DAVID Y. IGE
GOVERNOR

JOSH GREEN M.D.
LT. GOVERNOR

ISAAC W. CHOY
DIRECTOR OF TAXATION

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1577
FAX NO: (808) 587-1584

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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2022-04 (REVISED)

RE: Tax Law Changes from the 2022 Regular Legislative Session

Department of Taxation Announcement No. 2022-04, issued July 21, 2022, is re-issued to include a summary of Act 241 and to clarify Act 7's conformity to Public Law 117-2.

This Announcement summarizes the measures passed during the Regular Legislative Session of 2022 that amend or affect the State tax laws.

Act 7: Conformity to the Internal Revenue Code

Act 7 (Senate Bill 3143) conforms Hawaii income and estate and generation-skipping transfer tax laws by updating sections 235-2.3, 235-2.4, 235-2.45, and 236E-3, Hawaii Revised Statutes (HRS), to conform to the Internal Revenue Code (IRC). Act 7 generally addresses the IRC amendments made by the American Rescue Plan Act of 2021, P. L. 117-2 (ARPA), which became law on March 11, 2021. Significant changes are as follows:

- Section 9672(1), of Public Law 117-2, relating to tax treatment of targeted COVID-19 Economic Injury Disaster Loan (EIDL) advances, is operative for Hawaii income tax (please note that subsections (2) and (3) are not operative).
- Section 9673(1) of Public Law 117-2, relating to tax treatment of restaurant revitalization grants, is operative for Hawaii income tax (please note that subsections (2) and (3) are not operative).
- No amount received under section 9601 of Public Law 117-2, relating to 2021 recovery rebates to individuals, shall be included in gross income.

IRC amendments made by the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Consolidated Appropriations Act of 2021 were addressed in Act 13, Session Laws of Hawaii (SLH) 2020, and Act 89, SLH 2021, respectively. Act 7 became effective on June 27, 2022, the date of its approval; portions related to section 2202(a) of Public Law 116-136 (relating to tax-favored withdrawals from retirement plans) apply to taxable years beginning after December 31, 2019; portions related to section 236E-3, HRS, apply to taxable transfers occurring after December 31, 2021.

Act 8: Exemption from GET Filing Requirements

Act 8 (Senate Bill 2303) authorizes the Director of Taxation to exempt a taxpayer whose annual general excise tax liability does not exceed $100 from monthly, quarterly, or semiannual general excise tax filing requirements, provided that the taxpayer files an annual return. Act 8 became effective on June 27, 2022, and applies to taxable years beginning after December 31, 2022.

Act 15: Repeal of Deferred Payment Purchase Option for Cigarette Tax Stamps

Act 15 (Senate Bill 2376, S.D. 1) repeals and eliminates the deferred payment purchase option for cigarette tax stamps. Licensees will be required to pay for stamps at the time of purchase using cash, certified check, or bank transfer. Act 15 becomes effective on January 1, 2023.

Act 76: Liquor Tax Law Reporting and Investigations

Act 76 (House Bill 137, H.D. 1, S.D. 2, C.D. 1) removes the authority of the county liquor commissions to enforce the State liquor tax law and requires violations of the liquor tax law to be referred to the Director of Taxation for investigation. The general right of inspection without a warrant for potential violations of the liquor tax law is repealed. Applications for liquor licenses are now required to be notarized. The discretionary power of the liquor commission to deny a license to any person the liquor commission investigator finds is not fit and proper to hold a license is repealed. The requirement that investigative reports to the liquor commission include all matters that are relevant to the application or license in the judgment of the investigator is repealed. Act 76 becomes effective on January 1, 2023.

Act 77: Peer-to-Peer Car Sharing - GET and RVST

Act 77 (House Bill 1971, H.D. 2, S.D. 1, C.D. 1) authorizes and regulates peer-to-peer car-sharing programs. "Peer-to-peer car-sharing" is defined as "operation, use, or control of a motor vehicle by an individual other than the motor vehicle's owner through a peer-to-peer car-sharing program," with further clarification provided in Chapter 431, HRS. The definition of "peer-to-peer car-sharing program" does not include a car-sharing organization as defined in section 251-1. Act 77 also expressly imposes the general excise tax and rental motor vehicle surcharge tax on peer-to-peer car-sharing programs. Act 77 became effective on July 1, 2022.

