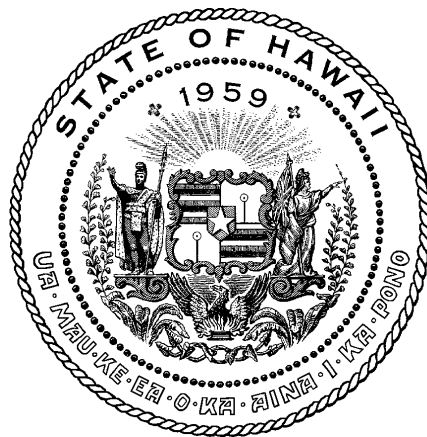


Digest of Tax Measures

(including coverage of 2020 federal coronavirus relief legislation)



Prepared by the State of Hawaii
Department of Taxation

Issued: December 11, 2020, amended April 13, 2021

This digest summarizes the federal tax laws enacted during calendar years 2019 and 2020, including the Coronavirus Aid, Relief, and Economic Security Act and the Families First Coronavirus Response Act. It includes changes to subtitle A, chapter 1; subtitle B; and certain 6000 series sections of the Internal Revenue Code (IRC). Unless otherwise noted, all references are to the Internal Revenue Code of 1986, as amended.

This digest is issued solely as a guide and is not intended to be either authoritative or exhaustive. Coverage of Hawaii tax laws enacted during the 2020 regular session may be found on the Department of Taxation website at <http://tax.hawaii.gov>. Hawaii bills and acts can be viewed on the State Capitol website at <http://capitol.hawaii.gov>.

This digest was updated on April 13, 2021 to correct an error on page 18 regarding the taxability of loan forgiveness under various loan programs provided by the Coronavirus Aid, Relief, and Economic Security Act.

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Taxpayer First Act

(P.L. No. 116-25; July 1, 2019)

CODE SECTION DESCRIPTION OF PROVISION

The following provisions are operative for Hawaii income tax purposes.

- §139H** **Exclusion of Interest Received During Action to Recover Seized Property**
- The act adds a new section to exclude from gross income interest received from the federal government in connection with an action to recover seized property in certain circumstances.
- Effective July 1, 2019.
- §6015(f)** **Clarification of Equitable Relief from Joint Liability**
- The Act extends discretion to the Treasury Secretary to relieve joint liability if joint liability is inequitable, but no relief is available under IRC section 6015(c) or (d).
- Effective for petitions or requests filed or pending on or after July 1, 2019.

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

- §6306(d)(3)** **Additional Receivables not Subject to Collection**
- Section 6306(d) provides a list of receivables that are not subject to collection under tax collection contracts. The list includes receipts that are the subject of an offer-in-compromise, innocent spouse cases, deceased taxpayers, minors, and others.
- The Act adds taxpayers whose main income is disability insurance benefits and taxpayers whose adjusted gross income does not exceed 200% of the applicable poverty level.
- Effective for tax receivables identified by the Treasury Secretary after December 31, 2020.
- §7122(c)** **Low-Income Exception for Offer-in-Compromise Payments**
- The Act waives fees required in connection with offer-in-compromise submissions for taxpayers whose adjusted gross income does not exceed 250% of the applicable poverty level.
- Effective July 1, 2019.
- §7803(e)** **Establishment of IRS Independent Office of Appeals**
- The Act creates an independent appeals office led by a new official (titled the Chief of Appeals), who answers directly to the Commissioner of Internal Revenue.
- Effective July 1, 2019.

Further Consolidated Appropriations Act, 2020 (P.L. No. 116-94; December 20, 2019)

