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# 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 to read as follows:

6           "**§235-2.3 Conformance to the federal Internal Revenue**  
7 **Code; general application.**       (a) For all taxable years  
8 beginning after December 31, [~~2021~~,] 2022, as used in this  
9 chapter, except as provided in this section and sections 235-  
10 2.35, 235-2.4, and 235-2.45, "Internal Revenue Code" means  
11 subtitle A, chapter 1, of the federal Internal Revenue Code of  
12 1986, as amended as of December 31, [~~2021~~,] 2022, as it applies  
13 to the determination of gross income, adjusted gross income,  
14 ordinary income and loss, and taxable income, except those  
15 provisions of the Internal Revenue Code which, pursuant to this  
16 chapter, do not apply or are otherwise limited in application.



1 Sections 9672(1) (relating to tax treatment of targeted  
2 EIDL advances) and 9673(1) (relating to tax treatment of  
3 restaurant revitalization grants) of Public Law 117-2 shall be  
4 operative for purposes of this chapter. No amount received  
5 under section 9601 (relating to 2021 recovery rebates to  
6 individuals) of Public Law 117-2 shall be included in gross  
7 income for purposes of this chapter.

8 Sections 276(b)(1) (relating to subsequent paycheck  
9 protection program loans), 277 (relating to emergency financial  
10 aid grants), 278(b)(1) (relating to emergency EIDL grants and  
11 targeted EIDL advances), 278(c)(1) (relating to subsidy for  
12 certain loan payments), and 278(d)(1) (relating to grants for  
13 shuttered venue operators) of Division N of Public Law 116-260  
14 shall be operative for purposes of this chapter. Sections 213  
15 (relating to modification of limitations on charitable  
16 contributions) and 214 (relating to temporary special rules for  
17 health and dependent care flexible spending arrangements) of  
18 Division EE of Public Law 116-260 shall be operative for  
19 purposes of this chapter. Sections 301, 302, and 304 (relating  
20 to disaster tax relief) of Division EE of Public Law 116-260  
21 shall be operative for purposes of this chapter. No amount



1 received under section 272 (relating to additional 2020 recovery  
2 rebates for individuals) of Division N of Public Law 116-260  
3 shall be included in gross income for purposes of this chapter.

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

11 Section 2202(a) (relating to tax-favored withdrawals from  
12 retirement plans) of Public Law 116-136 shall be operative for  
13 purposes of this chapter and shall apply to taxable years  
14 beginning after December 31, 2019.

15 Prior law shall continue to be used to determine:

16 (1) The basis of property, if a taxpayer first determined  
17 the basis of property in a taxable year to which prior  
18 law applies; and

19 (2) Gross income, adjusted gross income, ordinary income  
20 and loss, and taxable income for a taxable year to  
21 which prior law applies.



1 (b) The following Internal Revenue Code subchapters, parts  
2 of subchapters, sections, subsections, and parts of subsections  
3 shall not be operative for the purposes of this chapter, unless  
4 otherwise provided:

5 (1) Subchapter A (sections 1 to 59A) (with respect to  
6 determination of tax liability), except section  
7 1(h)(2) (relating to net capital gain reduced by the  
8 amount taken into account as investment income),  
9 except sections 2(a), 2(b), and 2(c) (with respect to  
10 the definition of "surviving spouse" and "head of  
11 household"), except section 41 (with respect to the  
12 credit for increasing research activities), except  
13 section 42 (with respect to low-income housing  
14 credit), except sections 47 and 48, as amended, as of  
15 December 31, 1984 (with respect to certain depreciable  
16 tangible personal property), and except section  
17 48(d)(3), as amended, as of February 17, 2009 (with  
18 respect to the treatment of United States Department  
19 of Treasury grants made under section 1603 of the  
20 American Recovery and Reinvestment Tax Act of 2009).



- 1 For treatment, see sections 235-110.91, 235-110.7, and  
2 235-110.8;
- 3 (2) Section 78 (with respect to dividends received from  
4 certain foreign corporations by domestic corporations  
5 choosing foreign tax credit);
- 6 (3) Section 86 (with respect to social security and tier 1  
7 railroad retirement benefits);
- 8 (4) Section 91 (with respect to certain foreign branch  
9 losses transferred to specified 10-percent owned  
10 foreign corporations);
- 11 (5) Section 103 (with respect to interest on state and  
12 local bonds). For treatment, see section 235-7(b);
- 13 (6) Section 114 (with respect to extraterritorial income).  
14 For treatment, any transaction as specified in the  
15 transitional rule for 2005 and 2006 as specified in  
16 the American Jobs Creation Act of 2004 section 101(d)  
17 and any transaction that has occurred pursuant to a  
18 binding contract as specified in the American Jobs  
19 Creation Act of 2004 section 101(f) are inoperative;



