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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-10

RE: Act 133, Session Laws of Hawaii 2009, Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

On June 18, 2009, Governor Linda Lingle signed into law Senate Bill 971, S.D. 2, H.D. 1, C.D. 1, as Act 133.

Act 133 provides for conforming amendments to Chapter 235, Hawaii Revised Statutes (HRS), based upon amendments made to the Internal Revenue Code for the calendar year 2008.

Section 235-2.5(c), HRS, mandates that the Department submit to each regular session of the Legislature a bill that amends Hawaii income tax law to conform to the changes in the Internal Revenue Code (IRC) for the previous calendar year.

Section 2 of Act 133 amends section 235-2.3(a), HRS, to conform the Hawaii Income Tax Law to the operative IRC sections of Subtitle A, Chapter 1, amended as of December 31, 2008. Generally, Subtitle A, Chapter 1, refers to sections 1 through 1400T, IRC.

A summary of the federal laws that were enacted in 2008 and their impact on Hawaii income tax law follows:

1. Economic Stimulus Act (P. L. No. 110-85, February 13, 2008):

This Act amends operative provisions related to the depreciation of cellulosic biomass ethanol plant property and New York Liberty Zone property.

The remaining deduction provisions of this Act relating to depreciable property are not operative for Hawaii income tax purposes, such as: the extended bonus depreciation provisions for tangible personal property, software and certain leasehold improvements acquired and placed in service in 2008; the $8,000 increase to the first-year depreciation limit for passenger automobiles acquired and placed in service in 2008; and the increased section 179 deduction of $250,000 and the higher phaseout limit of $800,000 for taxable years beginning in 2008.

2. Heroes Earnings Assistance and Relief Tax Act of 2008 (P. L. No. 110-245, June 18, 2008):

The operative provisions of this Act: relaxes the ownership and use exceptions for intelligence community employees and members of the Peace Corps with respect to the exclusion of gain from the sale of a principal residence; allows unused health flexible spending account balances to be distributed to reservists called to active duty; clarifies that state bonus payments to service members constitute qualified military benefits that are excluded from gross income; includes differential wage payments received by uniformed service members in compensation for purposes of the IRA contribution limit and for retirement plan purposes; requires qualified retirement plans to provide survivor payments for veterans; and allows military death gratuities and proceeds from Servicemembers' Group Life Insurance to be contributed to Roth IRAs or rolled over to Coverdell education savings accounts, regardless of contribution limits.

3. Heartland, Habitat, and Horticulture Act of 2008 (P. L. 110-246, June 18, 2008):

This Act provides relief to individuals affected by disasters in the Kansas area by relaxing certain retirement plan rules related to distributions, recontribution of withdrawals, loans, and plan amendments; extending the replacement period for involuntarily converted property; allowing taxpayers to expense certain costs incurred in the Kansas disaster area; and extending the net operating loss carryback period to five years for losses incurred in the Kansas disaster area. The Act also amends other operative provisions by: extending increased limits on qualified conservation contributions, allowing farmers to deduct endangered species recovery expenditures, and relaxing rules relating to investments by a real estate investment trust in timber.

4. Housing Assistance Tax Act of 2008 (P. L. 110-289, July 30, 2008):

This Act amends operative provisions as follows: provides a minimum 9% applicable percentage for purposes of computing the low income housing tax credit; increases states' allocation authority for low income housing tax credits from $2/resident to $2.20/resident; amends other provisions relating to qualification and administration of low income housing projects; taxes gain allocated to periods of nonqualified use with respect to a sale of a principal residence; and relaxes rules regarding investment in foreign investments and health care facilities for real estate investment trusts.

This Act also provided an additional standard deduction for real property taxes for non-itemizers that is not operative for Hawaii income tax purposes.

5. Hubbard Act (P. L. 110-317, August 29, 2008):

This Act repeals the dollar limitation on contributions to qualified funeral trusts.

6. Emergency Economic Stabilization Act of 2008 (P. L. 110-343, October 3, 2008):

This Act extends the exclusion for debt discharge income from home mortgages for three years so that it applies to qualified indebtedness discharged before January 1, 2013. It also caps executive compensation and applies golden parachute rules to certain employers that participate in the Troubled Asset Relief Program.

