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HOUSE COMMITTEE ON FINANCE

TESTIMONY OF THE DEPARTMENT OF TAXATION REGARDING HB 1089 RELATING TO CONFORMITY TO THE INTERNAL REVENUE CODE

TESTIFIER: FREDERICK D. PABLO, INTERIM DIRECTOR OF
TAXATION (OR DESIGNEE)
COMMITTEE: FIN
DATE: FEBRUARY 15, 2011
TIME: 3:30PM
POSITION: SUPPORT

This measure is the annual bill to update the Hawaii income tax law to conform to changes to the Internal Revenue Code that occurred in calendar year 2010.

The Department of Taxation (Department) **supports** this bill to continue in conformity with the Internal Revenue Code.

CONTINUING ANALYSIS—The Department is still analyzing all of the federal legislation that made changes to the Internal Revenue Code and the bill will need to be updated to provide for specific provisions of non-conformity, for example, by updating the provisions relating to section 179 to reflect not conforming to the extension of the increased section 179 amounts and thresholds.

The following federal legislation contains tax provisions that need to be analyzed to determine whether Hawaii should conform to the enacted Internal Revenue Code changes:

1. To Accelerate the Income Tax Benefits for Charitable Cash Contributions for the Relief of the Victims of the Earthquake in Haiti (P.L. 111-126) enacted January 22, 2010;
2. Temporary Extension Act of 2010 (P.L. 111-144) enacted on March 2, 2010;
3. Hiring Incentives to Restore Employment Act ("HIRE") (P.L. 111-147) enacted on March 18, 2010;
4. Patient Protection and Affordable Care Act (P.L. 111-148) enacted on March 23, 2010;
5. Health Care and Education Reconciliation Act of 2010 (P.L. 111-152) enacted on March 23, 2010;
6. Federal Aviation Administration Extension Act of 2010 (P.L. 111-153) enacted on March 25, 2010;
7. Continuing Extension Act of 2010 (P.L. 111-157) enacted on April 15, 2010;
8. Airport and Airway Extension Act of 2010 (P.L. 111-161) enacted on April 28, 2010;
9. Haiti Economic Lift Program Act of 2010 (P.L. 111-171) enacted on May 24, 2010;
10. To Clarify the Health Care provided by the Secretary of Veterans Affairs that Constitute Minimum Essential Coverage (P.L. 111-173) enacted on May 27, 2010;
11. Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (P.L. 111-192) enacted on June 25, 2010;
12. Airport and Airway Extension Act of 2010, Part II (P.L. 111-197) enacted on June 29, 2010;
13. Homebuyer Assistance and Improvement Act of 2010 (P.L. 111-198) enacted on July 2, 2010;

14. Dodd-Frank Wall Street Reform and Consumer Protection Act (P.L. 111-203) enacted on July 21, 2010;
15. Unemployment Compensation Extension Act of 2010 (P.L. 111-205) enacted on July 22, 2010;
16. 2010 Burmese Import Restrictions Act (P.L. 111-210) enacted on July 27, 2010;
17. Airline Safety and Federal Aviation Administration Extension Act of 2010 (P.L. 111-216) enacted on August 1, 2010;
18. Education Jobs and Medicaid Assistance Act (P.L. 111-226) enacted on August 10, 2010;
19. United States Manufacturing Enhancement Act of 2010 (P.L. 111-227) enacted on August 11, 2010;
20. Firearms Excise Tax Improvement Act of 2010 (P.L. 111-237) enacted on August 16, 2010;
21. Small Business Jobs Act of 2010 (P.L. 111-240) enacted on September 27, 2010;
22. Airport and Airway Extension Act of 2010, Part III (P.L. 111-249) enacted on September 23, 2010;
23. Plain Writing Act of 2010 (P.L. 111-274) enacted on October 13, 2010;
24. The Claims Resettlement Act of 2010 (P.L. 111-291) enacted on December 8, 2010;
25. Medicare and Medicaid Extenders Act of 2010 (P.L. 111-309) enacted on December 9, 2010;
26. Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) enacted on December 17, 2010;
27. Surface Transportation Extension Act of 2010, Part II (P.L. 111-322) enacted on December 22, 2010;

28. Regulated Investment Company Modernization Act of 2010 (P.L. 111-325) enacted on December 22, 2010;
29. Airport and Airway Extension Act of 2010, Part IV (P.L. 111-329) enacted on December 22, 2010;
30. Omnibus Trade Act of 2010 (P.L. 111-344) enacted on December 29, 2010.

REVENUE LOSS & METHODOLOGY—The Department is still analyzing the amount of revenue loss from conforming to the 2010 changes to the Internal Revenue Code and will update the Committee as soon as this information becomes available.

TAXBILLSERVICE

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SUBJECT: INCOME, Conformity to federal code

BILL NUMBER: SB 1316; HB 1089 (Identical)

INTRODUCED BY: SB by Tsustui by request; HB by Say by request

BRIEF SUMMARY: 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 12/31/10 for tax years beginning after 12/31/10.

EFFECTIVE DATE: Upon approval

STAFF COMMENTS: This is the annual conformity measure submitted by the department of taxation TAX-01 (11) 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. The purpose of conformity is to update the state income tax laws with respect to the definition of income with those changes made to the federal Code during the past year and to adopt those changes that are appropriate for Hawaii law.

For those unfamiliar with the operation of the conformity statute, the federal Code is adopted by exception, that is Chapter 1 of subtitle A of the Internal Revenue Code is adopted with the exception of the various Code sections listed in HRS section 235-2.3. Thus, if the Code section is not listed there, it is operative for state income tax purposes. In some cases, Code sections are operative with certain limitations as noted in HRS sections 235-2.4 and 2.45 where provisions like the standard deduction are operative, but the state law inserts different amounts for state income tax purposes. Prior to the adoption of the current statute in 1978, changes to the federal Code were adopted by referencing the specific Public Laws of the various sessions of Congress that made those changes. This was a tedious and cumbersome way to adopt the changes to the federal Code as one had to have the specific Public Law in order to understand how a certain tax provision applied for state income tax purposes.

The **major** federal tax laws from which the provisions are adopted include: (1) The Hiring Incentives to Restore Employment Act (HIRE), (PL 111-147, enacted March 18, 2010); (2) Small Business Jobs Act of 2010 (PL 111-240, enacted September 27, 2010) and (3) Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (PL 111-312, enacted December 17, 2010).

It should be noted that a number of Code amendments in the last few years focused on incentives to help jump start the economy with a variety of tax credits. Generally, Hawaii does not adopt these tax credits for state income tax purposes as these credits are a direct reduction of tax liability. Since federal tax rates are higher than state income tax rates, these credits are usually much more generous than what Hawaii can afford. This version of the bill is a short form proposal with specific amendments to be forthcoming from the department of taxation.

Digested 2/2/11