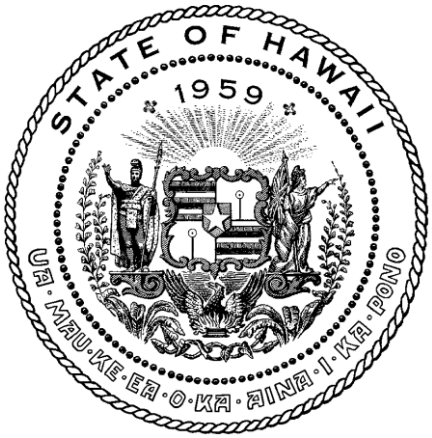
ENACTED BY THE STATE OF HAWAII

Digest of Tax Measures

TWENTY-EIGHTH LEGISLATURE—REGULAR SESSION OF 2016



Prepared by the State of Hawaii
Department of Taxation
Issued: December 14, 2016

NOTE: This Digest is issued solely as a guide and is not intended to be complete.

This digest summarizes the Hawaii tax laws enacted during the 2016 Regular Session and the federal tax laws enacted during calendar year 2015. It is issued solely as a guide and is not intended to be either authoritative or complete. Hawaii bills and acts can be viewed on the State Capitol website at http://www.capitol.hawaii.gov.

Key to Abbreviations

S.B.	=	**Senate Bill**
S.D.	=	**Senate Draft**
H.B.	=	**House Bill**
H.D.	=	**House Draft**
C.D.	=	**Conference Draft**
SCR	=	**Senate Concurrent Resolution**
HCR	=	**House Concurrent Resolution**
HRS	=	**Hawaii Revised Statutes**
IRC	=	**Internal Revenue Code**
IRS	=	**Internal Revenue Service**

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HAWAII TAX LAWS

ACT 33

S.B. 2921, H.D. 1

Relating to Conformity to the Internal Revenue code

Act 33 updates section 235-2.3(a), HRS, to conform to the operative IRC sections of subtitle A, chapter 1, as amended as of December 31, 2015. Act 33 also updates section 236E-3, HRS, to conform Hawaii's estate tax to subtitle B of the IRC as amended as of December 31, 2015. Finally, Act 33 updates the date in section 236E-3, HRS, to ensure the updated provisions only apply to decedents dying after December 31, 2015.

EFFECTIVE: April 29, 2016, for tax years beginning after December 31, 2015; provided that retroactive and prospective effective dates contained in congressional acts relating to the IRC and enacted between January 1, 2015 and December 31, 2015 shall be operative.

ACT 52

H.B. 2217, H.D. 1, S.D. 1

Relating to Amending or Repealing Hawaii Real Property Tax Laws for the Purpose of Deleting Obsolete or Unnecessary Provisions

Act 52 repeals obsolete state law, which imposed a real property tax, by repealing chapters 246 and 246A, HRS, in their entirety. Act 52 also amends other sections of the HRS to remove cross-references to the real property tax under chapters 246 and 246A, HRS.

EFFECTIVE: July 1, 2016.

ACT 53

H.B. 2218 H.D. 1, S.D. 1

Relating to Amending or Repealing Hawaii Income Tax Laws for the Purpose of Deleting Obsolete or Unnecessary Provisions

Act 53 repeals sections 235-2, 235-2.1, and 235-2.2, HRS, and amends section 235-2.3, HRS. These sections conformed Hawaii income tax law to the IRC prior to 1978. The repealed sections are no longer necessary for conformity. Act 53 also amends section 235-2.3, HRS, to ensure that years prior to 1978 are still governed by prior law.

EFFECTIVE: July 1, 2016.

ACT 76
S.B. 2131, S.D. 2, H.D. 2, C.D. 1
Relating to Energy

Act 76 amends the fuel tax to add a special rate of 2 cents per gallon of naphtha fuel sold to a power-generating facility. Act 76 also adds a definition of power-generating facility. The special rate and definition of power-generating facility were part of the fuel tax law that had expired January 1, 2016.

EFFECTIVE: June 20, 2016, retroactive to January 1, 2016.

ACT 129
S.B. 2833, S.D. 2, H.D. 2, C.D. 1
Relating to the Low-Income Housing Tax Credit

Act 129 shortens the time over which the State low-income housing tax credit is taken from ten years to five years.

EFFECTIVE: January 1, 2017. Applies to buildings that are awarded low-income housing tax credits after December 31, 2016. Repealed December 31, 2021.

ACT 182
S.B. 3084, S.D. 1, H.D. 2, C.D. 1
Relating to Cesspools

Act 182 amends the cesspool upgrade, conversion, or connection income tax credit to allow large-capacity cesspools to qualify for a separate credit for each tax map key number associated with the large-capacity cesspool.

EFFECTIVE: July 1, 2016. Applies to tax years beginning after December 31, 2015.

ACT 202
S.B. 2652, S.D. 2, H.D. 2, C.D. 1
Relating to Taxation

Act 202 repeals the ethanol facility income tax credit and creates a new, nonrefundable income tax credit for production of renewable fuels. The new credit is available for five consecutive years beginning with the first taxable year in which the taxpayer claiming the credit begins producing at least 15 billion British thermal units of renewable fuel per year. Fuels must be produced from renewable feedstocks, which include various agricultural crops and various types of waste. The credit is 20 cents per 76,000 British thermal units of renewable fuel sold for distribution in Hawaii. The credit has a per-

taxpayer cap of $3,000,000 per taxable year and an aggregate cap of $3,000,000 per tax year.

EFFECTIVE: July 5, 2016. Applies to tax years beginning after December 31, 2016. New credit is repealed December 31, 2021.

ACT 222

S.B. 2922, H.D. 1, C.D. 1

Relating to the Tax Review Commission

Act 222 provides the 2015-2017 Tax Review Commission an extension of one year, to 30 days prior to the convening of the 2018 regular session, to submit its report to the Legislature and appropriates $250,000 to be used by the Commission to evaluate the State's tax structure and recommend revenue and tax policy changes.

EFFECTIVE: July 6, 2016; provided that the appropriation is effective July 1, 2016.

ACT 223

S.B. 2987, S.D. 2, H.D. 2, C.D. 1

Relating to the Transient Accommodations Tax.

Act 223 extends the $103,000,000 total allocation of transient accommodations tax revenues to the counties for fiscal year 2016-2017. Act 174, SLH 2014, increased the counties' allocation to $103,000,000 from $93,000,000 for fiscal years 2014-2015 and 2015-2016.

EFFECTIVE: July 1, 2016.

ACT 230

H.B. 2707, H.D. 1, S.D. 2, C.D. 1

Relating to Medical Marijuana

Act 230 makes numerous amendments to Hawaii's medical marijuana dispensary law. The Act contains three tax-related changes.

First, Act 230 amends conformity to IRC section 280E to provide that Act 280E is not operative for Hawaii income tax purposes for medical marijuana businesses licensed under chapter 329D, HRS. This means that these businesses will be allowed to account for Hawaii income tax the same as other legitimate businesses.

Second, Act 230 amends the Enterprise Zone (EZ) law to deny all EZ benefits to medical marijuana businesses.

Third, Act 230 clarifies that the general excise tax exemption for prescription drugs does not apply to sales of medical marijuana.

EFFECTIVE: July 1, 2016. Income tax amendment applies to tax years beginning after December 31, 2015.

ACT 235

H.B. 1702, H.D. 1, S.D. 1, C.D. 1

Relating to Taxation

Act 235 increases the credit amount that certain taxpayers may claim for expenses for household and dependent care services necessary for gainful employment. Act 235 amends the income tax credit by modifying the phasedown of percentage of expenses on which the credit can be claimed at various adjusted gross income (AGI) thresholds. The table below shows the percentages and AGI levels for the previous credit and for the credit as amended by Act 235.

Credit under prior law		Credit as amended by Act 235	
AGI	**Applicable percentage**	**AGI**	**Applicable percentage**
$22,000 or less	25%	$25,000 or less	25%
$22,001 to $24,000	24%	$25,001 to $30,000	24%
$24,001 to $26,000	23%	$30,001 to $35,000	23%
$26,001 to $28,000	22%	$35,001 to $40,000	22%
$28,001 to $30,000	21%	$40,001 to $45,000	21%
$30,001 to $32,000	20%	$45,001 to $50,000	20%
$32,001 to $34,000	19%	Over $50,000	15%
$34,001 to $36,000	18%		
$36,001 to $38,000	17%		
$38,001 to $40,000	16%		
Over $40,000	15%		

EFFECTIVE: July 12, 2016. Applies to tax years beginning after December 31, 2015.

ACT 245

H.B. 1527, H.D. 1, S.D. 1, C.D. 1

Relating to Taxation

Act 245 requires the State Auditor (Auditor) to periodically review certain tax credits, exclusions, and deductions for the income tax under chapter 235, HRS, and financial institutions tax under chapter 241, HRS, beginning in 2019.

The Act requires the Auditor to: (1) determine the amount of tax expenditure for each credit, exclusion, or deduction for each of the previous three fiscal years; (2) estimate the tax expenditure for each credit, exclusion, or deduction for the current fiscal year and the next two fiscal years; (3) determine whether each credit, exclusion, or deduction has achieved and continues to achieve the purpose for which it was enacted by the legislature; (4) determine whether each credit, exclusion, or deduction is necessary to promote or preserve tax equity or efficiency; (5) determine whether an economic benefit has resulted, and if so, quantify the estimated benefit directly attributable to each credit, exclusion or deduction; and (6) estimate the annual cost of each credit, exclusion, or deduction per low-income resident.

Act 245 also requires the Auditor to recommend whether each credit, exclusion, or deduction should be retained without modification, amended, or repealed.

EFFECTIVE: July 1, 2018.

ACT 258
H.B. 1689, H.D. 2, S.D. 2, C.D. 1
Relating to Taxation

Act 258 creates a nonrefundable income tax credit for qualified expenses associated with the production or handling of organic foods. The credit is equal to 100% of qualified expenses and is capped at $50,000 per year per taxpayer and $2,000,000 per year in aggregate. Qualified expenses include fees for application, inspection, and for equipment, materials, or supplies necessary for certification or production.

Only producers, handlers, and handling operations, as defined by federal regulations, qualify for the credit. To claim the credit: (1) agricultural products must be sold in adherence with the federal Organic Foods Production Act, (2) certification in accordance with the Organic Foods Production Act must have been applied for, and (3) sales must not exceed $500,000 in the most recently reported fiscal year.

EFFECTIVE: July 12, 2016.Applies to tax years beginning after December 31, 2016. Repealed December 31, 2021.

ACT 261
S.B. 2547, S.D. 1, H.D. 1, C.D. 1
Relating to Taxation

Act 261 requires the State Auditor (Auditor) to periodically review certain tax exemptions, exclusions, and credits under the general excise and use tax, public service company tax (PSC), and insurance premium tax, beginning in 2018.

Specifically, Act 261 requires the Auditor to: (1) determine the amount of tax expenditure for each exemption, exclusion, or credit for each of the previous three fiscal years; (2) estimate the amount of tax expenditure for each exemption, exclusion, or credit for the current fiscal year and the next two fiscal years; (3) determine whether each exemption, exclusion, or credit has achieved and continues to achieve the purpose for which it was enacted by the legislature; (4) determine whether each exemption, exclusion, or credit is necessary to promote or preserve tax equity or efficiency; (5) determine whether an economic benefit has resulted, and if so, quantify the estimated benefit directly attributable to each exemption, exclusion, or credit; and (6) estimate the annual cost of each exemption, exclusion, or credit per low-income resident of the State.

Act 261 also requires the Auditor to recommend whether each exemption, exclusion, or credit should be retained without modification, amended, or repealed.

EFFECTIVE: July 1, 2017.

TABLE: CHANGES TO HAWAII REVISED STATUTES

This table lists the sections of Hawaii Revised Statutes affected by tax laws passed during the 2016 Regular Session.

KEY: Am = Amended
N = New
R = Repealed

SECTIONS AFFECTED	EFFECT	ACT NO.	BILL NO.
23-71	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-72	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-73	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-74	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-75	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-76	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-77	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-78	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-79	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-80	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-81	N	ACT 261	S.B. 2547, S.D. 1, H.D. 1, C.D. 1
23-91	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
23-92	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
23-93	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
23-94	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
23-95	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
23-96	N	ACT 245	H.B. 1527, H.D. 1, S.D. 1, C.D. 1
205-14	R	ACT 52	H.B. 2217, H.D. 1, S.D. 1
206M-15.5	Am	ACT 76	S.B. 2131, S.D. 2, H.D. 2, C.D. 1
209E-2	Am	ACT 230	H.B. 2707, H.D. 1, S.D. 2, C.D. 1
232E-3	Am	ACT 222	S.B. 2922, H.D. 1, C.D. 1
235-2	R	ACT 53	H.B. 2218, H.D. 1, S.D. 1
235-2.1	R	ACT 53	H.B. 2218, H.D. 1, S.D. 1
235-2.2	R	ACT 53	H.B. 2218, H.D. 1, S.D. 1
235-2.3	Am	ACT 33	S.B. 2921, H.D. 1
235-2.3	Am	ACT 53	H.B. 2218, H.D. 1, S.D. 1
235-2.4	Am	ACT 230	H.B. 2707, H.D. 1, S.D. 2, C.D. 1
235-16.5	Am	ACT 182	S.B. 3084, S.D. 1, H.D. 2, C.D. 1
235-55.6	Am	ACT 235	H.B. 1702, H.D. 1, S.D. 1, C.D. 1
235-110.3	R	ACT 202	S.B. 2652, S.D. 2, H.D. 2, C.D. 1
235-110.31	N	ACT 202	S.B. 2652, S.D. 2, H.D. 2, C.D. 1
235-110.8	Am	ACT 129	S.B. 2833, S.D. 2, H.D. 2, C.D. 1
235-110.94	N	ACT 258	H.B. 1689, H.D. 2, S.D. 2, C.D. 1
236E-3	Am	ACT 33	S.B. 2921, H.D. 1

SECTIONS AFFECTED	EFFECT	ACT NO.	BILL NO.
237-24.3	Am	ACT 230	H.B. 2707, H.D. 1, S.D. 2, C.D. 1
237D-6.5	Am	ACT 223	S.B. 2987, S.D. 2, H.D. 2, C.D. 1
239-5	Am	ACT 52	H.B. 2217, H.D. 1, S.D. 1
243-1	Am	ACT 76	S.B. 2131, S.D. 2, H.D. 2, C.D. 1
243-4	Am	ACT 76	S.B. 2131, S.D. 2, H.D. 2, C.D. 1
Chapter 246	R	ACT 52	H.B. 2217, H.D. 1, S.D. 1
Chapter 246A	R	ACT 52	H.B. 2217, H.D. 1, S.D. 1
248-1	Am	ACT 52	H.B. 2217, H.D. 1, S.D. 1
248-5	R	ACT 52	H.B. 2217, H.D. 1, S.D. 1
342G-61	Am	ACT 52	H.B. 2217, H.D. 1, S.D. 1

DIGEST OF FEDERAL LAWS

This section summarizes the changes made to the Internal Revenue Code during 2015. This section includes changes to subtitle A, chapter 1; subtitle B; and certain 6000 series sections of the Internal Revenue Code. Unless otherwise noted, all references are to the Internal Revenue Code of 1986, as amended.

Slain Officer Family Support Act

(P.L. No. 114-7; April 1, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
The following provision is operative for Hawaii income tax purposes.	
§170; Non-code section	**Timing of certain charitable contributions** The Act allows charitable contributions made for the relief of families of slain police officers Wenjian Liu and Rafael Ramos to qualify for a deduction although they are used for a specific individual. To qualify, the contributions must be made through a charitable organization and not made directly to the families. The Act additionally allows contributions made between January 1, 2015 and April 15, 2015 to be treated as made on December 31, 2014. Effective April 1, 2015.

Medicare Access and CHIP Reauthorization Act of 2015

(P.L. No. 114-10; April 16, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
The following provision is NOT operative for Hawaii income tax purposes.	
§6331(h)(3)	**Levies for nonpayment of tax** The Act increases the percentage of any payment due to a Medicare provider or supplier under title XVIII of the Social Security Act that shall be subject to a levy to 100% from 15%. Effective for payments made 180 days after April 16, 2015.

Don’t Tax Our Fallen Public Safety Heroes Act

(P.L. No. 114-14; May 22, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
The following provision is operative for Hawaii income tax purposes.	
§104(a)(6)	**Certain death and disability benefits excluded from gross income** The Act excludes from gross income amounts received pursuant to any program which provides compensation to surviving dependents of public safety officers who have died in the line of duty. Effective May 22, 2015.

Defending Public Safety Employees’ Retirement Act

(P.L. No. 114-26; June 29, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
The following provision is NOT operative for Hawaii income tax purposes.	
§72(t)(10)(B) and (4)(A)(ii)	**Exception to 10% penalty for nonqualified distribution broadened** The Act adds federal law enforcement officers, customs and border protection officers, federal firefighters, and air traffic controllers to the list of qualified public safety employees for which the lower age of 50 is applied for purposes of the exception to the 10% penalty for nonqualified distributions from a retirement plan. The Act also adds the qualified public safety officer exception to the exception to the application of the 10% penalty for modification. Effective June 29, 2015; §72(t)(10)(B) was subsequently amended by P.L. 114-113, see below.

Trade Preferences Extension Act of 2015

(P.L. No. 114-27; June 29, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are NOT operative for Hawaii income tax purposes.
§24(d)	**Child tax credit not refundable if foreign earned income or housing costs are excluded under §911** The child tax credit is available for each qualifying child under age 17. The credit is phased out as adjusted gross income exceeds certain thresholds. The Act amends the child tax credit to disallow the refundable portion of the credit if the claimant excludes any foreign income or housing costs from income. Effective for tax years beginning after December 31, 2014.
§§25A(g), 222(d)(6), and 6050S(d)(2)	**Payee statement required to claim higher education credit or deduction** Individual taxpayers can claim an income tax credit equal to the American Opportunity Tax Credit and the Lifetime Learning Credit for higher education expenses for themselves, their spouses, or dependents. Alternatively, an above the line deduction can be taken for qualified tuition and expenses. The Act requires a payee statement from the educational institution before either the credit or the deduction can be taken. Effective for tax years beginning after June 29, 2015.
§35(b)(1)(B), (e)(1)(J), (g)(11), (g)(12), and 6501(m)	**Health coverage tax credit retroactively extended and amended** Individuals receiving allowances under trade adjustment assistance programs and certain pension recipients can claim a health coverage tax credit (HCTC). The credit expired December 31, 2013. The Act extends the HCTC for six years by amending the definition of eligible coverage month to include months beginning before January 1, 2020. Effective for coverage months beginning after December 31, 2013 and before January 1, 2020. The Act also amended the HCTC to disallow the credit for coverage purchased through any exchange under the Affordable Care Act. Effective for coverage months in tax years beginning after December 31, 2015. The Act also retroactively repeals the “30 day requirement” whereby the individual had to be insured for a full 30-day period before separation from employment to qualify for the credit. Effective for coverage months in tax years beginning after December 31, 2013. The Act also amends the HCTC to require claimants to make an election to claim the credit and disallows the premium tax credit if the HCTC was elected. Effective for coverage months in tax years beginning after December 31, 2013.

Finally, the Act amends the period the IRS has to assess a deficiency attributable to the HCTC to one year after the IRS is notified of an HCTC election.

Effective for coverage months in tax years beginning after December 31, 2013.

§6655 Certain 2020 estimated taxes for corporations with assets of $1 billion or more increased

Generally, corporations are required to pay estimated income tax for each tax year in four equal installments. For corporations with assets of $1 billion or more, the installment payments are required to be 100.25% of the otherwise required payment. The Act amends the required installment payment for payments made in July, August, or September of 2020 to 108%.

Effective June 29, 2015.

§6721 Information return penalties increased after 2015

The Act increases the penalties for failing to provide timely and accurate information returns. The penalty for failing to file a correct information return on or before August 1 of the year was increased from $100 per return to $250 per return and the yearly maximum was increased from $1,500,000 to $3,000,000.

The penalty for information returns filed more than 30 days late but before August 1 were increased from $60 per return to $100 per return and the yearly maximum was increased from $500,000 to $1,500,000.

The penalty for information returns filed within 30 days of the due date was increased from $30 per return to $50 per return and the yearly maximum was increased from $250,000 to $500,000.

The special small business yearly maximum amounts and penalties for failure due to intentional disregard of the rules were also increased.

