States Enacts Partial Conformity With CARES Act

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Gov. David Ige (D) has signed legislation that conforms to some provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

S.B. 2920 retroactively conforms Hawaii's income, estate, and generation-skipping transfer tax laws to the Internal Revenue Code as of March 27, 2020, and addresses provisions of the CARES Act. Ige signed the bill into law August 12.

The bill specifies that forgiven Paycheck Protection Program loans, which aren't taxed as income at the federal level, are also not taxed as income at the state level. It also conforms the state's tax rules to the portions of the CARES Act that temporarily increased the size of the tax-free loans qualified individuals can take from their retirement plans and delayed repayment for some loans, as well as suspended the limit on certain deductible charitable contributions for 2020. It also establishes that stimulus payments to individuals won't be taxed as income.

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The Hawaii Department of Taxation backed the legislation. According to Ted Shiraishi, rules officer with the department, those provisions weren't inserted into the federal tax code under the CARES Act, so they had to be specifically referenced in S.B. 2920. "We were in a unique spot where we had to conform to a federal tax provision that's not in the IRC," he told *Tax Notes* August 14.

Notably, increased and expanded federal unemployment compensation allowed by the CARES Act is taxable as income by the state.

The legislation specifically decouples from provisions of the CARES Act that allow businesses' 2018, 2019, and 2020 net operating losses to be carried back five years and allows NOLs from 2018 and 2019 to be carried forward to 2019 and 2020 to offset 100 percent of taxable income.

"Although the CARES Act said [the federal government] would relax those limitations, [Hawaii is] not going to do that," said Tom Yamachika of the Tax Foundation of Hawaii.

The bill also decouples from the CARES Act provision that eliminates for tax years 2018, 2019, and 2020 the excess business loss limitation for noncorporate taxpayers.

The legislation also has some other implications. For example, the CARES Act retroactively fixes a provision in the Tax Cuts and Jobs Act, so that qualified improvement property is treated as 15-year property rather than 39-year property, qualifying it for bonus depreciation. Under S.B. 2920, Hawaii conforms to that change as well. Although the state doesn't conform to the federal government's bonus depreciation rules, Shiraishi said business owners — such as restaurants that make improvements to their facilities — will benefit from the conformity at the state level.

The legislation also eliminates language in the state tax code that specifically decoupled from a now-repealed part of the IRC that required nonprofits to pay taxes on parking and transportation-related fringe benefits for employees. Hawaii decoupled from that provision in 2019 and Congress later that year repealed it.