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# DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2020-04

RE: Tax Law Changes from the 2020 Regular Legislative Session

This Announcement summarizes the two measures passed during the Regular Legislative Session of 2020 that amend or affect the State tax laws.

## Act 13: Income and Estate Tax Conformity

Act 13 (Senate Bill 2920, S.D. 1, H.D. 1) is effective August 12, 2020 and applies to taxable years beginning and to decedents dying after December 31, 2019. Retroactive amendments to operative Internal Revenue Code (IRC) sections are adopted for Hawaii income tax and estate and generation-skipping transfer tax (estate) tax laws.

Act 13 updates section 235-2.3(a), Hawaii Revised Statutes (HRS), to conform to the operative sections of subtitle A, chapter 1, of the IRC, as amended as of March 27, 2020. March 27, 2020 was chosen to conform to the changes made by the “Coronavirus Aid, Relief, and Economic Security Act” (CARES Act), P.L. 116-36, enacted March 27, 2020. Act 13 also updates section 236E-3, HRS, to conform Hawaii's estate tax to subtitle B of the IRC as amended as of December 31, 2019.

Act 13 also amended section 235-2.3(a), HRS, to adopt several important provisions that were not direct amendments to IRC code sections, including:

- Section 1106(i) of the CARES Act, which excludes forgiveness of Paycheck Protection Program loans from gross income;
- Section 2202(b) of the CARES Act, which increases the amount of non-taxable loans that can be made from retirement plans;
- Section 2205 of the CARES Act, which increases certain charitable contribution limits; and
- The exclusion of the $1,200 federal stimulus payments from gross income for Hawaii income tax purposes.

Act 13 also amended conformity to several IRC sections, including:

- Section 172, which was amended by the CARES Act to allow taxpayers to amend their 2017, 2018, and 2019 returns to deduct amounts of net operating losses (NOL) that were previously disallowed by the “Tax Cuts and Jobs Act of 2017,” (TCJA) P.L. 115-97, enacted December 22, 2017. Act 13 provides that the TCJA restrictions on NOLs are still operative for Hawaii income tax purposes. For more detail on Hawaii’s NOL rules, see section 235-7(d), HRS.

- Section 461, which was amended to allow deductions for excess business losses, which were disallowed by the TCJA. The excess business loss is defined as any deduction in excess of the business's aggregate gross income plus $250,000. Act 13 provides that the excess business loss is still not deductible for Hawaii income tax purposes.
- Section 512(a)(7) provided that the unrelated business taxable income of a charitable organization must be increased by the amount of certain fringe benefit expenses for which a deduction is disallowed. Section 512(a)(7) was added by the TCJA, but was later repealed by the "Further Consolidated Appropriations Act, 2020," P.L. 116-94, enacted December 20, 2019. This repeal does not affect Hawaii income tax because Hawaii did not conform to section 512(a)(7) previously.

**Act 61: Renewable Energy Credit for Commercial Projects**

Act 61 (Senate Bill 2820, S.D.2, H.D.2) is effective December 31, 2019. Act 61 disallows the Renewable Energy Technologies Income Tax Credit for commercial projects of 5 megawatts of total output capacity or greater. The Act also provides multiple exceptions, including for systems subject to a power purchase agreement which receives Public Utilities Commission (PUC) approval or was pending approval before December 31, 2019, and for certain systems integrated with a pumped hydroelectric energy storage system where the requisite approval filings are submitted to the PUC by December 31, 2021. Act 61 also contains a nonsubstantive amendment which specifies that the Department may determine the distribution and share of the credit by administrative rule for pass-through entities.

For more. Information, please contact the Rules Office at (808) 587-1530 or by email at Tax.Rules.Office@hawaii.gov.

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