Effective for information returns filed after December 31, 2015.

§6722 Payee statement penalties increased

The Act increases the penalties for failure to timely provide a payee statement and failure to include the proper information on the payee statement or including incorrect information.

The penalty for failing to file a correct payee statement on or before August 1 of the year was increased from $100 per return to $250 per statement and the yearly maximum was increased from $1,500,000 to $3,000,000. The penalty for payee statements filed more than 30 days late but before August 1 was increased from $60 per return to $100 per statement and the yearly maximum was increased from $500,000 to $1,500,000.

The penalty for payee statements filed within 30 days of the due date was increased from $30 per return to $50 per statement and the yearly maximum was increased from $250,000 to $500,000. The special small business yearly maximum amounts and penalties for failure due to intentional disregard of the rules were also increased.

Effective for payee statements filed after December 31, 2015.

§6724 **Waiver of failure to file penalty for educational institutions unable to collect TINs**

Institutions are required to file returns with respect to any student that it pays an aggregate of $600 or more for a calendar year. There is a penalty imposed for failure to file the information return.

The Act amends the penalty provision so that no institution will be penalized for failing to provide a student's taxpayer identification number if the institution certifies that it has complied with all requirements for obtaining students' numbers.

Effective for information returns and statements required to be made after December 31, 2015.

Surface Transportation and Veterans Health Care Choice Improvement Act of 2015

(P.L. No. 114-41; July 31, 2015)

CODE SECTION	DESCRIPTION OF PROVISION
The following provisions are operative for Hawaii income tax purposes.	
223(c)(1)(C)	**Receipt of medical care for service-connected disability not relevant to health savings account eligibility** To be eligible for a health savings account individuals must be covered by a high deductible health plan and have no other coverage. The Act amends the eligibility rules to provide that veterans' receipt of benefits for service related disabilities does not count as coverage for purposes of determining health savings account eligibility. Effective for coverage months beginning after December 31, 2015.
§420(b)(4)	**Transfers of excess pension plan assets to retiree health accounts treated as qualified transfers through 2025** Generally, a qualified transfer of excess from a defined benefit plan to a health benefits account or an applicable life insurance account that is part of the plan does not create any tax penalty. The tax-free treatment of such transfers was to cease December 31, 2021. The Act extends the tax-free treatment of such transfers until December 31, 2025. Effective July 31, 2015.
§§1014(f), and 6662(b)(8) and (k)	**Income tax basis of property acquired from a decedent cannot exceed value used to determine estate tax** In general, the basis of property acquired from a decedent is the fair market value at death or at the alternative valuation date. Notwithstanding this rule some taxpayers have argued that the basis of property for income tax is higher than the fair market value basis the property had for estate tax purposes. The Act provides that the basis cannot exceed the final estate tax value or the ceiling value. Effective for property for which an estate tax return is filed after July 31, 2015.
The following provisions are NOT operative for Hawaii income tax purposes.	
4041(a)(2)(B), (C), and (D), and (3)(D)	**Alternative fuels excise tax rates on LPG and LNG reduced based on equivalencies to gasoline and diesel** The retail excise tax on liquefied petroleum gas (LPG) has been that of gasoline, or 18.3 cents per gallon and the tax on liquid natural gas (LNG) has been that of diesel, or 24.3 cents per gallon.

The Act amends tax applied to LPG to 18.3 centers per energy equivalent of a gallon of gasoline and the tax applied to LNG to 24.3 cents per energy equivalent of a gallon of diesel. The effect of this change will be to reduce the rate of tax per the amount of energy produced.

Effective for any sale or use of fuel after December 31, 2015.

4980H(c)(2)(F) **Individuals receiving TRICARE or veterans' health care benefits excluded from ACA employer mandate calculation**

Under the Affordable Care Act employers above a threshold size must offer full-time employees an opportunity to enroll in minimum essential coverage under an employer-sponsored health plan.

The Act excludes individuals who are receiving coverage under TRICARE or any health care program under Chapter 17 or 18, USC Title 38 from the determination of whether an employer exceeds the threshold for the employer mandate.

Effective for months beginning after December 31, 2013.

§§6035, 6724(d)(1) and (2) **Executors must provide IRS and property recipients with estate tax valuations for income tax purposes**

The Act requires the executor of any estate required to file an estate tax return to provide the IRS and each person acquiring any interest in property included in the decedent's gross estate a statement of the value of each interest in property reported on the return and any other information about the interest the IRS might require.

Effective for property for which an estate tax is filed after July 31, 2015.

§6048 **Filing date for Forms 3520 and 3520-A to be codified in Treasury Regulations**

Form 3520 is used by U.S. persons to report certain transactions with foreign trusts, the ownership of foreign trusts, and the receipt of large gifts from certain foreign persons. The due date has been the due date of the taxpayer's income tax return.

The Act requires the IRS to codify April 15 as the due date for Form 3520 in the Treasury Regulations. Effective for tax years beginning after December 31, 2015.

Form 3520-A is used by foreign trusts to satisfy their annual information reporting requirements. The due date has been contained in Notice 97-4.

The Act requires the IRS to codify the due date of the 15th day of the third month following the close of the tax year in the Treasury Regulations.

Effective for tax years beginning after December 31, 2015.

§6050H(b)(2) and (d)(2) **Additional mortgage interest reporting requirements**

Any person who receives mortgage interest from an individual of more than $600 for a calendar year must file an information return with respect to that individual. The return must include the name and taxpayer identification number (TIN) number, the amount of the mortgage, the amount of points for the calendar year,

the identity of the lender, reimbursements of interest, amount of points paid directly to borrower, and any other information required by Form 1098-T or its instructions.

The Act adds to the reporting requirements the amount of the outstanding principal on the mortgage as of the beginning of the calendar year, the date of the origination of the mortgage, and the address of the property that secures the mortgage.

Effective for statements required to be furnished after December 31, 2016.

§6072(a) and (b) **Partnership returns due date changed**

Partnership income tax returns have been due on the 15th day of the fourth month after the close of the partnership's tax year.

The Act changes the partnership income tax return due date to the 15th day of the third month following the close of the tax year.

Effective for tax years beginning after December 31, 2015.

§§6072, 170(a)(2)(B), 563, 1351(d)(1)(B)(i), 6167(c), 3425(a)(1), 6655(b)(2)(A), (g)(3), (h)(1), and (g)(4)(E) **C corporation returns due on April 15**

The Act amends several code sections to change the due date for tax returns of C corporations from March 15 to April 15.

Effective for tax years beginning after December 31, 2015. For C corporations with tax years ending on June 30, effective for tax years beginning after December 31, 2025.

§6081 **Automatic extensions lengthened**

Partnerships and trusts have been allowed five-month extensions to file tax returns. Benefit plans have been allowed two-and-a-half month extensions. Exempt organizations have been allowed three-month extensions to file.

The Act requires the IRS to amend the Regulations to provide six-month extensions to partnerships and exempt organizations; five-and-a-half month extensions for trusts; and three-and-a-half month extensions for benefit plans. Note that P.L. 114-94 repealed the three-and-a-half month extension period for benefit plans. See below for coverage of that Public Law.

Effective for tax years beginning after December 31, 2015.

§6081(b) **Five- and seven- month extension for some C corporations**

In general, corporations may extend the time to file income tax returns by six months.

The Act provides that C corporations with tax years ending on December 31 and beginning before January 1, 2026 only get a five-month extension and that C corporations whose tax years end on June 30 and begin before January 1, 2026 may be given a seven-month extension.

Effective for tax years beginning after December 31, 2015.

The following provision is operative for Hawaii income tax purposes.

§6501(e)(1)(B) **Overstated basis can trigger extended statute of limitations for substantial omissions from income**

In general, a three year-statute of limitations applies to income tax returns and a six-year statute of limitations applies when a return contains a substantial omission, defined as an amount greater than 25% of the amount of gross income required to be reported.

It has been the rule that an overstatement of basis leading to a lower reported income cannot be a substantial omission for purposes of applying the six-year statute of limitations.

The Act amends the calculation used to determine if the six-year statute of limitations applies by including understatements of income due to overstatements of basis. The Act also amends the adequate disclosure rules to exclude its application to overstated basis.

Effective for returns filed after July 31, 2015 and to returns filed on or before July 31, 2015 if the assessment period determined without regard to this change is still open as of July 31, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

Non-code section **FinCEN Form 114 due April 15 with six month extension**

A U.S. person with a financial interest or signature authority over a foreign financial account must file FinCEN Form 114 by June 30 following the end of the previous year if the value of the account exceeded $10,000 at any time during the calendar year.

The Act requires the IRS to require FinCEN Form 114 to be filed by April 15 following the end of the previous year and to allow a maximum extension of six months.

Effective for tax years beginning after December 31, 2015.

Airport and Airway Extension Act of 2015

(P.L. No. 114-55; September 30, 2015)

Note: Many provisions digested below are retroactive extensions of previously expired provisions. Retroactively extended provisions that are also operative for Hawaii income tax purposes become applicable to Hawaii income tax purposes as of the adoption of Hawaii's income tax conformity bill. Many provisions extended by this Act were extended for only one tax year, meaning those provisions have once again expired. For a list of tax provisions that have expired for tax year 2015, see appendix.

CODE SECTION	DESCRIPTION OF PROVISION
The following provisions are NOT operative for Hawaii income tax purposes.	
§§4081(d)(1)(B), 4261(k)(1)(A)(ii), and 4271(d)(1)(A)(ii)	**Airport and airway trust fund excise taxes extended** The tax on amounts paid for domestic air passenger tickets, the tax imposed on each domestic segment of taxable air transportation, the tax on international departures and arrivals by air, the tax on domestic air transportation of property, the tax on kerosene used in noncommercial aviation, and part of the tax on aviation gasoline were set to expire on September 30, 2015. The Act extends the above listed taxes through March 31, 2016. Effective September 30, 2015.
§4083(b) and 4261(j)	**Fractional ownership aircraft flights' treatment as noncommercial aviation extended** Fractional ownership flights are excluded from the definition of commercial aviation for purposes of the removal-at-terminal tax to avoid fractional ownership flights being subject to two excise taxes. Fractional ownership flights were also exempted from the transportation of persons and property taxes. Both of these exemptions were to expire September 30, 2015. The Act extends both exemptions through March 31, 2016. Effective September 30, 2015.

Bipartisan Budget Act of 2015

(P.L. No. 114-74; November 2, 2015)

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are operative for Hawaii income tax purposes.

§430(h)(2)(C)(iv) **25-year pension smoothing for plan funding purposes extended for three years**

The interest rates used to determine a multiemployer plan's funding targets and target normal cost are based on corporate bond yields. As corporate bond yields fell, plan funding was affected by the lower interest rates used. For plan years beginning on or after January 1, 2012, plans were required to use a minimum and a maximum percentage "interest rate corridors" to determine the interest rate for the 25-year period.

The Act extends the interest rate corridors applicable in the 25-year pension smoothing provision for an additional three years.

Effective for plan years beginning after December 31, 2015.

§430(h)(3)(C)(iii)(I) **New rules for determining whether plans have credible information for alternative mortality tables**

The IRS provides mortality tables for determining present value and making computations under section 430. Plan sponsors are allowed to use a substitute mortality table with IRS approval if the sponsor has credible information to justify use of a substitute table.

The Act provides that the determination of whether the sponsor has credible information must be made in accordance with established actuarial credibility theory which is materially different from the current rules and permits the use of tables that reflect adjustments to the tables if such adjustments are based on the plan's experience.

Effective for plan years beginning after December 31, 2015.

The following provisions are operative for Hawaii income tax purposes.

§761(b) and 704(e) **Partnership interests created by gift**

Family partnership rules provide that a person is a partner if the person owns a capital interest in a partnership in which capital was a material income-producing factor, regardless of whether the interest was created by gift.

The Act amends the definition of partner to provide that the partnership determination is made without regard to whether the interest was created by gift and amends the family partnership rule to that effect. This amendment is intended to eliminate the interpretation that the family partnership rule provided an alternative method of being recognized as a partner.

Effective for tax years beginning after December 31, 2015.

§771 - 777, 6221 - 6234, 6240 - 6248, 6251, 6252, and 6255

TEFRA and electing large partnership audit rules repealed and replaced

The Act repeals and replaces the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and Electing Large Partnerships rules.

Under the new rules each partnership will designate a partner or other person to serve as partnership representative with power to bind the partnership and its partners. Some partnerships are allowed to elect out of the new rules.

Under the new rules, partnerships will be liable for adjustments, penalties, and interest at the partnership level based on the amount the partners' liabilities would have been. Partnerships will have 270 days to propose modifications to proposed adjustments based on the tax rates applicable to the relevant partners.

Note that while the general substantive provisions of TEFRA were operative for Hawaii income tax purposes before repeal, the procedural provisions were not.

Effective for returns filed for partnership tax years beginning after December 31, 2017.

Note: The following provisions are new provisions the applicability of which will be determined by subsequent legislation.

§§6222 and 6031(b)

Items subject to consistency requirement broadened

Generally, a partner must treat a partnership item on its return in a manner that is consistent with the treatment of the item by the partnership.

The Act expands the consistency rule to apply to each item of income, gain, loss, deduction, or credit attributable to a partnership rather than only to partnership items.

Effective for returns filed for partnership tax years beginning after December 31, 2017. Partnerships may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§§6031(b), 6422, 6501(n), 6503(a)(1), 6504, 6511, 6512(b)(3), 6515, 6601(c), 7421(a), 7422, 7459(c), 7482(b)(1), 7485(b)

Conforming amendments for repeal of TEFRA

With the repeal of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the Electing Large Partnerships rules, many provisions of the code were left as deadwood. The code sections listed in this section were amended to remove deadwood provisions and ensure the code is consistent. The changes are conforming amendments and are nonsubstantive.

Effective for returns filed for partnership tax years beginning after December 31, 2017.

§§6221(a), 6223, 6241(1), and 6241(8)

Audit determinations made at the partnership level

The Act replaces existing partnership audit rules to provide that any adjustment to income, gain, loss, deduction, or credit of a partnership (and any partner's distributive share) will be made at the partnership level. Penalty and interest is also to be determined at the partnership level.

Each partnership must designate a partner or other person with a substantial presence in the U.S. as the representative who will have the sole authority to act on behalf of the partnership for purposes of the partnership level audit rules. The actions taken by the partnership in connection with the partnership level audit will bind all partners.

Effective for returns filed for partnership tax years beginning after December 31, 2017.

§6221(b)

Election out of partnership level audit determination rules

The Act provides that a partnership may elect out of the partnership level audit determination if the partnership is required to furnish 100 or fewer statements to partners or nominees, each partner is an individual, a C corporation, a foreign entity that would be treated as a C corporation if domestic, an S corporation, or an estate of a deceased partner, the election is made on a timely filed return for the tax year, and the partners are notified.

Effective for returns filed for partnership tax years beginning after December 31, 2017.

6225, 6233, 6241(2), (3), (4), and (7), 6225(c)(4), and (c)(5)

Treatment of IRS adjustments at the partnership level

If the IRS makes any adjustment, the partnership will pay any imputed underpayment from the adjustment in the adjustment year and any adjustment that does not result in an imputed underpayment will be taken into account by the partnership, in the adjustment year, as a reduction in non-separately stated income or an increase in non-separately stated loss for non-credit items and as a separately stated item for credit items.

The adjustment year is the year a court decision becomes final, if applicable, or the year an administrative adjustment request was made, if applicable, or the tax year in which the notice of final partnership adjustment is mailed in all other cases.

Imputed underpayment is determined by netting all adjustments of items of income, gain, loss, or deduction and multiplying the net by the highest tax rate in effect; treating any net change in loss as a change in income; and by including any change in credit amount.

Effective for returns filed for partnership tax years beginning after December 31, 2017. Partnership may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§6226(d)

Election to treat IRS partnership level adjustments as partner level adjustments

The Act provides that partnerships will be able to elect out of the new rules no later than 45 days after the date of notice of final partnership adjustment. The partnership must furnish each partner and to the IRS a statement of the partner's share of any adjustment to income, gain, loss, deduction, or credit.

If the election is made, each partners' income tax is adjusted as follows:

(1) For the partner's tax year that includes the end of the reviewed year, the amount the partner's income tax would increase using the partner's share of the adjustments; plus
(2) For the partner's tax years beginning after the reviewed year and before the year the election was made, the amount the partner's income tax would increase by reason of adjustment to tax attributes.

Penalties, additions to tax, and additional amounts will be determined at the partnership level with liability at the partner level. Interest will be determined at the partner level.

Effective for elections relating to returns filed for partnership tax years beginning after December 31, 2017. Partnerships may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§6227 **Requests for administrative adjustments**

The Act provides that a partnership may request an administrative adjustment relating to any item of income, gain, loss, deduction, or credit. The request cannot be made after a notice of administrative proceeding is mailed.

Effective for administrative adjustment requests relating to returns filed for partnership tax years beginning after December 31, 2017. Partnership may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§§6231, 6232, and 6241(6)(A) **Notice of administrative proceedings, assessments, and collections**

The Act provides that the IRS will mail to the partnership and representative notices of any administrative proceeding, proposed partnership adjustment, and final partnership adjustment. The notices will be sufficient if mailed to the last known address.

Effective for returns filed for partnership tax years beginning after December 31, 2017. Partnership may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§§6234, 6234(a)(3), (b)(1), and (d), 6241(5), 6241(6)(B), 6330(c)(4) **Judicial review of partnership adjustments**

The Act provides that a partnership may request review of a final partnership adjustment by the Tax Court, District Court, or Court of Federal Claims. The request must be made within 90 days of notice of the final partnership audit. The partnership must pay the amount of the imputed underpayment to make the request.

Effective for returns filed for partnership tax years beginning after December 31, 2017. Partnership may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

§§6235(a)(2) and (3), and 6241(6)(A) **Limitations periods for IRS adjustments**

The Act provides that no IRS adjustment may be made after the later of: (1) the date three years after the date the partnership's return is filed or the date the partnership files an administrative adjustment request, whichever is later; (2) the date that is 270 days (plus any extension) after the date on which documents for

a modification of an imputed underpayment are submitted; or 270 days after a notice of a proposed partnership adjustment is given.

Public Law 114-113 further amended the limitation period. That Act provides that no IRS adjustment may be made after the later of: (1) the date three years after the date the partnership's return is filed or the date the partnership files an administrative adjustment request, whichever is later; (2) the date that is 270 days (plus any extension) after the date on which documents for a modification of an imputed underpayment are submitted; or 330 days after a notice of a proposed partnership adjustment is given.

The period may be extended by agreement. Also, in the case of a non-filed return or a false or fraudulent return with intent to evade tax, there is no limit to the period. If the case of a substantial omission, the period is six years.

Effective for returns filed for partnership tax years beginning after December 31, 2017. Partnership may elect application to any partnership return filed for partnership tax years beginning after November 2, 2015.

Fixing America's Surface Transportation Act

(P.L. No. 114-94; December 4, 2015)

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are NOT operative for Hawaii income tax purposes.

§4041(a)(1)(C), (m)(1)(A), and (B), and 4081(d)(1)

Various higher fuel excise tax rates extended through September 2022

Reductions in the following excise fuel taxes were scheduled to take effect September 30, 2016:

(1) Gasoline tax for removal at the terminal or refinery and retail sale for use or use of a liquid alternative fuel;
(2) Kerosene and diesel fuel tax for removal at terminal and retail sale for use or use;
(3) Partially exempt methanol for retail sale or use before sale;
(4) Partially exempt ethanol for retail sale or use before sale.

The Act delays the tax reductions until after September 30, 2022.

Effective October 1, 2016.

§§4051(c), 4071(d), and 4221(a)

Retail truck manufacturer's tire excise taxes and certain exemptions extended through September 2022

The following taxes and exemptions were scheduled to expire September 30, 2016:

(1) The excise tax on the first retail sale of (i) auto truck chassis and bodies for vehicles over 33,000 lbs, (ii) 26,000 lbs. truck trailer and semi-trailer chassis and bodies, and (iii) tractors over 19,500 lbs. used for highway transportation with a trailer weighing (also if the combination is over 33,000 lbs.);
(2) The excise tax on manufacturer's, producer's, or importer's sale of highway tires;
(3) The exemption from the above for sales to state or local government; and
(4) The exemption from the above for sales to a nonprofit educational organization.

The Act extends the above taxes and exemptions through September 30, 2022.

Effective October 1, 2016.

