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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2021-06

RE: Tax Law Changes from the 2021 Regular Legislative Session

This Announcement summarizes the two measures passed during the Regular Legislative Session and First Special Session of 2021 that amend or affect the State tax laws.

Act 75: Amends the Barrel Tax Allocation

As it relates to tax administration, Act 75 (House Bill 1142, H.D. 2, S.D. 2, C.D. 1) amends how the barrel tax is allocated but does not otherwise change the amount of the barrel tax imposed under section 243-3.5, Hawaii Revised Statutes (HRS) section 243-3.5. Under Act 75, three cents of the tax on each barrel is allocated to the Electric Vehicle Charging System Subaccount of the Public Utilities Commission Special Fund.

Act 75 also reduces the allocation to the Energy Security Special Fund, established under section 201-12.8, HRS, from 5 cents to 4 cents and reduces the allocation to the Energy Systems Development Special Fund, established under section 304A-2169.1, HRS, from 10 cents to 8 cents. Act 75 became effective on July 1, 2021.

Act 78: Real Estate Investment Trust Regulation

Act 78 (House Bill 286, H.D. 1, S.D. 2) requires real estate investment trusts (REITs) to notify the Department of Taxation that they are active in Hawaii, to properly complete their tax returns (including checking the box indicating their status as REITs), and to include a copy of their federal tax return with their state tax return. The penalty for violating the requirements of Act 78 is $50 per day. Act 78 became effective June 24, 2021, the date of its approval, and applies to taxable years beginning after December 31, 2021.

Act 87: Transfers from Special Funds to the General Fund

Act 87 (House Bill 1298, H.D. 1, S.D. 1, C.D. 1) transfers to the general fund from various non-general funds of state departments and agencies that are in excess of what the Legislature has determined to be required. It also requires each department to annually submit to the Legislature program measures, costs elements, and accounting reports for all non-general funds under its control. As it relates to the Department of Taxation, Act 87 transferred $1

million from the Cigarette Tax Stamp Administration Special Fund, $15 million from the Tax Administration Special Fund, and $3,380.50 from the Sale of Assets for Delinquent Taxes Fund. Act 87 became effective on June 30, 2021.

Act 89: Income and Estate Tax Conformity

Act 89 (House Bill 1041, H.D. 1, S.D. 1) updates section 235-2.3(a), HRS, to conform to the operative sections of subtitle A, chapter 1, of the Internal Revenue Code (IRC), as amended as of December 31, 2020. Act 89 also updates section 236E-3, HRS, to conform Hawaii's estate tax to subtitle B of the IRC, as amended as of December 31, 2020. Retroactive amendments to operative IRC sections are adopted for Hawaii income tax and estate and generation-skipping transfer tax (estate) tax laws.

Please note: in most years, the annual conformity bill covers IRC amendments made during the previous calendar year. However, Act 13, Session Laws of Hawaii 2020 (Act 13, SLH 2020), addressed IRC and other federal tax amendments that were made from January 1, 2019 to March 27, 2020. Therefore, the State's response to P.L. 116-36 (the federal CARES Act), which was enacted on March 27, 2020, was included in Act 13, SLH 2020.

Act 89 amended section 235-2.3(a), HRS, to adopt several important federal provisions that were not direct amendments to IRC code sections. Specifically, the following tax sections of P.L. 116-260 (Consolidated Appropriations Act, 2021) were made operative for Hawaii income tax purposes:

- Section 276(b)(1) of Division N, which excludes forgiveness of subsequent Paycheck Protection Program loans from gross income;
- Section 277 of Division N, which excludes students' emergency financial aid grants from gross income;
- Section 278(b)(1), (c)(1), and (d)(1) of Division N, which exclude Economic Injury Disaster Grants, loan payments on certain small business loans, and certain small business grants from gross income;
- Section 213 of Division EE, which extends the increase in certain charitable contribution limits under section 2205 of the CARES Act;
- Sections 214, 301, 302, 304 of Division EE, which enact various disaster relief and retirement plan administration amendments; and
- The exclusion of the federal stimulus payments under section 272 of Division N from gross income.

