JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR OF TAXATION

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAI'I
DEPARTMENT OF TAXATION
Ka 'Oihana 'Auhau
P.O. BOX 259
HONOLULU, HAWAI'I 96809
PHONE NO: (808) 587-1530
FAX NO: (808) 587-1584

March 6, 2024

DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2024-01

RE: Temporary Administrative Rules Related to Pass-Through Entity (PTE) Taxation

Under its authority in section 231-10.7, Hawaii Revised Statutes (HRS), the Department of Taxation (Department) recently promulgated Temporary Administrative Rules for sections 18-235-200-01 to 18-235-200-09, Hawaii Administrative Rules (HAR). The Temporary Rules are effective February 16, 2024, and will expire on August 16, 2025.

These Rules are designed to implement and administer Hawaii's new PTE tax and credit established by Act 50, Session Laws of Hawaii (SLH) 2023; they also contain several examples to help explain how the tax and credit will apply under these Temporary Rules. The Department will be issuing these Temporary Rules as proposed rules for formal HAR adoption, subject to the procedural requirements of chapters 91 and 201M, HRS, to include conducting a public hearing and providing the opportunity for public input.

A copy of the Temporary Rules is attached to this announcement and can also be viewed on the Department's website at https://tax.hawaii.gov/legal/taxlawandrules/. Forms and instructions are available on the Department's website at https://tax.hawaii.gov/forms/.

If you have any questions about this Tax Announcement or the Department's implementation of Act 50 (SLH 2023), you may contact the Administrative Rules Office by emailing tax.rules.office@hawaii.gov or by calling (808) 587-1530.

GARY S. SUGANUMA
Director of Taxation

Attached: Temporary HAR §§ 18-235-200-01 to 18-235-200-09

TEMPORARY ADMINISTRATIVE RULES

THESE ADMINISTRATIVE RULES ARE TEMPORARY RULES ISSUED PURSUANT TO SECTION 231-10.7; HAWAII REVISED STATUTES.

AS TEMPORARY RULES, THESE ADMINISTRATIVE RULES BECOME EFFECTIVE SEVEN DAYS AFTER PUBLIC NOTICE IS ISSUED. THESE TEMPORARY ADMINISTRATIVE RULES TAKE EFFECT ON February 16, 2024.

TEMPORARY ADMINISTRATIVE RULES ARE EFFECTIVE FOR EIGHTEEN MONTHS. THESE TEMPORARY ADMINISTRATIVE RULES WILL EXPIRE ON August 16, 2025.

PERMANENT ADMINISTRATIVE RULES, SUBJECT TO THE PROCEDURAL REQUIREMENTS OF CHAPTER 91, HAWAII REVISED STATUTES (THE HAWAII ADMINISTRATIVE PROCEDURES ACT), ARE SIMULTANEOUSLY BEING PROPOSED FOR FORMAL ADOPTION.

DEPARTMENT OF TAXATION

Amendments to Chapter 18-235,
Hawaii Administrative Rules

Effective: February 16, 2024

SUMMARY

1. §18-235-200-01 through §18-235-200-09 are added.

§18-235-200-01 Pass-through entity election. (a) An election for pass-through entity taxation must be made on or before the due date prescribed for the filing of the schedule for the taxable year as provided in section 18-235-200-05, including any extensions thereof.

(b) Failure to timely make an election on the form prescribed by the director shall constitute a waiver of the election of pass-through entity taxation for the taxable year. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-02 Electronic filing. (a) All returns, schedules, statements, and other documents required to be filed under chapter 235, HRS, and chapter 18-235, HAR, shall be filed electronically by an electing pass-through entity for the taxable year in which an election for pass-through entity taxation is made.

(b) The date of filing shall be the date the return, schedule, statement, or other document is successfully transmitted to the department in the form and manner prescribed by the director.

(c) Failure by an electing pass-through entity to electronically file as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.

(d) The director may exempt any electing pass-through entity from the requirements in this section. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-03 Electronic funds transfer. (a) All payments required to be remitted by an electing pass-through entity under chapter 235, HRS, and chapter 18-235, HAR, shall be made by electronic funds

transfer for the taxable year in which an election for pass-through entity taxation is made.

(b) The date of payment shall be the date the funds are deposited with the State.

(c) Failure by an electing pass-through entity to submit payment by electronic funds transfer as required in this section shall result in the cancellation of the election of pass-through entity taxation for the taxable year.

(d) The director may exempt any electing pass-through entity from the requirements in this section. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-04 Estimated pass-through entity tax payments. (a) For tax years beginning after December 31, 2023, each electing pass-through entity shall transmit payment of the estimated tax for the current taxable year as follows:

(1) One-quarter of the estimated tax shall be paid on or before the twentieth day of the fourth month of the taxable year;

(2) One-quarter of the estimated tax shall be paid on or before the twentieth day of the sixth month of the taxable year;

(3) One-quarter of the estimated tax shall be paid on or before the twentieth day of the ninth month of the taxable year; and

(4) One-quarter of the estimated tax shall be paid on or before the twentieth day of the first month following the close of the taxable year.

(b) The penalties provided in section 235-97(f), HRS, shall apply to any underpayment of estimated tax provided in this section. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: HRS 235-97; Act 50, SLH 2023, §2)

§18-235-200-05 Pass-through entity tax payment; schedule of pass-through entity tax paid. (a) Each electing pass-through entity shall file with the department a schedule detailing each member's share of the pass-through entity tax paid, on a form prescribed by the director, on or before the twentieth day of the fourth month following the close of the taxable year. The schedule shall be accompanied by payment of the balance of the tax for the taxable year.

