section 152(e) of the Internal Revenue Code of 1954, as amended, applies to any child with respect to any calendar year; and
- (B) Such child is under age thirteen or is physically or mentally incompetent of caring for the child's self;
- in the case of any taxable year beginning in such calendar year, such child shall be treated as a qualifying individual described in subsection (b)(1)(A) or (B) (whichever is appropriate) with respect to the custodial parent (within the meaning of section 152(e)(1) of the Internal Revenue Code of 1954, as amended), and shall not be treated as a qualifying individual with respect to the noncustodial parent.
- (6) Payments to related individuals. No credit shall be allowed under subsection (a) for any amount paid by the taxpayer to an individual:
- (A) With respect to whom, for the taxable year, a deduction under section 151(c) of the Internal Revenue Code of 1954, as amended (relating to deduction for personal exemptions for dependents) is allowable either to the taxpayer or the taxpayer's spouse, or
- (B) Who is a child of the taxpayer (within the meaning of section 151(c)(3) of the Internal Revenue Code of 1954, as amended) who has not attained the age of nineteen at the close of the taxable year.
- For purposes of this paragraph, the term "taxable year" means the taxable year of the taxpayer in which the service is performed.
- (7) Student. The term "student" means an individual who during each of five calendar months during the taxable year is a full-time student at an educational organization.
- (8) Educational organization. The term "educational organization" means a school operated by the department of education or licensed under chapter 298, or a university, college, or community college.
- (9) Identifying information required with respect to service provider. No credit shall be allowed under subsection (a) for any amount paid to any person unless:
- (A) The name, address, taxpayer identification number, and general excise tax license number of such person are included on the return claiming the credit, [or]
- (B) If the person is located outside the State, the name, address, and taxpayer identification number, if any, of the person and a statement indicating that the service provider is located outside the State and that the general excise tax license and, if applicable, the taxpayer identification numbers are not required, or
- [(B)] (C) If such person is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a) of the Internal Revenue Code, the name and address of such person are included on the return claiming the credit.

In the case of a failure to provide the information required under the preceding sentence, the preceding sentence shall not apply if it is shown that the taxpayer exercised due diligence in attempting to provide the information so required."

SECTION 4. Section 235-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) For each withholding period (whether weekly, biweekly, monthly, or otherwise) the amount of tax to be withheld under this section shall be at a rate which, for the taxable year, will yield the tax imposed by section 235-51 upon each employee’s annual wage, as estimated from the employee’s current wage in any withholding period[, but (for the purposes of this subsection) of the rates provided by section 235-51 the maximum to be taken into consideration shall be eight per cent]. The tax for the taxable year shall be calculated upon the following assumptions:

- (1) That the employee’s annual wage, as estimated from the employee’s current wage in the withholding period, will be the employee’s sole income for the taxable year;
- (2) That there will be no deductions therefrom in determining adjusted gross income;
- (3) That in determining taxable income there shall be a standard deduction allowance which shall be an amount equal to one exemption (or more than one exemption if so prescribed by the director) unless (A) the taxpayer is married and the taxpayer’s spouse is an employee receiving wages subject to withholding, or (B) the taxpayer has withholding exemption certificates in effect with respect to more than one employer. For the purposes of this section, any standard deduction allowance under this paragraph shall be treated as if it were denominated a withholding exemption[.];
- (4) That in determining taxable income there also will be deducted the amount of exemptions and withholding allowances granted to the employee in the computation of taxable income, as shown by a certificate to be filed with the employer as provided by subsection (f); and
- (5) If it appears from the certificate filed pursuant to subsection (f) that the employee [is], under section 235-93, is entitled to make a joint return, that the employee and the employee’s spouse will so elect.”

SECTION 5. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) Individuals, corporations (including S corporations), estates, and trusts, shall annually furnish the department of taxation with a declaration of estimated tax for the current taxable year. Declarations of estimated tax, except as otherwise provided by rule, shall be governed by the provisions as to returns contained in sections 235-94, 235-98, 235-99, and 235-128. The declarations shall be made on estimated tax payment voucher forms. The payment voucher shall be filed, in the case of [individuals, estates, and trusts] taxpayers on the calendar year basis, on or before April 20[, and in the case of corporations on the calendar year basis on or before September 20]. In the case of a husband and wife who are entitled to submit a joint payment voucher for federal purposes, a single payment voucher may be submitted by them jointly, in which case the liability with respect to the estimated tax shall be joint and several; if a joint payment voucher is submitted but a joint income tax return is not made for the taxable year, the

