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To: The Honorable Sylvia Luke, Chair;
The Honorable Kyle T. Yamashita, Vice Chair;
and Members of the House Committee on Finance

From: Isaac W. Choy, Director
Department of Taxation

Date: Monday, April 4, 2022
Time: 1:30 P.M.
Place: Via Video Conference, State Capitol

Re: S.B. 3143, Relating to Conformity to the Internal Revenue Code

The Department of Taxation (Department) strongly supports S.B. 3143, an Administration measure, and offers the following comments for your consideration.

S.B. 3143 conforms Hawaii's income and estate and generation-skipping transfer taxes to the Internal Revenue Code (IRC) as of December 31, 2021. 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. 3143 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, 2021. Subtitle A, chapter 1, refers to IRC sections 1-1400A-2. S.B. 3143 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, 2021. Generally, subtitle B contains the estate tax provisions and consists of IRC sections 2001-2801.

S.B. 3143, as currently written, addresses the IRC amendments made *after* the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and the Consolidated Appropriations Act, 2021 (Second CARES Act). Conformity to the federal tax changes in the CARES Act and Second CARES Act were addressed in Act 13, Session Laws of Hawaii (SLH) 2020, and Act 89, SLH 2021, respectively.

On March 11, 2021, the American Rescue Plan Act of 2021, P. L. 117-2 (ARPA), became law. This Act made numerous changes to the IRC relevant to Hawaii income tax. Below is a description of the provisions the Department recommends be adopted for purposes of

Hawaii income tax law. These provisions are included in the current draft of S.B. 3143 as follows.

1. Tax treatment of Economic Injury Disaster Loan (EIDL) advances.

Explanation: The Department supports excluding EIDL Grants and advances from income because these grants are akin to the forgivable loans provided under the Paycheck Protection Program (PPP loans). EIDL Grants and advances are available for a wider variety of uses than were PPP loans, such as working capital, continuing health care benefits, etc.

Hawaii conformed to this treatment of EIDL Grants and advances through Act 89, SLH 2021. Therefore, conforming to this is not a change in policy. ARPA largely restates the exclusion included in the Second CARES Act, the Department recommends conforming to the restatement to ensure consistency with the federal treatment.

2. Tax treatment of restaurant revitalization grants.

Explanation: The Department supports excluding these grants from income for the reasons provided above for the EIDL Grants and advances. These grants are provided under Section 5003 of ARPA, which creates new program for supporting restaurants affected by the COVID-19 pandemic. These grants are akin to the PPP loans and grant support for affected businesses. The Department recommends conforming to the tax-free treatment of these grants.

3. Exclusion of the third recovery rebates (\$1,400 stimulus checks) from income.

Explanation: ARPA provided for a third recovery rebate that was similarly excluded from income. Hawaii conformed to the exclusion from income of the first and second recovery rebates. The Department recommends excluding the third recovery rebates from income.

In addition, the Department recommends amending conformity to section 2202(a) of the CARES Act to correct an oversight made when conforming to the CARES Act through Act 13, SLH 2020. The CARES Act allowed taxpayers to withdraw additional amounts from retirement plans, which Hawaii conformed to. However, the CARES Act also provided that taxpayers could exclude the withdrawn amounts from taxation by repaying the amounts to a retirement plan over three taxable years. Hawaii did not conform to this provision in 2020.

The Department believes this provision should have been conformed to in order to maintain consistency with federal income tax law. The language needed to conform to this provision retroactively to 2020, is contained on page 3, lines 8-11, of the current draft.

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

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, ESTATE, Conformity to Internal Revenue Code

BILL NUMBER: SB 3143

INTRODUCED BY: SB by KOUCHI by request (Governor's Package)

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, 2021.

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 12/31/21 for tax years beginning after 12/31/21. 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 12/31/21 for tax years beginning after 12/31/21.

Also contains language stating that sections 9672(1) (relating to tax treatment of targeted EIDL advances) and 9673(1) (relating to tax treatment of restaurant revitalization grants) of Public Law 117-2 shall be operative for Hawaii purposes, and that no amount received under section 9601 (relating to 2021 recovery rebates to individuals) of Public Law 117-2 shall be included in gross income for Hawaii purposes.

EFFECTIVE DATE: The income tax provisions are effective to taxable years beginning after December 31, 2021; the estate and generation-skipping tax provisions apply to decedents dying or taxable transfers occurring after December 31, 2021. Conformity to section 2202(a) of Public Law 116-136 applies to taxable years beginning after December 31, 2019.

STAFF COMMENTS: This is the annual conformity measure submitted by the department of taxation TAX-01 (22) 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.

This bill expressly conforms to section 2202(a) of the 2020 CARES Act, which allows for a coronavirus-related distribution out of a tax-advantaged retirement plan (such as an IRA) up to \$100,000 and repayment of the distribution over three years. DOTAX missed the provision in last year's conformity bill. Conformity is retroactive to 2020, creating an opportunity to amend returns in which Hawaii tax was paid on such a distribution.

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The current bill also conforms to the federal income exclusion for Restaurant Revitalization Fund (RRF) grants. Associated deductions will be disallowed, unlike federal treatment. The Department has indicated that the grant will be subject to GET.

Digested: 3/17/2022