

## ACT 59

H.B. NO. 1985

A Bill for an Act Relating to Taxation.

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

## PART I

SECTION 1. Section 235-7, Hawaii Revised Statutes, is amended to read as follows:

**“§235-7 Other provisions as to gross income, adjusted gross income, and taxable income.** (a) There shall be excluded from gross income, adjusted gross income, and taxable income:

- (1) Income not subject to taxation by the State under the Constitution and laws of the United States;
- (2) Rights, benefits, and other income exempted from taxation by section 88-91, having to do with the state retirement system, and the rights, benefits, and other income, comparable to the rights, benefits, and other income exempted by section 88-91, under any other public retirement system;
- (3) Any compensation received in the form of a pension for past services;
- (4) Compensation paid to a patient affected with Hansen’s disease employed by the State or the United States in any hospital, settlement, or place for the treatment of Hansen’s disease;
- (5) Except as otherwise expressly provided, payments made by the United States or this State, under an act of Congress or a law of this State, which by express provision or administrative regulation or interpretation are exempt from both the normal and surtaxes of the United States, even though not so exempted by the Internal Revenue Code itself;
- (6) Any income expressly exempted or excluded from the measure of the tax imposed by this chapter by any other law of the State, it being the intent of this chapter not to repeal or supersede any express exemption or exclusion;
- (7) Income received by each member of the reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States of America, and the Hawaii national guard as compensation for performance of duty, equivalent to pay received for forty-eight drills (equivalent of twelve weekends) and fifteen days of annual duty, at an:
  - (A) E-1 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2004;
  - (B) E-2 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2005;

- (C) E-3 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2006;
  - (D) E-4 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2007; and
  - (E) E-5 pay grade after eight years of service; provided that this subparagraph shall apply to taxable years beginning after December 31, 2008;
- (8) Income derived from the operation of ships or aircraft if the income is exempt under the Internal Revenue Code pursuant to the provisions of an income tax treaty or agreement entered into by and between the United States and a foreign country; provided that the tax laws of the local governments of that country reciprocally exempt from the application of all of their net income taxes, the income derived from the operation of ships or aircraft that are documented or registered under the laws of the United States;
  - (9) The value of legal services provided by a prepaid legal service plan to a taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (10) Amounts paid, directly or indirectly, by a prepaid legal service plan to a taxpayer as payment or reimbursement for the provision of legal services to the taxpayer, the taxpayer's spouse, and the taxpayer's dependents;
  - (11) Contributions by an employer to a prepaid legal service plan for compensation (through insurance or otherwise) to the employer's employees for the costs of legal services incurred by the employer's employees, their spouses, and their dependents;
  - (12) Amounts received in the form of a monthly surcharge by a utility acting on behalf of an affected utility under section 269-16.3 shall not be gross income, adjusted gross income, or taxable income for the acting utility under this chapter. Any amounts retained by the acting utility for collection or other costs shall not be included in this exemption; and
  - (13) One hundred per cent of the gain realized by a fee simple owner from the sale of a leased fee interest in units within a condominium project, cooperative project, or planned unit development to the association of owners under chapter 514A or 514B, or the residential cooperative corporation of the leasehold units.  
 For purposes of this paragraph:  
 "Fee simple owner" shall have the same meaning as provided under section 516-1; provided that it shall include legal and equitable owners;  
 "Legal and equitable owner", and "leased fee interest" shall have the same meanings as provided under section 516-1; and  
 "Condominium project" and "cooperative project" shall have the same meanings as provided under section 514C-1.
- (b) There shall be included in gross income, adjusted gross income, and taxable income:
- (1) ~~unless~~ Unless excluded by this chapter relating to the uniformed services of the United States, cost-of-living allowances and other payments exempted by ~~section~~ Section 912 of the Internal Revenue Code, but ~~section~~ Section 119 of the Internal Revenue Code nevertheless shall apply; and