§4081(d)(3)

Leaking Underground Storage Tank Trust Fund tax extended

Gasoline, diesel, and kerosene are subject to a 0.1 cent tax for removal from a terminal or refinery, entry into the U.S., and sale to an unregistered person. The tax is also imposed on retail level transactions. The tax funds the Leaking Underground Storage Tank Trust Fund. The taxes were set to expire September 30, 2016.

The Act extends the taxes through September 30, 2022.

Effective October 1, 2016.

§§4481(f), 4482(c)(4), and (d), and 4483(i)

Highway use tax and certain exemptions extended through September 30, 2022

The highway use tax is imposed by weight on the first use of U.S. public highways for each taxable period of a motor vehicle that has a gross vehicle weight of 55,000 lbs or more. Generally, taxable period was defined as any year beginning before July 1, 2017 and the period between July 1, 2017 and September 30, 2017 (during which the tax is 25% of the normal tax). Thus the use tax would expire after September 30, 2017.

The Act extends the highway use tax through September 30, 2023.

Effective October 1, 2016.

6081

Automatic extension for filing form 5500 remains at two-and-a-half months

Form 5500 is required to be filed by the administrator or sponsor of an employee benefit plan. Historically these filers were afforded a two-and-a-half month extension to file Form 5500. The 2015 Surface Transportation Act expanded the automatic extension to file to three-and-a-half months.

The Act repeals the provision of the 2015 Surface Transportation Act that provided for a three-and-a-half month extension for filing Form 5500.

Effective for tax years beginning after December 31, 2015.

§§6103(k), 6306(c) and (d)

Amendments to IRS collection contractor rules and exception to return confidentiality requirement for qualified tax collection contractors

The Act authorizes the IRS to contract with private collection companies for collection of inactive tax receivables. The Act also deems certain receivables are ineligible for collection under tax collection contracts and imposes rules on the selection of collection contractors.

Inactive tax receivables are any tax receivables if the IRS has removed them from the active inventory due to lack of resources or inability to locate the taxpayer; more than 1/3 of the statute of limitations has elapsed without assignment at the IRS; or, if more than one year has passed since assignment with no action.

Tax receivables cannot be collected by private companies if they are:

(1) Subject to an offer in compromise or installment agreement;
(2) Classified as innocent spouse related;
(3) Related to a deceased, a minor, someone in a combat zone, or a victim of identity theft;
(4) The subject of a levy or other examination or litigation; or
(5) Subject to an appeal.

The Act also provides for a system whereby a taxpayer affected by a federally declared disaster can get relief from the collection measures and a return of inactive tax receivables to the IRS inventory for IRS collection.

The Act requires the IRS to fund a new special compliance personnel program account with the 25% of the funds collected through private debt collection company efforts.

The Act authorizes disclosures to IRS collection contractors when speaking to the taxpayer who owes the tax and if they identify themselves as IRS contractors and disclose their business.

The IRS must report to Congress no less than 90 days after the end of each year on its tax collection contracts. The report must include information on the number of contracts and the amount collected, as well as the impact of the program and the amount of fees retained by the IRS.

Effective for disclosures made after December 4, 2015.

§§6320, 6331, 6103, 7345, 7508

Revocation or denial of passport if unpaid taxes exceeds $50,000

The United States Department of State (State Department) issues U.S. passports. The State Department may refuse to issue a passport if an applicant owes more than $2,500 in child support or owes certain debts to the U.S. government. The authority to refuse a passport due to debts did not extend to tax debts because the IRS was not authorized to disclose taxpayer information to the State Department.

The Act authorizes the disclosure of taxpayer information to the State Department in the case of a seriously delinquent federal tax debt. Generally, a tax debt must exceed $50,000 in order to qualify. The State Department is required to refuse a passport to anyone certified by the IRS as having a seriously delinquent federal tax debt except in emergency and humanitarian situations.

Effective December 4, 2015.

§6412(a)(1)

Floor stocks credit to apply to tires or fuel held on October 1, 2022

A manufacturer, producer, or importer can claim a credit for the difference between the amount of the removal at terminal tax or excise tax on tires paid and the amount of the tax after October 1, 2016 if the products subject to the tax were still held by the dealer for resale on October 1, 2016. This credit was to provide relief to taxpayers who paid the higher rate of tax just before repeal and lowering of the rates went into effect September 30, 2016.

The repeal of the excise tax on tires and the lowering of removal at terminal tax to 4.3 cents has been delayed until October 1, 2022. Therefore, the credit is now available at that date to avoid a cliff in the tax rate at that time.

Effective October 1, 2016.

Consolidated Appropriations Act, 2016

(P.L. No. 114-113; December 18, 2015)

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are NOT operative for Hawaii income tax purposes.

§25D(a)(1) and (2), (g), and (h)

REEP credit for solar property extended through 2021 and phased out

Individual taxpayers may claim the residential energy efficient property (REEP) credit. The credit is equal to 30% of the qualified expenditures on solar electric, solar water heating, fuel cell, small wind energy, and geothermal heat pump property. The credit was set to expire December 31, 2016.

The Act extends the credit for solar electric and solar water heating property placed in service before January 1, 2022. The Act also phases out the credit by reducing the percentage of expenditures eligible for the credit to:

(1) 26% for property placed in service after December 31, 2019 and before January 2021; and
(2) 22% for property placed in service after December 31, 2020 and before January 1, 2022.

Effective January 1, 2017.

§45(b)(5) and (d)(1)

Renewable electricity production credit for qualified wind facilities retroactively extended and phased out

The credit for electricity produced at wind facilities is available for electricity produced at a qualified facility during the ten-year period after the facility was placed in service. Wind facilities are only qualified facilities if construction of the facility began before January 1, 2015.

The Act extends the credit for wind facilities by defining qualified facilities as facilities under construction by January 1, 2020. The Act also phases out the credit for wind facilities by providing that the amount of the credit must be reduced by:

(1) 20% for any facility that begins construction after December 31, 2016 and before January 1, 2018;
(2) 40% for any facility that begins construction after December 31, 2017 and before January 1, 2019; and
(3) 60% for any facility that begins construction after December 31, 2018 and before January 1, 2020.

Effective January 1, 2015 for wind facilities that begin construction before January 1, 2020.

§48(a)(2) and (a)(6)

Business energy credit extended and phased out

The business energy credit is to encourage use of business equipment that uses sources of energy other than oil or gas. The credit is equal to the energy percentage of the basis of each energy property placed in service during the tax year. The energy percentage is 30% for solar energy property. The credit is only available for property that begins construction before January 1, 2016.

The Act extends the credit making it available for facilities that begin construction before January 1, 2022. The Act also phases out the credit by reducing the energy percentage to:

(1) 26% for property placed in service after December 31, 2019 and before January 2021; and
(2) 22% for property placed in service after December 31, 2020 and before January 1, 2022.

Effective December 18, 2015.

§48(a)(5) **Election to claim energy credit in lieu of the electricity production credit extended**

For qualified property that is part of a qualified investment credit facility, taxpayers can make an irrevocable election to take a 30% energy credit under section 48 rather than the electricity production credit under section 45. This option was available for facilities under construction before January 1, 2015. The Act extends the option for five years.

The Act also phases out the credit by providing that the amount of the credit must be reduced by:

(1) 20% for any facility that begins construction after December 31, 2016 and before January 1, 2018;
(2) 40% for any facility that begins construction after December 31, 2017 and before January 1, 2019; and
(3) 60% for any facility that begins construction after December 31, 2018 and before January 1, 2020.

Effective January 1, 2015. The election applies to qualified facilities the construction of which begins before January 1, 2020.

§199(c)(3)(C) **Independent oil refiners can exclude 75% of oil-transportation costs in computing DPAD**

Taxpayers are allowed the domestic production activities deduction (DPAD), which is equal to 9% of the taxpayer's qualified production activities income. The amount of the DPAD is subject to a taxable income/adjusted gross income limitation.

The Act provides that independent oil refiners can exclude 75% of their oil-transportation costs when computing DPAD. The overall result is an increase in the taxpayer's final DPAD. The provision is to mitigate potential damage to domestic refiners from the lifting of the ban on oil exports.

Effective for tax years beginning after December 31, 2015.

§4980I(b), (f) **Cadillac tax delayed until 2020 and made deductible**

The Cadillac tax is an excise tax on high cost employer-provided health insurance coverage. Such coverage is subject to a tax of 40% as part of the Affordable Care Act.

The Act delays the imposition of the tax until tax years beginning after December 31, 2019. The Act also makes the tax a deductible business expense by relaxing the exclusion under section 275(a)(6).

Furthermore, the Act requires the Comptroller General to report to Congress on the suitability of the current standards and benchmarks for age and gender adjustment of the thresholds for the Cadillac tax.

Effective December 18, 2015.

Non-code section **Annual fee imposed on health insurance providers suspended for 2017**

The Affordable Care Act imposes an annual fee on each covered entity engaged in the health insurance business. The Act suspends the annual fee for calendar year 2017.

Effective December 18, 2015.

Protecting Americans from Tax Hikes Act

(P.L. No. 114-113; December 18, 2015)

The following provisions are NOT operative for Hawaii income tax purposes.

§24(d)(1)(B)(i), (3), and (4)

Enhanced refundable child tax credit made permanent

The Child Tax Credit (CTC) is available for each qualifying child under age 17 that the taxpayer can claim as a dependent. The CTC is phased out for taxpayers with modified adjusted gross income exceeding certain thresholds.

The credit is nonrefundable but a portion is treated as refundable. The refundable portion is 15% of taxable earned income above $3,000. The $3,000 threshold was scheduled to expire December 31, 2017, to be replaced with a $10,000 threshold.

The Act makes the $3,000 threshold for the refundable portion of the CTC permanent.

Effective for tax years beginning after December 18, 2015.

§24(e)

Tax identification numbers required for CTC

The taxpayer must include the qualifying child's name and taxpayer identification number (TIN) on a tax return for the tax year in order to claim the Child Tax Credit (CTC) for that child. A TIN may be a Social Security Number, an individual taxpayer identification number, or an adoption taxpayer identification number.

A claim for the CTC is not allowed if the qualifying child's TIN was issued after the due date for filing the return for the tax year.

Effective for any tax return, or amendment or supplement to a tax return, filed after December 18, 2015. However, this amendment does not apply to timely filed 2015 returns.

§§24(g) and 6213(g)(2)(P)

Restrictions placed on taxpayers who improperly claimed CTC in a prior year

A taxpayer who erroneously claims the earned income credit (EIC) due to reckless or intentional disregard of rules or regulations is ineligible to claim the EIC for a period of two years. If the taxpayer's erroneous claim is due to fraud, the taxpayer is ineligible to claim the EIC for a period of ten years. If a taxpayer is denied the EIC as a result of deficiency procedures, no EIC is allowed for any later tax years unless the taxpayer provides the information required by the IRS to demonstrate eligibility for the credit.

The Act extends the disallowance rules described in the previous paragraph to the Child Tax Credit.

Effective for tax years beginning after December 31, 2015.

§25A(g)(1) and (i)(6); non-code section

Taxpayer's, and student's, TIN must be issued by return filing due date to claim the American Opportunity Tax Credit

The American Opportunity Tax Credit (AOTC), formerly referred to as the Hope Credit, is available to individual taxpayers, subject to a phase out for high income taxpayers and other special rules, for higher education expenses paid for themselves, their spouses, and any dependents for whom they claim a personal exemption. The credit is partially refundable (40%) and applies to the first four years of undergraduate education.

In order to claim the credit with respect to qualified tuition expenses for an individual, the taxpayer must include the taxpayer identification number (TIN) of that individual on their tax return for the tax year.

The Act provides that the TIN must have been issued on or before the due date for filing the tax return in order to claim the credit. The taxpayer will be denied the AOTC for any tax year for which the taxpayer has a TIN that has been issued after the due date for filing the return for the tax year.

The Act additionally makes the AOTC permanent.

Effective for any tax return, or amendment or supplement to a tax return, filed after December 18, 2015. However, this amendment does not apply to timely filed 2015 returns.

§25A(i)

AOTC for higher education expenses made permanent

Individual taxpayers can claim the American Opportunity Tax Credit, previously called the Hope credit, for qualified tuition and related expenses paid for the first two years of post-secondary educations.

The American Recovery and Reinvestment Act of 2009 (ARRA) greatly expanded the credit in terms of amount allowed, qualifying expenses, refundability, and phaseout. The ARRA also included a special rule for bona fide residents of U.S. possessions which allowed those individuals to claim the refundable portion of the credit in the possession in which they reside. For Puerto Rico and American Samoa, the non-mirror code possessions, bona fide residents can only claim the refundable portion if the possession in which they reside allows for it under internal law. The ARRA expansions were set to expire December 31, 2017

The Act makes the rules described above permanent

Effective for tax years beginning after December 18, 2015

§25A(i)(6)(C) **Taxpayers must provide educational institution's EIN to claim the AOTC**

In order to claim the American Opportunity Tax Credit (AOTC), taxpayers must include the name and taxpayer identification number (TIN) of the individual incurring qualifying tuition and related expenses, as discussed above. The Act adds the requirement that, for tax years beginning after 2015, the taxpayer includes the employer identification number of any institution to which tuition and qualified expenses are paid for the individual.

Effective for tax years beginning after December 31, 2015.

§§25A(i)(7) and 6213(g)(2)(Q) **Restrictions placed on taxpayers who improperly claimed AOTC in a prior year**

A taxpayer who erroneously claims the earned income credit (EIC) due to reckless or intentional disregard of rules or regulations is ineligible to claim the EIC for a period of two years. If the taxpayer's erroneous claim is due to fraud, the taxpayer is ineligible to claim the EIC for a period of ten years. If a taxpayer is denied the EIC as a result of deficiency procedures, no EIC is allowed for any later tax years unless the taxpayer provides the information required by the IRS to demonstrate eligibility for the credit.

The Act extends the disallowance rules for the EIC, described in the paragraph above, to the American Opportunity Tax Credit (AOTC).

Effective for tax years beginning after December 31, 2015.

§25C(c), (c)(1), and (g)(2) **Windows and doors must meet Version 6.0 Energy Star requirements to qualify for nonbusiness energy property credit**

The nonbusiness energy property credit is a nonrefundable personal credit allowed to individuals who install certain energy efficient property in a dwelling located in the US that the taxpayer uses as their principal residence.

The Act changes the requirements that property must meet to qualify for the credit. Exterior windows, including skylights, and doors must now meet Version 6.0 of the Energy Star program requirements to qualify for the credit. The Act also retroactively extends the credit by two years as described in the following paragraph.

Effective for property placed in service after December 31, 2015 and before January 1, 2017.

§30A **Possessions tax credit for American Samoa extended**

The possessions tax credit for income derived from business in a U.S. possession for U.S. corporations operating in American Samoa was extended in 2014 for tax years beginning before January 1, 2015.

The Act extends the possessions tax credit for American Samoa for tax years that begin before January 1, 2017.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

The following provisions are NOT operative for Hawaii income tax purposes.

§30B(k)(1) **Qualified fuel cell motor vehicle credit retroactively restored and extended**

The alternative motor vehicle credit is a cumulative credit available for several types of motor vehicles. The credit for qualified fuel cell motor vehicles required that the vehicles be purchased by December 31, 2014 to be eligible for the credit.

The Act extends the date by which eligible fuel cell motor vehicles must be purchased through December 31, 2016. The change works retroactively to restore the qualified fuel cell motor vehicle credit for two years.

Effective for property purchased after December 31, 2014 and before January 1, 2017.

§30C(g) **Qualified alternative fuel vehicle refueling property credit retroactively restored and extended**

The tax credit for qualified alternative fuel vehicle refueling property is available for taxpayers who place in service qualified alternative fuel vehicle refueling property in a taxable year. Taxpayers are entitled to a 30% credit for property placed in service, subject to caps. The credit previously did not apply to property placed in service after December 31, 2014.

The Act extends the credit to qualified alternative fuel vehicle refueling property for two years, through December 31, 2016.

Effective for property placed in service after December 31, 2014 and before January 1, 2017.

§30D(g)(3)(E) **Qualified two-wheeled plug-in electric vehicles credit retroactively restored and extended**

Under prior law, a credit was allowed for qualified two- or three-wheeled electric vehicles acquired during a tax year, equal to the lesser of 10% of the vehicle's cost or $2,500. The credit did not apply to vehicles acquired after December 31, 2013.

The Act retroactively extends the credit for qualified two-wheeled plug-in electric vehicles to vehicles acquired after December 31, 2014 and before January 1, 2017. The credit for qualified three-wheeled electric vehicles has not been extended. Note that the credit is reauthorized for vehicles acquired in 2015 and 2016, but not 2014.

Effective for vehicles acquired after December 31, 2014 and before January 1, 2017.

§32(b)(1) and (b)(3) **EIC rate of 45% for taxpayers with three or more children made permanent**

The earned income credit (EIC) is available to certain low- and moderate-income taxpayers. The credit is refundable and based on income, filing status, and number of qualifying children. The EIC is reduced or eliminated for eligible taxpayers who have earned income, or adjusted gross income if greater, above the phase-out thresholds.

The number of qualifying children determines the credit percentage, which is multiplied by the earned income to calculate the credit. The credit percentage for a taxpayer with three or more qualifying children is 45%. This percentage was temporary and applied from 2009 through 2017.

The Act makes the 45% credit percentage for taxpayers with three or more qualifying children permanent.

Effective for tax years beginning after December 31, 2015.

§32(b)(2)(B) and (b)(3)

Reduction in earned income credit marriage penalty made permanent

The earned income credit (EIC) is available to certain low- and moderate-income taxpayers. The credit is refundable and based on income, filing status, and number of qualifying children. The EIC is reduced or eliminated for eligible taxpayers who have earned income, or adjusted gross income (AGI) if greater, above the phase-out thresholds. For joint filers, the EIC is based on combined income.

The EIC for a tax year may not exceed the excess, if any, of either (a) the credit percentage times the earned income amount, over (b) the phase-out percentage times so much of the taxpayer's AGI or, if greater, earned income that exceeds the phase-out amount.

Phase-out amounts for married couples were increased by $5,000 by temporary rule that was set to expire in 2017. The Act makes the increase in phase-out amounts for married couples permanent.

Effective for tax years beginning after December 31, 2015.

§32(m)

Taxpayer's, and qualifying child's, social security numbers must be issued by return filing due date to claim the EIC

Claiming the earned income credit (EIC) requires the taxpayer to include the taxpayer's taxpayer identification number (TIN), and, if married, the TIN of the individual's spouse. A qualifying child is not taken into account for the purposes of computing the EIC unless the taxpayer also includes the child's TIN (as well as name and age) on the tax return for the tax year. For these purposes, a TIN is a social security number other than a number issued to allow the receipt of federally funded benefits.

The law formerly did not specify when the taxpayer's and qualifying child's TIN had to be issued. The Act provides that a taxpayer's or qualifying child's TIN is not valid for EIC purposes unless it was issued by the Social Security Administration on or before the due date for filing the return for the tax year.

Effective for any tax return filed after December 18, 2015, but does not apply to timely filed 2015 returns.

The following provisions are NOT operative for Hawaii income tax purposes.

§38(c)(4)(B)(ii) **Eligible small business can offset alternative minimum tax liability with research credits**

The general business credit is limited to the excess, if any, of the taxpayer's "net income tax" over the greater of the taxpayer's tentative minimum tax for the tax year; or 25% of the portion of the taxpayer's "net regular tax liability" that exceeds $25,000.

This liability limitation is relaxed in certain situations; for some but not all of the component credits of the general business credit (GBC), the tentative minimum tax is treated as being zero. For those credits, the liability limitation is applied separately and reduced by the GBC allowed for the tax year, other than any eligible small business (ESB) credits and specified credits.

The Act provides that the research credit is a specified credit with respect to an ESB after the application of rules similar to those in section 38(c)(5)(D).

Effective for tax years beginning after December 31, 2015.

§38(c)(4)(B)(v) and §45(e)(10)(D) **Taxpayer can offset alternative minimum tax liability with Indian coal production credit**

Taxpayers may claim a credit for production of Indian coal at a qualified Indian coal facility placed in service before January 1, 2009. Under prior law, the credit for Indian coal production was a specified credit for the purposes of the general business credit only during the four-year period beginning on either January 1, 2006 or the date the facility was placed in service.

The Act provides that the Indian coal production credit is a specified credit to the extent that the credit is attributable to section 45(e)(10). The Act also exempts the Indian coal production credit from the alternative minimum tax.

