TAX FOUNDATION
OF HAWAII

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May 18, 2021

The Honorable David Y. Ige
Governor, State of Hawaiʻi
Executive Chambers
State Capitol
Honolulu, HI 96813

Dear Governor Ige:

Re: HB 58, CD1
HB 862, CD1
HB 1041, SD1

We are attaching for your consideration summaries and commentary on the three bills of the 2021 legislative session referred to above.

These three bills are those that, in our judgment, have generated the most questions and commentary among the taxpayer and practitioner communities, and where the Foundation's comments on the bills cannot easily be found by examining the prior testimony on the bills.

If you or your staff has further questions on any of the above measures, we would be happy to make ourselves available for further discussion.

Very truly yours,

Thomas Yamachika
President

Attachments

SUBJECT: GENERAL EXCISE, USE, CONVEYANCE, Omnibus Tax Increase and Suspension of Exemptions

BILL NUMBER: HB 58, CD1

INTRODUCED BY: Conference Committee

EXECUTIVE SUMMARY: From 1/1/2022 through 12/31/2023, temporarily repeals certain general excise tax exemptions. Increases conveyance taxes for the sale of non-commercial properties valued at $4,000,000 or greater.

SYNOPSIS:

General Excise and Use Tax: Suspension of Exemptions

Adds a new section to chapter 237, HRS, that would suspend the following general excise tax exemptions between January l, 2022, and December 31, 2023:

- 237-13(3)(C) - reimbursements received by federal cost-plus contractors for the costs of purchased materials, plant, and equipment;
- 237-13(6)(D) - gross receipts of telecommunications home service providers acting as service carriers for other home service providers;
- 237-16.5 - amounts deducted from the gross income of real property lessees because of receipt from sublessees;
- 237-24(14) - amounts received by sugarcane producers;
- 237-24.5 - amounts received by stock exchanges and exchange members;
- 237-25(a)(1) - gross proceeds from the sale of intoxicating liquor to the United States;
- 237-25(a)(2) - tobacco products and cigarettes to the United States;
- 237-25(a)(3) - Other tangible personal property to the United States (including any agency, instrumentality, or federal credit union thereof but not including national banks) and any state-chartered credit union;
- 237-27.5 - gross proceeds received from the construction, reconstruction, erection, operation, use, maintenance of furnishing of air pollution facilities that do not have valid certificates of exemption on July 1, 2021;
- 237-29.8 - amounts received by telecommunications common carriers from call center operators for interstate or foreign telecommunications services.

Provides for the imposition of a tax of 4% on the previously exempt gross income or gross proceeds of sale between January l, 2022, and December 31, 2023. No county surcharge shall be levied, assessed, or collected on any previously exempt gross income or gross proceeds of sale that is subject to taxation by this measure.

This section shall not be applicable to gross income or gross proceeds from binding written contracts entered into prior to July 1, 2021 that do not permit the passing on of increased rates of tax. Also provides that the tax not be applicable to any gross income or gross proceeds of sale that cannot be legally taxed under the U.S. Constitution or laws of the United States.

Adds a new section to chapter 237, HRS, that requires the director of taxation from January 1, 2022 to require the information reporting on all exclusions or exemptions of all amounts, persons, or transactions under this chapter except for: (1) amounts received that are exempt under HRS section 237-24(1) through (7); and (2) any other amounts, persons, or transactions as determined by the director in the best interest of tax administration and made by official pronouncement.

Adds a new section to chapter 238, HRS, to suspend the following use tax exemptions between January l, 2022, and December 31, 2023:

- 238-3(g) - the use or sale of intoxicating liquor and cigarette and tobacco products imported into the state and sold to any person or common carrier in interstate commerce, whether ocean-going or air, for consumption out-of-state by the person, crew, or passengers on the shipper's vessels or airplanes;
- 238-3(h) - the use of any vessel constructed under HRS section 189-25 prior to July 1, 1969;
- 238-3(k) - the use of any air pollution control facility subject to HRS section 237-27.

Provides for the imposition of a tax of 4% on the previously exempt value of property, services, or contracting between January l, 2022, and December 31, 2023. No county surcharge shall be levied, assessed, or collected on any previously exempt value of property, services, or contracting that is subject to taxation by this measure.

