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 during calendar year 2021. 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 2022 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.

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American Recovery Plan Act of 2021

(P.L. No. 117-2; March 11, 2021)

CODE SECTION	DESCRIPTION OF PROVISION

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

§21 — **Child and Dependent Care Tax Credit**

The Act amends the child and dependent care tax credit by making the credit refundable, increasing the income limits, and setting a new phaseout percentage for high-income individuals.

The special rules apply to taxable years beginning after December 31, 2020. The rules do not apply for taxable years beginning after December 31, 2021.

§§24 and 7527A — **Child Tax Credit Improvements and Advance Payment of Credit**

The Act creates a special rule making the credit refundable in certain circumstances and allowing 17-year-olds to be eligible for treatment as qualifying children. There is a concordant reduction of $50 from the credit for every $1,000 by which the taxpayer's adjusted gross income (AGI) exceeds certain threshold amounts. The Act also establishes new protocol for the Secretary of the Treasury to make advance payments of portions of the Child Tax Credit to certain taxpayers between July 1, 2021, and December 31, 2021.

The special rules apply to taxable years beginning after December 31, 2020. The rules do not apply for taxable years beginning after December 31, 2021.

§32 — **Earned Income Tax Credit**

The Act creates special earned income tax credit (EITC) rules for individuals without qualifying children for any taxable year beginning in 2021. The special rules eliminate the maximum age cap on eligibility for the credit and modify the applicable minimum ages of eligibility for various categories of taxpayer. There is also an increase in the credit amount and phaseout percentages, and a modification of the interest calculations for the disqualified income test.

Note that though the federal EITC is not operative for Hawaii income tax purposes, the Hawaii EITC is based on the federal EITC and therefore these changes will be reflected in claims of Hawaii EITC.

Amendment applies to taxable years beginning after December 31, 2020. The rules do not apply for taxable years beginning after December 31, 2021.

§36B — **Refundable Credit for Certain Health Care Premiums**

The Act establishes temporary premium percentage rates to be used in calculating the credit for taxable years beginning in 2021 and 2022. For taxable years beginning in 2020, the tax liability for excess advance payments under Code section 36B(f)(2)(A) does not apply.

The Act also includes a series of provisions relating to credit calculation and expanded eligibility for taxpayers who received unemployment compensation for any week beginning during 2021.

The changes apply to taxable years beginning after December 31, 2020.

§85(c) **Exemption of Portion of Unemployment Compensation**

The Act excludes up to $10,200 of unemployment compensation from gross income. For joint filers, the Act excludes $10,000 of unemployment compensation for each taxpayer. The exclusion is available to taxpayers with adjusted gross income (AGI) of less than $150,000.

Please note that section 85 is generally applicable for Hawaii income tax purposes, however, subsection (c) is not operative for Hawaii income tax purposes.

The exclusion is applicable to taxable years beginning after December 31, 2019.

The following provisions are operative for Hawaii income tax purposes.

§108(f) **Treatment of Student Loan Forgiveness**

The Act exempts forgiveness of qualifying loan amounts from gross income if the loan provided expressly for postsecondary educational expenses.

The treatment applies to loans forgiven after December 31, 2020.

§129(a)(2) **Increase in Exclusion for Employer-Provided Dependent Care Assistance**

The Code excludes from gross income the amounts paid by employers for dependent care assistance of employees. The payments must be made through qualified programs. The exclusion is limited to $5,000 per year ($2,500 for a married taxpayer filing separate.)

The Act increases the limit to $10,500 per year and $5,250 per year for married taxpayers filing separate. The increased limit applies to taxable years beginning after December 31, 2020 and before January 1, 2022.

Effective for taxable years beginning after December 31, 2020.

§162(m) **Limitation on Excessive Employee Remuneration**

Deductions for salary payments are disallowed in the case of certain employees to the extent each of those employees' salaries exceed $1,000,000 per year. In general, the employees covered are the chief executive and chief financial officer of the company, along with any employee whose salary must be reported to shareholders due to being one of the highest three paid employees. The Act expands the affected employees to include the top five highest-compensated employees for the taxable year that are not already covered under the previous law.

The change applies to taxable years beginning after December 31, 2026.

