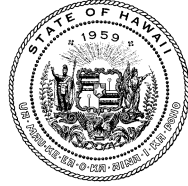


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To: The Honorable Donovan M. Dela Cruz, Chair;
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair;
and Members of the Senate Committee on Ways and Means

Date: Tuesday, February 4, 2020
Time: 10:30 A.M.
Place: Conference Room 211, State Capitol

From: Rona M. Suzuki, Director
Department of Taxation

Re: S.B. 2920, Relating to Conformity to the Internal Revenue Code

The Department of Taxation (Department) strongly supports S.B. 2920.

S.B. 2920 conforms Hawaii's income and estate and generation-skipping transfer taxes to the Internal Revenue Code (IRC) as of December 31, 2019. Hawaii Revised Statutes (HRS) sections 235-2.3(c) and 236E-4 require the Department to submit legislation to each regular session of the legislature to adopt the IRC as it exists on the December 31 preceding the regular session.

S.B. 2920 amends HRS section 235-2.3(a) to conform the Hawaii income tax law to the operative IRC sections of subtitle A, chapter 1, as amended as of December 31, 2019. Subtitle A, chapter 1, refers to IRC sections 1-1400Z-2. S.B. 2920 also amends HRS section 236E-3 to conform the Hawaii estate and generation-skipping transfer tax law to the operative IRC sections of subtitle B, as amended as of December 31, 2019. Generally, subtitle B contains the estate tax provisions and consists of IRC sections 2001-2801.

In addition to the formal changes above, S.B. 2920 makes one technical nonsubstantive amendment to conformity. S.B. 2920 amends HRS section 235-2.4(ee) to remove the reference to IRC section 512(a)(7). This reference was added to HRS section 235-2.4(ee) in 2019 in response to the Tax Cuts and Jobs Act. However, the "Further Consolidated Appropriations Act, 2020," P. L. 116-94, enacted December 20, 2019 repealed IRC section 512(a)(7). Therefore, the Department recommends the reference to this provision be repealed. The change will have no substantive effect on any taxpayer.

Finally, in addition to P.L. 116-94, addressed above, the Department reviewed the following tax measures enacted by the United States Congress during 2019 and determined no changes to conformity were necessary:

1. "Taxpayer First Act," P.L. 116-25, enacted July 1, 2019.
2. "Continuing Appropriations Act, 2020, and Health Extenders Act of 2019," P.L. 116-59,

enacted September 27, 2019.

3. “Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019,” P.L. 116-69, enacted November 21, 2019.
4. “Fostering Undergraduate Talent by Unlocking Resources for Education Act,” P.L. 116-91, enacted December 19, 2019.
5. “National Defense Authorization Act for Fiscal Year 2020,” P.L. 116-92, enacted December 20, 2019.

Thank you for the opportunity to provide testimony in support of this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, Conformity to the Internal Revenue Code

BILL NUMBER: SB 2920; HB 2364

INTRODUCED BY: SB by KOUCHI by request; HB by SAIKI by request

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, 2019. Removes the State's decoupling to IRC 512(a)(7), which has been repealed retroactively.

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 12/31/19 for tax years beginning after 12/31/19. 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 12/31/19 for tax years beginning after 12/31/19.

Amends HRS section 235-2.4(ee) to remove the provision decoupling from federal treatment of IRC section 512(a)(7).

EFFECTIVE DATE: Taxable years beginning after December 31, 2019; decedents dying or taxable transfers occurring after December 31, 2019.

STAFF COMMENTS: This is the annual conformity measure submitted by the department of taxation TAX-01 (20) 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.

Removal of decoupling from IRC 512(a)(7), the provision that required nonprofits to pay unrelated business income tax on the value of parking benefits given to their workers, is of no consequence because the federal provision was repealed retroactively by Division Q, sec. 302, of Pub. L. No. 116-94, and no longer exists.

Digested 1/30/2020