

ACT 112

H.B. NO. 2594

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. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235-A Operation of certain Internal Revenue Code provisions not operative under section 235-2.3. Notwithstanding the meaning of “Internal Revenue Code” as that term is used in section 231-2.3, beginning April 1, 2010, the fol-

lowing Sections of the federal Internal Revenue Code of 1986, as amended as of April 1, 2010, shall be operative for purposes of this chapter:

- (1) Section 6041 as applicable to persons under Section 6041(h) (with respect to information returns at the source for certain corporations);
- (2) Section 6038D (with respect to information with respect to foreign financial assets). With respect to persons required to report information under this Section, Section 6662(j) (with respect to imposition of accuracy-related penalties on underpayments) and Section 6501(e)(1)(A)(ii) (with respect to limitations on assessment and collection) shall also be operative for purposes of this chapter and shall be applied consistently with the correlating provisions of 231-36.6 and 235-111;
- (3) Section 6045B (with respect to returns relating to actions affecting basis in securities); and
- (4) Section 6050W (with respect to returns relating to payments made in settlement of payment card and third party network transactions)."

SECTION 3. Section 232-24, Hawaii Revised Statutes, is amended to read as follows:

"§232-24 Taxes paid pending appeal. The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director of finance into the "litigated claims fund". If the final determination is in whole or in part in favor of the appealing taxpayer, the director of finance shall repay to the taxpayer out of the fund, or if investment of the fund should result in a deficit therein, out of the general fund of the State, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with ~~interest at the rate of eight per cent a year~~ from the date of each payment into the litigated claims fund, the interest to be paid from the general fund of the State. For purposes of this section, the rate of interest shall be computed by reference to Section 6621(a) (with respect to interest rate determination) of the Internal Revenue Code of 1986, as of January 1, 2010. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization under the tax law concerned.

In a case of an appeal to a board of review, the tax paid, if any, upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director of finance in a special deposit. In the event of final determination of the appeal in the board of review, the director of finance shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, to become a realization under the tax law concerned."

SECTION 4. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

"§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, ~~[2008,] 2009,~~ as used in this chapter, except as provided in section 235-A, "Internal Revenue Code" means subtitle A, chapter 1, of the federal Internal Revenue Code of

1986, as amended as of December 31, [2008,] 2009, 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.
- (b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:
- (1) Subchapter A [~~sections~~] (Sections 1 to 59A) (with respect to determination of tax liability), except ~~[section]~~ Section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except ~~sections~~ Sections 2(a), 2(b), and 2(c) (with respect to the definition of "surviving spouse" and "head of household"), except ~~[section]~~ Section 41 (with respect to the credit for increasing research activities), except ~~[section]~~ Section 42 (with respect to low-income housing credit), [and] ~~except~~ ~~sections~~ Sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property)[-], and except Section 48(d)(3), as amended, as of February 17, 2009 (with respect to the treatment of United States Department of Treasury grants made under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
 - (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
 - (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
 - (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
 - (5) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 [~~section]~~ Section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 [~~section]~~ Section 101(f) are inoperative;
 - (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
 - (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);

- (8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
- (9) Section 139C (with respect to COBRA premium assistance);
- ~~[(9)]~~ ~~(10)~~ Subchapter B [~~sections~~] (Sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- ~~[(10)]~~ ~~(11)~~ Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- ~~[(11)]~~ ~~(12)~~ Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);
- ~~[(12)]~~ ~~(13)~~ Section 181 (with respect to special rules for certain film and television productions);
- ~~[(13)]~~ ~~(14)~~ Section 196 (with respect to deduction for certain unused investment credits);
- ~~[(14)]~~ ~~(15)~~ Section 199 (with respect to the U.S. production activities deduction);
- ~~[(15)]~~ ~~(16)~~ Section 222 (with respect to qualified tuition and related expenses);
- ~~[(16)]~~ ~~(17)~~ Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- ~~[(17)]~~ ~~(18)~~ Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- ~~[(18)]~~ ~~(19)~~ Section 291 (with respect to special rules relating to corporate preference items);
- ~~[(19)]~~ ~~(20)~~ Section 367 (with respect to foreign corporations);
- ~~[(20)]~~ ~~(21)~~ Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- ~~[(21)]~~ ~~(22)~~ Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- ~~[(22)]~~ ~~(23)~~ Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- ~~[(23)]~~ ~~(24)~~ Subchapter H (sections 581 to 597) (with respect to banking institutions), except [~~section~~] Section 584 (with respect to common trust funds). For treatment, see chapter 241;
- ~~[(24)]~~ ~~(25)~~ Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- ~~[(25)]~~ ~~(26)~~ Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- ~~[(26)]~~ ~~(27)~~ Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- ~~[(27)]~~ ~~(28)~~ Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- ~~[(28)]~~ ~~(29)~~ Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (30) Section 853A (with respect to credits from tax credit bonds allowed to shareholders);
- ~~[(29)]~~ ~~(31)~~ Subchapter N [~~sections~~] (Sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except [~~sections~~] Sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;

