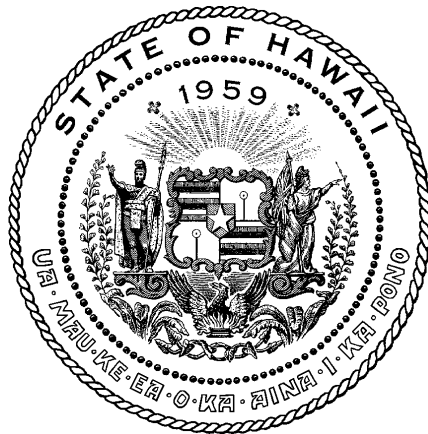


ENACTED BY THE STATE OF HAWAII

Digest of Tax Measures

TWENTY-THIRD LEGISLATURE – REGULAR SESSION OF 2006



Prepared by the State of Hawaii
Department of Taxation
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NOTE: This Digest is issued solely as a guide and is not intended to be complete.

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**THE ACT TO PROVIDE FOR PROPER TAX TREATMENT OF CERTAIN DISASTER MITIGATION
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THE ENERGY POLICY ACT OF 2005

P.L. NO. 108-218

**THE SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION EQUITY ACT: A LEGACY FOR
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P.L. NO. 109-059

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DIGEST OF TAX MEASURES

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INDEX BY ACT NUMBERS

Introduction

The following is a digest of bills passed by the 2006 Legislature and enacted into law. The Governor vetoed three substantive tax measures. The digest includes only those measures that affect Hawaii's tax laws and is provided for your information. It is issued solely as a guide and is not intended to be either authoritative or complete. Copies of the bills passed by the Legislature may be obtained from the Senate and House printshops. Bills and Acts are also accessible via the Internet on the State Capitol website at <http://www.capitol.hawaii.gov>, or on the Department of Taxation's website at <http://www.state.hi.us/tax>.

KEY TO ABBREVIATIONS

SB	=	Senate Bill
SD	=	Senate Draft
HB	=	House Bill
HD	=	House Draft
CD	=	Conference Draft
SCR	=	Senate Concurrent Resolution
HCR	=	House Concurrent Resolution
SSCR	=	Senate Standing Committee Report
HSCR	=	House Standing Committee Report
CCR	=	Conference Committee Report
SECT AFF	=	Section(s) of the Hawaii Revised Statutes Affected by the Bill's Provisions
HRS	=	Hawaii Revised Statutes
HAR	=	Hawaii Administrative Rules
SLH	=	Session Laws of Hawaii

ADMINISTRATIVE TAX MEASURES

ACT 124

HB 2412, HD1, SD1, CD1

RELATING TO CONFORMITY OF THE HAWAII INCOME TAX LAW TO THE INTERNAL REVENUE CODE

HSCR 635-06; HSCR 808-06; SSCR 3404; CCR 98-06

SECT AFF: 235-2.3; 235-2.45

Section 235-2.5(c), HRS, mandates that the Department of Taxation submit a bill to the Legislature, during each regular session, to conform to the changes in the Internal Revenue Code (IRC). The adoption of the amendments to the IRC assures continued State conformity with the federal income tax law and minimizes taxpayers' burdens in complying with Hawaii's income tax law.

Reviewed were the federal income tax law changes resulting from the following federal acts:

- (1) An Act to Amend the Internal Revenue Code of 1986 to Extend the Leaking Underground Storage Tank Trust Fund Financing Rate (P.L. No. 109-006; March 31, 2005);
- (2) The Act to Provide for Proper Tax Treatment of Certain Disaster Mitigation Payments of 2005 (P.L. No. 109-007; April 15, 2005);
- (3) The Energy Policy Act of 2005 (P.L. No. 109-058; August 8, 2005);
- (4) The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (P.L. No. 109-059; August 10, 2005);
- (5) The Katrina Emergency Tax Relief Act of 2005 (P.L. No. 109-073; September 23, 2005);
- (6) The Gulf Opportunity Zone Act of 2005 (P.L. No. 109-135; December 21, 2005);
- (7) The Mental Health Parity Act (P.L. No. 109-151; December 30, 2005).

For more information on the federal laws to which the State conforms, please see Department of Taxation Announcement No. 2006-06 and/or the Digest of Federal Laws contained in this publication.

EFFECTIVE: Upon approval and applies to taxable years beginning after December 31, 2005; provided that section 235-2.45(h), Hawaii Revised Statutes, applies to contributions made between August 28, 2005 to December 31, 2005.

CIGARETTE TAX/RENTAL MOTOR VEHICLE SURCHARGE TAX/GENERAL EXCISE & USE TAX MEASURES

ACT 316

SB 2961, SD1, HD1, CD1

RELATING TO HEALTH

SSCR 2206; SSCR 2761; HSCR 1234-06; HSCR 1636-06; CCR 179-06

SECT AFF: 36-27; 36-30; 245-15; 304-___; 321-234; 321-___

Increases the excise tax per cigarette by one cent per year over a six year span, as follows:

- 8.00 cents per cigarette on and after September 30, 2006;
- 9.00 cents per cigarette on and after September 30, 2007;
- 10.00 cents per cigarette on and after September 30, 2008;
- 11.00 cents per cigarette on and after September 30, 2009;
- 12.00 cents per cigarette on and after September 30, 2010;
- 13.00 cents per cigarette on and after September 30, 2011;

Creates two special funds, into which will be deposited various cigarette excise tax revenues:

The Hawaii Cancer Research Special Fund—Monies in the fund shall be used for the cancer research center's research and operating expenses;

The Community Health Centers Special Fund—Monies in the fund shall be used by the Department of Health for the operations of federally qualified health centers.

Deposits portions of the cigarette excise tax revenues into the following special funds [*Please note that the deposits contained in Act 316 are flawed as written. For purposes of this digest, the first deposit occurring from September 30, 2006 to September 29, 2007 will place 1.0 cent in the Hawaii Cancer Research Special Fund. The remaining flawed deposits will not begin until September 30, 2007*]—

- The Hawaii Cancer Research Special Fund;
- The Trauma System Special Fund;
- The Emergency Medical Services Special Fund;
- The Community Health Centers Special Fund.

EFFECTIVE: July 1, 2006; provided that if the trauma system special fund is not established by the legislature in HB 3142 in the regular session of 2006, the amounts designated to be paid into the trauma system special fund shall be deposited into the general fund. [HB 3142 was enrolled to the Governor and became law as Act 305 without signature on July 12, 2006.]

ACT 142

HB 2214, HD1, SD2, CD1

RELATING TO RENTAL MOTOR VEHICLE SURCHARGE TAX

HSCR 202-06; HSCR 492-06; HSCR 732-06; SSCR 3136; SSCR 3475; CCR 160-06
SECT AFF: 251-2

Allows either the lessor or the repair dealer to retain a record of the repair order in order for the lessor to be exempt from the rental motor vehicle surcharge tax. Amends the records retention requirement for the repair order to two years to be consistent with repair dealer records retention laws.

EFFECTIVE: July 1, 2006.

ACT 180

HB 2966, HD2, SD2, CD1

RELATING TO HOUSING

HSCR 592-06; HSCR 937-06; SSCR 3157; SSCR 3440; CCR 235-06
SECT AFF: Chapter 201G; 201G-116; 201G-117; 201G-459

Recodifies Chapter 201G, relating to the rights and obligations of the Housing and Community Development Corporation of Hawaii.

Bifurcates existing tax rights and obligations under the supervision of two new entities: The Hawaii Public Housing Authority and the Hawaii Housing Finance and Development Corporation.

Section 201G-116 provided a general excise tax exemption for persons or firms involved with the construction of affordable housing. This tax exemption continues unamended and recodified as HRS 201H-____.

Section 201G-117 provided that certain income earned and obligations issued by a nonprofit entity that qualifies as a "public housing agency" under federal law, are exempt from all taxes imposed by the State. This tax exemption continues unamended and recodified as HRS 201H-____.

Section 201G-459 provided a general excise tax exemption for certain providers of services rendered to homeless facilities or individuals. This tax exemption continues unamended and recodified under a new chapter yet to be determined.

EFFECTIVE: July 1, 2006.

INCOME TAX MEASURES

ACT 110

HB 957, HD1, SD1, CD1

RELATING TO TAXATION

HSCR 758; SSCR 1476; CCR 248-06

SECT AFF: 235-2.4; 235-51; Act 110 § 4 is an uncodified session law tax credit

Increases the individual income tax standard deduction to approximately 40% of the 2005 federal standard deduction.

Widens the individual income tax brackets by approximately 20% for married persons filing jointly, heads of household, surviving spouses, married persons filing separately, and unmarried persons.

Provides a one-time nonrefundable income tax credit equal to 10% of the qualified unreimbursed damage costs incurred as a result of the flooding that occurred in Manoa, Oahu on October 30, 2004 and during First Quarter 2006, statewide. The tax credit is refundable if the taxpayer has income of \$20,000 or less or all of the taxpayer's income is exempt pension income. The income tax credit is limited to \$10,000 per taxpayer.

For specific information on the amount of the standard deduction or the brackets as adjusted, please see Department of Taxation Announcement No. 2006-10.

For specific information on the flood relief income tax credit, please see Department of Taxation Announcement 2006-04.

EFFECTIVE: Upon approval with the increase in the standard deduction and the adjustment to the individual income tax brackets applying to taxable years beginning after December 31, 2006. The flood relief income tax credit applies to taxable years beginning after December 31, 2003 and before January 1, 2007.

ACT 88

SB 2570, SD2, HD2, CD1

RELATING TO DIGITAL MEDIA

SSCR 2023; SSCR 2707; HSCR 1019-06; HSCR 1586-06

SECT AFF: 235-17

Increases the refundable motion picture production income tax credit to 15% of qualified production costs in counties with a population over 700,000. Increases the refundable motion picture production income tax credit to 20% in counties with a population of 700,000 or less. Allows for prorating of costs occurring in more than one county.

Eliminates the 4% refundable income tax credit and the transient accommodations tax credit for qualified transient accommodation costs.

Establishes qualifications in order for a production to take the tax credit, including having at least \$200,000 in qualified production costs; providing the State screen credit; providing reasonable financial or in-kind contributions to Hawaii schools; producing evidence of hiring local talent or crew; and not being disqualified by definition.

Beginning on or after July 1, 2006, a production cost will not qualify for the tax credit if the cost has been paid for with money for which a high tech investment credit under HRS § 235-110.9 was claimed.

Creates prequalification standards and oversight by the Department of Business, Economic Development, & Tourism and the Hawaii Film Office. Each taxpayer must apply through the Hawaii Film Office and have the credits certified. A taxpayer claiming this credit must attach the certification with the taxpayer's tax return.

A maximum of \$8 million in tax credit is allowable per production.

Provides definitions of various terms, including "qualified production" and "qualified production costs."

EFFECTIVE: July 1, 2006; provided that the credit only applies to qualified production costs that were incurred on or after July 1, 2006 and before January 1, 2016. The Act repeals on January 1, 2016 and 235-17, HRS, is reenacted in the form in which it read the day before the effective date of the Act.

ACT 240

SB 2957, SD2, HD2, CD1

RELATING TO ENERGY

SSCR 2500; SSCR 2808; HSCR 1238-06; HSCR 1658-06; CCR 131-06
SECT AFF: 235-12.5; Act 207 § 4, SLH 2003

Increases the dollar amount of certain renewable energy tax credits for certain renewable energy technologies, as follows:

- Solar Thermal Technologies
 - Single-family residential property—\$2,250
- Wind-powered Energy Systems
 - Commercial property—\$500,000
- Photovoltaic Energy Systems
 - Single-family residential property—\$5,000
 - Commercial property—\$500,000

Eliminates the deduction from the calculation of the installation cost of any new, similar federal energy credit for taxable years beginning after December 31, 2005.

Eliminates the sunset date established in Act 207, SLH 2003.

EFFECTIVE: Upon approval and applies to taxable years beginning after December 31, 2005; provided that the increased tax credits shall be available only to eligible renewable energy technology systems installed after July 1, 2006.

MISCELLANEOUS TAX MEASURES

ACT 100

HB 2176, HD2, SD2, CD1

RELATING TO HOUSING

HSCR 412-06; HSCR 790-06; SSCR 3161; SSCR 3538; CCR 234-06
SECT AFF: 247-7

Increases the allocation of conveyance tax deposited into the Rental Housing Trust Fund from 30% to 50%. The increase is effective for one fiscal year.

EFFECTIVE: July 1, 2006. The increase in conveyance tax deposited repeals on June 30, 2007 and 247-7, HRS, is reenacted in the form in which it read the day before the effective date of the Act.

ACT 304

HB 1891, HD2, SD2, CD1

RELATING TO EDUCATION

HSCR 14-06; HSCR 739-06; SSCR 3053; SSCR 3444; CCR 152-06
SECTION AFF: 237-31

Increases the amount of funds to be deposited into the State Educational Facilities Improvement Special Fund, which is the difference between \$90 million and any general obligation bond financing for educational facilities. Increases the amount deposited for one fiscal year.

Clarifies that use of the funds is for improvement of educational facilities capital improvement program needs.

EFFECTIVE: July 1, 2006. The increase in the deposit repeals on June 30, 2007 and 237-21, HRS, is reenacted in the form in which it read the day before the effective date of the Act.

ACT 209

HB 2669, HD1, SD2, CD1

RELATING TO THE CONVENTION CENTER ENTERPRISE SPECIAL FUND

HSCR 82-06; HSCR 883-06; SSCR 3089; SSCR 3473; CCR 155-06
SECT AFF: 237D-6.5

Raises the ceiling on deposits of transient accommodations tax revenues into the Convention Center Enterprise Special Fund from \$31 million to \$33 million.

EFFECTIVE: July 1, 2006; provided that the amendments shall remain in effect when Act 235, SLH 2005, takes effect on July 1, 2007.

VETOED MEASURES

VETO (July 11, 2005)

HB 439, HD1, SD1, CD1

RELATING TO THE OFFICE OF THE OMBUDSMAN

HSCR 500; HSCR 152-06; SSCR 3029; SSCR 3519; CCR 78-06

SECT AFF: 231-__; 235-116; 237-34; 237D-13; 251-12

Authorizes the legislative Ombudsman to obtain state tax returns and return information in connection with an investigation of a taxpayer's complaint about an administrative act of the Department of Taxation.

Subjects the Ombudsman to civil and criminal penalties for unauthorized re-disclosure of tax return and return information, as provided for in respective tax chapters.

VETO (JULY 11, 2005)

SB 2076, SD2, HD2, CD1

RELATING TO LEASEHOLD CONVERSION

HSCR 987-06; HSCR 1148-06; HSCR 1649-06; SSCR 2506; SSCR 2903; CCR 220-06

SECT AFF: 235-7

Excludes from income taxation 100% of the capital gains realized during taxable years 2007-2008 from the sale of leased fee interests in residential house lots or multi-family residential leasehold property to a lessee, AOA, or cooperative, subject to an aggregate cap of \$800,000 in gain per year.

Defines certain terms.

VETO (July 11, 2005)

HB 1800, HD2, SD2, CD1

RELATING TO SALE OF REAL PROPERTY

HSCR 824-06; SSCR 3122; SSCR 3504; CCR 153-06

SECT AFF: 235-68

Increases the withholding on the disposition of real property by a nonresident seller to 8.25%.

TABLE SHOWING EFFECT OF ACTS
Twenty-Third Legislature - 2006 Regular Session

KEY: Am = Amended	R = Repealed
N = New	___ = Chapter or section number to be assigned in HRS Supplement

SECTIONS OF HRS AFFECTED			
SECTION NO.	EFFECT	ACT NO.	BILL NO.
36-27	Am	ACT 316	SB 2961 SD1, HD1, CD1
36-30	Am	ACT 316	SB 2961 SD1, HD1, CD1
201G-116	R	ACT 180	HB 2966 HD2, SD2, CD1
201G-117	R	ACT 180	HB 2966 HD2, SD2, CD1
201G-459	R	ACT 180	HB 2966 HD2, SD2, CD1
201H-___	N	ACT 180	HB 2966 HD2, SD2, CD1
201H-___	N	ACT 180	HB 2966 HD2, SD2, CD1
231-___	N	VETO	HB 439 HD1, SD1, CD1
235-2.3	Am	ACT 124	HB 2412 HD1, SD1, CD1
235-2.4	Am	ACT 110	HB 957 HD2, SD2, CD1
235-2.45	Am	ACT 124	HB 2412 HD1, SD1, CD1
235-7	Am	VETO	SB 2076 SD2, HD2, CD1
235-12.5	Am	ACT 240	SB 2957 SD2, HD2, CD1
235-17	Am	ACT 88	SB 2570 SD2, HD2, CD1
235-51	Am	ACT 110	HB 957 HD2, SD2, CD1
235-68	Am	VETO	HB 1800 HD2, SD2, CD1
235-116	Am	VETO	HB 439 HD1, SD1, CD1
237-31	Am	ACT 304	HB 1891 HD2, SD2, CD1
237-34	Am	VETO	HB 439 HD1, SD1, CD1
237D-6.5	Am	ACT 209	HB 2669 HD1, SD2, CD1
237D-13	Am	VETO	HB 439 HD1, SD1, CD1
245-15	Am	ACT 316	SB 2961 SD1, HD1, CD1
247-7	Am	ACT 100	HB 2176 HD2, SD2, CD1
251-2	Am	ACT 142	HB 2214 HD2, SD2, CD1
251-12	Am	VETO	HB 439 HD1, SD1, CD1
304-___	N	ACT 316	SB 2961 SD1, HD1, CD1
321-234	Am	ACT 316	SB 2961 SD1, HD1, CD1
321-___	N	ACT 316	SB 2961 SD1, HD1, CD1
Act 207 § 4, SLH 2003	Am	ACT 240	SB 2957 SD2, HD2, CD1
Act 110 § 4, SLH 2006	N	ACT 110	HB 957 HD2, SD2, CD1
___-129	N	ACT 180	HB 2966 HD2, SD2, CD1
CHAPTER NO.	EFFECT	ACT NO.	BILL NO.
201G	R	ACT 180	HB 2966, HD2, SD2, CD1
201H	N	ACT 180	HB 2966, HD2, SD2, CD1

Digest of an Act to Amend the Internal Revenue Code of 1986 to Extend the Leaking Underground Storage Tank Trust Fund Financing Rate of 2005 (P. L. No. 109-006; March 31, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION

DESCRIPTION OF PROVISION

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

§ 4081(d)

Paragraph (3) of IRC, section 4081(d) is amended by extending the applicable date from April 1, 2005 to October 1, 2005.

