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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2023-04

RE: Tax Law Changes from the 2023 Regular Legislative Session

This Announcement summarizes the measures passed during the Regular Legislative Session of 2023 that amend or affect State tax laws.

Act 48: Extension for Adoption of County Surcharge

Act 48 (House Bill 1363, H.D. 3, S.D. 2, C.D. 1) extends the period in which Maui County may adopt a surcharge on state tax from March 31, 2019 to December 31, 2023. Any surcharge adopted after December 31, 2022 shall be used only for housing infrastructure. Act 48 also authorizes counties with a population equal to or less than 500,000 that have adopted a surcharge prior to March 31, 2019 (*i.e.*, Kauaʻi and Hawaiʻi counties) to amend their ordinances to change the authorized uses of surcharge revenues to include housing infrastructure. Act 48 became effective on June 1, 2023.

Act 50: Establishment of Passthrough Entity Tax and Tax Credit

Act 50 (Senate Bill 1437, S.D. 1, H.D. 2, C.D. 1) amends chapter 235, Hawaii Revised Statutes (HRS), to allow partnerships and S corporations to annually elect to pay Hawaiʻi income taxes at the entity level. An electing pass-through entity (PTE) will be liable for Hawaiʻi income tax on the sum of all eligible members' distributive shares and guaranteed payments of Hawaiʻi taxable income, multiplied by the highest rate of tax applicable to the individual under section 235-51, HRS.

Eligible members of an electing PTE may claim a nonrefundable income tax credit for their *pro rata* share of PTE taxes paid by the entity. Additionally, residents and part-year residents are entitled to a nonrefundable credit for their share of taxes paid to another state or to the District of Columbia on income of any partnership or S corporation, so long as the taxes paid to the other state are found to be substantially similar to the taxes imposed by Act 50.

Act 50 is effective on January 1, 2024 and applies to taxable years beginning after December 31, 2022.

Act 56: Income and Estate Tax Conformity

Act 56 (House Bill 1100, H.D. 1, S.D. 2) updates section 235-2.3(a), HRS, to conform to

the operative sections of subtitle A, chapter 1, of the Internal Revenue Code of 1986 (IRC), as amended as of December 31, 2022. Act 56 also updates section 236E-3, HRS, to conform to operative sections of subtitle B of the IRC, as amended as of December 31, 2022.

Additionally, Act 56 amends section 235-2.3(b)(40), HRS, to conform to IRC section 1341, which provides relief for taxpayers when an item of income reported in an earlier tax year at a higher tax rate is returned in a subsequent year at a lower tax rate if it is determined that the taxpayer did not have an unrestricted right to the item of income when reported.

Act 56 became effective on June 5, 2023 and applies to taxable years beginning after December 31, 2022 and to decedents dying or taxable transfers occurring after December 31, 2022, except for the amendments to section 235-2.3(b)(40), HRS, which apply to taxable years beginning after December 31, 2021.

Act 62: Amendments to Cigarette and Tobacco Tax

Act 62 (Senate Bill 975, S.D. 2, H.D. 3, C.D. 1) amends the Cigarette Tax and Tobacco Tax in chapter 245, HRS, as follows:

- Establishes the offense of unlawful shipment of tobacco products;
- Adds definitions for "electronic smoking device" and "e-liquid" and amends the definition of "tobacco products" to include "electronic smoking device" and "e-liquid";
- Increases the wholesaler and dealer license fee from $2.50 to $250;
- Increases the retail tobacco permit fee from $20 to $50;
- Requires retail tobacco permit applicants to specify whether each place of business sells electronic smoking devices, e-liquid, or both; and
- Beginning January 1, 2024, imposes a tax of 70% of the wholesale price of each electronic smoking device or e-liquid sold, used, or possessed by a wholesaler or dealer, whether or not sold at wholesale, or if not sold, then at the same rate upon the use by the wholesaler or dealer.

Act 62 became effective on July 1, 2023.

Act 109: Repeal of the Nursing Facility Tax

Act 109 (House Bill 1369, H.D. 1, S.D. 1) repeals chapter 346E, HRS, relating to the nursing facility tax, and section 237-24.7, HRS, which provides a general excise tax exemption on taxes on nursing facility income imposed by chapter 346E, HRS, and passed on and collected by operators of nursing facilities. Act 109 became effective on June 22, 2023.

Act 163: Tax Credits to Assist Working Families

Act 163 (House Bill 954, H.D. 2, S.D. 2, C.D. 1) amends the household and dependent care services credit in section 235-55.6, HRS, by increasing the cap on employment-related expenses that may be used to claim the credit from $2,400 to $10,000 for one qualifying individual and from $4,800 to $20,000 for two or more qualifying individuals.

Act 163 also amends the refundable earned income tax credit in section 235-55.75, HRS, by increasing the amount of the credit from 20% to 40% of the federal earned income tax credit allowed and properly claimed under IRC section 32.

Additionally, Act 163 amends the refundable food/excise tax credit in section 235-55.85, HRS, by doubling the amount of credit per qualified exemption and increasing the adjusted gross income limits by $10,000 in all income brackets.

Act 163 became effective on June 30, 2023, applies to taxable years beginning after December 31, 2022, and will be repealed on December 31, 2027.

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

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