DAVID Y. IGE
GOVERNOR

JOSH GREEN, M.D.
LIEUTENANT GOVERNOR

LINDA CHU TAKAYAMA
DIRECTOR

DAMIEN A. ELEFANTE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
830 PUNCHBOWL STREET
HONOLULU, HAWAII 96813
http://tax.hawaii.gov/
Phone: (808) 587-1530 / Fax: (808) 587-1560
Email: Tax.Rules.Office@hawaii.gov

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# DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2019-09

RE: Tax Law Changes from the 2019 Regular Legislative Session

This announcement lists and summarizes the measures passed during the Regular Legislative Session of 2019 that amend or affect the State tax law. Below is a list of the eighteen Acts addressed in this Announcement, with a short description of the contents of each:

- Act 2: Marketplace Facilitators
- Act 3: New Estate Tax Bracket for Estates Exceeding $10 million
- Act 17: Income Tax Cleanup
- Act 20: Imposes Transient Accommodations Tax on Resort Fees
- Act 69: Income and Estate Tax Conformity
- Act 96: Market Sourcing for Sales of Services and Intangibles
- Act 97: Tax Refund Offsets
- Act 174: Amends the Rental Motor Vehicle Surcharge Tax Rate
- Act 221: Establishes an Economic Nexus Standard for Income Tax
- Act 232: Withholding on Nonresident Partners and Beneficiaries
- Act 260: Establishes a Ship Repair Income Tax Credit
- Act 261: Amends the Research Credit
- Act 267: Establishes a Historic Preservation Income Tax Credit
- Act 275: Amends Motion Picture, Digital Media, and Film Production Tax Credit

## Act 2: Marketplace Facilitators

Act 2 (Senate Bill 396, S.D. 1) is effective January 1, 2020. Act 2 deems marketplace facilitators the sellers of tangible personal property, intangible personal property, and services sold through the marketplace. Act 2 also deems sales of tangible personal property and services by sellers to the marketplace facilitator to be sales at wholesale.

Act 2 also defines marketplace facilitator as any person who sells or assists in the sale of tangible personal property, intangible personal property, or services on behalf of another by providing a forum for the listing or advertisement of the item and by collecting payment from the purchaser either directly or indirectly.

**Act 3: Imposes a New Estate Tax Bracket for Estates Exceeding $10 million**

Act 3 (Senate Bill 1361, S.D. 1) is effective April 4, 2019 and applies to decedents dying after December 31, 2019. Act 3 establishes a new estate tax rate bracket for taxable estates exceeding $10 million. The new bracket is 20 percent.

**Act 17: Income Tax Cleanup**

Act 17 (House Bill 114) is effective April 23, 2019. Act 17 repeals section 235-103, Hawaii Revised Statutes (HRS). Section 235-103, HRS, provided authority similar to that provided in section 231-3.1, HRS, and was therefore unnecessary. The repeal has no substantive effect and does not affect the Department's authority in any way.

**Act 20: Imposes Transient Accommodations Tax on Resort Fees**

Act 20 (Senate Bill 380, S.D. 1) is effective July 1, 2019. Act 20 imposes the transient accommodations tax on resort fees and defines resort fees as "any mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation's property, services, or amenities." Fore more information *see* Tax Information Release 2019-02.

**Act 69: Income and Estate Tax Conformity**

Act 69 (Senate Bill 1130, S.D. 1, H.D. 1) is effective June 7, 2019 and applies to taxable years beginning and to decedents dying after December 31, 2018. Retroactive amendments to operative Internal Revenue Code (IRC) sections are adopted for Hawaii income tax and estate and generation-skipping transfer tax (estate) tax laws.

Act 69 updates section 235-2.3(a), HRS, to conform to the operative sections of subtitle A, chapter 1, of the IRC, as amended as of December 31, 2018. Act 69 also updates section 236E-3, HRS, to conform Hawaii's estate tax to subtitle B of the IRC as amended as of December 31, 2018.

Act 69 makes a few minor changes to conformity. First, Act 69 conforms to the federal tax benefits conferred upon investments made in qualified opportunity zones. These tax benefits were added to the IRC by the Tax Cuts and Jobs Act but were not conformed to by Hawaii initially. Hawaii now conforms and provides the tax benefits for Hawaii income tax purposes but only for qualified opportunity zones in Hawaii.

Second, Act 69 clarifies that the applicable exclusion amount for the Hawaii estate and generation-skipping transfer tax law is fixed in the amount applicable for decedents dying on December 31, 2017. This amount is $5,490,000.

Finally, Act 69 clarifies that Hawaii does not conform to the addition to unrelated business taxable income of the amount of a disallowed fringe benefit paid by a a nonprofit organization. This is to ensure that nonprofit organizations are treated the same as ordinary corporations.

**Act 96: Market Sourcing for Sales of Services and Intangibles**

Act 96 (Senate Bill 394, S.D. 1, H.D. 1, C.D. 1) is effective June 7, 2019 and applies to taxable years beginning after December 31, 2019. Act 96 changes the sales factor sourcing rules for income from the sale of services and intangibles to market sourcing. Income from the sale of tangible personal property is already sourced using market sourcing.

In general, market sourcing rules are meant to source a sale to where the taxpayer's sales are located. This contrasts with prior sourcing rules, which sourced sales generally to where the taxpayer's business activity was located.

**Act 97: Tax Refund Offsets**

Act 97 (Senate Bill 1271, S.D. 1, H.D. 1) is effective June 7, 2019. Act 97 clarifies that tax refund offsets may be performed by the Department of Accounting and General Services (DAGS) and the Department of Taxation (Department). Act 97 authorizes both DAGS and the Department to perform tax refund offsets, notify debtors, and provide certain information to the claimant agencies.