CODE SECTION DESCRIPTION OF PROVISION

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

- §1(j) Kiddie Tax Changes from TCJA**
- The TCJA amended the kiddie tax to apply the estate and trust rates to children instead of their parents' rates.
- The Act repeals the use of the estate and trust rates for the kiddie tax added by the TCJA. Children are again taxed at their parents' rates.
- Effective for taxable years beginning after December 31, 2019.
- §25C(g)(2) Personal Energy Property Credit**
- The nonbusiness energy property credit is a nonrefundable personal credit allowed to individuals who install certain energy efficient property in a dwelling located in the US that the taxpayer uses as its principal residence.
- The Act extends the credit to apply to property placed in service through December 31, 2020 retroactively to property placed in service after December 31, 2017.
- §30B(k)(1) Fuel Cell Vehicle Credit**
- The alternative motor vehicle credit is a cumulative credit available for several types of motor vehicles. The credit for qualified fuel cell motor vehicles requires that the vehicles be purchased by December 31, 2017.
- The Act extends the credit to vehicles purchased by December 31, 2020, retroactive to vehicle purchased after December 31, 2017.
- §30C(g) Alternative Fuel Refueling Property Credit**
- The tax credit for qualified alternative fuel vehicle refueling property is equal to 30% of alternative fuel vehicle refueling property placed in service through December 31, 2017.
- The Act extends the credit to apply to property placed in service through December 31, 2020 retroactive to property placed in service after December 31, 2017.
- §30D(g)(3)(E)(ii) 2-wheeled Plug-in Electric Vehicle Credit**
- The Code allows a credit for qualified two- or three-wheeled electric vehicles acquired during a tax year, equal to the lesser of 10% of the vehicle's cost or \$2,500.
- The Act extends the credit to apply to vehicles acquired before January 1, 2021, retroactive to January 1, 2018.

§35(b)(1)(B)

Health Insurance Costs Credit

The Code allows a tax credit for 72.5% of the costs of health insurance for eligible coverage months.

The Act extends the credit to apply to eligible coverage months beginning before January 1, 2021.

§40(b)(6)(J)(i)

Second-Generation Biofuel Credit

As part of the general business credit under §38, §40(b)(6) allows an income tax credit of \$1.01 per gallon of qualified second-generation biofuel produced. The credit is offset in the case of fuel eligible for the alcohol credit or the ethanol credit. In general, second generation biofuel is liquid fuel that is derived from qualified feedstocks.

The Act extends the credit to apply to production before January 1, 2021, retroactive to production after December 31, 2017.

§40A(g), 6426, & 6427

Biodiesel Credit & Excise Tax Incentives

As part of the general business credit under section 38, section 40A allows a series of income tax credits for production of biodiesel mixtures, sale or use of biodiesel, and the production of agri-biodiesel. These incentives expired December 31, 2017.

The Act extends the incentives retroactively through December 31, 2022, retroactive to January 1, 2018.

§45(d)

Renewable Energy Production Credit

The Code allows a credit for energy generated from renewable resources. The credit is available for numerous techniques of producing renewable energy.

The Act extends the credit to apply to energy produced before January 1, 2021, retroactive to January 1, 2018. The extension applies to closed-loop biomass, open-loop biomass, geothermal or solar energy, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities.

§45(e)(10)(A)

Production Credit for Indian Coal Facilities

The Code allows a credit for energy generated from renewable resources and allows for an increase to that credit for producers of Indian coal. The increase applies for a 12-year period after January 1, 2006.

The Act extends the increase to the renewable fuel credit for Indian coal production by extending the 12-year period to a 15-year period, effectively extending the provision through December 31, 2020.

§45A(f)

Indian Employment Tax Credit

The Code allows an income tax credit to an employer for the qualified wages and expenses associated with employing an enrolled member of an Indian tribe, or a spouse of such person, within an Indian reservation.

The Act extends the credit to apply to taxable years beginning before January 1, 2021, retroactive to January 1, 2018.

§45D(f)(1)

New Markets Tax Credit

The New Markets Tax Credit provides a credit for qualified equity investment in a qualified community development entity. The credit is allowed in applicable percentages over a seven-year period. An annual nationwide limit on qualified equity investments applies to each calendar year for which the credit is available. If the nationwide limit is exceeded for a calendar year, the excess is carried over and the limit for the next year is increased by the amount of the excess, no amount can be carried over after 2019.

The Act provides for an allocation of \$5,000,000 for 2020 and allows carryovers until 2025.

§45E(b)

Increase in Credit for Small Employer Pension Plan Start-Up Costs

The Act increases the maximum credit to the greater of (1) \$500 or (2) the lesser of (a) \$250 for each eligible employee that is non-highly compensated or (b) \$5,000.

Effective for taxable years beginning after December 31, 2019.

§45G(f)

Railroad Track Maintenance Credit

The Code allows an income tax credit for 50% of qualified railroad track maintenance expenditures paid or incurred during a taxable year. The credit is limited to \$3,500 multiplied by the number of miles of track owned or assigned to the taxpayer.

The Act extends the credit to apply to expenditures made in taxable years beginning before January 1, 2023, retroactive to January 1, 2018.

