JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
**DEPARTMENT OF TAXATION**
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

# TESTIMONY OF GARY S. SUGANUMA, DIRECTOR OF TAXATION

**TESTIMONY ON THE FOLLOWING MEASURE:**
H.B. No. 2329, H.D.1, Relating to Conformity to the Internal Revenue Code

**BEFORE THE:**
Senate Committee on Ways and Means

**DATE:** Monday, March 30, 2026
**TIME:** 10:30 a.m.
**LOCATION:** State Capitol, Room 211

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

The Department of Taxation (DOTAX) supports H.B. 2329, H.D.1, an Administration measure, and offers the following comments for your consideration.

H.B. 2329, H.D.1, conforms Hawaii's income and estate and generation-skipping transfer taxes to the Internal Revenue Code (IRC) as of December 31, 2025. Sections 235-2.5(c) and 236E-4, Hawaii Revised Statutes (HRS), require DOTAX to submit legislation to each regular session of the legislature to adopt the IRC as it exists on the 31st day of December preceding the regular session.

Section 2 of the measure amends section 235-2.3(a), HRS, to conform Hawaiʻi income tax law to the operative IRC sections of subtitle A, chapter 1, as amended as of December 31, 2025. Subtitle A, chapter 1, refers to IRC sections 1-1400Z-2. Section 2 also amends section 235-2.3(b), HRS, which lists provisions in the IRC that are not operative under chapter 235, HRS.

Sections 3 and 4 of the measure amend section 235-2.4 and 235-2.45, HRS, which list IRC provisions that are operative under chapter 235, HRS, subject to modifications.

Section 5 of the measure amends section 236E-3, HRS, to conform Hawaiʻi

estate and generation-skipping transfer tax law to the operative IRC sections of subtitle B, as amended as of December 31, 2025. Generally, subtitle B of the IRC contains the estate tax provisions and consists of IRC sections 2001-2801.

The bill has a defective effective date of July 1, 3000, provided that sections 2, 3, and 4 apply to taxable years beginning after December 31, 2025, and section 5 applies to decedents dying or taxable transfers occurring after December 31, 2025.

**One Big Beautiful Bill Act**

On July 4, 2025, the One Big Beautiful Bill Act (OBBB), Public Law 119-21, was enacted into law. The OBBB makes numerous changes to federal individual, corporate, and estate tax laws. DOTAX's recommendations regarding conformity to the OBBB, which are reflected in H.B. 2329, are detailed in the tables below.

1. Provisions that DOTAX recommends conforming to:

| OBBB Section | Topic | IRC Section | Description |
|---|---|---|---|
| **Individual Provisions** | | | |
| 70109 | Casualty Loss Deduction | 165(h)(5) | Permanently disallows personal casualty loss deductions except those attributable to federal or state declared disasters. |
| 70110 | Miscellaneous Itemized Deductions | 67(b); 67(g) | Permanently disallows miscellaneous itemized deductions. Allows a deduction for certain unreimbursed educator expenses. |
| 70112 | Qualified Transportation Fringe Benefits | 132(f) | Permanently disallows the gross income exclusion for qualified bicycle commuting reimbursement. |
| 70114 | Wagering Losses | 165(d) | Limits deduction for wagering losses to 90% of amount of losses (still limited to extent of gains). Permanently extends provision that wagering losses include otherwise allowable deductions incurred in carrying out wagering transactions. |
| 70115 | ABLE Account Contribution Limits | 529A(b)(2)(B) | Permanently allows designated beneficiaries to contribute an amount in addition to the annual gift exclusion, equal to the lesser of the federal poverty line for a one-person household, or the individual's compensation for the tax year. Modifies the inflation adjustment for the annual gift exclusion by substituting 1996 for 1997 as the base year. |
| 70117 | Rollovers from 529 Accounts to ABLE Accounts | 529(c)(3)(C)(i)(III) | Permanently allows an exclusion from gross income for distributions rolled over from a 529 account to an ABLE account within 60 days. |

