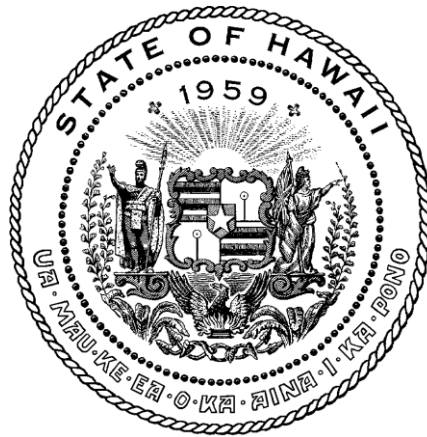


# Digest of Tax Measures



Prepared by the State of Hawaii  
Department of Taxation  
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This digest summarizes the federal tax laws enacted during calendar year 2018. It includes changes to subtitle A, chapter 1; subtitle B; and certain 6000 series sections of the Internal Revenue Code (IRC). Unless otherwise noted, all references are to the Internal Revenue Code of 1986, as amended.

This digest is issued solely as a guide and is not intended to be either authoritative or exhaustive. Coverage of Hawaii tax laws enacted during the 2019 regular session may be found on the Department of Taxation website at <http://tax.hawaii.gov>. Hawaii bills and acts can be viewed on the State Capitol website at <http://capitol.hawaii.gov>.

# Table of Contents

**Consolidated Appropriations Act, 2018** ..... 3

# **Consolidated Appropriations Act, 2018**

## **(P.L. No. 115-141; March 23, 2018)**

CODE SECTION      DESCRIPTION OF PROVISION

*The following provision is NOT operative for Hawaii income tax purposes.*

**§25A**                      **American Opportunity Tax Credit**

The Act renames the Hope credit as the American Opportunity credit. The Act extends the credit to apply to the first four years of post-secondary education. The Act prohibits a taxpayer from claiming the credit within 10 years of a final determination that the taxpayer claimed the credit fraudulently or within 2 years of a final determination that the taxpayer claimed the credit due to reckless or intentional disregard of rules and regulations. The Act also modifies some of the credit's applicable dollar amounts and its refundability.

The amendments shall be effective as if included in the Protecting Americans from Tax Hikes Act of 2015, which became effective December 18, 2015.

*The following provisions are operative for Hawaii income tax purposes.*

**§41(c)**                      **Repeal of alternative incremental credit**

The Act repeals the provision for an election to claim the alternative incremental credit. The alternative incremental credit allowed the credit to be claimed as a fixed percentage of the average of the taxpayer's gross receipts over the previous four taxable years.

The amendments shall be effective as if included in the Protecting Americans from Tax Hikes Act of 2015, which became effective December 18, 2015.

**§42(g)**                      **Average income test for low-income housing credit**

The Act adds an average income test for qualifying as a qualified low-income housing project. The average income test is met if 40 percent (25 percent in some situations) of the units are rent-restricted and rented to tenants whose incomes do not exceed the imputed income limitation. The test allows the average of the imputed income limitations to be used and that average cannot exceed 60 percent of area median gross income.

The amendments are effective for elections made under section 42(g)(1) after March 23, 2018.

**§42(h)(3)(I)**              **Increase in state housing credit ceiling for 2019, 2020, and 2021**

The Act amends the ceiling for the state housing credit by multiplying the numbers used in calculating the current ceiling amount by 1.125.

The increase is effective for calendar years beginning after December 31, 2017.

**§168(e)(3)(B)(vi) 5-year property**

The Act amends the definition of 5-year property by removing the reference to small power production facilities as defined by the Federal Power Act and replacing it with an 80-megawatt production capacity limit. The Federal Power Act requirements included limitations on fuel use, efficiency, and reliability. The new qualification is based solely on production capacity.

Effective for property placed in service after March 23, 2018.

***The following provisions are NOT operative for Hawaii income tax purposes.***

**§168(k) Phase-down of pre-Tax Cuts and Jobs Act bonus depreciation**

The Act phases down bonus depreciation of property placed into service before the changes made by the Tax Cuts and Jobs Act. The phase-down decreases the percentage of the adjusted basis allowed to be deducted from 50 percent to 30 percent.

Effective for purposes of section 168(k) in effect before the enactment of Public Law 115-97 and for property acquired before September 28, 2017 for purposes.

**§199A(a) Treatment of qualified cooperative dividends as qualified business income**

The Act repeals the exclusion of qualified cooperative dividends from qualified business income. This amendment allows the deduction of qualified cooperative dividends as part of the general deduction under section 199A. The Act also removes the special provisions for qualified cooperative dividends.

A qualified cooperative dividend includes any patronage dividend, per-unit retain allocation, and any qualified written notice of allocation, as defined in section 1388, or any similar amount.

The amendments take effect as if included in the Tax Cuts and Jobs Act, which became effective December 22, 2017.

**§199A(g) Deduction for qualified business income**

The Act amends the deduction allowed to agricultural or horticultural cooperatives. The amended deduction is 9 percent of the taxpayer's qualified production activities income or taxable income, whichever is lesser. The deduction is limited to 50 percent of the taxpayer's W-2 wages for the year.