§45L(g)

Energy Efficient Homes Credit

The Code allows a credit for construction of energy efficient homes equal to \$2,000 for homes that consume 50% less energy for heating and cooling than a comparable unit and \$1,000 for homes that consume 35% less energy for heating and cooling than a comparable unit.

The Act extends the credit to apply to homes acquired through December 31, 2020, retroactive to homes acquired after December 31, 2018.

§45N(e)

Mine Rescue Training Credit

The Code allows an income tax credit for amounts paid or incurred to train mine rescue teams. The credit equaled the lesser of \$10,000 or 20% of the training program costs paid or incurred for training mine rescue employees.

The Act extends the credit to apply to amounts paid or incurred in taxable years beginning before January 1, 2021, retroactive to January 1, 2018.

§45S(i) Employer Credit for Paid Family and Medical Leave

As part of the general business credit under §38, an employer can claim a credit equal to the applicable percentage of the wages paid to an employee on family and medical leave. The applicable percentage is 12.5% increased by .25% for each percentage point the rate of pay exceeds 50% (up to 25%).

The Act extends the credit to apply to wages paid in taxable years beginning before January 1, 2021.

§45T Small Employer Automatic Enrollment Credit

The Act creates a credit of \$500 for new small employer plans with an auto-enrollment feature for up to 3 years.

Effective for taxable years beginning after December 31, 2019.

§51(c)(4) Work Opportunity Credit

As part of the general business credit under §38, employers can claim the work opportunity tax credit under §51. The credit is equal to 40% of first-year wages paid to a member of a targeted group. Targeted groups include felons, veterans, rehabilitation referrals, and summer youth employees, among others.

The Act extends the credit to apply to wages paid to individuals beginning work before January 1, 2021.

§72(t)(2) Penalty-Free Withdrawals for Birth or Adoption

The Act allows individuals to take penalty-free withdrawals of up to \$5,000 from retirement plans for a qualified birth or adoption distribution. A qualified distribution is generally one made within 1 year of a birth or legal adoption is finalized.

Effective for distributions made after December 31, 2019.

The following provisions are operative for Hawaii income tax purposes.

§108(a)(1)(E) Cancellation of Mortgage Debt

A taxpayer can exclude up to \$2 million of income from qualified principal residence indebtedness that is canceled due to financial condition or decline in value of the residence.

The Act extends the exclusion from income retroactively to 2018 through 2020.

§163(h)(3)(E) Mortgage Insurance Premium Deduction

Section 163(h)(3)(E) allows mortgage insurance premiums paid in connection with acquisition indebtedness to be deducted as qualified residence interest, subject to a phase-out

The Act extends the deductibility of mortgage insurance premiums to premiums paid through December 31, 2020, retroactive to January 1, 2018.

- §168(e)(3)(A)(i) Treatment of Certain Racehorses as 3-Year Property**
- Section 168(e)(3)(A) provides that certain racehorses 2 years old or younger are 3-year property.
- The Act extends 3-year treatment retroactively to 2018 and through property placed in service before January 1, 2021.
- §168(i)(15)(D) 7-year Recovery Period for Motorsports Complexes**
- Section 168(e)(3)(C) provides a seven-year cost recovery period for motorsports complexes as defined at section 168(i)(15).
- The Act extends the 7-year treatment to complexes placed in service before January 1, 2021, retroactive to January 1, 2018.
- §168(j)(9) Accelerated Depreciation for Indian Reservation Property**
- The Code allows for accelerated depreciation for property on qualified Indian reservations.
- The Act extends the accelerated depreciation to property placed in service before January 1, 2021, retroactive to January 1, 2018.
- §168(l)(2)(D) Allowance for Second Generation Biofuel Property**
- The Code allows 50% bonus depreciation for second-generation biofuel property.
- The Act extends the 50% bonus depreciation to property placed in service before January 1, 2021, retroactive to property placed in service before January 1, 2018.
- §179D(h) Energy Efficient Commercial Buildings Deduction**
- The Code allows a deduction for the cost of energy efficient commercial building property in lieu of depreciation.
- The Act extends the deduction to apply to property placed in service through December 31, 2020, retroactive to property placed in service after December 31, 2017.

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

- §181(g) Expensing Rules for Certain Productions**
- The Code allows a taxpayer to deduct the entire cost of qualified film or television productions.
- The Act extends the expensing rule to apply to qualified film and theatrical productions commencing before January 1, 2021, retroactive to January 1, 2018.