- 1           (7) Section 120 (with respect to amounts received under  
2           qualified group legal services plans). For treatment,  
3           see section 235-7(a)(9) to (11);
- 4           (8) Section 122 (with respect to certain reduced uniformed  
5           services retirement pay). For treatment, see section  
6           235-7(a)(3);
- 7           (9) Section 135 (with respect to income from United States  
8           savings bonds used to pay higher education tuition and  
9           fees). For treatment, see section 235-7(a)(1);
- 10          (10) Section 139C (with respect to COBRA premium  
11          assistance);
- 12          (11) Subchapter B (sections 141 to 150) (with respect to  
13          tax exemption requirements for state and local bonds);
- 14          (12) Section 151 (with respect to allowance of deductions  
15          for personal exemptions). For treatment, see section  
16          235-54;
- 17          (13) Section 179B (with respect to expensing of capital  
18          costs incurred in complying with Environmental  
19          Protection Agency sulphur regulations);
- 20          (14) Section 181 (with respect to special rules for certain  
21          film and television productions);



- 1 (15) Section 196 (with respect to deduction for certain  
2 unused investment credits);
- 3 (16) Section 199 (with respect to the U.S. production  
4 activities deduction);
- 5 (17) Section 199A (with respect to qualified business  
6 income);
- 7 (18) Section 222 (with respect to qualified tuition and  
8 related expenses);
- 9 (19) Sections 241 to 247 (with respect to special  
10 deductions for corporations). For treatment, see  
11 section 235-7(c);
- 12 (20) Section 250 (with respect to foreign-derived  
13 intangible income and global intangible low-taxed  
14 income);
- 15 (21) Section 267A (with respect to certain related party  
16 amounts paid or accrued in hybrid transactions or with  
17 hybrid entities);
- 18 (22) Section 280C (with respect to certain expenses for  
19 which credits are allowable). For treatment, see  
20 section 235-110.91;



- 1 (23) Section 291 (with respect to special rules relating to  
2 corporate preference items);
- 3 (24) Section 367 (with respect to foreign corporations);
- 4 (25) Section 501(c)(12), (15), (16) (with respect to exempt  
5 organizations); except that section 501(c)(12) shall  
6 be operative for companies that provide potable water  
7 to residential communities that lack any access to  
8 public utility water services;
- 9 (26) Section 515 (with respect to taxes of foreign  
10 countries and possessions of the United States);
- 11 (27) Subchapter G (sections 531 to 565) (with respect to  
12 corporations used to avoid income tax on  
13 shareholders);
- 14 (28) Subchapter H (sections 581 to 597) (with respect to  
15 banking institutions), except section 584 (with  
16 respect to common trust funds). For treatment, see  
17 chapter 241;
- 18 (29) Section 642(a) and (b) (with respect to special rules  
19 for credits and deductions applicable to trusts). For  
20 treatment, see sections 235-54(b) and 235-55;





- 1 (30) Section 646 (with respect to tax treatment of electing  
2 Alaska Native settlement trusts);
- 3 (31) Section 668 (with respect to interest charge on  
4 accumulation distributions from foreign trusts);
- 5 (32) Subchapter L (sections 801 to 848) (with respect to  
6 insurance companies). For treatment, see sections  
7 431:7-202 and 431:7-204;
- 8 (33) Section 853 (with respect to foreign tax credit  
9 allowed to shareholders). For treatment, see section  
10 235-55;
- 11 (34) Section 853A (with respect to credits from tax credit  
12 bonds allowed to shareholders);
- 13 (35) Subchapter N (sections 861 to 999) (with respect to  
14 tax based on income from sources within or without the  
15 United States), except sections 985 to 989 (with  
16 respect to foreign currency transactions). For  
17 treatment, see sections 235-4, 235-5, and 235-7(b),  
18 and 235-55;
- 19 (36) Section 1042(g) (with respect to sales of stock in  
20 agricultural refiners and processors to eligible farm  
21 cooperatives);



- 1 (37) Section 1055 (with respect to redeemable ground  
2 rents);
- 3 (38) Section 1057 (with respect to election to treat  
4 transfer to foreign trust, etc., as taxable exchange);
- 5 (39) Sections 1291 to 1298 (with respect to treatment of  
6 passive foreign investment companies);
- 7 (40) Subchapter Q (sections 1311 to 1351) (with respect to  
8 readjustment of tax between years and special  
9 limitations) [~~+~~], except for section 1341 (with respect  
10 to computation of tax where taxpayer restores  
11 substantial amount held under claim of right);
- 12 (41) Subchapter R (sections 1352 to 1359) (with respect to  
13 election to determine corporate tax on certain  
14 international shipping activities using per ton rate);
- 15 (42) Subchapter U (sections 1391 to 1379F) (with respect to  
16 designation and treatment of empowerment zones,  
17 enterprise communities, and rural development  
18 investment areas). For treatment, see chapter 209E;
- 19 (43) Subchapter W (sections 1400 to 1400C) (with respect to  
20 District of Columbia enterprise zone);