The Act also allows the deduction to eligible taxpayers receiving payments from such cooperatives.

The amendments take effect as if included in the Tax Cuts and Jobs Act, which became effective December 22, 2017.

**§831(b)(1)(B) Diversification requirements for companies other than life insurance companies**

The Act provides for the aggregation of spousal interests when considering the diversification requirements of section 831.

The amendments shall be effective as if included in the Protecting Americans from Tax Hikes Act of 2015, which became effective December 18, 2015.

***The following provision is operative for Hawaii income tax purposes.***

**§856(c)(9) Treatment of personal property as REIT assets**

The Act adds detail on when gain on the sale of ancillary personal property will be treated as gain from the sale of a real estate asset for purposes of REIT qualification rules. The Act provides that if the personal property is leased in connection with the lease of real property for 1 year or more, the rents are treated as rents from real property, the property and the real property are sold together, and the fair market value of the personal property does not exceed 15 percent of the total from the sale, then the gain is treated as gain from the sale of a real estate asset.

The Act adds a similar 15 percent of total fair market value rule for determining if a mortgage on mixed personal and real property is a qualifying REIT asset.

The amendments shall be effective as if included in the Protecting Americans from Tax Hikes Act of 2015, which became effective December 18, 2015.

***The following provisions are NOT operative for Hawaii income tax purposes.***

**§897(k)(3)(B)(i) Meaning of qualified collective investment vehicle**

The Act adds a requirement to the definition of “qualified collective investment vehicle” that the foreign person be eligible for benefits under the comprehensive income tax treaty when the dividends article of the treaty imposes conditions on the benefits allowable in the case of dividends paid by a real estate investment trust. The requirement that the person be eligible for a reduced rate of withholding remains.

The amendments shall be effective as if included in the Protecting Americans from Tax Hikes Act of 2015, which became effective December 18, 2015.

**§6031(b) Amendment of statements provided to partners**

The Act creates an exception to the limitation on amending the information required to be provided to partners for partnerships that have elected out of the new partnership rules under section 6221(b), as well as partnerships fulfilling certain other conditions.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

***The following provisions are operative for Hawaii income tax purposes.***

**§§6225(b) and 6241(2) Definition and scope of partnership adjustment**

The Act amends the definition and scope of partnership adjustment to include any item with respect to the partnership that is relevant in determining the tax liability of any person under chapter 1. The previous definition was narrower and listed specific items like income, gain, loss, deduction, and credit of the partnership or any partner’s distributive share.

The Act amends the determination of imputed underpayment under section 6225(b) to reflect the new definitions.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

**§6225(c)(2) Amended returns of partners**

The Act creates an alternative method for partners to pay tax due to an adjustment. Section 6225(c)(2)(B) provides that procedures issued by the Secretary shall provide that if the partner pays and takes into account the adjusted amounts, then the requirement of an amended return in section 6225(c)(2)(A) shall be satisfied. The Act provides that this treatment is available to tiered partnerships and S corporations.

The Act also provides that the limitations on assessment and collection and credit and refund shall not apply to amended returns or payments made pursuant to sections 6225(c)(2)(A) or (c)(2)(B).

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

**§6226(b) Alternative to payment of imputed underpayment by partnership for tiered partnerships and S corporations**

The Act provides that if a partner that is a partnership or S corporation receives a notice under section 6226(a)(2), then that partner must file a partnership adjustment tracking report with the Secretary and either furnish statements to its partners or shareholders under section 6226(a)(2) or pay any imputed underpayment.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

***The following provisions are NOT operative for Hawaii income tax purposes.***

**§6231(b) Timing of notice of proposed partnership adjustment**

The Act links the authority to issue notices of proposed partnership adjustments to the statute of limitations in section 6235. Previously, there was not a statement in section 6231 that the limitations in section 6235 applied to notices of proposed partnership adjustments.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

**§6232 Failure to pay imputed underpayment**

The Act provides that if an imputed underpayment is not paid within 10 days of notice and demand, the interest provision of section 6232(a)(2)(B) shall apply but at a rate equal to the federal short-term rate plus 5 percentage points rather than 3 percentage points. The Act also provides that the Secretary can assess upon each partner its proportionate share of the interest amount.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

**§6235(c)**

**Limitations periods of section 6501 applicable**

The Act provides that if a partnership is required to provide information to the Secretary under section 6501(c)(8) or (c)(10), then the relevant limitation periods in either section 6501(c)(8) and (c)(10) are applicable. Previously, there was no statement in section 6235 that that these limitations periods applied.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.

***The following provision is operative for Hawaii income tax purposes.***

**§6241(12)**

**Treatment of shareholders in controlled foreign corporations**

The Act treats United States shareholders of controlled foreign corporations as the partners in the partnerships if the controlled foreign corporation is a partner in a partnership.

The Act also allows taxpayers with interests in passive foreign investment companies to elect the same treatment with respect to distributions from the passive foreign investment company.

Note that this provision is operative for Hawaii income tax purposes but that the purpose of this provision is to coordinate with Subchapter N (Sections 861 to 999), which is generally not operative Hawaii income tax purposes.

The amendments shall be effective as if included in the Bipartisan Budget Act of 2015, which became effective November 2, 2015.