ENACTED BY THE STATE OF HAWAII

Digest of Tax Measures

TWENTY-SEVENTH LEGISLATURE—REGULAR SESSION OF 2013

Prepared by the State of Hawaii
Department of Taxation
Issued: November 06, 2013

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

Introduction

The following is a digest of bills passed by the 2013 Legislature and enacted into law. 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 Document Center and House Print Shop. Bills and Acts are also accessible via the Internet on the State Capitol website at http://www.capitol.hawaii.gov.

KEY TO ABBREVIATIONS

S.B.	=	***Senate Bill***
S.D.	=	***Senate Draft***
H.B.	=	***House Bill***
H.D.	=	***House Draft***
C.D.	=	***Conference Draft***
SCR	=	***Senate Concurrent Resolution***
HCR	=	***House Concurrent Resolution***
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***
L Sp	=	***Legislative Special Session***
SLH	=	***Session Laws of Hawaii***

Table of Contents

ADMINISTRATIVE TAX MEASURES

ACT 6

H.B. 425, H.D. 1

Relating to Offers in Compromise

HSCR 582; SSCR 1054
SECT AFF: One new section added to Chapter 231

Act 6 requires that all offers in compromise submitted to the Department of Taxation, on or after April 5, 2013, be accompanied by a minimum payment. For a lump sum offer in compromise, at least 20% of the proposed offer must accompany the offer. For an offer in compromise that will be paid in periodic installments, an amount equal to the first periodic installment must accompany the offer. The Department of Taxation may waive these payment requirements for individuals who meet the low income certification guidelines published by the Internal Revenue Service.

EFFECTIVE: Upon approval, April 5, 2013.

ACT 33

S.B. 1187, S.D. 1

Relating to Delinquent Taxes

SSCR 502; HSCR 1460
SECT AFF: 231-32

Act 33 establishes a reasonableness standard for determining when a tax is uncollectible and should be deleted. The new reasonableness standard replaces the two year delinquency period standard.

EFFECTIVE: Upon approval, April 22, 2013, retroactive to January 1, 2013.

ACT 44

S.B. 1192, S.D. 1

Relating to Collection of Taxes

SSCR 501; HSCR 1462
SECT AFF: 231-25

Act 44 increases the amount of time, from 30 days to 180 days, which the Department of Taxation has to sell property it has seized due to a failure by a taxpayer to pay a tax delinquency. The Act further provides that the 180 day period shall toll during the pendency of any action commenced by any person relating to the seized property until a final order is rendered in the action.

EFFECTIVE: Upon approval, April 23, 2013.

ACT 58

S.B. 1197, S.D. 1, H.D. 1

Relating to the Department of Taxation Special Enforcement Section

SSCR 559; HSCR 1452
SECT AFF: 231-1; 231-81; 231-82; 231-83; 231-84; 231-85; 231-86; 231-91; 231-92; 231-93; 231-94; 231-95; 231-96; 231-97; 231-98; 231-99; 231-100; 235-20.5; 237-9; 237-12; Act 134 §13, SLH 2009

Act 58 deletes the sunset provision related to the Department of Taxation's Special Enforcement Section. The Special Enforcement Section was created by Act 134, SLH 2009, but its creation was set to be repealed in 2014. The Special Enforcement Section is now a permanent part of the Department of Taxation.

EFFECTIVE: Upon approval, April 30, 2013.

ACT 59

S.B. 1191, S.D. 1, H.D. 1

Relating to Boards of Review

SSCR 466; HSCR 1450
SECT AFF: 232-6; 232-7

Act 59 allows for the creation of up to three boards of review per taxation district and allows members of one board to be temporarily assigned to another board within the same district for purposes of establishing and maintaining quorum. The Act eliminates the April 9 deadline for each board to commence public meetings and requires each board to hold meetings at least once annually.

EFFECTIVE: July 1, 2013.

ACT 93

S.B. 1206, S.D. 1, H.D. 1, C.D. 1

Relating to Tax Collection

SSCR 507; HSCR 1453; CCR 134
SECT AFF: 231-13

Act 93 amends section 231-13, HRS, to state that the Director of Taxation is responsible for the collection and administration of all taxes, not only delinquent taxes. The Act requires reports to the legislature regarding the effect of Act 93 on the assessment, enforcement, and collection of taxes.

EFFECTIVE: Upon approval, May 31, 2013. Sunset date of June 30, 2017.

ACT 162

S.B. 1196, S.D. 1, H.D. 1, C.D. 1

Relating to Cash Economy Enforcement

SSCR 558; HSCR 1008; HSCR 1619; CCR 11
SECT AFF: 231-96

Act 162 modifies section 231-96, HRS, to require all persons doing business and engaging in cash transactions to offer a receipt or other record of the transaction and maintain a contemporaneously generated record of all business transactions conducted each day. Under previous law, only taxpayers conducting more than ten taxable business transactions per day were required to comply with these two requirements. As amended, taxpayers conducting nine or fewer taxable business transactions per day must comply with these two requirements as well.

EFFECTIVE: July 1, 2013.

INCOME TAX MEASURES

ACT 43

S.B. 1184, S.D. 1

Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code

SSCR 505; HSCR 1458
SECT AFF: 235-2.3; 235-2.5

Act 43 provides for conforming amendments to Chapter 235, HRS, based upon amendments made to the Internal Revenue Code (IRC) during the calendar year 2012 and the American Taxpayer Relief Act of 2012 (Taxpayer Relief Act), which was enacted on January 2, 2013.

Section 235-2.5(c), HRS, mandates that the Department of Taxation submit to each regular session of the legislature a bill to amend the Hawaii income tax law to conform to the IRC as amended during the previous calendar year.

Section 2 of Act 43 amends section 235.2.3(a), HRS, to conform the Hawaii income tax law to the operative IRC sections of Subtitle A, Chapter 1, as amended as of January 2, 2013. Generally, Subtitle A, Chapter 1, refers to sections 1, through 1400T, IRC. The date was amended to January 2, 2013 in order to conform to IRC amendments enacted in the Taxpayer Relief Act.

The following are the relevant federal laws enacted from January 1, 2012 through January 2, 2013. The specific impact of each federal law on Hawaii income tax law is included in the Digest of Federal Laws section of this publication.

1. FAA Modernization and Reform Act of 2012 (P.L. No. 112-95; February 14, 2012)

2. Middle Class Tax Relief and Job Creation Act of 2012 (P.L. No. 112-96; February 22, 2012)

3. Moving Ahead for Progress in the 21st Century Act (P.L. No. 112-141; June 29, 2012)

4. African Growth and Opportunity Act (P.L. No. 112-163; August 10, 2012)

5. American Taxpayer Relief Act of 2012 (P.L. No. 112-240; January 2, 2013)

EFFECTIVE: Upon approval, April 23, 2013, for tax years beginning after December 31, 2012; provided that retroactive and prospective effective dates contained in the congressional acts relating to the Internal Revenue Code and enacted between January 1, 2012 and January 2, 2013 shall be operative.

ACT 89

H.B. 726, H.D. 1, S.D. 2, C.D. 1

Relating to Film and Digital Media Industry Development

HSCR 455; HSCR 658; SSCR 977; SSCR 1381; CCR 180
SECT AFF: 235-17; Act 88 §4, SLH 2006

Act 89 amends the motion picture, digital media, and film production income tax credit by amending section 4 of Act 88, SLH 2006, to extend the credit until January 1, 2019; increasing the credit ceiling amount from $8,000,000 per qualified production to $15,000,000 per qualified production; increasing the credit amount from fifteen per cent of qualified production costs to twenty per cent of qualified production costs in a county with a population of over seven hundred thousand; and increasing the credit amount from twenty per cent of qualified production costs to twenty five per cent of qualified production costs in a county with a population of seven hundred thousand or less.

Act 89 also requires the Department of Business, Economic Development, and Tourism to prepare a report to the legislature setting forth the non-aggregated qualified production costs that form the basis of the tax credit claims and expenditures, itemized by taxpayer, in a redacted format to preserve the confidentiality of the taxpayers claiming the credit.

EFFECTIVE: July 1, 2013, for tax years beginning after December 31, 2012; provided that the Act shall be repealed on January 1, 2019 and section 235-17, HRS, shall be reenacted in the form in which it read on the day before the effective date of this Act.

ACT 256

H.B. 430, H.D. 1, S.D. 1, C.D. 1

Relating to Taxation

HSCR 600; SSCR 1049; CCR 118
SECT AFF: 235-__; Act 97 §3, SLH 2011

Act 256 amends section 3 of Act 97, SLH 2011, by carving out charitable contributions from the hard cap amounts. All itemized deductions except for charitable contributions remain subject to the applicable hard caps. Thus, the total itemized deductions that may be claimed by taxpayers who meet or exceed the respective AGI thresholds is the lesser of:

(A) The overall limitation under Internal Revenue Code §68 using the thresholds operative for federal tax year 2009; or
(B) The applicable hard cap plus allowable charitable contributions.

EFFECTIVE: July 1, 2013, for tax years beginning after December 31, 2012; provided that the affected provision remains subject to the sunset provision of Act 97 §6, SLH 2011, and shall be repealed January 1, 2016.

ACT 270

S.B. 1349, S.D. 2, H.D. 1, C.D. 1

Relating to Economic Development

SSCR 433; SSCR 769; HSCR 1116; HSCR 1422; CCR 131
SECT AFF: 235-110.91

Act 270 reenacts the Hawaii Tax Credit for Research Activities (TCRA). In general, the state credit is a refundable credit against income tax liability equal to 20% of qualified research expenses incurred for research activities in the state of Hawaii.

Act 270 adds, amends, and deletes definitions; establishes new reporting requirements; and requires the Department of Business, Economic Development, and Tourism to conduct studies to measure the effectiveness of the tax credit and to submit reports to the legislature.

Act 270 adopts Internal Revenue Code (IRC) §41 as of December 31, 2011, with the further requirement that qualified research expenses do not include research expenses incurred outside of the State. If the amount of the credit exceeds the amount of the taxpayer's tax liability (if any) for the applicable tax year, the difference is refunded to the taxpayer.

Act 270 adopts the base amount as set forth under IRC §41(c), such that only the increasing incremental amounts are eligible for the credit. Act 270 also requires that in order for a taxpayer to claim the Hawaii TCRA, said taxpayer must also claim the federal tax credit for increasing research activities under IRC §41.

EFFECTIVE: July 1, 2013, for tax years beginning after December 31, 2012. Sunset December 31, 2019.

ESTATE AND GENERATION-SKIPPING TRANSFER TAX MEASURES

ACT 45

S.B. 1203, S.D. 1

Relating to Conformity of the Hawaii Estate and Generation-Skipping Transfer Tax Law to the Internal Revenue Code

SSCR 560; HSCR 1463
SECT AFF: 236E-3; 236E-4

Act 45 provides for conforming amendments to Chapter 236E, HRS, based upon amendments made to the Internal Revenue Code (IRC) during the calendar year 2012 and by the American Taxpayer Relief Act of 2012 (Taxpayer Relief Act), which was enacted on January 2, 2013.

Generally, section 236E-4, HRS, mandates that the Department of Taxation submit to each regular session of the Legislature a bill that amends the Hawaii estate and generation-skipping transfer tax to conform to the IRC, as amended as of December 31 of the preceding calendar year. The date was amended to January 2, 2013 in Act 45 in order to conform to IRC amendments enacted in the American Taxpayer Relief Act of 2012 discussed below.

Section 2 of Act 45 amends section 236E-3, HRS, to conform the Hawaii estate and generation-skipping transfer tax law to the operative IRC §§ of Subtitle B, Chapter 1, as amended as of January 2, 2013. Generally, Subtitle B, Chapter 1 refers to IRC §§ 2001 through 2801.

The American Taxpayer Relief Act of 2012 (P.L. No. 112-240, January 2, 2013) impacts the Hawaii estate and generation-skipping transfer tax.

The American Taxpayer Relief Act of 2012 deleted the sunset provisions from the Economic Growth and Tax Relief Reconciliation Act of 2001 (P.L. No. 107-16, June 7, 2001) and Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. No. 111-312, December 17, 2010).

Deletion of the sunset provisions permanently extended the applicable exclusion amount level of $5,000,000, as indexed for inflation. Deletion of the sunset provisions also extended the portability of any unused exclusion amount between the estates of the first spouse to die and the surviving spouse. Thus, IRC §2010 is unchanged from 2012.

Hawaii conforms to IRC §2010 and relies on it to determine the applicable exclusion amount for purposes of the Hawaii estate and generation-skipping transfer tax.

Act 45 increased the maximum estate, gift, and generation skipping transfer tax rate from 35% to 40%. Hawaii does not conform to the tax rates imposed by IRC §2001(c). Thus, these changes are not operative for Hawaii estate and generation-skipping transfer tax purposes.

EFFECTIVE: Upon approval, April 23, 2013, for tax years beginning after December 31, 2012.

ACT 60

S.B. 1188, S.D. 1, H.D. 1

Relating to the Estate and Generation-Skipping Transfer Taxes

SSCR 556; HSCR 1449
SECT AFF: 236E-2; 236E-6; 236E-7; 236E-21

Act 60 amends section 236E-7, HRS, to make clear that state- recognized civil unions are treated as the equivalent of valid marriages notwithstanding nonrecognition of such civil unions under the Internal Revenue Code (IRC). Act 60 also amends section 236E-2, HRS, by defining "nonresident not citizen", and replaces "nonresidents who are not citizens" with "nonresident not citizen" in section 236E-6, HRS. The amendments clarify the treatment of nonresidents who are citizens, as it precisely defines the group by reference to Subchapter B of Chapter 11 of the IRC.

EFFECTIVE: July 1, 2013, for tax years beginning after December 31, 2012.

GENERAL EXCISE/USE/TRANSIENT ACCOMMODATIONS/WITHHOLDING TAX MEASURES

ACT 46

S.B. 1190, S.D. 1

Relating to the Imposition of Use Tax on Imported Contracting

SSCR 557; HSCR 1461
SECT AFF: 238-1; 238-2.3

Act 46 amends sections 238-1 and 238-2.3, HRS, to allow for the consistent treatment of imported contracting under both the use tax and the general excise tax (GET).

Section 238-1, HRS, is amended by deleting contracting imported or purchased by a licensed contractor from the list of activities not included in the term "use". Section 238-2.3, HRS, is amended by adding subparagraph (1)(C) providing for no use tax imposition where a licensed contractor imports or purchases contracting and that contracting becomes an identifiable element of the finished work or project, provided that: (1) the gross proceeds derived by the contractor are subject to GET as contracting; and (2) the contractor could have deducted the amounts paid to the subcontractor under section 237-13(3)(B), HRS, if the subcontractor was subject to GET.

EFFECTIVE: July 1, 2013.

ACT 52

S.B. 1185, S.D. 1

Relating to Denial of General Excise Tax Benefits

SSCR 465; HSCR 1459
SECT AFF: 237-9.3; 237-41.5

Act 219, SLH 2012 (Act 219), provides for 90 days notice before general excise tax (GET) benefits may be denied under section 237-9.3, HRS, for a "nonprofit organization". Act 219 also provides an exemption from personal liability under section 237-41.5, HRS, for any officer, member, manager, or other person having control or supervision over gross proceeds of a "nonprofit organization". Act 219 basically defined "nonprofit organization" as an entity who received tax exempt status under certain specified paragraphs of the Internal Revenue Code (IRC) section 501(c).

Act 52 amends sections 237-9.3(e) and 237-41.5(b), HRS, to define "nonprofit organization" as "a corporate entity, association, or other duly chartered entity that is registered with the State and is exempt from the application of [Chapter 237, HRS] pursuant to section 237-23(a)(3), (4), (5), (6), or (7)". Section 237-23, HRS, expressly states the types of entities which are exempt from GET. Act 52 amends the definition of "nonprofit organization" to be consistent with section 237-23, HRS, by removing the references to IRC §501(c).

EFFECTIVE: July 1, 2013.

