



CERTIFIED PUBLIC ACCOUNTANTS

## *Hawaii Tax News Flash*

### *In This Acuity Update:*

- State Legislative Update: Revenue Raising Bills Positioned for Immediate Passage

### **Revenue Raising Bills Being Positioned for Immediate Passage**

In massive conference committee meetings over the weekend, many revenue raiser bills were positioned for immediate passage. If these bills are sent to Governor Lingle this week, she will be required to act on them within ten days, which leaves enough time for the House and Senate to take veto override votes before the adjournment of the current legislative session. We thought it critical for our clients to know what they are and what they will do if enacted, as there is still time – although not much of it – before they could become law.

### **GET Exemptions...We'll Really, Really Swat Them This Time**

**STATUS: CONFERENCE DRAFT REPORTED OUT**

[SB 2402 CD1](#) “temporarily” suspends a list of exemptions from the general excise tax, which would instead be taxed at 0.5% from July 1, 2010, to June 30, 2015. Among the exemptions that would be subject to the new 0.5% rate are:

- The exemption for intercompany services and interest between related entities. This would tax most shared services, such as intercompany G&A, legal, accounting, and IT cost allocations. And let’s not forget stated or imputed interest on intercompany loans.
- The partial deduction a sublessor gets for lease rent paid for the space subleased. This could impose an additional tax for anyone both receiving and paying rent on the same space.
- The exemptions for property or services exported out of state. This would tax exporters, and service providers getting paid for projects outside of Hawaii.
- The exemption for the sale of tangible personal property to the U.S. Government and state-chartered credit unions.
- The exemption for the sale of imported tangible personal property that is sold for resale at wholesale (also known as the “Big Box” exemption).

A grandfather provision similar to that in the county surcharge law will exempt proceeds received under binding written contracts entered into prior to July 1, 2010, if the contracts do not permit the passing on of increased rates of taxes. (The prior version of the bill contained a longer list of disallowed exemptions, and imposed the tax at 1%.)

## High Technology Credit...“It’s a Deferral, Not a Taking,” But We’ll Kill It

**STATUS: SENATE SCHEDULED TO AGREE TO HOUSE VERSION**

[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.

**STATUS: SENATE SCHEDULED TO AGREE TO HOUSE VERSION**

[SB 2401 HD1](#), on the other hand, does affect credits previously earned, including carryover credits. The bill makes the credits unusable for three years. They can neither be refunded nor used to reduce tax liabilities for tax years beginning in 2010, 2011, or 2012. They will carry over to 2013...unless something else happens to them.

## Limiting Itemized Deductions and the Capital Goods Credit

**STATUS: CONFERENCE DRAFT REPORTED OUT**

[HB 1907 CD1](#) imposes a hard maximum on the amount of itemized deductions that a taxpayer may claim. The caps are: \$50,000 for married filing jointly or surviving spouse with AGI over \$300,000; \$25,000 for single or married filing separately with AGI over \$150,000; and \$37,500 for head of household with AGI over \$225,000. (The prior version of the bill contained larger caps, but without an AGI threshold.)

The bill also makes the Capital Goods Excise Tax Credit nonrefundable until 2015. This credit can be used to reduce tax liability but will not generate a refund, and presumably may be carried forward until utilized.

## Let’s Stick the Smokers Again, and Get the Insurers While We’re At It

**STATUS: CONFERENCE DRAFT REPORTED OUT**

[HB 1985 CD1](#) increases the tobacco tax rate from 11 cents to 15 cents per cigarette effective July 1, 2010, and then increases it another penny one year later. It also repeals the Hawaii itemized deduction for political contributions effective in 2011, and doubles the user fees for insurance licenses and certificates “temporarily” from July 1, 2010 to June 30, 2014. (The prior version of the bill doubled the user fees until June 30, 2013.)

## The Skinnier Barrel Tax

**STATUS: CONFERENCE DRAFT REPORTED OUT**

Chapter 243, HRS, imposes the fuel taxes. Among them is the environmental response tax, which is currently imposed at 5 cents (\$0.05) per barrel of petroleum product sold by a distributor. [HB 2421 CD1](#) would rename the tax, raise it to \$1.05 per barrel (an increase of

2000%) and divide the booty among the general fund and four special funds, one of which would be created by the bill. The general fund would receive 50 cents per barrel. (The prior version of the bill hiked the tax to \$1.55, a 3000% increase.)