(b) Each electing pass-through entity shall be granted an automatic six-month extension for the filing of the schedule; provided the conditions in section 18-235-98, including payment of the properly estimated tax liability on or before the due date prescribed for the filing of the schedule in subsection (a), are met.

(c) Amendments to the schedule shall not be allowed after the due date prescribed in this section, including any extensions thereof.

(d) The department may, in its discretion, cancel the election for pass-through entity taxation if an electing pass-through entity fails to file the schedule within the time provided for in this section.

Example 1:

Partnership1, a calendar-year taxpayer, pays the properly estimated tax liability on April 20 following the close of the tax year. On October 20, Partnership1 makes an election for pass-through entity taxation and files the required schedule. On November 1, Partnership1 discovers that there were additional distributive shares of income owed to its members for which it failed to report and pay PTE tax. Partnership1 will not owe additional pass-through entity tax on the additional distributive shares of income and may not amend the schedule of pass-through entity tax to report the additional distributive shares of income. Partnership1 must,

however, report the additional distributive shares of income on its income tax return. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-06 Refund of pass-through entity tax. Any claim for refund of the pass-through entity tax shall be filed by the electing pass-through entity, on a form prescribed by the director, on or before the due date prescribed for the filing of the schedule of pass-through entity tax provided in section 18-235-200-05, including any extensions thereof; provided that if the amount of pass-through entity tax paid by an electing pass-through entity exceeds the amount claimed on the schedule required to be filed under section 18-235-200-05, any claim for refund of the overpayment shall be filed within the time prescribed by section 235-111, HRS.

Example 1:

Partnership1, a calendar year taxpayer, pays $25,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20, Partnership1 makes an election for pass-through entity taxation and files the required schedule, which details each member's share of the $25,000 pass-through entity tax paid. On November 1, Partnership1 attempts to amend the schedule to decrease the amount of pass-through entity tax from $25,000 to $20,000 and requests a $5,000 refund. Partnership1 may not amend the schedule and may not receive the $5,000 refund, as the amended schedule and refund claim were not timely filed by October 20.

Example 2:

Partnership2, a calendar-year taxpayer, pays $30,000, the properly estimated tax liability, on April 20 following the close of the tax year. On October 20, Partnership2 makes an election for pass-through entity taxation and files the required schedule. The schedule details each member's share of $25,000 of the pass-through entity tax paid. On November 1, Partnership2 requests a refund of $5,000 for the overpayment of pass-through entity tax paid. Partnership2 may receive a refund of $5,000 because the refund claim was timely filed within the time prescribed by section 235-111, HRS.

Example 3:

Partnership3, a calendar-year taxpayer, makes estimated tax payments throughout the year and pays the properly estimated tax liability on April 20 following the close of the tax year. Partnership3 does not make an election for pass-through entity taxation. On November 1, Partnership3 requests a refund of the estimated tax payments made. Because Partnership3 did not make an election for pass-through entity taxation, section 18-235-200-06, HAR, does not apply. Partnership3 may receive a refund of the estimated tax payments made; provided the request is made within the time prescribed by section 235-111, HRS. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-07 Pass-through entity tax credit; allowed. (a) Each member of an electing pass-through entity whose distributive share or guaranteed payment of Hawaii taxable income is subject to the pass-through entity tax may claim a nonrefundable income tax credit equal to the member's share of pass-through entity taxes paid. For the purposes of this subsection, the amount of pass-through entity taxes paid does not include any amounts paid as penalties or interest.

(b) No credit may be claimed by any indirect member of an electing pass-through entity unless the direct member of the electing pass-through entity, of which the indirect member is a member, files a schedule detailing each member's share of the pass-through entity tax paid, on a form prescribed by the director, on or before the due date prescribed for the filing of the direct member's return under chapter 235, HRS, including any extensions.

Example 1:

PTE1, a pass-through entity whose members include Individual A, PTE2, and PTE3, makes an election for pass-through entity taxation, timely files the required schedule, and timely pays the pass-through entity tax. PTE2, a pass-through entity whose members include Individual B and Individual C, does not elect pass-through entity taxation and does not file a schedule detailing each member's share of the pass-through entity tax paid. PTE3, a pass-through entity whose members include Individual D and Individual E, does not elect pass-through entity taxation, but timely files a schedule detailing each member's share of the pass-through entity tax paid. Individual A may claim a credit or pass-through entity taxes paid by PTE1. Individual B and Individual C may not claim a

credit for pass-through entity taxes paid by PTE1 because PTE2 did not file the required schedule. Individual D and Individual E may claim a credit for pass- through entity taxes paid by PTE1 because PTE3 filed the required schedule. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-08 Credit for substantially similar taxes paid to another state or to the District of Columbia. A taxpayer claiming the credit for the pro rata share of taxes paid to another state or to the District of Columbia on income of any partnership or S corporation of which the taxpayer is a member shall attach to the taxpayer's income tax return for the taxable year a copy of the pass-through entity's tax return filed in the other state or District of Columbia and all available schedules showing the taxpayer's share of taxes paid. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)

§18-235-200-09 Income tax credits; ordering of credit claims. In the offsetting of a taxpayer's income tax liability, tax credits shall be applied in the following order:

(1) Tax credits that may be refunded or paid to a taxpayer who has no income tax liability;
(2) Nonrefundable tax credits that may not be carried forward; and
(3) Nonrefundable tax credits that may be used as a credit against taxes in subsequent years until exhausted. [Eff 1/1/24] (Auth: HRS §231-10.7; Act 50, SLH 2023) (Imp: Act 50, SLH 2023, §2)