Effective: March 31, 2005. Act §1.

Digest of Act to Provide for Proper Tax Treatment of Certain Disaster Mitigation Payments of 2005 (P. L. No. 109-007; Apr. 15, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION

DESCRIPTION OF PROVISION

The following provisions are operative for Hawaii income tax purposes.

§ 139

This Act amends § 139 (relating to disaster relief payments) by adding subsection (g), which excludes from gross income any qualified disaster mitigation payments.

Effective: Apr. 15, 2005. Act § 1.

§ 1033

This Act amends § 1033 (relating to involuntary conversions) by re-designating subsection (k) as subsection (l) and adding a new subsection (k), which treats sales or exchanges under the Robert T. Stafford Disaster Relief and Emergency Assistance Act or the National Flood Insurance Act as involuntary conversions for the purposes of this section.

Effective: Sales or other dispositions before, on, or after April 15, 2005. Act §1.

Digest of the Energy Policy Act of 2005 (P. L. No. 109-058; August 8, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION DESCRIPTION OF PROVISION

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

§ 23 (c) & § 25 (e)(1)(C)	<p>Individuals will be allowed 30% credit for photovoltaic, solar hot water, and fuel cell property installed in their home in 2006 and 2007, subject to dollar limits.</p> <p>Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1335(b))</p>
§ 25C	<p>Individuals will be allowed personal credit up to \$500 lifetime limit for energy efficient improvements to principal residence in 2006 and 2007.</p> <p>Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1333(a))</p>
§ 25D	<p>Individuals will be allowed 30% credit for photovoltaic, solar hot water, and fuel cell property installed in their home in 2006 and 2007, subject to dollar limits.</p> <p>Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1335(a))</p>
§ 29	<p>Nonconventional fuel production credit will be an elective general business credit for tax years ending Dec. 31, 2005.</p> <p>Effective: Tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1332(a))</p>
§ 29 (h)	<p>Nonconventional fuel credit will be available for coke and coke gas fuel produced and sold after Dec. 31, 2005.</p> <p>Effective: Fuel produced and sold after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1321(a))</p>
§ 30(b)(3)(A)	<p>Nonconventional fuel production credit will be an elective general business credit for tax years ending Dec. 31, 2005.</p> <p>Effective: Tax years after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1322(a))</p>
§ 30B	<p>Alternative motor vehicle credit for fuel cell, hybrid, lean burn technology and alternative fuel vehicles. New qualified fuel cell motor vehicle credit.</p> <p>Effective: Property placed in service after Dec. 31, 2005 in tax years ending after that date. (2005 Energy Tax Act § 1341(a))</p>

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- § 30C Credit provided for qualified alternative fuel vehicle refueling property.
Effective: Property placed in service after Dec. 31, 2005. (2005 Energy Tax Act § 1342(a))
- § 38(b) Credit provided for qualified alternative fuel vehicle refueling property.
Effective: Property placed in service after Dec. 31, 2005. (2005 Energy Tax Act §§ 1342, 1306, 1322, 1332, 1334)
- § 40(g) Small ethanol producer credit is expanded to producers with up to 60 million (up from 30 million) gallon capacity during the tax year for tax years ending after Aug. 8, 2005.
Effective: Tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1347)
- § 40A Biodiesel fuels credit is expanded to include a credit for small agri-biodiesel producers.
Effective: Tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1345)

The following provisions are operative for Hawaii income tax purposes.

- § 41(a) §41(a)(3) was added where a taxpayer can claim a research credit for 20% of amounts paid or incurred for research by an "energy research consortium".
Effective: Amounts paid or incurred after Aug. 8, 2005, in tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1351(a))
- § 41(b)(3)(C)(ii) For the purpose of determining which organizations are qualified research consortiums (i.e., an organization to which 75% of the taxpayer's payments are contract research expenses (qualified research expenses)) taken into account in computing the research credit, a qualified research consortium is any organization, other than an energy research consortium, which is described in (1) §501(c)(3) or §501(c)(6) and is exempt from tax under §501(a) or (2) is organized and operated primarily to conduct scientific research; and (3) it is not a private foundation.
Effective: Amounts paid or incurred after Aug. 8, 2005, in tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1351(a))
- § 41(b)(3)(D) Contract research expenses are 65% of amounts that a taxpayer pays or incurs to a person other than an employee of the taxpayer for qualified research which is energy research performed by that person on behalf of the taxpayer, is applied by substituting "100%" for "65%" in the case of amounts paid by the taxpayer for qualified research which is energy research to (1) an eligible small business; (2) an institution of higher education and (3) an organization which is a Federal laboratory.
Effective: Amounts paid or incurred after Aug. 8, 2005, in tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1351(b))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 41(f)(6) "Energy research consortium" is defined as any organization, which is described in (1) §501(c)(3) or §501(c)(6) and is exempt from tax under §501(a) and is organized and operated primarily to conduct energy research or is organized and operated primarily to conduct energy research in the public interest; (2) it is not a private foundation; (3) at least 5 unrelated persons paid or incurred during the calendar year in which the taxable year of the organization begins amounts to such organization for energy research; and (4) no single person paid or incurred (including as contributions) during such calendar year an amount equal to more than 50% of the total amounts received by such organization during such calendar year for energy research.

Effective: Amounts paid or incurred after Aug. 8, 2005, in tax years ending after Aug. 8, 2005. (2005 Energy Tax Act § 1351(a))

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

§ 43(b)(2) Enhanced oil recovery credit.

Effective: For tax years ending after 12/31/2005. (2005 Energy Tax Act § 1322(c))

§ 45(b)(4)(A) Credit for electricity produced from renewable resources is expanded to include electricity produced from certain hydropower at qualified facilities placed in service after Aug. 8, 2005 and before Jan. 1, 2008.

Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(c))

§ 45(b)(4)(B) Credit period for electricity produced from qualified geothermal or solar energy, small irrigation power, municipal solid waster, or open-loop biomass facilities placed in service after Aug. 8, 2005 is extended from five years to ten years.

Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(b))

§ 45(c)(1) Credit for electricity produced from renewable resources is expanded to include electricity produced from certain hydropower at qualified facilities placed in service after Aug. 8, 2005 and before Jan. 1, 2008.

Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(c))

§ 45(c)(3) Definition of open-loop biomass for purposes of the credit for electricity produced from renewable resources is expanded to include nonhazardous lignin wastes.

Effective: Electricity produced and sold after Oct. 22, 2004 in tax years ending after Oct. 22, 2004. (2005 Energy Tax Act § 1301(f))

§ 45(c)(8) Credit for electricity produced from renewable resources is expanded to include electricity produced from certain hydropower at qualified facilities placed in service after Aug. 8, 2005 and before Jan. 1, 2008.

Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(c))

§ 45(c)(9) Credit will be available for production of Indian coal from qualified facilities during a seven-year period beginning on Jan. 1, 2006.

Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(d))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- § 45(d)(5)-(7) Placed-in-service date is extended for two years through Dec. 31, 2007 for certain qualified facilities for purposes of the credit for electricity produced from renewable resources. Definition of trash combustion facilities for purposes of the credit for electricity produced from renewable resources is expanded to include new units placed in service in connection with facilities placed in service before Oct. 23, 2004. Credit will be
- Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301)
- § 45(d)(9) Credit for electricity produced from renewable resources is expanded to include electricity produced from certain hydropower at qualified facilities placed in service after Aug. 8, 2005 and before Jan. 1, 2008.
- Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301)
- § 45(d)(10) Credit will be available for production of Indian coal from qualified facilities during a seven-year period beginning on Jan. 1, 2006.
- Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301)
- § 45(e)(6) Technical amendment eliminates specific provision making lessees or operators of government-owned poultry waste facilities eligible for the credit for electricity produced from renewable resources.
- Effective: Electricity produced and sold after Oct. 22, 2004 in tax years ending after Oct. 22, 2004. (2005 Energy Tax Act § 1301(f))
- § 45(e)(8)-(9) Coordination of the credit for electricity produced from landfill gas and refined coal with the credit for production using fuel from nonconventional sources.
- Effective: Refined coal produced and sold after Oct. 22, 2004. (2005 Energy Tax Act § 1301(f))
- § 45(e)(10) Credit will be available for production of Indian coal from qualified facilities during a seven-year period beginning on Jan. 1, 2006.
- Effective: Aug. 8, 2005. (2005 Energy Tax Act § 1301(d))
- § 45(e)(11) Agricultural cooperatives can elect to pass through their credit for electricity produced from renewable resources to their patrons.
- Effective: Tax years of cooperative organizations ending after Aug. 8, 2005. (2005 Energy Tax Act § 1302(a))
- § 45I Credit for producing oil and gas from marginal wells.
- Effective: For tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1322)
- § 45J Advanced unclean power facility production tax credit will be available for certain facilities originally placed in service after Aug. 8, 2005.
- Effective: Production in tax years beginning after Aug. 8, 2005. (2005 Energy Tax Act § 1306(a))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- § 45K Nonconventional fuel production credit will be an elective general business credit for tax years ending after Dec. 31, 2005.
- Effective: Tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1322(a))
- § 45L New energy efficient home credit of \$2,000 (\$1,000 for certain homes) is available to eligible contractors for qualified new energy efficient homes acquired after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Qualified new energy homes acquired after Dec. 31, 2005 and before Jan 1, 2008. (2005 Energy Tax Act § 1332(a))
- § 45M Business tax credit will be allowed for manufactures of energy efficient dishwashers, clothes, washers, and refrigerators in 2006 and 2007.
- Effective: Appliances produced after Dec. 31, 2005. (2005 Energy Tax Act § 1334(a))
- § 46(3) Investment tax credit is expanded to include a credit for qualified investment in a qualifying advanced coal project.
- Effective: Periods after Aug. 8, 2005. (2005 Energy Tax Act § 1307(a))
- § 46(4) Investment tax credit is expanded to include a 20% credit for qualified investment in qualifying gasification projects.
- Effective: Periods after Aug. 8, 2005. (2005 Energy Tax Act § 1307(a))
- § 48(a)(1) 10% energy credit will be allowed for qualified microturbine property in periods after Dec. 31, 2005 and before Jan. 1, 2008. 30% credit will be allowed for qualified fuel cell property for periods after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1336 (d))
- § 48(a)(2)(A) 10% energy credit will be allowed for qualified microturbine property in periods after Dec. 31, 2005 and before Jan. 1, 2008. 30% energy credit will be allowed for qualified fuel cell property for periods after Dec. 31, 2005 and before Jan. 1, 2008. Energy credit for solar energy property will increase from 10% to 30% for property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act §§ 1336 (a) & (c))
- § 48(a)(3)(A)(i) Energy credit for solar energy property to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool will increase from 10% to 30% for property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act §§ 1337(c))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- § 48(a)(3)(A)(ii) Energy credit for solar energy property to illuminate the inside of a structure using fiber-optic distributed sunlight will increase from 10% to 30% for property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act §§ 1337(b))
- § 48(a)(3)(A)(iii) 10% energy credit will be allowed for qualified microturbine property in periods after Dec. 31, 2005 and before Jan. 1, 2008. 30% energy credit will be allowed for qualified fuel cell property for periods after Dec. 31, 2005 and before Jan. 1, 2008.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1336(a))
- § 48(c) This section provides definitions to "qualified microturbine property" and "qualified fuel cell property" as well as the limitations and the special rule under this section.
- Effective: Periods after Dec. 31, 2005, in tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1336(b))
- § 48A Investment tax credit is expanded to include a credit for qualified investment in a qualifying advanced coal project.
- Effective: Periods after Aug. 8, 2005. (2005 Energy Tax Act § 1307(b))
- § 48B Investment tax credit is expanded to include a 20% credit for qualified investment in qualifying gasification projects.
- Effective: Periods after Aug. 8, 2005. (2005 Energy Tax Act § 1307(b))
- § 49(a) Basis of property that is part of a qualifying advanced coal project or qualifying gasification project is subject to the at-risk rules that generally apply to the other components of the investment credit.
- Effective: Periods after Aug. 8, 2005. (2005 Energy Tax Act § 1307(c))
- § 53(d)(1) Nonconventional fuel production credit will be an elective general business credit for tax years ending Dec. 31, 2005.
- Effective: For tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1322(a))
- § 54 Nonrefundable tax credit will be allowed to holders of clean renewable energy bonds issued after 2005.
- Effective: Bonds issued after Dec. 31, 2005. (2005 Energy Tax Act § 1303(a))
- § 55(c)(1) Agricultural cooperatives can elect to pass through their credit for electricity produced from renewable resources to their patrons.
- Effective: Tax years of cooperative organizations ending after Aug. 8, 2005. (2005 Energy Tax Act § 1302(b))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 55 (c)(3) Nonconventional fuel production credit will be an elective general business credit for tax years ending after Dec. 31, 2005.

Effective: For tax years ending after Dec. 31, 2005. (2005 Energy Tax Act § 1322(a))

§§ 141(c) & (d),
148(b) State or local bonds used to finance prepayments of natural gas purchases by governmentally-owned utilities won't be arbitrage bonds or private activity bonds.

Effective: Obligations issued after Aug. 8, 2005. (2005 Energy Tax Act §§ 1327(a), (b) & (c))

The following provisions are operative for Hawaii income tax purposes.

§ 167 (h) Any geological and geophysical expenses paid or incurred in connection with the exploration for, or development of, oil or gas within the U.S. are allowed as a deduction ratably over the 24-month period beginning on the date that the expenses were paid or incurred. §167(h)(1).

If a taxpayer retires or abandons any property with respect to which geological or geophysical expenditures are paid or incurred during the 24-month amortization period, the taxpayer is not allowed to take a deduction on account of the retirement or abandonment. Instead, the amortization over 24 months continues with respect to the payment.

Effective: Amounts paid or incurred in tax years beginning after Aug. 8, 2005. (2005 Energy Tax Act § 1329(a))

§ 167 (i) This section provides cross-reference IRC sections to additional rule applicable to (1) depreciation of improvements in the case of mines, oil and gas wells, other natural deposits, and timber (§ 611) and (2) amortization of goodwill and certain other intangibles (§ 197).

Effective: Amounts paid or incurred in tax years beginning after Aug. 8, 2005. (2005 Energy Tax Act § 1329(a))

§ 168(e)(3)(B)(vi)(I) The 2005 Energy Tax Act clarifies that solar and wind property, the production from which is allowed as a credit for the production of electricity from renewable resources for the taxpayer's current year or any earlier tax year, is included in the five year MACRS class.

Effective: Electricity produced and sold after Oct. 22, 2004 in tax years ending Oct. 22, 2004. (2005 Energy Tax Act § 1301(f))

§ 168(e)(3)(C) Any "natural gas gathering line", the original use of which begins with the taxpayer after Apr. 11, 2005, is assigned to the 7-year property class of MACRS property. New natural gas gathering lines are exempted from the AMT depreciation adjustment. Makes technical and conforming amendments in connection with this 7-year property class assignment.

Effective: Generally effective for property placed in service after Apr. 11, 2005. (2005 Energy Tax Act § 1326(a))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 168(e)(3)(E) A statutory 15-year recovery period for certain assets used in the transmission of electricity for sale and related land improvements is established. The provision is limited to property the original use of which begins with the taxpayer after Apr. 11, 2005, but does not apply to property that is the subject of a binding contract before Apr. 12, 2005. New natural gas distribution lines placed in service before Jan. 1, 2011 are designated as MACRS 15-year property, resulting in faster depreciation. Makes technical and conforming amendments in connection with the statutory 15-year recovery period property.

Effective: Generally effective for property placed in service after Apr. 11, 2005. (2005 Energy Tax Act §§ 1308(a) & 1325(a))

§ 168(g)(3)(B) A statutory class life of 30 years for certain assets used in the transmission of electricity for sale and related land improvements is established. The provision is limited to property the original use of which begins which the taxpayer after 4/11/05, but does not apply to property that is the subject of a binding contract before 4/12/05.

Effective: Generally effective for property placed in service after Apr. 11, 2005. An exception applies to any property with respect to which the taxpayer or a related party has entered into a binding contract for the property's construction before Apr. 12, 2005. (2005 Energy Tax Act §§ 1308(b) & 1308(c)).

§ 168(i)(17) The term "natural gas gathering line" is defined as -- (A) the pipe, equipment, and appurtenances determined to be a gathering line by the Federal Energy Regulatory Commission, and (B) the pipe, equipment, and appurtenances used to deliver natural gas from the wellhead or a common point to the point at which such gas first reaches-- (i) a gas processing plant, (ii) an interconnection with a transmission pipeline for which a certificate as an interstate transmission pipeline has been issued by the Federal Energy Regulatory Commission, (iii) an interconnection with an intrastate transmission pipeline, or (iv) a direct interconnection with a local distribution company, a gas storage facility, or an industrial consumer.

Effective: Generally effective for property placed in service after Apr. 11, 2005. (2005 Energy Tax Act § 1326(b)).

§ 169(d) A certified air pollution control facility used in connection with a plant or other property that began operation after Jan. 1, '76 is generally eligible for an 84-month recovery period. Additionally, the Act adds to the definitions under §169(d) a special rule for atmospheric pollution control facilities placed in service after Apr. 11, 2005 and used in connection with an electric generation plant or other property that is primarily coal-fired. Under this rule, the definition of a certified pollution control facility provided in §169(d)(1) is applied without regard to the phrase "in operation before Jan. 1, '76". (§169(d)(5)(A)).

Taxpayers can recover the cost of certain certified atmosphere (air) pollution control facilities over 84 months if they are used in connection with an electric generation plant or other property that is primarily coal-fired. (§ 169(d)(5)(B)).

A facility used in connection with a plant or other property not in operation before Jan. 1, '76, the facility must be property that either (1) the construction, reconstruction, or erection of which is completed by the taxpayer after Apr. 11, 2005 (to the extent of the portion of the basis property attributable to the construction, reconstruction, or erection after Apr. 11, 2005), or (2) is acquired after Apr. 11, 2005, if the original use of the property commences with the taxpayer after Apr. 11, 2005. (§169(d)(4)(B))

Effective: Facilities placed in service after Apr. 11, 2005. (2005 Energy Tax Act §§ 1309(a), (b), (c) and (d))

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 172 (b)(1)(I) Electric utility companies can elect to extend the carryback period to 5 years (from 2 years) for a portion of NOLs arising in 2003,2004, and 2005. The period for which the 5-year carryback may be elected is equal to 20% of the utility's "electric transmission property capital expenditures" and its "pollution control facility capital expenditures". The special 5-year carryback period applies, at the taxpayer's election to NOLs arising in a tax year ending after Dec. 31, 2002, and before Jan. 1, 2006 ("loss years"). The NOL can be carried back to each of the five years preceding the tax year of the loss.