Act 89 became effective on June 25, 2021, the date of its approval, and applies to taxable years beginning and to decedents dying after December 31, 2020.

Act 90: Transient Accommodations Tax Cleanup Bill

Act 90 (House Bill 1043, H.D. 3, S.D. 2, C.D. 1) amends numerous Transient Accommodations Tax (TAT) sections contained in chapter 237D, HRS, including:

- Changing references to "operator and plan manager" to "persons" or "taxpayer." This ensures there are no loopholes in the imposition of the TAT;
- Repealing the misdemeanor criminal penalty for failure to register for a TAT license and replaces that criminal penalty with monetary fines; and
- Extending the personal liability applicable to the general excise tax under section 237-41.5, HRS, to apply to the TAT.

Act 90 also updates out-of-date TAT provisions and is effective on January 1, 2022.

Act 96: Tax Return Preparers Must Have a Valid Preparer Tax Identification Number

Act 96 (Senate Bill 320, H.D. 1, C.D. 1) requires each tax return preparer to have a valid preparer tax identification number (PTIN) issued by the Internal Revenue Service and to furnish the preparer's PTIN on any return or claim for refund prepared for compensation if required by the Department of Taxation. The penalty for non-compliance with Act 96 is $100 per violation for the first hundred violations, $500 per violation for the next four hundred violations, and $1,000 per violation for every subsequent violation. Act 96 is effective on January 1, 2022.

Act 99: Judicial Tax Appeal Filing Fees

Act 99 (Senate Bill 384, H.D. 1, C.D. 1) clarifies that any fee required for the filing of a tax appeal is nonrefundable. Act 99 is effective on January 1, 2022.

Act 115: Withholding Tax Changes

Act 115 (Senate Bill 1196, S.D. 2, H.D. 1, C.D. 1) changes the due date for employers to file the wage and tax statement (Form W-2/HW-2) from the last day of February to January 31 following the close of the calendar year. This measure also imposes a $25 per violation penalty for willfully failing to timely furnish the form to the employee, failing to timely file the form(s) with the Department of Taxation, or failing to file the form electronically if required to do so. The maximum penalty that may be imposed for non-compliance with Act 115 is $50 per employee. Act 115 is effective on January 1, 2022.

Act 116: Substantive Statutory Cleanup of Fuel, Liquor, and Cigarette/Tobacco Taxes

Act 116 (Senate Bill 1202, S.D. 1, H.D. 2, C.D. 1) makes several amendments to chapters 243 (fuel tax), 244D (liquor tax), and 245 (cigarette and tobacco tax), Hawaii Revised Statutes (HRS), with the goal of bringing more clarity to the law and allowing for more efficient tax

administration. Among other things, the Act removes onerous notice and definitional requirements for taxpayers, eliminates redundant and outdated sections, updates important cross-references, and harmonizes the three tax types' respective provisions related to licensing, permitting and appeals so that they read and operate more similarly to each other. Act 116 is effective on July 1, 2021.

Act 117: Non-substantive Statutory Cleanup of Various Hawaii Tax Laws

Act 117 (Senate Bill 1203, S.D. 1, H.D. 1, C.D. 1) amends title 14, HRS, to make several minor changes in chapters 231, 235, 237, 237D, 238, 239, 243, 244D, 245, and 251. These amendments are non-substantive and include technical corrections, updating references, clarifying language, and deleting obsolete or unnecessary provisions. Act 117 became effective on June 28, 2021, the date of its approval.

Act 118: Statewide Taxation Board of Review

Act 118 (Senate Bill 1204, S.D. 2, H.D. 2, C.D. 1) replaces the four separate district taxation boards of review (Oahu, Maui, Kauai, and Hawaii Island) with a single statewide taxation board of review appointed by the governor. The new statewide board will consist of ten members, with three required for quorum. Taxpayers and others appearing before the board may participate using cost-efficient means such as teleconferencing. Although the board remains all-volunteer, the difficulty of achieving quorum in each separate district created a significant backlog of tax appeals and essentially rendered the old board appeals structure inoperable. Act 118 will help Hawaii taxpayers greatly benefit from improved efficiency in tax administration and having their appeals decided expeditiously. Act 118 became effective on June 28, 2021, the date of its approval.

