
A BILL FOR AN ACT

RELATING TO CONFORMITY 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 and estate and generation-skipping transfer tax laws to
3 the Internal Revenue Code.

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

6 "(a) For all taxable years beginning after December 31,
7 ~~[2018,~~ 2019, as used in this chapter, except as provided in
8 this section and section 235-2.35, "Internal Revenue Code" means
9 subtitle A, chapter 1, of the federal Internal Revenue Code of
10 1986, as amended as of ~~[December 31, 2018,~~ March 27, 2020, as
11 it applies to the determination of gross income, adjusted gross
12 income, ordinary income and loss, and taxable income, except
13 those provisions of the Internal Revenue Code ~~[and federal~~
14 ~~public laws]~~ which, pursuant to this chapter, do not apply or
15 are otherwise limited in application ~~[and except for the~~
16 ~~provisions of Public Law 109-001 which apply to section 170 of~~
17 ~~the Internal Revenue Code. The provisions of Public Law 109-001~~



1 ~~to accelerate the deduction for charitable cash contributions~~
2 ~~for the relief of victims of the 2004 Indian Ocean tsunami are~~
3 ~~applicable for the calendar year that ended December 31, 2004,~~
4 ~~and the calendar year ending December 31, 2005].~~

5 Sections 1106(i) (relating to exclusion of loan forgiveness
6 from gross income), 2202(b) (relating to loans from retirement
7 plans), and 2205 (relating to charitable contributions) of
8 Public Law 116-136 shall be operative for purposes of this
9 chapter. No amount received under section 2201 (relating to
10 recovery rebates) of Public Law 116-136 shall be included in
11 gross income for purposes of this chapter.

12 Prior law shall continue to be used to determine:

- 13 (1) The basis of property, if a taxpayer first determined
14 the basis of property in a taxable year to which prior
15 law applies; and
- 16 (2) Gross income, adjusted gross income, ordinary income
17 and loss, and taxable income for a taxable year to
18 which prior law applies."

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



1 "§235-2.4 Operation of certain Internal Revenue Code
2 provisions; sections 63 to 530. (a) Section 63 (with respect
3 to taxable income defined) of the Internal Revenue Code shall be
4 operative for the purposes of this chapter, subject to the
5 following:

6 (1) Section 63(c)(1)(B) (relating to the additional
7 standard deduction), 63(c)(1)(C) (relating to the real
8 property tax deduction), 63(c)(1)(D) (relating to the
9 disaster loss deduction), 63(c)(1)(E) (relating to the
10 motor vehicle sales tax deduction), 63(c)(4) (relating
11 to inflation adjustments), 63(c)(7) (defining the real
12 property tax deduction), 63(c)(8) (defining the
13 disaster loss deduction), 63(c)(9) (defining the motor
14 vehicle sales tax deduction), and 63(f) (relating to
15 additional amounts for the aged or blind) of the
16 Internal Revenue Code shall not be operative for
17 purposes of this chapter;

18 (2) Section 63(c)(2) (relating to the basic standard
19 deduction) of the Internal Revenue Code shall be
20 operative, except that the standard deduction amounts
21 provided therein shall instead mean:



- 1 (A) \$4,400 in the case of:
- 2 (i) A joint return as provided by section
- 3 235-93; or
- 4 (ii) A surviving spouse (as defined in section
- 5 2(a) of the Internal Revenue Code);
- 6 (B) \$3,212 in the case of a head of household (as
- 7 defined in section 2(b) of the Internal Revenue
- 8 Code);
- 9 (C) \$2,200 in the case of an individual who is not
- 10 married and who is not a surviving spouse or head
- 11 of household; or
- 12 (D) \$2,200 in the case of a married individual filing
- 13 a separate return;
- 14 (3) Section 63(c)(5) (limiting the basic standard
- 15 deduction in the case of certain dependents) of the
- 16 Internal Revenue Code shall be operative, except that
- 17 the limitation shall be the greater of \$500 or the
- 18 individual's earned income; and
- 19 (4) The standard deduction amount for nonresidents shall
- 20 be calculated pursuant to section 235-5.



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

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

9 (1) Thresholds shall be those that were operative for
10 federal tax year 2009; and

11 (2) Suspension in section 68(f) shall not be operative for
12 purposes of this chapter.