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| 70119 | Exclusion from Gross Income of Student Loans Discharged on Account of Death or Disability | 108(f)(5) | Permanently allows an exclusion from gross income for the discharge of student and private education loans, but only in the event of the student's death or total disability. The temporary exclusion from gross income for the discharge of student loans for reasons other than death or total disability was not extended. |
| 70201 | Deduction for Tip Income | 224; 63(b) | Creates deduction up to $25,000 for qualified tips, with phase-out reduction of $100 for each $1,000 that modified adjusted gross income (AGI) exceeds $150,000 ($300,000 joint). Allows deduction to individuals who do not itemize. Sunsets 12/31/28. |
| 70204 | Trump Accounts | 530A; 128; 139J | Creates tax-exempt Trump accounts, treated similar to IRAs, for qualifying children under age 18. The accounts have an annual contribution limit of $5,000, subject to exemptions and indexed for inflation. Up to $2,500 of employer contributions are excluded from the employee's gross income, indexed for inflation. Qualified general contributions are excluded from the account beneficiary's gross income. |
| 70404 | Dependent Care Assistance Program | 129(a)(2)(A) | Increases the maximum gross income exclusion from $5,000 to $7,500 (joint) and from $2,500 to $3,750 (married filing separate (MFS)). |
| 70412 | Employer Payments of Student Loans | 127 | Permanently allows an exclusion of $5,250 from an employee's gross income for any qualified employer student-loan educational assistance repayments, indexed for inflation. |
| 70414 | Postsecondary credentialing expenses treated as Qualified Higher Education Expenses for 529 Accounts | 529(e)(3)(C); 529(f) | Adds qualified postsecondary credentialing expenses as a qualified higher education expense. Defines qualified postsecondary credentialing expenses as tuition, fees, books, supplies, equipment, and certain testing and CE fees, required for enrollment or attendance at a recognized postsecondary institution. |
| 70424 | Charitable Deductions for Non-Itemizers | 170(p) | Reinstates the charitable deduction for individuals that do not itemize deductions and increases the maximum allowed from $300 ($600 joint) to $1,000 ($2,000 joint). |
| 70425 | Charitable Deduction Floor for Individuals | 170(b)(1)(I); 170(d)(1)(C); 170(b)(1)(G) | Limits itemized charitable deduction for individuals to the extent that aggregate contributions exceed 0.5% of the taxpayer's contribution base for the tax year. Annual contributions not exceeding the 0.5% floor may be carried forward only in a year in which the floor is exceeded. Makes permanent the 60% limit on cash contributions. |

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| 70429 | Charitable Deduction for Native Alaskan Subsistence Whaling | 170(n)(1) | Increases the maximum charitable deduction from $10,000 to $50,000 per year for recognized whaling captains carrying out sanctioned whaling activities. |

| Corporate and Business Provisions | | | |
|---|---|---|---|
| 70303 | Limitation on Business Interest | 163(j)(8)(A)(v); 163(j)(9)(C) | For purposes of the deduction for business interest, which is limited to the sum of business interest income plus 30 percent of adjusted taxable income (ATI) plus floor plan financing interest, makes permanent the computation of ATI without regard for the deduction for depreciation, amortization, or depletion. Adds recreational, camping, or seasonal use trailers or campers to the definition of motor vehicles eligible for floor plan financing interest. |
| 70305 | Limitations on Deduction for Business Meals | 274(o); 274(n)(2)(C) | Provides exception from the disallowance for expenses for employer-operated eating facility for meals provided to customers as part of a bona fide (adequate payment/consideration) sale of goods or services. Excludes meals provided on certain fishing boats and at certain fish processing facilities from deduction limitation.<br><br>* DOTAX's recommendation is to conform to section 274, including amendments made by the Tax Cuts and Jobs Act, which disallowed deductions for entertainment, amusement, and recreation. |
| 70341 | Coordination of Business Interest Limitation with Interest Capitalization Provisions | 163(j)(10); 163(j)(5) | Requires that the business interest limitation is calculated before any interest is capitalized. Carryforward interest is decoupled from the interest capitalization provisions. |
| 70342 | ATI for Business Interest Limitation - Definition | 163(j)(8) | For purposes of the deduction for business interest, requires that the calculation of ATI exclude U.S. shareholder's income from Subpart F, GILTI, gross up for deemed paid foreign tax credit income under section 78, and the portion of deductions allowed by reason of inclusions under section 245A(a) (certain foreign-sourced dividends) and 250(a)(1)(B) (50% of GILTI and section 78 gross-up). |

