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# 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:**

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

3           SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5           "(a) For all taxable years beginning after December 31,  
6 [~~2007~~] 2008, as used in this chapter, "Internal Revenue Code"  
7 means [~~subtitle A, chapter 1~~] Subtitle A, Chapter 1, of the  
8 federal Internal Revenue Code of 1986, as amended as of December  
9 31, [~~2007~~] 2008, as it applies to the determination of gross  
10 income, adjusted gross income, ordinary income and loss, and  
11 taxable income, except those provisions of the Internal Revenue  
12 Code and federal public laws which, pursuant to this chapter, do  
13 not apply or are otherwise limited in application and except for  
14 the provisions of Public Law 109-001 which apply to [~~section~~]  
15 Section 170 of the Internal Revenue Code. The provisions of  
16 Public Law 109-001 to accelerate the deduction for charitable  
17 cash contributions for the relief of victims of the 2004 Indian

1 Ocean tsunami are applicable for the calendar year that ended  
2 December 31, 2004, and the calendar year ending December 31,  
3 2005.

4 Sections 235-2, 235-2.1, and 235-2.2 shall continue to be  
5 used to determine:

6 (1) The basis of property, if a taxpayer first determined  
7 the basis of property in a taxable year to which such  
8 sections apply, and if such determination was made  
9 before January 1, 1978; and

10 (2) Gross income, adjusted gross income, ordinary income  
11 and loss, and taxable income for a taxable year to  
12 which such sections apply where such taxable year  
13 begins before January 1, 1978."

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

16 **"§235-2.4 Operation of certain Internal Revenue Code**  
17 **provisions; sections 63 to 530.** (a) Section 63 (with respect  
18 to taxable income defined) of the Internal Revenue Code shall be  
19 operative for the purposes of this chapter, subject to the  
20 following:

21 (1) Sections 63(c)(1)(B) (relating to the additional  
22 standard deduction), 63(c)(1)(C) (relating to the real

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

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

14 ~~[(1)]~~ (A) \$4,000 in the case of:

15 ~~[(A)]~~ (i) A joint return as provided by section 235-  
16 93; or

17 ~~[(B)]~~ (ii) A surviving spouse (as defined in ~~[section]~~  
18 Section 2(a) of the Internal Revenue Code);

19 ~~[(2)]~~ (B) \$2,920 in the case of a head of household (as  
20 defined in ~~[section]~~ Section 2(b) of the Internal  
21 Revenue Code);

1       ~~[(3)]~~ (C)   \$2,000 in the case of an individual who is not  
2                    married and who is not a surviving spouse or head  
3                    of household; or

4       ~~[(4)]~~ (D)   \$2,000 in the case of a married individual filing  
5                    a separate return~~[-]~~;

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

7       (3)   Section 63(c)(5) (limiting the basic standard  
8            deduction in the case of certain dependents) of the  
9            Internal Revenue Code shall be operative, except that  
10           the limitation ~~[on basic standard deduction in the~~  
11           ~~case of certain dependents]~~ shall be the greater of  
12           \$500 or such individual's earned income~~[-. Section~~  
13           ~~63(f) shall not be operative in this State.]~~; and

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

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

1 (c) Section 121 (with respect to exclusion of gain from  
2 sale of principal residence) of the Internal Revenue Code shall  
3 be operative for purposes of this chapter, except that for the  
4 election under ~~[section]~~ Section 121(f), a reference to  
5 ~~[section]~~ Section 1034 treatment means a reference to section  
6 235-2.4(n) in effect for taxable year 1997.

7 (d) Section 163 (with respect to interest) of the Internal  
8 Revenue Code shall be operative for the purposes of this  
9 chapter, except that provisions in ~~[section]~~ Section  
10 163(d)(4)(B) (defining net investment income to exclude  
11 dividends) shall not be operative for the purposes of this  
12 chapter.

13 (e) Section 165 (with respect to losses) of the Internal  
14 Revenue Code shall be operative for purposes of this chapter~~[-]~~,  
15 except that the amount prescribed by Section 165(h)(1) (relating  
16 to the limitation per casualty) of the Internal Revenue Code  
17 shall be a \$100 limitation per casualty, and Sections  
18 165(h)(3)(A) and 165(h)(3)(B) (both of which relate to special  
19 rules for personal casualty gains and losses in federally  
20 declared disasters) of the Internal Revenue Code shall not be  
21 operative for purposes of this chapter. Section 165 as  
22 operative for this chapter shall also apply to losses sustained

1 from the sale of stocks or other interests issued through the  
2 exercise of the stock options or warrants granted by a qualified  
3 high technology business as defined in section 235-7.3.