Effective for tax years beginning after December 31, 2015.

§40(b)(6)(J)(i) **Second generation biofuel producer credit retroactively restored and extended to production before January 1, 2017**

The second generation biofuel producer credit is a component of the alcohol fuel credit. It is a refundable income tax credit for each gallon of qualified second generation biofuel produced during the tax year, and is in addition to any credit that may be available under the alcohol fuels credit.

Under prior law, this credit was not available for fuel produced after December 31, 2014. The Act retroactively extends the credit to qualified second generation biofuel production before January 1, 2017.

Effective for qualified second generation biofuel produced after December 31, 2014 and before January 1, 2017.

§40A(g) **Biodiesel fuels and renewable fuels credits retroactively restored and extended**

The biodiesel fuels credit is a component of the general business credit. The tax credit is available at various rates for each gallon of biodiesel fuel produced or sold in certain circumstances.

Under prior law, the credit was available for fuel sold and used before January 1, 2015. The Act extends the credit through December 31, 2016.

Effective for fuels sold or used after December 31, 2014 and before January 1, 2017.

The following provisions are operative for Hawaii income tax purposes.

§41(h), §45C(b)(1)(D) **Research credit retroactively restored and permanently extended; start-up small businesses can elect to apply a portion of credit against payroll tax**

Under prior law, taxpayers were entitled to a research credit which was not available for amounts paid or incurred after December 31, 2014. The Act removes the termination date, retroactively restoring the research credit and permanently extending it.

The Act also allows "qualified small businesses" to elect, for any tax year, to apply a portion of the research credit to payroll tax rather than income tax. The payroll tax credit portion for any qualified small business is the least of the "amount specified" in the election (not to exceed $250,000); the research credit for the tax year determined without regard to the election; or, in the case of a qualified small business other than a partnership or S corporation, the amount of the business credit carryforward from the tax year, determined without regard to the election.

The payroll tax credit portion is allowed as a credit against the tax imposed by section 3111(a). The credit can be taken against the employer's old-age, survivors and disability insurance (OASDI) liability, but cannot be taken against any portion of hospital insurance liability or against the employee OASDI taxes that the employer is required to withhold. The credit cannot exceed the tax imposed by section 3111(a) for any calendar quarter; if the amount exceeds the calendar quarter limit, the excess is carried to the next calendar quarter and allowed as a credit for that quarter. The employer payroll taxes against which the credit is taken can still be deducted as a business expense.

The IRS must prescribe regulations necessary to effectuate these changes.

The retroactive extension is effective for amounts paid or incurred after December 31, 2014. Other changes are effective for tax years beginning after December 31, 2015.

§42(b)(2) **Minimum low-income housing credit rate retroactively restored and made permanent**

The low-income housing credit allows investors in low-income buildings to claim the low-income housing credit over the ten years following the year the housing is placed in service. The credit is calculated by applying the applicable percentage to the basis of the building. The applicable percentage is meant to produce a credit equal to 70% of the present value of the basis of newly

constructed or substantially rehabilitated housing that is not federally subsidized. For such property that is federally subsidized, the credit is meant to equal 30% of the present value of the basis of the building.

Under prior law, the minimum applicable percentage was 9% for housing credit dollar amount allocations made before January 1, 2015.

The Act extends the minimum applicable percentage of 9% permanently.

Effective for allocations made after December 31, 2014.

§42(g)(4) and §142(d)(2)(B)(ii)

Military housing allowance exclusion for tax-exempt bond financing and low income housing credit retroactively restored and made permanent

For purposes of determining qualification for the low-income housing tax credit, military basic pay housing allowances are excluded from the income calculation used to determine eligibility of low-income tenants. Under prior law, the exclusion was not applicable after December 31, 2014.

The Act makes the exclusion of military basic pay housing allowances from the income calculation permanent.

Effective for income determinations made after July 30, 2008.

The following provisions are NOT operative for Hawaii income tax purposes.

§45(d)(2)(A), (d)(3)(A), (d)(4)(B), (d)(6), (d)(7), (d)(9), and (d)(11)(B)

Renewable energy production credit retroactively restored and extended for certain qualified facilities

A credit is allowed for electricity produced from certain renewable resources at qualified facilities during the ten-year period beginning when the facility is originally placed in service. Various types of facilities qualify for the credit, which under prior law only applied if construction of the facilities began before January 1, 2015.

The Act provides that the following facilities may qualify if their construction begins before January 1, 2017: (1) closed-loop biomass facilities; (2) open-loop biomass facilities; (3) geothermal facilities; (4) landfill gas facilities; (5) trash (i.e. municipal solid waste) facilities; (6) qualified hydropower facilities; and (7) marine and hydrokinetic facilities.

Note that wind facilities are separately treated in the 2016 Consolidated Appropriations Act.

Effective for qualified facilities the construction of which begins after December 31, 2014.

§45(d)(10) and (e)(10)(A)(ii)(I)

Indian coal production credit retroactively restored and extended; pre-2009 placed-in-service limitation and prohibition on sales to related persons no longer apply for purposes of the Indian coal production credit

Indian coal is coal produced from coal reserves that, on June 14, 2005 were owned by an Indian tribe or were held in trust by the U.S. for the benefit of an Indian tribe or its members. Under prior law, the credit period for Indian coal production expired for calendar year 2015.

The Act expands availability of the credit by removing the requirement that facilities had to have been placed in service prior to December 31, 2008 to qualify. Now, facilities placed in service after that date may qualify. The measure also removes a requirement that the taxpayer sell Indian coal to an unrelated person. The coal may now be sold to related parties so long as it is subsequently sold to an unrelated person.

Effective for coal produced and sold after December 31, 2015 in tax years ending after December 31, 2015.

§45A(f)

Indian employment credit for wages paid to qualified Native Americans retroactively restored and extended

For tax years beginning before January 1, 2015, an Indian employment credit was available for businesses located on Indian reservations. The credit was equal to 20% of the first $20,000 of qualified wages and insurance costs paid to a qualified employee; *i.e.* a member of an Indian tribe or their spouse who performed substantially all of his or her services for the employer on an Indian reservation and lived on or near the reservation.

The Act restores and extends the Indian employment credit. The credit now applies for tax years beginning on or before December 31, 2016.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

§45D(f)(1)(G) and (f)(3)

New markets tax credit is retroactively restored and extended to apply through December 31, 2019

Under prior law, a credit was available from 2001 through 2014 for qualified equity investment in a qualified community development entity. The credit was allowed to a taxpayer for a qualified entity investment in applicable percentages over a seven-year period. An annual nationwide limit on qualified equity investments applied to each calendar year for which the credit was available, ending in 2014. If the nationwide limit was exceeded for a calendar year, the excess was carried over and the limit for the next year was increased by the amount of the excess. Under prior law, no amount could be carried over to any calendar year after 2019.

The Act provides that the nationwide limit on qualified equity investments is $3.5 billion for each of calendar years 2010 through 2019. Thus the new markets tax credit is extended for five years, through 2019. The Act also provides that the last year to which unallocated credits can be carried over is 2024.

Effective for tax years beginning after December 31, 2014.

§45G(f)

An income tax credit for 50% of qualified railroad track maintenance expenditures paid or incurred during a taxable year was available for tax years beginning after December 31, 2004 and before January 1, 2015. The credit is limited to $3,500 multiplied by the number of miles of track owned or assigned to the taxpayer.

The Act extends the credit through 2016.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

The following provisions are NOT operative for Hawaii income tax purposes.

§45L(g) **New energy efficient home credit retroactively restored and extended**

An income tax credit for the construction of new energy efficient homes sold as residences is available to taxpayers who constructed or manufactured the homes.

The credit is equal to $2,000 for homes that consume 50% less energy for heating and cooling than a comparable unit; the credit is equal to $1,000 for homes that consume 35% less energy for heating and cooling than a comparable unit. The credit was available for homes acquired before January 1, 2015.

The Act retroactively restores the credit and extends the credit for one year.

Effective for homes acquired after December 31, 2014 and before January 1, 2017.

§45N(e) **Mine rescue team training credit retroactively restored and extended**

A credit was allowed for amounts paid or incurred to train mine rescue teams. The credit equaled the lesser of $10,000 or 20% of the training program costs paid or incurred for training mine rescue employees. The Act retroactively restores the credit and extends the credit for one year.

Effective for taxable years beginning after December 31, 2014 and before January 1, 2017.

§45P, 45P(a), and (b)(3) **Differential wage payment credit expanded; retroactively restored and made permanent**

When an employee is called to active duty in the U.S. military and their employer voluntarily pays the difference between what the employer would have paid the employee and what the military pays the employee, a credit equal to 20% of the differential wage payments made was available to the employer if the employer was a small business. The credit applied to amounts paid before January 1, 2014.

The Act retroactively restores and permanently extends the credit and also removes the requirement that the employer be an eligible small business, making the credit available for employers of any size.

The retroactive extension of the credit is effective for payments made after December 31, 2014. The elimination of the small business requirement is effective for tax years beginning after December 31, 2015.

§48(a)(5)(C)(ii)

For qualified property that is part of a qualified investment credit facility, taxpayers can make an irrevocable election to take a 30% energy credit under section 48 rather than the electricity production credit under section 45. This option was available for facilities that began construction before January 1, 2015.

The Act retroactively restores the option and extends the option for one year.

Effective for qualified facilities, the construction of which begins after December 31, 2014 and before January 1, 2017.

§51(c)(4), (d)(1)(J), and (d)(15)

Work opportunity tax credit retroactively restored and extended

The work opportunity tax credit (WOTC) allowed employers to claim an income tax credit equal to 40% of qualified first-year wages paid to employees of a targeted group. Generally, targeted groups are veterans, ex-felons, rehabilitation referrals, summer youth employees, recipients of supplemental nutrition assistance or long-term family assistance, and recipients of social security. The WOTC was not available for wages paid to an employee who began work after December 31, 2014.

The Act retroactively restores the credit and extends it for five years. The Act also expands targeted groups to include qualified long-term unemployment recipients, defined as an individual certified by a designated agency as being in a period of unemployment that is not less than 27 weeks and includes a period in which the individual was receiving unemployment compensation under state or federal law.

The retroactive extension is effective for individuals who begin work after December 31, 2014 and before January 1, 2020. The expansion of the credit for qualified long-term unemployment recipients is effective for individuals who begin work after December 31, 2015.

§54E(c)(1)

Qualified zone academy bond system extended through 2016

Section 54E allowed the sale and use of qualified zone academy bonds (QZABs). The bondholder receives a tax credit in lieu of interest payments, thus reducing the cost of borrowing to the issuer. To qualify, a school must be a public school with standard curricula and must be in an empowerment zone or enterprise community. QZABs have historically been subject to an annual aggregate cap. The cap for calendar years after 2014 was zero. No QZABs could be issued after 2014.

The Act authorizes a cap of $400 million for calendar years 2015 and 2016, extending the QZAB program for two years.

Effective for obligations issued after December 31, 2014 and before January 1, 2017.

§55(b)

Tax rate of 23.8% on corporation's qualified timber gain

A taxpayer may treat as a sale or exchange the cutting of timber that the taxpayer owned or held a contract right to cut for more than one year. If the taxpayer treats cutting the timber as a sale, gain or loss is recognized equal to the difference between the fair market value of the timber and the adjusted basis for depletion of the timber in the hands of the taxpayer. For corporations, there

is an alternative tax for corporations with a “net capital gain” that applies if it results in a tax less than the tax that would be imposed under the regular rates.

Under prior law, the rate of the alternative tax was 35% in all instances. The Act applies the alternative rate on net capital gains for any tax year beginning in calendar year 2016 for which the taxpayer has a net capital gain and a “qualified timber gain.” The qualified timber gain is taxed at a rate of 23.8%.

Effective for tax years beginning after December 31, 2015.

The following provisions are operative for Hawaii income tax purposes.

§§61 and 1016

Qualifying clean coal power grants excluded from gross income

Federal financial assistance is available under the Clean Coal Power Initiative to taxpayers meeting certain criteria. Under prior law, corporate taxpayers were able to exclude such amounts from gross income as a contribution to capital, thereby reducing the basis of any property acquired by reason of the capital contribution. No equivalent exclusion from income was available to noncorporate shareholders.

The Act allows a taxpayer other than a corporation to exclude amounts received under the Clean Coal Power Initiative from gross income. The basis for any depreciable property acquired with an excluded amount is reduced by an amount equal to that amount.

Effective for amounts received under the Clean Coal Power Initiative in taxable years beginning after December 31, 2011.

§62(a)(2)(D) and (d)(3)

Teachers’ Expense deduction expanded and retroactively made permanent

Section 62(a)(2)(D) allowed an above-the-line deduction of up to $250 for out-of-pocket expenses paid by eligible educators of grades kindergarten through 12 for classroom-related expenses, including for books, computer equipment, and supplementary materials. The deduction was available through 2014.

The Act expands the deduction to include expenses paid for professional development courses related to the curriculum for which the educator provides instruction. The $250 cap is also indexed to inflation after 2015. The Act also makes this deduction permanent.

The retroactive extension is effective for tax years beginning after December 31, 2014. The expansion to include professional development courses and indexing of the $250 cap for inflation are effective for tax years beginning after December 31, 2015.

The following provision is NOT operative for Hawaii income tax purposes.

§72(t)(10)(B)(ii)

Penalty-free early plan withdrawals for certain public safety officers expanded to include others

A taxable distribution from a qualified retirement plan is subject to a 10% early withdrawal tax unless the distribution is made under certain circumstances. One specifically provided exception exempts from the early withdrawal tax distributions made to an individual who separates from service after age 55. A

special rule applies to qualified public safety employees, and exempts from the early withdrawal tax distributions from a governmental defined benefit pension plan if the employee separates from service after age 50. This special rule applies to an employee of a state or political subdivision thereof who provides police protection, firefighting services, or emergency medical services for any area within the jurisdiction of the state or political subdivision.

The Act extends this special rule to include nuclear materials couriers, members of the U.S. capitol police, members of the Supreme Court police, and State Department diplomatic security special agents.

Effective for distributions after December 31, 2015.

The following provisions are operative for Hawaii income tax purposes.

§105(j)(1), (j)(2), and (j)(3)

Exclusion for certain health care reimbursements clarified and expanded

Amounts received by an employee through an employer-provided accident or health plan that reimburse the employee for expenses of the employee, his or her spouse, or his or her children under age 27 are excluded from the employee's gross income. Where some other beneficiary may receive some or all of the medical reimbursements under a plan, amounts paid under the plan are not excludable, even if one of the covered beneficiaries actually receives the reimbursements.

There is an exception to this general rule for accident or health plans that, on or before January 1, 2008, provided for reimbursements of a deceased plan participant's beneficiary, if the plan was funded by a medical trust created under certain circumstances in connection with a public retirement system.

The Act provides clarification as to what types of accident or health plans the exception applies to. The Act additionally expands the definition of an accident or health plan to which the exception applies to include plans established by or on behalf of a state or a political subdivision of a state.

Effective for payments made after December 18, 2015.

§108(a)(1)(E), (a)(1)(E)(i), and (a)(1)(E)(ii)

Exclusion of home mortgage forgiveness from debt discharge modified and retroactively extended

Section 108(a)(1)(E) allows taxpayers to exclude from income any discharge-of-indebtedness income resulting from discharge of qualified principal residence indebtedness. The exclusion applied to indebtedness discharged before January 1, 2015.

The Act retroactively extends the exclusion through 2016.

The Act also modifies the mortgage forgiveness exclusion so that it applies to indebtedness that is discharged subject to an arrangement that is entered into and evidenced in writing before January 1, 2017 if the qualified principal residence indebtedness is discharged in 2017.

The retroactive extension is effective for discharges of indebtedness after December 31, 2014 and before January 1, 2017. The modification is applicable to discharges of indebtedness after December 31, 2015 if the qualified principal residence indebtedness is discharged in 2017.

§117(c)(2)(C) **Payments from certain work-learning service programs excluded from income**

Gross income does not include amounts received as a qualified scholarship by an individual who is a candidate for a degree at an educational organization. However, that exclusion does not apply to amounts that represent payment for teaching, research, or other services.

The Act applies the exclusion to amounts received by individuals under a comprehensive student work-learning service program operated by a work college even if the payment is for teaching, research, or other services.

Effective for amounts received in tax years beginning after December 18, 2015.

§132(f)(2) **Dollar amount of monthly exclusion for employer-provided mass transit and parking benefits raised**

Section 132(f) allows the exclusion of certain employer-provided transportation related fringe benefits, including benefits for parking and mass transit passes. Under the general rule, the maximum exclusion for parking benefits is $175 per month ($250 per month adjusted for inflation for 2014) while the maximum exclusion for mass transit passes is $100. Section 132(f)(2) allowed a temporary increase of the exclusion amount for mass transit passes and carpooling through a parity with the parking benefits for months beginning before January 1, 2015.

The Act raises the dollar amount of the monthly exclusion limitation for employer-provided transit and vanpooling benefits to $175, thereby matching the amount for parking benefits without the parity provision.

Effective for months after December 31, 2014.

The following provisions are operative for Hawaii income tax purposes.

§139F **Damages for wrongful incarceration excluded from gross income**

The Act provides that for a wrongfully incarcerated individual, gross income does not include any civil damages, restitution, or other monetary award, including compensatory or statutory damages and restitution imposed in a criminal matter, relating to the individual's incarceration for the offense for which the individual was convicted.

A wrongfully incarcerated individual is an individual convicted of an offense and who served all or part of a sentence of imprisonment for that offense if either the individual was pardoned or granted clemency or amnesty for the offense because the individual was innocent of the offense, or the individual's conviction was reversed or vacated, after which the accusatory instrument for the covered offense was dismissed or the individual was found not guilty at a new trial.

Effective for tax years beginning on or after December 18, 2015.

§163(h)(3)(E)(iv)(I) **Mortgage insurance premium deduction retroactively extended**

Premiums paid for qualified mortgage insurance in connection with acquisition indebtedness for the taxpayer's main or second home are treated as qualified

residence interest and are deductible. Under prior law, the rules treating qualified mortgage insurance premiums as deductible were not valid after December 31, 2014. The Act retroactively restores this treatment and extends it through 2016.

Effective for amounts paid or accrued after December 31, 2014 and before January 1, 2017.

§164(b)(5)(I) **Election to claim itemized deduction for state/local sales taxes retroactively made permanent**

Under prior law, taxpayers could take an itemized deduction for state and local general sales taxes instead of an itemized deduction for state and local income taxes, for tax years beginning after December 31, 2003 and before January 1, 2015.

The Act makes the option for this election permanent and retroactive.

Effective for tax years beginning after December 31, 2014.

§168(e)(3)(A)(i) **Three-year depreciation for race horses retroactively restored and extended**

Section 168(e)(3)(A) allowed a three-year cost recovery period for any race horse two years old or younger placed in service before January 1, 2014. For race horses placed in service after December 31, 2013, the section allows a three-year cost recovery period for race horses that are more than two years old when placed in service.

The Act retroactively restores and extends the treatment through 2016. The Act additionally extends the three-year recovery period to apply to any race horse placed in service before January 1, 2017.

Effective for property placed in service after December 31, 2014 and before January 1, 2017 and for property placed in service after December 31, 2016 if the property is more than two years old at the time it is placed in service by the purchaser.

§168(e)(3)(E)(iv), (v),and (ix) **15-year depreciation for qualified leasehold, restaurant, and retail improvements retroactively restored and made permanent**

Generally, nonresidential real property, including nonresidential buildings and their structural components, are depreciated using the straight-line method over a 39-year general depreciation system (GDS) recovery period. Certain types of property, including qualified leasehold improvement property, qualified retail improvement property, and qualified restaurant property, could under prior law be depreciated using the straight-line method over a 15-year GDS recovery period.

In certain circumstances, the alternative depreciation system (ADS) is required. Non-residential real property is depreciated over a 40-year recovery period for ADS purposes. However, qualified leasehold improvement property, qualified retail improvement property, and qualified restaurant propery are depreciated over a 39-year recovery period for ADS purposes

Provisions allowing the use of the straight-line method over a 15-year GDS recovery period for qualified leasehold property, qualified restaurant property, and qualified retail improvement property expired December 31, 2014. The Act retroactively restores these provisions and makes them permanent.

Effective for property placed in service after December 31, 2014.

The following provisions are NOT operative for Hawaii income tax purposes.