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| 70421 | Opportunity Zones (OZs) | 1400Z-1; 1400Z-2(a)(2) | Allows new OZ determinations on 7/1/26, and each July 1 every 10 years thereafter. Changes qualifications for OZ designations. Allows deferred gains from qualified opportunity fund until disposition or 5 years from the date of investment, whichever is later.<br><br>Basis Adjustment:<br>Years Held — Basis Increase<br>≥ 5 years — 10% (30% for qualified rural opportunity fund)<br>≥ 10 years — FMV on date sold/exchanged<br>≥ 30 years — FMV 30 years after investment |
| 70422 | Low-Income Housing Tax Credit | 42(h)(3)(I); 42(h)(4) | Increases the allocation ceiling by 12%. For projects financed with tax-exempt bonds (4% projects), lowers the bond financing threshold from 50% to 25% of the building's aggregate basis. Requires at least 5% of financing be one or more tax-exempt bonds issued after 12/31/25. |
| 70426 | Charitable Deduction Floor for Corporations | 170(b)(2)(A); 170(d)(2)(A); | Limits corporate charitable contributions by adding a floor amount of 1% of taxable income, with the maximum of 10% of taxable income unchanged. Excess contributions may be carried forward for up to 5 years on a first-in-first-out basis, but only if allowed after determining the succeeding years' taxable amount first. A carryforward will be reduced if it results in an increased net operating loss. |
| 70430 | Accounting for Certain Residential Construction Contracts (RCCs) | 460(e); 56(a)(3) | Expands the exemption from percentage of completion method PCM for "home construction projects" to include certain RCCs beyond just homes meeting certain criteria, and extends the completion period on RCCs from 2 to 3 years. |
| 70432 | De Minimis Rules for Third Party Network Transactions | 6050W(e) | Increases the de minimis reporting requirement threshold for third-party settlement organizations from $600 to more than $20,000 and 200 aggregate transactions. |
| 70439 | Taxable Real Estate Investment Trust (REIT) Asset Test | 856(c)(4)(B)(ii) | For purposes of determining whether an entity is a REIT, amends the REIT subsidiary asset test by increasing the limitation on the value of the entity's total assets represented by one or more taxable REIT subsidiaries to 25%. |
| 70507 | Energy Efficient Commercial Buildings Deduction | 179D | Terminates the deduction for energy efficient commercial buildings for property construction beginning after June 30, 2026. |

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| 70509 | Cost Recovery for Energy Property | 168(e)(3)(B)(vi) | Removes solar or wind energy properties from the definition of a 5-year property classification eligible for an accelerated cost recovery period/depreciation deduction. |
| 70601 | Limitation on Excess Business Losses of Noncorporate Taxpayers | 461(l)(1); 461(l)(3)(C) | Makes permanent the disallowance of excess business losses of noncorporate taxpayers (previously set to expire in 2028). Adjusts the $250,000 threshold for inflation. Excess business loss is the excess of (i) taxpayer's aggregate business deductions over (ii) aggregate business income plus $250,000 (double if joint). |
| 70602 | Payments from Partnerships to Partners for Property or Services | 707(a)(2) | Deletes language requiring the issuance of regulations relating to the treatment of payments to partners for property or services. |
| **Compensation and Benefits Provisions** | | | |
| 70603 | Excessive Employee Remuneration from Controlled Group Members and Allocation | 162(m)(7) | For publicly held corporations, defines specified covered employees of controlled groups, and amends the formula to determine how compensation for executives working for multiple related entities must be proportionally allocated among such entities. |
| 71306 | Health savings account | 223(c)(2); 223(c)(1)(B) | Permanently extends safe harbor for high deductible health plans that do not have a deductible for telehealth and other remote care services. |
| 71307 | Health savings account | 223(c)(2) | Treats bronze and catastrophic plans available through an Exchange under the Affordable Care Act as high-deductible health plans. |
| 71308 | Health savings account | 223(c)(1) | Expands eligibility for individuals with direct primary care service arrangements; treats direct primary care service arrangement fees as qualified medical expenses excludible from income. |

