NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808)587-1560

July 19, 2011

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2011-21

RE: Act 91, Session Laws of Hawaii 2011, Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code

On June 9, 2011, HB 1089 HD1 SD 1 CD1, became Act 91, ("Act"), Session Laws of Hawaii ("SLH") 2011, required by Section 235-2.5(c), Hawaii Revised Statutes (HRS), to amend Hawaii Income Tax Law to conform to changes in the Internal Revenue Code, that occurred during calendar year 2010.

I. Review of Federal Law

In 2010, Congress enacted federal income tax measures with the hope of stimulating the economy and providing taxpayer relief. The following federal legislation represents some of the federal acts containing tax provisions that were analyzed to determine whether Hawaii should conform to the enacted Internal Revenue Code changes:

1. Hiring Incentives to Restore Employment Act ("HIRE") (P.L. 111-147) enacted on March 18, 2010;

2. Patient Protection and Affordable Care Act (P.L. 111-148) enacted on March 23, 2010 ("Patient Protection Act");

3. Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) enacted on March 23, 2010 ("Health Care Act");

4. Homebuyer Assistance and Improvement Act of 2010 (P.L. 111-198) enacted on July 2, 2010;

5. Small Business Jobs Act of 2010 (P.L. 111-240) enacted on September 27, 2010; and

6. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) enacted on December 17, 2010 ("Tax Relief Act").

Section 2 of the Act amends section 235-2.3(a), HRS, to conform the Hawaii Income Tax Law to the operative Code sections of subtitle A, chapter 1, amended as of December 31, 2010. Generally, subtitle A, chapter 1, refers to Code sections 1 through 1400T.

II. Federal Information Reporting Requirements

Section 3 of the Act amends section 235-2.35, by providing that the information reporting provisions that were enacted last year are not conformed to as of a certain date, but that subsequent amendments to those sections could apply as determined in the annual conformity bill.

III. Highlights of Conforming and Non-conforming Amendments

Section 4 of this Act amends section 235-2.4, HRS, with respect to conformity provisions for the following sections of the Code:

- §68 (Limitation on Itemized Deduction) – to not conform to the delay in the return of the limitation on itemized deductions. The limitation was scheduled to return for the 2011 tax year but is now delayed until the 2013 tax year at the federal level. However, the threshold amounts will be those that were operative at the federal level for tax year 2009. The phase out of itemized deductions would apply to individuals whose adjusted gross income exceeds $166,800 ($83,400 in the case of a separate return by a married individual). The amount of the itemized deductions would be reduced by the lesser of 3% of the amount over $166,800 or 80% of the itemized deductions for the taxable year. By not conforming to the delay, the limitation on itemized deductions would apply to the 2011 and 2012 tax years for Hawaii state income tax purposes. In addition, Act 97, SLH 2011, provides that a taxpayer's itemized deductions have to be reduced to the lowest amount as determined after applying the section 68 limitation or the cap on itemized deductions provided in Act 97. (Tax Relief Act provision);

- §105 (amounts received under accident and health plans) – conforms to the extension of the exclusion from gross income for employer-provided health coverage to any taxpayer's child who has not reached age 27 as of the end of the tax year from age 19 or age 24, if a student (Health Care Act provision);

- §127 (educational assistance programs) – conform to the extension for employer-provided educational assistance and the exclusion for graduate-level courses through 2012 (Tax Relief Act provision);

- §164(b)(5) (deduction for taxes paid) – not conform to the extension of the provision of an election to deduct general excise tax in lieu of the deduction for state income taxes paid through tax year 2011. As provided in Act 97, this limitation only applies to persons with federal adjusted gross income above certain thresholds based on filing status. See Tax Announcement 2011-20 for more information on Act 97; (Tax Relief Act provision);

- §179 (expensing certain depreciable business assets) – not conform to the increased thresholds for expensing certain business assts. The bill makes clear that for Hawaii income tax purposes, taxpayers can expense up $25,000 of aggregate cost of the property but if the cost of the property exceeds $200,000 then the $25,000 limitation is reduced by the amount in excess of $200,000. (Tax Relief Act provision);

- §168 (depreciation) – not conform to the special allowances (e.g., bonus depreciation) for certain property. Hawaii has consistently not conformed to special allowance provisions (Tax Relief Act provision);

- §213 (medical expense deduction) – conform to raising the floor on the medical expense deduction to 10% of adjusted gross income beginning in 2013 for most people and in 2018 for senior citizens (Patient Protection Act provision); and

- §408(d)(8) (Individual Retirement Accounts) – conform to the extension of the rules allowing tax-free distributions of up to $100,000, if donated to charity, through the 2011 tax year (Tax Relief Act).

IV. Basis of Assets Transferred at Death

This Act provides that assets transferred at death generally will receive a step-up in basis to fair market value for persons dying in 2010 or thereafter. Therefore, section 1014 of the Internal Revenue Code will apply and section 1022 of the Internal Revenue Code will be repealed for persons dying after December 31, 2009.

Section 301(a) of the Tax Relief Act provides that the amendments made to the Internal Revenue Code by the Economic Growth and Tax Recovery Act of 2001, shall be treated as never enacted for decedents dying and transfers made, after December 31, 2009. For persons dying in 2010, at the federal level, the executor may elect to either pay the estate tax and receive a step-up in basis under IRC section 1014 or not pay the estate tax and receive a carryover basis under IRC section 1022. At the federal level, prior to these amendments providing this election, there was no estate tax at the federal level. Act 91 does not adopt an election mechanism for persons dying during 2010 for Hawaii purposes. Hawaii had an estate tax in 2010 for persons dying after May 1, 2010. Therefore, for Hawaii purposes, all persons dying in 2010 will receive a step-up in basis under this Act.

V. Conclusion

If you have any questions regarding this announcement, please call the Technical Section at 587-1577 or e-mail to Tax.Technical.Section@hawaii.gov.



FREDERICK D. PABLO
Director of Taxation

HRS Section Explained: HRS Section 235-2.3(a); HRS Section 235-2.35; Section 235-2.4