Act 78: Collection of Delinquent Taxes

Act 78 (House Bill 2179, H.D. 1, S.D. 1) authorizes the Director of Taxation to apply to the circuit court to convert certain tax liens into an enforceable civil judgment if the lien is properly recorded and three hundred sixty-five days have elapsed without response or action by the taxpayer. Act 78 became effective on June 27, 2022.

Act 79: Special Enforcement Section Powers

Act 79 (Senate Bill 2379, S.D. 2, H.D. 2, C.D. 1) authorizes the Special Enforcement Section of the Department of Taxation to examine any sector of Hawaii's economy, initiate civil investigations, use enforcement and education to deter and prevent non-compliance with tax laws, and refer and recommend cases or examinations to auditors within the Department of Taxation for auditing. Act 79 became effective on June 27, 2022.

Act 80: GET Exemption for Stevedoring

Act 80 (Senate Bill 2475, S.D. 2, H.D. 1, C.D. 1) clarifies that amounts received or accrued for stevedoring services, wharfage, and demurrage services are exempt under the general excise tax law within section 237-24.3, HRS. Act 80 became effective on June 27, 2022.

Act 114: Minimum Wages Increase, Earned Income Tax Credit

Act 114 (House Bill 2510, H.D. 2, S.D. 1, C.D. 1) makes the State earned income tax credit (EITC) refundable and permanent. The State EITC becomes refundable beginning with the 2023 tax year. All carryforwards of nonrefundable EITC expire at the end of the 2024 tax year. Act 114 also adds new incremental increases to both minimum wages and tip credits beginning on October 1, 2022, and increasing through January 1, 2028. Act 114 became effective on June 27, 2022.

Act 115: Constitutional Tax Refund

Act 115 (Senate Bill 514, S.D. 1, H.D. 1, C.D. 2) provides a tax refund of either $100 or $300, depending on federal adjusted gross income, per qualifying exemption to which a resident taxpayer is entitled. The Act also makes deposits to the emergency and budget reserve fund and pension accumulation fund, pursuant to article VII, section 6, of the Hawaii State Constitution. Funding for these refunds and deposits is appropriated out of the general revenues of the State in an amount as may be necessary for fiscal year 2022-2023. Act 115 became effective on July 1, 2022. For more information, please see Tax Announcement 2022-03.

Act 139: Important Agricultural Land Qualified Agricultural Cost Tax Credit

Act 139 (Senate Bill 339, S.D. 2, H.D. 1, C.D. 1) extends the period during which the important agricultural land qualified agricultural cost tax credit is available through tax year 2030; it previously expired for tax years beginning after December 31, 2021. Act 139 becomes effective on July 1, 2022, and applies to taxable years beginning after December 31, 2021.

Act 216: Reinstation of Renewable Fuels Production Tax Credit

Act 216 (Senate Bill 2478, S.D. 2, H.D. 2, C.D. 1) reinstates the Renewable Fuels Production Tax Credit (RFPTC), which was previously codified at section 235-110.31, HRS, before its duly scheduled repeal on December 31, 2021. Act 216 also allows the RFPTC to be refunded under certain conditions. Act 216 became effective on June 27, 2022, and applies to

taxable years beginning after December 31, 2021.

Act 217: Film Credit Loan-Out and Reporting Requirements

Act 217 (H.B. 1982, H.D. 2, S.D. 2, C.D. 1) makes several changes to the Motion Picture, Digital Media, and Film Production Income Tax Credit (film credit), codified at section 235-17, HRS. Beginning January 1, 2023, Act 217 requires every person making payment to a loan-out company and claiming the film credit to withhold and remit to the Department of Taxation (DOTAX) a portion of all payments to the loan-out company. It also increases the amount of the tax credit by two percent in each category of qualified costs. The Act further amends the requirements to claim the tax credit, including reducing the amount of qualified production costs from $200,000 to $100,000, and removing the requirement for productions to submit a verification review by a qualified certified public accountant when applying for the tax credit. The cap on total tax credits claimed per qualified production is raised from $15,000,000 to $17,000,000, and the period during which excess income tax credits may be claimed is extended from December 31, 2025, to December 31, 2032.