4 (f) Section 168 (with respect to the accelerated cost  
5 recovery system) of the Internal Revenue Code shall be operative  
6 for purposes of this chapter, except that [~~provisions relating~~]  
7 Sections 168(j) (relating to property on Indian [~~reservations in~~  
8 section 168(j) and] reservations), 168(k) (relating to the  
9 special allowance for certain property acquired [~~after September~~  
10 10, 2001, and before January 1, 2005 (including the extension of  
11 the qualifying aircraft placed in service before January 1,  
12 2006), in section 168(k)] during the period specified therein),  
13 168(m) (relating to the special allowance for certain reuse and  
14 recycling property), and 168(n) (relating to the special  
15 allowance for qualified disaster assistance property) of the  
16 Internal Revenue Code shall not be operative for purposes of  
17 this chapter.

18 (g) Section 172 (with respect to net operating loss  
19 deductions) of the Internal Revenue Code shall be operative for  
20 purposes of this chapter, as further provided in section 235-  
21 7(d), except that Sections 172(b) (1) (J) and 172(j) (both of  
22 which relate to qualified disaster losses) of the Internal

1 Revenue Code shall not be operative for purposes of this  
2 chapter.

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

7 (1) The increase of the maximum deduction to \$100,000 for  
8 taxable years beginning after 2002 and before 2008,  
9 and the increase of the maximum deduction to \$125,000  
10 for taxable years beginning after 2006 and before  
11 2011, in [~~section~~] Section 179(b) (1);

12 (2) The increase of the qualifying investment amount to  
13 \$400,000 for taxable years beginning after 2002 and  
14 before 2008, and the increase of the qualifying  
15 investment amount to \$500,000 for taxable years  
16 beginning after 2006 and before 2011, in [~~section~~]  
17 Section 179(b) (2);

18 (3) The increase of the maximum deduction to \$250,000 and  
19 the increase of the qualifying investment amount to  
20 \$800,000 for taxable years beginning in 2008, in  
21 Section 179(b) (7);

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

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

6       ~~[(5)]~~ (6) Irrevocable election in ~~[section]~~ Section  
7               179(c) (2); and

8       (7) Special rules for qualified disaster assistance  
9               property in Section 179(e),

10 shall not be operative for the purposes of this chapter.

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

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

21       ~~[(i)]~~ (k) Section 220 (with respect to medical savings  
22 accounts) of the Internal Revenue Code shall be operative for



1 the purpose of this chapter, but only with respect to medical  
2 services accounts that have been approved by the Secretary of  
3 the Treasury of the United States.

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

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

20 ~~[(l)]~~ (n) In administering the provisions of ~~[sections]~~  
21 Sections 410 to 417 (with respect to special rules relating to  
22 pensions, profit sharing, stock bonus plans, etc.), ~~[sections]~~

1 Sections 418 to 418E (with respect to special rules for  
2 multiemployer plans), and [~~sections~~] Sections 419 and 419A (with  
3 respect to treatment of welfare benefit funds) of the Internal  
4 Revenue Code, the department of taxation shall adopt rules under  
5 chapter 91 relating to the specific requirements under such  
6 sections and to such other administrative requirements under  
7 those sections as may be necessary for the efficient  
8 administration of [~~sections~~] Sections 410 to 419A.

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

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

20 (o) Section 451 (which provides general rules for taxable  
21 year of inclusion) of the Internal Revenue Code shall be  
22 operative, except that the provisions of Sections 451(i)(3) and

1 451(i)(6), as they relate to a qualified electric utility, shall  
2 not be operative for purposes of this chapter.

3 ~~(m)~~ (p) Section 468B (with respect to special rules for  
4 designated settlement funds) of the Internal Revenue Code shall  
5 be operative for the purposes of this chapter and the tax  
6 imposed therein is hereby imposed by this chapter at a rate  
7 equal to the maximum rate in effect for the taxable year imposed  
8 on estates and trusts under section 235-51.

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

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

20 "Unrelated business taxable income" means the same as in  
21 the Internal Revenue Code, except that in the computation  
22 thereof sections 235-3 to 235-5, and 235-7 (except subsection

1 (c)), shall apply, and in the determination of the net operating  
2 loss deduction there shall not be taken into account any amount  
3 of income or deduction that is excluded in computing the  
4 unrelated business taxable income. Unrelated business taxable  
5 income shall not include any income from a prepaid legal service  
6 plan.

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

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

19 [~~(q)~~] (t) Sections 527 (with respect to political  
20 organizations) and 528 (with respect to certain homeowners  
21 associations) of the Internal Revenue Code shall be operative  
22 for the purposes of this chapter and the taxes imposed in each

1 ~~[such section]~~ Section are hereby imposed by this chapter at the  
2 rates determined under section 235-71.

