



CERTIFIED PUBLIC ACCOUNTANTS

Tax News Flash

In This Acuity Update:

- **First Round of State Tax Bills Gets Signed**

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On Monday, June 14, 2011, the Legislature was officially notified that some significant tax bills were signed into law on June 9. They are summarized in the following discussion.

For the other bills mentioned in our Final Decking Legislative Update, the Governor needs to notify the Legislature by **June 27th** of any intent to veto. If that notice is not given, we know that a bill on his desk will become law, either with or without the Governor's signature.

Acts 41 and 86 – Facility Charge and Weight Tax to be Hoisted

This year, the Department of Transportation submitted bills to hike various fees and taxes.

- **SB 1327** (TRN-13) allows DOT to increase the passenger facility charges – without a public hearing. This bill is now law.
- **SB 1329** (TRN-15) would increase the state motor vehicle tax by 1 cent per pound (typically, cars weigh between 3,000 and 7,000 pounds). This bill takes effect on July 1, 2011.

SB 1327 STATUS: ACT 41, SIGNED MAY 4, 2011

SB 1329 STATUS: ACT 86, SIGNED JUNE 8, 2011

Act 91 – Adoption of Federal Tax Changes – or Lack Thereof

Every year, the Department of Taxation submits, and the Legislature considers, a bill that would adopt some or all of the Federal changes that took place in the past year. This year's adoption is no different. This year's Act (**HB 1089**) enacts nonconformance in these areas:

- Limitation on itemized deductions, sometimes known as the "itemized deduction phaseout" under IRC §68 (Federal removed the phaseout beginning in 2010, State keeps it, but at 2009 threshold levels)
- Itemized deduction for general sales taxes (Federal allows a taxpayer to deduct sales taxes instead of income taxes, State allows a deduction for income taxes only...and won't even allow that – see Act 97 described below)

- Section 179 expensing (State only allows \$25,000, with a phaseout beginning at \$200,000 worth of section 179 property)

HB 1089 STATUS: ACT 91, SIGNED JUNE 9, 2011

Act 97 – Back Door Tax Increase! State Tax Addback Lives; Itemized Deductions Capped

The State tax addback bill has been signed.

SB 570 requires state taxes deductible for Federal purposes to be added back for individuals whose federal adjusted gross income is above certain levels (\$100K single, \$150K head of household, \$200K married filing jointly). Addback is required for all corporations regardless of income level. Although it may not be much consolation, add-back is required by most states.

SB 570 also imposes a hard cap on the amount of itemized deductions that will be allowed (\$25K single, \$32.5K head of household, \$50K married filing jointly) from 2011 through 2015.

Act 97 is effective for tax years beginning after December 31, 2010. Thus, for most taxpayers its effect will be retroactive to January 1, 2011.

SB 570 STATUS: ACT 97, SIGNED JUNE 9, 2011

Act 103 – “Flat Rate” Transient Tax on Comps and Packages

SB 1186 imposes a \$10 per night flat rate transient accommodations tax (TAT) on “every transient accommodation that is furnished on a complimentary or gratuitous basis, or otherwise at no charge, including transient accommodations furnished as part of a package.” This language could be problematic. Could a room be let out at a nominal amount (\$1 a night, perhaps) on which the TAT would be less than ten cents, as opposed to ten dollars? When a hotel operator furnishes transient accommodations as part of a tour package that involved other things, such as a meal and room package, what is the tax now? Under prior law, the operator paid tax on the amount allocated to the accommodations. Under this bill, does a flat rate of \$10 now apply?

Act 103 takes effect on July 1, 2011.

SB 1186 STATUS: ACT 103, SIGNED JUNE 9, 2011

Act 105 – GET Exemptions Get Swatted on July 1: Grandfather Relief May Be Available

SB 754 kills the following exemptions from July 1, 2011, to June 30, 2013. In the following full list, we list the disallowed exemptions in order of their HRS section number; in **bold** are the ones likely to have more widespread application.