ACT 157

S.B. 458, S.D. 1, H.D. 1, C.D. 1

Relating to the State Educational Facilities Improvement Special Fund

SSCR 119; SSCR 791; HSCR 1470; CCR 91
SECT AFF: 36-27; 36-30; 36-32; 37D-2; 237-31

Act 157 amends section 237-31, HRS, to remove the requirement that general excise tax revenues be deposited into the state educational facilities improvement special fund. Act 157 also limits expenditures from the special fund to projects authorized for fiscal years ending prior to July 1, 2016. The Act limits lease payments to those agreed to prior to July 1, 2013. The Act repeals the special fund on July 1, 2023.

EFFECTIVE: Upon approval, June 21, 2013; provided that the repeal of section 36-32, HRS, and associated amendments become effective July 1, 2023; and provided further that amendments made to sections 36-27(a) and 36-30(a), HRS, by this Act shall not be repealed when those sections are reenacted on June 30, 2015.

ACT 160

S.B. 1193, S.D. 1, H.D. 1

Relating to Section 237-24.3, Hawaii Revised Statutes

SSCR 467; HSCR 1451
SECT AFF: 237-24.3

Act 160 amends section 237-24.3, HRS, by deleting paragraph (2). Deletion of this paragraph removes the exemption from the general excise tax (GET) for amounts received from the sales of alcohol, cigarettes, and tobacco products, and agricultural, meat, and fish products to common carriers for consumption out of state on the common carrier's vessels or airplanes. Amounts received from these sales will no longer be exempt from GET for taxable years beginning after December 31, 2013.

EFFECTIVE: Upon approval, June 21, 2013, for taxable years beginning after December 31, 2013.

ACT 161
S.B. 1194, S.D. 2, H.D. 1, C.D. 1
Relating to Transient Accommodations Tax
SSCR 150; SSCR 703; HSCR 1469; CCR 146
SECT AFF: 237D-2; 237D-6.5; Act 61 §4, SLH 2009; Act 103 §4, SLH 2011

Act 161 makes several modifications to the transient accommodations tax (TAT) law. First, Act 161 makes permanent the rate of 9.25 per cent on gross rental or gross rental proceeds derived from furnishing transient accommodations. Under the law prior to Act 161, the rate is 7.25 per cent imposed under section 237D-2(a), HRS, with an additional 2.0 per cent imposed under section 237D-2(b), HRS, or a total of 9.25 per cent. The additional 2.0 per cent imposed under section 237D-2(b), HRS, had been set to expire June 30, 2015. Act 161 deletes subsection (b) and imposes the 9.25 per cent rate permanently under subsection (a) on gross rental or gross rental proceeds for the period beginning July 1, 2010 and thereafter.

Second, Act 161 repeals the daily $10 tax imposed on transient accommodations furnished on a complimentary or gratuitous basis, or otherwise at no cost, under section 237D-2(c), HRS. Beginning July 1, 2013, such complimentary rooms shall no longer be subject to TAT.

Third, Act 161 makes several changes to the allocations of TAT revenues collected.

EFFECTIVE: July 1, 2013.

ACT 163
S.B. 1360, S.D. 1, H.D. 1, C.D.1
Relating to General Excise Tax
SSCR 138; SSCR 705; HSCR 1454; CCR 86
SECT AFF: 237-24.3; 237-24.7; Act 239 §4, SLH 2007; Act 196, §6, SLH 2009

Act 163 makes the following exemptions permanent:

- Amounts received by submanagers of associations of apartment owners of a condominium property regime established in accordance with Chapters 514A or 514B, HRS, or nonprofit homeowners or community associations incorporated in accordance with Chapter 414D, HRS, in reimbursement of sums paid for common expenses under section 237-24.3, HRS.
- Amounts received by the operator of a hotel from a timeshare association in amounts equal to and which are disbursed by the operator or suboperator for employee wages, salaries, payroll taxes, insurance premiums, and benefits including retirement, vacation, sick pay, and health benefits under section 237-24.7(1), HRS.

- Amounts received by the suboperator of a hotel from the owner of the hotel, from a timeshare association, or from the operator of the hotel for employee wages, salaries, payroll taxes, insurance premiums, and benefits including retirement, vacation, sick pay, and health benefits under section 237-24.7(1), HRS.

These exemptions were set to expire December 31, 2014.

Act 163 also repeals the cap of $400,000 on the aggregate amount of tax exempted per calendar year.

EFFECTIVE: Upon approval, June 21, 2013; repeal of the $400,000 cap on aggregate exemptions applies to taxable years beginning after December 31, 2012.

ACT 164

S.B. 933, S.D. 1, H.D. 1, C.D. 1

Relating to the TRICARE Program

SSCR 626; HSCR 944; HSCR 1213; HSCR 1480; CCR 44
SECT AFF: 237-24; Act 70 §4, SLH 2009

Act 164 extends for five years the general excise tax exclusion applicable to amounts received by a managed care support contractor of the TRICARE program for the actual cost or advancement to third-party health care providers pursuant to a contract with the United States.

EFFECTIVE: July 1, 2013.

ACT 174

H.B. 144, H.D. 2, S.D. 2, C.D.1

Relating to Professional Employer Organizations

HSCR 80; HSCR 559; HSCR 823; SSCR 927; SSCR 1338; CCR176
SECT AFF: Four new sections added to Chapter 373L; 373L-1; 373L-2; 373L-3; Chapter 373K repealed; 237-24.75

Act 174 amends and clarifies the terms governing the general excise tax exemption allowed to Professional Employer Organizations (PEOs). Act 174 amends section 237-24.75, HRS, to require PEOs to be properly registered in order to claim the exemption. The Act also clarifies the timing of the disallowance of the exemption by providing measurable events upon which PEOs will no longer be eligible for the exemption.

Section 237-24.75, HRS, as amended by Act 174, provides that the exemption shall not apply after the Department of Labor notifies the Department of Taxation of noncompliance with the registration requirements of Chapter 373L, HRS, or after the Department of Taxation determines the PEO has failed to pay any tax or tax withholding for which the PEO is responsible.

EFFECTIVE: July 1, 2013.

ACT 268

H.B. 546, H.D. 2, S.D. 2, C.D. 1

Relating to the Hawaii Employer-Union Health Benefits Trust Fund

HSCR 318; HSCR 859; SSCR 964; SSCR 1380; CCR 144
SECT AFF: Two new sections added to Chapter 87A; 87A-24; 87A-42; 237-31; 237D-6.5

Act 268 establishes the Hawaii employer-union health benefits trust fund (EUTF) task force to examine the unfunded liability of the EUTF. Act 268 requires the use of a portion of general excise tax revenues to supplement deficient state public employer contribution amounts commencing with fiscal year 2018-2019. Act 268 requires the use of the transient accommodations tax revenues to supplement deficient county public employer contribution amounts commencing with fiscal year 2018-2019.

EFFECTIVE: July 1, 2013; provided that amendments made to section 237D-6.5, HRS, by this Act shall not be repealed when section 237D-6.5, HRS, is repealed and reenacted on June 30, 2015.

MISCELLANEOUS TAX MEASURES

ACT 146

H.B. 514, H.D. 2, S.D. 1

Relating to Public Housing

HSCR 11; HSCR 592; SSCR 887; SSCR 1256
SECT AFF: One new section added to Chapter 356D

Act 146 provides a state income tax and obligations exemption to public housing agencies. The exemption is available to any "public housing entity" as defined by the United States Housing Act of 1937 on income earned or obligations issued that are declared exempt from United States taxation by the United States Housing Act of 1937.

EFFECTIVE: Upon approval, June 25, 2013.

ACT 211

S.B. 1087, S.D. 2, H.D. 3, C.D. 1

Relating to Green Infrastructure

SSCR 437; SSCR 816; HSCR 963; HSCR 1197; HSCR 1587; CCR 92
SECT AFF: New part added to Chapter 196; new part added to Chapter 269; 269-5; 269-121

Act 211 establishes a regulatory financing structure authorizing the Public Utilities Commission and the Department of Business Economic Development and Tourism to provide low-cost loans for green infrastructure equipment. Act 211 also provides an exemption from all state and county taxes.

Effective: Upon approval, June 27, 2013; provided that the appropriations made by this Act shall take effect July 1, 2013.

ACT 248

S.B. 535, S.D. 1, H.D. 2, C.D. 1

Relating to Labor

SSCR 493; HSCR 1166; HSCR 1616; CCR 76
SECT AFF: 378-1; 378-2; 387-1

Act 248 establishes basic rights and protections for domestic workers. Act 248 defines casual basis employment, companionship services for the aged and infirm, and domestic services.

EFFECTIVE: Upon approval, July 1, 2013.

ACT 261

S.B. 19, S.D. 1, H.D. 2, C.D.1

Relating to Renewable Energy

SSCR 216; SSCR 524; HSCR 1184; HSCR 1550; CCR 75
SECT AFF: 269-1

Act 261 amends section 269-1, HRS, by amending the definition of "public utility" to specifically exclude landlords or lessors who install renewable energy systems on their property and provide, sell, or transmit the power generated to an electric utility or to lessees or tenants on the person's property where the renewable energy system is located.

Please note that landlords or lessors who qualify for this exception, while not public utilities, are still taxpayers subject to the State's general excise tax; they are required to file returns and pay the tax in accordance with Chapter 237, HRS, on any gross income derived from the sale of the power generated from renewable energy systems installed on their property.

For more information about whether a taxpayer is considered a public utility, please contact the Public Utilities Commission.

EFFECTIVE: Upon approval, July 3, 2013.

TAX-RELATED RESOLUTIONS

HCR 204

HCR 204, H.D. 1, S.D. 1
Requesting the Director of Business, Economic Development, and Tourism to Establish a Working Group to Study, Consider, and Recommend Ways to Reduce the Transport Time and Cost of Shipping Goods to Oahu from Molokai, Lanai, and Hana, Maui
HSCR 1625; SSCR 1606

Requests the Director of Business, Economic Development, and Tourism to establish a working group to examine means to alleviate the time and cost burden of shipping goods to Oahu from Molokai, Lanai, and Hana, Maui. The group is to examine and potential changes to existing statute, administrative rule, or ordinance; the feasibility of alternative modes of shipping and transport between islands; tax incentives for shipping and transport between islands; and any other appropriate issues.

The Department of Business, Economic Development, and Tourism is to provide all administrative, technical, professional, and clerical support to the group. The group is to be comprised of nine members of which the Director of Taxation, or his designee, is one. The group is to report its findings to the Legislature no later than 20 days prior to the convening of the Regular Session of 2014 and is to cease to exist on June 30, 2014.

TABLE SHOWING EFFECT OF ACTS
Twenty-Seventh Legislature—2013 Regular Session

KEY:	Am	=	Amended
	E	=	Extended
	N	=	New
	R	=	Repealed
	____	=	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 157	S.B. 458, S.D. 1, H.D. 2, C.D. 1
36-30	Am	ACT 157	S.B. 458, S.D. 1, H.D. 2, C.D. 1
36-32	Am/R	ACT 157	S.B. 458, S.D. 1, H.D. 2, C.D. 1
37D-2	Am	ACT 157	S.B. 458, S.D. 1, H.D. 2, C.D. 1
87A-___	N	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
87A-___	N	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
87A-24	Am	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
87A-42	Am	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
231-___	N	ACT 06	H.B. 425, H.D. 1
231-1	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-13	Am	ACT 93	S.B. 1206, S.D. 1, H.D. 1, C.D. 1
231-25	Am	ACT 44	S.B. 1192, S.D. 1
231-32	Am	ACT 33	S.B. 1187, S.D. 1
231-81	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-82	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-83	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-84	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-85	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-86	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-91	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-92	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-93	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-94	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-95	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-96	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-96	Am	ACT 162	S.B. 1196, S.D. 1, H.D. 1, C.D. 1
231-97	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-98	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-99	E	ACT 58	S.B. 1197, S.D.1, H.D.1
231-100	E	ACT 58	S.B. 1197, S.D.1, H.D.1
232-6	Am	ACT 59	S.B. 1191, S.D. 1, H.D. 1
232-7	Am	ACT 59	S.B. 1191, S.D. 1, H.D. 1
235-___	Am	ACT 256	H.B. 430, H.D.1, S.D.1, C.D. 1

SECTIONS OF HRS AFFECTED			
SECTION NO.	EFFECT	ACT NO.	BILL NO.
235-2.3	Am	ACT 43	S.B. 1184, S.D. 1
235-2.5	Am	ACT 43	S.B. 1184, S.D. 1
235-17	Am	ACT 89	H.B. 726, H.D. 1, S.D 2, C.D. 1
235-20.5	E	ACT 58	S.B. 1197, S.D.1, H.D.1
235-110.91	Am	ACT 270	S.B. 1349, S.D. 2, H.D. 1, C.D.1
236E-2	Am	ACT 60	S.B. 1188, S.D. 1, H.D. 1
236E-3	Am	ACT 45	S.B. 1203, S.D. 1
236E-4	Am	ACT 45	S.B. 1203, S.D. 1
236E-6	Am	ACT 60	S.B. 1188, S.D. 1, H.D. 1
236E-7	Am	ACT 60	S.B. 1188, S.D. 1, H.D. 1
236E-21	Am	ACT 60	S.B. 1188, S.D. 1, H.D. 1
237-9	E	ACT 58	S.B. 1197, S.D.1, H.D.1
237-9.3	Am	ACT 52	S.B. 1185, S.D.1
237-12	E	ACT 58	S.B. 1197, S.D.1, H.D.1
237-24	E	ACT 164	S.B. 933, S.D. 1, C.D. 1, H.D. 1
237-24.3	Am	ACT 160	S.B. 1193, S.D. 1, H.D. 1
237-24.3	E	ACT 163	S.B. 1360, S.D. 1, H.D. 1, C.D. 1
237-24.7	E	ACT 163	S.B. 1360, S.D. 1, H.D. 1, C.D. 1
237-24.75	Am	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
237-31	Am	ACT 157	S.B. 458, S.D. 1, H.D. 2, C.D. 1
237-31	Am	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
237-41.5	Am	ACT 52	S.B. 1185, S.D.1
237D-2	Am	ACT 161	S.B. 1194, S.D 2, H.D. 1, C.D. 1
237D-6.5	Am	ACT 161	S.B. 1194, S.D 2, H.D. 1, C.D. 1
237D-6.5	Am	ACT 268	H.B. 546, H.D. 2, S.D. 2, C.D. 1
238-1	Am	ACT 46	S.B. 1190, S.D. 1
238-2.3	Am	ACT 46	S.B. 1190, S.D. 1
269-1	Am	ACT 261	S.B. 19, S.D. 1, H.D. 2, C.D. 1
269-5	Am	ACT 211	S.B. 1087, S.D. 2, H.D. 3, C.D. 1
269-121	Am	ACT 211	S.B. 1087, S.D. 2, H.D. 3, C.D. 1
356D-___	N	ACT 146	H.B. 514, H.D. 2, S.D. 1
373L-A	N	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-B	N	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-C	N	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-D	N	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-1	Am	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-2	Am	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
373L-3	Am	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1
378-1	Am	ACT 248	S.B. 535, S.D. 1, H.D. 2, C.D. 1
378-2	Am	ACT 248	S.B. 535, S.D. 1, H.D. 2, C.D. 1
387-1	Am	ACT 248	S.B. 535, S.D. 1, H.D. 2, C.D. 1
Act 88 §4, SLH 2006	Am	ACT 89	H.B. 726, H.D. 1, S.D 2, C.D. 1

SECTIONS OF HRS AFFECTED			
SECTION NO.	**EFFECT**	**ACT NO.**	**BILL NO.**
Act 239 §4, SLH 2007	Am	ACT 163	S.B. 1360, S.D. 1, H.D. 1, C.D. 1
Act 61 §4, SLH 2009	Am	ACT 161	S.B. 1194, S.D 2, H.D. 1, C.D. 1
Act 70 §4, SLH 2009	Am	ACT 164	S.B. 933, S.D. 1, C.D. 1, H.D. 1
Act 134 §13, SLH 2009	Am	ACT 58	S.B. 1197, S.D.1, H.D.1
Act 196 §6, SLH 2009	Am	ACT 163	S.B. 1360, S.D. 1, H.D. 1, C.D. 1
Act 97 §3, SLH 2011	Am	ACT 256	H.B. 430, H.D. 1, S.D 1, C.D. 1
Act 103 §4, SLH 2011	Am	ACT 161	S.B. 1194, S.D 2, H.D. 1, C.D. 1
CHAPTERS AFFECTED			
CHAPTER NO.	**EFFECT**	**ACT NO.**	**BILL NO.**
196	Am	ACT 211	S.B. 1087, S.D. 2, H.D. 3, C.D. 1
269	Am	ACT 211	S.B. 1087, S.D. 2, H.D. 3, C.D. 1
373K	R	ACT 174	H.B. 144, H.D. 2, S.D. 2, C.D. 1

