Digest of Tax Measures

Prepared by the State of Hawaii
Department of Taxation
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This digest summarizes the federal tax laws enacted between March 28, 2020 and December 31, 2020. 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 2021 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.

Table of Contents

Consolidated Appropriations Act, 2021
(P.L. No. 116-260; December 27, 2020)

CODE SECTION	DESCRIPTION OF PROVISION

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

§25A	**American Opportunity Tax Credit** Individual taxpayers can claim the American Opportunity Tax Credit for qualified higher education expenses. The total value of the credit is $2,500. The similar Lifetime Learning Credit is also available, is worth up to $2,000, and is available beyond the undergraduate level. The Act doubles the income thresholds for the phaseout of both credits and deletes the provision allowing for an inflation adjustment. As a result of increasing the income limits, the Act also repeals the deduction for tuition and related expenses. See coverage of §222. Applies to taxable years beginning after December 31, 2020. See coverage of §222 for related information.
§25C(g)(2) and (d)(3)	**Personal (Nonbusiness) Energy Property Credit** The nonbusiness energy property credit is a nonrefundable personal credit allowed to individuals who install certain energy-efficient property in a dwelling located in the US that the taxpayer uses as its principal residence. The Act removes biomass stoves from the definition of energy-efficient building property eligible for the credit. The Act extends the credit to apply to property placed in service through December 31, 2021.
§25D(a), (g) and (h)	**Residential Energy Property Credit** The Act extends the residential energy property credit to apply to property placed in service through December 31, 2023. The Act delays the final phasedown of the applicable percentages of qualified solar electric property expenditures and qualified solar water heating property expenditures allowed for purposes of the credit to apply to property placed in service after December 31, 2022, and before January 1, 2024. The Act adds qualified biomass fuel property expenditures to the amounts eligible for the credit and defines such expenditures. Effective for property placed in service after December 31, 2020. Effective for qualified biomass fuel property expenditures paid or incurred in taxable years beginning after December 31, 2020.

§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, 2020.

The Act extends the credit to vehicles purchased by December 31, 2021.

§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, 2020.

The Act extends the credit to apply to property placed in service through December 31, 2021.

Effective for property placed in service after December 31, 2020.

§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 taxable 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, 2022.

Effective for vehicles acquired after December 31, 2020.

§35(b)(1)(B) **Credit for Health Insurance Costs of Eligible Individuals**

The Health Coverage Tax Credit (HCTC) is available to individuals eligible for Trade Adjustment Assistance allowances or individuals whose pension plans were taken over by the Pension Benefit Guaranty Corporation due to financial difficulties. Such individuals must be unable to enroll in other programs, including Medicaid or Medicare Part A. The HCTC is equal to 72.5% of the premiums of health insurance for eligible coverage months.

The Act extends the HCTC to apply to eligible coverage months beginning before January 1, 2022.

Effective for months beginning after December 31, 2020.

§40(b)(6)(J)(i) **Second Generation Biofuel Producer 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 for 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, 2022.

Effective for qualified second-generation biofuel production after December 31, 2020.

§42 **Minimum Low-Income Housing Credit Rate Established for Federally Subsidized Buildings**

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

The minimum applicable percentage is 9% for non-federally subsidized new buildings.

The Act establishes a minimum applicable percentage of 4% for federal subsidized new or existing buildings placed in service after December 31, 2020.

Effective for buildings receiving an allocation after December 31, 2020 and to buildings receiving tax exempt bond funding that is issued after December 31, 2020.

§§45(d) and 48(a) **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 at facilities on which construction is begun before January 1, 2022. Previously the credit applied to facilities on which construction began before January 1, 2021. The extension applies to wind, closed-loop biomass, open-loop biomass, geothermal or solar energy, landfill gas, trash, qualified hydropower, and marine and hydrokinetic renewable energy facilities.

The Act also extends the election to treat the above listed facility types as energy property for purposes of the energy credit from January 1, 2021, to January 1, 2022.