- (2) [~~unless~~] Unless expressly exempted or excluded as provided by subsection (a)(6), interest on the obligations of a State or a political subdivision thereof.
- (c) The deductions of or based on dividends paid or received, allowed to a corporation under [~~chapter~~] Chapter 1, [~~subchapter~~] Subchapter B, Part VIII of the Internal Revenue Code, shall not be allowed. In lieu thereof there shall be allowed as a deduction the entire amount of dividends received by any corporation upon the shares of stock of a national banking association, qualifying dividends, as defined in [~~section~~] Section 243(b) of the Internal Revenue Code, received by members of an affiliated group, or dividends received by a small business investment company operating under the Small Business Investment Act of 1958 (Public Law 85-699) upon shares of stock qualifying under paragraph (3), seventy per cent of the amount received by any corporation as dividends:
- (1) Upon the shares of stock of another corporation, if at the date of payment of the dividend at least ninety-five per cent of the other corporation's capital stock is owned by one or more corporations doing business in this [~~State~~] state and if the other corporation is subjected to an income tax in another jurisdiction (but subsection to federal tax does not constitute subsection to income tax in another jurisdiction); and
  - (2) Upon the shares of stock of a bank or insurance company organized and doing business under the laws of the State;
  - (3) Upon the shares of stock of another corporation, if at least fifteen per cent of the latter corporation's business, for the taxable year of the latter corporation preceding the payment of the dividend, has been attributed to this State.

However, except for national bank dividends, the deductions under this subsection are not allowed when they would not have been allowed under [~~section~~] Section 243 of the Internal Revenue Code, as amended by Public Law 85-866, by reason of subsections (b) and (c) of [~~section~~] Section 246 of the Internal Revenue Code. For the purposes of this subsection fifteen per cent of a corporation's business shall be deemed to have been attributed to this State if fifteen per cent or more of the entire gross income of the corporation as defined in this chapter (which for the purposes of this subsection shall be computed without regard to source in the [~~State~~] state and shall include income not taxable by reason of the fact that it is from property not owned in the [~~State~~] state or from a trade or business not carried on in the [~~State~~] state in whole or in part), under section 235-5 and the other provisions of this chapter, shall have been attributed to the State and subjected to assessment of the taxable income therefrom (including the determination of the resulting net loss, if any).

- (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;] state;~~ and
  - (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 shall not be operative for purposes of this chapter.
- (e) There shall be disallowed as a deduction the amount of interest paid or accrued within the taxable year on indebtedness incurred or continued, (1) to purchase or carry bonds the interest upon which is excluded from gross income by subsection (a); or (2) to purchase or carry property owned without the ~~[State;] state,~~ or to carry on trade or business without the ~~[State;] state,~~ if the taxpayer is a person taxable only upon income from sources in the ~~[State;] state.~~
- (f) Losses of property as the result of tidal wave, hurricane, earthquake, or volcanic eruption, or as a result of flood waters overflowing the banks or walls of a river or stream, or from any other natural disaster, to the extent of the amount deductible, under this chapter, not compensated for by insurance or otherwise, may be deducted in the taxable year in which sustained, or at the option of the taxpayer may be deducted in equal installments over a period of five years, the first such year to be the calendar year or fiscal year of the taxpayer in which such loss occurred.

- ~~[(g) In computing taxable income there shall be allowed as a deduction:~~
- (1) Political contributions by any taxpayer not in excess of \$250 in any year; provided that such contributions are made to a central or county committee of a political party whose candidates shall have

- qualified by law to be voted for at the immediately previous general election; or
- (2) Political contributions by any individual taxpayer in an aggregate amount not to exceed \$1,000 in any year; provided that such contributions are made to candidates as defined in section 11-191, who have agreed to abide by the campaign expenditure limits as set forth in section 11-209; and provided further that not more than \$250 of an individual's total contribution to any single candidate shall be deductible for purposes of this section.]”

SECTION 2. Section 11-226, Hawaii Revised Statutes, is repealed.

## PART II

SECTION 3. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the [State:] state:

- (1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (5) An excise tax equal to 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (6) An excise tax equal to 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (7) An excise tax equal to 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2008, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (8) An excise tax equal to 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after July 1, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (9) An excise tax equal to 11.00 cents for each little cigar sold, used, or possessed by a wholesaler or dealer on and after October 1, 2009,

whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

- (10) An excise tax equal to ~~[14.00]~~ 15.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (11) An excise tax equal to ~~[15.00]~~ 16.00 cents for each cigarette or little cigar sold, used, or possessed by a wholesaler or dealer on and after July 1, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (12) Except as provided in paragraph (13), an excise tax equal to seventy per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and
- (13) An excise tax equal to fifty per cent of the wholesale price of each cigar with a ring gauge of thirty or more (.467 inches in diameter or more), of any length, sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes, little cigars, or tobacco products that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps."