DIGEST OF FEDERAL LAWS

Digest of the FAA Modernization and Reform Act of 2012
(P.L. No. 112-95; February 14, 2012)

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

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
§147(e)	**Other requirements applicable to certain private activity bonds.** The Act allows tax-exempt qualified bonds to be used to finance fixed-wing emergency medical aircraft. Effective February 14, 2012.
	The following provisions are operative for Hawaii income tax purposes.
§249(a) and (b)	**Limitation on deduction of bond premium on repurchase** The Act expanded the limitation of the deduction for the bond premium paid for repurchase of debt. As amended, the limitation now applies to the premium for indebtedness that is convertible into stock of the issuer, the parent of the issuer, or a first-tier subsidiary of the issuer, as well as to the premium for indebtedness that is convertible into stock of a corporation that indirectly controls the issuer or that is indirectly controlled by the issuer. Effective for repurchases after February 14, 2012.
§402; Non-Code section	**Payments received by employees of bankrupt airlines can be rolled over to traditional IRAs as well as Roth IRAs** The Act provides that a "qualified airline employee" who receives an "airline payment amount", as defined by the Act, can contribute up to 90% of that amount to a traditional IRA and receive §402(c) rollover treatment. Previous law limited such treatment to airline payment amounts contributed to Roth IRAs. A qualified airline employee making such a transfer may exclude the amount transferred from gross income in the year in which the airline payment amount was paid to the qualified airline employee. The Act provides that any airline payment amount contributed to a Roth IRA that receives rollover treatment may be transferred to a traditional IRA, in a trustee-to-trustee transfer. Such transfer will be deemed to have been made at the time of the rollover to the Roth IRA, if the transfer is made within 180 days of February 14, 2012. Effective for transfers after February 14, 2012 of amounts paid before, on, or after February 14, 2012.

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

§7275(c) and (d) **Penalty imposed for lack of transparency in airline passenger tax disclosures**

The Act prohibits transportation providers from including amounts other than taxes imposed by §4261(a), (b), or (c) in the required disclosure of passenger taxes on tickets and advertising when the amount of such tax is separately stated. Disclosure elsewhere on tickets and in advertising of non-tax charges is allowed.

Effective on taxable transportation provided after March 31, 2012.

Digest of the Middle Class Tax Relief and Job Creation Act of 2012

(P.L. No. 112-96; February 22, 2012)

Note: Only amendments or additions to Internal Revenue Code Sections contained in subtitle A, chapter; subtitle B; and certain 6000 series sections of the Internal Revenue Code of 1986, as amended, are applicable for this Digest. Unless otherwise noted, all references below are to the Internal Revenue Code of 1986, as amended.

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is operative for Hawaii income tax purposes.
164(f): Non-Code section	**Special rule for computing the §164(f) deduction retroactively extended** The Act retroactively extends the special rule for computing the §164(f) deduction. The deduction allowed for tax years beginning in 2012 is 59.6% of OASDI (Social Security) tax paid plus 50% of the Medicare tax paid. Effective for remuneration received, and tax years beginning, after December 31, 2011.

Digest of the Moving Ahead for Progress in the 21st Century Act
(P.L. No. 112-141; July 6, 2012)

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

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
§72(t)(2)	**10% additional tax on early withdrawals from qualified retirement plans does not apply to federal phased retirement program payments** The Act adds an exemption to the 10% additional tax on early withdrawals from §4974(c) qualified retirement plans. The Act amends the federal civil service retirement program to allow for phased retirement and exempts amounts received under this phased retirement program from the 10% additional tax imposed by §72(t)(1) Effective July 6, 2012.
	The following provisions are operative for Hawaii income tax purposes.
§§79(f) and 420(a), (b)(2), (b)(4), (c)(2)(B), (c)(3)(A), (c)(3)(B)(i)(I), (c)(3)(B)(ii), (c)(3)(C), (d)(1)(A), (e)(1)(A), (e)(1)(B), (e)(1)(C), (e)(1)(D), (e)(4), (f)(2)(D)(i)(II), (f)(2)(D)(ii), (f)(6)(B), (f)(6)(C), and (f)(6)(D)	**Excess pension plan assets may be used to fund retiree group-term life insurance** The Act expands the types of accounts to which excess pension assets may be transferred to include "applicable life insurance accounts", as defined by the Act. A qualified transfer of excess pension assets to an applicable life insurance account will not bring adverse tax consequences. Group term life insurance may only be provided to the extent it is not includible in gross income; §79(a) determines the amount that is not includible in gross income as $50,000. Thus, only life insurance not in excess of $50,000 may be purchased with transferred assets. The Act makes various conforming changes so that the rules for transfers of excess pension assets to retiree medical accounts to fund retiree health benefits also apply to transfers to retiree life insurance accounts to fund retiree group-term life insurance. Effective for transfers made after July 6, 2012
§§404(o)(6); 417(e)(3)(C) and (e)(3)(D); 420(g); and 430(h)(2)(C)(iv) and (h)(2)(F)	**Plans may use interest rate smoothing over a 25-year period to determine liabilities** The Act increases the interest rate smoothing period for defined benefit plans from two years to 25 years. In determining minimum funding requirements defined benefit plans must calculate the present value of accrued or earned benefits. The interest rates used to calculate this present value can be calculated using a 25-year

interest rate corridor.

Effective for plan years beginning after December 31, 2011.

§420(b)(5) **Rules permitting transfer of excess defined benefit plan assets to retiree health accounts are extended through 2021**

The Act extends the expiration date of rules permitting the transfer of excess defined benefit pension assets to retiree health accounts to December 31, 2021.

Effective July 6, 2012.

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

§6412(a)(1) **Floor stocks refunds**

The Act extends the floor stocks credit, also known as the tire tax and the removal-at-terminal fuel tax, to apply to tires or fuel held by dealers on October 1, 2016.

Effective July 1, 2012.

Digest of the African Growth and Opportunity Act
(P.L. No. 112-163; August 10, 2012)

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

CODE SECTION	DESCRIPTION OF PROVISION
	The following provision is NOT operative for Hawaii income tax purposes.
Non-Code section; relating to §6655	**Corporations with assets of $1,000,000,000 or more must pay 100.25% of estimated taxes in 2017.** The Act provides that corporations with $1,000,000,000 or more must pay 100.25% of estimated tax otherwise due as an installment payment in July, August, or September of 2017. The Act further provides that the required installment payment following the increased installment payment must be appropriately reduced to reflect the prior increase. Effective as of August 10, 2012.

Digest of the American Taxpayer Relief Act of 2012
(P.L. No. 112-240; January 2, 2013)

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

CODE SECTION	DESCRIPTION OF PROVISION
	The following provisions are NOT operative for Hawaii income tax purposes.
§1(f)(2)(A) and (f)(8); Non-Code section	**Expansion of marrieds-filing-jointly 15% rate bracket to provide marriage penalty relief is extended permanently** The Act makes permanent the expansion of the 15% bracket for married taxpayers filing jointly. The Act repeals the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001, which began the phase-in of the expanded 15% bracket for married taxpayers filing jointly. Effective for tax years beginning after December 31, 2012.
§1(g)(7)(b)(ii)(II); Non-Code section	**Reduced rate for "kiddie tax" made permanent** A parent who elects to report a child's income on the parent's return must also include 10% of the lesser of either the standard deduction allowable to the parent for a dependent child or the excess of the child's income over that amount. The Act repeals the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 making permanent the reduced 10% inclusion rate. Effective for tax years beginning after December 31, 2012,
§1(h)(1), (h)(1)(B), (h)(1)(C), and (h)(1)(D); Non-Code section	**0% and 15% capital gain rates made permanent and 20% rate is added for high-income taxpayers** The Act repeals the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 making permanent the 0% and 15% capital gains rates. The 0% capital gains rate applies to gain that otherwise would be taxed at the 10% or 15% rate. The 15% capital gains rate applies to gain that otherwise would be taxed at the 25%, 28%, 33%, or 35% rate. The Act adds a 20% rate for high income taxpayers. The 20% capital gains rate applies to gain that otherwise would be taxed at the 39.6% rate. The new 39.6% rate, and thus the new 20% capital gains rate, applies to income above $450,000 for taxpayers who are married filing jointly; $425,000 for taxpayers who are heads of households; $400,000 for singles; and $225,000 for married filing separately, adjusted for inflation. Note that the 3.8% net investment income tax (NIIT) applies to certain taxpayers' capital gains beginning in 2013. Thus the overall capital gains rate for high-income taxpayers will equal 23.8% (20% capital gains rate + 3.8% NIIT). The NIIT applies

to taxpayers whose modified adjusted gross income exceeds $250,000 for married filing jointly returns, $125,000 for married filing separately returns, and $200,000 in all other cases.

The Act removes reference to the 5% rate applicable to tax years before 2008.

Effective for tax years beginning after December 31, 2012.

§1(h)(1)(D)(i), (h)(3)(B), and (h)(11); Non-Code section

0% and 15% rates applicable to qualified dividends made permanent and 20% rate added for high-income taxpayers

The Act repeals the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) making permanent the 0% and 15% rates applicable to qualified dividends. The 0% rate applies to qualified dividend income that otherwise would be taxed at the 10% or 15% regular tax rate. The 15% rate applies to qualified dividend income that otherwise would be taxed at the 25%, 28%, 33%, or 35% regular tax rate.

The Act adds a 20% rate for high income taxpayers. The 20% rate applies to qualified dividend income that otherwise would be taxed at the 39.6% regular tax rate. The new 39.6% rate, and thus the new 20% rate applicable to qualified dividends, applies to income above $450,000 for taxpayers who are married filing jointly; $425,000 for taxpayers who are heads of households; $400,000 for singles; and $225,000 for married filing separately, adjusted for inflation.

By removing the sunset provision of the JGTRRA, the Act makes permanent the holding period rule for determining when dividends on stock qualify as qualified dividend income. The Act also makes permanent the exclusion of qualified dividend income from net capital gain for purposes of computing the limitation on the amount of unrecaptured §1250 gain that is eligible to be taxed at the maximum 25% rate.

Effective for tax years beginning after December 31, 2012.

§§1(h)(2) and (h)(11)(D)(i); and 163(d)(4)(B); Non-Code section

Election to include qualified dividends in investment income for purposes of the investment interest deduction made permanent

Generally, a noncorporate taxpayer's deduction for investment interest is limited to the taxpayer's net investment income. The Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) amended §163(d)(4)(B) to allow taxpayers to elect to treat qualified dividend income as investment income, thus increasing investment income and the deductible amount of investment interest. The provision allowing the election was due to sunset December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the election to include qualified dividends in investment income for purposes of the investment interest deduction.

Note that §1(h)(2) is operative for Hawaii income tax purposes. However, §1(h)(2) only applies to require capital gains to be reduced by the amount a taxpayer takes into account as investment income. The provisions allowing the taxpayer to elect to include qualified dividends as investment income are not operative. This is because Hawaii's income tax, by deeming §163(d)(4)(B) inoperative as it excludes dividends from investment income, does not limit the investment interest expense and thus has no use for an election to include dividends as investment income.

Effective for tax years beginning after December 31, 2012.

§1(i)(2) and (i)(3); Non-Code section

Individuals' reduced rate brackets made permanent

The Act repeals the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 making permanent the 10%, 25%, 28%, 33%, and 35% rate brackets for individuals.

The Act imposes a new 39.6% bracket on high income taxpayers. The new rate is applied to income above $450,000 for taxpayers who are married filing jointly; $425,000 for taxpayers who are heads of households; $400,000 for singles; and $225,000 for married taxpayers filing separately. These amounts are adjusted for inflation in the same manner as the 10% bracket threshold.

Effective for tax years beginning after December 31, 2012.

§1(h)(11)(D)(ii); Non-Code section

Long-term capital loss treatment on stock to the extent extraordinary dividends were taxed as capital gain made permanent

Generally, if an individual, estate, or trust receives qualified dividend treatment on extraordinary dividend income, then any loss resulting from the sale or exchange of the underlying stock must be treated as long-term capital loss to the extent of the extraordinary dividends. The requirement was due to sunset December 31, 2012.

The Act repeals the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) making permanent the long-term capital loss treatment of losses on extraordinary dividends stock.

Effective for tax years beginning after December 31, 2012.

§1(i)(2); Non-Code section

25%, 28%, 33% trust and estate income tax rates made permanent and top rate increased to 39.6% after 2012

The Act repeals the sunset provision of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) making permanent the 25%, 28%, and 33% rate brackets for trusts and estates.

The Act does not amend the 15% bracket. The Act allows the 39.6% bracket to take effect after being reduced by the EGTRRA for previous tax years. The 39.6% bracket applies to taxable income in excess of $11,950 for 2013 as adjusted for inflation. See Rev Proc 2013-15, Sec 2.01.

Effective for tax years beginning after December 31, 2012.

§21; Non-Code section

EGTRRA-expanded dependent care credit permanently extended

Taxpayers with one or more qualifying individuals are allowed a dependent care credit equal to a percentage of eligible expenses incurred by the taxpayer. A qualifying individual is a dependent qualifying child under age 13 or a dependent or spouse who is incapable of self-care and who has the same place of abode as the taxpayer for at least half the tax year. Eligible expenses are expenses paid for the care of the qualified individual or individuals that allow the taxpayer to be gainfully employed. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) expanded the credit's maximum, base amount, and percentage. The expansion was due to sunset December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the expansion of the credit permanent. The credit is now permanently equal to 35% of up to $3,000 of eligible expenses if there is one qualified individual and 35% of up to $6,000 of eligible expenses if there are two or more qualifying individuals. The credit is subject to phase-out as adjusted gross income exceeds $15,000.

Effective for tax years beginning after December 31, 2012.

§23; Non-Code section

Expanded adoption credit rules, excluding refundability, made permanent

Taxpayers are allowed a credit for qualified adoption expenses paid or incurred for the adoption of an eligible child. The credit was expanded by both the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the 2010 Patient Protection and Affordable Health Care Act (PPACA). The EGTRRA changes are as follows:

(1) Maximum per child credit increased to $10,000 for all adoptions, adjusted for inflation;
(2) Phase-out starting point increased to $150,000 of adjusted gross income (AGI), adjusted for inflation;
(3) Allowed maximum credit or special needs adoptions, regardless of actual expenses;
(4) Allowed the credit to be claimed against AMT.

The PPACA changes are as follows:

(1) Maximum per child credit increased to $13,170, adjusted for inflation;
(2) Designated the credit as refundable and placed the credit under §36C.

The PPACA changes expired December 31, 2011. Therefore, in 2012 and thereafter, the PPACA changes were not effective.

The Act repeals the sunset provision of the EGTRRA making expansion of the credit permanent. The Act did not revive the PPACA changes, therefore the credit is no longer refundable and is again provided in §23. For tax years beginning in 2013 and thereafter the credit is permanently applicable as amended by EGTRRA.

Effective for tax years beginning after December 31, 2012.

§§24(a) and (d)(1); and 32(n); Non-Code section

$1,000 per child amount and expanded refundability of child tax credit made permanent

Taxpayers can qualify for a child tax credit (CTC) under §24 for each qualifying child under the age of 17. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) amended the CTC as follows:

(1) The credit was gradually increased to $1,000 per child
(2) The credit was made refundable subject to an earned income limitation, and
(3) §32(n), allowing the addition of the CTC to the earned income credit was repealed.