The following provisions are operative for Hawaii income tax purposes.

§213(f) Medical Expense Deduction Floor

The itemized deduction for medical expenses is generally available only to the extent that medical expenses exceed 10% of AGI. A special rule allows deduction of expenses that exceed 7.5% of AGI.

The Act extends the lowered medical expense deduction floor of 7.5% of AGI retroactively to 2019 and through 2020.

§219(d) Repeal of Max Age for IRA Contributions

An individual who has attained the age of 70.5 is allowed to continue contributing to a qualified retirement contribution to an IRA.

Effective for contributions made for taxable years beginning after December 31, 2019.

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

§222(e) Tuition and Fees Deduction

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 Act extends the deduction to apply to taxable years beginning before January 1, 2021, retroactive to January 1, 2018.

The following provisions are operative for Hawaii income tax purposes.

§263A(f)(4)(B) Exemption of Capitalization of Inventory Costs for Beer, Wine, and Spirits

Taxpayers are required to capitalize interest paid or incurred during a product's production period. For products that are typically aged, the production period includes the aging period. A special rule excludes the aging periods of beer, wine, and distilled spirits from the determination of the production period for purposes of capitalizing interest expenses, but only through December 31, 2019.

The Act extends the exclusion for aging periods for beer, wine, and spirits to apply to interest costs paid or accrued through December 31, 2020, retroactive to interest costs paid or accrued after December 31, 2019.

§401(a)(9) Post-Death RMD Rules Modified

If an employee or IRA owner dies after December 31, 2019, the remaining account balance must be distributed to designated beneficiaries within 10 years after the date of death. An exception to the 10-year rule for post-death required minimum distributions applies to an eligible designated beneficiary including surviving spouses and minor children among others.

§401(a)(9)(C)(i)(I) Increase Minimum Distribution Age

The Act increases the minimum distribution age from 70.5 to 72.

Effective for distributions required to be made after December 31, 2019, with respect to individuals who attain age 70.5 after that date.

§401(k)(2)(D) Requirement for 401(k) Plans to Expand Coverage for Long-Time Employees

The Act requires employers to provide participation to any employee who has at least 500 hours of service in 3 consecutive 12-month periods and is at least age 21.

Effective for plan years beginning after December 31, 2020.

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

§451(k)(3) FERC or State Policy Rules for Qualified Electric Utilities

The Code allows certain qualified gain on a qualified electric transmission transaction to be recognized ratably over an 8-year period rather than in the year of the transaction, but only for transactions before January 1, 2017.

The Act extends the ratable inclusion to qualified electric transmission transactions before January 1, 2021.

The following provision is operative for Hawaii income tax purposes.

§501(c)(12) Exclusion of Disaster-related Grants from Income of Certain Non-Profits

The Act excludes income from grants or contributions from the Robert T. Stafford Disaster Relief and Emergency Assistance Act or similar grant when determining the tax-exempt status of a mutual or cooperative telephone or electric company.

Effective for taxable years beginning after December 31, 2017.

Note: Section 501(c)(12) is operative only for companies that provide potable water to residential communities that have no access to public water resources.

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

§512(a)(7) Repeal of Increase in UBTI for Nonprofit Organizations

The Tax Cuts and Jobs Act disallowed certain deductions for for-profit organizations. Non-profits were required an increase their unrelated business taxable income by any amounts incurred for which a deduction would be disallowed. Effectively taxing the same amounts that were no longer deductible for for-profit organizations. The Act repeals the increase to UBTI.

Effective as if included in the Tax Cuts and Jobs Act.

Note: This provision was not operative for Hawaii income tax purposes before its repeal. Therefore, the repeal of this section was not substantive for Hawaii income tax purposes.

The following provision is operative for Hawaii income tax purposes.

§529(c) Section 529 Plan Distributions for Apprenticeships and Student Loans

The Act allows tax-free distributions from section 529 plans to pay for apprenticeship programs and expenses or for student loans for a beneficiary or a sibling, up to \$10,000.

Effective for distributions made after December 31, 2018.

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

§954(c)(6)(C) Look-through Rule for Related CFCs

Subpart F of the Code requires 10% shareholders of controlled foreign corporations (CFCs) 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 applies 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 Act extends the look-through treatment for dividends, interest, rents, and royalties paid between CFCs in taxable years beginning before January 1, 2021 and for tax years of US shareholders within which any such taxable year of a foreign corporation ends.

