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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2013-26

RE: Act 1, Second Special Session Laws of Hawaii 2013, Relating to Equal Rights

On November 13, 2013, Governor Neil Abercrombie signed into law Senate Bill 1, H.D. 1 as Act 1, Second Special Session Laws of Hawaii 2013 (Act 1). Act 1 recognizes marriages between individuals of the same-sex, and extends to such same-sex couples the same rights, benefits, protections, and responsibilities of marriage that opposite-sex couples receive. Act 1 became effective on December 2, 2013.

As it relates to taxation, all same-sex couples that are legally married in Hawaii or any other jurisdiction where such marriages are valid are married for all tax purposes, including income tax, estate tax, and generation skipping tax. Unlike couples in a civil union, same-sex married couples no longer need to create a federal tax return only for the purpose of computing their Hawaii income tax or estate and generation skipping tax liabilities because such marriages are recognized for federal tax purposes.

Act 1 does not change the tax treatment of partners in a Hawaii civil union or its recognized equivalent. Partners in such civil unions are treated as a married couple for Hawaii tax purposes, but are not considered to be married for federal tax purposes. Couples in a civil union must continue to create a federal tax return as if their union were considered to be a valid marriage for federal tax purposes in order to compute their Hawaii state income tax or estate and generation skipping tax liability.

As a reminder, for Hawaii income tax purposes, couples in a recognized marriage or civil union must choose a filing status of "Married filing joint return" or "Married filing separate return". Such couples may not choose a filing status of "Single". In addition, filing status is determined by the status of a couple on the last day of the tax year. For calendar year taxpayers, a couple who is married or in a recognized civil union on December 31, must file as a married couple.

For more information, please visit the Department's website at tax.hawaii.gov.

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Director of Taxation