The EGTRRA amendments were due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making permanent the $1,000 per child credit amount, the refundability of the credit, and the repeal of §32(n).

Effective for tax years beginning after December 31, 2012.

§§24(b)(3) and 26(a)(1); Non-Code section

Allowance of offset of alternative minimum tax by child tax credit made permanent

The child tax credit (CTC) can be used to offset regular tax liability and alternative minimum tax (AMT) liability. AMT offset was allowed under §26(a)(2) before its sunset and thereafter under §24(b)(3).

The Act extends the treatment under former §26(a)(2) to allow the CTC to offset AMT liability. The Act repeals the separate limitation rule under §24(b)(3).

Effective for tax years beginning after December 31, 2012.

§24(d)(4) **Increase in refundable portion of child tax credit is extended through 2017**

The child tax credit is refundable only to the extent of 15% of the taxpayer's earned income in excess of a statutory threshold of $10,000 adjusted for inflation. The American Recovery and Investment Act of 2009 reduced the threshold to $3,000 with no adjustment for inflation. The reduction was due to expire December 31, 2012.

The Act extends the $3,000 threshold amount, with no adjustment for inflation, through tax years beginning before January 1, 2018.

Effective for tax years beginning after December 31, 2012 and before January 1, 2018.

§25A(i); Non-Code section **American Opportunity Tax Credit for higher education expenses extended through 2017**

Individual taxpayers can claim the American Opportunity tax credit, previously called the Hope credit, for qualified tuition and related expenses (QT&R) paid for the first two years of post-secondary educations.

The American Recovery and Reinvestment Act of 2009 (ARRA) greatly expanded the credit in terms of amount allowed, qualifying expenses, refundability, and phaseout. The ARRA also included a special rule for bona fide residents of U.S. possessions which allowed those individuals to claim the refundable portion of the credit in the possession in which they reside. For Puerto Rico and American Samoa, the non-mirror code possessions, bona fide residents can only claim the refundable portion if the possession in which they reside allows for it under internal law. The ARRA expansions were set to expire December 31, 2012.

The Act extends the ARRA expansions through tax years beginning before January 1, 2018.

Effective for tax years beginning after December 31, 2012 and before January 1, 2018.

§25C(g)(2) **Non-business energy property credit retroactively reinstated and extended**

A taxpayer can claim a credit for certain energy efficient property installed in a dwelling located in the United States and owned and used by the taxpayer as the taxpayer's principal residence. The credit is equal to 10% of the cost of qualified energy efficiency improvements and 100% of amounts paid for residential energy property expenditures, subject to specific dollar limits. There is a lifetime limit of $500 in general and $200 for windows and skylights. The credit applied only to property placed in service before January 1, 2012.

The Act amends the credit to include property placed in service before January 1, 2014, retroactively extending it through December 31, 2013.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

§§26(a); 23(b)(4); 24(b)(3); 25(e)(1)(C); 25A(i)(5); 25B(g); 25D(c); 26(a)(1); 30(c)(2); 30B(g)(2); 30D(c)(2); 904(i); and 1400C(d)

Nonrefundable personal credits can offset alternative minimum tax and regular tax for tax years beginning after December 31, 2011

Taxpayers can qualify for a number of nonrefundable personal tax credits. In the past these credits have been subject to limitations based on tax liability under former §§26(a)(1) and (a)(2).

The relevant credits are:

(1) the §21 child and dependent care credit,
(2) the §22 credit for elderly and disabled,
(3) the §23 adoption expense credit,
(4) the §24 child tax credit,
(5) the §25 credit for interest paid or accrued on certain home mortgages of low income persons,
(6) the §25A Lifetime Learning credit,
(7) the §25A(i) modified Hope credit/American Opportunity Tax Credit,
(8) the §25B credit for elective deferrals and IRA contributions,
(9) the §25C nonbusiness energy property credit for energy-efficient improvements to a principal residence,
(10) the §25D residential energy efficient property (REEP) credit for photovoltaic, solar hot water, and fuel cell property added to a residence;
(11) the §30 qualified plug-in electric vehicle credit (nonbusiness portion);
(12) the §30B alternative motor vehicle credit;
(13) the Code section 30D new qualified plug-in electric drive motor vehicle credit (nonbusiness portion); and
(14) the §1400C first-time homebuyer credit for the District of Columbia.

For tax years beginning before 2012 the credits were allowable to the extent of the taxpayer's regular tax liability and alternative minimum tax (AMT) liability under former §26(a)(2). Thereafter, the credits were generally allowable only to the extent of the excess of the taxpayer's regular tax liability over the taxpayer's AMT liability under §26(a)(1). Thus the credits were not allowed to offset the AMT liability. There was a subset of these credits that were specifically allowed to offset AMT.

The Act permanently extends the treatment under former §26(a)(2) to allow the credits to offset AMT liability. The credits are allowed to offset a taxpayer's regular tax liability reduced by the foreign tax credit plus the AMT liability.

Effective for tax years beginning after December 31, 2011.

§§30A and 936

Possessions tax credit for American Samoa extended through 2013 with an American Samoa production requirement

Prior to 2006 §936 allowed a qualifying domestic corporation operating within, and having extensive amounts of gross income sourced from within, a possession of the United States to claim a tax credit estimating its taxable income in that possession. The Tax Relief and Health Care Act of 2006 (2006 TRA) extended the credit for American Samoa only.

To qualify after January 1, 2006 the corporation had to be an existing credit claimant, meaning that the corporation qualified for the credit and had elected to use it as of October 13, 1995, and also had to have elected to use §936 for its last tax year beginning before January 1, 2006. The credit was allowed for the corporations first six tax years that began after December 31, 2005 and before January 1, 2012, thus for tax years 2006 through 2011. The amount of the credit allowed was amended to equal 60% of qualified wages and fringe benefit expenses and various percentages of short, medium, and long-term depreciable tangible property. The extended credit expired on December 31, 2011.

The Act extends the tax credit for American Samoa for tax years beginning before January 1, 2014. The Act eliminates the requirement that a corporation be an existing credit claimant for tax years beginning after December 31, 2011. The Act imposes a qualified domestic production activities requirement on corporations after December 31, 2011.

The domestic production requirement requires the corporation to have qualified production activities income (QPAI) in American Samoa. QPAI is defined by §199(c) as the excess of the taxpayer's domestic production gross receipts for the tax year over the sum of the cost of goods sold allocable to those receipts and certain allocable expenses, losses, or deductions.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§30C(g)(2) **Non-hydrogen qualified alternative fuel vehicle refueling property credit retroactively restored and extended**

A taxpayer can claim a credit of 30% of the cost of any non-hydrogen qualified alternative fuel vehicle refueling property (qualified property) placed in service after December 31, 2010. The credit was capped at $30,000 for depreciable qualified property and $1,000 for other qualified property. The credit applied only to property placed in service before January 1, 2011.

The Act amends the credit to include property placed in service before January 1, 2014, retroactively extending it through December 31, 2013.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

§30D(f)(2), (f)(7), and (g) **Tax credit for 2- or 3- wheeled plug-in electric vehicles retroactively restored and extended**

A taxpayer can claim a credit of 10%, capped at $2,500, of the cost of each qualified plug-in electric vehicle acquired by the taxpayer. Under previous law qualified plug-in electric vehicles included 2- and 3-wheeled vehicles that met the following requirements:

(1) original use of the vehicle began with the taxpayer;
(2) the vehicle was acquired for use or lease and not for resale;
(3) the vehicle was made by a "manufacturer", as defined by EPA regs;
(4) the vehicle was manufactured primarily for use on public streets, roads, and highways;
(5) the vehicle had a gross vehicle weight rating of less than 14,000 pounds; and
(6) the vehicle was propelled significantly by an electric motor drawing power from an externally rechargeable battery with a capacity of at least 2.5 kilowatt hours.

The credit applied only to vehicles acquired before January 1, 2012.

The Act effectively extends the credit to include vehicles acquired after December 31, 2011 and before January 1, 2014 in slightly modified form.

The credit is now provided in §30D(g), previously the credit was provided in §30. The requirements of the previous credit remain the same but contain the additional requirement that a vehicle have a top speed of at least 45 miles per hour. Furthermore, the credit is made subject to certain Clean Air Act, state air quality, and federal safety provisions. Other previously applicable rules regarding the credit are carried over to apply to the credit as provided in §30D(g). These include rules for reduction of other credit for qualified plug-in electric drive motor vehicle by amount allowable under §30D, basis reduction, tax exempt entity usage, property used outside the United States, recapture, and election not to take the credit.

Effective for vehicles acquired after December 31, 2011 and before January 1, 2014.

§32(a)(2)(B), (c)(1)(C), (c)(2)(A)(i), and (h); Non-Code section

Earned Income credit simplification made permanent

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

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), the Jobs and Growth Tax Relief Reconciliation Act, and the Working Families Tax Relief Act of 2004 simplified the EIC rules as follows:

(1) The definition of earned income was modified to include only amounts that are includible in gross income;
(2) Reduction of the EIC for taxpayers who are subject to the alternative minimum tax was eliminated;
(3) AGI replaced modified adjusted gross income in the phaseout computation;
(4) The relationship test was changed to require qualifying children to reside with the taxpayer for more than six months and the eligible child category was expanded; and
(5) The tie-breaking rule applicable if more than one taxpayer claims EIC for one child was simplified.

The simplified rules were set to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the simplified EIC rules permanent.

Effective for tax years beginning after December 31, 2012.

§32(b)(2), (b)(3), and (j); Non-Code section

$5,000 increase in earned income credit phaseout threshold for joint filers extended through 2017

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

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the American Recovery and Reinvestment Act of 2009 (ARRA) increased the EIC phaseout threshold for joint filers to $3,000 and then to $5,000 more than the threshold for other filers. The EGTRRA expansion was set to expire December 31, 2012. The ARRA expansion was also set to expire December 31, 2012

The Act repeals the sunset provision of the EGTRRA and extends the ARRA expansion to tax years beginning before 2018. Thus, the $5,000 expansion of the phaseout threshold for joint filers is applicable through the 2017 tax year. Following the 2017 tax year the $3,000 expansion of the phaseout threshold for joint filers will apply. Refer to Rev. Proc. 2013-15 for detailed thresholds.

Effective for tax years beginning after December 31, 2012. The $5,000 expansion effective only for tax years beginning after December 31, 2012 and before January 1, 2018.

§32(b)(3)

Increased earned income credit for families with three or more qualifying children extended for five years

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

The number of qualifying children determines the credit percentage, which is multiplied by the earned income to calculate the credit. A temporary increase in credit percentage to 45% for families with three or more qualifying children was set to expire December 31, 2012.

The Act extends the 45% credit percentage for families with three or more qualifying children through any tax year beginning before 2018, thus through tax year 2017.

Effective for tax years beginning after December 31, 2012 and before January 1, 2018.

§§40(b)(6)(E)(i)(I), (b)(6)(F), (b)(6)(G); and 4101(a)

Algae treated as a qualified feedstock for purposes of the cellulose biofuel producer credit

The cellulosic biofuel producer credit it a nonrefundable credit that can be claimed for 60 cents of each gallon of qualified cellulosic fuel used or sold during the tax year. The credit is a component of the alcohol fuels credit provided by §40. To qualify for the credit a taxpayer must register with the IRS as a producer of cellulosic biofuel, as required by §4101.

Under previous law cellulosic biofuel meant any liquid fuel which is produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis and meets certain Clean Air Act requirements. The term did not include algae.

The Act amends the definition of cellulosic biofuel to include any liquid fuel which is derived by, or from, qualified feedstocks. Qualified feedstock is defined to mean any lignocellulosic or hemicellulosic matter available on a renewable or recurring basis and any cultivated algae, cyanobacteria, or lemna. The Act adds special rules for fuels derived from cultivated algae, cyanobacteria, or lemna. The Act replaces references to "cellulosic biofuel" with "second generation biofuel" in Code Secs. 40 and 4101.

Effective for fuels sold or used after January 2, 2013.

§40(b)(6)(H) and (b)(6)(J)

Cellulosic biofuel producer credit retroactively restored and extended

The cellulosic biofuel producer credit is a nonrefundable credit that can be claimed for 60 cents of each gallon of qualified cellulosic fuel used or sold during the tax year. The credit is a component of the alcohol fuels credit provided by §40. The credit applied to cellulosic biofuel production before January 1, 2013.

The Act retroactively extends the cellulosic biofuel producer credit to apply to cellulosic biofuel production before January 1, 2014. The Act imposes the carryover rules of §40(e)(2) so that no amount of unused credit can be carried over into a tax year beginning more than 3 years after the expiration date of the credit. For purposes of this credit and expiration date, that would be tax years beginning after December 31, 2016.

Effective for fuel produced before January 1, 2014.

§§40A(g); 6426(c)(6); and 6427(e)(6)(B)

Income and excise tax credits and refunds for biodiesel and renewable diesel retroactively restored and extended

The biodiesel fuels income tax credit, consisting of the biodiesel mixture credit, the biodiesel credit, and the small agri-biodiesel producer credit; the biodiesel mixture excise tax credit; and an excise tax refund could be claimed for fuel sold or used before January 1, 2012. These benefits, other than the credit for small agri-biodiesel producers, could be claimed for renewable diesel.

The Act retroactively extends these credits to apply to fuel sold or used after December 31, 2011 and before January 1, 2014.

The following provisions are operative for Hawaii income tax purposes.

§§41(f)(1)(A), (f)(1)(B), (f)(3)(A), (f)(3)(B), (h)(1)(B); and 45C(b)(1)(D)

Research credit retroactively extended and modified

Taxpayers can claim a research credit equal to 20% of the amount by which qualified research expenses (QREs) exceed a base amount or the alternative simplified credit. The research credit is composed of two additional, separately computed, credits. These are the university basic research credit and the energy research consortium credit. The credit applied to qualified research expenses paid or incurred before January 1, 2012.

The orphan drug credit is also available for qualified clinical drug testing expenses. This credit, provided in §45C, depends upon the research credit at §41 for definition of its terms. Note that §45C(b)(1)(D) is not operative for Hawaii income tax purposes; the orphan drug credit cannot be claimed against Hawaii income tax liability.

The Act retroactively extends the research credit to include qualified amounts paid or incurred after December 31, 2011 and before January 1, 2014.

The Act modifies the credit calculation rules where a major portion of a business or a separate business unit is acquired or disposed of. Generally, the acquirer must increase the amount of QREs and gross receipts taken into account in determining the amount of the credit. The Act requires the acquirer to include (1) in the tax year of acquisition, all QREs of the predecessor during the measurement period (any period used by the acquirer in determining the credit) multiplied by the fraction of the tax year the acquirer owned the property of the predecessor and (2) in subsequent tax years, the QREs paid or incurred by the predecessor during the measurement period. The acquirer must increase its gross receipts in the same way. The predecessor reduces its QREs and gross receipts by the same amounts in the year the disposition is made.

The Act modifies the rules for allocating the research credit among members of a controlled group of corporations or among commonly controlled businesses. The credit allowed to each member of such a group is determined on a proportionate basis to its share of the aggregate of the qualified amounts paid or incurred by the all members of such a group.

Effective for amounts paid or incurred after December 31, 2011 and before January 1, 2014. The modifications of the rules are effective for tax years beginning after December 31, 2011.

§42(b)(2) **Applicability of temporary minimum low-income housing credit rate of 9% expanded**

Investors in low-income buildings can claim the low-income housing credit over the ten years following the year the housing is placed in service. The credit is calculated by applying the applicable percentage to the basis of the building. The applicable percentage is meant to produce a credit equal to 70% of the present value of the basis of newly constructed or substantially rehabilitated housing that is not federally subsidized. For such property that is federally subsidized, the credit is meant to equal 30% of the present value of the basis of the building.

A minimum applicable percentage of 9% is applicable to qualifying buildings that are not federally subsidized and are placed in service after July 30, 2008 and before December 31, 2013.

The Act extends the 9% minimum applicable percentage for non-federally subsidized property to apply to housing credit dollar amount allocations made before January 1, 2014.

Effective January 2, 2013.

