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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2014-05

RE: Tax-Related Acts from the 2014 Regular Legislative Session

The purpose of this Announcement is to list and summarize the Acts, enacted as part of the State of Hawaii's 2014 Legislative Session, amending or affecting the State Tax Law. Specifically this announcement will address:

- Act 42, Relating to General Excise Tax Wholesale Rate Imposed Upon Sale of Tangible Personal Property
- Act 44, Relating to the Estate and Generation-Skipping Transfer Taxes
- Act 88, Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code
- Act 89, Relating to Taxpayer Education
- Act 101, Relating to Tax Credits
- Act 107, Relating to Energy
- Act 110, Relating to a Car-Sharing Vehicle Surcharge Tax
- Act 136, Relating to Financial Audit of the State of Hawaii by the Legislative Auditor
- Act 143, Relating to the General Excise Tax
- Act 174, Relating to Transient Accommodations Tax
- Act 200, Relating to the Capital Infrastructure Tax Credit
- Act 235, Relating to Condominium Associations

Act 42, Session Laws of Hawaii (SLH) 2014

On April 23, 2014, Governor Neil Abercrombie signed into law Senate Bill 2896, S.D. 1, as Act 42, SLH 2014 ("Act 42"). Act 42 is effective upon approval.

Act 42 clarifies that wholesale sales of tangible personal property are subject to the General Excise Tax at the rate of one-half of one per cent of the gross proceeds of sales. Act 42 addresses the inadvertent repeal of this rate by Act 135, SLH 2003, and represents no change in application of the tax.

Act 44, SLH 2014

On April 23, 2014, Governor Neil Abercrombie signed into law Senate Bill 2887, S.D. 1, as Act 44, SLH 2014 ("Act 44"). Act 44 applies to decedents dying or taxable transfers occurring after December 31, 2013.

Act 44 conforms the State's estate and generation-skipping transfer tax law to the Internal Revenue Code of 1986, as amended as of December 31, 2013. It also amends the definition of "applicable exclusion amount" for Hawaii estate tax purposes to close a loophole which allowed decedents to substantially reduce or eliminate any Hawaii estate taxes by gifting away property, even on the eve of death. Specifically, the Hawaii applicable exclusion amount is now reduced by the amount of taxable gifts made by the decedent that also reduces the amount of the federal applicable exclusion amount (or the exemption equivalent of the unified credit).

Act 88, SLH 2014

On June 16, 2014, Governor Neil Abercrombie signed into law Senate Bill 2886, S.D. 1, H.D. 1, as Act 88, SLH 2014 ("Act 88"), required by section 235-2.5(c), Hawaii Revised Statutes ("HRS"). Act 88 is effective June 16, 2014, and applies to taxable years beginning after December 31, 2013.

Act 88 conforms Hawaii income tax law to the Internal Revenue Code ("Code") as of December 31, 2013, and makes various technical amendments.

Section 2 of Act 88 amends section 235-2.3(a), HRS, to conform the Hawaii income tax law to the operative Code sections of subtitle A, chapter 1, as amended on December 31, 2013. Generally, subtitle A, chapter 1, refers to Code sections 1 through 1400T.

The following pieces of legislation amending the Code, enacted previous to December 31, 2013, were analyzed to determine if amendments to conformity were necessary:

1. "To amend the Internal Revenue Code of 1986 to include vaccines against seasonal influenza with the definition of taxable vaccines," P.L. 113-15, enacted June 25, 2013;

2. "To rename section 219(c) of the Internal Revenue Code of 1986 as the Kay Bailey Hutchison Spousal IRA," P.L. 113-22, enacted July 25, 2013;

3. "Continuing Appropriations Act, 2014," P.L. 113-46, enacted October 17, 2013;

4. "Fallen Firefighters Assistance Tax Clarification Act of 2013," P.L. 113-63, enacted December 20, 2013.

No amendments to conformity were necessary due to the above-listed federal legislation.

Section 3 of Act 88 amends section 235-2.4, HRS, to update conformity to various individual Code sections and to make various technical amendments. Section 235-2.4(b), HRS, is amended to reflect the repeal of two provisions already inoperative for Hawaii income tax purposes. Section 235-2.4(g), HRS, is amended to clean up the dates of inoperability regarding Code sections 132(f)(2)(A) and (B), due to an extension affecting the two provisions.