Effective January 1, 2021.

§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 15-year period to a 16-year period, effectively extending the provision through December 31, 2021.

Effective for coal produced after 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, 2022.

Effective for taxable years beginning after December 31, 2020.

§45D **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.

The Act provides for an allocation of $5,000,000 for 2021 through 2025 and extends the carryover period from 2025 to 2030.

Effective for calendar years beginning after December 31, 2020.

§45G **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 makes the credit permanent and reduces the credit rate from 50% to 40% beginning January 1, 2023.

Applies to taxable years ending after December 31, 2020.

§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 before January 1, 2022.

Effective for homes acquired after December 31, 2020.

§45N **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, 2022.

Effective for taxable years beginning after December 31, 2020.

§45S(i) **Employer Credit for Paid Family 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 leave under the Family and Medical Leave Act. 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, 2026.

Applicable to wages paid in taxable years beginning after December 31, 2020.

§45Q **Carbon Dioxide Sequestration Credit**

A series of credits are available ranging from $10 per metric ton to $20 per metric ton of carbon dioxide captured and disposed of in secure geological storage. The Act extends the credit two years to January 1, 2026.

Effective December 27, 2020.

§48(a)(2), (a)(5), (a)(6), and (a)(7) **Business Energy Credit Extended and Phased Out**

The business energy credit is to encourage use of business equipment that uses sources of energy other than oil or gas. The credit is equal to the energy percentage of the basis of each energy property placed in service during the tax year. The energy percentage is generally 30%.

The Act adds "waste energy recovery property" to the list of property eligible for the energy credit, defines that property and subjects it to the phaseout contained in subsection (a)(7). The Act also adds "qualified offshore wind facilities" to the list of property eligible for the energy credit, but only at the 10% energy percentage rate, and defines such property.

The Act extends the credit, making it available for facilities that begin construction before January 1, 2024 (from January 1, 2022). The date at which the credit percentage goes to 10% was extended from January 1, 2024 to January 1, 2026.

The Act also delays the phaseout of the credit. For solar energy property, the date the phaseout begins is extended from January 1, 2022 to January 1, 2024. For other property the date at which the second level of phaseout begins was extended to January 1, 2023 from January 1, 2021. The date at which the credit percentage goes to 0% was extended from January 1, 2024 to January 1, 2026.

Effective January 1, 2020.

§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, 2026.

Effective for individuals who begin work after December 31, 2020.

The following provisions are operative for Hawaii income tax purposes.

§108(a)(1)(E) and (h)(2) **Exclusion of Income from Discharge of Principal Residence Debt**

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

The Act extends the exclusion to apply to debt that is discharged before January 1, 2026 or debt which is subject to an arrangement entered into before January 1, 2026. and decrease in maximum acquisition debt allowed.

The Act also reduces the maximum principal residence debt taken into account in determining the exclusion from $2 million to $750,000.

Applicable to discharges of indebtedness after December 31, 2020.

§127(c)(1)(B) **Exclusion for Certain Employer Payments of Student Loans**

In general, employer-paid student loan repayments are included in the gross income of the employee. The CARES Act excludes employer-paid student loan repayments from gross income if the payments were made after March 27, 2020 and before January 1, 2021.

The Act extends the exclusion to payments made before January 1, 2026.

Effective for payments made after December 31, 2020.

§139B **Exclusion of volunteer firefighters and emergency medical responders' benefits**

The Code allows volunteer firefighters and emergency medical responders to exclude state and local tax benefits and qualified payments. The total exclusion is $50 per month of their service.

The Act makes the exclusion permanent.

Effective for taxable years beginning after December 31, 2020.

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

Section163(h)(3)(E) allows mortgage insurance premiums paid in connection with acquisition indebtedness to be deducted as qualified residence interest, subject to a phaseout.

The Act extends the deductibility of mortgage insurance premiums to premiums paid through December 31, 2021,

Effective for premiums paid after December 31, 2020.