This section shall not be applicable to the value of property, services, or contracting from binding written contracts entered into prior to July 1, 2021 that do not permit the passing on of increased rates of tax. Also provides that the tax not be applicable to any gross income or gross proceeds of sale that cannot be legally taxed under the U.S. Constitution.

If so determined, requires the director of taxation to: (1) exempt or exclude the property, services, or contracting or the use of the property, services, or contracting, from the tax; or (2) apportion the gross value of services or contracting sold to customers within the state by persons engaged in business both within and without the state to determine the value of that portion of the services or contracting that is subject to taxation under HRS chapter 237 for the purposes of section 237-21.

Adds a new section to chapter 238, HRS, that requires the director of taxation from January l, 2022 to require information reporting on all exclusions or exemptions of all amounts, persons, or transactions under the use tax, except for any amounts, persons, or transactions as determined by the director in the best interest of tax administration and made by official pronouncement.

Conveyance Tax: Rate Increases

SYNOPSIS: Amends section 247-2, HRS, to raise the conveyance tax rates for a condominium or single-family residence for which the purchaser is ineligible for a county homeowner's exemption on real property tax:

Minimum Property Value	Current Tax (per $100 of consideration)	New Tax (per $100 of consideration)
$0	$ 0.15	$ 0.15
$600,000	0.25	0.25
$1,000,000	0.40	0.40
$2,000,000	0.60	0.60
$4,000,000	0.85	**1.70**
$6,000,000	1.10	**3.30**
$10,000,000	1.25	**5.00**

Establishes a classification for "commercial properties," defined as property classified as commercial for county real property tax purposes. These properties would see no change in conveyance taxes. The third classification, all other real property transfers, would see an increase:

Minimum Property Value	Current Tax (per $100 of consideration)	New Tax (per $100 of consideration)
$0	$ 0.10	$ 0.10
$600,000	0.20	0.20
$1,000,000	0.30	0.30
$2,000,000	0.50	0.50
$4,000,000	0.70	**1.40**
$6,000,000	0.90	**2.70**
$10,000,000	1.00	**4.00**

EFFECTIVE DATE: 7/1/2050.

STAFF COMMENTS:

General Remarks

First and foremost, we question the need for this tax increase. When the conference draft of the budget bill, HB 200, was agreed to, legislative leaders touted their ability to deliver a balanced budget using the aid provided by the federal government and without relying on layoffs, furloughs, or tax increases.

Later statements attributed to legislative leaders in the media called for the tax increases in this bill to replenish the Rainy Day Fund, depleted during the course of the pandemic. Other statements mentioned that they thought it was appropriate for the business community to come up with the additional contribution in light of the legislative grace shown in paying down the

$700 million in federal debt incurred to keep the unemployment tax system afloat – debt that, so they said, was rightfully the responsibility of the business community in the first place.

We question the need to replenish the Rainy Day Fund with tax increases so soon. The premise behind such a fund is that it is used for urgent needs and then built up when the needs no longer exist. As of this writing, a Governor's Proclamation utilizing emergency powers is still in force; travel restrictions, restrictions on gathering, and mask-wearing mandates are still in effect; and the Health Department is reporting 78 average daily new cases of COVID-19. The sun is peeking out on the horizon but the rain hasn't stopped.

We then challenge the premise that the federal unemployment tax debt is solely the responsibility of employers. Businesses shut down by government order couldn't afford to hang on to all of their employees; some couldn't afford to hang on at all. There were not just furloughs; there were layoffs and business closures. Certainly an action of an employer is needed to lay off or shut down a business, but some of the employers' hands were forced by government action, justified in the name of public health. Federal law also is not consistent with this proposition. Under federal law, any interest required to be paid on the federal debt, called "title XII advances," can't be passed on to employers, directly or indirectly. Internal Revenue Code § 3304(a)(17); Congressional Research Service, "The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States," https://crsreports.congress.gov/product/pdf/RS/-RS22954, p. 8.

