

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

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

SECTION 1. The legislature finds that the calculation of the income tax of nonresidents established in Act 281, Session Laws of Hawaii 1997, and codified as section 235-4.3, Hawaii Revised Statutes, has proved to result in anomalies and difficulties for both the taxpayer and the department of taxation. The purpose of this Act is to enact a new method of calculating the income tax of nonresidents.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the standard deduction amount in section 63(c) of the Internal Revenue Code shall instead mean:

- (1) \$1,900 in the case of:
 - (A) A joint return as provided by section 235-93[.]; or
 - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code)[.];
- (2) \$1,650 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code)[.];
- (3) \$1,500 in the case of an individual who is not married and who is not a surviving spouse or head of household[.]; or
- (4) \$950 in the case of a married individual filing a separate return.

Section 63(c)(4) shall not be operative in this State. Section 63(c)(5) shall be operative, except that the limitation on basic standard deduction in the case of certain dependents shall be the greater of \$500 or such individual’s earned income. Section 63(f) shall not be operative in this State.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.”

SECTION 3. 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) 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) The standard deduction as provided in section 235-2.4 and personal exemptions as provided in section 235-5.4 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.

[(d)] (e) If in the opinion of the department the 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 any and every other source in the State, or if any person shows that the 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, processes, and formulas as the department prescribes as being just and equitable."

SECTION 4. Section 235-5.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In computing the taxable income of any individual, there shall be deducted, in lieu of the personal exemptions allowed by the Internal Revenue Code, personal exemptions computed as follows: Ascertain the number of exemptions which the individual can lawfully claim under the Internal Revenue Code, add an additional exemption for the taxpayer or the taxpayer's spouse who is sixty-five years of age or older within the taxable year, and multiply that number by \$1,040, for taxable years beginning after December 31, 1984. A nonresident shall [be entitled to the same personal exemptions as a resident, without proration of] prorate the personal exemptions on account of income from sources outside the State[.] as provided in section 235-5. In the case of an individual with respect to whom an exemption under this section is allowable to another taxpayer for a taxable year beginning in the calendar year in which the individual's taxable year begins, the personal exemption amount applicable to such individual under this subsection for such individual's taxable year shall be zero."

SECTION 5. Section 235-4.3, Hawaii Revised Statutes, is repealed.

SECTION 6. Statutory material to be repealed is bracketed.¹ New statutory material is underscored.

SECTION 7. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1998.

(Approved July 2, 1999.)

Note

1. Edited pursuant to HRS §23G-16.5.