§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 older are 3-year property.

The Act extends 3-year treatment to horses at least 2 years old and the time they are placed in service and that are placed in service before January 1, 2022.

Effective for property placed in service after December 31, 2020.

§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) that are placed in service before January 1, 2021,

The Act extends the special 7-year recovery period to property placed in service before January 1, 2026.

Effective for property placed in service after December 31, 2020.

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

§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, 2022.

Effective for property placed in service after December 31, 2020.

The following provisions are operative for Hawaii income tax purposes.

§170(p) **Charitable Deduction for Non-itemizers**

The Act adds a new subsection (p) to §170 that allows taxpayers who do not itemize to claim a charitable deduction of up to $600 for a joint return and up to $300 for other returns. Such donations cannot be used to establish or maintain a donor advised fund or to contribute to certain private foundations. The deduction is available to taxable years beginning in 2021.

Effective for taxable years beginning after December 31, 2020.

§179D **Energy efficient commercial buildings deduction**

Section 179D allows a deduction for an amount equal to the cost of energy efficient commercial buildings. Generally, to qualify, property must be depreciable property installed as part of interior lighting, heating, cooling, ventilation, or hot water systems or as part of the building envelope and as part of a plan to reduce energy and power costs.

The Act makes the deduction permanent. The Act also imposes an updated inflation adjustment based on cost of living in calendar year 2019. The Act also adds new reference standards for subject-matter experts (American Society of Heating, Refrigerating, and Air Conditioning Engineers and the Illuminating Engineering Society of North America) to determine eligibility

Effective for property placed in service after December 31, 2020.

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

§181(g) **Expensing Rules for Certain Productions**

§181 allows a taxpayer to deduct the entire cost of qualified film or television productions. Costs eligible to be deducted are limited to $15,000,000 per film or television production. The limit is $20,000,000 for costs incurred in a low-income community or a distressed area.

The Act extends the expensing rule to apply to qualified film and theatrical productions commencing before January 1, 2026.

Effective for productions commending after December 31, 2020.

The following provision is operative for Hawaii income tax purposes.

§213 **Reduction in Medical Expense Deduction Floor**

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

The Act makes permanent the special rule allowing deduction of medical expenses exceeding 7.5% of AGI.

Effective for taxable years beginning after December 31, 2020.

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

§222 **Qualified tuition and related expenses**

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 repeals the deduction for qualified tuition and related expenses.

Applies to taxable years beginning after December 31, 2020.

See coverage of §25A for related information.

The following provisions are operative for Hawaii income tax purposes.

§223(c) **Definitions and Special Rules for Health Savings Accounts**

The Act adds new special rules for how surprise billing statutes affect individuals receiving medical care and high-deductible health plans providing benefits for medical care.

Effective for plan years beginning on or after January 1, 2022.

§263A(f)(4) **Capitalization and Inclusion in Inventory Costs of Certain Expenses**

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, 2020.

The Act make the exemption for the aging period permanent.

Applies to interest costs paid or accrued after December 31, 2020.

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

§274(n)(2) **Temporary Full Allowance for Deduction of Business Meals**

In general, 50% of the cost of food and beverage expense related to a trade or business is deductible and no amount of entertainment is deductible. The Act allows for the full deduction for food or beverage provided by a restaurant that is paid for or incurred by January 1, 2023.

Effective for amounts paid or incurred after December 31, 2020.

Please note that section 274 is operative for Hawaii income tax purposes in the form it existed on December 21, 2017. Under that rule, 50% or food and beverage expense and 50% of entertainment expense is deductible.

The following provisions are operative for Hawaii income tax purposes.

§401(a) **Minimum Age for Working Distributions during Working Retirement**

The Act provides that a plan can make distributions to an employee aged 59 ½ that is not separated from employment and not risk losing its status as a qualified trust. The age is 55 for employees in the building and construction industry.

Effective for distributions made before on or after December 27, 2020.