## General Excise Tax as a Trust Fund Tax?

**STATUS: CONFERENCE COMMITTEE VOTED TO REPORT BILL OUT, NO CONFERENCE DRAFT RELEASED YET**

[HB 2595 SD2](#), sponsored by the Department of Taxation, 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. It would also 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 Federal code calls the withholding tax a “trust fund” tax to justify this treatment – the money doesn’t belong to the employer, who is only holding it in trust for its employees to satisfy their obligations to the Government. Although the Senate bill was held in committee, the House version crossed over and bypassed the Senate committee that killed its counterpart; furthermore, the chair of the Senate committee who killed the bill was not named to the conference committee.

## Refundable vs. Nonrefundable Credits

**STATUS: ON THE GOVERNOR’S DESK AND LIKELY TO BE SIGNED**

When a taxpayer has too many credits, what happens? Under prior procedure that applied to all nonrefundable credits other than the high technology credits, nonrefundable credits were applied first. The refundable credits were treated as payments, so that a taxpayer having excess credits would be issued a refund check. [HB 2596](#), a Department of Taxation-sponsored bill that was unchanged by the Legislature and is now on the Governor’s desk, turns this around. Refundable credits would be used first, so a taxpayer with excess credits would normally get a credit carryover balance – and no refund check.

## We Just Moved the GET Return Due Date, So Let’s Do the Same for Other Taxes

**STATUS: ON THE GOVERNOR’S DESK AND LIKELY TO BE SIGNED**

[HB 2600](#), another Department of Taxation bill that has made it to the Governor’s desk unchanged, would change the due dates for returns other than GET returns to the 20th of the month following the close of the reporting period. Returns of insurance premium tax, which are now due quarterly, would start being filed monthly.

## Assuring the Ability to Tax Dead People

**STATUS: CONFERENCE DRAFT REPORTED OUT**

In addition to the income tax, the Federal government imposes an estate tax. The estate tax, as it existed at the end of last year, offered a State death tax credit when it was imposed. Hawaii, like many other states, imposed an estate tax in the same amount so that bereaved families would not have to pay out additional dollars to the State but would, in effect, redirect dollars that otherwise would have been paid to Uncle Sam. [HB 2866 CD1](#) preserves the ability of the state to pick up the State death tax credit, and in addition taxes the transfer of an estate located in Hawaii by a nonresident who is not a citizen of the United States. A decedent under this law is entitled to all applicable exclusion or exemption amounts as determined under the Internal Revenue Code as of December 31, 2009, including a \$3.5 million applicable exclusion amount.

## If It Happened in Vegas and Your Money Stayed in Vegas...

**STATUS: ON THE GOVERNOR'S DESK**

[SB 2834 SD1](#) reinstates the net income tax deduction for gambling losses that was taken away last year. This reinstatement would be retroactively effective to January 1, 2009.

## Streamlined Sales Tax Agreement

**STATUS: CONFERENCE DRAFT REPORTED OUT**

Hawaii, like many other states, has been missing out on collecting GET or Use Tax on goods sold to residents by out-of-state sellers that are outside of the reach of the State's taxing jurisdiction. Although the tax does indeed apply to purchasers of such goods, it is not cost effective for the State to chase multitudes of small purchasers. Thus, there is interest in the increased collection from remote sellers that is supposed to come with joining the Streamlined Sales Tax Project (SSTP), a national initiative by many similarly situated states. In 2003, the State of Hawaii became a participant in the SSTP. A further act in 2005 advanced the State's efforts to comply with the terms and conditions of the conforming legislation reflected in the SSTP model agreement and act. However, there is currently a large issue: The SSTP requires a maximum of one tax rate per state, but the GET and Use Tax now have two major rates, namely the wholesale and retail rates. Legislation to split off the wholesale from the retail rates was passed in 2009 but was vetoed by the Governor, who cited concerns with ceding control to the SSTP governing body, providing amnesty, payment of a collection fee to an out-of-state vendor, and an ambiguous effective date. The SSTP rate split-off legislation passed through a couple of different bills and is now in [SB 2405 CD1](#). The bill creates a committee composed of six members, three each chosen by the Senate President and House Speaker, that would oversee the SSTP implementation. The balance of the legislation would be effective when Hawaii becomes a party to the SSTP agreement.

Information on these and other bills moving through the Legislature may be obtained from the Legislature's web site, [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov).

In any event, 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 Thomas Yamachika at [thomas.yamachika@accuityllp.com](mailto:thomas.yamachika@accuityllp.com)



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