The provision of this Act that allows certain financial institutions to treat the gain or loss from the sale or exchange of certain preferred stock in either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation as ordinary gain or loss is not operative for Hawaii income tax purposes.

7. Energy Improvement and Extension Act of 2008 (P. L. 110-343, October 3, 2008):

The operative provisions of this Act provide as follows: establishes qualified transportation fringe benefits for bicycle commuters; designates "Smart" electric meters and distribution grid systems as 10-year modified accelerated cost recovery system property; includes property used to produce any cellulosic biofuel as property eligible for bonus depreciation; extends election to expense certain refineries; extends deduction for energy efficient commercial building property; modifies provisions relating to qualifying electric transmission transactions; applies valuation conventions for determining the basis of securities sold on an account-by-account basis; and requires a basis reduction for any §30D credit claimed on new qualified plug-in electric drive motor vehicles.

The 50% bonus depreciation provision of this Act for qualified reuse and recycling property is not operative for Hawaii income tax purposes.

8. Tax Extenders and AMT Relief Act of 2008 (P. L. 110-343, October 3, 2008):

This Act amends operative provisions as follows: allows income averaging for amounts received from the Exxon Valdez litigation and allows retirement plan contributions to be made from such amounts; increases the alternative simplified research credit and makes other changes to research credit provisions; extends the up-to-$250-above-the-line deduction for teachers' out-of-pocket expenses through 2009; provides disaster relief for Midwest disaster areas (e.g., deductions for capitalizable expenditures, longer replacement period for involuntarily converted property, relaxed retirement plan provisions, etc.); extends the election to claim an itemized deduction for state and local general sales taxes through 2009; provides shorter recovery periods for certain types of property (i.e., qualified leasehold,

restaurant, and retail improvement property); increases charitable contribution limits/deduction for contributions of wholesome food inventory; extends the increased deduction for contributions of book inventory to schools and computers through 2009; extends the election to expense certain capital items through 2009; extends the rule allowing tax-free treatment of IRA distributions donated to charity through 2009; tightens the rules regarding taxation of nonqualified deferred compensation received from certain tax-indifferent corporation and partnerships; extends the rule including specified payments in unrelated business taxable income through 2009; and extends the rule that S corporation's charitable contribution of property reduces shareholder's basis only by contributed property's basis through 2009.

This Act also provided the following provisions, all of which are not operative for Hawaii income tax purposes: an additional standard deduction for net losses from federal declared disasters; an extension of the additional standard deduction for real property taxes paid in 2009; an increase in the per casualty floor from $100 to $500 and a waiver of the 10%-of-adjusted gross income threshold on personal casualty losses related to federally declared disasters in 2008 and 2009; 50% bonus depreciation for qualified disaster assistance property acquired in connection with federally declared disasters occurring before 2010; a 5-year carry back period for qualified disaster losses incurred in connection with federally declared disasters occurring before 2010; higher section 179 deduction limits for qualified disaster assistance property; an extension of the qualified film and TV production expense election to include 2009; an extension of the above-the-line deduction for higher education expenses through 2009; and an election to expense qualified disaster expenses.

9. Fostering Connections to Success and Increasing Adoptions Act of 2008 (P. L. 110-351, October 7, 2008):

The only operative provision of this Act amends the definition of "qualifying child" for purposes of the dependency exemption.

10. Worker, Retiree, and Employer Recovery Act of 2008 (P. L. 110-458, December 23, 2008):

The operative provisions of this Act include the following: relief for employer-sponsors of pension plans by relaxing funding provisions; taxpayer relief by waiving the required minimum distribution requirement for 2009, by requiring plans to offer nonspouse beneficiary rollovers starting in 2010, and by allowing distributions from designated Roth accounts to be rolled over to a Roth IRA.

Effective Date

The federal effective dates for amendments to operative IRC sections are adopted for purposes of Hawaii income tax law. Each of the respective federal effective dates will be the respective effective dates for purposes of Chapter 235, HRS. These effective dates can be found by referencing the specific federal Act.

For more information on Act 133, please contact the Rules Office at 808-587-1577.



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