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

20 (e) Section 85 (with respect to unemployment compensation)
21 of the Internal Revenue Code shall be operative for purposes of



1 this chapter, except that section 85(c) shall not be operative
2 for purposes of this chapter.

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

10 (g) Section 121 (with respect to exclusion of gain from
11 sale of principal residence) of the Internal Revenue Code shall
12 be operative for purposes of this chapter, except that for the
13 election under section 121(f), a reference to section 1034
14 treatment means a reference to section 235-2.4(n) in effect for
15 taxable year 1997.

16 (h) Section 132 (with respect to certain fringe benefits)
17 of the Internal Revenue Code shall be operative for purposes of
18 this chapter, except that:

19 (1) The suspensions in section 132(f)(8) and 132(g)(2)
20 shall not be operative for purposes of this chapter;
21 and



1 (2) Section 132(n) shall not apply to United States
2 Department of Defense Homeowners Assistance Program
3 payments authorized by the American Recovery and
4 Reinvestment Act of 2009.

5 (i) Section 162 (with respect to trade or business
6 expenses) of the Internal Revenue Code shall be operative for
7 the purposes of this chapter, except that sections 162(f)(2),
8 (3), and (4) (all of which relate to exceptions to the general
9 rule, established in section 162(f)(1), that no deduction is
10 allowed for the payment of fines or penalties) shall not be
11 operative for purposes of this chapter.

12 (j) Section 163 (with respect to interest) of the Internal
13 Revenue Code shall be operative for the purposes of this
14 chapter, except that the following provisions shall not be
15 operative for the purposes of this chapter:

16 (1) Section 163(d)(4)(B) (defining net investment income
17 to exclude dividends);

18 (2) Section 163(e)(5)(F) (suspension of applicable high-
19 yield discount obligation (AHYDO) rules);

20 (3) Section 163(h)(3)(F) (limiting mortgage interest); and



1 (4) Section 163(i)(1) as it applies to debt instruments
2 issued after January 1, 2010[7] (defining AHYDO).

3 (k) Section 164 (with respect to taxes) of the Internal
4 Revenue Code shall be operative for the purposes of this
5 chapter, except that:

6 (1) Section 164(b)(6)(B) (limiting the deduction for state
7 and local taxes) shall not be operative for the
8 purposes of this chapter;

9 (2) The deductions under section 164(a)(3) and (b)(5)
10 shall not be operative for corporate taxpayers and
11 shall be operative only for the following individual
12 taxpayers:

13 (A) A taxpayer filing a single return or a married
14 person filing separately with a federal adjusted
15 gross income of less than \$100,000;

16 (B) A taxpayer filing as a head of household with a
17 federal adjusted gross income of less than
18 \$150,000; and

19 (C) A taxpayer filing a joint return or as a
20 surviving spouse with a federal adjusted gross
21 income of less than \$200,000; and



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

4 (1) Section 165 (with respect to losses) of the Internal
5 Revenue Code shall be operative for purposes of this chapter,
6 except that:

7 (1) The amount prescribed by [~~sections~~] section 165(h)(1)
8 (relating to the limitation per casualty) of the
9 Internal Revenue Code shall be a \$100 limitation per
10 casualty;

11 (2) Section 165(h)(3)(A) and (B) (both of which relate to
12 special rules for personal casualty gains and losses
13 in federally declared disasters) of the Internal
14 Revenue Code shall not be operative for the purposes
15 of this chapter;

16 (3) Section 165(h)(5) (relating to the limitation on the
17 deductibility of personal casualty losses that are not
18 attributable to federally declared disasters) shall
19 not be operative for purposes of this chapter; and

20 (4) Section 165 as operative for this chapter shall also
21 apply to losses sustained from the sale of stocks or



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

4 (m) 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 sections 168(j)
7 (relating to property on Indian reservations), 168(k) (relating
8 to the special allowance for certain property acquired during
9 the period specified therein), 168(m) (relating to the special
10 allowance for certain reuse and recycling property), and 168(n)
11 (relating to the special allowance for qualified disaster
12 assistance property) of the Internal Revenue Code shall not be
13 operative for purposes of this chapter.