§§168(e)(6), (7)(B), and (8)(D); and 168(k)(2)(A)(ii), (iii), and (IV), (k)(2)(B)(i)(III), (k)(2)(C)(i), (k)(2)(D), (k)(2)(E)(i), (ii), and (iii), (k)(3), and (k)(5)

Requirements for building improvements qualifying for bonus depreciation and AMT relief relaxed

Taxpayers owning qualified property under section 168(k) are generally allowed 50% bonus depreciation in the year the property is placed in service. Qualified property is also exempt from the alternative minimum tax depreciation adjustment. Most types of machinery, tangible personal property, equipment, and computer software qualify, as did, under prior law, "qualified leasehold improvement property."

The Act deletes "qualified leasehold improvement property" as a category and replaces it with "qualified improvement property." "Qualified improvement property" is any improvement to an interior portion of a building that is nonresidential real property if the improvement is placed in service after the date the building is placed in service.

Property attributable to the enlargement of the building, an elevator or escalator, or the internal structural framework of the building does not qualify. The major change is that whether the improvements are to property subject to a lease is no longer relevant. Additionally, the time period after the building was first placed in service has been removed; to qualify, property only has to be placed in service after the building is placed in service.

Effective for property placed in service after December 31, 2015 and before January 1, 2020.

The following provision is operative for Hawaii income tax purposes.

§168(i)(15)(D)

Seven-year recovery period for motorsports entertainment complexes retroactively restored and extended

Section 168(e)(3)(C) allowed a seven-year cost recovery period for motorsports complexes, as defined at section 168(i)(15), placed in service after October 22, 2004 and before January 1, 2015. The Act extends the seven-year recovery period for motorsports complexes for two years.

Effective for property placed in service after December 31, 2014 and before January 1, 2017.

The following provisions are NOT operative for Hawaii income tax purposes.

§168(j)(8)

Accelerated depreciation for business property on Indian reservations modified; retroactively restored and extended

Section 168(j) allows shortened depreciation recovery periods for property on qualified Indian reservations place in service before January 1, 2015. The Act

extends the shortened periods for property on qualified Indian reservations for two years.

The Act additionally adds an irrevocable election out of the accelerated depreciation rules. If a taxpayer opts out of the accelerated depreciation rules for Indian reservation property for any class of property for any tax year, the accelerated depreciation rules will not apply to all property in that class placed in service during that tax year.

The extension is effective for property placed in service before January 1, 2017. The election is effective for tax years beginning after December 31, 2015.

§168(k)(2)(A)(ii), and (iii), (k)(2)(B)(i)(III), (k)(2)(C)(i), (k)(2)(D), (k)(2)(E)(i), (ii), and (iii), (k)(2)(F)(iii), and (k)(5)

Timely acquisition requirement for qualified property extended and simplified; deadwood provisions removed

Taxpayers owning qualified property under section 168(k) are generally allowed 50% bonus depreciation in the year the property is placed in service. Qualified property is also exempt from the alternative minimum tax depreciation adjustment. Qualified property is also allowed an $8,000 increase in the dollar limit on first year depreciation for passenger cars.

The requirements for qualified property are:

(1) The property must be of a qualifying type;
(2) The property must not be property required to be depreciated under the alternative depreciation system;
(3) The property must not be the subject of certain disqualifying transactions;
(4) The property's original use generally must begin with the taxpayer after December 31, 2007;
(5) The property must meet a timely placed in service requirement; and
(6) The property must meet a timely acquisition requirement.

Generally, the timely placed in service and timely acquisition requirements restrict qualified property to property acquired and placed in service prior to January 1, 2015, except for certain aircraft and long-production property, which generally had to be placed in service prior to January 1, 2016.

The Act extends the timely acquisition requirement through 2015. The Act also removes the requirement that property be acquired after 2007, and changes the parts of the acquisition rule that apply only to aircraft and long-production property.

The Act also requires that qualifying property be acquired prior to January 1, 2020, except for aircraft and certain long-production property, which must be acquired prior to January 1, 2021.

For passenger automobiles that are qualified property and are placed in service beginning with calendar year 2018, the $8,000 increase in the first-year depreciation limit is phased down. The amount is $6,400 for automobiles placed in service during calendar year 2018, and $4,800 for automobiles placed in service during calendar year 2019.

Effective for property placed in service after December 31, 2014 for the extension of the timely acquisition rule; further simplifications effective for property placed in service after December 31, 2015 and before January 1, 2020, and before January 1, 2021 for aircraft and certain long-production property.

§168(k)(2)(G) **AMT relief for bonus-depreciation-eligible property clarified**

The Act clarifies that, for the purpose of determining alternative minimum tax (AMT) taxable income under section 55, the deduction under section 167 for qualified property is determined without regard to any adjustment under section 56.

Effective for property placed in service after December 31, 2015 and before January 1, 2020.

§168(k)(4) **Rules for corporations trading bonus and accelerated depreciation for the refund of otherwise deferred AMT credits modified**

A corporation can make an election to forego bonus and accelerated depreciation for property that is eligible qualified property in exchange for the present allowance, as refundable tax credits, or certain otherwise-deferred credits.

The Act replaces the rules applicable to such election with new rules.

If a corporation makes a section 164(k)(4) election:

(1) for qualified property placed in service during the taxable year, neither bonus depreciation nor the higher first-year auto depreciation cap for passenger automobiles applies;
(2) the straight-line method must be used for the qualified property placed in service during the taxable year; and
(3) the limit imposed by section 53(c) for the tax year is increased by the bonus depreciation amount for the tax year.

The aggregate increase in tax credits resulting from the election is treated as refundable.

The bonus depreciation amount equals 20% of the excess, if any, of:

(1) the aggregate amount of depreciation that would be allowed under section 168 for the qualified property if bonus depreciation applied to the property, over
(2) the aggregate amount of depreciation that would be allowed under section 168 for qualified property placed in service during the tax year if bonus depreciation did not apply

The aggregate amounts determined above are determined without regard to several provisions of section 168.

The limitation for a tax year is equal to the lesser of:

(1) 50% of the minimum tax credit under section 53(b) for the first tax year beginning after December 31, 2015, or
(2) the minimum tax credit under section 53(b) for the computation year determined by taking into account only the adjusted net minimum tax for tax years ending before January 1, 2016.

All corporations treated as a single employer under section 52 are treated as one taxpayer for purposes of the election and are treated as making the election if any one of them makes the election.

Rules are provided for applying the election to a corporation that makes the election for a tax year and is a partner.

Effective for tax years ending after December 31, 2015, as modified by a phase-in rule, and before January 1, 2020 (2021 for certain aircraft and long-production property).

The following provisions are NOT operative for Hawaii income tax purposes.

§168(k)(4)(D)(iii)(II) and (k)(4)(L)

Corporations' trading of bonus and accelerated depreciation for the refund of otherwise deferred AMT credits restored and extended

A corporation can elect under section 168(k)(4) to forego bonus and accelerated depreciation for eligible qualified property in exchange for the present allowance, as refundable credits, of otherwise-deferred pre-2006 alternative minimum tax (AMT) credits.

The Act extends the elective exchange of bonus and accelerated depreciation for the refund of otherwise-deferred AMT credits to tax years ending before January 1, 2016.

A taxpayer that does not have a section 168(k)(4) election in effect for round 4 extension property is allowed to make such election for round 5 extension property. If a taxpayer does have an election in place for round 4 extension property, it is treated as having an election in place for round 5 extension property also, unless the taxpayer elects to not apply the election to round 5 extension property.

"Round 5 extension property" is property that is eligible qualified property only because of the extension of the application of the special allowance under section 168(k)(1) and the application of the extension of bonus depreciation to the section 168(k)(4) election.

For round 5 extension property, the bonus depreciation amount, maximum amount, and maximum increase amount that must be computed for this election all must be computed separately from amounts computed for property that is not round 5 extension property. Research credits are excluded for round 5 extension property.

Effective for tax years ending after December 31, 2014.

§168(k)(5)

Relaxed placed in service rule and other separate elective bonus depreciation and AMT relief rules for certain plants bearing fruit or nuts

The new requirements for qualified property in general are discussed above. In addition, the Act allows the taxpayer to elect to apply special rules for a specified plant that is qualified property if: (1) the plant is planted before January 1, 2020 or grafted before that date to a plant already planted, and (2) the planting or grafting takes place in the ordinary course of the taxpayer's farming business.

For a specified plant for which the election is made, a depreciation deduction of 50%, phased down as described below, is allowed for the tax year in which the specified plant is planted or grafted. The adjusted basis of the plant is reduced by the amount of the deduction.

For a specified plant planted after December 31, 2017, the following substitutions are made for the 50% depreciation rate:

(1) 40% for a plant that is planted in 2018, and
(2) 30% for a plant that is planted in 2019.

These phase-down rules conform to the general phase-down rules for bonus depreciation.

If the election is made for a specified plant, the plant is not treated as "qualified property" in the tax year it is placed in service. Generally plants bearing fruit or nuts are placed in service when they begin to produce a crop, which is later than the date they are planted.

The election can only be revoked with IRS consent.

Effective for specified plants planted or grafted after December 31, 2015 and before January 1, 2020.

The following provisions are NOT operative for Hawaii income tax purposes.

§168(k)(6) **Bonus depreciation phased down after December 31, 2017**

Under the Act, bonus depreciation available for qualified property is extended through 2019, or through 2020 for certain property, as discussed above. The Act additionally provides that bonus depreciation is phased down after 2017.

For qualified property placed in service in 2018, the bonus depreciation available is 40%. In calendar year 2019, it is 30%. For certain aircraft and long-production property, these years are shifted to 2019 and 2020, respectively.

Effective for property placed in service after December 31, 2015 and before January 1, 2020 (before January 1, 2021 for certain aircraft and long-production property).

§168(k)(7) **Election-out of bonus depreciation for qualified property narrowed to no longer include election out of AMT relief**

The rules discussed in previous entries, under prior law, did not apply to classes of property for which the taxpayer elected not to apply. The "election-out" under prior law did not apply to bonus depreciation, the $8,000 increase in the first-year depreciation cap for passenger automobiles, and alternative minimum tax relief.

The Act changes the election-out such that it only applies to bonus depreciation and the related favorable depreciation rule for passenger automobiles.

Effective for property placed in service after December 31, 2015 and before January 1, 2020 (before January 1, 2021 for certain aircraft and long-production property).

The following provisions are operative for Hawaii income tax purposes.

§170(b)(1)(A)(ix)

Agricultural research organizations 50% charities, not private foundations

Certain charitable organizations are "50% charities." Contributions by an individual to these organizations are deductible up to 50% of the donor's "contribution base." The Act adds agricultural research organizations to the list of 50% charities. The agricultural research organization must be directly engaged in the continuous active conduct of agricultural research in conjunction with a land grant university or a non-land-grant college of agriculture.

Effective for contributions made on and after December 18, 2015.

§170(b)(1)(E)(vi)

Incentive for qualified conservation easements contributed by individuals retroactively made permanent.

Section 170(b)(1)(E) allows a deduction for a qualified conservation contribution of up to 50% of the contribution base. In the case of a qualified farmer or rancher, the limit is 100% of the contribution base. In general, a qualified conservation contribution is of qualified real property to a qualified organization for conservation purposes. The contribution base is generally the adjusted gross income without any deduction for net operating loss carryback.

The Act removes the sunset rule for this provision, which made the increased percentage limits and extended carryforward period inapplicable to contributions made in tax years after December 31, 2014.

Effective for contributions made in tax years beginning after December 31, 2014.

§170(b)(2)(A), (b)(2)(C)(i), (b)(2)(C)(ii), (b)(2)(C)(iii), and (b)(2)(D)

Alaska Native Corporations may deduct certain qualified conservation contributions up to 100% of taxable income

The Act allows a charitable deduction for a qualified conservation contribution made by a Native Corporation that is a contribution of property that was land conveyed under the Alaska Native Claims Settlement Act to the extent that the amount of qualified conservation contributions does not exceed the excess of the Native Corporation's taxable income over the amount of its allowable charitable contributions.

Effective for contributions made in tax years beginning after December 31, 2015.

§170(b)(2)(B)(ii) and (b)(2)(B)(iii)

Incentives for qualified conservation contributions by corporate farmers and ranchers retroactively made permanent

Section 170(b)(2)(B) allows corporate farmers and ranchers to take deductions for qualified conservation contributions up to 100% of their taxable income. Additionally, if the aggregate amount of the contribution exceeds 100% of taxable income, the excess is carried over for 15 years. To qualify, a farmer must not be a publicly traded company and must derive more than 50% of its gross income from farming.

The Act removes the sunset provisions for this special rule, which made the increased percentage limit and extended carryforward period inapplicable to contributions after December 31, 2014.

Effective for contributions made in tax years beginning after December 31, 2014.

§170(e)(3)(C)(ii), (e)(3)(C)(iii), (e)(3)(C)(iv), and (e)(3)(C)(v)

Limitation on charitable deduction for food inventory contributions increased

Section 170(e)(3)(C) allowed a business, whether or not a C corporation, a deduction for contribution of food inventory in excess of the basis of the property contributed. For businesses other than C corporations, such deductions could not exceed 10% of the business's aggregate net income for the taxable year. The Act permanently extends this rule, which, under prior law, applied to contributions made through December 31, 2014.

The Act also raises the limit to 15% of the taxpayer's aggregate net income for the tax year. Any deductions in excess of this limit may be carried over for five tax years.

The Act also creates new rules for determining the contributions' fair market value.

The permanent extension is effective for contributions made after December 31, 2014. The increased limit, carryforward rules, and fair market value rules are effective for tax years beginning after December 31, 2015.

§179(b)(1), (b)(2), (b)(6), and (c)(2)

Higher limits on section 179 expensing restored and permanently extended

Section 179 allows a taxpayer to treat the cost of qualified property that would otherwise be capitalized as an expense and thus deductible in full in the year placed in service. The allowable amount is capped and subject to phase-out as the cost of qualifying property exceeds a threshold. For previous taxable years, the expensing limit was enhanced to $500,000 and the phase-out threshold to $2,000,000. The default expensing limit is $25,000 and the default phase-out threshold is $200,000.

Section 179(c)(2) allows a taxpayer to revoke the section 179 election without the consent of the Secretary of the Treasury and any such revocation is irrevocable.

The Act permanently extends the $500,000 dollar limitation and $2,000,000 beginning-of-phaseout amount. These changes are retroactive. The Act

additionally adjusts these values for inflation for any tax year beginning after calendar year 2015.

The Act additionally makes the option to revoke the section 179 election without the consent of the Secretary of the Treasury permanent.

Note that section 179 is generally operative for Hawaii income tax purposes. For purposes of the Hawaii income tax, the aggregate allowable expense provided by section 179 is limited to $25,000 and the phaseout threshold is lowered to $200,000.

Effective for tax years beginning after December 31, 2014.

The following provision is NOT operative for Hawaii income tax purposes.

§179(d)(1)(A)(ii) **Eligibility of software for section 179 election restored and permanently extended**

Section 179(d)(1)(A)(ii) defines section 179 property to include computer software. The Act permanently extends the inclusion of computer software as section 179 property.

Note that while section 179 is generally operative for Hawaii income tax purposes, section 179(d)(1) is not operative.

Effective for computer software placed in service in taxable years beginning after December 31, 2014.

The following provisions are operative for Hawaii income tax purposes.

§179(f)(1), (f)(3), and (f)(4) **Treatment of qualified real property as section 179 property is restored and permanently extended**

For tax years beginning before 2015, section 179 property included qualified real property which was defined as qualified leasehold, restaurant, and retail improvement property used in a trade or business and subject to depreciation. The aggregate amount of the cost of qualified real property that a taxpayer could elect to treat as an expense was subject to an annual limit of $250,000 and the $500,000 annual per taxpayer overall limit. However, amounts disallowed because of the active business income taxable limitation could not be carried forward if the amounts were attributable to qualified real property.

The Act permanently extends the treatment of “qualified real property” as section 179 property and the $250,000 annual dollar limitation is removed. The Act also removes the limitations on carryforward of amounts disallowed as attributable to expenses for qualified real property.

Note that section 179 is generally operative for Hawaii income tax purposes. For purposes of the Hawaii income tax, the aggregate allowable expense provided by section 179 is limited to $25,000 and the phaseout threshold is lowered to $200,000.

The extension is effective for tax years beginning after December 31, 2014. The removal of the $250,000 limitation and limitation on carryforward are effective for tax years beginning after December 31, 2015.

§179D(c)(1) and (2), (f)(1), (f)(2)(C)(i), and (h)

Updated standards apply for purposes of energy efficient commercial building deduction; deduction retroactively restored and extended

A deduction is available for an amount equal to the cost of energy efficient commercial building (EECB) property placed in service before January 1, 2015. EECB property was defined in part as being installed in a building that was within the scope of Standard 90.1-2001 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America. The deduction applied to property placed in service before January 1, 2015.

The Act modifies the definition of EECB property by changing the standard referred to from Standard 90.1-2001 to Standard 90.1-2007. The Act retroactively extends the deduction for EECB property to property placed in service before January 1, 2017.

The change in standards is effective for property placed in service after December 31, 2015. The retroactive restoration and extension of the deduction is effective for property placed in service after December 31, 2014 and before January 1, 2017.

§179E(g)

Election to expense advanced mine safety equipment retroactively restored and extended

Section 179E allowed a taxpayer to elect to deduct 50% of the cost of advanced mine safety equipment in the first year the property is placed in service. The property had to be placed in service prior to January 1, 2015.

The Act extends this election for two years.

Effective for property placed in service after December 31, 2014 and before January 1, 2017.

The following provisions are NOT operative for Hawaii income tax purposes.

§181(a)(1), (a)(2), (b), (c)(1), (e), (f), and (g)

Section 181 expensing election made available for live theatrical productions; expensing rules for film and television productions retroactively restored and extended

Section 181 allows a taxpayer to deduct the entire cost of qualified film or television productions. The Act expands section 181 to include any qualified live theatrical production commencing after December 31, 2015. Costs eligible to be deducted are limited to $15,000,000 per film or television production or live theatrical production. The limit is $20,000,000 for costs incurred in a low-income community or a distressed area.

A “qualified live theatrical production” means any live staged production of a play presented in a venue with an audience capacity of not more than 3,000 or a series of venues the majority of which have an audience capacity of not more than 3,000, if 75% of the total compensation of the production is qualified compensation, as defined in section 181(d)(3).

The Act additionally extends the availability of the election to productions commencing before January 1, 2017.

The addition of live theatrical productions is effective for productions commencing after December 31, 2015. The extension of the election for qualified film and television productions is effective for productions beginning after December 31, 2014 and before January 1, 2017.

§199(d)(8)(C) **Domestic production activities deduction for Puerto Rico activities retroactively extended**

The domestic production activities deduction is allowed for various trade or business activities, which typically must be conducted in the U.S. For the purposes of this deduction, Puerto Rico is not generally treated as part of the U.S. However, under prior law, in special circumstances Puerto Rico may be considered part of the U.S. for purposes of this deduction for the first nine years of a taxpayer beginning after December 31, 2005 and before January 1, 2015.

The Act changes the special provision for Puerto Rico to make it apply to the first eleven years of a taxpayer beginning after December 31, 2005 and before January 1, 2017.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

§222(e) **Qualified tuition deduction retroactively extended**

Individual taxpayers can deduct qualified tuition and related expenses paid for higher education by the taxpayer. Eligible expenses include tuition and fees for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, at an eligible institution of higher education. The deduction is subject to caps based on the type of filer and must be reduced by tax-free education assistance and exclusions from income under the rules for savings bond interest, Coverdell accounts, and qualified tuition programs. The deduction applied in tax years beginning before January 1, 2015. The Act retroactively extends the deduction through 2016.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

§245(a)(12) **Foreign dividends derived from RICs and REITs ineligible for dividends received deduction**

Corporations are allowed a deduction equal to a percentage of the U.S.-source portion of dividends received from a qualified 10% owned foreign corporation multiplied by an applicable percentage. The deduction is available if the distributing foreign corporation has post-1986 undistributed earnings and profit attributable to income that is (1) effectively connected with a U.S. trade or business, or (2) dividends received from an 80% owned domestic corporation. The amount of the deduction is determined under the general section 243(a) rules as if the foreign corporation is a domestic corporation.

The Act treats regulated investment companies (RICs) and real estate investment trusts (REITs) as foreign corporations for the purposes of (2), above. That is, for purposes of determining whether dividends from a foreign corporation are eligible for a dividends-received deduction, dividends from RICs and REITs are treated as dividends from foreign corporations.