Section 3 of Act 88 also amends conformity to Code section 164 in order to disallow a double tax benefit for income taxes paid to a foreign jurisdiction. The amendment disallows the deduction for foreign income taxes paid if the taxpayer has taken the credit allowed under section 235-55, HRS.

Section 4.1 of Act 88 amends section 235-2.45(e), HRS, to provide that the 100 per cent exclusion for gain on certain small business stock is not operative for Hawaii income tax purposes.

Section 4.2 of Act 88 amends section 235-2.45(h), HRS, to continue nonconformance to the shortened recognition periods provided in Code section 1374(d)(7)(B), (C), and (D).

Section 4.3 of Act 88 amends section 235-2.45(m), HRS, to provide for nonconformance to the provisions of Subchapter C of the Code that deal with administrative procedures. The amendment maintains conformity with provisions of Subchapter C of the Code that define the substantive tax treatment of partnership items. The amendment will allow the Department of Taxation to impose its own administrative procedures to this area of law to remain consistent with the administration of the remainder of Hawaii income tax law.

Section 5 of Act 88 amends section 235-2.5(c), HRS, by removing the date contained in that section. This amendment will alleviate the need to amend section 235-2.5(c), HRS, each year but will maintain the meaning and intention of that section.

Act 89, SLH 2014

On June 16, 2014, Governor Neil Abercrombie signed into law Senate Bill 2895, S.D. 1, H.D. 1, C.D. 1, as Act 89, SLH 2014 ("Act 89"). Act 89 is effective upon approval.

Act 89 allows the Department of Taxation to use Tax Administration Special Fund monies for taxpayer education programs, including tax publications.

Act 101, SLH 2014

On June 19, 2014, Governor Neil Abercrombie signed into law House Bill 2464, H.D. 1, S.D. 1, C.D. 1, as Act 101, SLH 2014 ("Act 101"). Act 101 applies to taxable years beginning after July 1, 2008.

Act 101 amends the Important Agricultural Land Qualified Agricultural Cost Tax Credit to clarify the credit amounts. In the first year in which the credit is claimed, the taxpayer may claim a credit equaling 25% of incurred qualified agricultural costs or $625,000, whichever is less. In the second year in which the credit is claimed, the taxpayer may claim a credit equaling 15% of incurred qualified agricultural costs or $250,000, whichever is less. In the third year in which the credit is claimed, the taxpayer may claim a credit equaling 10% of qualified agricultural costs incurred or $125,000, whichever is less.

Act 107, SLH 2014

On June 20, 2014, Governor Neil Abercrombie signed into law Senate Bill 2196, S.D. 2 H.D. 1, C.D. 1, as Act 107, SLH 2014 ("Act 107"). Act 107 is effective July 1, 2014.

Act 107 does the following:

- Extends the sunset of the $1.05 per barrel rate of the Environmental Response, Energy and Food Security Tax ("Environmental Response Tax") to June 30, 2030.

- Re-establishes the Energy Systems Development Special Fund, which was repealed after June 30, 2013.

- Re-establishes allocation of a portion of Environmental Response Tax revenues to the Energy Systems Development Special Fund, with the allocation set to sunset June 30, 2030.

- Extends the sunset of allocations of portions of the Environmental Response Tax to the Environmental Response Revolving Fund, the Energy Security Special Fund, and the Agricultural Development and Food Security Special Fund from June 30, 2015 to June 30, 2030.

Act 110, SLH 2014

On June 20, 2014, Governor Neil Abercrombie signed into law Senate Bill 2731, S.D. 2, H.D. 2, as Act 110, SLH 2014 ("Act 110"). Act 110 is effective January 1, 2015.

Act 110 imposes a surcharge tax on car-sharing organizations. The car-sharing surcharge tax is 25 cents per half-hour that a vehicle is rented by a car-sharing organization. The surcharge tax is capped at $3 per day, matching the per-day, per-rental rate for the rental motor vehicle surcharge tax.