14 (n) Section 172 (with respect to net operating loss
15 deductions) of the Internal Revenue Code shall be operative for
16 purposes of this chapter[~~7~~] in the form that it existed as of
17 December 31, 2019, and as further provided in section 235-7(d)[~~7~~
18 ~~except that section 172(b)(1)(J) and (j) (both of which related~~
19 ~~to qualified disaster losses) of the Internal Revenue Code shall~~
20 ~~not be operative for purposes of this chapter].~~



1 (o) Section 179 (with respect to the election to expense
2 certain depreciable business assets) of the Internal Revenue
3 Code shall be operative for purposes of this chapter, except as
4 provided in this subsection:

5 (1) The aggregate cost provided in section 179(b)(1),
6 which may be taken into account under section 179(a)
7 for any taxable year, shall not exceed \$25,000;

8 (2) The amount at which the reduction in limitation
9 provided in section 179(b)(2) begins shall exceed
10 \$200,000 for any taxable year; and

11 (3) The following shall not be operative for purposes of
12 this chapter:

13 (A) Defining section 179 property to include computer
14 software in section 179(d)(1);

15 (B) Inflation adjustments in section 179(b)(5);

16 (C) Irrevocable election in section 179(c)(2); and

17 (D) Special rules for qualified disaster assistance
18 property in section 179(e).

19 (p) Section 198A (with respect to the expensing of
20 qualified disaster assistances expenses) of the Internal Revenue
21 Code shall not be operative for purposes of this chapter.



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

5 (r) Section 219 (with respect to retirement savings) of
6 the Internal Revenue Code shall be operative for the purpose of
7 this chapter. For the purpose of computing the limitation on
8 the deduction for active participants in certain pension plans
9 for state income tax purposes, adjusted gross income as used in
10 section 219 as operative for this chapter means federal adjusted
11 gross income.

12 (s) Section 220 (with respect to medical savings accounts)
13 of the Internal Revenue Code shall be operative for the purpose
14 of this chapter, but only with respect to medical services
15 accounts that have been approved by the Secretary of the
16 Treasury of the United States.

17 (t) Section 265 (with respect to expenses and interest
18 relating to tax-exempt income) of the Internal Revenue Code
19 shall be operative for purposes of this chapter; except that
20 section 265(b)(3)(G) and (7) shall not be operative and section
21 265 shall not apply to expenses for royalties and other income



1 derived from any patents, copyrights, and trade secrets by an
2 individual or a qualified high technology business as defined in
3 section 235-7.3. These expenses shall be deductible.

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

8 (v) Section 280E (with respect to expenditures in
9 connection with the illegal sale of drugs) of the Internal
10 Revenue Code shall be operative for the purposes of this
11 chapter, except that section 280E shall not be operative with
12 respect to the production and sale of medical cannabis and
13 manufactured cannabis products by dispensaries licensed under
14 chapter 329D and their subcontractors, as defined in section
15 329D-1.

16 (w) Section 382 (with respect to limitation on net
17 operating loss carryforwards and certain built-in losses
18 following ownership change) of the Internal Revenue Code shall
19 be operative for the purposes of this chapter, except that
20 section 382(n) shall not be operative for purposes of this
21 chapter.



1 (x) Section 408A (with respect to Roth Individual
2 Retirement Accounts) of the Internal Revenue Code shall be
3 operative for the purposes of this chapter, except that section
4 408A(d)(3)(A)(iii) shall not be operative for purposes of this
5 chapter. For the purposes of determining the aggregate amount
6 of contributions to a Roth Individual Retirement Account or
7 qualified rollover contribution to a Roth Individual Retirement
8 Account from an individual retirement plan other than a Roth
9 Individual Retirement Account, adjusted gross income as used in
10 section 408A as operative for this chapter means federal
11 adjusted gross income.

12 (y) In administering the provisions of sections 410 to 417
13 (with respect to special rules relating to pensions, profit
14 sharing, stock bonus plans, etc.), sections 418 to 418E (with
15 respect to special rules for multiemployer plans), and sections
16 419 and 419A (with respect to treatment of welfare benefit
17 funds) of the Internal Revenue Code, the department of taxation
18 shall adopt rules under chapter 91 relating to the specific
19 requirements under those sections and to other administrative
20 requirements under those sections as may be necessary for the
21 efficient administration of sections 410 to 419A.



1 In administering sections 401 to 419A (with respect to
2 deferred compensation) of the Internal Revenue Code, Public Law
3 93-406, section 1017(i), shall be operative for the purposes of
4 this chapter.