§430(c) & (m) **15-Year Amortization of Plan Shortfalls**

Defined benefit plans must adhere to strict funding requirements. If the funding levels fall below the standards, plans are required to make additional payments. One of the additional payments is the shortfall amortization charge. In general, this amount is based on a 7-year correction period for the plan. The Act allows the shortfall amortization charge to be based on a 15-year correction period.

The Act also allows a 30-year correction period for Community Newspaper Plans. The Act also allows such plans to use 8 percent interest for purposes of determining their funding levels.

The changes are applicable to plan years beginning after December 31, 2018. The newspaper plan amendments are applicable to plan years beginning after December 31, 2017.

§430(h) **Pension Fund Stabilization Percentages for Single Employer Plans**

The Act delays the tightening of the pension fund stabilization percentages by roughly six years. The Act provides that the applicable minimum percentage remains at 90 percent until 2026.

The extension if effective for plan years beginning after December 31, 2019.

§431(b)(8) **Funding Standard Account Rules**

The Act amends a relief provision from the financial crisis to apply to the first two plan years after February 29, 2020. The relief allows plans to amortize net investment losses for purposes of the solvency test.

The amendments are effective on the first day of the first plan year ending on or after February 29, 2020.

§432 & non-code § **Delay of Endangered, Critical, or Critical and Endangered Status**

The Act allows plans to elect to maintain their previous year's status for the plan year beginning between March 1, 2020 and February 28, 2021. The Act provides that plans that were already in endangered or critical status are not required to update their recovery plans or schedules.

The Act also provides that a plan in endangered or critical status can elect to have its funding improvement period or rehabilitation period extended by five years.

The maintenance of status is applicable for the plan years beginning between March 1, 2020 and February 28, 2021. The extension of the improvement or rehabilitation period is applicable for plan years beginning after December 31, 2019.

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

§461(l)(1) **Excess Business Losses for Noncorporate Taxpayers**

The Tax Cuts and Jobs Act disallowed the excess business loss of taxpayers other than corporations for taxable years beginning after December 31, 2017 and before January 1, 2026. “Excess business loss” is defined as deductions that exceed the taxpayer’s trade or business gross income plus $250,000.

The CARES Act allowed taxpayers other than corporations to deduct excess business losses for 2018, 2019, and 2020, but continued to disallow excess business losses for taxable years beginning after December 31, 2020 and before January 1, 2026.

The American Rescue Plan Act extends the disallowance of excess business losses to apply to taxable years beginning before January 1, 2027.

Effective for taxable years beginning after December 31, 2025.

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.

§864 Election to Allocate Interest and Other Expenses on Worldwide Basis

The election to allocate interest on a worldwide basis was initially enacted in 2004 but the effective date of the section was routinely delayed until the provision finally became effective for tax years beginning after December 31, 2020. The Act repeals the election retroactive to this effective date.

The repeal is applicable for taxable years beginning after December 31, 2020.

§3131 et seq. Payroll Credits (Paid Sick Leave, Paid Family Leave)

The Act creates two new credits, a paid sick leave credit and a paid family leave credit. The credits are equal to the full amount of qualified leave wages and certain collectively bargained contributions, plus allocable qualified health plan expenses and the amount of the employer's share of social security and Medicare taxes imposed on the qualified leave wages. The credits are allowed against the Medicare tax of 1.45 percent under Code section 3111(b).

Code section 3133 provides a special increase to the credits, allowing an increase by the amount of social security and medicare surcharge tax imposed on the sick leave wages and family leave wages for which the credit is allowed.

The paid sick leave and paid family leave credits apply to wages paid with respect to the period beginning on April 1 and ending on September 30, 2021.

The special rule is applicable to calendar quarters beginning after March 31, 2021.

§3134 Employee Retention Credit for Employers Subject to Closure due to COVID-19

The American Rescue Plan Act expands the employee retention credit, enacted in last year's CARES Act. The credit allows eligible employers to claim a credit for paying qualified wages to employees. The new COVID relief law extends the credit through the end of 2021 and expands the definition of eligible employers.

The Act creates a new provision allowing eligible employers subject to closure a credit equal to 70 percent of the qualified wages with respect to each employee for each calendar quarter.

The credit shall only apply to wages paid after June 30, 2021, and before January 1, 2022."

The following provision is operative for Hawaii income tax purposes.

