

2019 HAWAII TAX UPDATE

OCTOBER 2019

Hawaii's New Nexus Presumptions

Act 221 (SB 495) adds a new section regarding nexus presumptions for persons lacking physical presence in Hawaii to Chapter 235 of the Hawaii Revised Statutes. Effective January 1, 2020, a person that lacks physical presence in the State is presumed to be systematically and regularly engaging in business in the State and taxable if, during the current or preceding calendar year:

1. *The person engages in 200 or more business transactions with persons within the State; or*
2. *The sum of the value of the person's gross income attributable to sources from in this State equals or exceeds \$100,000 or for a person that does business within and without the State the numerator of the person's sales factor for the State equals or exceeds \$100,000.*

This new standard applies to all individuals, trusts, estates, partnerships, associations, companies, and corporations.

Estate Tax

Act 3 (SB 1361 SD1) increases the estate tax rate on taxable estates exceeding \$10 million to 20%. The tax is applicable to decedents or taxable transfers after December 31, 2019.

Opportunity Zones in Hawaii

ACT 69 (SB 1130 SD1 HD1) updated the Hawaii Revised Statutes to conform to the Internal Revenue Code for Opportunity Zones. This provides incentives for investors to re-invest realized capital gains into Opportunity Funds in exchange for temporary tax deferral, a step-up in basis for reinvested capital gains pursuant to certain conditions, and additional benefits on gains from the Opportunity Fund. The Opportunity Funds are then used to provide investment capital in certain low-income communities (Opportunity Zones). Hawaii has designated 25 census tracts as Opportunity Zones.

R&D Credits

Act 261 (SB 1314) extends the tax credit for research activities through 2024. In addition, it amends the tax credit for research activities so that references to the base amount in Section 41 of the Internal Revenue Code shall not apply, and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years. However, the Act also imposes an aggregate cap of \$5,000,000 for all R&D credits within the State.

Short-Term Vacation Rentals

City Ordinance 19-18 now prohibits advertising transient vacation units (TVUs) rented for 30 days or less and imposes a fine of \$1,000 for the initial violation with additional daily fines. Repeat violations are subject to a \$10,000 fine with additional daily fines. However, the City did allow for a limited number of new bed and breakfast registrations and Non-Conforming Use certificates.

Gift Certificates

Act 236 (HB 314) requires a gift certificate issuer to redeem the remaining value of a gift certificate for cash if the gift certificate has a balance of less than \$5 beginning on January 1, 2020.

Media Income Tax Credit

Act 275 (SB 33) increased the total amount of available media income tax credits from \$35,000,000 to \$50,000,000.

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Mandatory E-Filing

Act 66 (HB 2395), enables the Department of Taxation to require certain taxpayers to file tax returns electronically. The following categories of taxpayers are subject to electronic filing:

- 1) Withholding tax filings for employers whose total tax liability exceeds \$40,000 for the calendar or fiscal year;
- 2) General excise tax filings by taxpayers whose total tax liability exceeds \$4,000;
- 3) Transient accommodations tax filings by operators and plan managers whose total tax liability exceeds \$4,000;
- 4) Corporate income taxpayers;
- 5) Taxpayers who are subject to estate and generation-skipping transfer tax;
- 6) Public service companies;
- 7) Banks and other financial corporations;
- 8) Fuel, liquor, cigarette and tobacco, rental motor vehicle, tour vehicle, and car-sharing vehicle surcharge services.

Nonresident Withholding

Act 232 (SB 1360) now requires partnership, estates, and trusts to withhold an amount equal to the highest marginal tax rate applicable to a nonresident taxpayer's percentage of distributable income. The bill excludes publicly traded partnerships from withholding. Withholding is applicable beginning after December 31, 2018.

Transient Accommodations Tax Broadened

Effective July 1, 2019, Act 020 (SB 380) broadened the transient accommodations tax to include taxes on resort fees, which was defined as any "mandatory charge or surcharge imposed by an operator, owner, or representative thereof to a transient for the use of the transient accommodation's property, services, or amenities."

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