Effective for dividends received from RICs and REITs on or after December 18, 2015.

The following provisions are operative for Hawaii income tax purposes.

§263A(c)(7) **Relaxed placed in service rule and other depreciation and AMT relief rules for plants bearing fruit or nuts**

For specified plants (generally a tree or vine bearing fruit or nuts that has a pre-productive period of more than two years) planted before January 1, 2020, or grafted before that date to a plant already planted, when the grafting or planting takes place in the ordinary course of the taxpayer's farming business, a depreciation deduction equal to 50% of the adjusted specified basis of the plant is allowed under section 167(a) for the tax year in which the specified plant is planted or grafted, and the adjusted basis of the plant is reduced by the amount of the deduction.

For a plant planted after December 13, 2017, the following substitutions are made for the 50% depreciation rate: 40% for a plant planted or grafted in 2018, and 30% for a plant planted or grafted in 2019.

Alternative minimum tax relief rules similar to rules in section 168(k)(2)(G) apply to plants for which this election is made.

If the election is made for a specified plant, the plant is not treated as qualified property for bonus depreciation in the later tax year in which it is placed in service. The election is irrevocable without IRS consent.

Effective for plants planted or grafted after December 31, 2015 and before January 1, 2020.

§267(d) **Modification of related-party loss rules**

In general, no deduction is allowed from sales or exchanges of property between certain related persons. However, such loss can be taken into account on a subsequent sale by the transferee. If a taxpayer acquires property from a transferor who sustains a loss on the transfer that is not allowable as a deduction because the parties were related, any gain realized by the taxpayer

upon disposition of the property is recognized only to the extent that the gain exceeds the loss allocable to the property. The Act modifies the related-party loss rules by adding an exception for transfers from tax-indifferent parties.

Therefore the general rule does not apply to the extent gain or loss is not subject to federal income tax in the hands of the transferor immediately before the transfer. The new rule precludes the importation of losses from parties that are not subject to federal income tax or to whom the item would have no substantial tax impact.

Effective for sales and other dispositions of property acquired after December 31, 2015, in a sale or exchange to which section 267(a)(1) applied.

§§355(h) and 856(c)(8)

Tax-free spinoffs involving REITs restricted

Real estate investment trusts (REITs) typically do not pay tax on distributed income, but the income is taxed to REIT shareholders. Corporations whose assets include real estate assets may contribute those assets to a subsidiary and distribute the subsidiary's stock to shareholders, in order to allow the (former) subsidiary to elect REIT status.

In some situations, section 355 provides that the distribution is tax free. Otherwise, the corporation will recognize gain on the distribution of the subsidiary stock and the recipients of the stock will be treated as receiving a dividend or as having a capital gain.

The Act restricts the application of section 355. The Act provides that section 355 does not apply to any distribution if either the distributing corporation or the controlled (subsidiary) corporation is a REIT. An exception applies if both corporations are REITs immediately after the distribution, or if the distributing corporation was a REIT for the three-year period prior to the distribution, the controlled corporation was a REIT subsidiary under section 856(l) during the period, and the distributing corporation had control of the controlled corporation at all times during the period under section 368(c).

A controlled corporation may meet the above requirements if the stock of the corporation was distributed by a taxable REIT subsidiary in a transaction under section 355, and the assets of the corporation consist solely of the stock or assets held by one or more taxable REIT subsidiary of the distributing corporation also meeting the requirements.

If a corporation was a distributing corporation or controlled corporation in a section 355 distribution, the corporation will not be eligible to elect REIT status for any tax year beginning before the end of the 10-year period following the date of the distribution.

Effective for distributions after December 6, 2015, unless the transaction was described in a ruling request submitted to the IRS on or before December 7, 2015.

§402

Period for rollovers to traditional IRAs of amounts received in certain airline carrier bankruptcies extended

If a qualified employee received an airline payment amount (payment of money or property by a commercial passenger airline made by order of a federal bankruptcy court in a case that was filed during a certain time period) and

transferred up to 90% of that amount to a traditional IRA within 180 days of receipt (or, if later, by August 12, 2012), then that transferred amount was treated as a tax-free rollover contribution.

The Act allows transfers of certain airline payment amounts from December 18, 2014 through June 15, 2016. The expanded period applies only to airline payment amounts that became such by reason of the amendment of "airline payment amount" made by the 2014 Airlines Bankruptcy Payments Rollover Act.

Effective December 18, 2014 through June 15, 2016.

§§403(b)(9), 414(c), (e), and (z), and 415

Rules on church plans clarified

Special rules apply to retirement plans that are church plans. Church plans are plans that are maintained by churches or qualified church-controlled organizations. The Act adds several provisions that affect church plans.

The Act applies aggregation rules to church plans, where one organization provides at least 80% of the operating funds for the other organization during the recipient's tax year and there is a degree of common management between the organizations. Aggregation rules are also applied to an organization that is a nonqualified church-controlled organization. These rules provide that the organization will be aggregated with one or more other nonqualified church-controlled or other non tax-exempt organizations and will be treated as a single employer, provided that at least 80% of the directors or trustees of such other organization are representatives of or controlled by such nonqualified church-controlled organization. Therefore, plans of organizations affiliated with a church may now qualify as church plans.

Additionally, the Act provides that any defined benefit arrangement in effect on September 2, 1982 that was established by a church, convention, or association of churches will be subject to applicable section 415(b) limitations, as if the arrangement were a qualified defined benefit plan.

The Act provides that a church plan may establish an "automatic contribution arrangement" and establishes rules for such arrangement similar to rules provided in section 414 for other types of plans.

Provided that both the transferor and transferee plans are maintained by the same church or association of churches, the Act allows several types of transfers of beneficiary's accrued benefit between plans without treating the transactions as distributions includable in gross income.

The Act also allows the investment of assets of a church plan or an organization designed to administer a church plan in a group trust without adverse tax consequences.

The rules on establishment of an automatic enrollment provision are effective on December 18, 2015. Rules regarding transfers or mergers between church plans are effective for transfers and mergers occurring after December 18, 2015. Rules on investment of church plans are effective for investments made after December 18, 2015. Rules on applying aggregation rules to church plans and applying contribution and benefit limits for defined benefit plans are effective for years beginning before, on, or after December 18, 2015.

The following provisions are operative for Hawaii income tax purposes.

§408(d)(8) **Rule allowing IRA distributions up to $100,000 if donated to charity made permanent**

IRA distribution rules allow certain distributions donated to charity to be tax-free if made directly by the IRA trustee to a charitable organization, private foundation, or section 4966(d)(2) donor advised fund and made after the individual for whose benefit the IRA is maintained has reached the age of 70½. Under prior law, only distributions of this type made prior to January 1, 2015 could be treated as tax-free. The Act makes the tax-free qualified charitable distribution rule permanent.

Effective for distributions made in tax years beginning after December 31, 2014.

§408(p)(1)(B) **Retirement plans for which rollovers to SIMPLE retirement accounts permitted expanded**

A simple Individual Retirement Account (IRA) account formerly allowed rollovers or transfers only from another simple IRA.

The Act permits rollover contributions to an employee's simple IRA from (1) a traditional IRA; (2) a qualified trust; (3) a qualified annuity; and (4) a governmental section 457 plan. However, no rollover contribution is permitted until after the two-year period beginning on the date the employee first participated in a qualified salary reduction arrangement maintained by the employer.

Effective for contributions made after December 18, 2015.

The following provision is NOT operative for Hawaii income tax purposes.

§451(i)(3) **Gain deferral election for qualifying electric transmission transactions retroactively restored and extended**

A taxpayer could elect to recognize gain on certain qualifying electric transmission transactions over an eight-year period if the amount realized was used to purchase exempt utility property within four years of the sale date. A qualifying electric transmission transaction was a sale or other disposition by a qualified electric utility to an independent transmission company of property used in the trade or business of providing electric transmission services, or any stock or partnership interest in an entity whose principal trade or business is the provision of the services. The deferral applied to sales made prior to January 1, 2015.

The Act retroactively extends the election through December 31, 2016.

Effective for dispositions after December 31, 2014 and before January 1, 2017.

The following provision is NOT operative for Hawaii income tax purposes.

§460(c)(6)(B)(ii) **Disregard of certain bonus depreciation in applying the percentage of completion method restored and extended through January 1, 2020**

In general, under the percentage of completion method of accounting (PCM) used for long-term contracts, depreciation and other cost recovery allowances

are taken into account as costs under the contract. Thus, increased depreciation leads to increased income for the tax year.

Certain modified accelerated cost recovery system (MACRS) property with a recovery period of seven years or less is excluded from the calculation under the PCM rules. The exclusion applies to property placed in service before January 1, 2011 and to certain long production period property placed in service before January 1, 2012.

The Act adds an additional time period during which certain MACRS property is eligible for the exclusion from the calculation under the PCM rules. The exclusion now applies to property placed in service after December 31, 2012 and before January 1, 2020 and certain long production period property placed in service after December 31, 2012 and before January 1, 2021.

Effective for property placed in service after December 31, 2014 and before January 1, 2020 and before January 1, 2021 for certain long production period property.

The following provisions are operative for Hawaii income tax purposes.

§501(h)(4)(E)

Agricultural research organizations can make lobbying expenditures test election

In general, an organization cannot be exempt from tax if a substantial part of its activities consists of attempting to influence legislation. Certain organizations can elect to use the lobbying expenditures test. Under this test, lobbying expenditures are compared to allowable amounts based on a sliding-scale percentage of the organization's exempt purpose expenditures.

Only certain organizations qualify to make the lobbying expenditures test election. The Act allows agricultural research organizations described in section 170(b)(1)(A)(ix) to make this election.

Effective for contributions made on and after December 18, 2015.

§§506, 6033(f), and 6652(c)(4); non-code section

Section 501(c)(4) organizations must register with the IRS

Formal recognition from the IRS is mandatory for organizations exempt under section 501(c)(3) but was voluntary for organizations exempt under section 501(c)(4).

The Act requires that a section 501(c)(4) organization notify the IRS that it is operating as such no later than 60 days after the organization is established. The IRS may extend the 60-day period for good cause.

The notice to the IRS must provide the organization's name, the date and state of formation, and a statement setting out the purpose of the organization. The IRS must confirm receipt of the notice within 60 days. The organization may request a determination letter. Penalties may apply for failure to timely submit the initial required notice.

Effective for section 501(c)(4) organizations formed after December 18, 2015. Effective for section 501(c)(4) organizations formed before December 18, 2015 if they have not applied for a determination letter or filed an annual return or notice under section 6033(i) before December 18, 2015.

§512(b)(13(E) **Mitigation of tax-exempt parent organization's UBTI received from a controlled entity made permanent**

Interest, rents, royalties, and annuities are generally excluded from unrelated business taxable income (UBTI) of tax exempt organizations for purposes of the tax on UBTI. If the income is received from a tax-exempt subsidiary organization, however, the income is treated as UBTI to the extent that the payment reduces the net unrelated income of the controlled entity.

A special rule was in place providing that, for payments made under a binding contract in effect on August 17, 2006 or renewal of such contract, the general rule only applied to the portion of the payments received or accrued that exceeded the amount that would have been paid or accrued had the payment been at arm's length.

A 20% penalty was imposed on the larger of the excess payment determined without regard to any amendment or supplement to a tax return, or the excess payment determined with regard to all amendments and supplements to a tax return. The special rule was not to apply to payments received after December 31, 2014.

Note that section 512 is operative for Hawaii income tax purposes but that some conditions relating to unrelated business income apply. See section 235-2.4(z), HRS.

Effective for payments received and accrued in any tax year beginning after December 31, 2014.

§529(c)(3) **Aggregation requirements eliminated for qualified tuition programs**

Distributions from a qualified tuition plan (QTP) are tax-free to the extent they are used to pay qualified higher education expenses. Any distribution used for other purposes is includable in the distributee's gross income under the section 72 annuity rules.

All QTP's of which an individual was a designated beneficiary were treated as one program, all distributions during a tax year were treated as one distribution, and the value of the contract, income thereon, and investment therein were computed as of the close of the calendar year in which the tax year began.

The Act removes the operating rules for applying the section 72 annuity rules to taxable QTP distributions. Thus all QTP's with the same beneficiary no longer must be aggregated. The portion of each multiple distributions from a QTP in a tax year that represents earnings is computed on a distribution-by-distribution basis.

Effective for distributions made after December 31, 2014.

The following provision is NOT operative for Hawaii income tax purposes.

§529(e)(3)(A)(iii) **Additions to qualified higher education expenses for QTP beneficiaries**

Distributions from a qualified tuition plan are excludable to the extent they are used to pay qualified higher education expenses. These expenses include tuition, fees, books, supplies, and equipment required for the beneficiary's

enrollment or education; costs for room and board for a student carrying at least half a normal full-time work load; and for special needs beneficiaries, expenses for special needs services that are incurred in connection with enrollment or attendance at the institution.

The Act adds expenses for the purchase of a computer or peripheral equipment, computer software, or internet access and related services to the list of "qualified higher education expenses." The equipment, software, or services must be used primarily by the beneficiary during any of the years beneficiary is enrolled at an eligible higher education institution.

Software is not a higher education expense unless the software is predominantly educational in nature.

Effective for tax years beginning after December 31, 2014.

The following provision is operative for Hawaii income tax purposes.

§529A(b)(1), (d)(3), and (e)(7)

Designated beneficiaries may open an ABLE account in any state

A qualified Achieving a Better Life Experience (ABLE) account may be established under a state's qualified ABLE program and owned by a designated beneficiary who is disable or blind. Only one account is allowed per beneficiary, and contributions are limited to the amount of the annual gift tax exclusion. Amounts in the account accumulate on a tax-deferred basis, and distributions are tax-free up to the amount of the designated beneficiary's qualified disability expenses.

ABLE accounts were only able to be established in the beneficiary's state of residence. States without ABLE programs could enter into a contract to provide its residents with access to another state's ABLE program. The Act eliminates the requirement that a qualified ABLE account be established only in the state of residence of the designated beneficiary.

Effective for tax years beginning after December 31, 2014.

The following provision is NOT operative for Hawaii income tax purposes.

§562(c), (c)(1), (c)(2), and (e)

Preferential dividend exclusion for REITs amended

Real estate investment trusts (REITs) and regulated investment companies may deduct dividends paid to their shareholders, and are required to make certain dividends to maintain their status. In order to qualify for the deduction, a dividend cannot be a preferential dividend; that is, it must be a dividend distributed pro rata to shareholders, with no preference to any share of stock compared to shares of the same class, and with no preference to one class over another except to the extent that class is entitled to preference. Publicly offered RICs had an exception to these rules, but no exception existed for publicly offered REITs.

The Act eliminates the disallowance of a deduction for preferential dividends for publicly offered REITs. A publicly offered REIT is one that is required to file annual and periodic reports with the SEC. The IRS may provide an appropriate remedy to cure a failure by a REIT to comply with the preferential dividend rules if it is determined that the failure is inadvertent or due to reasonable cause and not due to willful neglect.

Effective for distributions in tax years beginning after December 31, 2014. The IRS's authority to cure inadvertent failures applies for distributions in tax years beginning after December 31, 2015.

The following provision is operative for Hawaii income tax purposes.

§664(e) **Valuation rules on remainder interest of certain charitable remainder unitrusts clarified**

A charitable remainder unitrust (CRUT) is a trust that provides that a fixed percentage of at least 5% of the fair market value of the trust assets be paid at least annually to one or more noncharitable income beneficiaries either for a term of less than 20 years or for the life or lives of the income beneficiaries. There are two exceptions to the fixed payout rules quoted above. Upon termination, the remainder interest must be transferred to or retained for the use of a charitable organization.

The Act provides that for CRUTs qualifying for an exception from the fixed payout rules the remainder interest is calculated as if an amount equal to five percent of the net fair market value of the trust assets (or greater amount if required by the instrument) is to be distributed each year, and any net income limit is to be disregarded.

Effective for terminations of trusts occurring after December 18, 2015.

The following provision is NOT operative for Hawaii income tax purposes.

§831(b)(2)(A)(i) and (d) **Rules on noninsurance companies' election to be taxed only on investment income modified**

Insurance companies other than life insurance companies with net written premiums, or direct written premiums if greater, of not more than $1,200,000 in the tax year can elect to be taxed at regular corporate rates only on taxable investment income. The premiums written by all members of a controlled group are aggregated to determine the amount of premiums written by any member of the group. A 50% ownership test is used to determine whether a controlled group exists.

The Act increases the maximum amount of annual premiums for a company eligible for the election to $2,200,000, adjusted for inflation. Additionally, a diversification requirement is added that requires no more than 20% of the company's net premiums for the taxable year be attributable to any one policyholder. All policyholders who are related or members of a controlled group are considered one policyholder.

The requirement may also be met if no "specified holder" (a spouse or lineal descendant of an individual who holds an interest in specified assets of the insurance company) holds more than a de minimis percentage higher in aggregate assets in the company than that holder holds in the "specified assets" of the company. "Specified assets" are the trades or businesses, rights, or assets with respect to which the net written premiums of the insurance company are paid.

Effective for tax years beginning after December 31, 2016.

The following provisions are operative for Hawaii income tax purposes.

§856(c)(4)(B)(ii)

REIT's interest in taxable REIT subsidiaries limited after 2017

The assets of a real estate investment trust (REIT) are required to be at least 75% real estate assets, government securities, and cash; no more than 25% of REIT assets may be securities other than ones that qualify for the 75% asset test. With the exception of securities of a taxable REIT subsidiary, no more than 5% of the value of REIT assets may be securities of one issuer, and the REIT may not possess securities representing more than 10% of the voting power or outstanding value of any one issuer. Not more than 25% of a REIT's assets may be securities of one or more taxable REIT subsidiaries.

The Act amends the assets test. After 2017, no more than 20% of the assets of a REIT may consist of securities of one or more taxable REIT subsidiaries.

Effective for tax years beginning after December 31, 2017.

§856(c)(5)(B), (c)(3)(H), (c)(4)(B)(iii), and (c)(5)(L)

Definition of real estate assets for REITs amended

Real estate investment trusts (REITs) are required to maintain 75% of their assets as real estate assets, government securities, and cash. REITs must also comply with certain income requirements; 95% of the entity's gross income must be derived from passive sources in real estate and securities, and 75% of its gross income must be from certain real estate sources.

The Act amends the definition of "real estate assets" for REITs to include debt instruments issued by publicly offered REITs. Not more than 25% of the value of a REIT's total assets may be represented by nonqualified publicly offered REIT debt instruments. Gain on the sale of a nonqualified publicly offered REIT debt instrument does not qualify for purposes of the 75% income test described above. The Act also provides that interests in real property mortgages are treated as real estate assets.

Effective for tax years beginning after December 31, 2015.

§856(c)(5)(G)

Types of hedging income excluded from REIT gross income tests expanded

Among the income requirements for real estate investment trusts (REITs) is a requirement that at least 95% of the entity's gross income be derived from passive sources in real estate and securities. Also, 75% of the entity's gross income must be from certain real estate sources as described in previous entries.

Except to the extent provided by IRS regulations, income of a REIT from hedging transactions is not included in the REIT's gross income for purposes of the 95% income test and 75% income test, to the extent that (1) the hedging transaction hedges indebtedness incurred to acquire or carry real estate assets; or (2), the hedging transaction is designed to mitigate currency fluctuations related to items that qualify under the income tests.

The Act adds a third category of excluded hedging transactions. If a REIT enters into a hedging transaction that manages risk with respect to a prior hedge that a REIT enters in connection with the extinguishment or disposal of an asset, income from that transaction is not included for purposes of the income tests.

Effective for tax years beginning after December 31, 2015.

§856(c)(9)

Modification of treatment of personal property for purposes of REIT assets test

75% of the assets of a real estate investment trust (REIT) are required to be real estate assets, government securities, or cash. This test must be satisfied at the close of each quarter. As described above, there are also tests for the income of REITs—95% of the entity's gross income must be from passive sources in real estate and securities and 75% of its income must be from real estate sources.

The Act provides that personal property will be treated as a real estate asset for the purpose of the asset test, to the extent that rents attributable to the personal property are treated as rents from real property for the purpose of the income test. Where an obligation is secured by a mortgage on both real and personal property, and the fair market value of the personal property does not exceed 15% of the fair market value of the property, the obligation is treated as one secured by a mortgage on real property for the income test, and as a real estate asset for the purpose of the asset test.

Effective for tax years beginning after December 31, 2015.

