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**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 1398, Relating to Conformity to the Internal Revenue Code

BEFORE THE:

Senate Committee on Ways and Means

DATE: Tuesday, February 28, 2023

TIME: 10:00 a.m.

LOCATION: State Capitol, Room 211

Chair Dela Cruz, Vice-Chair Keith-Agaran, and Members of the Committee:

The Department of Taxation ("Department") supports S.B. 1398, an Administration measure, and offers the following comments for your consideration.

S.B. 1398 conforms Hawaii's income and estate and generation-skipping transfer taxes to the Internal Revenue Code (IRC) as of December 31, 2022. Sections 235-2.3(c) and 236E-4, Hawaii Revised Statutes (HRS), require the Department to submit legislation to each regular session of the legislature to adopt the IRC as it exists on the December 31 preceding the regular session.

S.B. 1398 amends section 235-2.3(a), HRS, to conform the Hawaii income tax law to the operative IRC sections of subtitle A, chapter 1, as amended as of December 31, 2022. Subtitle A, chapter 1, refers to IRC sections 1-1400 A-2. S.B. 1398 also amends section 236E-3, HRS, to conform the Hawaii estate and generation-skipping transfer tax law to the operative IRC sections of subtitle B, as amended as of December 31, 2022. Generally, subtitle B contains the estate tax provisions and consists of IRC sections 2001-2801.

In addition to the formal changes above, S.B. 1398 makes several other amendments to conformity, as follows.

First, S.B. 1398 amends section 235-2.3(b)(40), HRS, to conform to IRC section 1341, which provides relief to taxpayers when an item of income reported in an earlier tax

year (at a higher tax rate) is returned in a subsequent year (at a lower tax rate) if it is determined that the taxpayer did not have an unrestricted right to the item of income when reported.

Second, S.B. 1398 contains a minor cleanup change to section 235-2.4(m), HRS, and amends section 235-2.5(a)(3), HRS, to clarify that certain retroactive and prospective provisions in federal Public Law that are operative in chapter 235, HRS, are operative for purposes of chapter 235, HRS.

The United States Congress enacted the following tax measures during 2022, which the Department analyzed to determine if amendments to conformity were necessary:

1. Inflation Reduction Act of 2022, P.L. 117-169, enacted August 16, 2022
2. Consolidated Appropriations Act, 2023, P.L. 117-328, enacted December 29, 2022
 - a. Division T - SECURE 2.0 Act of 2022
 - b. Division FF - Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022.

There are no significant impacts to Hawaii's adoption of the IRC sections due to the passage of the Inflation Reduction Act of 2022 and the Health Extenders, Improving Access to Medicare, Medicaid, and CHIP, and Strengthening Public Health Act of 2022.

With respect to the SECURE 2.0 Act of 2022, the intent of Congress was to help strengthen the retirement system and American's financial readiness for retirement. Hawaii adopts most of the provisions, with the most notable including:

1. The required minimum distribution (RMD) age will change to age 73 beginning January 1, 2023. If a person is already subject to the RMD for years prior to January 1, 2023, they must continue taking their RMD;
2. The RMD age will change to age 75 beginning January 1, 2025. Again, if a person is already required to take the RMD, they must continue taking the RMD; and
3. Beginning in 2024, RMDs will no longer be required from Roth accounts in employer retirement plans.

The Department notes that there is an indeterminate revenue loss for this measure.

Thank you for the opportunity to provide comments on this measure.

TAX FOUNDATION OF HAWAII

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SUBJECT: INCOME, ESTATE, Conformity to Internal Revenue Code

BILL NUMBER: SB 1398, HB 1100 [TAX-01]

INTRODUCED BY: SB by KOUCHI, HB by SAIKI (Governor's Package)

EXECUTIVE SUMMARY: Conforms Hawai'i income and estate and generation-skipping transfer tax laws to the Internal Revenue Code of 1986, as amended as of December 31, 2022.

SYNOPSIS: Amends HRS section 235-2.3(a) by changing the date references to make the Internal Revenue Code (IRC) applicable for state income tax purposes as it was amended on 12/31/22 for tax years beginning after 12/31/22. Amends HRS section 236E-3 by changing the date references to make the IRC applicable for state estate and generation-skipping tax purposes as it was amended on 12/31/22 for tax years beginning after 12/31/22.

Amends HRS section 235-2.3(b)(40) to restore conformity to IRC section 1341, with respect to computation of tax where taxpayer restores substantial amount held under claim of right.

Amends HRS section 235-2.4(m) to delete reference to IRC section 168(n), which no longer exists.

Makes a technical amendment to HRS section 235-2.5(a)(3) to allow for conformity to IRC prospective and retroactive effective dates in federal law provisions that are operative under Hawaii law but are not codified in the IRC.

EFFECTIVE DATE: Income tax changes apply to taxable years beginning after December 31, 2022. Estate tax changes apply to decedents dying or taxable transfers occurring after December 31, 2022.

STAFF COMMENTS: This is the annual conformity measure submitted by the department of taxation TAX-01 (23) in compliance with HRS section 235-2.5 which requires the department to annually submit a measure to maintain state income tax conformity with the federal Internal Revenue Code, and in compliance with HRS section 236E-4 which requires the department to annually submit a measure to maintain state estate and generation-skipping tax conformity with the federal Internal Revenue Code.

The purpose of conformity is to update the state tax laws with those changes made to the federal Code during the past year and to adopt those changes that are appropriate for Hawaii law.

With regard to IRC section 1341, the Department in its justification sheet explained that section 1341 provides relief to taxpayers when an item of income reported in an earlier tax year (at a higher tax rate) is returned in a subsequent year (at a lower tax rate) if it is determined that the taxpayer did not have an unrestricted right to the item of income when reported.

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