I called this bill the Enola Gay Frankenbill. You might remember from the history books that Enola Gay was the name of the aircraft that dropped the first atomic bomb on the City of Hiroshima in World War II. Here, of course, the bill's destination isn't Japan; it's the pocketbooks of us the taxpayers.

The general excise and conveyance tax increases come from SB56, which tried to justify the increases there proposed by saying that we are in a pandemic and state government needs " to generate revenue to allow the State to meet its strategic goals, avoid furloughs and layoffs for state workers, and prevent disruptions to essential government services." The House apparently did not buy in to this rationale, as SB56 received the chilliest of receptions in the House, meriting a rare quadruple referral after which no House committee even heard the bill.

The pandemic has taken its toll. Jobs outside of the public sector that are rapidly disappearing because businesses big and small can't make ends meet. In the private sector we are not simply talking about salary reductions and furloughs. Those are happening too, but we are seeing layoffs and business closures. People who suffer salary reductions and furloughs still have jobs. Layoffs and business closures aren't easily reversible. So we know that some of those jobs and businesses won't be coming back soon.

Data from the Census Bureau show what we have suspected all along, that our population is going down. A press release from the Census Bureau on Dec. 30, 2019 states that only ten states lost population between 2018 and 2019, and Hawaii made the list. (https://www.census.gov/–newsroom/press-releases/2019/popest-nation.html).

When people are squeezed economically by the cost of living, taxes, and inefficient bureaucracy, they can and do vote with their feet – by getting on planes, for example. To what lengths will we go to chase people out of our state?

Will this Enola Gay drop the bomb on an economy already reeling from the pandemic? We need to do everything we can to restart economic activity, and not make it more difficult by heightening the tax burdens associated with that activity.

General Excise and Use Tax: Suspension of Exemptions

This measure proposes to suspend the selected general excise and use tax exemptions and provides that the amount of the exempt income shall be taxed at the rate of 4% temporarily between January l, 2022, and December 31, 2023. The apparent intent is to mirror Act 105, SLH 2011, which did the same thing between July 1, 2011 and June 30, 2013.

This year, however, lobbyists were ready to fight for exemptions their clients were interested in and were successful in whittling the list of suspended exemptions from 31 (which were in the original list in Senate Bill 56) to a mere 11. Some of the exemptions left will have little financial impact. For others, the financial impact won't be visible to the public because only a handful of taxpayers qualify for the exemption and the Department of Taxation won't release information about those exemptions to preserve taxpayer confidentiality. We consider the following two as significant exemption suspensions.

Sales to the Federal Government. Because the federal government can import whatever they need free of Hawaii use tax and/or GET, local sellers seeking to sell to the federal government (including military exchanges and commissaries) would be at a disadvantage if they had to pay 4% on their sales while their out-of-state competitors didn't. That's part of the science behind why the exemption was enacted. So, the big losers here are local companies trying to get Uncle Sam to buy their products or stock them for resale in the commissaries and exchanges.

In 2018, the amount of business to which this exemption applied was nearly $1.4 billion, leading to a GET exemption of a little more than $49 million.

Sublease deduction. In Hawaii, lots of land is leased. Large landowners in the days of the Kingdom of Hawaii carried their holdings over to the State of Hawaii, and because they didn't want to part with their land, they leased it instead. Lessees, especially of larger tracts of land developed into shopping malls, for example, subleased their land to stores. Larger stores could sublease part of their space to smaller stores, and so forth. The problem is that 4% GET was payable on every lease and sublease, which started to add up quickly if there were more than a couple of lease tiers. So, in 1997 our lawmakers enacted the sublease deduction, which allowed a person who both received and paid lease rent to deduct 87.5% of rent paid. This deduction was meant to mimic the wholesale-retail rate economics where wholesalers were allowed a 0.5% rate when their customers resold their products and paid 4% retail rate GET when they did.

The Auditor estimated that this deduction caused an annual revenue loss of about $6.8 million based on 2018 numbers.

The big losers would be the smaller stores who rent from larger stores who rent from people up the food chain. There will be lots more tax payable up and down the chain, and the tax is usually passed on down to the lessees who are occupying the space. Look for retail prices of the goods sold by those stores to increase as a result.