Effective: Elections made in tax years ending 2005 and before 2009. (2005 Energy Tax Act §1311)

§ 179A(f) § 179A deductions for clean-fuel vehicles and clean-fuel vehicle refueling property will terminate for property placed in service after Dec. 31, 2005 rather than after Dec. 31, 2006.

Effective: Aug. 8, 2005. (2005 Energy Tax Act §1348)

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

§ 179B(e) Cooperatives that are small business refiners are allowed to pass through to patrons that are cooperatives the expensing deduction for costs of diesel fuel sulfur control compliance.

Effective: Expenses paid or incurred after Dec. 31, 2002 in tax years ending after Dec. 31, 2002. (2005 Energy Tax Act § 1324(a))

The following provisions are operative for Hawaii income tax purposes.

§ 179C § 179C is added by 2005 Energy Tax Act §1323(a), which provides elections to taxpayers to treat 50% of the cost of any "qualified refinery property" as an expenses that isn't chargeable to capital account. Thus, any cost so treated is allowed as a deduction for the tax year in which the qualified refinery is placed in service.

Effective: Properties placed in service after Aug. 8, 2005. (2005 Energy Tax Act §1323(a))

§ 179D § 179C is added by 2005 Energy Tax Act §1323(a), which provides that deduction will be allowed for costs of energy efficient commercial building property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.

Effective: Properties placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §1331(a)).

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

§ 196(c) New energy efficient home credit of \$2000 (\$1000 for certain homes) is available to eligible contractors for qualified new energy efficient homes acquired after Dec. 31, 2005 and before Jan. 1, 2008.

Effective: Qualified new energy homes acquired after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §1332(d)).

The following provisions are operative for Hawaii income tax purposes.

§ 263(a)(1)(H) Section 263(a)(1)(H) was added by § 1323(b)(2) of the Energy Tax Act of 2005. The 2005 Energy Tax Act amends § 263 (which provides the "regular" capitalization rules) to provide that the rule, which requires capitalization of amounts paid for new buildings does not apply to expenditures for which a deduction is allowed under § 179A.

Effective: Properties placed in service after 2005 Energy Tax Act date of enactment. (2005 Energy Tax Act §1323(b)).

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 263(a)(1)(I) Section 263(a)(1)(I) was added by §§ 1323(b)(2)&(4) of the Energy Tax Act of 2005. The 2005 Energy Tax Act amends § 263 (which provides the "regular" capitalization rules) to provide that the rule, which requires capitalization of amounts paid for new buildings does not apply to expenditures for which a deduction is allowed under § 179B. § 179B is not operative under § 235-2.3, HRS.

Effective: Properties placed in service after 2005 Energy Tax Act date of enactment. (2005 Energy Tax Act §1323(b)).

§ 263(a)(1)(J) Section 263(a)(1)(J) was added by §§ 1323(b)(2) &(4) of the Energy Tax Act of 2005. The 2005 Energy Tax Act amends § 263 (which provides the "regular" capitalization rules) to provide that the rule, which requires capitalization of amounts paid for new buildings does not apply to expenditures for which a deduction is allowed under § 179C.

Effective: Properties placed in service after 2005 Energy Tax Act date of enactment. (2005 Energy Tax Act §1323(b)).

§ 263(a)(1)(K) Section 263(a)(1)(K) was added by § 1323(b)(4) of the Energy Tax Act of 2005. The 2005 Energy Tax Act amends § 263 (which provides the "regular" capitalization rules) to provide that the rule, which requires capitalization of amounts paid for new buildings does not apply to expenditures for which a deduction is allowed under § 179D.

Effective: Properties placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §1331(b)).

§263A(c)(3) The uniform capitalization (UNICAP) rules (that generally deny a deduction for certain costs) do not apply to any cost allowable as a deduction under §167(h) relating to geological and geophysical costs.

Effective: Amounts paid or incurred in tax years beginning after 2005 Energy Tax Act date of enactment. (2005 Energy Tax Act § 1329 (b)).

§ 312(k)(3)(B) Any amount deductible under § 179D rules is deducted ratably from earnings and profits over a period of five tax years, beginning with the tax year in which the amount is deductible under §179D. (This section is NOT operative with respect to amounts deductible under §§179B & 179C)

Effective: Properties placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §1331(b)).

§ 451(i)(3) & (4)(B)(ii) Extension until Dec. 31, 2007, for a qualifying electric transmission transaction for which gain can be recognized over eight years.

Effective: Transactions after 2005 Energy Tax Act date of enactment. (2005 Energy Tax Act §1305(a)).

§ 468A(b) The requirement that the amount a taxpayer can pay into a qualified fund each tax year is limited by the taxpayer's cost of service is repealed. Thus, the amount that a taxpayer can pay into a qualified fund is the ruling amount for that tax year. As a result, all taxpayers, including unregulated taxpayers, are eligible to make deductible contributions to qualified funds.

Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1310(a)).

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- § 468A(d)(1) The 2005 Energy Tax Act amends the rule which disallows a deduction for payments to a fund unless the taxpayer requests a ruling amount from IRS to add the requirement that taxpayers must request a schedule of ruling amounts upon each renewal of the operating license of the nuclear power plant.
- Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1310(c)).
- § 468A(d)(2)(A) "Ruling amount" is amended so that it is limited to the amount necessary to fund the total nuclear decommissioning costs for the power plant over the estimated useful life of the power plant. This change repeals the limitation that a qualified fund could only accumulate an amount sufficient to pay for a nuclear power plant's decommissioning costs incurred during the period that the qualified fund is in existence (generally post ' 84 decommissioning costs). Thus, a taxpayer may accumulate an amount sufficient to cover the present value of 100% of a nuclear power plant's estimated decommissioning costs in a qualified fund.
- Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1310(b)).
- § 468A(e)(2) 22% rate of tax on the gross income of a qualified fund that applied for tax years beginning in calendar year ' 94 and ' 95 is obsolete.
- Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1310(f)).
- §§ 468A(f), (g) & (h) A taxpayer maintaining a qualified fund for a nuclear power plant will be able to transfer amounts into the fund up to the present value of the portion of the total nuclear decommissioning costs relating to that power previously existed under pre-2005 Energy Tax Act law. Makes technical and conforming amendments in connection with the nuclear decommissioning fund rules.
- Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1310(b)).

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

- § 501(c) Sunset dates eliminated for income rules regarding certain transactions of rural electric co-operatives.
- Effective: Aug. 8, 2005. (2005 Energy Tax Act §1304).

The following provisions are operative for Hawaii income tax purposes.

- § 613A(c)(6)(C) § 1322(a)(3)(B) of the 2005 Energy Tax Act amended § 613A(c)(6)(C) by striking ``section 29(d)(2)(C)" and inserting ``section 45K(d)(2)(C)".
- § 613A(c)(6)(C) provides that "for purposes of this paragraph, the term "reference price" means, with respect to any calendar year, the reference price determined for such calendar year under § 45K(d)(2)(C)."
- Effective: Tax years beginning after Dec. 31,2005. (2005 Energy Tax Act §1322(a)).
- § 613A(d)(4) Exemption ceiling applicable to independent oil and gas producers qualifying for percentage depletion is increased to average daily refinery runs of 75,000 barrels-per-day.
- Effective: Tax years beginning after Aug. 8, 2005. (2005 Energy Tax Act §1328(a)).

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

- §§ 772(a)(9), (10) & (11) Nonconventional fuel production credit will be an elective general business credit for tax years ending after Dec. 31, 2005.
Effective: For tax years ending after Dec. 31, 2005. (2005 Energy Tax Act §1322(a)).
- § 772(d)(5) 2005 Energy Tax Act deleted the words "the foreign tax credit, and the credit allowable under section 29".
Effective: Credits determined under IRC of 1986 for tax years ending after Dec. 31, 2005. (2005 Energy Tax Act §1322(a)).
- § 1016(a)(30) The 2005 Energy Tax Act adds to the list of proper basis adjustments, which must be made under §1016(a). § 1016(a)(30) provides that "proper adjustment in respect of the property shall in all cases be made to the extent provided in Section 179B(c)".
Effective: Property placed in service after Dec. 31, 2005. (2005 Energy Tax Act §1331(b)).
- § 1016(a)(31) § 1016(a)(31) provides that "in the case of a facility with respect to which a credit was allowed under section 45H, to the extent provided in section 45H(d)".
Effective: Property placed in service after Dec. 31, 2005. (2005 Energy Tax Act § 1331).
- § 1016(a)(32) Deduction will be allowed for costs of energy efficient commercial building property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.
Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1331(b)).
- § 1016(a)(33) New energy efficient home credit of \$2,000 (\$1,000 for certain homes) is available to eligible contractors for qualified new energy efficient homes acquired after Dec. 31, 2005 and before Jan. 1, 2008.
Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1332).
- § 1016(a)(34) Individuals will be allowed personal credit up to \$500 lifetime limit for energy efficient improvements to principal residence in 2006 and 2007.
Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1332(b)).
- § 1016(a)(35) Individuals will be allowed 30% credit for photovoltaic, solar hot water, and fuel cell property installed in their home in 2006 and 2007, subject to dollar limits.
Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §1332(b)).
- § 1016(a)(36) § 1016(a)(36) provides that "proper adjustment in respect of the property shall in all cases be made to the extent provided in Section 30B(h)(4)".
Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act §§ 1341& 1342).

**DIGEST OF THE ENERGY POLICY ACT OF 2005
P.L. NO. 109-058; AUGUST 8, 2005**

§ 1016(a)(37) § 1016(a)(37) provides that "proper adjustment in respect of the property shall in all cases be made to the extent provided in Section 30C(f)".

Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1342(b)).

§ 1245(a)(2)(C) For purposes of recapture under § 1245, the deduction for energy efficient commercial property allowable under § 179D is treated as an amortization deduction.

Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1331(b)).

§ 1245(a)(3)(C) The 2005 Energy Tax Act also provides that any portion of real property for which the taxpayer has taken the deduction allowable under § 179D rules is § 1245 property for purposes of recapture.

Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1331(b)).

§ 1245(b)(9) Depreciation recapture rules are modified to treat disposition of multiple amortizable § 197 intangibles in a single transaction (or a series of related transactions) as if all of the intangibles were a single asset.

Effective: Dispositions of property after Aug. 8, 2005. (2005 Energy Tax Act § 1363(a)).

§ 1250(b)(3) Deduction will be allowed for costs of energy efficient commercial building property placed in service after Dec. 31, 2005 and before Jan. 1, 2008.

Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1331(b)).

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

§ 1397E Nonrefundable tax credit will be allowed to holders of clean renewable energy bonds issued after 2005.

Effective: Bonds issued after Dec. 31, 2005. (2005 Energy Tax Act § 1303(c)).

§ 1400C Individuals will be allowed 30% credit for photovoltaic, solar hot water, and fuel cell property installed in their home in 2006 and 2007, subject to dollar limits.

Effective: Property placed in service after Dec. 31, 2005 and before Jan. 1, 2008. (2005 Energy Tax Act § 1335(b)).

Digest of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users of 2005 (P. L. No. 109-059; August 10, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

<u>CODE SECTION</u>	<u>DESCRIPTION OF PROVISION</u>
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The following provisions are NOT operative for Hawaii income tax purposes.

§§ 38(b)(18)-(20)	Tax credit is available to eligible wholesalers, distillers, and importers of distilled spirits for tax years beginning after Sept. 30, 2005; credit is based on "average tax-financing cost" per case. Effective: August 10, 2005. (2005 Transportation Act § 11126(b)).
§§ 142(a)(13)-(15), 142(m), 146(g)(3)	State and local bonds for qualified highway or surface freight transfer facilities granted tax-exempt "exempt facility" bond status. Effective: August 10, 2005. (2005 Transportation Act § 11143(a)-(c)).
§ 4041(a)(1)(B)	Removal-at-terminal and retail excise tax rates relating to kerosene used in aviation modified. Effective: August 10, 2005. (2005 Transportation Act § 11161(b)(3)(A)).
§4041(a)(1)(C)(iii)(I)	Reduction of various excise fuel tax rates delayed (from Oct. 1, 2005) until Oct. 1, 2011. Effective: August 10, 2005. (2005 Transportation Act § 11101(a)(1)(A)).
§ 4041(a)(2)(B)	Reduction of various excise fuel tax rates delayed (from Oct. 1, 2005) until Oct. 1, 2011. Retail excise fuels tax imposed on alternative fuels, retail tax on LPG, LNG and CNG modified, for sale or use after Sept. 30, 2006. Clerical amendments. Effective: August 10, 2005 (2005 Transportation Act §§ 11101(a)(1)(B), 11113(a)(1)(A)-(D), 11151(e)(2)).
§§ 4041(a)(3)(A), 4041(a)(3)(C)	Retail excise fuels tax imposed on alternative fuels, retail tax on LPG, LNG and CNG modified, for sale or use after Sept. 30, 2006. Effective: August 10, 2005. (2005 Transportation Act §§ 11113(a)(2)(A)-(B)).

**DIGEST OF THE SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT
TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS OF 2005
P.L. NO. 100-059; AUGUST 10, 2005**

- § 4041(c) Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
Effective: August 10, 2005. (2005 Transportation Act §§ 11161(b)(1)(A)-(D)).
- § 4041(m)(1) Reduction of various excise fuel tax rates delayed (from Oct. 1, 2005) until Oct. 1, 2011.
Effective: August 10, 2005 (2005 Transportation Act § 11101(a)(1)(C)).
- §§ 4051(a)(4)-(5) Highway tractors weighing 19,500 pounds or less, and 33,000 pounds or less when combined with a trailer or semi-trailer, excluded from 12% retail excise tax.
Effective: August 10, 2005. (2005 Transportation Act § 11112(a)).
- § 4051(c) Retail truck and manufacturer's tire excise taxes extended through Sept. 30, 2011; state and non-profit educational organization exemptions also extended.
Effective: August 10, 2005. (2005 Transportation Act § 11101(a)(1)(D)).
- § 4064(b)(1)(A) Heavy limousines exempted from gas-guzzler tax.
Effective: August 10, 2005. (2005 Transportation Act § 11111(a)).
- § 4071(d) Retail truck and manufacturer's tire excise taxes extended through Sept. 30, 2011; state and non-profit educational organization exemptions also extended.
Effective: August 10, 2005. (2005 Transportation Act § 11101(a)(1)(E)).
- § 4081(a)(1)(B) "Deep-draft ocean-going vessels," except those used to enter taxable fuel transferred in bulk, must register for fuel excise tax purposes.
Effective: August 10, 2005. (2005 Transportation Act § 11166(b)(1)).
- §§ 4081(a)(2)(A)(ii)-(iv), Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
Effective: August 10, 2005. (2005 Transportation Act § 11161(a)(1)).
- § 4081(a)(2)(C) Aircraft operators must be registered to make tax-reduced (4.3¢ per gallon) removals of kerosene for use in commercial aviation, for removals after Dec. 31, 2004. Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
Effective: August 10, 2005. (2005 Transportation Act §§ 11151(b)(1), 11161(a)(2)).
- §§ 4081(a)(3)(A), 4081(A)(i), 4081(a)(3)(D), 4081(a)(4) Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
Effective: August 10, 2005. (2005 Transportation Act §§ 11161(a)(3)(A)-(B), 11161(a)(4)(A)-(C)).
- § 4081(d)(1) Reduction of various excise fuel tax rates delayed (from Oct. 1, 2005) until Oct. 1, 2011.
Effective: August 10, 2005. (2005 Transportation Act § 11101(a)(1)(F)).

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- § 4081(d)(2) 21.8¢ per gallon removal-at-terminal tax on kerosene used in other than commercial aviation, drops to 4.3¢ per gallon after Sept. 30, 2007. Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11151(b)(2), 11161(a)(4)(D)).
- § 4082(b) Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.
- Effective: August 10, 2005. (2005 Transportation Act § 11161(a)(4)(A)).
- §§ 4082(d)(2)(B), 4082(e) Removal-at-terminal and retail excise tax rates relating to kerosene used in aviation modified.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11161(a)(4)(E)(i)-(iv), 11161(b)(3)(C)).
- § 4083(b) Seaplane transportation exempted from passenger and cargo air transportation excise taxes.
- Effective: August 10, 2005. (2005 Transportation Act § 11123(b)).
- § 4101(a)(1) Retail excise fuels tax imposed on alternative fuels, retail tax on LPG, LNG and CNG modified for sale or use after Sept. 30, 2006.
- Effective: August 10, 2005. (2005 Transportation Act § 11113(c)).
- § 4101(a)(4) Refunds of excise taxes on post-2005 credit card sales of fuel to certain tax-exempt persons to be made to the credit card issuers. Change in ownership will require re-registration of persons connected to fuel excise taxes.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11163(a), 11164(a)).
- § 4161(a)(1) Excise tax on fishing rods and poles capped at \$10.
- Effective: August 10, 2005. (2005 Transportation Act § 11117(a)).
- § 4161(a)(2) Excise tax imposed on sonar devices suitable for finding fish capped at \$30.
- Effective: August 10, 2005. (2005 Transportation Act § 11117(b)).
- §§ 4182(c)-(d) Firearms sold by person that manufactures, produces, and imports less than 50 firearms per year are exempted from the firearms excise tax.
- Effective: August 10, 2005. (2005 Transportation Act § 11131(a)).
- § 4221(a) Retail truck and manufacturer's tire excise taxes extended through Sept. 30, 2011; state and non-profit educational organization exemptions also extended.
- Effective: August 10, 2005. (2005 Transportation Act § 11101(b)(1)).

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§§ 4261(e)(1)(B)(i),
4261(e)(1)(B)(ii)(I)-
(III) Airports not connected by paved roads to other airports can be rural airports for purposes of the exception to the \$3.20-per-domestic-flight-segment excise tax for flights to or from a rural airport.

Effective: August 10, 2005. (2005 Transportation Act §§ 11122(a)(1), 11122(a)(2)).

§ 4261(f) Timber operations exemption from air passenger tax applies to air transportation by fixed-wing aircraft (as well as by helicopter).

Effective: August 10, 2005. (2005 Transportation Act § 11121(c)).

§ 4261(i)-(j) Seaplane transportation exempted from passenger and cargo air transportation excise taxes.

Effective: August 10, 2005. (2005 Transportation Act § 11123(a)).

§ 4281 Exemption from taxes on air transportation extended to sightseeing flights conducted by small aircraft.

Effective: August 10, 2005. (2005 Transportation Act § 11124(a)).

§§ 4461(c), 4462(d) Harbor maintenance tax (HMT) on exported commercial cargo is repealed.