§420(f) **Qualified Transfers to Cover Future Retiree Costs and Collectively Bargained Retiree Benefits**

Overfunded defined benefit plans are permitted to transfer assets to retiree health accounts. Such plans can also elect to make qualified future transfers to retiree health accounts. The transfer period over which the future transfers will occur is declared at the time of the election.

The Act authorizes defined benefit retirement plans that have elected to make a qualified future transfer to elect to terminate the transfer period before December 31, 2021. This allows the plans to stop the planned transfers.

Effective for taxable years beginning after December 31, 2019.

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

§954(c)(6)(C) **Look-thru Rule for Controlled Foreign Corporations**

Subpart F of the Code requires 10% of 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 neither subpart F income to the extent attributable to non-subpart F income, nor 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, 2026 and for tax years of US shareholders within which any such taxable year of a foreign corporation ends.

Effective for taxable years of foreign corporations beginning after December 31, 2020, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations ends.

§1391(d) **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, 2025.

Effective for taxable years beginning after December 31, 2020.

§1397A **Termination of Increased Expensing under Section 179**

The Code allows enterprise zone businesses to increase the limits on section 179 expensing. The Act terminates this special allowance for property placed in service in taxable years beginning after December 31, 2019.

Effective for taxable years beginning after December 31, 2020.

§1397B **Termination of Nonrecognition of Gain on Rollover of Empowerment Zone Investments**

The Code provides nonrecognition treatment on the gain from the sale of an empowerment zone investment to the extent the proceeds are reinvested into another empowerment zone. The Act terminates this special allowance.

Effective for taxable years beginning after December 31, 2020.

§4121(f)(2) **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, 2020.

The Act delays the earliest date on which the reduced rates can take effect to December 31, 2021.

Effective for sales after 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, 2025.

Effective January 1, 2021.

§6103(k) **Authorization of Disclosure by Secretary of the Treasury**

Section 6103(k) authorizes disclosure of tax returns and tax return information for listed tax administration purposes. The Act adds section 6103(k)(15) to authorize disclosure to the Social Security Administration. The disclosure is only allowed for purposes of determining if a debt is exempt from collection by an outside collection company due to substantially all of the taxpayer's income being from disability or supplemental security income benefits.

Effective for disclosures made on or after December 27, 2020.

§6103(l)(13) **Authorization of Disclosure to Contractor by Higher Education Agencies or Institutes**

Section 6103(l) authorizes limited disclosures for purposes other than tax administration, including disclosures to institutes of higher education or state higher education authorities for purposes of the Higher Education Act of 1965.

The Act authorizes Institutes of Higher education and State higher education authorities to designate a contractor to receive return information on its behalf. The Act also authorizes further disclosure to the Office of Inspector General of the Department of Education.

Effective for disclosures made after the date of enactment of the FUTURE Act, P.L. 116-91, December 19, 2019.

§§6426(d)(5) and (e)(3) and 6427(e) **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 fuels, including for alternative fuels and alternative fuel mixtures. These incentives expired December 31, 2020.

The Act extends the incentives through December 31, 2022.

Effective for fuel sold or used after December 31, 2020.

§6428A **Additional Recovery Rebates**

The Act provides for $600 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 $600 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.

The following provisions are operative for Hawaii income tax purposes.

Non-code § **Special Rules for Disaster Tax Relief**

The Act provides that for disaster areas, other than areas declared disasters solely by reason of the COVID-19 pandemic, the penalty under §72(t) does not apply. The Act also allows recontributions of withdrawals for home purchases that were received during the 180 days before the disaster or the 30 days after the disaster.

The Act provides special rules for disaster relief contributions.

Please note that these rules are contained in sections 301, 302, and 304 of Section EE of P.L. 116-260. These provisions are applicable for Hawaii income tax purposes, but Hawaii does not conform to the penalty for early withdrawal under §72(t) in any case.