§§42(g)(4) and 142(d)(2)(B)(ii) **Military housing allowance exclusion for tax-exempt bond financing and low-income housing credit retroactively restored and extended**

An otherwise qualifying project can fail to qualify for tax-exempt bond financing or the low-income housing credit if the project's residents and the area it is located in exceed allowed income levels. A project can exclude the military housing allowance from its residents' and area's income for purposes of the income determination. The exclusion only applied for income determinations made after July 30, 2008 and before January 1, 2012.

The Act retroactively restores and extends the exclusion to apply to income determinations made before January 1, 2014.

Note that §142 relating to exempt facility bonds is not operative for Hawaii income tax purposes, however the rule at §143(d)(2)(B)(ii) is applicable to the low-income housing credit for Hawaii income tax purposes through reference.

	Effective for income determinations made after July 30, 2008 and before January 1, 2014.

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

§45(c)(6)	**Definition of municipal solid waste amended to exclude paper that is commonly recycled and segregated from other solid waste** Certain producers of energy can claim the electricity production credit for every kilowatt hour of electricity sold to an unrelated party that is produced from qualified energy resources. Qualified energy resources include municipal solid waste. Municipal solid waste means solid waste as defined by the Solid Waste Disposal Act. The Act amends the definition of solid waste to specifically exclude paper that is commonly recycled and has been segregated from other solid waste. Effective for electricity produced and sold after January 2, 2013.
§45(d)(1), (d)(2)(A)(i), (d)(3)(A)(i)(I), (d)(3)(A)(ii), (d)(4), (d)(6), (d)(7), (d)(9)(B), (d)(9)(C), and (d)(11)(B)	**Credits for facilities producing energy from certain renewable resources extended and modified** Certain producers of energy can claim the electricity production credit for every kilowatt hour of electricity sold to an unrelated party that is produced from qualified energy resources. The Act amends the definition of qualified facility for wind facilities, closed-loop biomass facilities, open-loop biomass facilities, geothermal facilities, municipal solid waste facilities, marine and hydrokinetic renewable energy facilities, and hydropower facilities to include such facilities the construction of which begins before January 1, 2014. Certain modifications to closed-loop biomass facilities and certain improvements to hydropower facilities qualify if construction begins before January 1, 2014. The Act further amends the definition of geothermal facility to exclude any qualified business property the basis of which is taken into account for purposes of the energy credit under §48. Effective January 2, 2013.
§45(e)(10)	**Indian coal production credit period extended to eight year period beginning January 1, 2006** Producers of "Indian coal" could increase the credit otherwise allowable under §45. The increase was equal to the "applicable dollar amount" per ton of Indian coal produced by the taxpayer at an "Indian coal production facility" and sold to an unrelated party during the seven year period following January 1, 2006. The Act extends the period during which the increased credit is allowable from seven years to eight years following January 1, 2006. Thus, coal produced before January 1, 2014 is eligible for the increased credit. Effective for coal produced after December 31, 2012.
§45A(f)	**Indian employment credit for wages paid to qualified Native Americans**

retroactively restored and extended

Employers can claim the Indian employment credit for a portion of wages paid to Native Americans living and working on Indian reservations. The credit was applicable through the tax year ending December 31, 2011.

The Act retroactively restores and extends the Indian employment credit to apply through December 31, 2013.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§45D(f)(1)(G) and (f)(3)

New markets tax credit retroactively restored and extended

Taxpayers can claim the new markets tax credit for qualified equity investments in a qualified community development entity. The credit is subject to a nationwide limitation per calendar year. The nationwide maximum for 2011, the final year before scheduled expiration of the credit, was $3.5 billion. Any unused amount of this limitation for a calendar year was carried over to the next calendar year to increase that year's limitation. No amount could be carried over to any calendar year after 2016.

The Act restores and extends the new markets credit to apply through December 31, 2013 with a nationwide limitation of $3.5 billion per calendar year. The Act extends the period through which unused nationwide limitation can be carried over through 2018.

Effective for calendar years beginning after December 31, 2011 and before January 1, 2014.

§45F; 38(b)(15); and 1016(a)(28)

Employer-provided child care credit permanently extended

Employers can claim a credit for certain costs of providing child care assistance to employees. The credit is equal to: (1) 25% of certain costs of acquiring, constructing, rehabilitating, expanding, or operating a qualified child care facility, (2) 25% of certain costs paid or incurred under contract with a qualified child care facility, and (3) 10% of certain costs of providing child care resource and referral services to employees. The credit is subject to a $150,000 limit per tax year. The credit is treated as part of the §38 general business credit.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) created the child care tax credit. The child care tax credit was due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the child care credit permanent.

Note that §1016 regarding adjustments to basis is generally operative for Hawaii income tax purposes. §1016(a)(28) provides that an adjustment to basis is proper for property for which a child care credit was claimed.

Effective for tax years beginning after December 31, 2012.

§45G(f)

Railroad track maintenance credit retroactively restored and extended

Eligible taxpayers can claim the railroad track maintenance credit for 50% of qualified expenditures. The credit was limited by a per taxpayer per taxable year cap of $3,500 multiplied by the sum of the number of miles of track the taxpayer owned or leased and the number of miles of track assigned to the taxpayer by §45G(b). The credit applied to qualified expenditures paid or incurred before December 31, 2011.

The Act retroactively restores and extends the railroad track maintenance credit to apply to qualified expenditures paid or incurred before January 1, 2014.

Effective for expenditures paid or incurred during tax years beginning after December 31, 2011 and before January 1, 2014.

§45L(c)(1)(A)(i) **New energy efficient home credit modified**

Eligible contractors can claim the new energy efficient home credit for each qualified new energy efficient home the contractor constructs and sells for use as a residence. The credit is equal to $2,000 for a 50% reduction in energy usage and $1,000 for a 30% reduction in energy usage.

The Act amends the new energy efficient home credit by substituting the "2006 International Energy Conservation Code" for the "2003 International Energy Conservation Code" for purposes of determining eligibility of the credit.

Effective for homes acquired after December 31, 2011 and before January 1, 2014.

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

Eligible contractors can claim the new energy efficient home credit for each qualified new energy efficient home the contractor constructs and sells for use as a residence. The credit is equal to $2,000 for a 50% reduction in energy usage and $1,000 for a 30% reduction in energy usage. The credit was available for qualifying homes substantially completed after December 31, 2005 and acquired before January 1, 2012.

The Act retroactively restores and extends the new energy efficient home credit to apply to homes acquired before January 1, 2014.

Effective for homes acquired after December 31, 2011 and before January 1, 2014.

§45M(b)(1)(D), (b)(1)(E), (b)(2)(F), (b)(3)(E), (b)(3)(F) **Energy efficient appliance credit retroactively restored and extended**

Manufacturers of qualified energy efficient appliances can claim the energy efficient appliance credit. The credit is awarded on a per item basis and the amount varies by appliance type. The credit is subject to annual production limits, an annual percentage-of-gross-receipts limit, and a cumulative aggregate limit. The credit was available for appliances manufactured before December 31, 2011.

For dishwashers manufactured in calendar year 2011, the credits were:

(1) $25 for dishwashers which use no more than 307 kilowatt hours (kWh) per year and 5.8 gallons per cycle (5.5 gallons per cycle for dishwashers designed for greater than 12 place settings);
(2) $50 for dishwashers which use no more than 295 kWh per year and 4.25 gallons per cycle (4.75 gallons per cycle for dishwashers designed for greater than 12 place settings); and
(3) $75 for dishwashers which use no more than 280 kW/h per year and 4 gallons per cycle (4.5 gallons per ycle for dishwashers designed for

greater than 12 place settings).

For clothes washers manufactured in calendar year 2011, the credits were:

(1) $175 for top-loading clothes washers which meet or exceed a 2.2 modified energy factor and don't exceed a 4.5 water consumption factor;
(2) $225 for top-loading clothes washers which meet or exceed a 2.4 modified energy factor and don't exceed a 4.2 water consumption factor;
(3) $225 for front-loading clothes washers which meet or exceed a 2.8 modified energy factor and don't exceed a 3.5 water consumption factor.

For refrigerators manufactured in calendar year 2011, the credits were:

(1) $150 for refrigerators that consume at least 30% less energy than the 2001 energy conservation standards; and
(2) $200 for refrigerators that consume at least 35% less energy than the 2001 energy conservation standards.

The Act retroactively restores and extends the credit for certain appliances to apply to appliances manufactured before December 31, 2013. The credit was not restored or extended to apply to dishwashers using between 295 and 307 kWh and 4.25 and 5.8 gallons of water per cycle (5.5 if designed for 12 place settings or more) or to top-loading clothes washers which fail to meet or exceed a 2.4 modified energy star factor or a 4.2 water consumption factor.

For appliances for which the credit is restored and extended, the credit amounts remain the same.

Effective for appliances produced after December 31, 2011 and before January 1, 2014.

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

Taxpayers can claim the mine rescue team training credit for amounts paid or incurred for training mine rescue teams. The credit equals the lesser of $10,000 or 20% of the training program costs paid or incurred by an employer to train its qualified mine rescue team employees. The credit applied to amounts paid or incurred before January 1, 2012.

The Act retroactively restores and extends the mine rescue team training credit to apply to amounts paid or incurred before January 1, 2014.

Effective for amounts paid or incurred after December 31, 2011 and before January 1, 2014.

§45P(f) **Differential wage payment credit retroactively restored and extended**

When an employee is called to active duty in the U.S. military and its employer voluntarily pays the difference between what the employer would have paid the employee and what the military pays the employee, eligible small businesses can claim a credit equal to 20% of eligible differential wage payments made. Under pre-2012 Taxpayer Relief Act law, the credit applied to differential wage payments made before January 1, 2012.

The Act retroactively restores and extends the differential wage payment credit to apply to differential wage payments made before January 1, 2014.

Effective for differential wage payments made after December 31, 2011 and before January 1, 2014.

The following provision is operative for Hawaii income tax purposes.

§48(a)(5)(D) **Definition of qualified property for purposes of the election to take the energy credit in lieu of the electricity production credit retroactively amended**

Taxpayers can elect to claim the 30% energy credit in lieu of the electricity production credit. The credit can be claimed for any qualified property that is part of a qualified investment credit facility (QICF). In general a QICF is any facility that qualifies for the electricity production credit of §45. Under pre-2012 Taxpayer Relief Act law, qualified property is tangible personal property or other tangible property used as an integral part of the QICF, but not including a building or its structural components, with respect to which depreciation or amortization is allowable.

The American Recovery and Reinvestment Act of 2009 (ARRA) provided for an election to receive a grant in lieu of the credit. The grant could be issue for property placed in service during 2009, 2010, or 2011 or for property the construction of which began during 2009, 2010, or 2011 if placed in service after 2011 and before the credit termination date for that property.

The Act amends the definition of qualified property by adding two additional requirements. The new requirements are that the property be constructed, reconstructed, erected, or acquired by the taxpayer and that the original use of the property commences with that taxpayer.

The Act amends the election to receive a grant in lieu of the credit by requiring the property be originally placed in service by the person who is receiving the grant. Thus the Internal Revenue Service cannot issue a grant other than to the person who originally placed the property in service.

Note that §48(a)(5)(D) is operative for Hawaii income tax purposes, however, the underlying credits involved, the electricity production credit and the energy credit, are not operative for Hawaii income tax purposes.

Effective for facilities placed in service after December 31, 2008.

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

§51(c)(4)(B) **Work opportunity credit retroactively restored and extended**

Employers can claim the work opportunity tax credit equal to 40% of qualified first year wages paid to employees of a targeted group. Under pre-2012 Taxpayer Relief Act law, the credit did not apply to qualified first year wages paid to a qualified veteran who began work after December 31, 2012 or to qualified first year wages paid to any other member of a targeted group who began work after December 31, 2011.

The Act retroactively extends the wage opportunity tax credit to apply to qualified first year wages paid to all members of a targeted group who begin work before January 1, 2014.

Effective for qualified first year wages of individuals who begin work after December 31, 2011 and before January 1, 2014.

§54E(c)(1) **Qualified zone academy bonds extended**

Qualified zone academy bonds (QZABs) are qualified tax credit bonds entitling the holder to a nonrefundable tax credit. Qualification as a QZAB is subject to multiple requirements under §54E. QZABs are subject to an annual national bond volume limitation. After December 31, 2011 the limitation was zero, effectively ending the program.

The Act amends the national bond volume limitation to allow $400 million in QZABs for 2012 and 2013.

Effective for bonds issued after December 31, 2011 and before January 1, 2014.

§55(b)(1)(A)(iii), (d)(1)(A), (d)(1)(B), (d)(3), and (d)(4) **Alternative minimum tax exemption amounts retroactively increased and indexed for inflation after 2012**

In computing the alternative minimum tax (AMT) liability. Individuals may apply an exemption amount to their alternative minimum taxable income (AMTI). Under pre-2012 Taxpayer Relief Act law the exemption amounts equaled:

(1) $45,000 for married taxpayers filing jointly or surviving spouses;
(2) $33,750 for unmarried taxpayers who are not surviving spouses; and
(3) $22,500 for married taxpayers filing separate returns.

The exemption amount for married individuals filing separate returns is technically defined as 50% of the exemption for married couples filing jointly. The exemption amounts were temporarily increased between 2001 and 2011 by various pieces of legislation. All such temporary increases expired December 31, 2011.

The Act retroactively increases the AMT exemption amounts, makes the amounts permanent, and provides for inflation adjustments in later tax years. The new exemption amounts are:

(1) $78,750 for married taxpayers filing jointly or surviving spouses;
(2) $50,600 for unmarried taxpayers who are not surviving spouses; and
(3) $39,375 for married taxpayers filing separate returns.

The exemption amount for married taxpayers filing separate returns is still technically defined as 50% of the exemption for married taxpayers filing jointly.

The Act amends the description of the phaseout threshold amount for married taxpayers filing separate returns, estates, and trusts. The phaseout amount is now equal to 50% of the phaseout threshold applicable to married taxpayers filing jointly.

The Act amends the description of the statutory amount used to calculate the tentative minimum tax for a married taxpayer filing separately under §55(b)(1)(A)(iii). The statutory amount is now equal to 50% of the otherwise applicable amount.

In addition to the AMT exemption amounts, the Act indexes the phaseout thresholds and the statutory amount used to calculate tentative minimum tax under §55(b)(1)(A)(i) for inflation.

Effective for tax years beginning after December 31, 2011.

§55(b)(3)(B), (b)(3)(C), and (b)(3)(D) **0% and 15% alternative minimum tax rates on capital gains and qualified dividends made permanent and 20% tax rate added for high-income taxpayers**

The Act repeals the sunset provision of the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) making permanent the 0% and 15%

alternative minimum tax (AMT) rates applicable to capital gains and qualified dividends. The 0% rate applies to capital gains and qualified dividends that otherwise would be taxed at the 10% or 15% regular tax rate. The 15% rate applies to capital gains and qualified dividends that otherwise would be taxed at the 25%, 28%, 33%, or 35% regular tax rate.

The Act adds a 20% rate for high income taxpayers. The 20% rate applies to capital gains and qualified dividends that otherwise would be taxed at the 39.6% regular tax rate. The new 39.6% regular tax rate, and thus the new 20% rate applicable to capital gains and qualified dividends, applies to income above $450,000 for married taxpayers filing jointly; $425,000 for taxpayers who are heads of households; $400,000 for singles; and $225,000 for married taxpayers filing separately, adjusted for inflation.

Note that the 3.8% net investment income tax (NIIT) applies to certain taxpayers' capital gains and qualified dividends beginning in 2013. Thus the overall capital gains and qualified dividends rate for high-income taxpayers will equal 23.8% (20% capital gains rate + 3.8% NIIT). The NIIT applies to taxpayers whose modified adjusted gross income exceeds $250,000 for married taxpayers filing jointly, $125,000 for married taxpayers filing separately, and $200,000 in all other cases.

Effective for tax years beginning after December 31, 2012.

§57(a)(7); Non-Code section — **7% AMT preference for excluded gain on qualified small business stock permanently extended**

A taxpayer can exclude from gross income the gain on the sale or disposition of qualified small business stock (QSBS). A percentage of the amount excluded is treated as a preference item and thus added to alternative minimum taxable income (AMTI).