2. Provisions that DOTAX recommends decoupling from:

| OBBB Section | Topic | IRC Section | Description |
|---|---|---|---|
| **Individual Provisions** | | | |
| 70202 | Deduction for Overtime | 225; 63(b) | Creates deduction up to $12,500 ($25,000 joint) for qualified overtime compensation, with phase-out reduction of $100 for each $1,000 that modified AGI exceeds $150,000 ($300,000 joint). Sunsets 12/31/28. Allows deduction to individuals who do not itemize. |
| 70203 | Deduction for Car Loan Interest | 163(h)(4); 63(b) | Creates deduction up to $10,000 for qualified passenger vehicle loan interest, with a phase-out reduction of $200 for each $1,000 (or portion thereof) that modified AGI exceeds $100,000 ($200,000 joint). Applicable for tax years 2025 to 2028. Vehicle must have final assembly in the United States. Allows deduction to individuals who do not itemize. |
| 70411 | Gross Income Exclusion for Awards by SGOs | 139K | Allows a gross income exclusion of amounts provided pursuant to a scholarship received from a Scholarship Granting Organization. |
| 70413 | 529 Account Distributions for Elementary or Secondary School Expenses | 529(c)(7); 529(e)(3) | Increases the annual distribution limit for elementary and secondary school expenses from $10,000 to $20,000 per beneficiary. Adds the following elementary or secondary school expenses as "qualified higher education expenses" (in addition to tuition): curriculum materials, books, instructional materials, online educational materials, tutoring tuition, test fees, higher education dual enrollment fees, and educational therapies. |
| 70437 | Capital Gains from Sale of Certain Farmland Property | 1062 | Establishes an election to make four equal annual installment payments for net income tax on the sale or exchange of qualified farmland property to a qualified farmer, beginning in the year the sale/exchange occurs. |

| Corporate and Business Provisions | | | |
|---|---|---|---|
| 70302 | Full Expensing of Domestic Research and Experimental Expenditures | 174A; 174 | Permanently reinstates immediate deduction for domestic research and experimental expenditures. Foreign research expenditures are still required to be amortized over 15 years. |
| 70307 | Special Depreciation Allowance for Qualified Production Property | 168(n); 1245(a)(3) | Adds an electable 100% bonus depreciation deduction for qualified production property constructed between 1/19/25 and 1/1/29, and placed in service before 1/1/31. Property use must be for a "qualified production activity," defined to include the manufacture, production, or refining of a qualified product (tangible personal property including food or beverages not sold/served in the same building). |
| 70435 | Interest on Loans for Rural or Agricultural Real Property | 139L | Allows a gross income exclusion of 25% of interest received by a qualified lender on any qualified real estate loan or leasehold mortgage lien secured by U.S. or U.S. possession sited rural or agricultural real estate. |

DOTAX notes that the tables above do not include provisions in the OBBB that the State had previously decoupled from and for which the bill does not propose changing, such as amendments to federal tax brackets, personal exemption amounts, the state and local tax deduction, and federal tax credits.

**Revenue Impact**

DOTAX notes the following revenue estimate for this bill:

**General Fund Impact ($ millions)**

| FY 2027 | FY 2028 | FY 2029 | FY 2030 | FY 2031 | FY 2032 |
|---|---|---|---|---|---|
| -2.38 | -2.48 | 7.16 | 19.6 | 15.77 | 17.96 |

Thank you for the opportunity to provide comments in support of this measure.

LEGISLATIVE TAX BILL SERVICE

# TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, ESTATE, Conformity to Internal Revenue Code and One Big Beautiful Bill Act

BILL NUMBER: HB 2329 HD1

INTRODUCED BY: FIN

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, 2025.

SYNOPSIS: See attached section-by-section analysis of HB 2329 as originally introduced. HD1 states that the Pease limitation (former IRC sec. 68) is to be applied for Hawaii purposes as it existed as of December 31, 2024, with the thresholds that were operative for federal tax year 2009.

EFFECTIVE DATE: July 1, 3000. Income tax provisions apply to taxable years beginning after December 31, 2025; and estate tax provisions apply to decedents dying or taxable transfers occurring after December 31, 2025.

STAFF COMMENTS: We have attached a section-by-section analysis. We generally recommend conforming to federal changes and reducing the overall tax rate. We do have specific high-level comments in the section-by-section analysis, some of which are summarized below:

**Pease Limitation, IRC Sec. 68:** Hawaii has been following a pre-TCJA law that eliminated as much as 80% of itemized deductions based on the taxpayer's income. The current wording of the bill (in HD1) would keep the statutory wording in place at the end of 2024 with applicable amounts as they existed in 2009. Given that miscellaneous itemized deductions are being disallowed up front, it would be preferable to conform to the OBBBA provision to simplify compliance.

**Disaster Losses, IRC Sec. 165(h):** Current law decouples from IRC “Section 165(h)(3)(A) and (B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters).” However, those paragraphs are definitions, not rules; a technical amendment is probably required to make sure that we are decoupling from the right things.