- 1 (44) Section 14000 (with respect to education tax
- 2 benefits);
- 3 (45) Section 1400P (with respect to housing tax benefits);
- 4 (46) Section 1400R (with respect to employment relief);
- 5 (47) Section 1400T (with respect to special rules for
- 6 mortgage revenue bonds);
- 7 (48) Section 1400U-1 (with respect to allocation of
- 8 recovery zone bonds);
- 9 (49) Section 1400U-2 (with respect to recovery zone
- 10 economic development bonds); and
- 11 (50) Section 1400U-3 (with respect to recovery zone
- 12 facility bonds)."

13 SECTION 3. Section 235-2.4, Hawaii Revised Statutes, is  
 14 amended by amending subsection (m) to read as follows:

15 "(m) Section 168 (with respect to the accelerated cost  
 16 recovery system) of the Internal Revenue Code shall be operative  
 17 for purposes of this chapter, except that sections 168(j)  
 18 (relating to property on Indian reservations), 168(k) (relating  
 19 to the special allowance for certain property acquired during  
 20 the period specified therein), and 168(m) (relating to the  
 21 special allowance for certain reuse and recycling property) [-



1 ~~and 168(n) (relating to the special allowance for qualified~~  
2 ~~disaster assistance property)]~~ of the Internal Revenue Code  
3 shall not be operative for purposes of this chapter."

4 SECTION 4. Section 235-2.5, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) Reference in provisions of the Internal Revenue Code  
7 which are operative in this State to provisions in the Internal  
8 Revenue Code which are not operative in this State shall be  
9 considered inoperative for the purposes of determining gross  
10 income, adjusted gross income, ordinary income and loss, and  
11 taxable income; provided that:

12 (1) References to time limits and other administrative  
13 provisions in subtitle F (sections 6001 to 7873) of  
14 the Internal Revenue Code contained in operative  
15 sections of the Internal Revenue Code shall be deemed  
16 references to applicable provisions of this chapter or  
17 chapter 231 or 232, and in the absence of applicable  
18 provisions in this chapter or chapters 231 or 232,  
19 then to rules adopted by the director of taxation  
20 under subsection (b);



- 1 (2) If inoperative provisions of the Internal Revenue Code  
2 have been codified in this chapter such references  
3 shall be deemed references to the codified provisions  
4 in this chapter. Transitory and savings provisions in  
5 federal Public Laws amending sections of the Internal  
6 Revenue Code operative in this chapter shall be  
7 operative for the purposes of this chapter.  
8 Provisions in this chapter or chapter 231 or 232 in  
9 conflict with the Internal Revenue Code or transitory  
10 or savings provisions in federal Public Law shall  
11 control; and
- 12 (3) Retroactive and prospective provisions in federal  
13 Public Laws amending sections of the federal Internal  
14 Revenue Code operative in this chapter and retroactive  
15 and prospective provisions in federal Public Laws that  
16 are operative in this chapter affecting taxable years  
17 beginning or ending before the December 31 date in  
18 section 235-2.3 shall be operative for the purposes of  
19 this chapter; provided that the effective dates in  
20 Public Law 96-471 placing it in effect for the taxable



1 year 1980 shall be operative for the purposes of this  
2 chapter."

3 SECTION 5. Section 236E-3, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§236E-3 Conformance to the Internal Revenue Code; general  
6 application. For all decedents dying, or transfers occurring,  
7 after December 31, [~~2021,~~] 2022, as used in this chapter,  
8 "Internal Revenue Code" means subtitle B of the federal Internal  
9 Revenue Code of 1986, as amended as of December 31, [~~2021,~~]  
10 2022, as it applies to the determination of gross estate,  
11 adjusted gross estate, federal taxable estate, and generation-  
12 skipping transfers, except those provisions of the Internal  
13 Revenue Code and federal public laws that, pursuant to this  
14 chapter, do not apply or are otherwise limited in application."

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

17 SECTION 7. This Act shall take effect upon its approval;  
18 provided that:

- 19 (1) Section 2 shall apply to taxable years beginning after  
20 December 31, 2022; provided that the amendment to  
21 section 235-2.3(b)(40) (with respect to computation of



1 tax where taxpayer restores substantial amount held  
2 under claim of right), Hawaii Revised Statutes, shall  
3 apply to taxable years beginning after December 31,  
4 2021;

5 (2) Sections 3 and 4 shall apply to taxable years  
6 beginning after December 31, 2022; and

7 (3) Section 5 shall apply to decedents dying or taxable  
8 transfers occurring after December 31, 2022.



**Report Title:**

Conformity to the Internal Revenue Code for 2022; 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 December 31, 2022. (SD1)

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not legislation or evidence of legislative intent.*