§6050W **Exceptions to Reporting of Third-party Network Transactions**

The Code provides for detailed reporting of payments made in settlement of payment card and third-party network transactions. Under prior law an exception provided that third party settlement organizations did not have to report for transactions of $20,000 or less or if the aggregate number of transactions is 200 or less.

The Act amends the *de minimis* exception to allow third party settlement organizations to avoid reporting only if the amount does not exceed $600.

Effective for returns for calendar years beginning after December 31, 2021.

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

§6428B **2021 Recovery Rebates for Individuals**

The Act provides for $1,400 stimulus payments to every individual other than a nonresident alien or a person for whom a deduction is available under §151. The Act provides for an additional $1,400 per dependent the taxpayer can claim. 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 2021 tax.

§§6432 and 139I **Health Care; Coverage Premium Assistance; Exclusion from Income**

The Act provides for a temporary 100 percent reduction in the premium otherwise payable by certain individuals and their families who elect COBRA continuation coverage due to a loss of coverage as the result of a reduction in hours or an involuntary termination of employment.

The temporary premium assistance is also available to individuals enrolled in continuation health coverage under State programs that provide for coverage comparable to COBRA continuation coverage, often referred to as "miniCOBRA." The premium assistance is excluded from an individual's gross income.

The Act also creates a new refundable credit against Social Security tax equal to the amount not paid by assistance eligible individuals for continuation coverage. The credit is claimed by the person to whom premiums are payable, this is either the plan itself or the employer maintaining the plan.

Note that the creation of the tax credit is not operative for Hawaii income tax purposes but the exclusion from gross income of the premium assistance is operative for Hawaii income tax purposes.

The premium assistance is available only for periods of COBRA coverage beginning after April 1, 2021, but not for periods beginning after Sept. 30, 2021.

§§6720C and 35(g)(9)

Penalty for Failure to Notify Health Plan of Cessation of Eligibility

The Act adds a new Code section 6720C, establishing a penalty for failure to notify a group health plan that their eligibility for continuation coverage premium assistance (also known as COBRA) has ceased, unless such failure is due to reasonable cause and not willful neglect. The penalty is $250 per failure; except in cases of fraud, where the penalty is the greater of $250 or 110% of the value of premium assistance received.

The changes are effective March 11, 2021.

Non-code §

Credit for Sick Leave for Self-Employed Individuals

The Act creates a sick leave credit for self-employed individuals. The credit is measured by the number of days the self-employed individual missed work multiplied by the lesser of $200 or the individual's average daily self-employment income.

The amount is increased to $511 or 100 percent of the average daily self-employment income if the individual is unable to work due to a quarantine or isolation order, a health care provider ordered self-quarantine, or is experiencing symptoms of COVID-19.

An eligible self-employed individual is generally an individual who regularly carries on any trade or business within the meaning of Code section 1402, and would be eligible to receive qualified sick leave wages or qualified family leave wages if the individual were an employee.

The credit is available for days occurring during the period beginning on April 1, 2021 and ending on September 30, 2021.

Non-code §

Credit for Family Leave for Self-Employed Individuals

The Act creates a family leave credit for self-employed individuals. The credit is measured by the number of days the self-employed person is unable to work multiplied by the lesser of 67 percent of the individual's average daily self-employment income or $200.

An eligible self-employed individual is generally an individual who regularly carries on any trade or business within the meaning of Code section 1402, and would be eligible to receive qualified sick leave wages or qualified family leave wages if the individual were an employee.

The credit is available for days occurring during the period beginning on April 1, 2021 and ending on September 30, 2021.

The following provisions are operative for Hawaii income tax purposes.

Non-code § **Exclusion from Income of Targeted EIDL Advances**

The Act excludes Economic Injury Disaster Loan (EIDL) program funds from gross income. The EIDL program is a hybrid loan and grant program. The EIDL program is similar to the Paycheck Protection Program (PPP) though the EIDL program allows a wider use of the funds than PPP.

Note that though Hawaii conforms to the exclusion from income of the amounts of EIDL advances, Hawaii does not conform to the allowance of deductions for expenses paid with EIDL funds.

The EIDL program funds were appropriated for fiscal year 2021 and remain available until September 30, 2022. As such, the effective date for the exclusion is taxable years beginning in 2021 or 2022.

Non-code § **Exclusion from Income of Restaurant Revitalization Grants**

The restaurant revitalization grants are to provide support to restaurants affected by the COVID-19 pandemic. The Act excludes the grant receipts from gross income.