Non-code § **Extension of CARES Act Modifications to Charitable 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.

Under special rules enacted by the CARES Act, the charitable deduction limit for cash contributions was increased 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.

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 CARES Act increased 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 are applicable to contributions made during 2020.

The Act extends the new limits to apply to contributions made during 2021.

Effective for contributions made after December 31, 2020.

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

Non-code § **Low-Income Housing Tax Credit**

The Act provides that the ceiling for the State housing credit is increased by the amount allocated by the State housing agency to buildings located in a qualified disaster zone in the State.

Effective for the ceilings applicable for calendar years 2021 and 2022.

Please note that this provision of P.L. 116-260 is not operative for Hawaii income tax purposes, but because the Hawaii LIHTC is dependent to some extent on the federal LIHTC credit, the federal change may have some indirect effect(s).

Non-code § **Special Rules for Health and Dependent Care Flexible Spending Arrangements**

"Cafeteria plan" is a general term for an employer-sponsored benefits plan, the employees' contributions to which are deductible from the employees' gross income. Cafeteria plans are subject to strict rules, including limits on how much of a flexible spending benefit can be carried over into a future plan year.

The Act provides for various special rules, including carryover of benefits from 2020 or 2021 into the next year, and the allowance of an extension of the grace period to 12 months after the end of 2020 or 2021. The Act provides that plans that allow this flexibility will still be treated as a cafeteria plan.

Effective December 27, 2020.

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 2021.

Non-code § **Temporary Rule for Determining Earned Income**

The earned income tax credit and the refundable portion of the child tax credit are based on the claimant's level of earned income for the taxable year.

The Act allows taxpayers to use earned income from a preceding year rather than the current taxable year in calculating the credits. The special rule applies for taxpayers' first taxable year beginning in 2020.

Effective for taxable years beginning in 2020.

Please note that while Hawaii does not conform to the federal earned income tax credit (EITC), Hawaii has its own EITC which is equal to a simple percentage of the federal EITC. Therefore, while not operative for Hawaii income tax purposes, the changes will affect the Hawaii EITC amount.

Non-code § **PPP Loans Deductible**

Paycheck Protection Program (PPP) loans are forgivable loans provided as part of the CARES Act and subsequent Acts in response to the COVID-19 pandemic. Indebtedness is not included in gross income. The forgiveness of PPP loans is also not included in income.

The Act allows deductions for expenses paid with forgiven PPP loan proceeds and provides that basis adjustments and other tax attributes are to be treated as if the forgiveness was included in income.

Effective for taxable years ending after the enactment of the CARES Act, therefore to taxable years ending after March 27, 2020.

The following provisions are operative for Hawaii income tax purposes.

Non-code § **Emergency Financial Aid Grants Not Taxable**

The Act provides that emergency financial aid grants awarded by an institution of higher education under sections 3504 or 18004 of the CARES Act of other financial aid grants issued to students shall not be included in gross income and shall not count toward the adjustment of any scholarship under Code section 25A.

Effective for emergency financial aid grants made after March 26, 2020.

Non-code § **EIDL Advances and Subsidies for Loan Payments**

The Act provides that Economic Injury Disaster Loan proceeds that are forgiven are not included in gross income. This includes advances provided under section 1110(e) of the CARES Act and sections 324 and 331 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act. The Act provides that deductions and other tax attributes shall be allowed even though the amounts are forgiven. The Act provides the same treatment for loan subsidies provided under section 1112(c) of the CARES Act.

Please note that Hawaii conforms to the exclusion from gross income of these amounts but does not conform to the allowance of deductions for expenses paid with the forgiven amounts or the maintenance of other tax attributes.

The amendments are effective for taxable years ending after the enactment of the CARES Act, therefore to taxable years ending after March 27, 2020. Portions of the EIDL advance provisions that relate to funding under section 331 of the Economic Aid to Hard-Hit Businesses, Nonprofits, and Venues Act apply to taxable years ending after December 27, 2020.