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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2015-02

RE: Tax Law Changes from the 2015 Regular Legislative Session

This Announcement lists and summarizes the Acts, enacted as part of the State of Hawaii's 2015 Legislative Session, amending or affecting the State tax law. Below is a list of the Acts addressed in this Announcement, with a short description of the Act's contents:

- Act 18: Technical Correction of the General Excise Tax Exemption for Nonprofit Organizations
- Act 22: Amends or Repeals Obsolete Tax Laws
- Act 23: Conformity to the Estate and Generation-Skipping Transfer Taxes
- Act 52: Conformity of the Hawaii Income Tax Law to the Internal Revenue Code
- Act 53: Technical Correction of the Income Tax Credit for Employment of Vocational Rehabilitation Referrals
- Act 93: Transient Accommodations Tax Increase for Timeshares
- Act 94: Tax Reports Required of the Department
- Act 95: Amends the General Excise Tax Exemption for Affordable Housing Projects
- Act 120: Income Tax Credit for Converting Cesspools
- Act 128: Exempts Disabled Veterans from Motor Vehicle Registration Fee
- Act 185: Amends the Environmental Response, Energy, and Food Security Tax
- Act 201: Exempts On-Bill Obligations Collected by Electric Utilities
- Act 204: Local Contact Information and Tax Registration Number Required in Transient Accommodations Advertisements
- Act 205: Counties Authorized to Adopt Commuter Benefits Programs
- Act 223: Amends the Refundable Food/Excise Credit
- Act 240: Extends the Honolulu County Surcharge; Authorizes Other Counties to Adopt Surcharge

Act 18: Technical Correction of the General Excise Tax Exemption for Nonprofit Organizations

Act 18 (House Bill 966, H.D.1) is effective retroactively and applies to taxable years beginning after December 31, 2011. It adds back the words "as such" to section 237-23(b)(3), Hawaii Revised Statutes ("HRS"), which were inadvertently repealed by Act 184, Session Laws of Hawaii ("SLH") 2012. Section 237-23, HRS, relates to the General Excise Tax ("GET")

exemption for nonprofit organizations.

Act 22: Amends or Repeals Obsolete Tax Laws

Act 22 (Senate Bill 1212, S.D. 1) is effective July 1, 2015. It repeals various provisions in the GET and public service company ("PSC") tax laws, chapters 237 and 239, HRS, respectively, used to phase in the current wholesale tax rate and sublease deduction rate. Specifically, Act 22 repeals part of section 237-16.5, HRS, repeals section 237-13.3, HRS, in its entirety and all references thereto, and repeals part of section 239-6, HRS.

Act 23: Conformity to the Estate and Generation-Skipping Transfer Taxes

Act 23 (Senate Bill 1134) is effective May 1, 2015 and applies to decedents dying after December 31, 2014. It conforms the State's estate and generation-skipping transfer tax law under chapter 236E, HRS, to the Internal Revenue Code ("IRC"), as amended as of December 31, 2014, as it applies to the estate and generation-skipping transfer tax.

Act 52: Conformity of the Hawaii Income Tax Law to the Internal Revenue Code

Act 52 (Senate Bill 1133, S.D. 1, H.D. 1) is effective May 20, 2015 and applies to taxable years beginning after December 31, 2014; however, retroactive amendments to operative IRC sections are adopted for Hawaii income tax purposes under section 235-2.5(a)(3), HRS. Act 52 updates section 235-2.3(a), HRS, to conform to the operative IRC sections of subtitle A, chapter 1, as amended as of December 31, 2014, and updates section 235-2.4, HRS, as explained below.

During 2014, Congress enacted several new tax measures. One of these new tax measures, the "Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014," P.L. 113-295, enacted December 19, 2014, creates new IRC section 529A allowing states to create tax preferred savings plans for the benefit of disabled individuals ("ABLE Plans"). Hawaii created its ABLE Plan program this year in Act 206, SLH 2015.