Act 110 defines a "car-sharing organization" as a rental motor vehicle lessor that operates a membership program in which:

1. Self-service access to a fleet of vehicles is provided, with or without requiring a reservation, exclusively to members of the organization who have paid a membership fee;

2. Members are charged a usage rate, either hourly or by the minute, for each use of a vehicle;

3. Members are not required to enter into a separate written agreement with the organization each time the member reserves and uses a vehicle; and

4. The average paid use period for all vehicles provided by the organization during any taxable period is six hours or less.

Act 136, SLH 2014

On June 24, 2014, Governor Neil Abercrombie signed into law Senate Bill 2779, S.D. 1, H.D. 1, C.D. 1, as Act 136, SLH 2014 ("Act 136"). Act 136 is effective upon approval.

Act 136 authorizes the Department of Taxation to release tax return information to the Legislative Auditor to the extent necessary and relevant to the scope of the comprehensive annual financial report audit of the State.

Additionally, Act 136 increases the punishment for intentional disclosure of tax return information to a Class C felony. A person convicted of a Class C felony may be subject to imprisonment of up to five years, a fine of up to $10,000, or both.

Act 143, SLH 2014

On June 24, 2014, Governor Neil Abercrombie signed into law House Bill 1772, H.D. 1, S.D. 1, C.D 1, as Act 143, SLH 2014 ("Act 143"). Act 143 is effective July 1, 2014.

Act 143 exempts from the General Excise Tax amounts received by a contractor of the Patient-Centered Community Care program for costs or advancements to third party health care providers pursuant to a contract with the United States. The receipts retained by these contractors are still subject to GET.

Act 174, SLH 2014

On July 1, 2014, Governor Neil Abercrombie signed into law House Bill 1671, H.D. 1, S.D. 1, C.D. 1, as Act 174, SLH 2014 ("Act 174"). Act 174 is effective July 1, 2014.

Act 174 increases the amount of the transient accommodations tax ("TAT") revenues to be distributed to the counties to $103,000,000 per year for two years (for fiscal year 2014-2015 and fiscal year 2015-2016). The amount shall return to $93,000,000 per year for fiscal year 2016-2017 and thereafter.

Act 174 also creates a joint state-county working group that shall (1) evaluate the way the state and counties divide the duties and responsibility for providing public services, and (2) recommend the proper distribution of the TAT revenues among the State and the counties to the Legislature. The working group is administratively attached to the Office of the Auditor.

Act 200, SLH 2014

On July 1, 2014, Governor Neil Abercrombie signed into law House Bill 1702, H.D. 2, S.D. 2, C.D. 1, as Act 200, SLH 2014 ("Act 200"). Act 200 is effective July 1, 2014 and applies to taxable years beginning after December 31, 2013.

Act 200 establishes a capital infrastructure tax credit for tenants who are relocating due to the Kapalama container terminal modernization project. The credit equals 50% of infrastructure costs incurred by an eligible tenant, up to maximum costs of $2,500,000 per tenant per taxable year. The credit is available for tax years beginning after December 31, 2013 and expires for tax years beginning after December 31, 2019.

Act 200 also establishes a recapture provision if the tenant generating the credit fails to continue the line of business it conducted as of July 1, 2014, or if a taxpayer claiming the credit disposes of its interest (whether in whole or in part) in the qualified infrastructure tenant. Recapture is mandatory irrespective of how the disposition is accomplished. The recapture is equal to 100% of capital infrastructure tax credit claimed in the preceding five (5) years.

Act 235, SLH 2014

On July 8, 2014, Governor Neil Abercrombie allowed Senate Bill 2483, S.D. 1, H.D. 1 C.D. 1, to become law without his signature as Act 235, SLH 2014 ("Act 235"). Act 235 is effective July 1, 2014.

Act 235 amends the priority of liens in the event a condominium association files a lien against a unit due to unpaid maintenance fees. Act 235 provides that a State tax lien will not have priority over a condominium association lien, even if the State tax lien were filed before the association's lien. However, real property tax liens will continue to have priority over condominium association liens. In addition, Act 235 cannot affect federal tax liens.

For more information, please contact the Rules Office at 808-587-1530 or by e-mail at Tax.Rules.Office@hawaii.gov.

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