Note that though Hawaii conforms to the exclusion from income of the amounts of restaurant revitalization grants, Hawaii does not conform to the allowance of deductions for expenses paid with restaurant revitalization grant funds.

The grants are effective immediately. The funds must be used before the end of the covered period, which is December 31, 2021, unless a later date is determined, in which case that date cannot be more than two years after the enactment of the Act, which is March 11, 2023.

Infrastructure Investment and Jobs Act

(P.L. No. 117-58; November 15, 2021)

CODE SECTION	DESCRIPTION OF PROVISION

The following provisions are operative for Hawaii income tax purposes.

§118	**Special Rules for Water and Sewerage Disposal Utilities** In general, gross income does not include a contribution to capital. The Tax Cuts and Jobs Act provided that any contributions in aid of construction or any other contribution as a customer or individual or potential customer and any contribution by any governmental entity or civic group are not contributions to capital and thus are includable in gross income. The Act creates an exception to the inclusion of contributions in aid of construction in gross income for amounts received by water or sewerage disposal services. The exception covers any amounts received in aid of construction and also amounts that are for the protection, preservation, or enhancement of drinking water or sewerage disposal services if received from a governmental entity. The exception is effective for contributions made after December 31, 2020.
§142(a)	**Bonds of Certain Additional Projects Treated as Exempt Facility Bonds** The Act adds "qualified broadband projects" and "qualified carbon dioxide capture facilities" to the list of projects' bonds treated as exempt facility bonds. Exempt facility bonds are a subset of private activity bonds. The interest received on private activity bonds is tax exempt if the various requirements are met. The addition of qualified broadband project bonds and qualified carbon dioxide capture facility bonds to exempt facility bonds is effective for obligations issued after December 31, 2021.
§142(m)	**Increase in Limitation Amount for Certain Exempt Facilities** The Act increases the limit applicable to Qualified Highway or Surface Freight Transportation Facilities from $15,000,000,000 to $30,000,000,000. The increase is effective for obligations issued after December 31, 2021.
§430(h)(2)(C)(iv)	**Extension of Interest Rate Stabilization** The Act delays the tightening of the pension fund stabilization percentages by roughly five years. The Act provides that the applicable minimum percentage remains at 90 percent until 2031. The extension if effective for plan years beginning after December 31, 2021.

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

§3134 **Termination of Employee Retention Credit for Closures Due to COVID-19**

The Act terminates the employee retention credit early by limiting it to wages paid before October 1, 2021. Previous law allowed the credit for wages paid through January 1, 2022. In the case of a recovery startup business, wages paid through January 1, 2022 are eligible for the credit.

The termination applies to calendar quarters beginning after September 30, 2021.

§6045(c)(1) **Information Reporting for Brokers and Digital Assets**

The Act adds any person who regularly provides a service of effectuating transfers of digital assets on behalf of another person to the list of "brokers." These parties will be responsible for the same information reporting as other brokers.

The addition applies to returns and statements due after December 31, 2023.

§7451 **Tolling of Time for Filing a Petition with the Tax Court**

The Act provides for a tolling of the deadline to file a petition with the Tax Court by any number of days during which a filing location is inaccessible or unavailable to the general public on the date the petition is due, plus 14 days.

The tolling applies to petitions whose filing dates are after November 15, 2021.

§7508(a)(1) **Tolling for Time of Service in a Combat Zone**

The Act amends the language allowing tolling of the time to file a petition with the Tax Court or an appeal from a Tax Court decision. The new language allows tolling for general all filings with the Tax Court. Previous law only allowed tolling for filings with the Tax Court that requested a redetermination of a deficiency.

The modified language applies to any act for which the period for performing the act has not expired before November 15, 2021.

§7508A(a) **Extension of Deadlines for Significant Fires**

The Act adds significant fire to the list of disasters justifying a postponement of deadlines. The amendment applies to fires for which assistance is provided after November 15, 2021.

§7508A(d) **Deadlines for Taxpayers Affected by Federally Declared Disasters**

The Act modifies the deadlines for claims related to federal declared disasters from the latest incident date to the earliest incident date or the date the declaration of emergency was issued, whichever is later.

The modification applies to federally declared disasters declared so after the November 15, 2021.