Act 52 amends section 235-2.4, HRS, to provide that section 529A, IRC, is operative for Hawaii income tax purposes, but the ten percent penalty on distributions from ABLE Plans not used for qualified expenses is not operative for Hawaii income tax purposes.

Act 53: Technical Correction of the Income Tax Credit for Employment of Vocational Rehabilitation Referrals

Act 53 (Senate Bill 1136, H.D. 1) is effective May 20, 2015. It updates the income tax credit for employment of vocational rehabilitation referrals under section 235-55.91, HRS, by amending references to the IRC that have changed. These amendments are technical and non-substantive.

Act 93: Transient Accommodations Tax Increase for Timeshares

Act 93 (House Bill 169, H.D. 1, S.D. 1, C.D. 1) is effective January 1, 2016. It makes two changes to the Transient Accommodations Tax ("TAT") law:

1. It gradually increases the TAT rate owed on timeshare units occupied by owners under section 237D-2(c), HRS, to match the 9.25% rate owed on units furnished to renters under section 237D-2(a), HRS.

TAT Rate for Timeshare Occupancy	
January 1, 2016 to December 31, 2016	8.25%
January 1, 2017 and later	9.25%

2. It makes clarifying, nonsubstantive amendments to the definition of "fair market rental value" under section 237D-1, HRS.

Act 94: Tax Reports Required of the Department

Act 94 (Senate Bill 92, S.D. 2, H.D. 1, C.D. 1) is effective July 1, 2015. It requires the Department to publish a report on GET exemptions that (1) are tax expenditures at the wholesale rate; (2) are tax expenditures at the retail rate; and (3) may be foregone opportunities to export taxes. Act 94 also requires the Department to report to the Legislature on the status of upgrading its forms and reporting capabilities per the implementation of the Department's Tax System Modernization on or before December 31, 2015. Lastly, Act 94 renames the report required under section 231-3.4(a)(2), HRS, from "Hawaii income patterns – corporations, proprietorships, and partnerships" to "Hawaii income patterns – business," and requires the Department to publish all reports set forth in section 231-3.4(a), HRS, no later than 20 days prior to the convening of each regular session, except for the reports on Hawaii income patterns – business, and the new report on the GET exemptions, for which the reporting deadline is no later than 20 days prior to the convening of the 2017 regular session and each session thereafter.

Act 95: Amends the General Excise Tax Exemption for Affordable Housing Projects

Act 95 (Senate Bill 971, S.D. 1, H.D. 1, C.D. 1) is effective July 1, 2015 and applies to projects with an initial certification date after June 30, 2015. It adds a new requirement for obtaining certification from the Hawaii Housing Finance and Development Corporation ("HHFDC") as affordable housing projects. HHFDC certification is a prerequisite for a taxpayer to claim a GET exemption under section 201H-36, HRS. The new requirement is that the housing project must be affordable for a minimum number of years as noted in the table below.

Type of Project	Term
Moderate Rehabilitation	5 years from date specified in regulatory agreement
Substantial Rehabilitation	10 years from date specified in regulatory agreement
Newly Constructed	30 years from date of issuance of certificate of occupancy

Act 120: Income Tax Credit for Converting Cesspools

Act 120 (House Bill 1140, H.D. 1, S.D. 2, C.D. 1) is effective July 1, 2015, applies to taxable years ending after December 31, 2015, and is repealed on December 31, 2020. It creates a temporary, nonrefundable income tax credit for the costs incurred in converting a qualified cesspool to a septic system or to an aerobic treatment unit system, or for the cost of connecting a cesspool to a sewer system. In order to be entitled to the credit, the Department of Health must certify that the cesspool is located within 200 feet of a shoreline, perennial stream, or wetland, is located within a source water assessment program area, or is a residential large capacity cesspool, provided that no more than two residential large capacity cesspools may be certified in any tax year. The Department of Health must certify all credit claims, and the credit amount is 100% of qualified costs up to a maximum of $10,000 per taxpayer. The amount of tax credits certified in any given tax year cannot exceed $5 million.

