

**ACT 178**

H.B. NO. 1645

A Bill for an Act Relating to Conforming Tax Provisions to the Uniform Limited Liability Company Act.

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

SECTION 1. Section 235-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Partner’ means the same as in the Internal Revenue Code.”

SECTION 2. Section 235-68, Hawaii Revised Statutes, is amended by amending the definition of “resident person” in subsection (a) to read as follows:

““Resident person” means any [individual]:

- (1) Individual included in the definition of resident in section 235-1; [any corporation]
- (2) Corporation incorporated or granted a certificate of authority under chapter 415, 415A, or 415B; [any partnership]
- (3) Partnership formed or registered under chapter 425 or 425D; [any foreign]
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or 425D; [or any trust]
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or [any estate]
- (9) Estate included in the definition of resident estate in section 235-1.”

SECTION 3. Section 237-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The words “gross income” and “gross proceeds of sales” shall not be construed to include: gross receipts from the sale of securities as defined in 15 United States Code section 78c or similar laws of jurisdictions outside the United States, contracts for the sale of a commodity for future delivery and other agreements, options, and rights as defined in 7 United States Code section 2 that are permitted to be traded on a board of trade designated by the Commodities Futures Trading Commission under the Commodity Exchange Act, or evidence of indebtedness or, except as otherwise provided, from the sale of land in fee simple, improved or unimproved, dividends as defined by chapter 235; cash discounts allowed and taken on sales; the proceeds of sale of goods, wares, or merchandise returned by customers when the sale price is refunded either in cash or by credit; or the sale price of any article accepted as part payment on any new article sold, if the full sale price of the new article is included in the “gross income” or “gross proceeds of sales”; gross receipts from the sale or transfer of materials or supplies, interest on loans, or the provision of engineering, construction, maintenance, or managerial services by one “member” of an “affiliated public service company group” to another “member” of the same group as such terms are defined in [section 239-2(6).] section 239-2. Accounts found to be worthless and actually charged off for income tax purposes may, at corresponding periods, be deducted from gross proceeds of sale, or gross income, within this chapter, so far as they reflect taxable sales made, or gross income earned, after July 1, 1935, but shall be added to gross proceeds of sale or gross income when and if afterwards collected.”

SECTION 4. Section 237-23.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This chapter shall not apply to amounts received, charged, or attributable to services furnished by one related entity to another related entity or to imputed or stated interest attributable to loans, advances, or use of capital between related entities.

As used in this subsection:

“Related entities” mean:

- (1) An affiliated group of corporations within the meaning of section 1504 (with respect to affiliated group defined) of the federal Internal Revenue Code of 1986, as amended;
- (2) A controlled group of corporations within the meaning of section 1563 (with respect to definitions and special rules) of the federal Internal Revenue Code of 1986, as amended; and
- (3) Those entities connected through ownership of at least eighty per cent of the total value of each such entity, including partnerships, associations, trusts, S corporations, nonprofit corporations, or any other group or combination of these or other tax entities acting as a business unit;

whether or not the entity is located within or without the State or licensed under this chapter.

“Services” mean legal and accounting services and those managerial and administrative services performed by an employee, officer, partner, trustee, [or] sole proprietor, member, or manager in the person’s capacity as an employee, officer, partner, trustee, [or] sole proprietor, member, or manager of one of the related entities and shall include overhead costs attributable to those services.”

SECTION 5. Section 237-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of [a] an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate’s or decedent’s return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; [and]
- (11) The Multistate Tax Commission or its authorized representative[.]; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a misdemeanor.”

SECTION 6. Section 237D-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to [willfully] wilfully permit any such return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for tax purposes only the taxpayer, the taxpayer’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate’s or decedent’s return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; [and]
- (11) The Multistate Tax Commission or its authorized representative[.]; and
- (12) Members of a limited liability company.

Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.”

SECTION 7. Section 239-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read:

““Partner” means the same as in the Internal Revenue Code.  
“Partnership” means the same as in the Internal Revenue Code.”

SECTION 8. Section 239-8, Hawaii Revised Statutes, is amended to read as follows:

**“§239-8 Allocation and apportionment.** (a) The gross income included in the measure of the tax [under section 239-2(6)(B) or (C)] as defined in subparagraphs (B) and (C) of the definition of “gross income” in section 239-2, shall be determined by an allocation and separate accounting so far as practicable.

(b) If under [section 239-2(6)(B)] subparagraph (B) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that

proportion of the total gross income, so requiring apportionment, which the direct cost of the transportation, conveyance, or transmission designated in [section 239-2(6)(B)] subparagraph (B) of the definition of “gross income” in section 239-2, bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.

(c) If under [section 239-2(6)(C)] subparagraph (C) of the definition of “gross income” in section 239-2, an apportionment of gross income is necessary, there shall be apportioned to the State and included in the measure of the tax that proportion of the total gross income, so requiring apportionment, which the total direct cost of the transportation, conveyance, or transmission within the State bears to the total direct cost of the transportation, conveyance, or transmission the gross income from which requires apportionment.”

SECTION 9. Section 243-1, Hawaii Revised Statutes, is amended by amending the definition of “person” to read as follows:

““Person”, except where the context or sense otherwise requires, means and includes individuals, firms, associations, corporations, trusts, estates, [or] partnerships[.], or other entities.”

SECTION 10. Section 251-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All tax returns and return information required to be filed under this chapter, and the report of any investigation of the return or of the subject matter of the return, shall be confidential. It shall be unlawful for any person or any officer or employee of the State to intentionally make known information imparted by any tax return or return information filed pursuant to this chapter, or any report of any investigation of the return or of the subject matter of the return, or to wilfully permit any such tax return, return information, or report so made, or any copy thereof, to be seen or examined by any person; provided that for surcharge tax purposes only the lessor or tour vehicle operator, the lessor’s or tour vehicle operator’s authorized agent, or persons with a material interest in the return, return information, or report may examine them. Unless otherwise provided by law, persons with a material interest in the return, return information, or report shall include:

- (1) Trustees;
- (2) Partners;
- (3) Persons named in a board resolution or a one per cent shareholder in case of a corporate return;
- (4) The person authorized to act for a corporation in dissolution;
- (5) The shareholder of an S corporation;
- (6) The personal representative, trustee, heir, or beneficiary of an estate or trust in case of the estate’s or decedent’s return;
- (7) The committee, trustee, or guardian of any person in paragraphs (1) to (6) who is incompetent;
- (8) The trustee in bankruptcy or receiver, and the attorney-in-fact of any person in paragraphs (1) to (7);
- (9) Persons duly authorized by the State in connection with their official duties;
- (10) Any duly accredited tax official of the United States or of any state or territory; [and]
- (11) The Multistate Tax Commission or its authorized representative[.]; and
- (12) Members of a limited liability company.

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Any violation of this subsection shall be a misdemeanor. Nothing in this subsection shall prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items of the reports or returns.”

SECTION 11. In codifying the new definitions added to section 239-2, Hawaii Revised Statutes, by section 6<sup>1</sup> of this Act, the revisor of statutes shall remove the numeric designations of the existing definitions and alphabetize the existing definitions and the new definitions into one list.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 16, 1997.)

### **Note**

1. Should probably be “section 7”.