- estimated tax for [such] the year may be treated as the estimated tax of either the husband or the wife or may be divided between them.
- (2) Each [individual, estate, and trust] taxpayer shall transmit, with the payment voucher, payment of one-quarter of the estimated tax for the current taxable year. In determining this quarterly payment and all other installments, there first shall be deducted from the total estimated tax the amount of estimated tax withholding or collection at source for the taxable year. Thereafter, on the twentieth day of June and September, the [individual, estate, and trust] taxpayer shall transmit with the payment voucher, payment of one-quarter of the estimated tax. The fourth quarter payment of the estimated tax shall be transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.
- (3) [Each corporation shall transmit, with its payment voucher, payment of one-half of the estimated tax for the current taxable year. The second half payment of the estimated tax shall be transmitted with the payment voucher by January 20 of the year following the taxable year for which the estimate was made.
- (4) Individuals, corporations, estates, and trusts] Taxpayers operating on a fiscal year basis shall make similar estimates and tax payments, on or before the twentieth day of the fourth month of the fiscal year [in the case of individuals, estates, and trusts and the ninth month of the fiscal year in the case of corporations,] and periodically thereafter so as to conform to the payments and returns required in the case of those on a calendar year basis.
- [(5)] (4) The department by rule may excuse individuals from filing an estimate in those cases where the gross income and exemptions are such that no tax is expected to accrue under this chapter, or are such that substantially all the tax will be collected through tax withholding or at the source.
- [(6)] (5) In the case of a foreign corporation, the department may excuse the filing of an estimate and the payment of estimated tax if it is satisfied that less than fifteen per cent of the corporation's business for the taxable year will be attributable to the State. For the purposes of this paragraph, fifteen per cent of a corporation's business shall be deemed attributable to the State if fifteen per cent or more of the entire gross income of the corporation (which for the purposes of this paragraph means gross income computed without regard to source in the State) is attributable to the State under sections 235-21 to 235-39 or other provisions of this chapter.
- [(7)] (6) In the case of [an individual, estate, trust, or domestic corporation] a taxpayer whose tax liability is less than [\$100,] \$500, the filing of an estimate and the payment of estimated tax shall not be required."

SECTION 6. Section 235-97, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) In the case of any underpayment of estimated tax, except as provided by [paragraph (3) of] this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of eight per cent a year upon the amount of the underpayment [(determined under paragraph (1) of this subsection)] for the period of the underpayment [(determined under paragraph (2) of this subsection)].

- (1) [For purposes of this subsection, the] The amount of the underpayment shall be the excess of:

- (A) The [amount of the installment which would be required to be paid if the estimated tax were equal to seventy per cent (fifty per cent in the case of corporations) of the tax shown on the return for the taxable year or, if no return is filed, seventy per cent (fifty per cent in the case of corporations) of the tax for such year,] required installment, over
 - (B) The amount, if any, of the installment paid on or before the [last date prescribed for such payment.] due date for the installment.
- (2) The period of the underpayment shall run from the due date for the installment [was required to be paid] to whichever of the following dates is the earlier:
- (A) The twentieth day of the fourth month following the close of the taxable year[.], or
 - (B) With respect to any portion of the underpayment, the date on which [such] the portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be [considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (1)(A) for such installment date.] credited against unpaid required installments in the order in which the installments are required to be paid.
- (3) [Notwithstanding the preceding paragraphs, the addition to the tax with respect to any underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds whichever of the following is the lesser:
- (A) The amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the least:
 - (i) The tax shown on the return of the taxpayer for the preceding taxable year, if a return showing a liability for the tax was filed by the taxpayer under the income tax law of 1957 for the preceding taxable year and such preceding year was a taxable year of twelve months; or
 - (ii) An amount equal to the tax computed on the basis of the facts shown on the taxpayer's return for, and the law applicable to, the preceding taxable year, if a return for such preceding year was filed by the taxpayer under the income tax law of 1957, but at the rates applicable to the taxable year and on the basis of an individual taxpayer's status with respect to personal exemptions under section 235-54 for the taxable year, or
 - (iii) An amount equal to seventy per cent (fifty per cent in the case of corporations) of the tax for the taxable year computed by placing on an annualized basis the adjusted gross income and taxable income for the months in the taxable year ending before the month in which the installment is required to be paid. For purposes of this subparagraph, the adjusted gross income and taxable income shall be placed on an annualized basis by:
 - First, multiplying by twelve (or, in the case of a taxable year of less than twelve months, the number of months in the taxable year) the adjusted gross income, or the taxable income (computed without deduction of personal exemp-

- tions), for the months in the taxable year ending before the month in which the installment is required to be paid,
- Second, dividing the resulting amount by the number of months in the taxable year ending before the month in which such installment date falls, and
- Third, deducting from such amount, in the case of computation of taxable income of individuals, the deductions for personal exemptions allowable for the taxable year (such personal exemptions being determined as of the last date prescribed for payment of the installment), or
- (B) An amount equal to ninety per cent (sixty-five per cent in the case of corporations) of the tax computed at the rates applicable to the taxable year, on the basis of the actual adjusted gross income and taxable income for the months in the taxable year ending before the month in which the installment is required to be paid.]

For the purposes of this section, the term "tax" means the tax imposed under this chapter reduced by any credits available to the taxpayer other than the credit for amounts withheld from the taxpayer's wages or taxes withheld at the source, if any, for the taxable year.

- (4) Sections 6654(d), (e)(2), (e)(3), (h), (i), (j), (k), and (l) (with respect to failure by an individual to pay estimated income tax), and 6655(d), (e), (g)(2), (g)(3), (g)(4), and (i) (with respect to failure by a corporation to pay estimated income tax) of the Internal Revenue Code, as of the date set forth in section 235-2.3(a), shall be operative for the purposes of this section; provided that the due dates contained in any of the preceding Internal Revenue Code sections shall be deemed to be the twentieth day of the applicable month."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval; provided that sections 1 to 3 shall apply to taxable years beginning after December 31, 1992; and provided that sections 4 to 6 shall apply to taxable years beginning after December 31, 1993.

(Approved April 26, 1993.)