PART III

SECTION 4. Section 431:7-101, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

- “(a) The commissioner shall collect in advance the following fees:
  - (1) Certificate of authority: Issuance.....\$900
  - (2) Organization of domestic insurers and affiliated corporations:
    - (A) Application and all other papers required for issuance of solicitation permit, filing.....\$1,500
    - (B) Issuance of solicitation permit.....\$150
  - (3) Producer’s license:
    - (A) Issuance, regular license.....\$50
    - (B) Issuance, temporary license .....\$50
  - (4) Nonresident producer’s license: Issuance .....\$75
  - (5) Independent adjuster’s license: Issuance .....\$75
  - (6) Public adjuster’s license: Issuance .....\$75
  - (7) Workers’ compensation claim adjuster’s limited license: Issuance.....\$75
  - (8) Independent bill reviewer’s license:
    - Issuance.....\$80
  - (9) Limited producer’s license: Issuance .....\$60
  - (10) Managing general agent’s license: Issuance .....\$75
  - (11) Reinsurance intermediary’s license: Issuance .....\$75
  - (12) Surplus lines broker’s license: Issuance.....\$150
  - (13) Service contract provider’s registration: Issuance.....\$75
  - (14) Approved course provider certificate: Issuance .....\$100

- (15) Approved continuing education course certificate: Issuance.....\$30
- (16) Vehicle protection product warrantor's registration: Issuance .....\$75
- (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
- (18) Limited line motor vehicle rental company producer's license: Issuance.....\$1,000
- (19) Life settlement contract provider's license: Issuance.....\$75
- (20) Life settlement contract broker's license: Issuance.....\$75
- ~~(19)~~(21) Examination for license: For each examination, a fee to be established by the commissioner.

(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) \$600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) \$50 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) \$75 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) \$45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) \$45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) \$45 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;
- (7) \$60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) \$45 per year for all services (including extension of the license) for a producer's limited license;
- (9) \$75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) \$75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) \$45 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) \$75 per year for all services (including renewal of registration) for a service contract provider;
- (13) \$65 per year for all services (including extension of the certificate) for an approved course provider;
- (14) \$20 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) \$75 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) \$20 for a criminal history record check;<sup>1</sup>
- (17) \$600 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer[-];

- (18) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and
- (19) \$75 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.

The services referred to in paragraphs (1) to [(17)] (19) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.”

PART IV

SECTION 5. Section 431:7-101, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsections (a) and (b) to read:
  - “(a) The commissioner shall collect in advance the following fees:
    - (1) Certificate of authority: Issuance.....[~~\$900~~] \$1,800
    - (2) Organization of domestic insurers and affiliated corporations:
      - (A) Application and all other papers required for issuance of solicitation permit, filing .....[~~\$1,500~~] \$3,000
      - (B) Issuance of solicitation permit..... [~~\$150~~] \$300
    - (3) Producer’s license:
      - (A) Issuance, regular license..... [~~\$50~~] \$100
      - (B) Issuance, temporary license ..... [~~\$50~~] \$100
    - (4) Nonresident producer’s license: Issuance ..... [~~\$75~~] \$150
    - (5) Independent adjuster’s license: Issuance ..... [~~\$75~~] \$150
    - (6) Public adjuster’s license: Issuance ..... [~~\$75~~] \$150
    - (7) Workers’ compensation claim adjuster’s limited license: Issuance..... [~~\$75~~] \$150
    - (8) Independent bill reviewer’s license: Issuance ..... [~~\$80~~] \$160
    - (9) Limited producer’s license: Issuance ..... [~~\$60~~] \$120
    - (10) Managing general agent’s license: Issuance..... [~~\$75~~] \$150
    - (11) Reinsurance intermediary’s license: Issuance ..... [~~\$75~~] \$150
    - (12) Surplus lines broker’s license: Issuance..... [~~\$150~~] \$300
    - (13) Service contract provider’s registration: Issuance ..... [~~\$75~~] \$150
    - (14) Approved course provider certificate: Issuance ..... [~~\$100~~] \$200
    - (15) Approved continuing education course certificate: Issuance..... [~~\$30~~] \$60
    - (16) Vehicle protection product warrantor’s registration: Issuance ..... [~~\$75~~] \$150
    - (17) Criminal history record check; fingerprinting: For each criminal history record check and fingerprinting check, a fee to be established by the commissioner.
    - (18) Limited line motor vehicle rental company producer’s license: Issuance..... [~~\$1,000~~] \$2,000
    - (19) Life settlement contract provider’s license: Issuance ..... [~~\$75~~] \$150
    - (20) Life settlement contract broker’s license: Issuance..... [~~\$75~~] \$150
    - (21) Examination for license: For each examination, a fee to be established by the commissioner.