The Conference Report accompanying this bill said that the changes in the bill were partly to address inequities in the taxing system. That would not seem to apply to the GET changes. Rather, lawmakers started with a list of 31 exemptions in Senate Bill 56, and whittled them down to 11. Many of the 20 exemptions that escaped suspension were due to key constituents or affected businesses expressing opposition. The result is a carpet-bombing of random sectors of the economy at a time when everyone is struggling to survive.

Many of the exemptions exist because if the general excise or use tax were imposed on these entities or transactions it would impose an undue burden or cause businesses to structure transactions in an inefficient manner. There are those exemptions that exist because to tax the transaction would be a violation of superior law or may be deemed unconstitutional. Other deductions, exclusions and exemptions exist because they help to reduce the pyramiding effect of the general excise tax. Undoing these exemptions will not only result in the increase in the cost of doing business in Hawaii, but may create inequitable taxing situations that were addressed by the specific general excise tax exemption.

While this measure is proposed to extract additional revenues to address the state's fiscal crisis, it should be remembered that the adoption of measures like this that temporarily propose a "tax increase" on certain transactions, will not be effective unless government expenditures are also curtailed. If taxes increase and spending rises, little or no net gain is achieved – and we are starting this year in a deficit.

Elimination of many of these exemptions or exclusions would come at a bad time as the state's economy struggles to come back from the devastation caused by the COVID-19 pandemic. recession. Adding to the cost of doing business and living in Hawaii will stall economic recovery, prolonging the downturn in state revenues.

As Hawaii families have tightened their collective belts during these difficult times, so should federal state, and county governments. Before adding additional burdens to Hawaii's overburdened taxpayers, both businesses and individuals, state policymakers need to put all programs and services on the table and decide which are really "core" services and which are "nice to have" and then rearrange the allocation of resources so that it is only the "core" services that are funded.

Finally, we note the distinct probability that these tax increases will be used to fund collective bargaining increases, as this measure, like any across the board tax increase, would motivate the government employee unions to demand, and mediators or arbitrators to award, substantial (or more substantial) wage and salary increases. This would certainly be unfair to a larger group of taxpayers who have suffered not only furloughs or pay reductions, but layoffs and business closures, starting from the pandemic and which would be exacerbated by the tax increases in this bill.

That said, this measure underscores the depth and breadth of the financial crisis that the state faces. Unless elected officials rein in the size and cost of running government in Hawaii, such desperate measures, as this bill represents, may have to be adopted and in doing so will destroy the economic base of the state. This is not a compromise situation but an either/or situation: either expenditures are right-sized or the state's economy is destined for collapse. If lawmakers believe that their only alternative is to raise more revenues, it is less than honest to implement that belief by suspending exemptions and making the general excise and use taxes more expensive indirectly; the cost of these revenue enhancements will be regressive, and hidden from the public at large, who instead may blame the businesses who must recover the cost of the additional tax in the shelf price of their goods and services.