Act 226: Low-Income Housing Tax Credit

Act 226 (House Bill 80, H.D. 1, S.D. 1, C.D. 1) relaxes the rules on allocating the Low-Income Housing Tax Credit (LIHTC), allowing taxpayers to allocate the credit freely among their partners or members. Act 226 also relaxes the installment method, at-risk, and passive activity loss rules applicable to the LIHTC and allows the Hawaii LIHTC to be claimed in the initial year even if federal Form 8609 has not been received by the taxpayer. However, Act 226 expressly prohibits the deductions and expenses claimed by all Hawaii taxpayers to exceed the deductions and expenses claimed by all taxpayers on federal returns.

Finally, Act 226 extends the shortened credit period provided by Act 129, Session Laws of Hawaii 2016 (Act 129), to apply through December 31, 2027. This extension is not repealed when section 235-110.8, HRS, is repealed and reenacted on December 31, 2027. For more on Act 129, see Tax Announcement No. 2016-07. Act 226 became effective on July 1, 2021, and applies to taxable years beginning after December 31, 2020

Act 237: Increase in Rental Motor Vehicle Surcharge Tax

Act 237 (House Bill 485, H.D. 1, S.D. 1, C.D. 1) increases the Rental Motor Vehicle Surcharge Tax imposed under section 251-2, HRS, by 50 cents per year beginning January 1, 2022. The current rate is $5 per day, thus, beginning on January 1, 2022, the daily rate will be $5.50. In addition, Act 237 provides an exemption from the tax when the lessor is renting a vehicle because their vehicle was stolen. Prior to the enactment of Act 237, the only exemption available was for lessor's renting a vehicle because their vehicle was being repaired. Act 237 became effective on July 6, 2021, the date of its approval, without the Governor's signature.

Act 1, First Special Session 2021: County Transient Accommodations Tax

As it relates to State tax administration, Act 1, 1st Special Session 2021 (House Bill 862, H.D. 2, S.D. 2, C.D. 1), authorizes the counties to establish and administer their own transient accommodations tax (TAT) at a maximum rate of 3%. In order to establish the county TAT, the county must first adopt an ordinance. The Director of Finance in each county that establishes a county TAT, is granted the same authority that the Director of Taxation has under chapter 237D, HRS.

Act 1 also amends the allocation of TAT revenue under section 237D-6.5, HRS, by reducing the allocation to the convention center special fund from $16 million to $11 million, eliminating the $79 million allocation to the tourism special fund, and eliminating the $103 million allocation to the counties. The provisions of Act 1 discussed above became effective on July 1, 2021.

Act 9, First Special Session 2021: Relating to Non-General Funds

Act 9, 1st Special Session 2021 (House Bill 1299, H.D. 1, S.D. 1, C.D. 1, A.D. 1) repeals various non-general funds of certain Executive Branch departments and moves the fund balances to the general fund. As it relates to tax administration, Act 9 repeals the barrel tax allocation to Agricultural Development and Food Security Special Fund. Act 9 became effective on July 1, 2021.

Vetoed Measures

House Bill 58, H.D. 1, S.D. 1, C.D. 1, was passed by the Legislature, but was vetoed by the Governor on July 6, 2021. Governor's Message 1279 contains the Governor's statement of objection to the measure. This measure suspended certain general excise and use tax exemptions from January 1, 2022 through December 31, 2023 and increased the conveyance tax for non-commercial properties valued at $4,000,000 or greater.

House Bill 1296, H.D. 1, S.D. 2, C.D. 1, was passed by the Legislature, but was vetoed by the Governor on July 6, 2021. Governor's Message 1291 contains the Governor's statement of objection to the measure. As it relates to State taxes, this measure amended the Tobacco and Cigarette Tax revenue allocation under section 245-15, HRS.

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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