**Deduction for Qualified Business Income, IRC Sec. 199A:** Our top individual tax rate is 11%, second highest in the country, while our top corporate tax rate is 6.4%, which is much more on par with what other states are charging corporations. Right now, our individual income tax law doesn’t even attempt to distinguish between income that comes from a business and income that comes from wages. Because we have chosen to tax business income at a much lower rate if the income is earned in a corporation, we should seriously consider adopting section 199A here in Hawaii to give some relief to the 75% of businesses, especially small businesses, that are not in corporate form.

**No Tax on Tips (New IRC Sec. 224) vs. No Tax on Overtime (New IRC Sec. 225):** The bill in its current form will conform to No Tax on Tips but will NOT conform to No Tax on Overtime. We wonder why the provisions are treated differently. Both are temporary changes that would increase complexity and carry a revenue cost.

**Qualified Tuition Programs, IRC Sec. 529:** A section 529 qualified tuition program, also referred to as a "qualified tuition program," can either be a prepaid tuition program that allows a person to purchase on behalf of a designated beneficiary tuition credits or certificates that entitle the beneficiary to the waiver or payment of the beneficiary's qualified higher education expenses, or a college savings plan that allows a person to make contributions to an account established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account. Hawaii conforms to federal law except for sections 529(c)(6) (additional tax on disqualifying distributions), 529(c)(7) (treatment of elementary and secondary tuition), and 529(e)(3)(A)(iii) (allowing, as eligible expenses, purchase of computer or peripheral equipment, computer software, or Internet access). The bill proposes no change. We concur with decoupling from the penalty tax provision, as Hawaii does in other qualified plan contexts, and ask the Committee to consider conforming to the other two excluded provisions. In practice, it is difficult to audit and assess state tax on federally qualified distributions from such an account.

**Trump Accounts, new IRC Sec. 530A:** The bill apparently conforms to federal treatment. However, we recommend that a provision be inserted in section 235-2.4 (the title of which needs to be adjusted) stating that Hawaii does not conform to the penalty provision, section 530A(d)(5), as is done with similar penalty provisions relating to qualified plans.

Digested: 3/27/2026

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

735 Bishop Street, Suite 417 Honolulu, Hawaii 96813 Tel. 536-4587

# ANALYSIS OF THE ONE BIG BEAUTIFUL BILL ACT

In the following analysis, we present an explanation of the provisions in the One Big Beautiful Bill Act (OBBBA). Many of the explanations of the federal changes are taken from the House Budget Committee Report (H.R. Rep. 119-106). For each provision, we list the present Hawaii treatment, the proposed action taken in the Department of Taxation's Conformity Bill (TAX-01) (HB 2329 / SB 3149), and the Foundation's comments.

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# ANALYSIS OF THE ONE BIG BEAUTIFUL BILL ACT

## A. EXTENSION OF MODIFICATION OF RATES (ACT SEC. 70101, IRC SEC. 1)

### 1. Description of Federal Change:

The OBBBA makes permanent the regular income tax rate schedules for individuals, estates, and trusts enacted by the Tax Cuts & Jobs Act ("TCJA").

The provision generally modifies the indexing for Inflation for bracket thresholds by providing one additional year of inflation in the cost-of-living adjustment. Under the provision, the cost-of-living adjustment for the regular income tax brackets for 2026 is generally the percentage by which the chained CPI for 2025 exceeds the chained CPI for 2016. The result is that the bracket thresholds are larger than they would otherwise be absent this additional year of inflation.

However, the dollar amount at which the 37-percent rate bracket begins and the 35-percent rate bracket ends (the "37-percent rate bracket threshold") is not provided this additional year of inflation in the cost-of-living adjustment. Thus, the cost-of-living adjustment for the 37-percent rate bracket threshold for 2026 is the percentage by which chained CPI for 2025 exceeds the chained CPI for 2017.

These provisions are effective for taxable years beginning after December 31, 2025.

### 2. Present State Law

Hawaii has its own tax rates and brackets in sections 235-51 and 235-71, HRS.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We recommend that the scheduled rate reductions be, at most, paused rather than eliminated. Please see our comments on GOV-06 (HB 2306 / SB 3125).

## B. EXTENSION OF INCREASED STANDARD DEDUCTION AND TEMPORARY ENHANCEMENT (ACT SEC. 70102, IRC SEC. 63)

### 1. Description of Federal Change:

The OBBBA strikes the expiration date of the temporary increases to the standard deduction enacted by TCJA.

