



CERTIFIED PUBLIC ACCOUNTANTS

Hawaii Tax News Flash

In This Acuity Update:

- Act 221 Deferral Bill Vetoed by Acting Governor Aiona
- GET Trust Fund Bill Signed Into Law
- HSCPA Organizing Practitioners' State Tax Update for July 27 – Save the Date!

Act 221 Deferral Bill Vetoed by Acting Governor Aiona

STATUS: VETOED, AND LIKELY TO STAY THAT WAY

On June 9th, Lt. Gov. “Duke” Aiona, who is Acting Governor while Gov. Lingle is traveling, vetoed [SB 2401 HD1](#), the controversial measure that would have made previously earned QHTB credits unusable, meaning that the credits could neither be refunded nor used to reduce tax liabilities, for tax years beginning in 2010, 2011, or 2012. In the accompanying veto message, Aiona stated that the bill “negatively impacts Hawaii’s economy and business climate by increasing the uncertainty of doing business in the State...The fact that this bill would change the tax credit rules retroactively, implies people who put capital in Hawaii can no longer trust the State Government to keep its word.” Aiona also observed that several investors and funds had threatened to sue if the measure were enacted, making it questionable whether the revenue projected to be raised by the bill would in fact be realized.

This bill cleared its last vote in the Senate with 14 “Aye” and 11 “Nay” votes. A veto override would require two-thirds, or 17 affirmative votes. Jeff Au, managing director of Pacificap Management, Inc. and a staunch opponent of this bill, stated that he was confident that there were a sufficient number of “No” votes to foil any veto override attempts.

Thus, it appears that this bill will stay dead.

A companion bill, [SB 2001 HD1](#), gives another year of life to the tax credit for research activities, sometimes known as the 20% refundable R&D credit, but in the process would repeal the technology infrastructure renovation tax credit and the high technology business investment tax credit. The repeal would take effect on May 1, 2010 and would not affect credits earned before the effective date, including carryover credits. This bill remains on the Governor's desk awaiting decision.

GET Trust Fund Bill Signed Into Law

STATUS: ACT 155, SESSION LAWS OF HAWAII 2010

[HB 2595 CD1](#), originally sponsored by the Department of Taxation, was signed into law on June 1st. There are two parts to the bill.

One part of the bill would deny the benefit of any lower rate, credit, deduction, or income split, unless the taxpayer files a return within one year after the return is due. That basically means that a taxpayer who was supposed to file a GET return but didn't gets taxed at the full retail rate, period, once a year goes by.

The Senate draft of the bill contained exemptions for tax-exempt charities and certain types of income thought to be nonbusiness in nature. Wages received by an employee, for example, were exempted under the Senate draft. The Conference Committee deleted the exemptions, stating in the committee report that the exemptions were unnecessary, but the committee's reasoning is open to serious question. It remains to be seen whether the Department will feel that it is obliged to enforce the law against charities, wage earners, and others that were exempt under the Senate draft.

The other part of the bill would impose *personal liability* against a "responsible person" in a business that fails to pay the general excise tax, just as the IRS does for businesses that withhold tax from employees and fail to pay that tax over to the government.

The bill specifically takes aim at GET "collected as a recovery of the taxpayer's liability under this chapter, where the amount is passed on as the tax owed by the taxpayer under this chapter for the transaction and is separately stated or accounted for in a receipt, contract, invoice, billing, or other evidence of the business activity," but then goes on to say that even if a taxpayer doesn't attempt to pass on the tax the trust fund concept will apply anyway to an imputed amount, determined by multiplying gross receipts by the tax rate.

HSCPA Organizing Practitioners' State Tax Update for July 27

SAVE THE DATE: JULY 27, 2010, REGISTRATION AT 8:00, PROGRAM 8:30-10:30

The Hawaii Society of CPA's is organizing a Practitioners' State Tax Update, presently scheduled for July 27th at the Ala Moana Hotel in Honolulu. This tax update should take on additional importance this year because the Department of Taxation has cancelled its Tax Workshop that it normally sponsors at about this time of year.

The speakers for this tax update will be long-time tax litigator Ron Heller, former State Tax Director Ray Kamikawa, and Accuity principal Tom Yamachika. Please contact the HSCPA (www.hscpa.org) for further details or to register.

If you have questions about any of these news items, your client service team at Accuity can bring you the resources that you may need.

Please do not hesitate to contact your client service team for more information or Tom Yamachika at (thomas.yamachika@accuityllp.com)



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