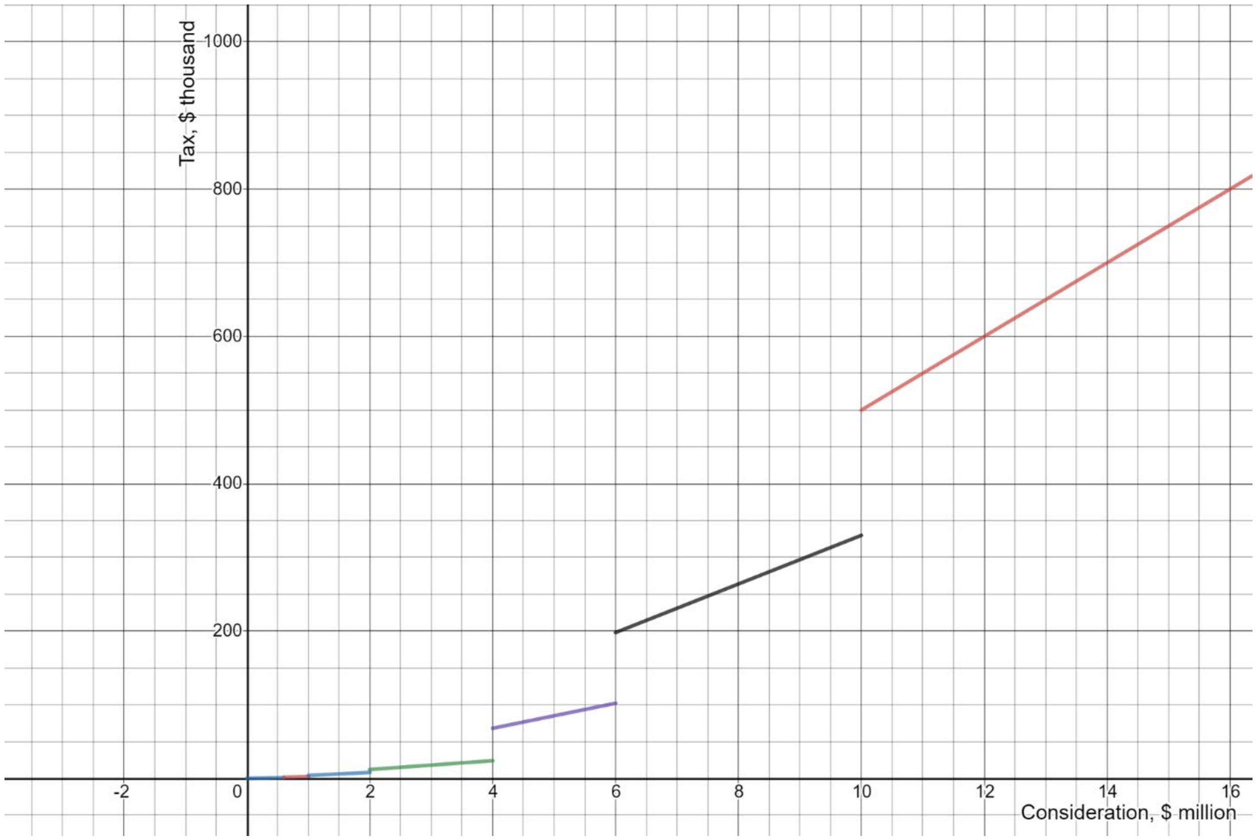
Conveyance Tax: Rate Increases

The conveyance tax was enacted by the 1966 legislature after the repeal of the federal law requiring stamps for transfers of real property. It was enacted for the sole purpose of providing the department of taxation (which at the time also administered the real property tax) with additional data for the determination of market value of properties transferred. This information was also to assist the department in establishing real property assessed values and at that time the department stated that the conveyance tax was not intended to be a revenue raising device.

Prior to 1993, the conveyance tax was imposed at the rate of 5 cents per $100 of actual and full consideration paid for a transfer of property. At the time all revenues from the tax went to the general fund. The legislature by Act 195, SLH 1993, increased the conveyance tax to 10 cents per $100 and earmarked 25% of the tax to the rental housing trust fund and another 25% to the natural area reserve fund. Because of legislation in 2005 and in 2009, the conveyance tax rates were substantially increased and bifurcated between nonowner-occupied residential properties and all other properties. Tax brackets were based on the amount of the value transferred.

This bill proposes to raise conveyance tax rates yet again, and in dramatic fashion once property values exceed a certain amount.

There are two points lawmakers may wish to consider. First, the proposed new brackets have discontinuities at the bracket break points, which means that if taxable income increases by $1 at a break point, such as from $9,999,999 to $10,000,001, the increase in tax will be substantially more than $1. In this example the tax would go from $330,000 to $500,000. Substantial discontinuities such as these may motivate behavior for taxpayers near a break point. This behavior might not be desirable from an economic standpoint. Note that the tax brackets for the other graduated tax Hawaii has, the net income tax, are structured so that they do not have this problem.