Effective: August 10, 2005. (2005 Transportation Act §§ 11116(a), 11116(b)(1), 11116(b)(2)).

§§ 4481(f),
4482(c)(4), (d),
4483(h) Highway use tax extended through Sept. 30, 2011; exemptions for states and transit-type buses also extended.

Effective: August 10, 2005. (2005 Transportation Act §§ 11101(a)(2)(A)-(C), 11101(b)(2)).

§§ 5002(b),
5010(c)(2)(A) Special occupational tax on producers and marketers of alcoholic beverages is repealed. Conforming amendments.

Effective: August 10, 2005. (2005 Transportation Act §§ 11125(b)(13)(A)-(C), 11125(b)(14)).

§ 5011 Tax credit is available to eligible wholesalers, distillers, and importers of distilled spirits for tax years beginning after Sept. 30, 2005; credit is based on "average tax-financing cost" per case.

Effective: August 10, 2005. (2005 Transportation Act § 11126(a)).

§ 5052(d) Special occupational tax on producers and marketers of alcoholic beverages is repealed. Conforming amendment.

Effective: August 10, 2005. (2005 Transportation Act § 11125(b)(15)).

§§ 5061(d)(4)-(6) Quarterly excise taxes for small alcohol excise taxpayers with no more than \$50,000 tax liability in previous calendar year must be paid no later than 14 days after the end of the last quarter during which such taxes were imposed.

Effective: August 10, 2005. (2005 Transportation Act §§ 11127(a)-(b)).

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- §§ 5081, 5091-5093, 5111-5114, 5116, 5117, 5121, 5121(d)(3), 5122(c)-(d), 5123-5125, 5131, 5131(a), 5132-5134, 5141-5143, 5145-5149, 5182, 5276, 5402(b), 5432, 5432(c)-(d), 5671, 5691, 5731(c)-(d), 5732, 5733, 5733(c)(2), 5734
- Special occupational tax on producers and marketers of alcoholic beverages is repealed. Conforming amendments.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11125(a)(1)(A)-(E), 11125(a)(2), 11125(a)(3), 11125(b)(3)(A), 11125(b)(3)(C)(i)-(iii), 11125(b)(5)(A), 11125(b)(5)(B)(i)-(ii), 11125(b)(5)(C), 11125(b)(6)(A), 11125(b)(6)(B)(i)-(iii), 11125(b)(7), 11125(b)(8), 11125(b)(11)-(12), 11125(b)(16), 11125(b)(17), 11125(b)(18), 11125(b)(19)(A), 11125(b)(20)(A)-(C), 11125(b)(20)(E)).
- § 6049(d)(8)
- Non-refundable tax credit will be allowed to holders of clean renewable energy bonds issued after 2005.
- Effective: August 10, 2005. (2005 Transportation Act § 11303(b)).
- § 6071(c)
- Special occupational tax on producers and marketers of alcoholic beverages is repealed. Conforming amendment.
- Effective: August 10, 2005. (2005 Transportation Act § 11125(b)(21)).
- § 6206
- Refunds of excise taxes on post-2005 credit card sales of fuel to certain tax-exempt person to be made to the credit card issuers.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11163(d)(1)(A)-(D)).
- § 6412(a)(1)
- Floor stocks credit or refund for tire tax and removal-at-terminal fuel tax to apply to tires or fuel held by dealers on Oct. 1, 2011.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11101(a)(3)(A)-(B)).
- §§ 6416(a)(4), 6416(a)(4)(A)-(C), 6416(b)(2)
- Refunds of excise taxes on post-2005 credit card sales of fuel to certain tax-exempt persons to be made to the credit card issuers.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11163(b)(1)(A)-(E), 11163(b)(2)).
- §§ 6420(c)(4), 6420(c)(4)(B)
- Aerial applicators (crop dusters) don't need written consent of farm's owner, tenant, or operator to claim credit for excise tax paid on gasoline used on, or flying to, a farm for farming purposes.
- Effective: August 10, 2005. (2005 Transportation Act §§ 11121(a)-(b)).
- § 6421(f)(2)(A)-(B)
- 21.8¢ per gallon removal-at-terminal tax on kerosene used in other than commercial aviation, drops to 4.3¢ per gallon after Sept. 30, 2007.
- Effective: August 10, 2005. (2005 Transportation Act § 11151(b)(3)(A)-(B)).

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- §§ 6426, 6426(a),
6426(d),
6426(d)(2)(F),
6426(e)-(g),
6427(e),
6427(e)(1)-(5) Excise tax credit or refund permitted for alternative fuels and alternative fuel mixtures, for sale or use after Sept. 30, 2006. Conforming amendments.

Effective: August 10, 2005. (2005 Transportation Act §§ 11113(b)(1), 11113(b)(2), 11113(b)(3)(A), 11113(b)(3)(C)(i)-(ix), 11151(e)(2)).
- § 6427(f) Refund rules based on pre-2004 Jobs Act reduced-alcohol excise fuel excise tax rates eliminated.

Effective: August 10, 2005. (2005 Transportation Act § 11151(a)(1)).
- §§ 6427(i)(4)(A),
6427(l), 6427(l)(2),
6427(l)(4),
6427(l)(4)(A)-(B) Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.

Effective: August 10, 2005. (2005 Transportation Act §§ 11161(b)(2)(A), 11161(b)(3)(B), 11161(b)(3)(D)(i)-(ii), 11161(b)(3)(E)(i)-(iii)).
- § 6427(l)(5)-(6),
6427(l)(6)(A) Ultimate vendor excise tax refund claims for diesel fuel and kerosene sold for farm use eliminated; ultimate purchasers claim the refund.

Effective: August 10, 2005. (2005 Transportation Act § 11161(b)(2)(B), 11162(a)-(b)).
- § 6427(l)(6)(B) Removal-at-terminal and retail excise tax rules relating to kerosene used in aviation modified.

Effective: August 10, 2005. (2005 Transportation Act § 11161(b)(3)(F)).
- §§ 6427(l)(6)(C)-(D),
6675(a),
6675(b)(1) Refunds of excise taxes on post-2005 credit card sales of fuel to certain tax-exempt persons to be made to the credit card issuers.

Effective: August 10, 2005. (2005 Transportation Act § 11163(c)(1)-(2), 11163(d)(2)-(3)).
- § 6719, 6719(a) Change in ownership will require re-registration of persons connected to fuel excise taxes.

Effective: August 10, 2005. (2005 Transportation Act § 11164(b)(1)(A)-(C)).
- § 6720A Penalty imposed as to certain adulterated fuels.

Effective: August 10, 2005. (2005 Transportation Act § 11167(a)).
- §§ 7012(4)-(6) Special occupational tax on producers and marketers of alcoholic beverages is repealed. Conforming amendment.

Effective: August 10, 2005. (2005 Transportation Act § 11125(b)(9)).
- § 7232, 7272 Change in ownership will require re-registration of persons connected to fuel excise taxes.

Effective: August 10, 2005. (2005 Transportation Act §§ 11164(b)(2)(A)-(C), 11164(b)(3)(A)-(B)).

Digest of the Katrina Emergency Tax Relief Act of 2005 (P. L. No. 109-073; September 23, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION

DESCRIPTION OF PROVISION

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

§§ 24 & 32

Qualified individuals can elect to calculate their earned income credit and refundable child credit for the taxable year that includes Aug. 25, 2005, using their earned income from the prior taxable year. Qualified individuals are permitted to make the election only if their earned income for the taxable year that includes Aug. 25, 2005, is less than their earned income for the preceding taxable year.

Qualified individuals are individuals who on Aug. 25, 2005, had their principal place of abode in either:

- (1) the core disaster area, or
- (2) the Hurricane Katrina disaster area (but outside the core disaster area) and the individual was displaced from his principal place of abode by reason of Hurricane Katrina.

Effective: For the taxable year of a qualified individual that includes Aug. 25, 2005. Act § 406.

§ 51

Work opportunity tax credit for Hurricane Katrina employees. A Hurricane Katrina employee is treated as a member of a targeted group for purposes of the work opportunity tax credit (WOTC).

A Hurricane Katrina employee is an individual who:

- on Aug. 28, 2005, had a principal place of abode in the Hurricane core disaster area, and who is hired during the 2-year period beginning on Aug. 28, 2005 for a position the principal place of employment of which is located in the core disaster area, or
- on Aug. 28, 2005 had a principal place of abode in the core disaster area, who is displaced from that abode because of Hurricane Katrina, and who is hired during the period beginning on Aug. 28, 2005 and ending Dec. 31, 2005.

Effective: For employees hired on or after Aug. 28, 2005. Act § 201.

The following provision is operative for Hawaii income tax purposes.

§ 108

Effective for debt discharges made on or after Aug. 25, 2005, and before Jan. 1, 2007, any amount which would otherwise be includible in a natural individual's gross income because a nonbusiness debt is discharged by an applicable entity, in whole or in part, is excluded from income if the debt is not incurred in connection with a trade-or-business, and the person's principal place of abode on Aug. 25, 2005 was located in the core disaster area, or in the Hurricane Katrina disaster area (but outside the core disaster area), and he suffered economic loss because of Hurricane Katrina.

There is no exclusion for discharge of debt to the extent that realty constituting security for the debt is located outside of the Hurricane Katrina disaster area.

Applicable entities under § 6050P(c)(1) include:

- (1) an executive, judicial, or legislative agency (as defined in 31 USC § 3701(a)(4)) and
- (2) any financial institution (as described in § 581 (relating to banks) or § 591(a) (relating to savings institutions));
- (3) any credit union;
- (4) any corporation that is a direct or indirect subsidiary of an entity described in (1) or (2) which, by virtue of being affiliated with that entity, is subject to supervision and examination by a Federal or State agency regulating those entities;
- (5) the Federal Deposit Insurance Corporation (FDIC), the Resolution Trust Corporation, the National Credit Union Administration, certain other Federal executive agencies, and any successor or subunit of any of them;
- (6) an executive, judicial, or legislative agency (as defined in 31 USC § 3701(a)(4)); and
- (7) any other organization a significant trade or business of which is the lending of money.

Effective: Debt discharges made on or after Aug. 25, 2005 and before Jan. 1, 2007. Act § 401.

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

§ 143

The Katrina Relief Act waives the first-time homebuyer requirement for qualified Hurricane Katrina recovery residences by treating such residences as if they were targeted area residences. A qualified Hurricane Katrina recovery residence is defined as (1) any residence located in the core disaster area and (2) any other residence if, on Aug. 28, 2005, the mortgagor of such residence owned a principal residence in the Hurricane Katrina disaster area that was rendered uninhabitable by reason of Hurricane Katrina and the residence being financed is located in the same State as the prior principal residence. The provision applies to residences financed before Jan. 1, 2008.

The provision also increases from \$15,000 to \$150,000 the permitted amount of a qualified home-improvement loan with respect to residences located in the Hurricane Katrina disaster area to the extent such loan is for the repair of damage caused by Hurricane Katrina. Effective: Sept. 23, 2005. Act § 404.

§ 151

Additional exemption for housing Hurricane Katrina displaced individuals. For tax years of a natural person beginning in 2005 and 2006, the Katrina Relief Act provides an additional exemption of \$500 for each Hurricane Katrina displaced individual of the taxpayer, up to \$2,000 cap for both years. Any individual may be a Hurricane Katrina displaced individual only one time for all tax years.

A Hurricane Katrina displaced individual is an individual:

- (1) whose principal place of abode on Aug. 28, 2005 was in the Hurricane Katrina disaster area,
- (2) who is displaced from the abode and if the abode was not in the core disaster area, the abode was damaged by Hurricane Katrina or the person was evacuated from the abode because of Katrina,
- (3) who is provided housing free of charge by the taxpayer in the taxpayer's principal residence for a period of 60 consecutive days, which ends in the tax year in which the exemption is claimed.

Effective: Taxable years beginning in 2005 and 2006. Act § 302.

The following provisions are operative for Hawaii income tax purposes.

§ 170(c)

Under the Katrina Relief Act, effective for tax years ending after Aug. 24, 2005, reimbursement by § 170(c) organizations (public charities and private foundations) to volunteers for the costs of using a passenger automobile in connection with providing donated services for Hurricane Katrina relief during the period of Aug. 25, 2005 to Dec. 31, 2006 may be excluded from the volunteer's gross income to the extent:

- (1) the amount does not exceed the business standard mileage rate (as periodically adjusted for the current rates), and
- (2) the § 274(d) substantiation requirements applicable to business expenses deducted by employees are satisfied.

The exclusion does not apply to any expenses relating to the performance of services for compensation, and a taxpayer cannot claim any other deduction or credit for these expense.

Effective: For automobile usage between Aug. 24, 2005 through Dec. 31, 2006. Act § 304.

§ 170(e)

Food Inventories. Any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for donations of "apparently wholesome food" from the taxpayer's inventory to the lesser of:

- basis plus half of the food's appreciation (i.e., basis plus half of fair market value in excess of basis); or
- two times basis.

For taxpayers other than C corporations, the total deduction for donations of food inventory in a tax year generally may not exceed 10% of the taxpayer's net income for the tax year (without regard to the food inventory deduction) from all sole proprietorships, S corporations, or partnerships (or other non-C corporation entity) from which contributions of food inventory are made.

"Apparently wholesome food" is food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

Book Inventories. C corporations are eligible to claim the enhanced deduction for qualified book contributions to schools. C corporations can make qualified contributions of books from inventory and claim an enhanced deduction equal to the lesser of:

- basis plus half of the books' appreciations; or
- two times basis.

A qualified book contribution is a charitable contribution of books to a public school that provides elementary education or secondary education. The school must be an educational organization that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.

Effective: Contributions made after Aug. 27, 2005, in tax years ending after Aug. 28, 2005, and before Jan. 1, 2006. Act §§ 305, 306.

§ 170(i)

Increase in standard mileage rate for charitable use of vehicles. Under the Katrina Relief Act, a taxpayer who uses a vehicle in providing donated services to a charity for relief related to Hurricane Katrina during the period of Aug. 25, 2005 to Dec. 31, 2006 can compute his charitable mileage deduction using a standard mileage rate equal to 70% of the business mileage rate in effect on the date of the contribution, rather than the § 170(i) charitable standard mileage rate (14 cents per mile). This amount is rounded to the next highest cent.

A vehicle for this purpose includes any motor vehicle manufactured primarily for use on the public streets, roads, and highways. The business standard mileage rate for expense incurred on or after Jan. 1, 2005, and before Sept. 1, 2005 is 40.5 cents per mile. For expenses incurred on or after Sept. 1, 2005, and before Jan. 1, 2006, it is 48.5 cents per mile. Thus, from Sept. through Dec. of 2005, the charitable standard mileage rate for Katrina relief is 34 cents (48.5 cents x 0.7 = 33.95 cents, rounded to 34 cents).

Effective: For vehicle usage after Aug. 24, 2005 through Dec. 31, 2006. Act § 303.

DIGEST OF THE KATRINA EMERGENCY TAX RELIEF ACT OF 2005
P.L. NO. 109-073; SEPTEMBER 23, 2005

§ 1033

The replacement period for involuntary converted property is extended from two to five years if:

- (1) converted property that was located in a Hurricane Katrina disaster area;
- (2) the converted property was compulsorily or involuntarily converted after Aug. 24, 2005, by reason of Hurricane Katrina; and
- (3) substantially all of the use of the replacement property is within the Hurricane Katrina disaster area

Effective: For property compulsorily or involuntarily converted on or after Aug. 24, 2005 by reason of Hurricane Katrina. Act § 405.

Digest of Gulf Opportunity Zone Act of 2005 (P. L. No. 109-135; December 21, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

CODE SECTION

DESCRIPTION OF PROVISION

The following provision is operative for Hawaii income tax purposes.

§ 2(b) Clerical Correction. Subparagraph (C) of section 2(b)(2) is amended by striking "subparagraph (C)" and inserting "subparagraph (B)".

Effective Dec. 21, 2005. Act § 412.

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

§ 21(b) Technical correction amending § 203 of the Working Families Tax Relief act of 2004 with respect to § 21, IRC.

Effective for taxable years beginning after 12/31/2004 as if included in § 203 of the Working Families Tax Relief Act of 2004. Act 404.

§§ 23(b) & (c)

The 2005 Gulf Opportunity Zone Act strikes the change to § 23(c) made by 2005 Energy Tax Act §1335(b)(1), which added a reference to the residential energy efficient property credit. The Code will be applied and administered as if that change had never been enacted. This change corrects an error made by 2005 Energy Tax Act §1335(b)(1). That section added a reference to the residential energy efficient property credit to § 23(c), as in effect before 2006, even though the residential energy efficient property credit didn't take effect until after 2005.

Effective: for taxable years beginning after Dec. 31, 2005 for § 23. Act § 402.

§§24(d), 25B(g), 26(b)

Under the pre-2005 Gulf Opportunity Zone Act tax liability limitation on the child tax credit, which was to have applied for tax years beginning after Dec. 31, 2005, the credit is limited to the excess of the sum of regular tax liability plus AMT liability, over the sum of nonrefundable personal credits (other than the child tax credit, the adoption credit, and the saver's credit), plus the foreign tax credit.

The 2005 Gulf Opportunity Zone Act provides that this tax liability limitation applies only for tax years to which § 26(a)(2) doesn't apply. The 2005 Gulf Opportunity Zone Act clarifies that the rule applies with respect to the § 26(a)(2) limitation or the § 24(b)(3) limitation, as the case may be.

The refundable portion of the child tax credit reduces the amount of the otherwise allowable nonrefundable child tax credit without regard to the § 24(b)(3) tax liability limitation. The 2005 Gulf Opportunity Zone Act clarifies that the rule applies with respect to the § 26(a)(2) limit or the § 24(b)(3) limit, as the case may be.

Effective: Tax years beginning after Dec. 31, 2005. The amendments won't apply to tax years beginning after Dec. 31, 2010. Act § 402.

