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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2013-09

RE: Act 45, Session Laws of Hawaii 2013, Relating to Conformity of the Hawaii Estate and Generation-Skipping Transfer Tax Law to the Internal Revenue Code.

On April 23, 2013, Governor Neil Abercrombie signed into law Senate Bill 1203, S.D. 1, as Act 45, Session Laws of Hawaii 2013 (Act 45). Act 45 amends Chapter 236E, Hawaii Revised Statutes (HRS), to comply with the Internal Revenue Code (IRC) as amended as of January 2, 2013.

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

Section 2 of Act 45 amends §236E-3, HRS, to conform the Hawaii Estate and Generation-Skipping Transfer Tax law to the operative IRC sections of Subtitle B, Chapter 1, as amended as of January 2, 2013. Generally, Subtitle B, Chapter 1 refers to IRC sections 2001 through 2801.

A summary of the relevant federal laws that were enacted on or before January 2, 2013 and their impact on the Hawaii Estate and Generation-Skipping Transfer Tax follows:

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

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

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

Hawaii conforms to IRC §2010 and relies on it to determine the applicable exclusion amount for purposes of the Hawaii Estate and Generation-Skipping Transfer Tax.

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

For more information on this issue, please contact the Rules Office at 808-587-1577 or by e-mail at Tax.Rules.Office@hawaii.gov.

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