

ACT 133

S.B. NO. 971

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

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

SECTION 1. The purpose of this Act is to conform Hawaii income tax law to the Internal Revenue Code.

SECTION 2. 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, [2007,] 2008, as used in this chapter, “Internal Revenue Code” means [~~subtitle A, chapter 1,~~] Sub-
title A, Chapter 1, of the federal Internal Revenue Code of 1986, as amended as of December 31, [2007,] 2008, 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 laws which, pursuant to this chapter, do not apply or are otherwise limited in application and except for the provisions of Public Law 109-001 which apply to [~~section~~] Section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

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 3. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; sections 63 to 530. (a) Section 63 (with respect to taxable income defined) of the Internal Revenue Code shall be operative for the purposes of this chapter, subject to the following:

- (1) Sections 63(c)(1)(B) (relating to the additional standard deduction), 63(c)(1)(C) (relating to the real property tax deduction), 63(c)(1)(D) (relating to the disaster loss deduction), 63(c)(4) (relating to inflation adjustments), 63(c)(7) (defining the real property tax deduction), 63(c)(8) (defining the disaster loss deduction), and 63(f) (relating to additional amounts for the aged or blind) of the Internal Revenue Code shall not be operative for purposes of this chapter;

- (2) Section 63(c)(2) (relating to the basic standard deduction) of the Internal Revenue Code shall be operative, except that the standard deduction [amount in section 63(e) of the Internal Revenue Code] amounts provided therein shall instead mean:

- (+) (A) \$4,000 in the case of:
 - ~~(A)~~ (i) A joint return as provided by section 235-93; or
 - ~~(B)~~ (ii) A surviving spouse (as defined in ~~section~~ Section 2(a) of the Internal Revenue Code);
- (2) (B) \$2,920 in the case of a head of household (as defined in ~~section~~ Section 2(b) of the Internal Revenue Code);
- (3) (C) \$2,000 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) (D) \$2,000 in the case of a married individual filing a separate return[-];

~~[Section 63(e)(4) shall not be operative in this State.]~~

- (3) Section 63(c)(5) (limiting the basic standard deduction in the case of certain dependents) of the Internal Revenue Code 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-]; and

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

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in ~~section~~ Section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this

chapter, except that for the election under ~~[section]~~ Section 121(f), a reference to ~~[section]~~ Section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that provisions in ~~[section]~~ Section 163(d)(4)(B) (defining net investment income to exclude dividends) shall not be operative for the purposes of this chapter.

(e) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter~~[-]~~, except that the amount prescribed by Section 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and Sections 165(h)(3) (A) and 165(h)(3)(B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the Internal Revenue Code shall not be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(f) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that ~~[provisions relating]~~ Sections 168(j) (relating to property on Indian [reservations in section 168(j) and] reservations), 168(k) (relating to the special allowance for certain property acquired [after September 10, 2001, and before January 1, 2005 (including the extension of the qualifying aircraft placed in service before January 1, 2006), in section 168(k)] during the period specified therein), 168(m) (relating to the special allowance for certain reuse and recycling property), and 168(n) (relating to the special allowance for qualified disaster assistance property) of the Internal Revenue Code shall not be operative for purposes of this chapter.

(g) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, as further provided in section 235-7(d), except that Sections 172(b)(1)(J) and 172(j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~[(g)]~~ (h) Section 179 (with respect to the election to expense certain depreciable business assets) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to:

- (1) The increase of the maximum deduction to \$100,000 for taxable years beginning after 2002 and before 2008, and the increase of the maximum deduction to \$125,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(1);
- (2) The increase of the qualifying investment amount to \$400,000 for taxable years beginning after 2002 and before 2008, and the increase of the qualifying investment amount to \$500,000 for taxable years beginning after 2006 and before 2011, in ~~[section]~~ Section 179(b)(2);
- (3) The increase of the maximum deduction to \$250,000 and the increase of the qualifying investment amount to \$800,000 for taxable years beginning in 2008, in Section 179(b)(7);

~~[(3)]~~ (4) Defining ~~[section]~~ Section 179 property to include computer software in ~~[section]~~ Section 179(d)(1);

~~[(4)]~~ (5) Inflation adjustments in ~~[section]~~ Section 179(b)(5); ~~[and~~

~~[(5)]~~ (6) Irrevocable election in ~~[section]~~ Section 179(c)(2); ~~and~~

- (7) Special rules for qualified disaster assistance property in Section 179(e).

shall not be operative for the purposes of this chapter.

(i) Section 198A (with respect to the expensing of qualified disaster assistance expenses) of the Internal Revenue Code shall not be operative for purposes of this chapter.

~~(h)~~ (j) Section 219 (with respect to retirement savings) of the Internal Revenue Code shall be operative for the purpose of this chapter. For the purpose of computing the limitation on the deduction for active participants in certain pension plans for state income tax purposes, adjusted gross income as used in [section] Section 219 as operative for this chapter means federal adjusted gross income.

~~(i)~~ (k) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose of this chapter, but only with respect to medical services accounts that have been approved by the Secretary of the Treasury of the United States.

~~(j)~~ (l) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

~~(k)~~ (m) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in [section] Section 408A as operative for this chapter means federal adjusted gross income.

~~(l)~~ (n) In administering the provisions of [sections] Sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), [sections] Sections 418 to 418E (with respect to special rules for multiemployer plans), and [sections] Sections 419 and 419A (with respect to treatment of welfare benefit funds) of the Internal Revenue Code, the department of taxation shall adopt rules under chapter 91 relating to the specific requirements under such sections and to such other administrative requirements under those sections as may be necessary for the efficient administration of [sections] Sections 410 to 419A.