The Act also changes requirements for the Department of Business, Economic Development, and Tourism (DBEDT). DBEDT's annual report to the Legislature on film credit claims and expenditures must now include the dollar amount claimed, name of the company, and name of the qualified production of the taxpayers claiming the credit. There is also a new seven-month time limit for DBEDT to issue response letters to claimant taxpayers. Additionally, taxpayers are now required to submit a fee of 0.2 percent of the tax credit claimed to DBEDT, which shall be deposited into the Hawaii Film and creative industries development special fund. The Act also provides clarification of the definition of "qualified production costs" to note that it "does not include any costs funded by any grant, forgivable loan, or other amounts not included in gross income[.]"

Finally, the Act authorizes and appropriates funds for DOTAX to establish 2 full-time equivalent (FTE) tax auditor positions and for DBEDT to establish 1 FTE program specialist position to accomplish the many changes enacted by this bill. The portions of Act 217 relating to the creation of FTE positions and appropriations become effective on July 1, 2022, with the changes to the film credit and other tax provisions taking effect on January 1, 2023.

Act 218: Taxation Board of Review Membership and Compensation

Act 218 (Senate Bill 2378, S.D. 1, H.D. 2, C.D. 1) adjusts the membership of the State Taxation Board of Review from a ten-member volunteer board to a three-member salaried board with a set compensation schedule. Act 218 also requires the Chair of the Board to have certain qualifications, and sets new a new quorum requirement of two members, with a majority vote of members who heard the appeal required to validate board actions. The Act also establishes the legal and evidentiary framework the board may use in reaching its decisions and clarifies that board meetings are contested case hearings with notice requirements. Act 218 became effective upon approval, with appropriations effective July 1, 2022, and the change to board membership structure effective January 1, 2023.

Act 241: Zero-Emission Vehicle Fueling System Rebate Program; Hydrogen Fueling System; Public Utilities Commission; Barrel Tax

Act 241 (Senate Bill 2570, S.D. 2, H.D. 1, C.D. 1) establishes the zero-emission vehicle fueling system rebate program to incentivize the installation or upgrade of zero-emission vehicle fueling systems. Applicants may be eligible if they install hydrogen fueling systems, provided that the system stores or dispenses only renewable hydrogen. The rebate amount is set at $200,000 per eligible installation or upgrade of a hydrogen fueling system. There is also established a hydrogen fueling system subaccount within the Public Utilities Commission special fund. For tax administration purposes, Act 241 reduces the allocation that the energy systems development special fund receives from the environmental response, energy, and food security tax from 8 cents to 5 cents and allocates the difference to the hydrogen fueling system subaccount. Act 241 became effective on July 1, 2022.

Vetoed Measures

House Bill 2466, H.D. 2, S.D. 1, C.D. 1, was passed by the Legislature, but was vetoed by the Governor on July 12, 2022. Governor's Message 1391 contains the Governor's statement of objection to the measure. This measure exempted all gross proceeds or income from the sale of products resulting from the cultivation of taro and production of qualifying taro products from the general excise tax from the date of its approval through June 30, 2027.

Senate Bill 2511, S.D. 2, H.D. 2, C.D. 1, was passed by the Legislature, but was vetoed by the Governor on July 12, 2022. Governor's Message 1398 contains the Governor's statement of objection to the measure. This measure expanded the renewable energy technologies income tax credit provided under section 235-12.5, HRS, to include firm renewable energy systems and long-duration renewable energy storage systems. This measure would have applied to taxable years beginning after December 31, 2021, but not to taxable years beginning after December 31, 2046.

Senate Bill 3201, S.D. 1, H.D. 1, C.D. 1, was passed by the Legislature, but was vetoed by the Governor on July 12, 2022. Governor's Message 1405 contains the Governor's statement of objection to the measure. This measure clarified application of the general excise tax law for gross income derived from unrelated trade or business activities of nonprofit organizations, stating that said unrelated trade or business activities shall not be exempted from the general excise tax. The measure would have been effective January 1, 2023, through December 31, 2027.

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

ISAAC W. CHOY
Director of Taxation