Act 128: Exempts Disabled Veterans from Motor Vehicle Registration Fee

Act 128 (House Bill 1153, S.D. 2, C.D. 1) is effective June 19, 2015. It exempts resident disabled veterans from payment of annual vehicle registration fees required by section 249-31, HRS, for one vehicle per year, and applies to motor vehicle registrations issued or renewed after January 1, 2016. The exemption does not apply to vehicles used for commercial purposes.

Act 185: Amends the Environmental Response, Energy, and Food Security Tax

Act 185 (Senate Bill 359, S.D. 1, H.D. 1, C.D. 1) is effective July 1, 2015. It makes several amendments to the Environmental Response, Energy and Food Security Tax.

Act 185 amends the definition of "distributor" in section 243-1, HRS, to include persons who deal in fossil fuels. Act 185 also amends section 243-3.5, HRS, by adding a new definition for "fossil fuel." Act 185 applies the Environmental Response, Energy, and Food Security Tax to fossil fuel sold by a distributor at the rate of 19 cents per one million British thermal units of fossil fuel sold by a distributor.

Act 185 contains additional amendments to section 243-3.5, HRS, which exempt from the Environmental Response, Energy, and Food Security Tax coal used to fulfill a power purchase agreement between an independent power producer and an electric utility that is in effect as of June 30, 2015, as well as permit independent power producers to pass the cost of the tax on to an electric utility. An electric utility is allowed to recover the cost of the tax through an appropriate surcharge to the end user. A gas utility is allowed to recover the cost of the tax as part of its fuel cost in its fuel adjustment charge.

Act 201: Exempts On-Bill Obligations Collected by Electric Utilities

Act 201 (Senate Bill 1096, S.D. 1, H.D. 2, C.D. 1) is effective July 2, 2015. It exempts from state and county taxes the amounts collected by electric utilities for the repayment of on-

bill obligations, including the GET under chapter 237, HRS, the PSC tax under chapter 239, HRS, the public utility fee under section 269-30, HRS, and the public utility franchise tax under chapter 240, HRS. For the on-bill financing program, electric utilities serve as billing and collection agents in a "pass-through" capacity. Act 201 exempts amounts collected under the on-bill financing program only; it does not impact other fees or taxes imposed on other amounts received in the normal course of operations by the electric utilities.

Act 204: Local Contact Information and Tax Registration Number Required in Transient Accommodations Advertisements

Act 204 (Senate Bill 519, S.D. 2, H.D. 3, C.D. 1) is effective January 1, 2016. It requires TAT registration numbers and local contact information to be displayed in all transient accommodation units and in all advertisements of those units. Operators or plan managers that do not have the TAT registration number or local contact information properly displayed both in the unit and in the advertisement of the unit may be cited and fined. Additionally, transient accommodation brokers such as website operators, online travel agencies, or online booking agencies that do not provide a unit's TAT registration number and local contact information in all advertisements for the unit may be cited and fined.

Act 204 also makes clarifying, nonsubstantive amendments to the definition of "transient accommodation" under section 237D-1, HRS.

Act 205: Counties Authorized to Adopt Commuter Benefits Programs

Act 205 (House Bill 1010, H.D. 1, S.D. 2, C.D. 1) is effective July 1, 2015. It authorizes counties to adopt an ordinance establishing a commuter benefits program consisting of one or more of the following:

1. A program allowing employees an income tax exclusion for costs paid for transit passes, vanpool charges or bicycle commuting under section 132(f), IRC;
2. A program where employees are offered a subsidy to offset the costs of transit passes, vanpool charges or bicycle commuting; or
3. Employer-provided transportation similar to a bus or vanpool furnished to employees at low or no cost.