**DIGEST OF THE GULF OPPORTUNITY ZONE ACT OF 2005
P.L. 109-135; DECEMBER 21, 2005**

- § 25(e) The 2005 Gulf Opportunity Zone Act strikes the change to § 25(e)(1)(C) made by 2005 Energy Tax Act §1335(b)(2), which added a reference to the residential energy efficient property credit. The Code will be applied and administered as if that change had never been enacted.
- Effective: Tax years beginning after Dec. 31, 2005. The amendments won't apply to tax years beginning after Dec. 31, 2010. Act § 402.
- §§ 25C(b) & (c) Technical correction amending § 25C, IRC, subsection (c)(3)(B) was struck out.
- Effective Dec. 21, 2005. Act § 412.
- §§ 25D(b), (c) & (e) Credit for residential energy efficient property. Technical correction amending § 1335 of the Energy Policy Act of 2005, clarifying the dollar limitations are applied without regard to carryovers of the credit from prior taxable years. The 2005 Gulf Opportunity Zone Act also revises the joint occupancy rule so that it applies to expenditures for a dwelling unit, rather than the credit allowed for the unit.
- Effective: Property placed in service after Dec. 31, 2005, in tax years ending after that date. Act § 402.
- § 26(b) Technical correction amending § 885 of the American Jobs Creation Act of 2004 with respect to § 26, IRC. Clerical correction amending subparagraph (E) of section 26(b)(2) by striking "section 530(d)(3)" and inserting "section 530(d)(4)".
- Effective Dec. 21, 2005. Act §§ 403, 412.
- §§ 30B(g) & (h) Alternative motor vehicle credit and credit for installation of alternative fueling stations. Technical correction amending § 1341 of the Energy Policy Act of 2005, providing that the credits for property sold to a tax-exempt entity are subject to the business credit limitations if it is depreciable property. Each of these rules provides that the seller to a tax-exempt entity can claim the credit. The provision provides that the credits for property sold to a tax-exempt entity are subject to the business limitations.
- Effective: Property placed in service after Dec. 31, 2005 in tax years ending after that date. Act § 402.
- The 2005 Gulf Opportunity Zone Act also provides that the remainder of the alternative motor vehicle credit can't exceed the excess of the regular tax liability reduced by the sum of the credits allowed under the sum of the nonrefundable personal credits, the foreign tax credit, and the qualified electric vehicles credit over the tentative minimum tax for the tax year.
- Effective: Dec. 21, 2005. Act § 412.

**DIGEST OF THE GULF OPPORTUNITY ZONE ACT OF 2005
P.L. 109-135; DECEMBER 21, 2005**

§§ 30C(d) & (e) Technical correction amending § 1342 of the Energy Policy Act of 2005, providing that the credits for property sold to a tax-exempt entity are subject to the business credit limitations if it is depreciable property. Each of these rules provides that the seller to a tax-exempt entity can claim the credit. The provision provides that the credits for property sold to a tax-exempt entity are subject to the business limitations.

The 2005 Gulf Opportunity Zone Act provides that the remainder of the qualified alternative fuel vehicle refueling property credit can't exceed the excess of the regular tax liability reduced by the sum of the credits allowed under the sum of the nonrefundable personal credits, the foreign tax credit, the qualified electric vehicles credit, and the alternative motor vehicle credit over the tentative minimum tax for the tax year.

Effective: Dec. 21, 2005. Act § 412.

§ 32(c) The 2005 Gulf Opportunity Zone Act extends the availability of the election to treat combat pay excluded from gross income under § 112 as earned income in determining both eligibility for the earned income credit and the amount of that credit for one year through tax years beginning before Jan. 1, 2007.

Effective: for taxable years beginning after Dec. 31, 2005. Act 302.

§ 38(b) Gross income of a qualified employee doesn't include the value of any lodging furnished in-kind to that employee, the employee's spouse, or any of the employee's dependents, by or on behalf of a qualified employer for any month during the tax year. The amount which may be excluded from income under § 1400P(a)(1) for any month for which lodging is furnished during the tax year cannot exceed \$600. (cross reference § 1400P, IRC)

Effective: Lodging furnished beginning Jan. 1, 2006, and ending on the date that is 6 months after Jan. 1, 2006. Act § 103.

The 2005 Gulf Opportunity Zone Act provides an employee retention credit for employers affected by Hurricane Katrina, Hurricane Rita and Hurricane Wilma, i.e., an income tax credit to eligible employers in an amount equal to 40% of the qualified wages for each eligible employee. The amount of qualified wages that can be taken into account for this purpose for any individual employee is limited to \$6,000. (cross reference §1400R, IRC)

Effective: For qualified wages paid or incurred after Aug. 28, 2005 relating to Hurricane Katrina; after Sept. 23, 2005 relating to Hurricane Rita; after Oct. 23, 2005 relating to Hurricane Wilma, and before Jan. 1, 2006 by eligible employers in the GO Zone to or for an eligible employee whose principal place of employment on Aug. 28, 2005 with the eligible employer was in the GO Zone. Act 201.

§ 39(a) Technical correction amending § 39, IRC. Subparagraph (A) of § 39(a)(1) is amended by striking "each of the 1 taxable years" and inserting "the taxable year". Subparagraph (B) of § 39(a)(3) shall be applied by substituting "5 taxable year" for "1 taxable year" in subparagraph (A).

Effective: Dec. 21, 2005. Act 412.

§ 40A(b) The Gulf Opportunity Zone Act amends § 40A(b)(5)(B) to eliminate the parenthetical "(determined without regard to the last sentence of § 40A(d)(2))" from § 40A(b)(5)(B).

Effective: Dec. 21, 2005. Act 412.

The following provisions are operative for Hawaii income tax purposes.

§§ 41(b)(3) & (f)(6) Expansion of research credit. Technical correction amending § 1351 of the Energy Policy Act of 2005, clarifying that the rule preventing amounts from being taken into account more than once also applies to the provisions of the research credit relating to energy research consortia. The provision also clarifies that qualified research with respect to energy research consortia must be conducted in the United States or Puerto Rico. This conforms the treatment of such qualified research to the treatment of other qualified research under the research credit in this respect.

Any amount that is taken into account for purposes of the credit for payments to an energy research consortium is not taken into account for purposes of the qualified research expense credit or the basic research credit. For purposes of the credit for contract research expenses, the term "qualified research consortium" does not exclude an energy research consortium.

Effective: Amounts paid or incurred after Aug 8, 2005 in tax years ending after Aug. 8, 2005. Act § 402.

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

§ 43(c) Technical correction amending § 43, IRC, with respect to the terms "Alaska natural gas" and "natural gas".

Effective: Dec. 21, 2005. Act § 412.

§ 45(c)(3) Extension and modification of renewable electricity production credit. Technical correction amending § 1301 of the Energy Policy Act of 2005, changing the wording of the reference to "nonhazardous lignin waste material" to "lignin material" so as not infer that lignin is hazardous of waste.

Effective: Electricity produced and sold after Oct. 22, 2004 in tax years ending after Oct. 22, 2004. Act § 402.

§ 45(c)(7) Credit for production of refined Coal. Technical correction amending § 710 of the American Jobs Creation Act of 2004, striking the word "synthetic" from the definition of refined coal to carry out the intent that qualifying solid fuels produced from coal (including lignite) meet two new primary standards, an emissions reduction test and a value enhancement test, and not also be subject to a "chemical change" test promulgated under Treasury guidance for certain fuels from coal to qualify for credit under § 29.

Effective: Refined coal produced and sold after Oct. 22, 2004 in tax years ending after that date. Act § 403.

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§§ 45G(b) & (c) Railroad track maintenance credit. Technical correction amending § 245 of the American Jobs Creation Act of 2004, clarifying that for purposes of the rule that prevents the claiming of the credit by more than one eligible taxpayer with respect to the same mile or track, Class II and Class III railroads that operate track under a lease are not required to obtain assignment from the track owner in order to utilize or assign the credit. Under the provision, the credit is limited in respect of the total number of miles of track (1) owned or leased by the Class II or Class III railroad and (2) assigned by the Class II or Class III railroad for purposes of the credit.

The provision also clarifies the rules governing the assignment of track by Class II or Class III railroads. A track mile may be assigned only once per tax year, effective at the close of the tax year, and any track mile assigned may not also be taken into account by the assignor taxpayer for the tax year. An assigned track mile is taken into account by the assignee in the tax year, which includes the effective date of assignment.

Effective: Tax years beginning after Dec. 31, 2004 as if included in § 245 of the American Jobs Creation Act of 2004. Act § 403.

§ 45I(a) Clerical correction amending §45I, IRC, with respect to qualified credit oil production.

Effective: Dec. 21, 2005. Act § 412.

§§ 45J(c) & (e) Credit for production from advanced nuclear power facilities. Technical correction amending § 1306 of the Energy Policy Act of 2005, clarifying the production credit for advanced nuclear power to carry out the intent the phase-out is indexed for inflation but the credit rate is not.

Effective: For production in tax years beginning after Aug. 8, 2005 as if included in § 1306 of the Energy Policy Act of 2005. Act § 402.

§§ 45K(a) & (g) Modification of credit for producing fuel from a nonconventional source. Technical correction amending § 1322 of the Energy Policy Act of 2005, clarifying the credit is allowable without the requirement to make an election.

Effective: Dec. 21, 2005. Act § 402.

§ 48(a) The 2005 Gulf Opportunity Zone Act law provision amends § 48(a)(1) to refer correctly to § 48(c)(1)(B) and § 48(c)(2)(B).

Effective: Dec. 21, 2005. Act § 412.

§ 50(a) Technical correction amending § 50(a)(2)(E) by striking "section 48(a)(5)" and inserting "section 48(b)".

Effective: Dec. 21, 2005. Act § 412.

§§ 54(c) & (l) Clean renewable energy bonds. Technical correction amending § 1303 of the Energy Policy Act of 2005, repealing § 54(l)(5), as it may provide a double benefit when computing the estimated tax penalty in the manner prescribed under §§ 6654(f) and 6655(g).

Effective: For taxable years beginning after 2005. Act § 402.

The 2005 Gulf Opportunity Zone Act also amends § 54(c) to provide that the credit for clean renewable energy bonds cannot exceed the excess of the sum of the regular tax liability and the alternative minimum tax, over the sum of the credits allowable under this part.

Effective: Bonds issued after Dec. 31, 2005, and before Jan. 1, 2007 for tax years ending after Aug. 27, 2005. Act § 101.

§ 55(c) Computation of foreign tax credit in determining alternative minimum tax by farmers and fisherman using income averaging. Technical correction amending § 314 of the American Jobs Creation Act of 2004, clarifying that in computing the regular tax for purposes of determining the alternative minimum tax of a farmer or fisherman using income averaging, the foreign tax credit does not need to be recomputed.

Effective: Dec. 21, 2005. Act § 403.

§§ 56(b) & (d) The 2005 Gulf Opportunity Zone Act makes the following changes to the alternative tax net operating loss deduction (ATNOLD) rules: (i) the 90% of AMTI limit is determined not only without regard to the ATNOLD, but also without regard to the U.S. production activities deduction allowed by § 199 and (ii) the AMTI limit at is also determined not only without regard to the ATNOLD, but also without regard to the U.S. production activities deduction.

Effective: Tax years beginning after Dec. 31, 2004 except that items arising from a tax year of a partnership, S corporation, estate, or trust beginning before Jan. 1, 2005, are not taken into account for § 199(d)(1) purposes. Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§§ 62(a) & (e) Technical correction amending § 62(a), IRC, by redesignating paragraph (19) (relating to costs involving discrimination suits, etc.), as added by § 703 of the American Jobs Creation Act of 2004, as paragraph (20), and by moving such paragraph after paragraph (19) (relating to health savings accounts). Subsection (e) of § 62 is amended by striking "subsection (a)(19)" and inserting "subsection (a)(20)".

Effective: Dec. 21, 2005. Act § 412.

§§ 121(d) &(g) Sale of principal residence following section 1031 exchange. Technical correction amending § 840 of the American Jobs Creation Act of 2004, clarifying that the exclusion under § 121 is denied on the sale or exchange of a principal residence by a taxpayer who did not recognize gain under § 1031 on the exchange in which the residence was acquired (or a by person whose basis in the residence is determined in whole or in part with reference to the basis of the residence in the hands of that taxpayer). The provision also makes a clerical change to the numbering of paragraphs.

Effective: Sales or exchanges after Oct. 22, 2004. Act § 403.

§ 137(b) Technical correction amending § 102(e) of the American Jobs Creation Act of 2004, amending the §137(b), IRC.

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

- § 143 The 2005 Gulf Opportunity Zone Act provides that the Katrina Relief Act's waiver of the first-time homebuyer requirement won't apply to financing provided after Dec. 31, 2010 (rather than Dec. 31, 2007).
Effective: Dec. 21, 2005. Act § 104.

The following provisions are operative for Hawaii income tax purposes.

- § 152(e) Uniform definition of child. Technical correction amending §§ 201, 203 and 207 of the Working Families Tax Relief act of 2004, clarifying § 152(e) to permit a divorced or legally separated custodial parent to waive, by written declaration, his or her right to claim a child as a dependent for purposes of the dependency exemption and child credit (but not with respect to other child-related tax benefits). By means of the waiver, the noncustodial parent is granted the right to claim the child as a dependent for these purposes. The provision clarifies that the waiver rules under the uniform definition of qualifying child operate as under prior law.

Effective: Tax years beginning after Dec. 31, 2004. Act § 404.
- § 163(j) The 2005 Gulf Opportunity Zone Act adds the U.S. production activities deduction to the items that must be added back in computing "taxable income" or "adjusted taxable income" under § 163(j)(6)(A), defining "adjusted taxable income" for purposes of the rules limiting the deductibility of "disqualified interest" paid to related persons by certain corporations (the "earnings stripping" rules).

Effective: Tax years beginning after Dec. 31, 2004. Act § 403.
- § 164 Treatment of deduction for State and local sales taxes under the alternative minimum tax. Technical correction amending § 501 of the American Jobs Creation Act of 2004, clarifying that the itemized deduction for State and local sales taxes does not apply in calculating alternative minimum taxable income. Act § 403.
- § 167(f) Paragraph (3) of § 167(f) is amended by striking "section 197(e)(7)" and inserting "section 197(e)(6)".

Effective: Dec. 21, 2005. Act § 412.
- § 168(e) Depreciation of certain solar- or wind-powered equipment. Technical correction amending § 11813 of the Omnibus Budget Reconciliation Act of 1990, clarifying that 5-year property includes certain heating, cooling, and other equipment using solar or wind (rather than solar and wind) energy.

Effective: Property placed in service after Dec. 31, 1990. Act § 410.
- § 168(i) Subparagraph (D) of § 168(i)(15) is amended by striking "This paragraph shall not apply to" and inserting "Such term shall not include."

Effective: Dec. 21, 2005. Act § 412.

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

§ 168(k) Depreciation allowance for aircraft. Technical correction amending § 336 of the American Jobs Creation Act of 2004, clarifying that either noncommercial aircraft or property having a longer production period can qualify. Act § 403.

Bonus depreciation. Technical correction amending § 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, clarifying that property acquired and placed in service during 2005 pursuant to a written binding contract which was entered into after May 5, 2003, and before Jan. 1, 2005, is eligible for 50-percent additional first-year depreciation deduction.

The provision corrects the reference to a date in the rules applicable to qualified New York Liberty Zone property so that it refers to the Jan. 1, 2005, date in the corresponding rule for additional first-year depreciation in § 168(k). Act § 405.

The following provisions are operative for Hawaii income tax purposes.

§ 169(d)(5) Expansion of amortization for certain atmospheric pollution control facilities in connection with plants first placed in service after 1975. Technical correction amending § 1309 of the Energy Policy Act of 2005, clarifying that the 84-month amortization period only applies to facilities used in connection with a plant or other property placed in service after Dec. 31, 1975.

Effective: Facilities placed in service after Apr. 11, 2005. Act § 402.

§ 170(f)(12) Reporting with respect to donations of motor vehicles, boats and airplanes. Technical correction amending § 884 of the American Jobs Creation Act of 2004, clarifying that the acknowledgement by the donee organization is to include whether the donee organization provided any goods or services in consideration of the vehicle, and a description and good faith estimate of the value of any such goods or services, or, if the goods or services consist solely of intangible religious benefits, a statement to that effect.

Effective: Contributions made after Dec. 31, 2004. Act § 403.

§ 172(b)(1)(I) Technical correction amending § 1311 of the Energy Policy Act of 2005, where a number of clerical amendments are made to § 172(b)(1)(I). A net operating loss (NOL) may be carried back two years and forward 20 years, unless a special carryback or carryover period applies or the taxpayer irrevocably elects to forgo carrybacks. The 2005 Energy Tax Act provided a special rule under which companies that invest in electric transmission equipment or pollution control facilities—“qualifying investments”—can elect a five-year carryback period instead of the “regular” two-year carryback period for a portion (up to 20% of the preceding year’s qualifying investment) of their 2003, 2004, and 2005 NOLs.

Under pre-2005 Gulf Opportunity Zone Act law, the 2003, 2004, or 2005 NOLs eligible for the five-year carryback period were NOLs that arose in a tax year ending in 2003, 2004, or 2005. This meant that the five-year carryback wasn’t available for NOLs for other tax years that were carried back or forward to 2003, 2004, or 2005. Moreover, the election had to be made in a tax year ending in 2006, 2007 or 2008. Thus, the last possible date for making the election was Dec. 31, 2008 (for a calendar year taxpayer).

The 2005 Gulf Opportunity Zone Act provides that the special five-year carryback period applies, at the taxpayer’s election, to NOLs for a tax year (instead of in a tax year) ending after Dec. 31, 2002 and before Jan. 1, 2006 (“loss year NOLs”). In other words, an NOL for a tax year ending in 2003, 2004, or 2005 can be a “loss year NOL” eligible for the five-year carryback period election. Under pre-2005 Gulf Opportunity Zone Act law, the NOL had to arise in a tax year ending in 2003, 2004, or 2005 to be a loss year NOL.

The 2005 Gulf Opportunity Zone Act further provides that the limit on the portion of a loss year NOL eligible for the five-year carryback is based on the qualifying investment for the tax year preceding the tax year for which (instead of in which) the election is made. Specifically, the portion of the 2003, 2004, or 2005 NOL for which the election is allowed can’t exceed 20% of the sum of the taxpayer’s “electric transmission property (ETP) capital expenditures” (capital expenditures for property used in transmitting at 69 or more kilovolts (kvs) of electricity for sale), and “pollution control facility (PCF) capital expenditures” (capital expenditures made by an electric utility company for a certified PCF,) for the tax year preceding the tax year for which the election is made. The 2005 Gulf Opportunity Act provides that the election can be made for any tax year (instead of in any tax year) ending after Dec. 31, 2005 and before Jan. 1, 2009.

Effective: Elections made for tax years ending after Dec. 31, 2005 and before Jan. 1, 2009. Act § 402.

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

§ 181 Expensing of certain films and television production costs. Technical correction amending § 244 of the American Jobs Creation Act of 2004, clarifying that the \$15 million production cost limitation and the 75 percent qualified compensation requirement are determined on an episode-by-episode basis (not an aggregate basis).