Next, the new conveyance tax rate schedule for "commercial" properties is clearly underinclusive. The apparent intent was for residential properties selling for enhanced amounts to be exposed to large conveyance tax rates, on the assumption that a filthy rich person ripe for the fleecing is on one or the other end. But there are many real property tax classifications that are not residential, and commercial classification is only one of them. See https://www.real-propertyhonolulu.com/media/1723/ratesfy21.pdf, which is a report showing all real property classifications in the various counties. Specifically, the "commercial" classification does not include agricultural, hotel and resort, industrial, preservation/conservation, and public service. Thus, the tax applicable to the sale of such properties will be the tax on non-commercial properties.

Digested 5/18/2021

SUBJECT: TRANSIENT ACCOMMODATIONS, County Surcharge on TAT

BILL NUMBER: HB 862, CD1

INTRODUCED BY: Conference Committee

EXECUTIVE SUMMARY: Our comments are limited to that part of the bill that repeals the distribution of transit accommodations tax revenues to the counties and authorizes each county to impose a surcharge on transient accommodations tax.

SYNOPSIS: Part III of the bill adds a new section to chapter 46, HRS, to authorize counties to adopt a surcharge on TAT by ordinance:

Adds a new section to chapter 237D, HRS, providing for the surcharge, and limiting the surcharge to 3% of taxable gross rental, gross rental proceeds, and fair market rental value. States that all provisions of the TAT law apply to the surcharge.

Part IV of the bill amends section 87A-42, HRS, to delete the language mandating sequestration of the county's share of TAT moneys if the county has not made its required contributions toward Other Post-Employment Benefits for public workers such as pensions (ERS) and health benefits (EUTF).

Part V amends section 237D-6.5, HRS, to, among other things. delete the current provision earmarking $103 million annually to the counties.

Makes other technical and conforming amendments.

EFFECTIVE DATE: 7/1/2021.

STAFF COMMENTS: In law prior to 2009, the TAT was levied at the rate of 7.25% on most transient accommodations. Once collected, 44.8% of the tax, after satisfying specified earmarks, was distributed to the counties. Act 61, SLH 2009, increased the TAT rate to 8.25% between 7/1/09 and 6/30/10 and to 9.25% between 7/1/10 to 6/30/15. Act 161, SLH 2013, made permanent the TAT rate of 9.25% and changed the allocations of TAT from a percentage basis to a specific dollar amount.

After the counties complained about their allocations, Act 174, SLH 2014, required a state-county functions working group to be convened to evaluate the division of duties and responsibilities between the State and counties relating to the provision of public services and to recommend an appropriate allocation of the transient accommodations tax revenues between the State and counties that properly reflects the division of duties and responsibilities relating to the provision of public services. The working group met and issued a report to the 2015 legislature, recommending that the percentage allocation of the TAT be restored. Bills were drafted to adopt that recommendation. The bills did not pass. After some years of going back and forth, Gov. Ige in 2019 announced that his administration would submit a bill to restore some form of percentage allocation to the counties. That bill, BUF-21 (19), failed to pass.

The current bill presents one way to end the bickering. "Stop complaining about the amount allocated to you from the TAT," the bill's proponents seem to be saying, "because we'll give you the authority to impose TAT on your own."

The apparent intended consequences of the bill are to require the counties to increase the TAT or other taxes, after the State keeps the entire $103 million previously shared with the counties. We are concerned that taxes would then go up while our State's economy is still reeling from the effects of the COVID-19 pandemic and the conditions meriting an Emergency Proclamation by the governor's office still exist.

This bill may also have unintended consequences.

Unlike the GET surcharge, this bill does not provide for collection of the surcharge and distribution to the counties. The counties are purely on their own and would be expected to come up with their own infrastructure, forms, reporting, and enforcement, largely duplicating with the Department of Taxation already provides. This does not seem to be an efficient use of resources.

Furthermore, the bill removes an important means to ensure funding of government's OPEB (other post-employment benefits) and pension obligations to former employees. Legislation passed in 2013 provided that if public employers failed to make their required contributions to ERS and/or EUTF, then the GET (for the state) or the TAT (for the counties) would be sequestered until the contributions are made. This bill removes the TAT distribution to the counties and ends the possibility of TAT sequestration, which when coupled with loss of TAT funding gives the counties financial motivation to suspend or terminate funding of OPEB and pension benefits that they already have committed to.