§1391(d)(1)(A) Empowerment Zone Tax Incentives

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.

The Act extends the period for empowerment zones to remain in effect until December 31, 2020.

§4121(e)(2)(A) Black Lung Excise Tax

The coal tax allows for an automatic reduction of the tax rate after a certain date or if there is no outstanding balance in the Black Lung Disability Trust Fund. The earliest date is December 31, 2018.

The Act delays the earliest date on which the reduced rates can take effect to December 31, 2020.

§4611(f)(2)

Oil Spill Liability Trust Fund Rate

The oil spill liability trust fund rate is a component of the tax on petroleum.

The Act extends usage of the rate through December 31, 2020, retroactive to December 1, 2018.

§4940(a)

Reduction in Tax Rate for Investment Income of Private Foundations

Private foundations are subject to an excise tax on their investment income. The Act reduces the applicable tax rate from 2% to 1.39%.

Effective for taxable years beginning after December 20, 2019.

**§§5041, 5051,
5414, etc.**

Reduced Rate of Excise Tax on Beer

The Code allows many special rates and provisions to beer, wine, and spirits that expired on January 1, 2020.

The Act extends the various provisions through December 31, 2020

§6426

Alternative Excise Tax Credits

Alternative fuel credit and alternative fuel mixture credit.

The Act extends each credit to apply to sale or use through December 31, 2020, retroactive to sale or use after December 31, 2017.

Non-code §

American Samoa Economic Development Credit

The American Samoa economic development credit equals 60% of qualified wages and fringe benefit expenses and various percentages of short, medium, and long-term depreciable tangible property.

The Act extends the credit through 2020, and retroactive to 2018.

Non-code §

Disaster Relief Provisions

The Act waives the 10% penalty under §72(t) for any disaster withdrawals, limited to \$100,000 less the aggregate of prior disaster withdrawals. The Act also provides an employee retention credit equal to 40% of the wages paid to an eligible employee. The Act increases the limit on charitable contributions and extends certain filing deadlines. Finally, the Act provides for additional low-income housing allocations for disaster related areas in California for tax year 2020.

The above provisions are generally applicable to the disaster affected tax period.

Families First Coronavirus Response Act

(P.L. No. 116-127; March 18, 2020)

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

Non-code § Emergency Paid Sick Leave for the Self-Employed

The Act provides a refundable tax credit against the self-employment tax to self-employed taxpayers as if the taxpayer were the employer and the employee. Up to \$511/day for a taxpayer directly affected and \$200/day for a caregiver. 10 days max.

Effective for days between March 18, 2020 and December 31, 2020.

Non-code § Employer Tax Credit for Family and Medical Leave

The Act requires employers with fewer than 500 employees to provide both paid and unpaid leave. The Act provides an exception for employers of less than 50 employees. The leave is generally for childcare when COVID-19 has made school or childcare not available. The first 10 days can be unpaid, the remainder must be paid, up to \$200 per day and \$10,000 per employee total.

The Act provides employers a credit against their portion of social security tax equal to 100% of the qualified family leave wages paid.

Effective for days between March 18, 2020 and December 31, 2020.

Non-code § Employer Tax Credit for Emergency Paid Sick Leave

The Act requires private employers with less than 500 employees to provide 80 hours of paid sick time to employees unable to work for virus-related reasons. Up to \$511/day for an employee directly affected and \$200/day for an employee that is a caregiver. 10 days max.

The Act provides employers a refundable tax credit against their share of the social security tax equal to 100% of the qualified sick leave wages paid.

Effective for days between March 18, 2020 and December 31, 2020.

Coronavirus Aid, Relief, and Economic Security Act

(P.L. No. 116-136; March 27, 2020)

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

**§53(e); Form
8827**

Corporation's AMT Credit Accelerated

In general, corporations are allowed a refundable AMT credit of 50% of the excess of the minimum tax credit over the corporation's regular tax liability (100% in 2021).

The Act allows a refundable AMT credit of 100% of the excess of the minimum tax credit over the corporation's regular tax liability for 2019. The Act also allows corporations to elect to take 100% of the refundable credit in 2018, in which case there is no credit for 2019.

The following provisions are operative for Hawaii income tax purposes.