**Act 174: Amends the Rental Motor Vehicle Surcharge Tax Rate**

Act 174 (S.B. 162, S.D. 2, H.D. 3, C.D. 1) is effective July 1, 2019. Act 174 repeals the two percent rental motor vehicle surcharge on lessees without a valid Hawaii driver's license and increases the rate of the rental motor vehicle surcharge tax from three percent to five percent per day. The repeal of the two percent surcharge was necessary due to likely unconstitutionality under the dormant commerce clause of the United States Constitution.

Act 174 additionally repeals the special allocations of the two percent surcharge. The two percent surcharge was originally to be deposited into a special fund for the county where the rental took place. As amended the full five percent per day is deposited into the highway fund. For more information *see* Tax Announcement 2019-05.

**Act 221: Establishes an Economic Nexus Standard for Income Tax**

Act 221 (Senate Bill 495, S.D. 2, H.D. 1) is effective July 2, 2019 and applies to taxable years beginning after December 31, 2019. Act 221 establishes an economic nexus standard for Hawaii income tax. The Act states that a person without physical presence is engaging in business in the State if the person has $100,000 or more in income sourced to the state or has 200 or more transactions sourced to the state.

Act 221 establishes a standard very similar to the economic nexus standard for general excise tax established by Act 41, Session Laws of Hawaii 2018.

**Act 232: Withholding of Taxes on Income of Nonresident Partners and Beneficiaries of Partnerships, Estates, and Trusts**

Act 232 (Senate Bill 1360, S.D. 1, H.D. 1) is effective July 2, 2019 and applies to taxable years beginning after December 31, 2018. Act 232 requires income tax withholding for nonresident taxpayers based on the taxpayers' distributive share of income attributable to the State reflected on the partnership's, estate's, and trust's return for the taxable period. The amount withheld equals to the highest marginal tax rate applicable to a nonresident taxpayer multiplied by the amount of the taxpayer's distributive share of income attributable to the State.

Withholding is not required by a publicly traded partnership, as defined by section 7704(b) of the Internal Revenue Code (IRC). A publicly traded partnership is required to file an annual information return of each unit holder with income sourced to Hawaii.

**Act 260: Ship Repair Industry Tax Credit**

Act 260 (Senate Bill 972, S.D. 1, H.D. 1, C.D. 1) is effective on January 1, 2020 and applies to taxable years beginning after December 31, 2021. Act 260 establishes a new Ship Repair Industry Tax Credit which is intended to offset costs incurred in constructing and placing into service a purpose-built floating drydock at Pearl Harbor for use by the United States Navy, provided that no credit is allowed after December 31, 2026. This Act also repeals the Capital Infrastructure Tax Credit under section 235-17.5, HRS.

**Act 261: Amends the Income Tax Credit for Research Activities**

Act 261 (Senate Bill 1314, S.D. 1, H.D. 1, C.D. 1) is effective for taxable years beginning after December 31, 2019. Act 261 amends the Tax Credit for Research Activities (TCRA) such that references to the base amount contained in section 41 of the IRC do not apply, and credit may be taken based upon all qualified research expenses incurred in Hawaii without regard to the amount of expenses for previous years.

Act 261 provides that the Department of Business, Economic Development, and Tourism must certify all claims for the tax credit and establishes an annual aggregate cap of $5,000,000. Taxpayers must still claim the federal research credit under IRC section 41 to claim the TCRA. Act 261 extends the TCRA through December 31, 2024.

**Act 267: Establishes a Historic Preservation Income Tax Credit**

Act 267 (Senate Bill 1394, S.D. 2, H.D. 2, C.D. 1) is effective July 1, 2019 and applies to qualified rehabilitation expenditures incurred in taxable years beginning after December 31, 2019 and is repealed on December 31, 2024.

Act 267 establishes a new, nonrefundable income tax credit for taxpayers who rehabilitate historic structures pursuant to a rehabilitation plan certified by the Department of Land and Natural Resources' State Historic Preservation Division (SHPD). The credit is equal to 30% of the qualified expenses incurred as part of the certified rehabilitation plan. In addition, the credit is subject to an aggregate cap of $1,000,000 per year, and is subject to recapture if the

projected expenditures do not materialize, or the rehabilitation does not proceed in a timely manner or in accordance with the approved plan.

Act 267 requires owners of certified historic structures to notify the SHPD when the rehabilitation has been completed and requires SHPD to review the rehabilitation and verify that it has been completed in accordance with the approved rehabilitation plan. Act 267 also requires SHPD, in consultation with the Department, to determine the information necessary to enable an assessment of the outcome of this tax credit, and to submit an annual report to the Legislature.

The Act authorizes the Department to require proof to claim the credit, including requiring the taxpayer to file its certificate received from the SHPD when it files its tax return. This Act also specifies that all information submitted to the SHPD by taxpayers claiming this credit is public information.

**Act 275: Motion Picture, Digital Media, and Film Production Tax Credit**

Act 275 (Senate Bill 33, S.D. 3, H.D. 2, C.D. 1) is effective July 10, 2019 and applies to taxable years beginning after December 31, 2018. Act 275 amends motion picture, digital media, and film production income tax credit (film credit) by increasing the film credit annual aggregate cap from $35 million to $50 million.

Act 275 directs University of Hawaii (UH) West Oahu to execute a memorandum of understanding with Hawaii Technology Development Corporation (HTDC) for a no-cost lease agreement of certain lands for a minimum of 60 years by no later than December 31, 2020. Act 275 also requires UH West Oahu to transfer title of certain lands to HTDC within a certain time frame.

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

LINDA CHU TAKAYAMA
Director of Taxation