§§856(e)(4)(C) and 857(b)(6)(C)(v), (b)(6)(D), (b)(7)(A), and (E)

Modification of treatment of services provided by taxable REIT subsidiaries

Real estate investment trusts (REITs) are subject to the income thresholds described above. A REIT is subject to a 100% prohibited transactions tax (PTT) on the net income from prohibited transactions, i.e. the income from the sale or disposition of property held by a REIT that is inventory property or property held primarily for sale to customers in the ordinary course of its trade or business. There are certain safe harbor provisions pertaining to prohibited transactions.

The Act provides that the PTT will also apply for redetermined taxable REIT subsidiary (TRS) services income. Redetermined TRS income is gross income

of a TRS attributable to services provided to or on behalf of the REIT, to the extent the amount would be increased on distribution, apportionment, or allocation under section 482. Redetermined TRS income does not include gross income attributable to services provided to tenants of the REIT.

The Act also amends the safe harbor; if the existing test is not met, substantially all of the marketing expenditures relating to the property must be made either through an independent contractor from whom the REIT did not receive any income or a TRS.

The Act also extends indefinitely the provision for TRS in the rule regarding timber REITs. The Act amends the rules for terminating the foreclosure property grace period to provide that all property will lose its status as foreclosure property if the REIT uses foreclosure property in a trade or business at any time more than 90 days after the property was acquired, other than in a trade or business conducted through an independent contractor from whom the REIT receives no income or a TRS.

Effective for tax years beginning after December 31, 2015.

§§857(d)(1), (4), and (5), and 562(e)(1)

Modification of REIT earnings and profits calculation

A real estate investment trust (REIT) and its shareholders are generally subject to rules applicable to domestic corporations. Earnings and profits (E&P) determine how distribution by the corporation to its shareholders will be taxed. REITs must meet certain minimum distribution requirements to avoid corporate level tax. To maintain REIT status, a REIT must make dividend distributions to its shareholders equal to the sum of 90% of the REIT taxable income without regard to the deduction for dividends paid. A REIT may lack E&P to treat distributions as dividends and thus may fail to meet its distribution requirement.

The Act provides that the E&P of a REIT for any taxable year are not reduced by an amount not allowable in computing its taxable income and that was not allowable in computing its taxable income for a prior year.

Effective for taxable years beginning after December 31, 2015.

§857(g)

Limitation placed on dividend designations by REITs

Real estate investment trusts (REITs) are allowed to deduct dividends they pay, which allows them to pass through their income to shareholders without tax at the entity level. REITs may also pass through the character of capital gains and qualified dividend income taxed at capital gains rates to their shareholders.

The Act provides that the aggregate amount of dividends designated by a REIT as capital gains dividends cannot exceed the dividends paid by the REIT for that year. Dividends paid after the close of the year are treated as paid for the prior year.

Effective for distributions in tax years beginning after December 31, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

§871(k)(1)(C) and (k)(2)(C)

Withholding-tax exemption for regulated investment company interest-related and short-term capital gains dividends paid to foreign persons permanently extended

The American Jobs Creation Act of 2004 allowed a regulated investment company to pay interest-related dividends out of interest that generally would not be taxable if received by a foreign person and short-term capital gains dividends out of short-term capital gains. Such dividends were generally not taxable and not subject to withholding. The above treatment applied to dividends paid before January 1, 2015.

The Act permanently extends the withholding tax exemption on certain interest-related and capital gains related dividends.

Effective for tax years beginning after December 31, 2014.

§897(c)(1)(B)

Definition of U.S. real property interest amended

Gain from a U.S. real property interest (USRPI) is treated as income effectively connected with a U.S. trade or business under the Foreign Investment in Real Property Act (FIRPTA). FIRPTA gain is subject to tax and withholding. Under certain circumstances, beneficial interest in a U.S. real property holding corporation is not considered a USRPI.

The Act adds a new requirement for this treatment requiring that neither the corporation nor any predecessor of the corporation was a regulated investment company or a real estate investment trust at any time during the relevant periods.

Effective for dispositions on or after December 18, 2015.

§897(h)(4)(A)

Inclusion of regulated investment companies in definition of qualified investment entity extended for certain Foreign Investment in Real Property Tax Act purposes retroactively restored and extended

A qualified investment entity (QIE) generally must withhold tax on a distribution to a foreign person or to another QIE to the extent the distribution is attributable to Foreign Investment Real Property Tax Act (FIRPTA) gain. FIRPTA gain is generally gain on United States Real Property Interests (USRPIs), and includes stock in United States real property holding corporations (USRPHCs). However, under the regularly traded exception, stock that is regularly traded is not a USRPI, and thus cannot generate FIRPTA gain, unless a foreign person holds more than 5% of that class of stock during the 5 year period before the disposition or the taxpayer's shorter holding period. Additionally, under the domestically controlled exception the stock of a domestically controlled QIE is not a USRPI.

Section 897(h)(4)(A)(i)(II) allows regulated investment companies (RICs) to qualify as QIEs if the RIC is a USRPHC or would be if the regularly traded exception and the domestically controlled exception did not apply. Thus, in general, gain on the sale of RIC stock is not FIRPTA gain and is not subject to tax or withholding. The inclusion of RICs in the definition of QIEs expired December 31, 2011.

The Act restores the inclusion of RICs in the definition of QIEs and makes the inclusion permanent.

Effective January 1, 2015. However, the amendments do not apply with respect to withholding requirements under section 1445 for any payment made before December 18, 2015.

§897(h)(4)(E) and (k)

Exception from FIRPTA for certain stock of REITs

An exception to the Foreign Investment Real Property Tax Act (FIRPTA) exists for foreign shareholders of certain publicly-traded corporations. Under prior law, the exception applied to any class of stock of a domestic corporation that was regularly traded on an established securities market, but only if held by a person who did not actually or constructively own more than 5% of that class of stock.

Distributions by real estate investment trusts (REITs) to foreign persons, to the extent attributable to gains or sales of a United States Real Property Interest (USRPI), are treated as gain recognized from the sale or exchange of a USRPI. Certain distributions from a REIT to foreign taxpayers owning less than a 5% interest were exempt. Special rules applied if foreign investments were held through a qualified investment entity.

The Act modifies the ownership rules. In the case of REIT stock only, the Act increases the ownership a shareholder may hold from 5% to 10%. The percentage ownership threshold that results in treating distributions as dividends rather than FIRPTA gain is likewise changed from 5% to 10%.

The Act additionally provides that, as long as the 10% rule is not exceeded, a qualified shareholder may own and dispose of any amount of REIT stock without the application of FIRPTA.

Effective for dispositions on or after December 18, 2015; effective for any distribution by a REIT on or after December 18, 2015 that is treated as a deduction for a taxable year ending after December 18, 2015. The application of the exception to the application of FIRPTA is effective December 18, 2015.

§§897(l) and 1445(f)(3)

Foreign retirement and pension funds not subject to FIRPTA

Gain from the disposition of a United States Real Property Interest (USRPI) is typically treated as income effectively connected with a U.S. trade or business under the Foreign Investment Real Property Tax Act (FIRPTA), and is subject to tax.

The Act provides that FIRPTA provisions do not apply to any USRPI held directly by, or to any distribution received from a real estate investment trust by, a qualified foreign pension fund, or any entity wholly held by a foreign pension fund.

A “foreign pension fund” is a trust, corporation, or other organization which (A) is created under the laws of a country other than the US; (B) is established to provide retirement or pension benefits to participants or beneficiaries that are current or former employees (or designees of employees) of one or more employers in consideration of services rendered; (C) does not have a single participant or beneficiary with a right to more than 5% of its assets or income; (D) is subject to government regulation and provides annual information reporting about its beneficiaries to the tax authorities in the country in which it

operates; and (E) as to which contributions are deductible or excluded from the gross income of the entity or taxed at a reduced rate, or taxation of any investment of the trust, corporation, or other organization is deferred or taxed at a reduced rate.

Effective for dispositions and distributions after December 18, 2015.

§§953(e) and 954(h)

Subpart F exception for active financing income made permanent

Subpart F of the IRC requires United States taxpayers who are 10% shareholders of a controlled foreign corporation (CFC) to include in income a pro rata share of the CFC's insurance income and adjusted net foreign base company income. Sections 953(e) and 954(h) allow multiple exemptions from the general inclusion of Subpart F. The exemptions applied to tax years of foreign corporations beginning before January 1, 2015 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

The Act makes the Subpart F exception permanent.

Effective for tax years of foreign corporations beginning after December 31, 2014 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

§954(c)(6)(C)

Look-through treatment for payments between related controlled foreign corporations under foreign personal holding company income rules extended

Subpart F of the IRC requires United States taxpayers who are 10% shareholders of a controlled foreign corporation (CFC) to include in income a pro rata share of the CFC's subpart F income. For this purpose subpart F income does not include dividends and interest received from a related corporation from the same country or rents and royalties from a related corporation on property within the country the CFC is organized in.

Look-through treatment applied to dividends, interest, rents, and royalties received by one CFC from a related CFC and the payments were not subpart F income to the extent attributable to non-subpart F income or income that was not effectively connected with the conduct of a United States trade or business of the payor. The look-through treatment applied for tax years beginning before January 1, 2012.

The Act extends the look-through treatment for dividends, interest, rents, and royalties paid between related CFCs to apply to tax years beginning before 2020 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

Effective for tax years of foreign corporations beginning after December 31, 2014 and before January 1, 2020, and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

The following provisions are operative for Hawaii income tax purposes.

§1016 **Qualifying clean coal power grants excluded from gross income**

Federal financial assistance under the Clean Coal Power Initiative is available to taxpayers meeting the specified criteria. Corporate taxpayers may have been eligible to exclude this type of financial assistance from gross income as a contribution to capital, but an equivalent exclusion from income was not available to noncorporate shareholders.

The Act provides that for an eligible taxpayer other than a corporation, gross income does not include any amount received under the Clean Coal Power Initiative. (Section 402, PL 109-458, 08/08/2005). For any amount so received, taxpayer is eligible if they make a payment to the IRS equal to 1.18% of the amount received. The exclusion will not apply to any amount unless it could be excluded from the gross income of a corporation under section 118.

The basis of any depreciable property acquired with an excluded amount during the 12-month period beginning on the day the amount was received is reduced by that amount. The excess of that amount over the amount of the reduction is applied to the reduction of the basis of any other property held by the taxpayer.

Effective for amounts received in taxable years beginning after December 31, 2011.

§1201(b) **23.8% tax rate applies to a corporation's qualified timber gains for its tax year that begins in 2016**

Taxpayers can elect to treat the cutting of timber that the taxpayer owned or held a contract to cut for more than one year as a sale or exchange. If the election is made, a gain or loss is recognized in an amount equal to the difference between the fair market value of the timber on the first day of the tax year and the adjusted basis for depletion of the timber in the hands of the taxpayer.

For most corporations that are subject to a corporate level tax, there is an alternative tax for corporations with a "net capital gain" that applies if it results in a tax less than the tax that would be imposed under the regular tax rates.

The Act applies the alternative tax on net capital gains for any tax year beginning in 2016 for which a corporation has both a net capital gain and "qualified timber gain." Under the alternative tax, the qualified timber gain is taxed at a rate of 23.8%.

Qualified timber gain consists of the gains and losses described in section 631(a) or section 631(b). Timber to which these sections apply is governed by the capital gain/ordinary loss rules of §1231. "Qualified timber gain" is, only for timber held for more than 15 years, the excess (if any) of the sum of taxpayer's gains described in section 631(a) or section 631(b) for the year, over the sum of taxpayer's losses described in section 631(a) or section 631(b) for the year.

The Act additionally removes the rules for computing the alternative minimum tax of a corporation that has qualified timber gain.

Effective for tax years beginning after December 31, 2015.

The following provision is NOT operative for Hawaii income tax purposes.

§1204(a)(4) **100% exclusion of gain on certain small business stock retroactively restored and made permanent**

Section 1202 allows noncorporate taxpayers an exclusion of gain on the sale of qualified small business stock held for more than five years. The general rule is a 50% exclusion. Section 1202(a)(4) allowed a more generous exclusion of 100% of the gain on qualified small business stock.

The Act deletes permanently extends the 100% exclusion.

Effective for stock acquired after December 31, 2014.

Note that while section 1202 is generally operative for Hawaii income tax purposes, section 1202(a)(4) containing the 100% exclusion rule is not operative.

The following provisions are operative for Hawaii income tax purposes.

§1367(a)(2) **Reduction of S corporation's shareholder's basis only by basis of contributed property made permanent**

Section 1367(a)(2) provides that when an S corporation makes a charitable contribution the corresponding reduction in the shareholders' basis is limited to the basis of the property contributed and applied on a proportionate basis to each shareholder.

The Act permanently extends the rule.

Effective for contributions made in tax years beginning after December 31, 2014.

§1374(d)(7) **Shortened S Corp built-in gains holding period permanently extended**

In general, S corporations are taxed at the highest rate on gains attributable to built-in gain realized during the recognition period. The recognition period is the first 10 years after a conversion from a C corporation. Under special rules, the recognition period was temporarily shortened to 7 years and then to 5 years.

The Act retroactively extends the shortened 5-year recognition period to apply to all tax years beginning after December 31, 2014.

Effective for tax years beginning after December 31, 2014.

The following provisions are NOT operative for Hawaii income tax purposes.

§1391(d)(1)(A)(i) **Empowerment zone designation period retroactively restored and extended**

Certain distressed urban and rural areas can be designated as empowerment zones by state or local governments. Empowerment zones are eligible for a range of special tax incentives. The basic empowerment zone is a "Round 1" zone. Round 1 zones remain in effect until December 31, 2013 or a designated termination date, whichever is earlier, or until revoked.

The Act provides that the earliest termination date for an empowerment zone designation is December 31, 2016. The provision extends the empowerment zone designation for two years.

Effective for tax years beginning after December 31, 2014 and before January 1, 2017.

§1394(b)(3)(B)(i)(I), (II), and (III), (b)(3)(C), and (b)(3)(D)(iii)

Employee-residents of a qualified low-income community can meet the requirement to allow a business to qualify for purposes of the tax-exempt enterprise zone facility bond rules

For areas designated as enterprise communities or empowerment zones, tax-exempt bond financing can be used to finance facilities used by an enterprise zone business.

For a business to qualify as a qualified business entity or a qualified proprietorship, at least 35% of the employees of the business have to be residents of an empowerment zone or enterprise community. Residents of a qualified low-income community were not included in this calculation.

The Act provides that, for the purposes of section 1397C(b)(6) and section 1397(c)(5), an employee is treated as a resident of an empowerment zone if the employee is a resident of an empowerment zone, an enterprise community, or a qualified low-income community within an applicable nominating jurisdiction. A qualified low-income community is a census tract in which the poverty rate is at least 20% or the median family income for that tract does not exceed 80% of statewide median family income or metropolitan median family income if the tract is located in a metropolitan area.

Effective for bonds issued after December 31, 2015.

§1445(a), (c)(4), (e)(3), (e)(4), and (e)(5)

Rate of FIRPTA withholding increased to 15%

Foreign investors are not generally subject to tax on U.S. source capital gain income unless it is effectively connected with a U.S. trade or business, or it is realized by an individual who meets certain presence requirements. Gain from disposition of a U.S. real property interest (USRPI) is treated as income connected with a U.S. trade or business under the Foreign Investment in Real Property Tax Act (FIRPTA). This gain is subject to tax and withholding. Stock or a beneficial interest in a U.S. real property holding corporation (USRPHC) is a USRPI.

Under prior law, if a foreign person disposed of any USRPI, the transferee was required to withhold at the rate of 10% of the amount of the disposition. A USRPHC was required to withhold at the rate of 10% of the amount of certain distributions of property to foreign shareholders. A partnership, trustee of a, or executor was required to withhold 10% of the fair market value of any USRPI distributed to a foreign partner or foreign beneficiary. The transferee of a partnership interest or beneficial interest in a trust or estate was required to deduct 10% of the amount realized on the disposition, if 50% or more of the value was USRPIs and 90% of the value is USRPIs plus cash.

The Act raises the FIRPTA rates to 15%. The Act also provides for a reduced FIRPTA withholding of 10% if the property is acquired by the transferee as a residence, as to which the amount realized does not exceed $1,000,000, and to which the exemption for a residence bought for $300,000 or less does not apply.

Effective for dispositions after February 16, 2016.

The following provision is operative for Hawaii estate and generation-skipping transfer tax purposes.

§2501(a)(6)

Gift tax does not apply to transfers to certain tax-exempt organizations

Under prior law, transfers to section 501(c)(4), 501(c)(5), and 501(c)(6) organizations were possibly subject to gift tax.

The Act provides that the gift tax does not apply to the transfer of money or other property to section 501(c)(4), 501(c)(5), and 501(c)(6) organizations.

Effective for gifts made after December 18, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

§§3121(a)(1), 3306(b)(1), and 3512

All remuneration paid by a motion picture project employer to a motion picture project worker during a year is subject to a single FICA OASDI, and single FUTA wage base

Under prior law, if an employee worked for multiple common-law employers during the year, then separate old age, survivor, and disability insurance (OASDI) and Federal Unemployment Tax Act (FUTA) wage bases apply in determining the employer share of OASDI tax and FUTA tax for each common law employer, even if the wages from all employers are paid by the same third party statutory employer. After 2015, businesses can shift their payroll tax liability to certain IRS-certified professional employer organizations.

The Act provides that remuneration paid to a "motion picture project employee" during the calendar year will be treated as remuneration paid for employment of that worker during the calendar year. The employer's identity will be determined without regard to common law rules applicable in determining the employer-employee relationship.

Therefore all remuneration paid by the motion picture project employer (e.g., a payroll service company) to a motion picture project worker is subject to a single OASDI wage base and a single FUTA wage base, even if the worker is the common law employee of multiple entities during the year.

Effective for remuneration paid after December 31, 2015.

§4191(c) **Medical device excise tax suspended for sales in 2016 and 2017**

There is an excise tax of 2.3% of the sales price of taxable medical devices, defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act. The excise tax on medical devices is in effect for sales after December 31, 2012.

The Act suspends the medical device excise tax for two years. The tax does not apply to sales for the period beginning on January 1, 2016 and ending on December 31, 2017.

Effective for sales after December 31, 2015 and before January 1, 2018.

The following provision is operative for Hawaii income tax purposes.

§6015(e)(6) **Time for filing a petition for Tax Court review of IRS denial of spousal relief suspended during bankruptcy review plus 60 days**

A person who has made the innocent spouse or separate liability election or has requested equitable relief can petition the Tax Court to determine the appropriate relief available under the rules for those elections. The time for filing the petition with the Tax Court is any time after the earlier of the date the IRS mails notice of the IRS's final determination of relief, or the date which is six months after the date the election is filed with the IRS or the request under section 6015(f) is made, but no later than the close of the 90th day after the IRS mails its notice of determination.

The Act suspends the 90-day period described above for a person who is prohibited by reason of a bankruptcy case under Title 11. The 90-day statutory period is suspended for the period during which the person is prohibited from filing the petition, and for 60 days after that date.

Effective for petitions for spousal relief filed after December 18, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

§6031(b) **Consistency requirement for partner's tax return for post-2017 returns**

A partner must treat a partnership item on its return in a manner consistent with the treatment of that partnership item on the partnership return. The requirement does not apply for an item if a statement identifying the inconsistency is filed with the IRS.

The Act applies the consistency requirement to each item of income, gain, loss, deduction, or credit attributable to a partnership. An underpayment of tax by a partner because of an inconsistent position that is not disclosed will be treated as if the underpayment were due to a mathematical or clerical error. Any final decision as to an inconsistent decision identified in a proceeding to which the partnership is not a party is not binding on the partnership. The Act also provides that the information required to be furnished by the partnership to the partners may not be amended after the due date of the partnership return to which that information relates except in certain circumstances.

Effective for returns filed for partnership tax years beginning after December 31, 2017, except a partnership may elect to apply these rules to a partnership return filed for partnership tax years beginning after November 2, 2015 and before January 1, 2018.

§§6045(g)(2)(B)(iii), 6721(c)(3), and 6722(c)(3)) **Brokers not required to correct a customer's adjusted basis in securities due to de minimis errors on information returns; safe harbor for de minimis errors on information returns and payee statements**

Brokers that are required to file an information return regarding the gross proceeds of a "covered security" must include the customer's adjusted basis and whether any gain or loss is short term or long term. Penalties apply for failure to include correct information, except where there is reasonable cause and no willful neglect. Penalties also apply for failure to furnish a payee statement to the person prescribed on or before the date prescribed and failure to include all of the information required to be included on the payee statement.