§62(a)

Above-the-Line Deduction for Charitable Contributions

Taxpayers may deduct charitable contributions only as itemized deductions.

The Act allows an above-the-line deduction of up to \$300 for charitable contributions. The deduction is limited to cash contributions and to taxpayers that do not itemize. The above-the-line deduction is only available for tax years beginning in 2020.

Effective for taxable years beginning in 2020.

§72(p)(2)(A)

Retirement Plan Loans Not Treated as Distributions

A taxpayer may borrow from a retirement plan and avoid the proceeds being treated as taxable distributions subject to the federal penalty. The limit is determined using a complicated formula, but generally is up to \$50,000 or 50% of the nonforfeitable accrued benefit, whichever is less.

The Act increases the amount a taxpayer may borrow from a retirement plan without the amounts being considered distributions from \$50,000 to \$100,000, or 100% of the nonforfeitable accrued benefit. The increase applies to loans made during the 180-day period beginning on 3/27/2020. The Act also delays the repayment due date for repayments due between 3/27/2020 and 12/31/2020 by one year.

Effective for loans made during the 180-day period beginning on March 27, 2020.

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

**§72(t);
non-code §**

Waiver of 10% Early Distribution Penalty

A 10% penalty applies to any early distribution from a qualified retirement plan.

The Act waives the 10% early distribution penalty for distributions related to the coronavirus of up to \$100,000. The Act allows any taxable distributions to be taxed ratably over the following 3 taxable years. Related to coronavirus includes those diagnosed, whose spouse or dependent was diagnosed, and those who experienced financial hardship from quarantine, furlough, layoff, or other indirect effect of coronavirus.

Effective for distributions made from January 1, 2020 through December 31, 2020.

The following provisions are operative for Hawaii income tax purposes.

§127

Exclusion from Income of Employer-Provided Student Loan Payments

Employer-paid student loan repayments are included in the gross income of the employee. The Act excludes employer-paid student loan repayments from gross income.

The exclusion applies to payments made after March 27, 2020 and before January 1, 2021.

§163(j)

Relaxation of Limitation on Business Interest Deductions

The Tax Cuts and Jobs Act limited business interest deductions to the sum of: (1) business interest income, (2) 30% of adjusted taxable income (ATI), and (3) floor plan financing interest.

The Act increases the business interest deduction to include up to 50% of ATI. For purposes of the limit, taxpayers can elect to use 2019 ATI for taxable years beginning in 2020.

The increase is effective for tax years beginning in 2019 and 2020.

§168(e)

Technical Correction for Qualified Improvement Property

Qualified improvement property (QIP) was not specifically included as 15-year property under the TCJA, meaning QIP was not eligible for 100% bonus depreciation.

The Act designates QIP as 15-year property. Making QIP eligible for 100% depreciation under TCJA. Assigns QIP a 20-year class life for the Alternative Depreciation System.

Effective from the effective date of the Tax Cuts and Jobs Act.

§170; non-code §

Increase to Charitable Deduction Limitation for Cash Contributions

Taxpayers may take itemized deductions for their cash charitable contributions only up to 60% of their "contribution base" which is generally AGI. Charitable deductions for corporations are generally limited to 10% of taxable income.

The Act increases the charitable deduction limit for cash contributions from 60% to 100% of “contribution base.” Corporations are allowed an additional deduction of up to 25% of their taxable income.

The new limits are applicable to contributions made during 2020.

§170; non-code § Increase to Charitable Deduction of Food Inventory

Contributions of food inventory are generally limited to 15% of taxable income for corporations and 15% of aggregate net income for all other taxpayers.

The Act increases the limits for contributions of food inventory to 25% of taxable income for corporations and 25% of aggregate net income for all other taxpayers.

The new limits apply to contributions made during 2020.

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

§172(a) and (b) Net Operating Loss Carrybacks and 80% taxable income limitation

Net operating losses (NOLs) cannot be carried back, but they can be carried forward indefinitely. NOLs are limited to 80% of taxable income.

The Act allows carrybacks of NOLs that were created in 2018, 2019, or 2020 to be carried back up to 5 years before the loss year. The Act also repeals the rule limiting NOLs to 80% of taxable income.

The changes apply retroactively to taxable years beginning after December 31, 2017.

Note: Section 172 is generally operative for Hawaii income tax purposes. However, the specific change made by the CARES Act to re-allow the NOL carrybacks and remove the 80% of taxable income limitation are not operative for Hawaii income tax purposes.