- [30] (32) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- [31] (33) Section 1055 (with respect to redeemable ground rents);
- [32] (34) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- [33] (35) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- [34] (36) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- [35] (37) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- [36] (38) Subchapter U [~~sections~~] (Sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;
- [37] (39) Subchapter W [~~sections~~] (Sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);
- [38] (40) Section 1400O (with respect to education tax benefits);
- [39] (41) Section 1400P (with respect to housing tax benefits);
- [40] (42) Section 1400R (with respect to employment relief); ~~and~~
- [41] (43) Section 1400T (with respect to special rules for mortgage revenue bonds)[-];
- (44) Section 1400U-1 (with respect to allocation of recovery zone bonds);
- (45) Section 1400U-2 (with respect to recovery zone economic development bonds); and
- (46) Section 1400U-3 (with respect to recovery zone facility bonds)."

SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

"§235-2.4 Operation of certain Internal Revenue Code provisions; [~~sections~~] 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)(1)(E) (relating to the motor vehicle sales tax 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), 63(c)(9) (defining the motor vehicle sales tax 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 amounts provided therein shall instead mean:
 - (A) \$4,000 in the case of:
 - (i) A joint return as provided by section 235-93; or
 - (ii) A surviving spouse (as defined in [~~section~~] Section 2(a) of the Internal Revenue Code);
 - (B) \$2,920 in the case of a head of household (as defined in [~~section~~] Section 2(b) of the Internal Revenue Code);

- (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
- (D) \$2,000 in the case of a married individual filing a separate return;
- (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 shall be the greater of \$500 or such individual's earned income; 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 85 (with respect to unemployment compensation) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 85(c) shall not be operative for purposes of this chapter.

(d) Section 108 (with respect to income from discharge of indebtedness) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 108(i) (relating to deferral and ratable inclusion of income arising from business indebtedness discharged by the reacquisition of a debt instrument) shall not be operative for purposes of this chapter.

~~(e)~~ (e) 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)]~~ 235-2.4(s) in effect for taxable year 1997.

(f) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the provision in Section 132(f)(2) that equalizes the dollar amounts for Sections 132(f)(2)(A) and (B) after February 17, 2009, until January 1, 2011, shall not be operative and except that Section 132(n) shall not apply to United States Department of Defense Homeowners Assistance program payments authorized by the American Recovery and Reinvestment Act of 2009.

~~(d)~~ (g) 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), Section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules) and Section 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO) shall not be operative for the purposes of this chapter.

(h) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that Sections 164(a)(6) and 164(b)(6) shall not be operative for the purposes of this chapter.

~~(e)~~ (i) 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~~ Sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and ~~sections~~ 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 the 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)]~~ (j) 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 ~~[sections]~~ Sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired 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)]~~ (k) 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]~~ 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.

~~[(h)]~~ (l) 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~~[,]~~ or 2009, in ~~[section]~~ Section 179(b)(7);
- (4) Defining ~~[section]~~ Section 179 property to include computer software in ~~[section]~~ Section 179(d)(1);
- (5) Inflation adjustments in ~~[section]~~ Section 179(b)(5);
- (6) Irrevocable election in ~~[section]~~ Section 179(c)(2); and
- (7) Special rules for qualified disaster assistance property in ~~[section]~~ Section 179(e),

shall not be operative for the purposes of this chapter.

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

~~[(j)]~~ (n) 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.

~~[(k)]~~ (o) 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.

~~[(l)]~~ (p) 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 Sections 265(b)(3)(G) and 265(b)(7) shall not be opera-

ive and that ~~[(#)]~~ Section 265 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.

~~[(q)]~~ Section 382 (with respect to limitation on net operating loss carry-forwards and certain built-in losses following ownership change) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that Section 382(n) shall not be operative for purposes of this chapter.

~~[(m)]~~ ~~[(r)]~~ Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter~~[-]~~, except that Section 408A(d)(3)(A)(iii) shall not be operative for 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.