- **The deduction by a contractor for amounts paid to a subcontractor (HRS §237-13(3)(B)).**
- The deduction by Federal cost-plus contractors for reimbursed materials, plant, and equipment (HRS §237-13(3)(C)).

- Gross receipts of mobile telecommunications service providers selling to other providers (HRS §237-13(6)(D)).
- **The partial deduction a sublessor gets for lease rent paid for the space subleased (§237-16.5).**
- Gross receipts of a tax-exempt organization for conventions, conferences, trade show exhibits, or display spaces (HRS §237-16.8). The bill takes some pains to emphasize that the tax treatment of other income earned by a tax-exempt organization is not affected.
- Gross receipts of sugar cane producers (HRS §237-24(14)).
- Gross receipts for loading, transportation, and unloading of agricultural commodities shipped interisland (HRS §237-24.3(1)).
- Gross receipts for selling liquor, tobacco products, and food to common carriers engaged in interstate or foreign commerce (HRS §237-24.3(2)).
- Gross receipts from loading or unloading of cargo from watercraft or aircraft (HRS §237-24.3(4)(A)) – BUT stevedoring and related services, as defined in HRS §382-1, furnished to a company by its wholly owned subsidiary continue to be exempt.
- Gross receipts from tugboat and towage services (HRS §237-24.3(4)(B)).
- Gross receipts from transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines (HRS §237-24.3(4)(C)).
- Gross receipts of labor organizations from real property leases (HRS §237-24.3(10)).
- Rent for aircraft or aircraft engines used for interstate air transportation (HRS §237-24.3(12)).
- Gross receipts of stock, bond, and commodity exchanges and exchange members (HRS §237-24.5).
- High technology research and development grants (HRS §237-24.7(10)).
- Gross receipts from servicing and maintenance of aircraft or construction of an aircraft service and maintenance facility (HRS §237-24.9).
- **Sales of tangible personal property to the Federal Government (HRS §237-25).**
- Gross receipts of petroleum product refiners from other refiners (HRS §237-27).
- Gross receipts related to air pollution control facilities (HRS §237-27.5) – UNLESS the facility has a certificate of exemption valid on July 1, 2011.

- Gross proceeds of shipbuilding and ship repair (HRS §237-28.1).
- Receipts of telecommunications common carriers from call center operators for interstate or foreign telecommunications services (HRS §237-29.8).
- **Gross proceeds of qualified activities conducted in enterprise zones (unless already qualified by DBEDT as of July 1, 2011), including gross proceeds of contractors who construct within such zones (HRS §209E-11).**
- Import of aircraft for leasing or use in air transportation (HRS §238-1(6)).
- Import of oceangoing vehicles for use in interisland transportation (HRS §238-1(7)).
- Import of materials, parts, or tools for use in aircraft service or maintenance (HRS §238-1(8)).
- Import of liquor or tobacco products to be sold to a person or common carrier for consumption out of state (HRS §238-3(g)).
- Use of certain vessels constructed prior to July 1, 1969 (HRS §238-3(h)).
- Use of an air pollution control facility (HRS §238-3(k)).

The full 4% retail rate (but not the county surcharge) applies to the previously exempt amounts.

The bill would take effect on July 1, 2011, and expires on June 30, 2013.

There is a provision grandfathering all exemptions for income earned under a binding written contract signed prior to July 1, 2011, but only if that contract does not permit the passing on of increased rates of taxes. (This provision is similar to the grandfather clause that applied to the county surcharge when it went into force on January 1, 2007. See HRS §237-8.6(c).)

SB 754 STATUS: ACT 105, SIGNED JUNE 9, 2011

Information on these and other bills moving through the Legislature may be obtained from the Legislature's web site, www.capitol.hawaii.gov. Or click on the links in this message.

If you have questions about any of these news items, your client service team at Acuity 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@acuityllp.com)



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