

ACT 13

S.B. NO. 2920

A Bill for an Act Relating to Conformity 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 and estate and generation-skipping transfer tax laws 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, ~~[2018;]~~ 2019, as used in this chapter, except as provided in this section and section 235-2.35, “Internal Revenue Code” means subtitle A, chapter 1, of the federal Internal Revenue Code of 1986, as amended as of ~~[December 31, 2018;]~~ March 27, 2020, 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 1106(i)(relating to exclusion of loan forgiveness from gross income), 2202(b)(relating to loans from retirement plans), and 2205 (relating to charitable contributions) of Public Law 116-136 shall be operative for purposes of this chapter. No amount received under section 2201 (relating to recovery rebates) of Public Law 116-136 shall be included in gross income for purposes of this chapter.

Prior law 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 prior law applies; and
- (2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which prior law applies.”

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) 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 the individual's earned income; and
- (4) The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 67 (with respect to the 2-percent floor on miscellaneous itemized deductions) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the suspension in section 67(g) shall not be operative for purposes of this chapter.

(c) Section 68 (with respect to the overall limitation on itemized deductions) of the Internal Revenue Code shall be operative; provided that the:

- (1) Thresholds shall be those that were operative for federal tax year 2009; and
- (2) Suspension in section 68(f) shall not be operative for purposes of this chapter.
- (d) 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 72(t) shall not be operative for purposes of this chapter.
- (e) 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.
- (f) 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.
- (g) 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 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.
- (h) Section 132 (with respect to certain fringe benefits) of the Internal Revenue Code shall be operative for purposes of this chapter, except that:
 - (1) The suspensions in section 132(f)(8) and 132(g)(2) shall not be operative for purposes of this chapter; and
 - (2) 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.
- (i) Section 162 (with respect to trade or business expenses) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 162(f)(2), (3), and (4) (all of which relate to exceptions to the general rule, established in section 162(f)(1), that no deduction is allowed for the payment of fines or penalties) shall not be operative for purposes of this chapter.
- (j) Section 163 (with respect to interest) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that the following provisions shall not be operative for the purposes of this chapter:
 - (1) Section 163(d)(4)(B) (defining net investment income to exclude dividends);
 - (2) Section 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules);
 - (3) Section 163(h)(3)(F) (limiting mortgage interest); and
 - (4) Section 163(i)(1) as it applies to debt instruments issued after January 1, 2010[;] (defining AHYDO).
- (k) Section 164 (with respect to taxes) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that:
 - (1) Section 164(b)(6)(B) (limiting the deduction for state and local taxes) shall not be operative for the purposes of this chapter;
 - (2) The deductions under section 164(a)(3) and (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.
- (l) Section 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that:
 - (1) The amount prescribed by ~~sections~~ section 165(h)(1) (relating to the limitation per casualty) of the Internal Revenue Code shall be a \$100 limitation per casualty;
 - (2) Section 165(h)(3)(A) and (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;
 - (3) Section 165(h)(5) (relating to the limitation on the deductibility of personal casualty losses that are not attributable to federally declared disasters) shall not be operative for purposes of this chapter; and
 - (4) 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.
- (m) 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 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.
- (n) Section 172 (with respect to net operating loss deductions) of the Internal Revenue Code shall be operative for purposes of this chapter~~;~~ in the form that it existed as of December 31, 2019, and as further provided in section 235-7(d)(d)~~;~~ except that section 172(b)(1)(J) and (j) (both of which related¹ to qualified disaster losses) of the Internal Revenue Code shall not be operative for purposes of this chapter.
- (o) 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 as provided in this subsection:
 - (1) The aggregate cost provided in section 179(b)(1), which may be taken into account under section 179(a) for any taxable year, shall not exceed \$25,000;
 - (2) The amount at which the reduction in limitation provided in section 179(b)(2) begins shall exceed \$200,000 for any taxable year; and
 - (3) The following shall not be operative for purposes of this chapter:
 - (A) Defining section 179 property to include computer software in section 179(d)(1);
 - (B) Inflation adjustments in section 179(b)(5);
 - (C) Irrevocable election in section 179(c)(2); and
 - (D) Special rules for qualified disaster assistance property in section 179(e).

(p) 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.

(q) Section 217 (with respect to moving expenses) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the suspension in section 217(k) shall not be operative for purposes of this chapter.

(r) 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 219 as operative for this chapter means federal adjusted gross income.

(s) 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.

(t) 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 section 265(b)(3)(G) and (7) shall not be operative and 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. These expenses shall be deductible.

(u) Section 274 (with respect to the disallowance of certain entertainment, etc., expenses) of the Internal Revenue Code shall be operative for this chapter in the form that it existed as of December 21, 2017.

(v) Section 280E (with respect to expenditures in connection with the illegal sale of drugs) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 280E shall not be operative with respect to the production and sale of medical cannabis and manufactured cannabis products by dispensaries licensed under chapter 329D and their subcontractors, as defined in section 329D-1.

(w) 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.

(x) 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 408A as operative for this chapter means federal adjusted gross income.

(y) 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 those sections and to 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.

(z) 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 those funds shall be subject to income tax under this chapter.

(aa) Section 451 (which provides general rules for taxable year of inclusion) of the Internal Revenue Code shall be operative, except that section 451(k)(3) and (6), as it relates to a qualified electric utility, shall not be operative for purposes of this chapter.

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

(cc) Section 461 (with respect to the general rule for taxable year of deduction) of the Internal Revenue Code, shall be operative for purposes of this chapter in the form that it existed as of December 31, 2019.

~~[(ee)]~~ (dd) 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.

~~[(dd)]~~ (ee) 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.

~~[(ee)]~~ (ff) 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:

- (1) In the computation of unrelated business taxable income[:
~~(A) Sections], sections~~ 235-3 to 235-5, and 235-7 (except subsection (c)), shall apply; ~~[and~~
~~(B) Section 512(a)(7) shall not apply;]~~
- (2) 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; and
- (3) Unrelated business taxable income shall not include any income from a legal service plan.

For a person described in 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.

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

~~[(gg)]~~ (hh) 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.

~~[(hh)]~~ (ii) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that sections 529(c)(6), 529(c)(7), and 529(e)(3)(A)(iii) shall not be operative.

~~[(ii)]~~ (jj) Section 529A (with respect to qualified ABLE programs) shall be operative for the purposes of this chapter, except that section 529A(c)(3) (with respect to additional tax for distributions not used for disability expenses) shall not be operative.

~~[(jj)]~~ (kk) Section 530 (with respect to 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 236E-3, Hawaii Revised Statutes, is amended to read as follows:

“§236E-3 Conformance to the Internal Revenue Code; general application. For all decedents dying, or transfers occurring, after December 31, ~~[2018;]~~ 2019, as used in this chapter, “Internal Revenue Code” means subtitle B of the federal Internal Revenue Code of 1986, as amended as of December 31, ~~[2018;]~~ 2019, as it applies to the determination of gross estate, adjusted gross estate, federal taxable estate, and generation-skipping transfers, except those provisions of the Internal Revenue Code and federal public laws that, pursuant to this chapter, do not apply or are otherwise limited in application.”

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

SECTION 6. This Act shall take effect upon its approval; provided that:

- (1) Sections 2 and 3 shall apply to taxable years beginning after December 31, 2019; and
- (2) Section 4 shall apply to decedents dying or taxable transfers occurring after December 31, 2019.

(Approved August 12, 2020.)

Note

1. Prior to amendment “relate” appeared here.