5 In administering section 402 (with respect to the
6 taxability of beneficiary of employees' trust) of the Internal
7 Revenue Code, the tax imposed on lump sum distributions by
8 section 402(e) of the Internal Revenue Code shall be operative
9 for the purposes of this chapter and the tax imposed therein is
10 hereby imposed by this chapter at the rate determined under this
11 chapter.

12 (z) In administering section 403 (with respect to taxation
13 of employee annuities) of the Internal Revenue Code, any funds
14 that represent pre-tax employee deferrals or contributions that
15 are distributed from the annuity and used solely to obtain
16 retirement credits under the state employees' retirement system
17 shall not be treated as a rollover for purposes of section
18 403(b)(8)(A) of the Internal Revenue Code, and those funds shall
19 be subject to income tax under this chapter.

20 (aa) Section 451 (which provides general rules for taxable
21 year of inclusion) of the Internal Revenue Code shall be



1 operative, except that section 451(k)(3) and (6), as it relates
2 to a qualified electric utility, shall not be operative for
3 purposes of this chapter.

4 (bb) In administering section 457 (with respect to
5 compensation plans of state and local governments and tax-exempt
6 organizations) of the Internal Revenue Code, any funds that
7 represent pre-tax employee deferrals or contributions that are
8 distributed from the deferred compensation plan and used solely
9 to obtain retirement credits under the state employees'
10 retirement system shall not be treated as a rollover for
11 purposes of section 457(e)(16)(A) of the Internal Revenue Code
12 and those funds shall be subject to income tax under this
13 chapter.

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

18 [~~ee~~] (dd) Section 468B (with respect to special rules
19 for designated settlement funds) of the Internal Revenue Code
20 shall be operative for the purposes of this chapter and the tax
21 imposed therein is hereby imposed by this chapter at a rate



1 equal to the maximum rate in effect for the taxable year imposed
2 on estates and trusts under section 235-51.

3 ~~[(dd)]~~ (ee) Section 469 (with respect to passive
4 activities and credits limited) of the Internal Revenue Code
5 shall be operative for the purposes of this chapter. For the
6 purpose of computing the offset for rental real estate
7 activities for state income tax purposes, adjusted gross income
8 as used in section 469 as operative for this chapter means
9 federal adjusted gross income.

10 ~~[(ee)]~~ (ff) Sections 512 to 514 (with respect to taxation
11 of business income of certain exempt organizations) of the
12 Internal Revenue Code shall be operative for the purposes of
13 this chapter as provided in this subsection.

14 "Unrelated business taxable income" means the same as in
15 the Internal Revenue Code, except that:

- 16 (1) In the computation of unrelated business taxable
- 17 income[+
- 18 ~~(A) Sections], sections 235-3 to 235-5, and 235-7~~
- 19 (except subsection (c)), shall apply; ~~[and~~
- 20 ~~(B) Section 512(a)(7) shall not apply;]~~



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

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

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

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



1 section are hereby imposed by this chapter at the rates
2 determined under section 235-71.

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

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

12 ~~[(jj)]~~ (kk) Section 530 (with respect to Coverdell
13 education savings accounts) of the Internal Revenue Code shall
14 be operative for the purposes of this chapter. For the purpose
15 of determining the maximum amount that a contributor could make
16 to an education individual retirement account for state income
17 tax purposes, modified adjusted gross income as used in section
18 530 as operative for this chapter means federal modified
19 adjusted gross income as defined in section 530."

20 SECTION 4. Section 236E-3, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "§236E-3 Conformance to the Internal Revenue Code; general
2 application. For all decedents dying, or transfers occurring,
3 after December 31, [~~2018~~] 2019, as used in this chapter,
4 "Internal Revenue Code" means subtitle B of the federal Internal
5 Revenue Code of 1986, as amended as of December 31, [~~2018~~]
6 2019, as it applies to the determination of gross estate,
7 adjusted gross estate, federal taxable estate, and generation-
8 skipping transfers, except those provisions of the Internal
9 Revenue Code and federal public laws that, pursuant to this
10 chapter, do not apply or are otherwise limited in application."

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

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

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



Report Title:

Conformity to the Internal Revenue Code for 2019; Income Tax;
Estate and Generation-skipping Transfer Tax

Description:

Conforms Hawaii income and estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of 3/27/2020, with special provisions to conform to parts of federal Public Law 116-136, the Coronavirus Aid, Relief, and Economic Security Act, which took effect on 3/27/2020. Conforms Hawaii estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of 12/31/2019. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