(b) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of a certificate of authority, license, or other certificate are as follows:

- (1) [~~\$600~~] \$1,200 per year for all services (including extension of the certificate of authority) for an authorized insurer;
- (2) [~~\$50~~] \$100 per year for all services (including extension of the license) for a regularly licensed producer;
- (3) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed nonresident producer;
- (4) [~~\$45~~] \$90 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
- (5) [~~\$45~~] \$90 per year for all services (including extension of the license) for a regularly licensed public adjuster;
- (6) [~~\$45~~] \$90 per year for all services (including extension of the license) for a workers' compensation claims adjuster's limited license;
- (7) [~~\$60~~] \$120 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
- (8) [~~\$45~~] \$90 per year for all services (including extension of the license) for a producer's limited license;
- (9) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed managing general agent;
- (10) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
- (11) [~~\$45~~] \$90 per year for all services (including extension of the license) for a licensed surplus lines broker;
- (12) [~~\$75~~] \$150 per year for all services (including renewal of registration) for a service contract provider;
- (13) [~~\$65~~] \$130 per year for all services (including extension of the certificate) for an approved course provider;
- (14) [~~\$20~~] \$40 per year for all services (including extension of the certificate) for an approved continuing education course;
- (15) [~~\$75~~] \$150 per year for all services (including renewal of registration) for a vehicle protection product warrantor;
- (16) [~~\$20~~] \$40 for a criminal history record check;
- (17) [~~\$600~~] \$1,200 per year for all services (including extension of the license) for a regularly licensed limited line motor vehicle rental company producer;
- (18) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract provider; and
- (19) [~~\$75~~] \$150 per year for all services (including extension of the license) for a regularly licensed life settlement contract broker.

The services referred to in paragraphs (1) to (19) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs."

2. By amending subsection (e) to read as follows:

"(e) All fees and penalties shall be deposited to the credit of the compliance resolution fund[-]; provided that beginning July 1, 2010, the statutory fees collected pursuant to subsections (a) and (b), not including administratively set fees and assessments as may be authorized under this section, shall be deposited as follows:

Fifty per cent shall be deposited into the compliance resolution fund: and  
Fifty per cent shall constitute an insurance license and service tax, which shall be deposited into the general fund.”

PART V

SECTION 6. Statutory material to be repealed is bracketed and stricken.<sup>2</sup> New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2010; provided that:

- (1) Part I shall be effective on January 1, 2011, and shall apply to taxable years beginning after December 31, 2010; provided that the amendments made to section 235-7, Hawaii Revised Statutes, under section 1 of this Act shall not be repealed when that section is reenacted on January 1, 2013, pursuant to Act 166, Session Laws of Hawaii 2007;
- (2) Part III shall be effective upon the repeal and reenactment of section 431:7-101, Hawaii Revised Statutes, pursuant to Act 177, Session Laws of Hawaii 2008, as amended by Act 11, Session Laws of Hawaii 2009; and
- (3) Part IV shall be repealed on July 1, 2014, and sections 431:7-101(a), (b), and (e), Hawaii Revised Statutes, shall be reenacted as they read on June 30, 2010.

(Approved April 25, 2010.)

Notes

1. Prior to amendment “and” appeared here.
2. Edited pursuant to HRS §23G-16.5.