Act 223: Amends the Refundable Food/Excise Credit

Act 223 (Senate Bill 555, S.D. 1, H.D. 1, C.D. 1) is effective July 9, 2015, and applies to taxable years beginning after December 31, 2015. Act 223 is repealed on December 31, 2017, and the law as it read prior to this Act's amendments will automatically be reenacted.

Act 223 amends the Refundable Food/Excise Tax Credit described in section 235-55.85, HRS, in several ways. First, Act 223 removes the requirement that the individual claiming the credit must have resided in the State for nine months during the taxable year and replaces it with

a requirement that the individual must have been physically present in the state for nine months during the taxable year. Second, Act 223 adjusts the maximum adjusted gross income an unmarried individual taxpayer may have in order to be eligible to claim the credit. Third, Act 223 adjusts the amount of credit per qualified exemption available to eligible taxpayers.

The adjusted gross income of taxpayers and the credit per exemption available to them under Act 223 is illustrated in the tables below:

Adjusted gross income for taxpayers filing a single return	**Credit per exemption**
Under $5,000	$110
$5,000 to under $10,000	$100
$10,000 to under $15,000	$85
$15,000 to under $20,000	$70
$20,000 to under $30,000	$55
$30,000 and over	$0

Adjusted gross income for heads of household, married individuals filing separate returns, and married couples filing joint returns	**Credit per exemption**
Under $5000	$110
$5,000 to under $10,000	$100
$10,000 to under $15,000	$85
$15,000 to under $20,000	$70
$20,000 to under $30,000	$55
$30,000to under $40,000	$45
$40,000 to under $50,000	$35
$50,000 and over	$0

Act 240: Extends the Honolulu County Surcharge; Authorizes Other Counties to Adopt Surcharge

Act 240 (House Bill 134, H.D. 1, S.D. 2, C.D. 1) takes effect July 1, 2015. It authorizes the extension of the City and County of Honolulu surcharge on state general excise and use taxes ("county surcharge") at the 0.5% rate, authorizes other counties to adopt ordinances establishing a county surcharge at a rate of no more than 0.5%, and limits the use of the county surcharge revenues for the City and County of Honolulu to capital costs.

Act 240 amends section 46-16.8(b), HRS, by giving authority to the City and County of Honolulu to elect to extend the sunset of its county surcharge from January 1, 2023 to December 31, 2027 at the 0.5% rate. The election to extend the county surcharge must be done by ordinance adopted prior to January 1, 2016, but no earlier than July 1, 2015. The City and County of Honolulu must hold a public hearing on the ordinance before it is adopted. Act 240 requires the Department to continue to collect and administer any extended county surcharge.

Act 240 amends section 46-16.8(c), HRS, by giving authority to the other counties to establish a county surcharge at a rate of no more than 0.5%. An election to establish a county surcharge must be done by ordinance adopted prior to January 1, 2016, but no earlier than July 1, 2015. The county must hold a public hearing on the proposed adoption of the ordinance before it is adopted. Act 240 requires the Department to collect and administer a county surcharge adopted by any of the other counties.

Act 240 limits how the counties can spend their county surcharge revenues. The City and County of Honolulu is limited to using its county surcharge revenue for capital costs of the Honolulu Rail Transit project and expenses in complying with the Americans with Disabilities Act of 1990 with respect to that project. The City and County of Honolulu cannot use the surcharge to build or repair public roads, highways, or bicycle paths, or to support public transportation systems already in existence prior to July 13, 2005.

The other counties must use their county surcharge revenues for the operation or capital costs of public transportation systems within their county. In contrast to the City and County of Honolulu, the other counties may use their county surcharge revenue to pay for costs including public roadways or highways, public buses, trains, ferries, pedestrian paths or sidewalks, or bicycle paths, as well as expenses in complying with the Americans with Disabilities Act of 1990 with respect to those public transportation systems.

For more information, please contact the Rules Office at 808-587-1530 or by email at Tax.Rules.Office@hawaii.gov.

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