

ACT 88

S.B. NO. 2886

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, ~~[2012,]~~ 2013, as used in this chapter, except as provided in section 235-2.35, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of ~~[January 2, 2013,]~~ December 31, 2013, 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 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]~~ these sections apply, and if ~~[such]~~ the 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]~~ these sections apply where ~~[such]~~ the taxable year begins before January 1, 1978.”

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

1. By amending subsections (a) and (b) to read:

“(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]~~ Section 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 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~~ the individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.
- (b) Section 68 (with respect to the overall limitation on itemized deductions) of the Internal Revenue Code shall be operative, ~~except that sections 68(f) and 68(g) shall not be operative~~; provided that the thresholds shall be those that were operative for federal tax year 2009."
2. By amending subsection (g) to read:
- "(g) 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."
3. By amending subsections (i) and (j) to read:
- "(i) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:
- (1) ~~Sections~~ Section 164(a)(6) and ~~164(b)(6)~~ (b)(6) shall not be operative for the purposes of this chapter; ~~and~~
 - (2) The deductions under ~~sections~~ section 164(a)(3) and ~~164(b)(5)~~ (b)(5) shall not be operative for corporate taxpayers and shall be operative only for the following individual taxpayers:
 - (A) A taxpayer filing a single return or a married person filing separately with a federal adjusted gross income of less than \$100,000;
 - (B) A taxpayer filing as a head of household with a federal adjusted gross income of less than \$150,000; and
 - (C) A taxpayer filing a joint return or as a surviving spouse with a federal adjusted gross income of less than \$200,000[-]; and

(3) Section 164(a)(3) shall not be operative for any amounts for which the credit under section 235-55 has been claimed.

(j) 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 sections 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty, and ~~sections~~ section 165(h)(3)(A) and [165(h)(3)(B)] (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.”

4. By amending subsection (l) to read:

“(l) 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~~ section 172(b)(1)(J) and [172(f)] (j) (both of which relate to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.”

5. By amending subsection (q) to read:

“(q) 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~~ section 265(b)(3)(G) and [265(b)(7)] (7) shall not be operative 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.”

6. By amending subsections (t) and (u) to read:

“(t) In administering the provisions of sections 410 to 417 (with respect to special rules relating to pensions, profit sharing, stock bonus plans, etc.), sections 418 to 418E (with respect to special rules for multiemployer plans), and 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~~ those sections and to ~~such~~ other administrative requirements under those sections as may be necessary for the efficient administration of sections 410 to 419A.

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

In administering 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 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.

(u) In administering 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 403(b)(8)(A) of the Internal Revenue Code, and ~~such~~ those funds shall be subject to income tax under this chapter.”

7. By amending subsection (w) to read:

“(w) In administering 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 contribu-

tions 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 457(e)(16)(A) of the Internal Revenue Code and ~~such~~ those funds shall be subject to income tax under this chapter."

8. By amending subsection (dd) to read:

"(dd) Section 530 (with respect to ~~education individual retirement accounts~~) Coverdell education savings 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 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530."

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

1. By amending subsection (e) to read:

"(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) and (4) shall not be operative for purposes of this chapter."

2. By amending subsection (h) to read:

"(h) Subchapter S (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; except that ~~sections~~ section 1374(d)(7)(B) [and 1374(d)(7)(C)], (C), and (D) shall not be operative for purposes of this chapter."

3. By amending subsection (m) to read:

"(m) ~~Subchapter C (sections 6221 to 6233)~~ Sections 6221, 6222, and 6231 (with respect to tax treatment of partnership items) of subchapter C of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter."

SECTION 5. Section 235-2.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The department of taxation shall submit to each regular session of the legislature a bill to amend sections 235-2.3, 235-2.4, and 235-2.45 and such other sections and subsections of this chapter as may be necessary to adopt the Internal Revenue Code as it exists on ~~January 2, 2013;~~ the December 31 preceding such regular session. In submitting the bill the department may provide that certain amendments to the Internal Revenue Code by Congress during the preceding calendar year shall not be operative in this State or as operative are limited in their operation. The department shall also prepare a digest and explanation of the amended provisions of the Internal Revenue Code recommended for operation, as well as those provisions ~~which~~ that are limited in their operation, or ~~which~~ that are not recommended for operation, and shall submit with the bill required by this subsection the digest, explanation, and a statement of revenue impact of the adoption of ~~such~~ the bill. In preparing the bill, digest, and explanation the department may request the assistance of the office of the legislative reference bureau.

It is the intent of the legislature that it shall each year adopt all amendments to the Internal Revenue Code for the calendar year preceding the year in which the legislature meets; provided that the legislature may choose to adopt

none of the amendments to the Internal Revenue Code or may provide that certain amendments are limited in their operation.”

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

SECTION 7. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2013.

(Approved June 16, 2014.)