The Act adds a safe harbor for incorrect information on an information return. No correction is required if no single amount in error differs from the correct amount by more than $100 and no single amount reported for tax withheld on any information return differs from the correct amount by more than $25. A similar safe harbor is added for payee statements—errors in dollar amounts of less than $100 and errors in tax withheld of less than $25 will not result in a penalty.

The Act provides that, for brokers' required information returns, any incorrect dollar amount that is not required to be corrected due to the Act's addition of these safe harbors will be treated as the correct amount.

Effective for returns to be file and payee statements required to be provided after December 13, 2016.

§6050S(b)(2)(B)(i) **Only qualified tuition and related expenses actually paid can be reported on higher education information returns**

Eligible higher education institutions must complete information returns regarding individuals enrolled in higher education programs. Among the

information required to be reported under prior law was the aggregate amount of payments received or the aggregate amount billed for qualified tuition with respect to the individual for whom the return is being filed.

The Act removes the option of including the aggregate amount billed for qualified tuition and related expenses with respect to the individual for whom the information return is being filed. Thus, filers of Form 1098-T must include the aggregate amount of payments received for qualified tuition and related expenses when completing the return.

Effective for expenses paid after December 31, 2015, for education furnished in periods beginning after December 31, 2015.

§6050S(b)(2)(C) **Eligible educational institutions must report their EINs on information returns related to higher education tax benefits**

Eligible educational institutions to which qualified tuition and related expenses are paid are subject to reporting requirements, including filing Form 1098-T, for individuals for any academic period.

The Act provides that, in addition to the information already required on the 1098-T, an eligible educational institution to which qualified tuition and related expenses are paid must also include its employer identification number on the information return.

Effective for expenses paid after December 31, 2015 for education furnished in academic periods beginning after December 31, 2015.

§6051(a)(2) **IRS authority to require truncated SSNs on Form W-2 extended**

Among other information, the W-2 statement provided to an employee must contain the employee's social security account number (SSN) if wages have been paid.

The Act requires that employers provide an "identifying number" for an employee on a W-2 rather than an SSN. This change will allow the IRS to promulgate regulations requiring or permitting a truncated SSN under authority currently provided by section 6109.

Effective December 18, 2015.

§6071(b) and (c) **Filing due date accelerated for reporting employee wage and nonemployee compensation**

For employers, the filing due date for Form W-3 was February 28 of the year after the year to which the returns relate and the last day of February for Form 1099-MISC. If either was filed electronically, the due date was March 31 in the calendar year after the year for which the return had to be filed.

The Act provides that Forms W-2 and W-3 and any returns or written statements required by the IRS to report nonemployee compensation must be filed by January 31 of the calendar year after the year to which the returns relate. The electronic filing due date remains for employee and payee statements, the extended electronic filing date is no longer available for Form W-2.

Effective for returns and statements relating to calendar years beginning after December 18, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

§6103(e)(11) **Certain information may be disclosed to persons who informed IRS of violations of sections 7123, 7123A, or 7214**

Under prior law a person providing information to the IRS indicating a violation of the return disclosure rules of section 7123, 7123A, or 7214 was not authorized to have confidential information disclosed to them.

The Act allows the IRS to disclose to persons who provide information about section 7123, 7123A, or 7214 violations whether an investigation based on the person's advice has been initiated and whether it remains open or is closed, whether the investigation substantiated the person's suspicions of a violation, and whether any action has been taken with respect to any individual because of the investigation.

Effective for disclosures of information made on or after December 18, 2015.

§6109(i) **ITIN issuance requirements modified**

Taxpayers not eligible for a social security number may apply for an IRS individual taxpayer identification number (ITIN). Under prior law such application could be made by mail or by bringing forms and materials to a designated Taxpayer Assistance Center or an IRS office overseas, or taxpayers could use an acceptance agent. The ITIN would be deactivated if it was not used during any tax year for a period of five consecutive years, regardless of when it was issued.

The Act allows taxpayers residing in the U.S. to submit their application and materials to community-based acceptance agents, or by mail. In the case of applicants residing outside the U.S., the applicant may apply to an IRS employee or designee of the Secretary at a U.S. diplomatic mission or consular post, or by mail.

The IRS will make rules for accepting applications by mail. Documents submitted must meet IRS requirements. In addition, the IRS must develop procedures that identify ITINs used solely for purposes of claiming tax treaty benefits.

The Act also provides that ITINs will remain in effect until a specified date that differs depending on when the ITIN is issued, or if the individual does not file a tax return for three consecutive years, the earlier of the last day of the third consecutive year or the last day of the tax year that includes December 18, 2015.

The Act additionally requires the IRS to develop a program to train community-based acceptance agents. The Act also requires that the IRS program for the issuance of ITINs be audited by the Treasury Inspector General for Tax Administration, and requires the IRS to conduct a study on the effectiveness of the application process.

Effective for applications for individual taxpayer identification numbers made after December 18, 2015.

§6123(g)(2)(K) EIC claim by barred taxpayer is math error

If a return contains a mathematical or clerical error that is listed in section 6123, the IRS can summarily assess the additional tax due without sending the taxpayer a deficiency notice. Because the error notice that is required to be sent is not a 90-day letter, the taxpayer cannot contest the assessment in Tax Court.

If a taxpayer erroneously claims the earned income credit (EIC) due to recklessness or intentional disregard of the rules, they are ineligible to claim the EIC for a period of ten years. If a barred taxpayer attempted to claim the EIC during the barred period, prior law required sending that taxpayer, that claim was not a mathematical or clerical error as described above.

The Act provides that an EIC claim by a taxpayer barred from claiming the EIC because of a prior reckless claim or intentional disregard of the rules is a mathematical or clerical error, and the IRS has authority to make a summary assessment.

Effective for tax years beginning after December 31, 2015.

§6213(g)(2)(O) Inclusion of invalid ITIN is treated as math error

Under prior law, if a taxpayer included an individual taxpayer identification number (ITIN) that was expired, revoked, or otherwise invalid on his or her tax return the IRS could not make a summary assessment and had to send a 90-day letter, as the invalid ITIN was not a mathematical or clerical error as described above.

The Act provides that, if a taxpayer includes an ITIN that has expired, been revoked, or is otherwise invalid on his or her return, it is a mathematical or clerical error and the IRS may summarily asses the taxpayer.

Effective for applications for ITINs made after December 18, 2015.

The following provisions are NOT operative for Hawaii income tax purposes.

§6225(c)(4)(a)(i), (5)

How IRS adjustments will be taken into account at the partnership level for post-2017 returns

See digest of the Bipartisan Budget Act of 2015, above, for a discussion of this code section, as amended

§6226(d)

Election to take IRS audit adjustments into account at the partner level for partnership returns after 2017

See digest of the Bipartisan Budget Act of 2015, above, for a discussion of this code section, as amended.

§6234(a)(3), (b)(1), and (d)

Judicial review of partnership adjustments for post-2017 partnership returns

See digest of the Bipartisan Budget Act of 2015, above, for a discussion of this code section, as amended

§6235(a)(2) and (a)(3)

Limitations periods for IRS adjustments for post-2017 partnership returns

See digest of the Bipartisan Budget Act of 2015, above, for a discussion of this code section, as amended.

§6330(d)(1) and (d)(2)

Time for filing a petition for Tax Court review of a levy and other collections actions is suspended during bankruptcy automatic stay plus 30 days

The IRS cannot levy against a person's property unless it gives the person a notification in writing of his or her right to a pre-levy Collection Due Process (CDP) hearing. The person can appeal the determination to the Tax Court. Under prior law the taxpayer had to appeal the determination to the Tax Court within 20 days after the date the notice of determination was issued.

The Act provides that for a person who is prevented by reason of a bankruptcy case under Title 11 of the United States Code from filing a petition, the running of the 30-day period for filing the petition is suspended for the period the taxpayer is prevented from filing the petition, plus 30 days. The Act additionally provides that a taxpayer can, within 30 days of a CDP determination, petition the Tax Court for a review of the determination.

Effective for petitions filed for collection proceedings under §6330 after December 18, 2015.

§6402(m)

Extended time to review refund claims based on CTC and EIC

The Act provides that no credit or refund on an overpayment for a tax year will be made to a taxpayer before the 15th day of the second month following the close of a tax year if a refundable child tax credit or earned income credit is allowed to the taxpayer for the tax year. Because individuals are generally calendar year taxpayers, this means that a refund for most taxpayers claiming these credits will not be made before February 15th of the following year. This change gives the IRS more time to review refund claims.

Effective for credits or refunds made after December 31, 2016.

§6404(h)

Taxpayer can seek Tax Court review of interest abatement claim if IRS does not issue final determination

Under prior law, if the IRS did not mail a final determination regarding an abatement of interest claim, the Code did not authorize the filing of a Tax Court petition and the taxpayer was unable to seek judicial review of the claim.

The Act provides that the Tax Court may order an abatement if taxpayer's action is brought after the earlier of the mailing of the IRS's final determination not to abate the interest or the date 180 days after the filing with the IRS of a claim for abatement under the general abatement rules. The Court cannot act if taxpayer's action is brought more than 180 days after the mailing of the IRS's final determination not to abate the interest.

Effective for claims for abatement of interest filed with the IRS after December 18, 2015.

§§6426(c)(6) and 6427(e)(6)(B)

Biodiesel/renewable diesel excise tax credits and refunds retroactively extended

An excise tax credit was available for producing a biodiesel mixture and was applied against a taxpayer's removal-at-terminal excise tax liability. To the extent that the credit exceeded taxpayer's excise tax liability, it was refundable. The incentives expired December 31, 2014.

The Act retroactively extended the excise tax credit and refund provisions to apply to sales or uses before January 1, 2017.

Effective for fuel sold or used after December 31, 2014 and before January 1, 2017.

The following provisions are NOT operative for Hawaii income tax purposes.

§§6426(d)(5), (e)(3), (e)(6)(3), (j), and 6427(e)(6)(C)

Alternative fuel incentives retroactively extended through 2016 and modified

Prior law allowed a $0.50 per gallon excise tax credit against retail fuel excise tax liability and removal at terminal excise tax liability for alternative fuel sold for use or used by the taxpayer. The credit applied against excise tax was refundable if it exceeded taxpayer's excise tax liability, or in certain circumstances could be applied against income tax liability. The incentives did not apply to sales after December 31, 2014.

The Act extends the credits to apply to sales before January 1, 2017. The Act additionally modifies provisions relating to liquid petroleum gas (LPG) and liquid natural gas (LNG) to reflect changes to the excise tax rate on these products.

Changes to LNG and LPG are effective for fuel sold or used after December 31, 2015. The extension of the credit and refund provisions is effective for fuel sold and used after December 31, 2014 and before January 1, 2017.

§§6664(a) and 6676(a) and (c)

Treatment of credits modified for accuracy-related, fraud, and erroneous claims penalties

A penalty is imposed on certain underpayments of tax. The accuracy-related penalty is generally imposed at the rate of 20% on underpayments attributable to negligence or disregard of rules or regulations, substantial understatements, and similar offenses. If the underpayment is due to fraud, the penalty is imposed at a rate of 75% of the portion of the underpayment which is attributable to fraud. "Underpayment" is the amount by which the tax exceeds the sum of the amount shown as the tax by the taxpayer plus amounts previously assessed over the amount of rebates made.

Under prior law the amount of tax shown on the return used in calculating the underpayment could not be less than zero. Additionally, if a claim for refund or credit of income tax was made for an excessive amount, the person making the claim was liable for a penalty equal to 20% of the excessive amount unless it was shown that the claim had a reasonable basis.

The Act provides that, when computing an underpayment for the purposes of the accuracy-related and fraud penalties, the excess of refundable credits over the tax is taken into account as a negative amount of tax. The Act additionally removes an exception from the erroneous claims penalty for the earned income credit and changes the standard for penalty relief from having a reasonable basis to the claim being due to reasonable cause.

The amendment to the definition of underpayment applies to tax returns filed after December 18, 2015, and tax returns filed before that date if the assessment period for the taxes to which the return applies has not expired. The removal of the earned income credit exception from the erroneous claims penalty applies to claims filed after December 18, 2015. The change in the standard for penalty relief applies December 18, 2015.

§6694(b)(1)(B)

Tax preparer penalty for willful or reckless conduct increased

The penalty for a tax return preparer who prepared a return or claim for refund for which any part of an understatement was due to willful or reckless conduct was subject to a penalty equal to the greater of $5,000 or 50% of the income derived or to be derived by the preparer as to the return or claim.

The Act increased the penalty to the greater of $5,000 or 75% of the income derived or to be derived by the preparer as to the return or claim.

Effective for tax returns prepared for tax years ending after December 18, 2015.

§6695(g)

Penalty for lack of due diligence by return preparer extended to determinations of eligibility for CTC and AOTC

Tax preparers who fail to comply with regulatory due diligence requirements with respect to determining eligibility for or the amount of the earned income tax credit are required to pay a penalty of $500 for each such failure. The due diligence requirements covers both determination of eligibility for the credit and amount of the credit, and compliance with the requirements must be documented.

The Act extends this penalty to return preparers who prepare federal income tax returns on which a child tax credit is claimed or on which the American

Opportunity tax credit is claimed. Due diligence requirements similar to those for the earned income tax credit apply.

Effective for tax years beginning after December 31, 2015.

§§6721(c)(3) and 6722(c)(3)

Safe harbor for de minimis errors on information returns and payee statements

Anyone required to file an information return with the IRS who fails to do so before the filing date or includes incorrect information on the information return is subject to a penalty. Any person who fails to provide a payee statement to the person to whom it is required to be furnished, or who includes incorrect information on the payee statement, is also subject to a penalty. The penalties are not imposed if the failure is due to reasonable cause, and may vary depending on the circumstances.

The Act provides that, for information returns, if no single amount in error differs from the correct amount by more than $100 and no single amount reported for tax withheld differs from the correct amount by more than $25, then the information return will be treated as having been filed with all the correct information. For payee statements, the same amounts apply, but the exception will not apply if the person to whom the payee statement is required to be furnished makes an election with the IRS that the payee statement safe harbor not apply. To the extent that errors on information returns relate to an amount for which this election is made, the exception for information statements will also not apply.

Effective for information returns required to be filed and payee statements required to be furnished after December 31, 2016.

The following provisions are NOT operative for Hawaii income tax purposes.

§7123(c)

IRS appeals allowed for adverse determination of tax-exempt status

The Act requires the IRS to set forth procedures under which an organization that claims tax-exempt status may request an administrative appeal to IRS Appeals of certain adverse determinations. These determinations include the qualification of the organization as exempt from tax under section 501(a) or as an organization that qualifies under section 170(c)(2); the classification of the organization as a private foundation, and the classification of the organization as a private operating foundation.

Effective for determinations made on or after May 19, 2014.

§7428(a)(1)(E) **Declaratory judgment procedure for section 501(c)(3) organizations extended to other section 501(c) and section 501(d) organizations**

Section 501(c)(3) organizations may obtain a judicial determination of their initial or continuing status as a tax-exempt organization, and as an eligible charitable contribution donee, a private foundation, a private operating foundation, or a farmer's cooperative organization. Taxpayers may challenge an adverse determination by the IRS by initiating a declaratory judgment action.

The Act provides that such declaratory judgment actions are available to section 501(c) or 501(d) organizations.

Effective for pleadings filed after December 18, 2015.

§7441 **Clarification of the nature of the U.S. Tax Court**

The Tax Court is established by Congress under the powers provided in Article I of the Constitution. The President has the power to remove Tax Court judges after notice and opportunity for hearing based on inefficiency, neglect of duty, or malfeasance in office, but not for any other cause.

The Act provides that the Tax Court is not an agency of, and is independent of, the Executive Branch of the government.

Effective December 18, 2015.

§7453 **Tax Court must follow rules of evidence in certain trials**

In general, the Tax Court can prescribe its own rules of practice and procedure, but prior law required that it use the statutory Federal Rules of Evidence applicable to non-jury trials in the U.S. District Court for the District of Columbia. Exceptions were for statutory small tax cases and proceedings for determination of employment status, in which the Court could prescribe rules of evidence of its choosing.

The Act provides that the proceedings of the Tax Court and its divisions shall be in accordance with the Federal Rules of Evidence, except in the aforementioned small tax and determination of employment status cases. This is a change from the evidentiary rules applied by the District Court of the District of Columbia.

Effective for proceedings commenced after December 18, 2015 and to prior proceedings to the extent practicable.

§7463(f)(3) **Taxpayers may use small tax case procedures for review of IRS decisions not to abate interest of up to $50,000**

Under prior law there was no provision specifically making small tax case procedures available to the tax court for review of IRS decisions not to abate interest.

The Act provides that at the taxpayer's option and with the concurrence of the Tax Court before the case is heard, the proceeding for review of an IRS determination not to abate interest in which the amount of interest does not exceed $50,000 may use the procedures for small tax cases.

Effective for cases pending as of December 18, 2015 and cases commenced after December 18, 2015.

§7466 **Tax Court must provide rules for filing, investigating, and acting upon conduct complaints and disability allegations against Tax Court judges**

Article III courts have procedures in place for any person to file a complaint that a judge is unable to perform his or her duties due to disability or that the judge has acted prejudicially. Some Article I courts have similar procedures.

The Act requires the Tax Court to prescribe rules consistent with the rules for Article III courts establishing procedures for filing complaints with respect to the conduct of any judge of the Tax Court and the investigation and resolution of these complaints.

Effective for proceedings commencing after June 15, 2016 and applicable to proceedings pending on June 15, 2016 to the extent practicable.

§7470 **General management, administrative, and expenditure authorities extended to Tax Court**

Under prior law, the Tax Court did not have certain general authorities usually available to other Article I courts.

The Act provides that the Tax Court may exercise the authorities provided for purposes of management, administration, and expenditure of funds applicable to a court of the United States. The Act provides the Tax Court with the same general management authority available to other Article I courts.

Effective December 18, 2015.

§7470A **Tax Court given authority to conduct annual judicial conferences**

The Act provides that the Tax Court has authority to conduct annual judicial conferences. The Court is authorized to impose a reasonable fee for participation in the annual conference and may use the fees to defray expenses of the conference. By its rules the Court must allow for representation at the conference by persons admitted to practice before the Tax Court and other persons active in the legal profession.

Effective December 18, 2015.

§7473 **Most fees received by Tax Court to be deposited in a special Treasury fund appropriate for Court's operation and maintenance**

Under prior law, fees received by the Tax Court were paid into the Treasury as miscellaneous receipts.

The Act provides that most of the fees received by the Tax Court are to be deposited into a special fund of the Treasury to be available to offset funds appropriated for the maintenance and operation of the Tax Court. The exceptions are periodic registration fees and registration fees for annual judicial conference participants.

Effective December 18, 2015.

§7482(b)(1) **Circuit Court venue for appeals of spousal relief or collection actions clarified**

The Act provides that appeals of Tax Court decisions are proper in the venue where the petitioner is located in a spousal relief case. The Act also provides that for a collection hearing based on liens or levies, proper venue is the legal residence of an individual petitioner and the principal place of business or principal office of a non-individual entity petitioner.

Effective for petitions filed after December 18, 2015, but does not interfere with proceedings filed before that date.

§7508(e)(3) **Time for IRS to collect taxes from members of the Armed Forces hospitalized due to combat zone injuries is not extended for period of hospitalization**

In general, the obligations of individuals in the Armed Forces with respect to various actions under the IRC and the IRS's rights with respect to determination, assessment, and collection of that individual's tax liability are suspended for the period the individual serves in a combat zone plus the period of continuous hospitalization resulting from any injuries suffered while serving in a combat zone, plus 180 days after the termination of the hospitalization.

The Act provides that the collection period for taxpayers hospitalized as described above is not stayed by the hospitalization and for the next 180 days. The collection period extends for 10 years after assessment, plus the actual time spent in a combat zone, but time of hospitalization and the subsequent 180 days is disregarded when calculating the collection period.

Effective for taxes assessed before, on, or after December 18, 2015.

§7803(a)(3) **IRS Commissioner must ensure IRS employees are familiar with and respect taxpayer rights**

The Act provides that the Commissioner must ensure that IRS employees are familiar with and act in accordance with taxpayer's rights as afforded under other provisions of the Code. These include the rights enumerated in IRS Publication No. 1.

Effective December 18, 2015.