The Jobs and Growth Tax Relief and Reconciliation Act of 2003 (JGTRRA) reduced the percentage of the exclusion treated as a preference item from 42% and 28% to a uniform rate of 7%. The reduction was due to sunset December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making the 7% percentage preference rule permanent.

Effective for tax years beginning December 31, 2012.

The following provisions are operative for Hawaii income tax purposes.

§62(a)(2)(D) — **Above-the-line deduction for teachers' out of pocket classroom related expenses retroactively restored and extended**

Eligible educators can claim an above-the-line deduction of up to $250 for out of pocket expenses paid for certain classroom related expenses such as books, supplies, computer equipment, and supplementary materials. The deduction expired December 31, 2011.

The Act retroactively restores and extends the deduction for teachers' out of pocket classroom related expenses making it available in tax years beginning in 2012 and 2013.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§63(c)(2); Non-Code section

Standard deduction marriage penalty relief made permanent

The Act repeals the sunset provision of the Economic Growth and Tax Relief and Reconciliation Act of 2001 making the basic standard deduction for married taxpayers filing jointly and surviving spouses permanently equal to 200% of the basic standard deduction for unmarried taxpayers or married taxpayers filing separately.

Note that §63(c)(2) is operative for Hawaii income tax purposes but that the standard deduction amounts themselves are not operative. Standard deduction amounts applicable for Hawaii income tax purposes are provided in section 235-(a)(2), HRS.

Effective for tax years beginning after December 31, 2012.

§68(b) and (g); Non-Code section

Overall limitation on itemized deductions restored and modified

Prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) itemized deductions were reduced if a taxpayer's adjusted gross income (AGI) exceeded the inflation adjusted applicable amount. The reduction equaled the lesser of 3% of the excess of AGI over the applicable amount or 80% of otherwise allowable itemized deductions. The EGTRRA first reduced the limitation then eliminated it altogether for tax years beginning after December 31, 2009. The elimination was due to expire December 31, 2012.

The Act restores the overall limitation on itemized deductions and increases the inflation adjusted applicable amounts. The applicable amounts are now:

(1) $300,000 for married taxpayers filing jointly or for a surviving spouse;
(2) $275,000 for a taxpayer filing as a head of household;
(3) One-half the amount under (1) above for a married taxpayer filing separately, currently $150,000; and
(4) $250,000 for other taxpayers.

Note that for Hawaii income tax purposes the thresholds are those operative for federal tax year 2009.

Effective for tax years beginning after December 31, 2012.

§108(a)(1)(E)

Exclusion for debt discharge income from home mortgage forgiveness extended

Taxpayers may use the mortgage forgiveness exclusion to exclude from income any debt discharge income resulting from a discharge of qualified principal residence indebtedness after December 31, 2006 and before January 1, 2013.

The Act extends the mortgage forgiveness exclusion to apply to indebtedness forgiven before January 1, 2014.

Effective for discharges of indebtedness after December 31, 2012 and before January 1, 2014

§117(c)(2)

Exclusion for awards under the National Health Service Corps and Armed Forces Health Professions programs made permanent

In general a taxpayer can exclude scholarships from income. However, scholarships awarded as payment for teaching, research, or other services are not excludable. The Economic Growth and Tax Relief and Reconciliation Act of 2001 (EGTRRA) provided that scholarships received under the National Health Service Corps Scholarship program (NHSC) and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance program (Armed Forces Scholarship program) can be excluded from gross income regardless of any service obligation on the part of the student. The exclusion was due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the excludability of awards from the NHSC and the Armed Forces Scholarship program permanent.

Effective for taxable years beginning after December 31, 2012.

§127 **Exclusion for employer provided educational assistance, and restoration of the exclusion of graduate level courses, made permanent**

A taxpayer may exclude up to $5,250 annually for educational assistance provided by employers. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) extended the exclusion in general and restored the exclusion for graduate courses. The extension of the exclusion was due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the exclusion for employer provided educational assistance, including assistance for graduate courses, permanent.

Effective for tax years beginning after December 31, 2012.

§132(f)(2) **Parity between employer provided mass transit and parking benefits extended**

Employers can exclude from employees' income amounts provided as qualified transportation fringe benefits and parking benefits up to inflation adjusted statutory amounts. Prior to February 17, 2009 the statutory amount for qualified transportation fringe benefits was less than the amount for parking benefits.

The American Recovery and Reinvestment Act of 2009 (ARRA) temporarily increased the statutory amount for qualified transportation benefits to provide parity between those and employer provided parking benefits. The parity provision applied to benefits received in months before January 1, 2012.

The Act extends the parity between employer provided mass transit and parking benefits to apply to benefits received in months beginning after December 31, 2011 and before January 1, 2014. The monthly exclusion applicable to tax years beginning in 2013 is $245 for both employer provided mass transit benefits and employer provided parking benefits, see Rev Proc 2013-15 for more information.

Note that §132(f)(2) is operative for Hawaii income tax purposes subject to a specific exception. Section 235-2.4(g), HRS, provides that the provision in §132(f)(2) making the exclusions equal is not operative for Hawaii income tax purposes. Also note that the inflation adjustment is not operative for Hawaii income tax purposes.

Effective for months beginning after December 31, 2011 and before January 1, 2014.

§137; Non-Code section

Adoption assistance exclusion made permanent

Taxpayers can exclude from income qualified adoption expenses paid or reimbursed by an employer under an employer provided adoption assistance program. The exclusion is subject to a dollar limit and an income based phaseout, both adjusted for inflation.

Prior to the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) the exclusion was due to expire December 31, 2001. EGTRRA modified the exclusion and made it permanent. The EGTRRA itself was subject to a sunset provision, as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, of December 31, 2012. After this date the exclusion would revert to pre-EGTRRA law which provided for the exclusion to expire December 31, 2001.

The Act repeals the sunset provision of the EGTRRA making permanent the adoption assistance exclusion. For tax years beginning in 2013 the maximum exclusion is $12,970 and the phaseout range is $194,580 to $234,580.

Note that the inflation adjustment is not operative for Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2012.

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

§142(a)(13) and (k); Non-Code section

Tax exempt status of public educational facility bonds made permanent

In general, state and local bonds issued to finance private projects (private activity bonds) are not exempt from federal income tax. However, certain categories of private activity bonds are eligible for exemption from federal income tax.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) added bonds issued to finance tax exempt public education facilities as a category eligible for private activity tax exempt bond treatment. This allowance was due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making permanent the tax exempt treatment of bonds issued to finance tax exempt public education facilities.

Effective for tax years beginning after December 31, 2012.

§148(f)(4)(D)(vii); Non-Code section

Increase in arbitrage rebate exception for government bonds issued to finance education facilities made permanent

In general, state and local bonds are not tax exempt if they are arbitrage bonds. An arbitrage bond is a bond issued as part of an issue any portion of the proceeds of which is reasonably expected to be used to acquire higher yielding investments or to replace funds used to acquire higher yielding investments. However, no bond will be treated as an arbitrage bond if the arbitrage profits are rebated to the United States.

A governmental entity with general taxing powers that is not issuing private activity bonds is exempted from the arbitrage rebate requirement, subject to a bond issuance limit. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) increased the annual limit to $15 million of bonds if at least $10 million were issued to finance public school construction expenditures. This increase was due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the $15/$10 million limit applicable for exemption from the arbitrage rebate exception permanent

Effective for tax, plan, or limitation years beginning after December 31, 2012 and estates of decedents dying, gifts made, or generation skipping transfers made after December 31, 2012.

§151(d)(3) and (d)(4); Non-Code section

Personal exemption phaseout restored

Taxpayers are subject to phaseout of the personal exemption if their income exceeds certain threshold amounts. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) reduced then eliminated the personal exemption phaseout (PEP) rules. The reduction and elimination of the PEP rules was due to expire December 31, 2012, thus the restoration of the PEP rules was due January 1, 2013.

The Act restores the PEP rules permanently. The Act repeals the sunset provision of the EGTRRA and §151(d)(3)(F), the provision responsible for eliminating the PEP rules. The threshold amounts for tax years beginning in 2013 are $300,000 for married taxpayers filing jointly or surviving spouses; $275,000 for heads of household; $250,000 for single taxpayers; and $150,000 for married taxpayers filing separately.

Effective for tax years beginning after December 31, 2012.

The following provisions are operative for Hawaii income tax purposes.

§163(h)(3)(E)(iv)

Interest deduction for mortgage insurance premiums retroactively restored and extended

Taxpayers may deduct premiums paid or accrued for qualified mortgage insurance in connection with acquisition indebtedness for the taxpayer's qualified principal residence, subject to a phaseout rule for adjusted gross incomes in excess of $100,000 per year. The deduction applied to amounts paid or incurred before January 1, 2012 and amounts properly allocable to any period before January 1, 2012.

The Act retroactively extends the deductibility of qualified mortgage insurance premiums to apply to amounts paid or accrued before January 1, 2014 not allocable to any period after December 31, 2013.

Effective for amounts paid or accrued after December 31, 2011 and before January 1, 2014.

§164(b)(5)(I)

Election to claim itemized deduction for state and local sales taxes retroactively restored and extended

Taxpayers can elect to claim an itemized deduction for state and local general sales taxes paid in lieu of an itemized deduction for state and local income taxes paid. The election expired December 31, 2011.

The Act retroactively extends the election to deduct state and local general sales taxes to apply to tax years beginning before January 1, 2014.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§168(e)(3)(E)(iv), (e)(3)(E)(v), (e)(3)(E)(ix)

15-year accelerated depreciation for certain building improvements and restaurants retroactively restored and extended

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

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

The special rules outlined above applied to property placed in service before January 1, 2012.

The Act retroactively extends the rules outlined above to apply to properties placed in service before January 1, 2014.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

§168(i)(9)(A)(ii)

Modified Accelerated Cost Recovery System elections must be taken into account under normalization accounting for public utility property

Generally, depreciation deductions for tangible personal property are taken under the modified accelerated cost recovery system (MACRS). MACRS is not allowed for public utility property unless a normalization method of accounting is applied to the property.

Normalization accounting requires the following:

(1) The taxpayer must, in computing its tax expense for establishing its cost of service for ratemaking purposes and reflecting operating results in its regulated books of account, use a method of depreciation for public utility property that is the same as, and a depreciation period for that property that is no shorter than, the method and period used to compute its depreciation expense for those purposes; and

(2) If the deduction allowed under §168 differs from the deduction allowed under §167 using the method used to compute regulated tax expense under (1), then taxpayer must make adjustments to a reserve to reflect the deferral of taxes resulting from the difference.

The Act amends subparagraph (2) above by requiring the deduction allowable under §168 be determined while "respecting all elections made by the taxpayer under §168". In other words the taxpayer must take all elections actually made into account in determining the §168 deduction.

Effective for property placed in service after December 31, 2012.

§168(i)(15)(D) **7-year recovery period for motorsports entertainment complexes retroactively restored and extended**

Motorsports entertainment complexes placed in service after October 22, 2004 are treated as 7-year modified accelerated cost recovery system (MACRS) property. Such treatment applied to property placed in service before January 1, 2012.

The Act retroactively restores and extends the treatment of motorsports entertainment complexes as 7-year MACRS property to apply to property placed in service before January 1, 2014.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

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

§168(j)(8) **Shortened recovery periods for qualified Indian reservation property retroactively restored and extended**

Qualified Indian reservation property qualifies for shortened depreciation recovery periods. The accelerated depreciation is also allowed for purposes of the alternative minimum tax. The above rules applied to property placed in service before January 1, 2012.

The Act retroactively restores and extends the depreciation incentives for qualified Indian reservation property to apply to property placed in service before January 1, 2014.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

§168(k)(2)(A)(iii), (k)(2)(A)(iv), (k)(2)(B)(ii), and (k)(2)(E)(i) **Bonus depreciation and alternative minimum tax relief extended**

Taxpayers owning qualified property under §168(k) is generally allowed 50% bonus depreciation in the year the property is placed in service. 100% bonus depreciation was available for qualified property placed in service between September 8, 2010 and January 1, 2012. Qualified property is also exempt from the alternative minimum tax depreciation adjustment. Qualified property is also allowed an $8,000 increase in the dollar limit on first year depreciation for passenger cars.

The requirements for qualified property are:

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

Generally, the timely placed in service and timely acquisition requirement restrict qualified property to property acquired and placed in service prior to January 1, 2012. For aircraft and certain long production period property, the timely placed in service requirement restricts qualified property to property placed in service prior to January 1, 2014.

The Act amends the timely placed in service and timely acquisition requirements to generally allow the above discussed rules to apply to property acquired and placed in service prior to January 1, 2014 (January 1, 2015 for aircraft and certain long production period property). The Act did not restore 100% bonus depreciation.

Effective for property placed in service after December 31, 2012 and before January 1, 2014, and for aircraft and certain long production period property placed in service after December 31, 2013 and before January 1, 2015.

§168(k)(2)(A)(iv) **Increased first year depreciation cap for cars that are qualified property extended**

§280F(a) limits depreciation deductions allowable for passenger automobiles. However, §168(k)(2)(F) increases the limit by $8,000 for cars that are qualified property under §168 and are not subject to an election to decline the bonus depreciation and alternative minimum tax depreciation relief otherwise available for qualified property. The above rule was limited to property placed in service prior to January 1. 2013.

The Act amends the timely placed in service requirement to include property placed in service prior to January 1, 2014.

Effective for property placed in service after December 31, 2012 and before January 1, 2014.

§168(k)(2)(A)(iv), (k)(4)(D)(iii)(II), and (k)(4)(J) **Additional round of trading bonus depreciation and accelerated depreciation for deferred credits provided**

A corporation can elect under §168(k)(4) to forego bonus and accelerated depreciation for eligible qualified property in exchange for the present allowance, as refundable credits, of otherwise deferred pre-2006 alternative minimum tax (AMT) and research credits. The election applies to property placed in service before January 1, 2013, or before January 1, 2014 for aircraft and certain long production period property.

The Act amends the placed in service date to allow an additional round of §168(k)(4) elections for property placed in service before January 1, 2014 and before January 1, 2015 for aircraft and certain long production period property. The Act defines property captured by this extension as round 3 extension property.

The Act provides special rules applicable to round 3 extension property. The Act excludes the research credit for round 3 extension property. Thus, only the applicable AMT credits are available for the additional round of elections. The Act requires that separate computations be made for round 3 extension property. The Act provides an election to opt out of §168(k)(4) treatment for round 3 extension property. Finally, the Act provides that if a taxpayer has not made a §168(k)(4) election prior to the Act, then a subsequent election can only apply to round 3 extension property.

Effective for property placed in service after December 31, 2012 and before January 1, 2014 and for aircraft and certain long production period property placed in service after December 31, 2013 and before January 1, 2015.

The following provisions are operative for Hawaii income tax purposes.

§§168(l), (l)(2)(A), and (l)(2)(D) **Bonus depreciation and alternative minimum tax depreciation relief for certain biofuel plant property modified and extended**

A taxpayer can claim 50% bonus depreciation and the exemption from the alternative minimum tax (AMT) depreciation adjustment for qualified cellulosic biofuel plant property. Qualified cellulosic biofuel plant property is depreciable property:

(1) Used in the United States solely to produce cellulosic biofuel;
(2) The original use of which commenced with the taxpayer;
(3) Which was purchased by the taxpayer; and
(4) Was placed in service by the taxpayer before January 1, 2013.

Cellulosic biofuel is any liquid fuel produced from any lignocellulosic or hemicellulosic matter that is available on a renewable or recurring basis.

The Act extends the bonus depreciation allowance and exemption from AMT depreciation adjustment to include property placed in service by the taxpayer before January 1, 2014.

The Act replaces all references to cellulosic biofuel with references to second generation biofuel. Second generation biofuel is liquid fuel that is derived by or from any qualified feedstock and meets the registration requirements of the Environmental Protection Agency. Qualified feedstocks include lignocellulosic and hemicellulosic matter available on a renewable or recurring basis as well as any cultivated algae, cyanobacteria, and lemna. Thus, with the substitution of second generation biofuel for cellulosic biofuel, the basis of the depreciation has expanded.