The following provisions are operative for Hawaii income tax purposes.

§401(a)(9) Waiver of Required Minimum Distribution Rules

In general, beginning at age 70 ½, taxpayers must take required minimum distributions from certain retirement plans.

The Act suspends required minimum distribution requirements for calendar year 2020.

Effective for calendar years beginning after December 31, 2019. The waiver is limited to calendar year 2020.

§430(j) & Non-code §;

Pension Funding Delay

Minimum required contributions are generally due 8.5 months after the close of the plan year.

The Act allows single employer plans more time to meet funding obligations by delaying the due date for contributions due in 2020 to January 1, 2021, with interest.

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

§461(l)(1)

Excess Business Loss Deduction for Taxpayers other than Corporations

The Tax Cuts and Jobs Act disallowed the excess business loss of taxpayers other than corporations. “Excess business loss” is defined as deductions that exceed the taxpayer’s trade or business gross income plus \$250,000.

The Act allows taxpayers other than corporations to deduct excess business losses for 2018, 2019, and 2020. “Excess business loss” is defined as deductions that exceed the taxpayers trade or business gross income plus \$250,000.

Note: Section 461 is generally operative for Hawaii income tax purposes. However, the specific changes made by the CARES Act to re-allow the deduction for excess business losses are not operative for Hawaii income tax purposes.

§§5214(a) & 5001

Exception to Excise Tax for Alcohol Used to Produce Hand Sanitizer

An excise tax is imposed on distilled spirits by §5001. The tax does not apply while the alcohol is held in certain facilities but applies when the alcohol is removed.

The Act provides that alcohol removed from January 1, 2020 to December 31, 2020 that is used for hand sanitizer is exempt from the excise tax on distilled spirits.

§6428

Recovery Rebates (stimulus checks)

The Act provides for \$1,200 stimulus payments to every individual other than a nonresident alien individual or an individual for whom a deduction is available under §151. The Act provides for an additional \$500 per qualifying child. The Act provides that the amounts are not includible in gross income.

Note that though the allowance of the credit creating the payments is not operative for Hawaii income tax purposes, the exclusion of the amounts from gross income is operative for Hawaii income tax purposes.

The stimulus payments are effective immediately and are paid as an advanced refund of 2020 tax.

Non-code §

Employee Retention Credit

The Act provides a refundable credit against the employer’s share of Social Security contributions. The credit is equal to 50% of wages paid during the covid-19 crisis. It is available to employers in business in 2020 whose operations have been fully or partially suspended or that have a more than 50% reduction in

quarterly receipts. The credit is a maximum \$5,000 per employee. Wages used for relief under FFCRA (see below) are not eligible.

Effective for wages paid after March 12, 2020 and before January 1, 2021.

The following provisions are operative for Hawaii income tax purposes.

Non-code § Exclusion of Paycheck Protection Program Loan Forgiveness

Loan forgiveness or cancellation of indebtedness income is generally includible in gross income.

The Act provides that the forgiveness of Paycheck Protection Program indebtedness is not included in gross income.

Non-code § Exclusion of Small Business Administration Loan Forgiveness

Loan forgiveness or cancellation of indebtedness income is generally includible in gross income.

The Act provides that loan forgiveness of small business association loans under §7(a) of the Small Business Act is not includible in gross income.

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

Non-code § Economic Injury Disaster Loan Advances

The Act allows small business owners to apply for Economic Injury Disaster Loan (EIDL) advances of up to \$10,000 that will not have to be repaid. The advances are treated as grants and are therefore included in income.

Non-code § Delay of Payment of Employer Payroll Taxes

Employers and employees contribute 6.2% of gross pay to social security. A comparable contribution is required for certain employees for the railroad retirement system.

The Act allows businesses that have had CARES Act SBA loan debt forgiven, including self-employed, to defer paying the employer portion of social security and both portions of the railroad retirement taxes. Self-employed deferral is 50% of the Self-Employment Contributions Act liability.

Effective until January 1, 2021.

Non-code §; §§4261, 4271 Suspension of Certain Aviation Excise Taxes

The Code imposes various excise taxes on the aviation industry.

The Act provides an excise tax holiday from the date of enactment of the CARES Act (March 27, 2020) through December 31, 2020 for the aviation excise taxes under sections 4261 & 4271.