Effective: Qualified film and television productions commencing after Oct. 22, 2004 and before Jan. 1, 2009. Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§ 194 Reforestation expensing recapture. Technical correction amending § 322 of the American Jobs Creation Act of 2004, clarifying that the amortization provision applies to trusts and estates, but the deduction applies to estates (not to trusts). The provision provides that § 1245 is expanded to provide recapture rules for the new expensing provisions of § 194(b).

Effective: Expenditures paid or incurred after Oct. 22, 2004. Act § 403.

§ 198 The § 198 expensing election for qualified environmental remediation expenditures (the “expensing election”) is applied by substituting, in § 198(h), “Dec. 31, 2007” for “Dec. 31, 2005” for expenditures paid or incurred after Aug. 27, 2005 and before Jan. 1, 2008.

Effective: Tax years ending after Aug. 27, 2005 for costs paid or incurred after Aug. 27, 2005 and before Jan. 1, 2008. Act § 101.

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

§ 199 Deduction relating to income attributable to domestic production activities. Technical correction amending § 102 of the American Jobs Creation Act of 2004 with respect to § 199. Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§ 223(d) Under the 2005 Gulf Opportunity Zone Act, for purposes of the definition of “qualified medical expenses” under the health savings account rules, “dependent” is defined in § 152, but without regard to subsections (b)(1), (b)(2), and (d)(1)(B) of that section. Thus, for health savings account purposes, an individual may qualify as a dependent without regard to whether he:

- (1) is subject to the general rule that a dependent of a taxpayer shall be treated as himself having no dependents;
- (2) is married and files a joint return; and
- (3) has gross income that exceeds an otherwise applicable gross income limitation

Effective: Tax years beginning after Dec. 31, 2004. Act § 404.

§§ 274, 267, 707 Limitation of employer deduction for certain entertainment expenses. Technical correction amending § 907 of the American Jobs Creation Act of 2004, making clerical changes to the paragraphs. Act § 403.

The 2005 Gulf Opportunity Zone Act expands the definition of “specified individual” in § 274(e)(2)(B), to include any individual who is subject to the requirements of § 16(a) of the Securities Exchange Act of 1934 with respect to the taxpayer or a related party to the taxpayer or would be subject to those requirements if the taxpayer (or the related party) were an issuer of equity securities referred to in that section.

Effective: For expenses incurred after Oct. 22, 2004. Act § 403.

§ 334(b) The 2005 Gulf Opportunity Zone Act revises the basis limitation rule for subsidiary liquidations so (i) it applies only to property that became subject to U.S. income tax on the liquidation and (ii) conforms to the basis limitation rule that applies to shareholder transfers of property to a corporation.

Under the 2005 Gulf Opportunity Zone Act, the basis of property transferred in a § 332 tax-free subsidiary liquidation is the same in the hands of the distributee as in the hands of the transferor, except that in the hands of the distributee, the basis of the property is its fair market value at the time of the distribution where gain or loss is recognized by the liquidating corporation as to the property, and (2) the basis of any § 362(e)(1)(B) property is its fair market value at the time of the distribution if the distributee's total adjusted basis for such property would otherwise (i.e., if not for this basis limitation rule) exceed the property's fair market value immediately after the liquidation.

Effective: The amendments to the subsidiary liquidation rule apply to liquidations after Oct. 22, 2004. Act § 403.

§ 351 Nonqualified preferred stock. Technical correction amending § 899 of the American Jobs Creation Act of 2004, clarifying that the "real and meaningful likelihood" requirement under the Act (which applies so that stock shall not be treated as participating in corporate growth to any significant extent unless there is a "real and meaningful likelihood" of the shareholder actually participating in the earnings and growth of the corporation) applies also for purposes of determining whether stock is not stock that is "limited and preferred as to dividends."

Effective: Transactions occurring after May 14, 2003. Act § 403.

§§ 357, 361 Modification of treatment of transfers to creditors in divisive reorganizations. Technical correction amending § 898 of the American Jobs Creation Act of 2004, clarifying that the amount of the adjusted basis of property that is taken into account for purposes of § 361(b)(3) is reduced by the liabilities assumed (within the meaning of § 357(c)).

Effective: Transfers of money or other property, or liabilities assumed, in reorganizations occurring on or after Oct. 22, 2004. Act § 403.

§ 362 The 2005 Gulf Opportunity Zone Act revises the conditions for the transferor and the transferee to elect under § 362(e)(2)(C) to reduce the transferor's basis in stock received for property to which the second basis limitation rule, would otherwise apply instead of reducing the basis of the transferred property in the hands of the transferee. An election is made at the time and in the form and manner prescribed by IRS, and, once made, is irrevocable.

Effective: The amendment to the election to reduce stock basis is effective for transactions after Oct. 22, 2004. Act § 403.

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§ 402(g) Option to treat elective deferral as after-tax Roth contributions. Technical correction amending § 617 of the Economic Growth and Tax Relief Reconciliation Act of 2001. The 2005 Gulf Opportunity Zone Act amends the \$15,000 cumulative limit on the catch-up election for 403(b) annuity plans. Under the Act, the \$15,000 cumulative limit is reduced by the sum of both: (1) amounts not included in gross income for earlier tax years under the catch-up rule (as under prior law), plus (2) the aggregate amount of § 402A(c)(1) designated Roth contributions for earlier tax years. Thus, the amount of designated Roth contributions made for earlier years is an additional amount by which the \$15,000 cumulative limit must be reduced

Effective: For tax years beginning after Dec. 31, 2005. Act § 407.

§ 409A Nonqualified deferred compensation plans. Technical correction amending § 885 of the American Jobs Creation Act of 2004, clarifying that the additional tax and interest under the nonqualified deferred compensation provision of the Act are not treated as payments of regular tax for alternative minimum tax purposes. The provision also clarifies that the application of the rule providing that certain additional deferrals must be for a period of not less than five years is not limited to the first payment for which deferral is made. The provision also clarifies that Treasury Department guidance providing a limited period during which plans can conform to the requirements applies to plans adopted before Jan. 1, 2005.

The provision also clarifies that the effective date of the funding provisions relating to offshore trusts and financial triggers is Jan. 1, 2005. Act § 403.

§ 415(c) Equitable treatment for contributions to defined contribution plans. Technical correction amending § 632 of the Economic Growth and Tax Relief Reconciliation Act of 2001. Under the law as in effect before the Act, a special limit applied to contributions to tax-sheltered annuities for foreign missionaries with adjusted gross income not exceeding \$17,000.

The special limit was inadvertently dropped by the Act. The special limit was restored in a technical correction in the Job Creation and Worker Assistance Act of 2002, but did not accurately reflect the pre-Act rule. The provision revises the special limit to reflect the pre-Act rule.

Effective: For years beginning after Dec. 31, 2001. Act § 407.

§ 470 Limitation on deductions allocable to property used by tax-exempt entities. Technical correction amending § 849 of the American Jobs Creation Act of 2004. The Act establishes rules to limit deductions that are allocable to tax-exempt use property. For this purpose, the Act generally defines "tax-exempt use property" by reference to the definition provided in § 168(h). Section 168(h) generally provides that tax-exempt use property includes tangible property that is leased to a tax-exempt entity, as well as certain property owned by a partnership that has a tax-exempt partner and provides for certain special allocations.

The provision clarifies that the deduction limitations rules established by the Act apply without regard to whether the tax-exempt use property is treated as such by reason of a lease or otherwise (e.g., because the property is owned by a partnership that has a tax-exempt partner and provides for certain special allocations). In the case of property treated as tax-exempt use property other than by reason of a lease, the provision clarifies that the deduction limitation rules generally are effective for property acquired after March 12, 2004.

Effective: Property treated as tax-exempt use property other than by reason of a lease and that is acquired after Mar. 12, 2004. Act § 403.

§ 481 The 2005 Gulf Opportunity Zone Act provides that § 481 (regarding required adjustments when a taxpayer changes its accounting method), doesn't apply to any changes in accounting method required for qualified naval ship contracts as provided in 2004 Jobs Act §708 .

Effective: Contracts for ships or submarines with construction commencement dates after Oct. 22, 2004. Act § 403.

§ 613(c) The 2005 Gulf Opportunity Zone Act provides that for oil shale, extraction from the ground, crushing, loading into the retort, and retorting (including in situ retorting) are considered to be mining eligible for percentage depletion, but hydrogenation, refining, or any other process after the retorting is not considered to be mining.

Effective: Dec. 21, 2005. Act § 412.

§ 709 Consistent amortization period for intangibles and treatment of partnership organizational expenses. Technical correction amending § 902 of the American Jobs Creation Act of 2004, correcting the reference to "taxpayers" to refer to "partnerships" in the rules relating to deduction or amortization of partnership organizational expenses.

Effective: Amounts paid or incurred after Oct. 22, 2004. Act § 403.

§§ 734(a), (b) Disallowance of certain partnership loss transfers. Technical correction amending § 833 of the American Jobs Creation Act of 2004, clarifying that the mandatory basis adjustments apply if there is a substantial basis reduction with respect to a distribution. This means that there must be a partnership distribution to a partner with respect to which there is a substantial basis reduction.

Effective: Distributions after Oct. 22, 2004. Act § 403.

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

§ 853 Minimum holding period for withholding taxes on gain and income other than dividends. Technical correction amending § 832 of the American Jobs Creation Act of 2004, clarifying that the exception from the minimum period for certain withholding taxes paid by registered or licensed brokers and dealers on income and gain from securities also apply to gain from the sale of stock. Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§§ 856(c)(7) & (m)(6),
857(b)(2) The 2005 Gulf Opportunity Zone Act recodifies the rules for failures to satisfy the Real estate investment trusts (REITs) assets tests. A REIT does not lose its REIT status for failing to meet any of the assets tests for a quarter (other than a de minimis failure to satisfy the 5% and 10% tests described below) if:

- (1) following the REIT's identification of the failure to satisfy the requirements for a particular quarter, the REIT files a description of each asset that causes the REIT to fail to satisfy the requirements at the close of the quarter of any tax year in a schedule for the quarter with IRS in accordance with IRS regs ;
- (2) the failure to meet the requirements for a particular quarter is due to reasonable cause and not due to willful neglect ; and
- (3) the REIT either disposes of the assets within 6 months after the last day of the quarter in which the REIT's identification of the failure to satisfy the assets tests occurred or within some other time period prescribed by IRS or the assets tests are otherwise satisfied within that period.

The rule that taxes due to failures to meet the REIT requirements are deductible for purposes of calculating a REIT's real estate investment company taxable income is amended to refer to the recodified section.

Effective: Assets tests failures for which requirements of either the de minimis rule or the tax imposed on non-de minimis failures are satisfied after Oct. 22, 2004. Act § 403.

§ 857(b)(6) The 2005 Gulf Opportunity Zone Act provides that the definitions with respect to a sale of property, which is a real estate that is not a prohibited transaction under the American Jobs Creation Act of 2004 applied before the American Jobs Creation Act of 2004 apply as well for the timber safe harbor added by the American Jobs Creation Act of 2004 .

Effective: Dec. 21, 2005. Act § 412.

§ 860G Repeal of special rules for Financial Asset Securitization Investment Trusts (FASITs) and modifications to rules for Real Estate Mortgage Investment Conduits (REMICs). Technical correction amending § 835 of the American Jobs Creation Act of 2004, clarifying that if more than 50 percent of the obligations transferred to, or purchased by, a REMIC are originated by a government entity and are principally secured by an interest in real property, then each obligation originated by a government entity and transferred to, or purposed by, the REMIC is treated as principally secured by an interest in real property.

Effective: January 1, 2005. Act § 403.

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

- § 877 Expatriation of individuals. Technical correction amending § 877 of the American Jobs Creation Act of 2004, clarifying that the exception to the requirement of minimal prior physical presence in the United States is both for (i) teachers, students, athletes, and foreign government individuals, and (ii) individuals receiving medical attention. Act § 403.
- § 897 Application of FIRPTA to distributions from REITS. Technical correction amending § 418 of the American Jobs Creation Act of 2004, clarifying that the new rules providing an exception from FIRPTA do not apply to regulated investment companies ("RICs"), but only to real estate investment trusts ("REITs"). The provision clarifies that the period of time during which a foreign shareholder may not held more than five percent of the class of stock with respect to which the distribution is made is the one-year period ending on the date of the distribution. The provision also clarifies that the new rules apply to any distribution of a REIF that is treated as a deduction for a taxable year of the REIT beginning after the date of enactment. Act § 403.
- § 904 Recharacterization of overall domestic loss. Technical correction amending § 402 of the American Jobs Creation Act of 2004, clarifying that in a case in which an overall domestic loss is used as a carryback, the requirement in § 904(g)(2) that the taxpayer have elected the benefits of the foreign tax credit applies to the taxable year in which the loss is used.
- Technical correction amending § 403 of the American Jobs Creation Act of 2004, adding a transition rule under which a taxpayer may elect not to apply the Act's look-through rules to taxable years beginning before January 1, 2005. Act § 403.
- § 954 Look-through treatment for sales of partnership interests. Technical correction amending § 412 of the American Jobs Creation Act of 2004, clarifying that constructive ownership is taken into account in determining whether a controlled foreign corporation is a 25-percent owner of a partnership for purposes of the rule treating a sale of a partnership interest as a sale of a proportionate share of the assets of the partnership. This provision conforms the statutory language to the legislative history of the Act. Act § 403.
- § 961 Adjustments to basis of stock in controlled foreign corporations. Technical correction amending § 1112(b) of the Taxpayer Relief Act of 1997, clarifying that the basis adjustments of § 961(c) apply not only with respect to the stock of the controlled foreign corporation that earns the subpart F income that give rise to the basis adjustments, but also with respect to the stock of higher-tier controlled foreign corporations in the same chain of ownership. Act § 409.

§ 965 Incentives to reinvest foreign earnings in the United States. Technical correction amending § 422 of the American Jobs Creation Act of 2004, clarifying that distributions made indirectly through tiers of controlled foreign corporations are eligible for the benefits of § 965 only if they originate with a dividend received by one controlled foreign corporation from another controlled foreign corporation in the same chain of ownership described in § 958 (a).

The provision clarifies that for purposes of determining the amount of excess dividends eligible for the deduction, only cash dividends received during the elected taxable year are taken into account under § 965(b)(2)(A).

The provision also provides that the Treasury Secretary with explicit regulatory authority to prevent the avoidance of the purposes of § 965(b)(3), which reduces the amount of eligible dividends in certain cases in which an increase in related-party indebtedness has occurred after October 3, 2004. The provision also clarifies the definition of "applicable financial statement" under § 965(c)(1). The expenses disallowance rule of § 965(d)(2) applies only to deductions for expenses that are directly allocable to the deductible portion of the dividend. The provision clarifies that foreign taxes that are not allowed as foreign tax credits by reason of § 965(d) do not give rise to income inclusions under § 78.

The provision also clarifies that under § 965(e)(1), the only foreign tax credits that may be used to reduce the tax on the nondeductible portion of a dividend are credits for foreign taxes that are attributable to the nondeductible portion of the dividend. Credits for other foreign taxes cannot be used to reduce the tax on the nondeductible portion of the dividend.

The provision also clarifies that § 965(f) to provide that an election to apply § 965 is timely if made on or before the due date (including extensions) for filing the tax return for the relevant taxable year. Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§ 1016(a) The 2005 Gulf Opportunity Zone Act provides that a basis adjustment for property the acquisition of which resulted under § 1045 in the nonrecognition of any part of the gain realized on the sale of other property, to the extent provided in § 1045(b)(3) (rules providing for a reduction of basis of replacement stock where gain isn't recognized because of a qualified small business stock rollover election).

Effective: Dec. 21, 2005. Act § 412.

§§ 1041(a), 1366(d)(2) Transfer of suspended losses incident to divorce. Technical correction amending § 235 of the American Jobs Creation Act of 2004. The effective date of Act § 235 is corrected to provide that it is effective for transfers after December 31, 2004.

Effective: Transfers after Dec. 31, 2004. Act § 403.

**DIGEST OF THE GULF OPPORTUNITY ZONE ACT OF 2005
P.L. 109-135; DECEMBER 21, 2005**

§§ 1081-1083 Repeal of the Public Utility Holding Company Act of 1935. Technical correction amending § 1263 of the Energy Policy Act of 2005, repealing §§ 1081-1083 of the Code (relating to exchanges in obedience to Securities and Exchange Commission orders) to conform to the repeal of the Public Utility Holding Company Act of 1935. The 2005 Gulf Opportunity Zone Act repeals the rules that provided for nonrecognition treatment and carryover basis rules for exchanges and distributions that were made under a Securities and Exchange Commission (SEC) order under the Public Utility Act of 1935. The repeal does not apply to any exchange, expenditure, investment, distribution, or sale made in obedience to an order of the Securities and Exchange Commission.

Effective: Feb. 8, 2006. Act § 402.

§ 1092 Modification of treatment of transfers to creditors in divisive reorganizations. Technical correction amending § 888 of the American Jobs Creation Act of 2004, clarifying that taxpayers are permitted to identify a straddle as an identified straddle under § 1092(a)(2)(B) (by making a clear and unambiguous identification on their books and records) without regard to whether the Secretary has prescribed regulations under the mandate in that section. The provision provides that the Secretary's mandate under the provision is to issue guidance in the form of regulations or in another form. Act § 403.

§ 1245(a)(2) For purposes of computing recomputed basis, the 2005 Gulf Opportunity Zone Act provides that any deduction of expensing of reforestation expenses allowable under § 194 is treated as if it is a deduction allowable for amortization. Thus, § 1245 is expanded to provide recapture rules for expensing of reforestation expenses under § 194(b).

Effective: Expenditures paid or incurred after Oct. 22, 2004. Act § 403.

§ 1250(b)(3) Energy efficient commercial buildings deduction. Technical correction amending § 1331 of the Energy Policy Act of 2005, repealing the language of "or by section 179D" in § 1250(b)(3), IRC.

Effective: Property placed in service after Dec. 31, 2005. Act § 402.

§ 1256(f) The 2005 Gulf Opportunity Zone Act provides that if "personal property" as defined in § 1092(d)(1) has ever been identified under § 1256(e)(2) by the taxpayer as being part of a hedging transaction, gain from the sale or exchange of that property may never be treated as capital gain, but has to be reported as ordinary income.

Effective: Dec. 21, 2005. Act § 412.

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

§§ 1352-1359 Election to determine corporate tax on certain international shipping activities using per ton rate. Technical correction amending § 248 of the American Jobs Creation Act of 2004. The provision strikes the rule added by the Act regarding the operation of a qualifying vessel by a non-electing corporation that is a member of an electing group.

