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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2010-11

August 5, 2010

Re: Act 182, Session Laws of Hawaii 2010, Relating to the Permitted Transfers in Trust Act

On June 28, 2010, Governor Linda Lingle signed into law Senate Bill 2842 SD 2, HD 1, CD 1, as Act 182, Session Laws of Hawaii 2010.

Act 182, the Permitted Transfers in Trust Act, creates a new chapter in the Hawaii Revised Statutes (HRS) that authorizes the transfer of certain property into trust arrangements, whereby the property transferred receives statutory creditor protection. This announcement is limited to the tax implications of the Permitted Transfers in Trust Act.

TAX PROVISIONS OF THE PERMITTED TRANSFERS IN TRUST ACT

The Permitted Transfers in Trust Act provides for the assessment of a 1% excise tax on the fair market value of each permitted transfer made pursuant to the Act. To be a permitted transfer under the Act, the transfer of property must be made pursuant to a trust instrument.

The tax is to be paid by the transferor of the permitted property. The Act specifies that the only property transferable under the Act is cash, marketable securities, life insurance contracts, and non-private annuities.

The Department of Taxation (Department) is authorized to administer this tax with all of its authorities of Title 14, HRS, including the Department's implementation authorities relating to the assessment, collection, and enforcement of the tax laws.

A non-grantor trust established under the Act is subject to Hawaii income tax law. However, to the extent that the beneficial interest in the non-grantor trust is held by a beneficiary residing outside Hawaii, the income or capital gains accumulated for that nonresident beneficiary is exempt from Hawaii income tax.

Hawaii residents that receive actual or constructive distributions of income or principal from a trust established under the Act are subject to all taxes on that income.

TAX FORMS AND GUIDANCE

The Department is presently developing new tax forms, Form P-70, *Permitted Transfers in Trust Tax Return*, for the assessment and collection of the Permitted Transfers in Trust Act tax. The Department will be providing preliminary guidance to taxpayers in the instructions that accompany the form.

Also, the Department will be developing administrative rules providing additional guidance, which the Department initially intends to issue as temporary rules. Persons interested in submitting comments or suggestions on the administration of this tax may send comments to the following contact:

Rules Office
Department of Taxation
PO Box 259
Honolulu, Hawaii 96809

Phone: (808) 587-1530
Fax: (808) 587-1584
Email: Tax.Rules.Office@hawaii.gov

EFFECTIVE DATE

Act 182 is effective on July 1, 2010 and applies to permitted transfers made after that date.

For more information, contact the Technical Section at 587-1577.

STANLEY SHIRAKI
Acting Director of Taxation