In administering ~~[sections]~~ Sections 401 to 419A (with respect to deferred compensation) of the Internal Revenue Code, Public Law 93-406, ~~[section] Section 1017(i)~~, shall be operative for the purposes of this chapter.

In administering ~~[section] Section 402~~ (with respect to the taxability of beneficiary of employees' trust) of the Internal Revenue Code, the tax imposed on lump sum distributions by ~~[section] Section 402(e)~~ of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter.

(o) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that the provisions of Sections 451(i)(3) and 451(i)(6), as they relate to a qualified electric utility, shall not be operative for purposes of this chapter.

~~(m)~~ (p) Section 468B (with respect to special rules for designated settlement funds) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at a

rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

~~[(#)]~~ (q) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of computing the offset for rental real estate activities for state income tax purposes, adjusted gross income as used in ~~[section]~~ Section 469 as operative for this chapter means federal adjusted gross income.

~~[(#)]~~ (r) Sections 512 to 514 (with respect to taxation of business income of certain exempt organizations) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this subsection.

“Unrelated business taxable income” means the same as in the Internal Revenue Code, except that in the computation thereof sections 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply, and in the determination of the net operating loss deduction there shall not be taken into account any amount of income or deduction that is excluded in computing the unrelated business taxable income. Unrelated business taxable income shall not include any income from a prepaid legal service plan.

For a person described in ~~[section]~~ Section 401 or 501 of the Internal Revenue Code, as modified by section 235-2.3, the tax imposed by section 235-51 or 235-71 shall be imposed upon the person’s unrelated business taxable income.

~~[(#)]~~ (s) Section 521 (with respect to cooperatives) and ~~[subchapter T (sections)]~~ Subchapter T (Sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code shall be operative for the purposes of this chapter as to any cooperative fully meeting the requirements of ~~[section]~~ Section 421-23, except that Internal Revenue Code ~~[section]~~ Section 521 cooperatives need not be organized in Hawaii.

~~[(#)]~~ (t) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code shall be operative for the purposes of this chapter and the taxes imposed in each ~~[such section]~~ Section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(#)]~~ (u) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that ~~[section]~~ Section 529(c)(6) shall not be operative.

~~[(#)]~~ (v) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in ~~[section]~~ Section 530 as operative for this chapter means federal modified adjusted gross income as defined in ~~[section]~~ Section 530.”

SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is amended to read as follows:

“**§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b);
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an in-

dividual, unless the contributions and gifts are to be used exclusively in the State; and

(3) The tax imposed by ~~[section]~~ Section 1(e) of the Internal Revenue Code as applied by ~~[section]~~ Section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

(b) Section 667 (with respect to treatment of amounts deemed distributed by trusts in preceding years) of the Internal Revenue Code shall be operative for the purposes of this chapter and the tax imposed therein is hereby imposed by this chapter at the rate determined under this chapter; except that the reference to tax-exempt interest to which ~~[section]~~ Section 103 of the Internal Revenue Code applies in ~~[section]~~ Section 667(a) of the Internal Revenue Code shall instead be a reference to tax-exempt interest to which section 235-7(b) applies.

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under ~~[section]~~ Section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying ~~[section]~~ Section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that ~~[section]~~ Section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9;
- (2) Allocations of net operating loss pursuant to section 235-111.5;
- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.

(e) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter, the capital loss carryback provisions of ~~[section]~~ Section 1212 shall not be operative and the capital loss carryforward allowed by ~~[section]~~ Section 1212(a) shall be limited to five years; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

(f) Section 1221 (with respect to the definition of capital assets) is operative; provided that the provisions of Section 301 of Public Law 110-343, which provide that gain or loss from the sale or exchange of any applicable preferred stock by any applicable financial institution (such terms being defined by Public Law 110-343) shall be treated as ordinary income or loss, shall not be operative. A sale or exchange of any applicable preferred stock by any applicable financial institution (as those terms are defined by Section 301 of Public Law 110-343) shall be treated as a sale of a capital asset and taxed accordingly.

~~[(f)]~~ (g) Subchapter S [~~(sections)~~ (Sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

~~[(g)]~~ (h) Section 1400N (with respect to tax benefits for Gulf Opportunity Zone) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that ~~[sections]~~ Sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain

tax-exempt bonds); 1400N(c) (with respect to the low income housing credit); 1400N(d) (with respect to special allowance for certain property acquired on or after August 28, 2005); 1400N(e) (with respect to increase in expensing under ~~section~~ Section 179); 1400N(h) (with respect to increase in rehabilitation credit); 1400N(l) (with respect to credit to holders of Gulf tax credit bonds); 1400N(m) (with respect to application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone); 1400N(n) (with respect to treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements) shall not be operative for purposes of this chapter.

~~[(h)]~~ (i) Section 1400S (with respect to additional tax relief provisions) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that ~~section~~ Section 1400S(d) (with respect to the special rule for determining earned income) shall not be operative for the purposes of this chapter.

~~[(i)]~~ (j) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

~~[(j)]~~ (k) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to disclosures of information to the United States Justice Department or appropriate federal or state law enforcement agency for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning investigating terrorist incidents, threats, or activities) of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(k)]~~ (l) Subchapter C ~~[sections]~~ (Sections 6221 to 6233) (with respect to tax treatment of partnership items) of ~~chapter~~ Chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(l)]~~ (m) Subchapter D ~~[sections 6240 to 6255]~~ (Sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(n) Section 6501(e) (with respect to limitation on assessment and collection where there is a substantial omission of items) of the Internal Revenue Code shall be operative for purposes of this chapter.

~~[(m)]~~ (o) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

~~[(n)]~~ (p) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2009.

(Approved June 18, 2009.)