The provision clarifies § 1354(b) to provide that an election to determine income tax on certain international shipping activities using a per ton rate is timely if made on or before the due date (including extension) for filing the tax return for the relevant taxable year.

The provision clarifies the treatment of operating agreements under the tonnage tax rules. An operating agreement is not a charter, but is instead an agreement with an owner or character of a qualifying vessel to provide operating or management services in respect of a qualifying vessel, for example, crew, technical, or commercial services.

The provision makes clear that a person providing services for a vessel under an operating agreement is treated as operating the vessel and may elect tonnage tax treatment, assuming the other requirements for such treatment are met.

The provision also clarifies that interests in operating agreements are taken into account for purposes of allocating the notional shipping income from the operation of qualifying vessels among respective ownership, charter, and operating agreement interests. In addition, in the case of a partnership operating a vessel, the extent of a partner's ownership, charter, or operating agreement interest is determined on the basis of the partner's interest in the partnership. The provision makes a clerical amendment by eliminating subparagraph (B) of § 1355(c)(3) of the Code, because the rule of subparagraph (b) is encompassed in subparagraph (A). Act § 403.

The following provisions are operative for Hawaii income tax purposes.

§ 1361(b) Information returns for qualified subchapter S subsidiaries. Technical correction amending § 239 of the American Jobs Creation Act of 2004. The 2005 Gulf Opportunity Zone Act amends the rules regarding qualified subchapter S subsidiaries, so that, except as provided by IRS, qualified subchapter S subsidiaries are treated as separate entities for purposes of the information return requirements.

Effective: Tax years beginning after Dec. 31, 2004. Act § 413.

§ 1361(c) Family members treated as one shareholder of an S corporation election. Technical correction amending § 231 of the American Jobs Creation Act of 2004, repealing the requirement that a family must elect to be treated as one shareholder for purposes of determining the number of shareholders for purposes of subchapter S. The provision also provides that the determination of whether a common ancestor is more than six generations removed from the youngest generation of shareholders is made at the latest of (i) the date the subchapter S election is made, (ii) the date a family member first holds stock in the S corporation; or (iii) October 22, 2004.

The term "applicable date" means the latest of:

- (1) the date the election under § 1362(a) is made,
- (2) the earliest date that an individual, who is a common ancestor, any lineal descendant of such common ancestor, and any spouse or former spouse of such common ancestor or any such lineal descendant, holds stock in the S corporation, or
- (3) October 22, 2004.

The provision treats the estate of a family member as a member of the family for purposes of determining the number of shareholders.

Effective: Tax years beginning after Dec. 31, 2004. Act § 403.

Expansion of bank S corporation eligible shareholders to include IRAs. Technical correction amending § 233 of the American Jobs Creation Act of 2004. The provision expands the provision in the Act allowing certain bank stock to be held by an IRA (or to be sold by an IRA to the beneficiary) to include stock in a depository holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act). A depository holding company includes a bank holding company and a thrift holding company.

Effective: Oct. 22, 2004. Act § 413.

§ 1362(d) Exclusion of investment securities income from passive income test for bank S corporations. Technical correction amending § 237 of the American Jobs Creation Act of 2004. The provision expands the rule in the Act, which provides that, in the case of a bank, bank holding company, or financial holding company, certain interest and dividend income is not treated as passive under the S corporation passive investment income rules. Under the provision, this rule applies to a bank and to a depository holding company (as defined in section 3(w)(1) of the Federal Deposit Insurance Act). A depository holding company includes a bank holding company and a thrift holding company.

Effective: Oct. 22, 2004. Act § 413.

§ 1363(d) Clarification of earnings and profits and stock basis where LIFO recapture tax applies. Technical correction amending § 10227 of the Omnibus Budget Reconciliation Act of 1987, providing that the rules relating to (1) the prohibition on adjustments of earnings and profits of an S corporation and (2) the requirement to reduce the basis of stock of the S corporation by reason of nondeductible expenses do not apply to any corporate tax imposed by reason of § 1363(d).

Effective: For S corporation elections made after Dec. 17, 1987. Act § 411.

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

§ 1397E Technical correction amending § 1303 of the Energy Policy Act of 2005, clarifying that the qualified zone academy bond credit rules under § 1397E effective for tax years beginning after 2005.

Effective: For tax years beginning after 2005. Act § 402.

The following provision is operative for Hawaii income tax purposes.

§ 1400M § 1400M provides definitions of the following terms: Gulf Opportunity Zone, Hurricane Katrina disaster area, Rita GO Zone, Hurricane Rita disaster Area, Wilma GO Zone, and Hurricane Wilma disaster area. Act § 101.

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

§ 1400N(a) The 2005 Gulf Opportunity Zone Act authorizes the issuance of tax-exempt qualified bonds to finance the construction and rehabilitation of residential and nonresidential property located in the Gulf Opportunity Zone.

Effective: Bonds issued after Dec. 21, 2005 and before Jan. 1, 2011 for tax years ending after Aug. 27, 2005. Act § 101.

§ 1400N(b) One additional advance refunding of bonds is allowed under the applicable rules of § 149(d).

Effective: Advance refundings after Dec. 21, 2005 and before Jan. 1, 2011 in tax years ending after Aug. 27, 2005. Act § 101.

The following provision is operative for Hawaii income tax purposes.

§ 1400N(c) For calendar years 2006, 2007, and 2008, the state housing credit ceiling of each state, any portion of which is located in the Gulf Opportunity Zone will be increased by the lesser of the aggregate housing credit dollar amount allocated to buildings located in the Gulf Opportunity Zone for the calendar year by the state housing credit agency of the state or the "Gulf Opportunity housing amount" for the state for the calendar year.

The term "Gulf Opportunity housing amount" means, for any calendar year, the amount equal to the product of \$18.00 multiplied by the portion of the state population which is in the for each calendar year, each applicable state in the Gulf Opportunity Zone must treat the additional credit cap allocable to that state under § 1400N(c)(1)(C) as allocated before any other credit cap amounts. This means that each state in the GO Zone is treated as using the credits in the following order:

- (1) the additional credit cap, including any of those credits returned to the state, under the GO Zone;
- (2) the state's allocation of any unused state housing credit ceiling from the preceding calendar year;
- (3) the current year's allocation of pre-2005 Gulf Opportunity Zone Act law credit, including any credits returned to the state, and
- (4) any national pool allocations.

Any term used in § 1400N(c) that is also used in § 42 has the same meaning as it does when it is used in § 42.

Effective: Tax years ending after Aug. 27, 2005. However, § 1400N(c) (except for § 1400N(c)(2)) applies to calendar years 2006, 2007, and 2008. Act § 101.

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

§ 1400N(d) The 2005 Gulf Opportunity Zone Act provides that for “qualified Gulf Opportunity Zone property” the depreciation deduction under § 167(a) for the tax year in which the property is placed in service includes an allowance equal to 50% of the adjusted basis of the qualified Gulf Opportunity Zone property (“50% bonus depreciation”), and the adjusted basis of the qualified Gulf Opportunity Zone property is reduced by the amount of that deduction before computing the amount otherwise allowable as a depreciation deduction for the tax year and any later tax year. The 50% bonus depreciation for qualified Gulf Opportunity Zone property is subject to the general rules regarding whether an item is deductible under § 162 or subject to capitalization under § 263. (cross reference §168(k), IRC)

Effective: Tax years ending after Aug. 27, 2005 for property (1) acquired by the taxpayer by purchase after Aug. 27, 2005, but only if no written binding contract for the acquisition was in effect before Aug. 28, 2005, and (2) placed in service before Jan. 1, 2008 (before Jan. 1, 2009 if the property is nonresidential real property or residential rental property) Act § 101.

§ 1400N(e) The 2005 Gulf Opportunity Zone Act provides that for purposes of § 179:

- (1) the dollar amount in effect under § 179(b)(1) (i.e. the \$100,000 annual dollar limit indexed for inflation as discussed above) is increased by the lesser of:
 - (A) \$100,000, or
 - (B) the cost of “qualified section 179 Gulf Opportunity Zone property” (see below) placed in service during the tax year, and
- (2) the dollar amount in effect under § 179(b)(2) (i.e. the \$400,000 beginning-of-phase-out level indexed for inflation as discussed above) is increased by the lesser of:
 - (A) \$600,000, or
 - (B) the cost of qualified section 179 Gulf Opportunity Zone property placed in service during the tax year.

Effective: Tax years ending after Aug. 27, 2005. Act § 101.

The following provisions are operative for Hawaii income tax purposes.

§ 1400N(f) The 2005 Gulf Opportunity Zone Act allows taxpayers to elect to treat 50% of any “qualified Gulf Opportunity Zone clean-up cost” as an expense that isn't chargeable to capital account. The cost is, instead, allowed as a deduction for the tax year in which the cost is paid or incurred. The remaining 50% is capitalized as under pre-2005 Gulf Opportunity Zone Act law.

“Qualified Gulf Opportunity Zone clean-up cost” is any amount that would be chargeable to capital account but for § 1400N(f)(1) and meets the following two requirements:

(1) the cost is paid or incurred during the period beginning on Aug. 28, 2005, and ending on Dec. 31, 2007, for the removal of debris from, or the demolition of structures on, real property that is located in the Gulf Opportunity Zone; and

(2) the cost is paid or incurred with respect to property that is:

(A) held by the taxpayer for use in a trade or business or for the production of income, or

(B) property described in § 1221(a)(1) in the hands of the taxpayer.

Effective: Tax years ending after Aug. 27, 2005 for amounts paid or incurred after Aug. 27, 2005 and before Jan. 1, 2008. Act § 101.

§ 1400N(g) The 2005 Gulf Opportunity Zone Act provides for qualified environmental remediation expenditures paid or incurred after Aug. 27, 2005 in connection with a qualified contaminated site located in the Gulf Opportunity Zone. The § 198 expensing election for qualified environmental remediation expenditures (the “expensing election”) is applied by substituting, in § 198(h), “Dec. 31, 2007” for “Dec. 31, 2005” for expenditures paid or incurred after Aug. 27, 2005 and before Jan. 1, 2008. Thus, the expensing election is extended for two years for qualified contaminated sites located in the Gulf Opportunity Zone.

Effective: Tax years ending after Aug. 27, 2005 for costs paid or incurred after Aug. 27, 2005 and before Jan. 1, 2008. Act § 101.

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

§ 1400N(h) The 2005 Gulf Opportunity Zone Act provides that § 47(a) is applied by substituting “13%” for “10%” in § 47(a)(1) and by substituting “26%” for “20%” in § 47(a)(2). Thus, the 2005 Gulf Opportunity Zone Act increases the rehabilitation credit under § 47 from 10% to 13% for qualified rehabilitated buildings and from 20% to 26% for certified historic structures located in the Gulf Opportunity Zone, provided that the qualified rehabilitation expenditures with respect to such buildings or structures are paid or incurred during the period beginning on Aug. 28, 2005 and ending on Dec. 31, 2008 for any qualified rehabilitated building or certified historic structure located in the Gulf Opportunity Zone.

Effective: Expenditures paid or incurred after Aug. 27, 2005 and before Jan. 1, 2009 for tax years ending after Aug. 27, 2005. Act § 101.

The following provisions are operative for Hawaii income tax purposes.

§ 1400N(i)

The 2005 Gulf Opportunity Zone Act provides an increase in the limitation under § 194(b)(1)(B) for “qualified timber property” any portion of which is located in: (1) the Gulf Opportunity Zone, (2) the portion of the Rita GO Zone that isn't part of the Gulf Opportunity Zone, or (3) the Wilma GO Zone.

Effective: Tax years ending after Aug. 27, 2005 for costs paid or incurred after Aug. 27, 2005 in the Gulf Opportunity Zone, after Sept. 22, 2005 in the part of the Rita GO Zone that isn't in the Gulf Opportunity Zone and after Oct. 22, 2005 in the part of the Wilma GO Zone that isn't in the Gulf Opportunity Zone or Rita GO Zone, and before Jan. 1, 2008. Act § 101.

The Act also provides that for purposes of determining any farming loss under § 172(i), income and deductions that are allocable to the “specified portion” of the tax year and that are attributable to “qualified timber property” any portion of which is located in the Gulf Opportunity Zone, located in the portion of the Rita GO Zone that isn't part of the Gulf Opportunity Zone, or located in the Wilma GO Zone, are treated as attributable to farming businesses.

The above rules don't apply to any taxpayer that: (1) is a corporation the stock of which is publicly traded on an established securities market, or (2) is a real estate investment trust. Also, the above rules don't apply to any qualified timber property unless the taxpayer held not more than 500 acres of qualified timber property on the following dates: (1) on Aug. 28, 2005, in the case of qualified timber property any portion of which is located in the GO Zone, (2) on Sept. 23, 2005, in the case of qualified timber property, any portion of which is located in the portion of the Rita GO Zone that isn't part of the GO Zone, or (3) on Oct. 23, 2005, in the case of qualified timber property any portion of which is located in the Wilma GO Zone.

Effective: Losses arising in tax years ending after Aug. 27, 2005 from income and deductions attributable to qualified timber property and allocable to portions of tax years after Aug. 27, 2005 in the GO Zone, after Sept. 22, 2005 in the part of the Rita GO Zone that isn't in the GO Zone and after Oct. 22, 2005 in the part of the Wilma GO Zone that isn't in the GO Zone or Rita GO Zone, and before Jan. 1, 2007. Act § 101.

§ 1400N(j)

The 2005 Gulf Opportunity Zone Act provides an election for taxpayers to treat certain casualty losses to public utility property caused by Hurricane Katrina as a specified liability loss (SLL) eligible for the 10-year NOL carryback period. Specifically, the taxpayer's SLL for any tax year includes (in addition to product liability losses and losses attributable to certain deferred statutory liabilities) any qualifying loss to public utility property, which the taxpayer elects to treat as a "GO Zone public utility casualty loss" for the tax year.

Effective: Losses arising in tax years ending after Aug. 27, 2005. Act § 101.

Note: Coordination with other disaster loss rules.

The following disaster loss rules won't apply to any GO Zone PU casualty loss to the extent that loss is taken into account as an SLL under the rules in § 1400n(j)(4):

(A) § 1400N(k) (providing for a five-year carryback period for "qualified GO Zone losses"). Thus, taxpayers who make the election to treat a casualty loss as an SLL can't include that casualty loss as part of the five-year NOL carryback under that other provision.

(B) § 165(i) (election to deduct certain losses attributable to a disaster occurring in a Presidentially-declared disaster area in the tax year immediately preceding the disaster). Thus, taxpayers who make the election to treat a casualty loss as an SLL can't also treat that loss as having occurred in any earlier tax year by making the § 165(i) election.

§ 1400N(k)

The 2005 Gulf Opportunity Zone Act provides a special five-year carryback period for NOLs to the extent of certain amounts related to Hurricane Katrina or the Gulf Opportunity Zone. Specifically, if any portion of the taxpayer's NOL for a tax year is a "qualified GO Zone loss", then, in applying § 172(b)(1)(A) (which provides the two-year NOL carryback period) to that portion, "five tax years" is substituted for "two tax years."

The 2005 Gulf Opportunity Zone Act also provides that the § 165(i) early deduction election won't apply to any qualified GO zone loss to the extent the qualified GO zone loss is taken into account under § 1400N(k). Thus, to the extent that a casualty loss is included in the taxpayer's NOL and carried back five years under the rule for qualified GO zone losses, the taxpayer can't also treat the loss as having occurred in the immediately preceding tax year.

Effective: Losses arising in tax years ending after Aug. 27, 2005. However, the election not to apply the five-year carryback may be made for any tax year. Act § 101.

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

§ 1400N(l)

The 2005 Gulf Opportunity Zone Act creates a new category of tax-credit bonds that may be issued in calendar year 2006 by the States of Louisiana, Mississippi, and Alabama ("Gulf tax credit bonds"). If a taxpayer holds a "Gulf tax credit bond" on one or more credit allowance dates of the bond occurring during any tax year, there is allowed as a credit against the tax imposed by Chapter 1 of the Internal Revenue Code for the tax year an amount equal to the sum of the credits determined under § 1400N(l)(2) with respect to those dates. Gross income includes the amount of the credit allowed to the taxpayer under § 1400N(l) and the amount so included is treated as interest income.

Effective: Bonds issued after Dec. 31, 2005, and before Jan. 1, 2007 for tax years ending after Aug. 27, 2005. Act § 101.

§ 1400N(m) The 2005 Gulf Opportunity Zone Act provides that “the new markets tax credit limitation” under § 45D is increased by an amount equal to \$300 million for 2005 and 2006 and \$400 million for 2007 to be allocated among qualified community development entities to make qualified low-income community investments within the “Gulf Opportunity Zone”.

Effective: Tax years ending after Aug. 27, 2005. Act § 101.

§ 1400N(n) The 2005 Gulf Opportunity Zone Act provides that a project operator is allowed to rely on the representations made by any individual for purposes of determining (1) if any residential rental project meets the applicable income limits and (2) if any certification meets the project operator certification requirement

Effective: Tax years ending after Aug. 27, 2005. Act § 101.

The following provisions are operative for Hawaii income tax purposes.

§ 1400N(o) Taxpayers who incurred casualty losses attributable to Hurricane Katrina with respect to public utility property located in the Gulf Opportunity Zone may elect to take those losses into account in the fifth tax year (rather than the first tax year) immediately preceding the tax year in which the loss occurred, and use the tentative carryback procedures to recover any refunds resulting from the election.

Specifically, the 2005 Gulf Opportunity Zone Act provides an election that taxpayers can make for “eligible public utility property (PUP) losses”. For any PUP loss for which the taxpayer makes the election is applied by substituting “the fifth tax year immediately preceding” for “the immediately preceding tax year.”

Effective: Tax years ending after Aug. 27, 2005. Act § 101.

§ 1400N(p) For purposes of § 1400N(d), § 1400N(e) and § 1400N(k)(2)(B)(iv), “qualified Gulf Opportunity Zone property” doesn’t include any property described under the heading “Prohibited property.” “Prohibited property” is (1) any property used in connection with any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, or any store whose principal business is the sale of alcoholic beverages for consumption off premises, or (2) any gambling or animal racing property.

Effective: Tax years ending after Aug. 27, 2005, except that the inapplicability of the five-year carryback of NOLs attributable to casualty losses, depreciation or amortization is effective for losses arising in tax years ending after Aug. 27, 2005. Act § 101.

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

§ 1400O The Act temporarily expands the Hope and Lifetime Learning credits for students attending an eligible education institution located in the Gulf Opportunity Zone. In addition, for GO Zone students, Hope and Lifetime Learning credit QT&R expenses include § 529(e)(3) qualified higher education expenses.

