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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2012-04

RE: Act 179, Session Laws of Hawaii 2012, Relating to Conformity of Hawaii Income Tax Law to the Internal Revenue Code and Act 184, Session Laws of Hawaii 2012, Relating to Taxation

On June 28, 2012, Governor Neil Abercrombie signed into law House Bill 2605, H.D. 1, S.D. 1, as Act 179, Session Laws of Hawaii (SLH) 2012 ("Act 179"). Act 179 provides for conforming amendments to Chapter 235, Hawaii Revised Statutes (HRS), based upon amendments made to the Internal Revenue Code (IRC) for the calendar year 2011.

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 IRC for the previous calendar year.

Section 2 of Act 179 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, 2011. Generally, Subtitle A, Chapter 1, refers to sections 1 through 1400T, IRC.

A summary of the relevant federal laws that were enacted in 2011 and their impact on Hawaii Income Tax Law follows:

1. Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011 (P.L. No. 112-9, April 14, 2011):

This Act repealed IRC § 6041(h) which required the reporting of rental property expense payments of $600 or more made to corporations after December 31, 2010 on Form 1099.

Hawaii conforms to the repeal of IRC § 6041(h), thus, IRC § 6041(h) is not operative for Hawaii Income Tax purposes for taxable years beginning after December 31, 2011. This Act also amended IRC § 36B which is not operative for Hawaii Income Tax purposes.

2. Department of Defense and Full-Year Continuing Appropriations Act, 2011 (P.L. No. 112-10, April 15, 2011):

This Act includes a repeal of sections of the Patient Protection and Affordable Care Act (PPACA) and associated Code provisions dealing with "free choice vouchers."

This Act amended IRC § 36B(c)(2)(D) by deleting the exception for individuals receiving free choice vouchers due to the repeal of the "free choice voucher" system enacted in the Patient Protection and Affordable Care Act.

The remaining provisions of this Act relating to free choice vouchers are not operative for Hawaii Income Tax purposes, such as the repeal of IRC § 139D which excluded free choice vouchers from gross income and the deletion of "free choice voucher" deduction under IRC § 162(a).

3. To Extend the Generalized System of Preferences, and for other purposes (P.L. 112-40, October 13, 2011)

This Act would temporarily and retroactively extend the Generalized System of Preferences and provisions related to Trade Adjustment Assistance and the Health Coverage Tax Credit. In addition, the Act would require states to make certain changes to laws that govern their unemployment programs to improve recovery and prevent overpayments of benefits. The Act also would modify provisions that govern Medicare Quality Improvement Organizations and would change merchandise processing fee rates.

Act 184, SLH 2012

On June 29, 2012, Governor Neil Abercrombie signed into law House Bill 1705, H.D. 1, S.D. 1, C.D.1, as Act 184, SLH 2012 ("Act 184"). Section 2 of Act 184 amends § 235-2.3(b)(21), HRS, so that IRC § 501(c)(12) is operative for companies that provide potable water to residential communities that lack any access to public utility water services.

Section 3 of Act 184 amends § 237-23(a)(7), HRS and exempts companies that provide potable water to residential communities that lack any access to public utility water services and are tax exempt under section 501(c)(12) of the Internal Revenue Code of 1986, as amended from the application of HRS Chapter 237. Act 184 applies to taxable years beginning after December 31, 2011.

Taxpayers who qualify for a GET exemption under Act 184 must file Form G-6 or G-6S with the Department in order to be exempted. Please see Form G-6A, Instructions for Preparing Form G-6 and G-6S for more details.

For more information on this issue, please contact the Rules Office at 808-587-1577 or by e-mail at Tax.Rules.Office@hawaii.gov.



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