~~[(n)]~~ ~~[(s)]~~ 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)]~~ ~~[(t)]~~ In administering ~~[section]~~ Section 403 (with respect to taxation of employee annuities) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the annuity and used solely to obtain retirement credits under the state ~~[[employees']]~~ retirement system shall not be treated as a rollover for purposes of ~~[section]~~ Section 403(b)(8)(A) of the Internal Revenue Code, and such funds shall be subject to income tax under this chapter.

~~[(p)]~~ ~~[(u)]~~ 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]~~ 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.

~~[(q)]~~ ~~[(v)]~~ In administering ~~[section]~~ Section 457 (with respect to compensation plans of state and local governments and tax-exempt organizations) of the Internal Revenue Code, any funds that represent pre-tax employee deferrals or contributions that are distributed from the deferred compensation plan and used solely to obtain retirement credits under the state ~~[[employees']]~~ retirement system shall not be treated as a rollover for purposes of ~~[section]~~ Section 457(e)(16)(A) of the Internal Revenue Code and such funds shall be subject to income tax under this chapter.

~~[(+)]~~ (w) 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.

~~[(s)]~~ (x) 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 469 as operative for this chapter means federal adjusted gross income.

~~[(t)]~~ (y) 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.

~~[(u)]~~ (z) Section 521 (with respect to cooperatives) and subchapter T (~~[sections]~~ 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 421-23, except that Internal Revenue Code ~~[section]~~ Section 521 cooperatives need not be organized in Hawaii.

~~[(v)]~~ (aa) 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 section are hereby imposed by this chapter at the rates determined under section 235-71.

~~[(w)]~~ (bb) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that ~~[section]~~ Sections 529(c) (6) and 529(e)(3)(A)(iii) shall not be operative.

~~[(x)]~~ (cc) 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 6. Section 235-2.4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§235-2.4 Operation of certain Internal Revenue Code provisions; ~~[sections]~~ 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)(1)(E) (relating to the motor vehicle sales tax 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), 63(c)(9) (defining the motor vehicle sales tax 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 amounts provided therein shall instead mean:
- (A) \$4,400 in the case of:
- (i) A joint return as provided by section 235-93; or
 - (ii) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (B) \$3,212 in the case of a head of household (as defined in ~~section~~ Section 2(b) of the Internal Revenue Code);
- (C) \$2,200 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (D) \$2,200 in the case of a married individual filing a separate return;
- (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 shall be the greater of \$500 or such individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5."

SECTION 7. 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 individual, unless the contributions and gifts are to be used exclusively in the ~~[State;]~~ 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 provid-

ed 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 for investments made before May 1, 2009;
- (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 1202 (with respect to partial exclusion for gain from certain small business stock) of the Internal Revenue Code shall be operative for purposes of this chapter, except that Section 1202(a)(3) shall not be operative for purposes of this chapter.

~~[(e)]~~ (f) 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)]~~ (g) Section 1221 (with respect to the definition of capital assets) is operative; provided that the provisions of [section] 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] Section 301 of Public Law 110-343) shall be treated as a sale of a capital asset and taxed accordingly.

~~[(g)]~~ (h) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of [chapter] Chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII[-]; except that Sections 1374(d)(7)(B) and 1374(d)(7)(C) shall not be operative for purposes of this chapter.

~~[(h)]~~ (i) 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.

~~[(j)]~~ (j) 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.

~~[(j)]~~ (k) 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.

~~[(k)]~~ (l) 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.

~~[(h)]~~ (m) Subchapter C (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.

~~[(m)]~~ (n) Subchapter D (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]~~ Chapter 232 relating to tax appeals.

~~[(n)]~~ (o) 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.

~~[(o)]~~ (p) 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.

~~[(p)]~~ (q) 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 8. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of ~~[section]~~ Section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year;
- (2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967;

- (B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967; and
- (C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection;
- (3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation;
- (4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under ~~section~~ Section 172 of the Internal Revenue Code;
- (5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under ~~section~~ Section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer's business prior to the taxpayer entering business in this ~~[State; and]~~ state;
- (6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in ~~section~~ Section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2008, shall not be operative for purposes of this chapter~~[-]; and~~
- (7) The election for the carryback for 2008 or 2009 net operating losses of small businesses as provided in Section 172(b)(1)(H) of the Internal Revenue Code as it read on December 31, 2009, shall not be operative for purposes of this chapter."

SECTION 9. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute the appropriate section number for the letters used in designating the new section in this Act.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 11. This Act shall take effect upon its approval; provided that section 6 shall take effect on January 1, 2011.

(Approved May 17, 2010.)

Note

1. Edited pursuant to HRS §23G-16.5.