Effective: Dec. 21, 2005. Act § 102.

§ 1400P Gross income of a qualified employee doesn’t include the value of any lodging furnished in-kind to that employee, the employee’s spouse, or any of the employee’s dependents, by or on behalf of a qualified employer for any month during the tax year. The amount which may be excluded from income under § 1400P(a)(1) for any month for which lodging is furnished during the tax year cannot exceed \$600. (cross reference § 38(b), IRC, above)

Effective: Lodging furnished beginning Jan. 1, 2006, and ending on the date that is 6 months after Jan. 1, 2006. Act § 103.

The following provisions are operative for Hawaii income tax purposes.

§ 1400Q(a)

The 2005 Gulf Opportunity Zone Act codifies the 2005 Katrina Relief Act rules with respect to qualified Hurricane Katrina distributions. Under the 2005 Gulf Opportunity Zone Act, the favorable tax treatment of “qualified hurricane distributions” from “eligible retirement plans” that “qualified individuals” may receive includes:

- the reduction of the tax on a qualified hurricane distribution by including it in income ratably over three years,
- the inapplicability of the § 72(t) 10% additional tax on early distributions, (not applicable see § 235-2.4(b), HRS)
- the continued deferral of the income realized from a qualified hurricane distribution, for amounts that are recontributed to an eligible retirement plan.

In addition, “qualified hurricane distributions” are treated as satisfying the distribution restrictions in § 401(k)(2)(B)(i), § 403(b)(7)(A)(ii), § 403(b)(11), and § 457(d)(1)(A) .

The 2005 Gulf Opportunity Zone Act also provides that any amount of a “qualified hurricane distribution” that a taxpayer is required to include in gross income for a tax year must be included in gross income ratably over the three-tax year period beginning with the tax year in which the distribution is received (i.e., the tax year in which the distribution otherwise must be included in gross income)—unless the taxpayer elects to include the distribution in gross income in one year.

The 2005 Gulf Opportunity Zone Act permits “qualified hurricane distributions” to be recontributed to eligible retirement plans or IRAs, thus making the distributions tax-free. Specifically, under the 2005 Gulf Opportunity Zone Act, any individual who receives a “qualified hurricane distribution” at any time during the three-year period beginning on the day after the date of the distribution was received, may make one or more repayment contributions (“recontributions”) to an “eligible retirement plan” in which he is a beneficiary, and to which a rollover contribution could be made under § 402(c) , § 403(a)(4), § 403(b)(8), § 408(d)(3) , or § 457(e)(16), as the case may be.

Effective: Dec. 21, 2005 for distributions made (i) after Aug. 24, 2005 for Hurricane Katrina, after Sept. 22, 2005 for Hurricane Rita, and after Oct. 22, 2005 for Hurricane Wilma, and (ii) before 2007. Act § 201.

§ 1400Q(b)

Under the 2005 Gulf Opportunity Zone Act, certain individuals who received retirement plan or IRA distributions for home purchases that were canceled due to Hurricanes Katrina, Rita, or Wilma, can return the distributions to a qualified plan or IRA, and the distributions will be tax-free and without penalty. Specifically, the 2005 Gulf Opportunity Zone Act provides that any individual who received a “qualified distribution” may make, during the “applicable period,” one or more recontributions to an eligible retirement plan of which he is a beneficiary and to which a rollover contribution of the distribution could be made under § 402(c) , § 403(a)(4), § 403(b)(8) , or § 408(d)(3) . The amount of the recontributions cannot exceed, in the aggregate, the amount of the qualified distribution.

Effective: Dec. 21, 2005 (a) for recontributions made during the period (i) beginning on Aug. 25, 2005 for Hurricane Katrina, Sept. 23, 2005 for Hurricane Rita, and Oct. 23, 2005 for Hurricane Wilma, and (ii) ending on Feb. 28, 2006, if (b) home purchase distributions were received (i) after Feb. 28, 2005, and (ii) before Aug. 29, 2005 for Hurricane Katrina, before Sept. 24, 2005 for Hurricane Rita, and before Oct. 24, 2005 for Hurricane Wilma. Act § 201.

§ 1400Q(c)

The 2005 Gulf Opportunity Zone Act codifies the 2005 Katrina Relief Act rules with respect to plan loan limits and payment deadlines for individuals affected by Hurricane Katrina, and extends these rules to individuals whose principal place of abode was in the Hurricane Katrina, Rita, or Wilma disaster area, and who sustained an economic loss from the hurricane in that area.

For certain individuals affected by Hurricane Katrina, Rita, or Wilma, the 2005 Gulf Opportunity Zone Act increases the amount that can be withdrawn as a loan from qualified employer plans, and provides a one-year postponement of payments for existing plan loans. Specifically, plan loan limits are increased by providing that, for any loan from a “qualified employer plan” to a “qualified individual” that’s made during the “applicable period”:

(A) § 72(p)(2)(A)(i) is applied by substituting “\$100,000” for “\$50,000,”
and

(B) § 72(p)(2)(A)(ii) is applied by substituting “the present value of the nonforfeitable accrued benefit of the employee under the plan” for “one-half of the present value of the nonforfeitable accrued benefit of the employee under the plan.”

Effective: Dec. 21, 2005 for (a) modifying limits on plan loans made (i) after Sept. 24, 2005 for Hurricane Katrina, after Dec. 21, 2005 for Hurricane Rita, and after Dec. 21, 2005 for Hurricane Wilma, and (ii) before 2007; and (b) extending repayment deadlines for plan loan repayment due dates (i) beginning after Aug. 24, 2005 for Hurricane Katrina, after Sept. 22, 2005 for Hurricane Rita, and after Oct. 22, 2005 for Hurricane Wilma, and (ii) before 2007. Act § 201.

§ 1400Q(d)

The 2005 Gulf Opportunity Zone Act codifies the 2005 Katrina Relief Act rules with respect to qualified retirement plans and provides a window during which plans may be operated according to the relief provisions for Hurricane Katrina, Rita, or Wilma, before being amended to reflect those provisions.

Specifically, if new § 1400Q applies to any plan or annuity contract, then the plan or contract is treated as being operated in accordance with its terms (i.e., as if the plan had actually been amended to reflect these new provisions) for a specified period (i.e., during the “remedial amendment period”) by the end of which the plan or contract must be amended to reflect the statutory and regulatory hurricane relief provided.

Effective: Dec. 21, 2005 to the last day of the 2007 plan year. Act § 201.

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

§ 1400R

The 2005 Gulf Opportunity Zone Act provides an employee retention credit for employers affected by Hurricane Katrina, Hurricane Rita and Hurricane Wilma, i.e., an income tax credit to eligible employers in an amount equal to 40% of the qualified wages for each eligible employee. The amount of qualified wages that can be taken into account for this purpose for any individual employee is limited to \$6,000. (cross reference §38(b), IRC above)

Effective: For qualified wages paid or incurred after Aug. 28, 2005 relating to Hurricane Katrina; after Sept. 23, 2005 relating to Hurricane Rita; after Oct. 23, 2005 relating to Hurricane Wilma, and before Jan. 1, 2006 by eligible employers in the GO Zone to or for an eligible employee whose principal place of employment on Aug. 28, 2005 with the eligible employer was in the GO Zone. Act 201.

The following provisions are operative for Hawaii income tax purposes.

§§ 1400S(a)(1),
(a)(2)(A) & (a)(4)

The Gulf Opportunity Zone Act codifies the Katrina Relief Act provision which provided that the § 170(b) percentage limitations on charitable contribution deductions don't apply to "qualified contributions", i.e., certain cash contributions made after Aug. 27, 2005 and before Jan. 1, 2006 to certain charities. The Gulf Opportunity Zone Act provides that qualified contributions aren't taken into account for purposes of applying the § 170(b) percentage limitations to "other" contributions.

Any qualified contribution is allowed only to the extent that the individual's qualified contributions don't exceed the excess of: (a) the individual's contribution base, over (b) the amount of all other charitable contribution deductions. If the total amount of qualified contributions made in the contribution year exceeds the above-described limitation, the excess is added to the amount by which the "other" contributions to § 170(b)(1)(A) charities for the year exceed the 50% of the contribution base, for purposes of applying the § 170(d) carryforward rules. Also, qualified contributions aren't taken into account for purposes of applying the § 170(d) carryover rules to other contributions. Thus, in applying the carryover provisions to determine the charitable deduction for other contributions, qualified contributions are taken into account only to the extent qualified contributions are carried over to succeeding tax years.

Individuals: Qualified contributions are charitable contributions that meet all of the following four requirements :

- (1) The contribution must be paid in cash.
- (2) The contribution must be paid during the period beginning on Aug. 28, 2005, and ending on Dec. 31, 2005.
- (3) The contribution must be paid to a § 170(b)(1)(A) charity (other than a § 509(a)(3) supporting organization).
- (4) The taxpayer must elect to treat the contribution as a qualified contribution.

For partnerships and S corporations, the election described in (4) above is made separately by each partner or shareholder.

The amount allowed as a charitable contribution deduction isn't treated as an itemized deduction for purposes of the overall limitation on itemized deductions to the extent it doesn't exceed the "qualified contributions" paid during the tax year. Thus, the charitable contribution deduction up to the amount of qualified contributions paid during the year isn't treated as an itemized deduction for purposes of the overall limitation on itemized deductions.

Effective: Contributions paid after Aug. 27, 2005 and before Jan. 1, 2006. Act § 201.

§§ 1400S(a)(1),
(a)(2)(B) & (a)(4)

Corporations: The Gulf Opportunity Zone Act codifies the provisions in the Katrina Relief Act, and extends the definition of qualified contributions in the case of corporations, to include contributions for relief efforts related to Hurricane Rita and Hurricane Wilma.

Any qualified contribution is allowed only to the extent that total qualified contributions don't exceed the excess of: (a) the corporation's taxable income (computed without deductions for charitable contributions or dividends received, or net operating loss or capital loss carrybacks), over (b) the amount of all other charitable contributions allowed for the year. In other words, a corporation's deduction for qualified contributions is allowed up to the amount by which the corporation's taxable income exceeds the deduction for other charitable contributions. Thus, a corporation's charitable deduction for qualified contributions isn't limited to 10% of its taxable income.

Effective: Contributions paid after Aug. 27, 2005 for Hurricane Katrina relief, or after Sept. 22, 2005 for Hurricane Rita or Hurricane Wilma relief and before Jan. 1, 2006. Act § 201.

§ 1400S(a)(3) & (a)(4)

For individual's cash contributions made after Aug. 27, 2005 and before Jan. 1, 2006, the amount allowed as a charitable contribution deduction isn't treated as an itemized deduction for purposes of the overall limitation on itemized deductions to the extent it doesn't exceed the "qualified contributions" paid during the tax year. Thus, the charitable contribution deduction up to the amount of qualified contributions paid during the year isn't treated as an itemized deduction for purposes of the overall limitation on itemized deductions.

Effective: Contributions paid after Aug. 27, 2005 and before Jan. 1, 2006. Act § 201.

§ 1400S(b)

The 2005 Gulf Opportunity Zone Act codifies the 2005 Katrina Relief Act rules with respect to losses and expands them to include losses relating to Hurricane Rita and Hurricane Wilma. The Act removes the two limitations on personal casualty and theft losses (the "\$100-per-casualty floor" and the "10%-of-AGI threshold") for losses related to Hurricane Katrina, Hurricane Rita, and Hurricane Wilma.

Effective: Losses related to Hurricane Katrina arising after Aug. 24, 2005; losses related to Hurricane Rita arising after Sept. 22, 2005; and losses related to Hurricane Wilma arising after Oct. 22, 2005. Act § 201.

§ 1400S(c)

For taxpayers determined by IRS to be affected by the Presidentially declared disaster related to Hurricane Katrina, Hurricane Rita, or Hurricane Wilma, any administrative relief provided by IRS under § 7508A applies for a period ending not earlier than Feb. 28, 2006.

Effective: Dec. 21, 2005. Act § 201.

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

§1400S(d)

The 2005 Gulf Opportunity Zone Act codifies the Katrina Relief Act provision which provided the one-year look-back election for computing the child tax credit and EIC as new § 1400S(d) and expands it to permit certain qualified individuals affected by Hurricanes Rita and Wilma to make similar elections.

Effective: Tax years that include: Aug. 25, 2005 for Hurricane Katrina, Sept. 23, 2005 for Hurricane Rita, and Oct. 23, 2005 for Hurricane Rita. Act § 201.

The following provision is operative for Hawaii income tax purposes.

§ 1400S(e) The 2005 Gulf Opportunity Zone Act codifies the 2005 Katrina Relief Act rules with respect to the IRS's authority to make adjustments in the application of the federal tax laws for tax years beginning in 2005 or 2006, as needed to ensure that taxpayers do not lose any deduction or credit, or experience a change of filing status, due to temporary relocations because of Hurricane Katrina. The 2005 Gulf Opportunity Zone Act expands the authority previously granted with respect to Hurricane Katrina to include taxpayers affected by Hurricane Rita and Hurricane Wilma.

Effective: Tax years beginning after Dec. 31, 2004 and before Jan. 1, 2007. Act § 201.

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

§ 1400T The Gulf Opportunity Zone Act makes changes to the qualified mortgage bond rules for financing provided before Jan. 1, 2011, for owner-occupied residences in the GO Zone, the Rita GO Zone, or the Wilma GO Zone.

Effective: Dec. 21, 2005 for financing provided before Jan. 1, 2011. Act § 201.

§ 6038 Notice of certain transfers to foreign persons. Technical correction amending § 1144 of the Taxpayer Relief Act of 1997, correcting the omission of a conjunction in the description of transfers that are generally subject to certain information reporting requirements. Act § 409.

§ 6103 (d) The 2005 Gulf Opportunity Zone Act provides that IRS may not make disclosures after Dec. 31, 2006 to facilitate combined federal/state employment tax reporting. Thus, the 2005 Gulf Opportunity Zone Act extends for one year the authority for the combined employment tax reporting program (through Dec. 31, 2006).

Effective: Disclosures after Dec. 31, 2005 and before Jan. 1, 2007. Act § 305.

The following provisions are operative for Hawaii income tax purposes.

§§ 6103(i)(3)(C), 6103(i)(7) The 2005 Gulf Opportunity Zone Act provides that IRS may not make disclosures after Dec. 31, 2006 (1) under the above rules to apprise appropriate officials of terrorist activities, and (2) under the above rules for disclosures relating to terrorist activities that are made to law enforcement agencies or intelligence agencies upon written request. Thus, the 2005 Gulf Opportunity Zone Act extends for one year the terrorist activity disclosure provisions (through Dec. 31, 2006).

Effective: Disclosures after Dec. 31, 2005 (2005 Gulf Opportunity Zone Act §305(b)(2)) and before Jan. 1, 2007. Act § 305.

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

§ 6103(l) Rules relating to disclosure of taxpayer return information. Technical correction amending § 201 of the Victims of Terrorism Tax Relief Act of 2001, correcting cross-references within the disclosure rules relating to disclosure to the National Archives and Records Administration.

Effective: Requests made after Dec. 31, 2005 and before Jan. 1, 2007. Act § 406.

DIGEST OF THE GULF OPPORTUNITY ZONE ACT OF 2005
P.L. 109-135; DECEMBER 21, 2005

- § 6112 Material advisor list maintenance requirement and penalty. Technical correction amending § 815 of the American Jobs Creation Act of 2004, clarifying that the penalty under § 6708 for failing to comply with the § 6112 list maintenance requirements applies to both (1) material advisors with respect to reportable transactions under present-law § 6112, and (2) organizers and sellers of potentially abusive tax shelters under prior-law § 6112.
- § 6401 Technical correction amending § 1303 of the Energy Policy Act of 2005, clarifying that the refund overpayment rules under § 6401 effective for tax years beginning after 2005.
- Effective: For tax years beginning after 2005. Act § 402.
- § 6501 Statute of limitations for unreported listed transactions. Technical correction amending § 814 of the American Jobs Creation Act of 2004. The Act provides that the statute of limitations with respect to an undisclosed listed transaction does not expire until one year after the earlier of (1) the date on which the Secretary is furnished the required information, or (2) the date on which a material advisor satisfies the list maintenance requirements with respect to a request by the Secretary. The provision clarifies that a "material advisor" for this purpose includes either a material advisor as defined in § 6111(b)(1) or, in the case of material aid, assistance, or advice rendered on or before the date of enactment. Act § 403.
- § 6611 Tentative carryback and refund adjustments and treatment of carrybacks or adjustments for certain unused deductions. Technical correction amending § 1055 of the Taxpayer Relief Act of 1997, correcting a reference in rules relating to tentative carryback and refund adjustments to refer to coordination rules in § 6611(f)(4)(B). The provision also corrects a reference in rules relating to carrybacks or adjustments of certain unused deductions to refer to the filing date within the meaning of § 6611(f)(4)(B). Act § 409.
- § 6662A Accuracy-related penalties for listed transactions and reportable transactions with a significant tax avoidance purpose. Technical correction amending § 812 of the American Jobs Creation Act of 2004, clarifying that underpayments attributable to an understatement resulting from participation in a listed transaction or a reportable transaction with a significant tax avoidance purpose are not subject to accuracy-related penalties under § 6662 to the extent that an accuracy-related penalty under § 6662A is imposed upon such underpayment. The provision clarifies that accuracy-related penalties under § 6662A do not apply to underpayments to which a fraud penalty under § 6663 is applied.
- The provision clarifies that, with respect to disqualified opinions, the strengthened reasonable cause exception to § 6662A penalties does not apply to the opinion of a tax advisor if (1) the opinion was provided to the taxpayer before the date of enactment, (2) the opinion relates to a transaction entered into before the date of enactment, and (3) the tax treatment of items relating to the transaction was included on a return or statement filed by the taxpayer before the date of enactment. Act § 403.
- § 6707A Penalty for failure to disclose reportable transactions. Technical correction amending § 811 of the American Jobs Creation Act of 2004, clarifying that the penalty for failing to disclose participation in a reportable transaction applies to returns and statements that are filed after the date of enactment, without regard to the original or extended due date for such return or statement. Act § 403.

Digest of Mental Health Parity Act of 2005 (P. L. No. 109-151; December 30, 2005)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter 1, and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest.

IRC §9812 is not under subtitle A, chapter 1. Therefore, Hawaii law does not conform to this provision.

CODE SECTION

DESCRIPTION OF PROVISION

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

§ 9812	Extends for one extra year, the federal excise tax for failure to comply with the mental health parity requirements to December 31, 2006.
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