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

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

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

17 **"§235-2.45 Operation of certain Internal Revenue Code**  
18 **provisions; sections 641 to 7518.** (a) Section 641 (with  
19 respect to imposition of tax) of the Internal Revenue Code shall  
20 be operative for the purposes of this chapter subject to the  
21 following:

- 1 (1) The deduction for exemptions shall be allowed as  
2 provided in section 235-54(b);
- 3 (2) The deduction for contributions and gifts in  
4 determining taxable income shall be limited to the  
5 amount allowed in the case of an individual, unless  
6 the contributions and gifts are to be used exclusively  
7 in the State; and
- 8 (3) The tax imposed by [~~section~~] Section 1(e) of the  
9 Internal Revenue Code as applied by [~~section~~] Section  
10 641 of the Internal Revenue Code is hereby imposed by  
11 this chapter at the rate and amount as determined  
12 under section 235-51 on estates and trusts.
- 13 (b) Section 667 (with respect to treatment of amounts  
14 deemed distributed by trusts in preceding years) of the Internal  
15 Revenue Code shall be operative for the purposes of this chapter  
16 and the tax imposed therein is hereby imposed by this chapter at  
17 the rate determined under this chapter; except that the  
18 reference to tax-exempt interest to which [~~section~~] Section 103  
19 of the Internal Revenue Code applies in [~~section~~] Section 667(a)  
20 of the Internal Revenue Code shall instead be a reference to  
21 tax-exempt interest to which section 235-7(b) applies.

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

10 (d) Section 704 of the Internal Revenue Code (with respect  
11 to a partner's distributive share) shall be operative for  
12 purposes of this chapter; except that [~~section~~] Section  
13 704(b)(2) shall not apply to:

14 (1) Allocations of the high technology business investment  
15 tax credit allowed by section 235-110.9;

16 (2) Allocations of net operating loss pursuant to section  
17 235-111.5;

18 (3) Allocations of the attractions and educational  
19 facilities tax credit allowed by section 235-110.46;

20 or

21 (4) Allocations of low-income housing tax credits among  
22 partners under section 235-110.8.

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

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

21 ~~[(f)]~~ (g) Subchapter S ~~[(sections)]~~ (Sections 1361 to 1379)  
22 (with respect to tax treatment of S corporations and their



1 shareholders) of chapter 1 of the Internal Revenue Code shall be  
2 operative for the purposes of this chapter as provided in part  
3 VII.

4 ~~[(g)]~~ (h) Section 1400N (with respect to tax benefits for  
5 Gulf Opportunity Zone) of the Internal Revenue Code shall be  
6 operative for the purposes of this chapter, except that  
7 ~~[sections]~~ Sections 1400N(a) (with respect to tax-exempt bond  
8 financing); 1400N(b) (with respect to advance refundings of  
9 certain tax-exempt bonds); 1400N(c) (with respect to the low  
10 income housing credit); 1400N(d) (with respect to special  
11 allowance for certain property acquired on or after August 28,  
12 2005); 1400N(e) (with respect to increase in expensing under  
13 ~~[section]~~ Section 179); 1400N(h) (with respect to increase in  
14 rehabilitation credit); 1400N(l) (with respect to credit to  
15 holders of Gulf tax credit bonds); 1400N(m) (with respect to  
16 application of new markets tax credit to investments in  
17 community development entities serving Gulf Opportunity Zone);  
18 1400N(n) (with respect to treatment of representations regarding  
19 income eligibility for purposes of qualified residential rental  
20 project requirements) shall not be operative for purposes of  
21 this chapter.

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

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

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

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

1           ~~[(1)]~~ (m) Subchapter D [~~(sections 6240 to 6255)]~~ (Sections  
2 6240 to 6255) (with respect to simplified audit procedures for  
3 electing large partnerships) of the Internal Revenue Code shall  
4 be operative for the purposes of this chapter, with due regard  
5 to chapter 232 relating to tax appeals.

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

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

16          ~~[(n)]~~ (p) Section 7518 (with respect to capital  
17 construction fund for commercial fishers) of the Internal  
18 Revenue Code shall be operative for the purposes of this  
19 chapter. Qualified withdrawals for the acquisition,  
20 construction, or reconstruction of any qualified asset that is  
21 attributable to deposits made before the effective date of this  
22 section shall not reduce the basis of the asset when withdrawn.

1 Qualified withdrawals shall be treated on a first-in-first-out  
2 basis."

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

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

S.B. NO. 971  
S.D. 2  
H.D. 1  
C.D. 1

**Report Title:**

Income Tax; Conformity to the Internal Revenue Code for 2008

**Description:**

Conforms amendments to the Hawaii income tax law based upon amendments to the Internal Revenue Code for calendar year 2008.  
(SB971 CD1)

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