Effective for property placed in service after December 31, 2012 and before January 1, 2014. But note that the substitution of the references to biofuels discussed above is effective January 2, 2013.

§170(b)(1)(E)(vi) **Special rules for qualified conservation easements contributed by individuals retroactively restored and extended**

A taxpayer can take deductions for qualified conservation contributions made up to 50% of the contribution base. A qualified farmer or rancher can take deductions for qualified conservation contributions made up to 100% of the contribution base. In general a qualified conservation contribution is a contribution of a qualified real property interest to a qualified organization exclusively for conservation purposes. A taxpayer's contribution base is equal to the taxpayer's adjusted gross income but without any deduction for net operating loss carryback. Any excess of qualified conservation contributions over the above limits can be carried forward for up to 15 years. The above rules applied to contributions made before January 1, 2012.

The Act retroactively extends the special treatment for qualified conservation contributions to include contributions made before January 1, 2014.

Effective for contributions made after December 31, 2011 and before January 1, 2014.

§170(b)(2)(B)(iii) **Special rules for qualified conservation easements contributed by corporate farmers and ranchers retroactively restored and extended**

Corporate farmers and ranchers can take deductions for qualified conservation contributions made up to 100% of their taxable income. To qualify a taxpayer must not be a publicly traded company and must derive more than 50% of its gross income from farming. Any excess of qualified conservation contributions over the above limits can be carried forward for up to 15 years. The above rules applied to contributions made before January 1, 2012.

The Act retroactively extends the special treatment for qualified conservation contributions made by corporate famers or ranchers to include contributions made before January 1, 2014.

Effective for contributions made after December 31, 2011 and before January 1, 2014.

§170(e)(3)(C)(iv) **Above basis deduction rules for charitable contributions of food inventory retroactively restored and extended**

A taxpayer engaged in a trade or business, whether or not a C corporation, can claim a deduction for donations of apparently wholesome food inventory in excess of the basis of the property. For a taxpayer other than C corporations, such deductions cannot exceed 10% of the taxpayer's aggregate net income for that tax year. The above rules applied to contributions made before January 1, 2012.

The Act retroactively extends the above basis deduction rules for contributions of apparently wholesome food to include contributions made before January 1, 2014.

Effective for contributions made after December 31, 2011 and before January 1, 2014.

§179(b)(1)(B), (b)(1)(C), (b)(1)(D), (b)(2)(B), (b)(2)(C), (b)(2)(D), (b)(6), (f)(1), and (f)(4)(D) **Increased §179 dollar limitation, phaseout threshold, and treatment of qualified real property as §179 property retroactively restored and extended**

A taxpayer can elect to treat the cost of any §179 property placed in service during the taxable year as an expense, thus allowing a deduction for the entire cost in the year the property is placed in service. The allowable amount is capped and subject to phaseout based on the cost of qualifying property placed in service during the tax year. Generally, §179 property is tangible, depreciable, personal property that is purchased for use in a trade or business.

For tax years beginning in 2010 or 2011 the deduction limitation was $500,000 and the phaseout threshold was $2,000,000. These increased amounts were not applicable to tax years beginning in 2012. Generally, amounts exceeding the deduction limitation can be carried forward into future tax years.

For tax years beginning in 2010 or 2011, §179 property included qualified real property. Generally including qualified leasehold, restaurant, and retail improvement property used in a trade or business. Notwithstanding the general rule allowing the carry forward of amounts exceeding the deduction limitation, §179(f)(4)(A) prohibits any amount attributable to qualified real property being carried forward into tax years beginning after 2011.

The Act retroactively extends the $500,000 limitation and $2,000,000 phaseout threshold to apply to tax years beginning in 2012 and 2013. The Act provides that for tax years beginning after 2013, the deduction limitation will equal $25,000 and the phaseout threshold will equal $200,000.

The Act extends the treatment of up to $250,000 of qualified real property as §179 property to apply to tax years beginning in 2012 and 2013. The Act amends the limitation on carry forward of amounts attributable to qualified real property to prohibit carry forward into tax years beginning after 2013.

The Act amends §179(f)(4)(C) by adding a sentence clarifying that the taxable income limitation under §179(b)(3)(A), for the taxpayer's last tax year beginning in 2013, is not to be reduced by the amount of additional depreciation deductions that result from the prohibition of carry forward of qualified real property costs into tax years beginning after 2014.

Note that §179 is generally operative for Hawaii income tax purposes. However, section 235-2.4(m), HRS, limits the operability of §179. For purposes of the Hawaii income tax, the aggregate allowable expense provided by §179 is limited to $25,000 and the phaseout threshold is lowered to $200,000.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014. New rules for tax years beginning after 2013 effective January 1, 2014.

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

§179(c)(2) **Revocation of §179 election without IRS approval extended**

A taxpayer can elect to treat the cost of any §179 property placed in service during the taxable year as an expense, thus allowing a deduction for the entire cost in the year the property is placed in service. The election must specify the items of qualifying property to which the election applies. In general a §179 election and specification cannot be revoked by the taxpayer without consent from the Internal Revenue Service (IRS). However, a taxpayer could irrevocably revoke a §179 election and specification from 2002 to 2013.

The Act extends the allowance of an irrevocable revocation of a §179 election and specification to any tax year beginning before January 1, 2014.

Note that in general §179 is operative for purposes of Hawaii income tax purposes. However, §179(c)(2) is specifically rendered not operative for purposes of Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§179(d)(1)(A)(ii) **Eligibility of software for §179 election extended**

A taxpayer can elect to treat the cost of any §179 property placed in service during the taxable year as an expense, thus allowing a deduction for the entire cost in the year the property is placed in service. Qualifying property for purposes of the §179 election includes "off-the-shelf" computer software purchased for use in the active conduct of a trade or business. The inclusion of off-the-shelf software only applied to tax years beginning before January 1, 2013.

The Act extends the inclusion of off-the-shelf computer software as qualifying property for purposes of the §179 election to apply through tax years beginning before January 1, 2014.

Note that in general §179 is operative for purposes of Hawaii income tax purposes. However, §179(d)(1) is specifically rendered not operative for purposes of Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

The following provision is operative for Hawaii income tax purposes.

§179E(g) **Election to expense cost of qualified advanced mine safety equipment property retroactively restored and extended**

A taxpayer can elect to expense 50% of the cost of advanced mine safety equipment. The election applies to property placed in service before January 1, 2012.

The Act retroactively extends the election to expense the cost of advanced mine safety equipment to apply to property placed in service before January 1, 2014.

Effective for property placed in service after December 31, 2011 and before January 1, 2014.

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

§181(f) **Expensing rules for qualified film and television productions retroactively restored and extended**

A taxpayer can election to expense certain costs of qualified film and television productions. The election applies to productions beginning before January 1, 2012.

The Act retroactively extends the election to apply to productions beginning before January 1, 2014

Effective for productions beginning after December 31, 2011 and before January 1, 2014.

§199(d)(8)(C) **Allowance of §199 deduction for Puerto Rico activities retroactively restored and extended**

Taxpayers can take the domestic production activities deduction for various trade or business activities conducted in the United States. Generally, the Commonwealth of Puerto Rico is not treated as part of the United States. However, special rules treat Puerto Rico as part of the United States for purposes of this deduction. The special rules apply to tax years beginning before January 1, 2012.

The Act retroactively extends the treatment of Puerto Rico as part of the United States for purposes of the domestic production activities deduction to apply to tax years beginning before January 1, 2014.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

The following provision is operative for Hawaii income tax purposes.

§221(b)(2)(B) and (f) **Student loan interest deduction rules made permanent**

Individual taxpayers can deduct up to $2,500 for interest paid on qualified higher education loans. The deduction is subject to a phaseout and a 60-month limitation. The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) eliminated the 60-month limitation and increased the phaseout thresholds. The increased phaseout thresholds were $50,000 for taxpayers not filing jointly and $100,000 for taxpayers filing jointly. The EGTRRA also provided that the phaseout thresholds be indexed for inflation. The elimination of the 60-month limitation and increased phaseout thresholds were due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the increased thresholds permanent and permanently eliminating the 60-month limitation. The phaseout thresholds applicable for 2013, as indexed for inflation, are $60,000 for taxpayers not filing jointly and $125,000 for taxpayers filing jointly. See Rev. Proc. 2013-15 for details.

Note that the inflation adjustment is not operative for Hawaii income tax purposes, thus the phaseout thresholds will equal the statutory amounts of $50,000 for taxpayers not filing jointly and $100,000 for taxpayers filing jointly.

Effective for tax years beginning after December 31, 2012.

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

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

Individual taxpayers can deduct qualified tuition and related expenses paid for higher education by the taxpayer. Eligible expenses include tuition and fees for the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer, at an eligible institution of higher education. The deduction is subject to caps based on the type of filer and must be reduced by tax free education assistance and exclusions from income under the rules for savings bond interest, Coverdell accounts, and qualified tuition programs. The deduction applies in tax years beginning before January 1, 2012.

The Act retroactively extends the qualified tuition deduction to apply to tax years beginning before January 1, 2014.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

The following provisions are operative for Hawaii income tax purposes.

§306(a)(1)(D); Non-Code section **Qualified dividend income treatment for ordinary income on disposition of §306 stock made permanent**

Gain realized by individuals and other noncorporate taxpayers on the disposition of §306 stock is taxable as ordinary income rather than as capital gain to the extent the gain would have been a dividend if the issuing corporation had distributed cash equal to the stock sold. However, such ordinary income is taxable as qualified dividend income at the net capital gain rates. Such treatment was due to expire December 31, 2012.

The Act makes permanent the treatment of gains on the disposition of §306 stock as qualified dividend income.

Note that while §306 is operative for Hawaii income tax purposes, §1(h)(11), which provides for the qualified dividend treatment of gain on §306 stock is not operative for Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2012.

§341; Non-Code **Repeal of collapsible corporation provision made permanent**

section

The Jobs and Growth Tax Relief and Reconciliation Act of 2003 (JGTRRA) repealed the collapsible corporation rules. The repeal of the collapsible corporation rules was due to expire December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the repeal of the collapsible corporation rules.

Effective for tax years beginning after December 31, 2012.

§402A(c)(4)(E) **Distribution restrictions for "in-plan Roth rollovers" amended**

Generally, a taxpayer may contribute rollover distributions to certain retirement plans such as a 401(k) or 403(b) without including the rollover distributions in gross income. However, if the distributions are made to a Roth IRA account, the individual must include the distribution in gross income.

The Small Business Jobs Act of 2010 allowed "in-plan Roth rollovers". An in-plan Roth rollover is a taxable distribution from an individual's non-Roth account that is rolled over to his Roth account in the same plan. To be eligible, the distribution had to be an eligible rollover contribution otherwise allowed under the plan. In-plan Roth rollovers are not tax free; a distribution that would otherwise be included in gross income must still be included in gross income.

The Act amends the restrictions to allow any amount not otherwise distributable under the plan to be transferred to a Roth account maintained for the individual's benefit and receive treatment as an in-plan Roth rollover. The Act provides that a plan will not be treated as violating §§401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), 457(d)(1)(A), or 5 USC §8433 solely due to such a transfer.

Effective for transfers to designated Roth accounts made after December 31, 2012

§408(d)(8)(F) **Rule allowing tax free Individual Retirement Account distributions of up to $100,000 if donated to charity retroactively extended and modified**

A taxpayer may receive distributions from Individual Retirement Accounts (IRAs) tax free if the distributions are donated to charity. The amount allowed to be distributed and donated tax free is limited to $100,000. In general the distribution must be made by the IRA directly to the charity. Such distributions are taken into account for purposes of the required minimum distribution (RMD) rules as if they did not receive special treatment. The above tax free treatment applies to distributions made in tax years beginning before January 1, 2012.

The Act retroactively extends the tax free treatment of up to $100,000 of IRA distributions donated to charity to apply to distributions made before January 1, 2014.

The Act allows taxpayers to elect to treat a distribution made in December 2012 as a charitable transfer for purposes of tax free treatment as well as the RMD rules. Thus the Act allows an exception to the rule that charitable transfers must be made by the IRA directly to the charity.

The Act allows charitable transfers made in January 2013 to be deemed made on December 31, 2012. Thus the Act allows transfers made in January 2013 to count against the $100,000 limitation for 2012 as well as to satisfy the RMD requirements for 2012.

Effective for IRA distributions made in tax years beginning after December 31, 2011 and before January 1, 2014.

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

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

A taxpayer can elect to recognize gain on certain electric transmissions transactions ratably over an eight-year period to the extent the amount realized is used to purchase exempt utility property within four years of the sale. The deferral applies to gain from sales before January 1, 2012.

The Act extends the gain deferral to apply to gain from sales before January 1, 2014.

Effective for sales or dispositions after December 31, 2011 and before January 1, 2014.

The following provisions are operative for Hawaii income tax purposes.

§460(c)(6)(B)(ii) **Disregard of certain bonus depreciation in applying the percentage of completion method extended**

In general, under the percentage of completion method of accounting (PCM) used for long-term contracts, depreciation and other cost recovery allowances are taken into account as costs under the contract. Thus, increased depreciation leads to increased income for the tax year.

Certain modified accelerated cost recovery system (MACRS) property with a recovery period of 7 years or less is excluded from the calculation under the PCM rules. The exclusion applies to property placed in service before January 1, 2011 and to certain long production period property placed in service before January 1, 2012.

The Act adds an additional time period during which certain MACRS property is eligible for the exclusion from the calculation under the PCM rules. The exclusion now applies to property placed in service after December 31, 2012 and before January 1, 2014 and certain long production period property placed in service after December 31, 2012 and before January 1, 2015.

Note that while §460 is generally operative for Hawaii income tax purposes, §460(c)(6) refers to §168(k), which is not operative for Hawaii income tax purposes. Therefore, under section 235-2.5(a), HRS, §460(c)(6) is not operative for Hawaii income tax purposes.

Effective for property placed in service after December 31, 2012 and before January 1, 2014 and before January 1, 2015 for certain long production period property.

§512(b)(13)(E)(iv) **Rule excluding specified payments from controlled entity from tax exempt parent's unrelated business taxable income retroactively restored and extended**

Under §512(b)(13) a tax exempt parent must include specified payments from a

50% controlled subsidiary, either taxable or tax exempt, in unrelated business taxable income (UBTI) to the extent the payments reduce the net unrelated income, or increase the net unrelated loss, of the 50% controlled subsidiary.

A special rule provides that for payments under written contracts in effect on August 17, 2006 the inclusion rule of §512(b)(13) applies only to the portion of the payments received that exceed what would have been received if the contract had been at arm's length. The special rule provides for a penalty of 20% of the excess payment. The special rule applied to payments received or accrued before January 1, 2012.

The Act retroactively extends the special rule detailed above to apply to payments received before January 1, 2014.

Note that §512 is generally applicable for Hawaii income tax purposes. However, section 235-2.4(z), HRS, provides limitations to the operation of §512.

Effective for payments received or accrued after December 31, 2011 and before January 1, 2014.

§§530(b)(1)(A)(iii), (b)(2), (b)(4), (b)(5), (c)(1), (d)(2)(C), (d)(2)(D), and (d)(4)(C)(i); 25A(e); 4973(e)(1)(A) and (e)(1)(B); Non-Code section

Increased $2,000 contribution limit and other enhancements to Coverdell education savings accounts made permanent

An individual can make a nondeductible cash contribution to a Coverdell education savings account (CESA) for qualified education expenses of a beneficiary under age 18. A specified aggregate amount per beneficiary can be contributed per year. The allowed contribution of an individual contributor is phased out based on modified adjusted gross income (MAGI). A 6% excise tax is applies to excess contributions.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) modified the CESA rules generally to expand contribution limits and make the withdrawal terms more lenient. The EGTRRA modifications were set to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making the modified rules permanent.