Digested 5/18/2021

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII
126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, ESTATE, Conformity to Internal Revenue Code

BILL NUMBER: HB 1041, SD1

INTRODUCED BY: Senate Committee on Ways & Means

EXECUTIVE SUMMARY: Conforms Hawaii income and estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of December 31, 2020. We think the bill as now drafted represents a reasonable conformity position given the revenue cost of conforming to the provisions that are proposed to be decoupled.

SYNOPSIS: Amends HRS section 235-2.3(a) by changing the date references to make the Internal Revenue Code (IRC) applicable for state income tax purposes as it was amended on 12/31/20 for tax years beginning after 12/31/20. Also adds a paragraph, recommended by the Department of Taxation, to conform selectively to certain portions of the Consolidated Appropriations Act (CAA), Pub. L. No. 116-260:

Conforms to:

1. Exclusion of PPP loan forgiveness from income.

2. Exclusion of EIDL Grants from income.

3. Exclusion from income of payments made by Government to small business lenders on certain small business loans.

4. Exclusion of certain small business grants (sec. 324 of CAA) from income. These grants are provided to businesses such as live music and entertainment venues and movie theatres.

5. Exclusion of the second recovery rebates ($600 stimulus checks) from income.

6. Exclusion of emergency financial aid grants received by students from income (does not apply to grants for which teaching, research, or services are required).

7. Extension of the increase the charitable deduction for food inventory to apply to contributions made through 2021.

8. Adoption of assorted disaster and retirement plan administration changes.

Does not conform to:

1. Allowance of deductions for expenses paid with proceeds of forgiven PPP loans for which the forgiven amounts were excluded from income.

2. Allowance of deductions for expenses paid with grant proceeds and other forgiven loan amounts that were excluded from income.

3. Allowance of partnerships and S corporations to treat excluded forgiven loan proceeds and grant proceeds as tax-exempt income.

Amends HRS section 236E-3 by changing the date references to make the IRC applicable for state estate and generation-skipping tax purposes as it was amended on 12/31/20 for tax years beginning after 12/31/20.

EFFECTIVE DATE: The income tax provisions are effective to taxable years beginning after December 31, 2020; the estate and generation-skipping tax provisions apply to decedents dying or taxable transfers occurring after December 31, 2020.

STAFF COMMENTS: This was the annual conformity measure submitted by the department of taxation TAX-01 (21) in compliance with HRS section 235-2.5 which requires the department to annually submit a measure to maintain state income tax conformity with the federal Internal Revenue Code, and in compliance with HRS section 236E-4 which requires the department to annually submit a measure to maintain state estate and generation-skipping tax conformity with the federal Internal Revenue Code.

The purpose of conformity is to update the state tax laws with those changes made to the federal Code during the past year and to adopt those changes that are appropriate for Hawaii law.

Two of the proposed area of nonconformity that have generated the most questions and discussion are these:

1. *State Taxation of Unemployment Benefits.* Sec. 9042 of the American Rescue Plan Act of 2021, Pub. L. No. 117-2 (amending IRC § 85), provided for the exclusion from income of up to $10,200 in unemployment benefits received in 2020. Unemployment benefits, representing a replacement for wage income, are normally taxable, and the state agency paying the benefits is required to offer the beneficiary the option to withhold income tax somewhat like withholding of payroll taxes. Although federal legislation enacted in 2021 is normally reviewed in the 2022 legislative session, much attention was paid to this provision this year because it affects 2020 income, and therefore tax returns to be filed in 2021.

2. *State Deductibility of Expenses Connected with Forgiven PPP Loans.* Before the CAA was enacted, the Internal Revenue Service ruled in Rev. Rul. 2020-27, following the general rule in IRC § 265 that expenses allocable to tax-exempt income are not deductible, that the salary or other expenses leading to forgiveness of all or part of a Paycheck Protection Program (PPP) loan are not deductible. The CAA reversed that rule, rendering that ruling obsolete for federal purposes.

Choices had to be made in deciding what portions of the CAA to conform with. To us it is understandable that the legislature chose not to conform to these two issues, given the projected revenue cost of conforming.

Digested 5/16/2021