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Tax News Flash

In This Acuity Update:

- Gov. Lingle Releases Notices of Intent to Veto

Gov. Lingle Releases Notices of Intent to Veto

On June 21, Governor Lingle, as required by the Hawaii Constitution, released a list of 39 bills that are still being considered for veto.

A bill that is on the list may or may not actually be vetoed. The Governor has until July 6 to make her final decision.

A bill that is *not* on the list, however, cannot be vetoed, and therefore will become law either with or without Gov. Lingle's signature.

Public comments on the 39 bills being considered for vetoes on July 6 may be sent to the Governor's office as follows:

Email: governor.lingle@hawaii.gov or gov.policy@hawaii.gov

Fax: (808) 586-0006

Mail: Office of the Governor
Hawai'i State Capitol, Executive Chambers
Honolulu, Hawai'i 96813

What's on the Governor's List?

Civil Unions

STATUS: NOTICE OF INTENT TO VETO GIVEN JUNE 21

HB 444 SD1 extends the same rights, benefits, protections, and responsibilities of spouses in a marriage to partners in a civil union. This bill has some tax implications but has been extensively covered in other media.

High Technology Credit...Poof?

STATUS: NOTICE OF INTENT TO VETO GIVEN JUNE 21

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 4% 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.

The Governor's tentative veto explanation reads: "Extends the Tax Credit for Research Activities by one year at the expense of the High Technology Business Investment Tax Credit and Technology Infrastructure Tax Credit, which must be repealed early on May 1, 2010 instead of December 31, 2010, reversing the State's commitments to job creating businesses and their investors."

The other bill involving the high tech credits, [SB 2401 HD1](#), did affect credits previously earned, including carryover credits. Lt. Gov. James "Duke" Aiona vetoed the bill on June 9, 2010.

Both of these bills passed the full Senate with a vote of 14 to 11, and would likely not survive a veto.

Limiting Itemized Deductions and the Capital Goods Credit

STATUS: NOTICE OF INTENT TO VETO GIVEN JUNE 21

[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 bill also makes the 4% 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.

The Governor's tentative veto explanation reads: "Adversely impacts Hawaii taxpayers and businesses by capping state income tax itemized deductions and making the capital goods excise tax credit nonrefundable for businesses until January 1, 2016, contrary to sound economic policy."

And Now, More Importantly, What's *Not* on the Governor's List?

Items that are still pending and are not on the list are going to become law.

Raid!!!

STATUS: WILL BECOME LAW

[HB 2542 CD1](#), originally sponsored by the Department of Budget and Finance, would authorize the transfer of monies from twenty-five special funds to the State general fund. The sheer length of the list of special funds raided (just the tip of the iceberg) gives us an idea of just how labyrinthine our State finances have become.

The bill also changes the fuel tax credit for commercial fishers to be paid out of the State Highway Fund, and changes the way the tobacco tax is distributed among the general fund and four special funds.

Allowing the Dynasty Trust...with a Price

STATUS: WILL BECOME LAW

Current Hawaii law states that a trust must end within 90 years or 21 years following the death of someone alive at the time the trust was drafted, whichever is longer. This law is based on an ancient English common law rule known as the Rule Against Perpetuities. The Rule was of little estate planning consequence until the federal Tax Reform Act of 1986 created a new tax known as the Generation-Skipping Transfer Tax (GSTT). If a wealthy individual attempted to leave assets directly to grandchildren or more remote heirs at death, then the estate would have to pay this large extra tax. However, the decedent could leave assets in trust but that trust cannot

last longer than state law allows. Acting on this exception, Alaska, Delaware, South Dakota and other states abolished their Rule Against Perpetuities to allow their trusts to last forever. In effect, this allows a wealthy individual to leave assets in trust and those assets will never be charged with the GSTT.

SB 2842 CD1 adds the Permitted Transfers in Trust Act, which does away with Hawaii's Rule Against Perpetuities as to irrevocable trusts established under the Act. Such trusts may only be funded with cash, marketable securities, life insurance contracts, and non-private annuities (not real estate).

The bill, of course, makes its users pay for its benefits: it imposes a 1% excise tax on the fair market value of all assets transferred to a trust established under the Act.

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

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 Thomas Yamachika at thomas.yamachika@accuityllp.com



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