Note that though §530 treatment of CESAs is generally operative for Hawaii income tax purposes, §25A(e), which provides for the interaction of CESAs with the Hope and Lifetime Learning Credits, and §4973, which imposes the 6% tax on excess contributions to CESAs, are not operative for Hawaii income tax purposes. The 10% tax to the beneficiary for excess distributions is imposed by §530(d)(4) and is operative for Hawaii income tax purposes.

Effective for tax years beginning December 31, 2012.

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

§§531 and 541; Non-Code section

Accumulated earnings tax and personal holding company tax rates increased

The Act increases the tax rate for both the accumulated earnings tax and the undistributed personal holding company tax to 20%.

Effective for tax years beginning after December 31, 2012.

The following provision is operative for Hawaii income tax purposes.

§584(c) **Passthrough of qualified dividend income by common trust funds made permanent**

In general §584 common trust funds are not taxable; instead, each participant recognizes a proportionate share of the trust fund's income. Under the Jobs and Growth Tax Relief and Reconciliation Act of 2003 (JGTRRA), qualified dividend income received by noncorporate shareholders is taxed as a capital gain at 15%. A special rule allows the qualified dividend treatment of qualified dividends received by a common trust fund to be passed through to its participants. The special rule was due to expire December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the passthrough of qualified dividend treatment from a common trust fund to its participants.

Effective for tax years beginning after December 31, 2012.

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

§§646 and 6039H **Favorable income tax treatment of Alaska Native Settlement Trusts made permanent**

Generally, Alaska Native Corporations and Settlement Trusts, their shareholders, and their beneficiaries are taxable under no special rules. However, the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) allowed an Alaska Native Settlement Trust to elect to pay the lowest individual ordinary income tax rate. The EGTRRA exempted distributions from an electing trust from tax. The EGTRRA also provided that contributions to an electing trust by an Alaska Native Corporation are not deemed distributions to the corporation's shareholders. Finally, an electing trust can use streamlined rules in §6039H to comply with information reporting. The favorable rules were due to expire December 31, 2012.

The Act repeals the sunset provision of the EGTRRA making permanent the favorable treatment of Alaska Native Corporations and Settlement Trusts, their shareholders, and their beneficiaries.

Effective for tax years beginning after December 31, 2012.

The following provisions are operative for Hawaii income tax purposes.

§691(c)(4) **Inclusion of qualified dividend income in prohibition on income in respect of a decedent double benefit made permanent**

Generally, under §691(c)(4), when income in respect of a decedent (IRD) includes net capital gain, including qualified dividend income, the amount of IRD subject to capital gains rates is reduced by the amount of the IRD deduction. This rule is meant to prohibit the double benefit of the capital gains rates and a deduction. Under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (JGTRRA) the inclusion of qualified dividend income was due to expire December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the inclusion of qualified dividend income in the limitation of the amount subject to capital gains tax rates.

Effective for tax years beginning after December 31, 2012.

§702(a)(5); Non-Code section

Passthrough of qualified dividend income by partnerships made permanent

Qualified dividend income received by noncorporate shareholders is taxed as net capital gain. The Jobs and Growth Tax Relief and Reconciliation Act of 2003 (JGTRRA) allowed each partner in a partnership receiving qualified dividend income to receive capital gain treatment on the partner's share. The above rule was due to expire December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the passthrough of capital gains treatment for qualified dividend income received by a partnership and distributed to its partners.

Note that while §702 is operative for Hawaii income tax purposes, §1(h)(11), which provides for the qualified dividend treatment intended to be passed through by §702(a)(5), is not operative for Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2012.

§854(a), (b)(1)(B), (b)(1)(C), (b)(4), and (c)(2); Non-Code section

Passthrough of qualified dividend income by regulated investment companies and real estate investment trusts made permanent

Under the Jobs and Growth Tax Relief and Reconciliation Act of 2003 (JGTRRA), where a regulated investment company (RIC) receives qualified dividend income not exceeding 95% of its income, the RIC may designate the dividends it pays out as eligible for capital gains treatment to the extent of total qualifying dividends received by the RIC plus the amount of dividends paid out of pre-RIC earnings and profits. The same general rule is applicable to a real estate investment trust (REIT) except that there is no 95% of income limitation. The above rules were due to expire December 31, 2012.

The Act repeals the sunset provision of the JGTRRA making permanent the above treatment of dividends paid by RICs and REITs.

Note that while §854 is operative for Hawaii income tax purposes, §1(h)(11), which provides for the qualified dividend treatment intended to be passed through by §854, is not operative for Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2012.

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

§871(k)(1)(C) and (k)(2)(C)

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

The American Jobs Creation Act of 2004 allowed a regulated investment company (RIC) to pay interest-related dividends out of interest that generally would not be taxable if received by a foreign person and short-term capital gains dividends out of short-term capital gains. Such dividends were generally not taxable and not subject to withholding. The above treatment applied to dividends paid before January 1, 2012.

The Act retroactively extends the withholding tax exemption on certain interest-related and capital gains related dividends to apply to dividends paid before

January 1, 2013.

Effective for tax years beginning after December 31, 2011 and before January 1, 2014.

§897(h)(4)(A)(ii) **Inclusion of regulated investment companies in definition of qualified investment entity extended for certain Foreign Investment in Real Property Tax Act purposes retroactively restored and extended**

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

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

The Act retroactively extends the inclusion of RICs in the definition of QIEs through December 31, 2013.

Effective January 1, 2012 through December 31, 2013.

§§953(e)(10) and 954(h)(9) **Subpart F exception for active financing income retroactively restored and extended**

Subpart F of the Internal Revenue Code requires United States taxpayers who are 10% shareholders of a controlled foreign corporation (CFC) to include in income a pro rata share of the CFC's insurance income and adjusted net foreign base company income. Code Secs. 953(e) and 954(h) allow multiple exemptions from the general inclusion of Subpart F. The exemptions applied to tax years of foreign corporations beginning before January 1, 2012 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

The Act retroactively extends the exemptions to apply to tax years beginning before January 1, 2014 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

Effective for tax years of foreign corporations beginning after December 31, 2011 and before January 1, 2014 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

§954(c)(6)(C) **Look-through treatment for payments between related controlled foreign corporations under foreign personal holding company income rules retroactively restored and extended**

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

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

The Act retroactively extends the look-through treatment for dividends, interest, rents, and royalties paid between related CFCs to apply to tax years beginning before January 1, 2014 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

Effective for tax years of foreign corporations beginning after December 31, 2011 and before January 1, 2014 and for tax years of United States shareholders within which any such tax year of a foreign corporation ends.

The following provisions are operative for Hawaii income tax purposes.

§1202(a)(2)(C) **Partial exclusion of gain from sale or exchange of certain qualified small business stock in empowerment zone C corporations extended**

In general, noncorporate taxpayers can exclude 50% of gain realized on the sale of qualifying small business stock (QSBS) held for more than five years. Under special rules, noncorporate taxpayers can exclude 60% or more of gain realized on the sale of QSBS of a C corporation in a designated empowerment zone. The 60% exclusion percentage for gain on QSBS of C corporations in empowerment zones does not apply to gain realized after December 31, 2016.

The Act extends the 60% exclusion of gain on QSBS of C corporations in empowerment zones to apply to gain realized before January 1, 2018.

Effective for gains realized before January 1, 2018.

§1202(a)(3) and (a)(4) **100% gain exclusion for qualified small business stock retroactively restored and extended and acquisition date defined**

In general, noncorporate taxpayers can exclude 50% of gain realized on the sale of qualifying small business stock (QSBS) held for more than five years. Under special rules, noncorporate taxpayers can exclude 100% of gain realized on the sale of qualifying small business stock (QSBS) acquired between September 28, 2010 and December 31, 2011. Under a previous special rule, noncorporate taxpayers can exclude 75% of gain realized on the sale of QSBS acquired between February 17, 2009 and September 28, 2010.

The Act retroactively restores and extends the 100% exclusion of gain on QSBS of C corporations to apply to QSBS acquired before January 1, 2014.

The Act defines the acquisition date for QSBS as the first day on which the stock was held by the taxpayer applying the holding period rules of §1223.

Note that §1202 is generally operative for Hawaii income tax purposes. However, §1202(a)(3) containing the temporary 75% exclusion of QSBS is not operative for

Hawaii income tax purposes.

Effective for stock acquired after December 31, 2011 and before January 1, 2014 for the 100% exclusion of QSBS gain. Effective for stock acquired after September 27, 2010 for the definition of acquisition date of QSBS eligible for the 100% exclusion. Effective for stock acquired between February 17, 2009 and September 28, 2010 for definition of acquisition date of QSBS eligible for the 75% exclusion.

§1367(a)(2) **Rule that S corporation's charitable contribution reduces shareholder's basis only by contributed property's basis retroactively restored and extended**

Under a special rule, when an S corporation makes a charitable contribution the corresponding reduction in the shareholders' basis is limited to the basis of the property contributed and applied on a proportionate basis to each shareholder. The limitation applies to tax years beginning before December 31, 2011.

The Act retroactively extends the limitation discussed above to apply to tax years beginning before January 1, 2014.

Effective for contributions made in tax years beginning after December 31, 2011 and before January 1, 2014.

§1374(d)(2)(B) and (d)(7) **Application of S corporation built-in gains clarified and holding period extended**

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

The Act retroactively extends the shortened 5-year recognition period to apply to tax years beginning after December 31, 2011 and before January 1, 2014.

The Act amends specific rules regarding the taxation of built-in gains. The Act provides that an installment sale is treated as a sale in the year of the sale even if gain is recognized in a later year under installment sales rules. The Act provides that net recognized built-in gain is only carried over into years within the recognition period.

Note that §1374 is generally applicable for Hawaii income tax purposes. However, §1374(d)(7)(B) and (d)(7)(C), which allow the shortened recognition periods, are specifically deemed not operative for Hawaii income tax purposes.

Effective for tax years beginning after December 31, 2011.

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

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

Certain distressed urban and rural areas can be designated as empowerment zones by state or local governments. Empowerment zones are eligible for a range of special tax incentives. The basic empowerment zone is a "Round 1" zone. Round 1 zones remained in effect until December 31, 2011 or a designated termination date, whichever is earlier, or until revoked.

The Act retroactively extends the effectiveness of Round 1 empowerment zones until December 31, 2013. Correspondingly the Act allows a Round 1 zone assigned a termination date contemporaneous with the statutory expiration date to amend the termination date.

Effective for periods after December 31, 2011 and before January 1, 2014.

The following provisions are operative for Hawaii income tax purposes.

§1400L(d)(2)(D)

Period for issuance of New York Liberty Bonds retroactively restored and extended

Interest on bonds issued by states and localities is not tax-exempt if the bonds are private activity bonds. Generally, private activity bonds are bonds the proceeds of which are used in private business or issued to private persons. One exception to the taxability of private activity bonds is for qualified New York Liberty Bonds. The exception also excludes interest on such bonds from AMT calculations.

Qualified New York Liberty Bonds are bonds most of the proceeds of which are used for qualified project costs, are issued by New York state or one of its political subdivisions, are designated as such bonds by the Governor of New York or the Mayor of New York City, and are issued between March 9, 2002 and January 1, 2012.

The Act retroactively extends the issuance period for qualified New York Liberty Bonds to January 1, 2014.

Effective for bonds issued after December 31, 2011 and before January 1, 2014.

§§2001(c) and 2010(c)(4)(B)(i); Non-Code section

Estate, gift, and generation-skipping transfer tax rules made permanent and top rate increased

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA), as supplemented by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (2010 TRA) effected an estate and gift tax with a unified exclusion amount of $5,000,000, indexed for inflation, and a generation-skipping transfer tax (GST) exemption of $5,000,000, indexed for inflation. The two acts also made numerous other changes to the estate, gift, and GST taxes, including the portability of any unused portion of the deceased spouse's exclusion for the estate and gift taxes. The EGTRRA and 2010 TRA changes to the estate, gift, and GST taxes were due to expire December 31, 2012.

The Act repeals the sunset provisions of the EGTRRA and the 2010 TRA making permanent the amendments to the estate, gift, and GST taxes.

The Act increases the top estate and gift tax rate from 35% to 40% for amounts in excess of $1,000,000. The Act makes a technical correction relating to portability of any unused exclusion between spouses by replacing "basic exclusion amount" with "applicable exclusion amount".

Note that §2001(c) relating to estate tax rates is not operative for Hawaii estate and generation-skipping transfer tax purposes. However, §2010(c)(4)(B)(i), relating to the applicable credit amount, is applicable for Hawaii estate and generation-skipping transfer tax purposes. Also note that Hawaii does not have a gift tax and the applicable exclusion amount for Hawaii tax purposes is not adjusted for federally taxable gifts.

Effective for estates of decedents dying, generation-skipping transfers, and gifts made after December 31, 2012. The technical correction is effective after December 31, 2010.

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

§6103(k)(10)	**Provision authorizing the Internal Revenue Service to disclose certain returns and return information to prison officials amended and made permanent** The Internal Revenue Service (IRS) is allowed to disclose certain prisoner tax information to certain federal and state prison officials. The rules allowing and regulating such disclosures expired December 31, 2012. The Act eliminates the termination date of §6103(k)(10) making permanent the rules allowing and regulating disclosures of prisoner tax information to federal and state prison officials. The Act amends the rules regulating the disclosures. Under amended rules, the IRS can make a disclosure to an officer or employee of a federal or state prison system, not only to a head of a federal or state agency, as under previous law. The Act provides that the IRS can make disclosures to contractors operating private prisons. The Act allows the IRS to disclose "any return", expanding the scope of information subject to disclosure to prison officials. Finally, the Act provides amended restrictions on redisclosure of information obtained under §6103(k)(10) and an exception for duly authorized legal representatives. Effective January 2, 2013.
§6409	**Provision that tax refunds will not affect eligibility for federal benefit programs made permanent** Any refund or advance payment of a refundable credit is not taken into account when determining eligibility for federal benefits or assistance or benefits under a state or local program using federal funds. The above rule applied to amounts received before January 1, 2013. The Act removes the expiration language of §6409 making permanent the disregard of tax refunds in determining eligibility for benefit programs. Effective for amounts received after December 31, 2012.
§§6426(d)(5)and (e)(3); 6427(e)(6)(C), (e)(6)(D), and (e)(6)(E)	**Alternative fuels and alternative fuel mixture excise tax credit, and alternative fuels excise tax refund rules, extended** Taxpayers can claim a 50 cent per gallon excise tax credit against the retail fuel excise tax and removal at terminal excise tax for alternative fuel sold for use or used, or, in the case of the removal at terminal tax for alternative fuel, used to produce an alternative fuel mixture. The credit is refundable in some circumstances. The credit does not apply to ethanol, methanol, The credit and rules expired December 31, 2011 except for liquefied hydrogen fuels, for which the credit expires December 31, 2014. The Act retroactively extends the two alternative fuels credits, for fuels other than liquefied hydrogen, to December 31, 2013. Also for fuels other than liquefied hydrogen, the Act extends the refund provision of the alternative fuels excise tax

credit but does not extend the refund provision of the credit against removal at terminal excise tax.

Finally, for fuels involving liquefied hydrogen, the Act eliminates, effective December 31, 2011, the reference to "alternative fuel mixtures" under the termination rules for refunds. This change retroactively bars refunds of the credit against removal at terminal tax for liquefied hydrogen fuels after December 31, 2011.

For fuels other than liquefied hydrogen sold or used after December 31, 2011 and before January 1, 2014.

The following provision is operative for Hawaii income tax purposes.

§7518(g)(6)(A); Non-Code section

Tax rate on individual's nonqualifying capital gain withdrawals from Merchant Marine capital construction fund increased

Generally, taxpayers can deduct amounts deposited in a Merchant Marine capital construction fund (CCF). "Nonqualifying withdrawals" from a CCF are taxable. Nonqualifying withdrawals are treated as first coming out of the ordinary income account, then out of the capital gain account. Nonqualifying withdrawals from the capital gain account are taxed at 15%.

The Act increases the rate on nonqualifying withdrawals from the capital gain account to 20%.

Note that §7518 is generally applicable for Hawaii income tax purposes, but see section 235-2.45(q) for specific treatment.

Effective for tax years beginning after December 31, 2012.

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