The provision modifies the indexing for inflation of the standard deduction amount by providing one additional year of inflation in the cost-of-living adjustment starting in taxable years beginning after December 31, 2025. Under the provision, the cost-of-living adjustment for the standard deduction amount for 2026 is the percentage by which the chained CPI for 2025 exceeds the chained CPI for 2016. The result is that the standard deduction amount is larger than it would otherwise be absent this additional year of inflation.

In addition, the provision temporarily increases the amount of the standard deduction by $2,000 in the case of married individuals filing a joint return and a surviving spouse, $1,500 in the case of a head of household, and $1,000 in any other case for taxable years beginning after December 31, 2024, and before January 1, 2029. These temporary amounts are not indexed for inflation.

These provisions are effective for taxable years beginning after December 31, 2024.

#### 2. Present State Law

Hawaii has its own standard deduction in section 235-2.4(a), HRS.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We recommend that the Committee consider furthering the federal simplification efforts by increasing the standard deduction amounts. Please see our comments on GOV-06 (HB 2306 / SB 3125).

### C. TERMINATION OF DEDUCTION FOR PERSONAL EXEMPTIONS (ACT SEC. 70103, IRC SEC. 151)

#### 1. Description of Federal Change

In determining taxable income, an individual reduces adjusted gross income by any personal exemption deductions and either the applicable standard deduction or their itemized deductions. Personal exemptions generally are allowed for the taxpayer (both taxpayers in the case of a joint return) and any dependents of the taxpayer. The TCJA temporarily reduced the amount of the personal exemption to $0 for taxable years 2018 through 2025.

In lieu of the deduction for personal exemptions, an estate is allowed a deduction of $600. A trust is allowed a deduction of $100; $300 if required to distribute all its income currently; and an amount equal to the personal exemption of an individual, or for years in which the personal exemption is zero, an indexed value ($5,100 for 2025), in the case of a qualified disability trust.

OBBBA permanently reduces the amount of the personal exemption to $0 effective for taxable years beginning after December 31, 2025.

#### 2. Present State Law

Hawaii has its own personal exemptions in section 235-54, HRS.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We recommend that the Committee consider furthering the federal simplification efforts by eliminating the personal exemptions, which are now extremely modest, in favor of enhanced standard deduction amounts. Please see our comments on GOV-06 (HB 2306 / SB 3125).

### D. ENHANCED STANDARD DEDUCTION FOR SENIORS (ACT SEC. 70103, IRC SEC. 63, 151)

#### 1. Description of Federal Change

An individual who does not elect to itemize deductions reduces adjusted gross income ("AGI") by the amount of the applicable standard deduction in arriving at taxable income. An additional standard deduction is allowed to an individual who has attained age 65 before the close of the taxable year or is blind at the close of the taxable year.

TCJA temporarily increased the basic standard deduction for tax years beginning after December 31, 2017, and before January 1, 2026. Under present law, relative to taxable years beginning in 2025, the standard deduction will decrease for taxable years beginning in 2026.

OBBBA creates a deduction for a bonus additional amount for all individuals who have attained age 65 (for each spouse meeting the applicable criteria in the case of a joint return) for taxable years beginning after December 31, 2024, and before January 1, 2029. This additional amount is $4,000 per individual, the "senior bonus amount."

The senior bonus amount phases out for taxpayers with income over a threshold amount of $150,000 for taxpayers filing jointly and $75,000 for all other taxpayers. The senior bonus amount is reduced by four percent of modified AGI in excess of the applicable threshold amount.

The deduction for the senior bonus amount is allowed to taxpayers who claim the standard deduction and to taxpayers who elect to itemize deductions and is not indexed for inflation.

The SSN of the taxpayer and the taxpayer's spouse (if married filing jointly) must appear on the return. The SSN for each individual must be issued before the due date of the return. Each SSN also must be issued to a citizen or national of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States.

Effective for taxable years beginning after December 31, 2024. Sunsets after 2028.

### 2. Present State Law

Hawaii does not allow an additional standard deduction for seniors and does not conform to federal law regarding enhanced personal exemptions for seniors. Rather, section 235-54, HRS, allows an additional personal exemption for taxpayers who are aged 65 years or older.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We are hesitant to recommend the adoption of temporary tax changes that would increase complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

## E. EXTENSION OF INCREASED CHILD TAX CREDIT AND TEMPORARY ENHANCEMENT (ACT SEC. 70104, IRC SEC. 24)

### 1. Description of Federal Change

The provision temporarily increases the maximum child tax credit to $2,500 for taxable years beginning after December 31, 2024, and before December 31, 2028.

For taxable years beginning after December 31, 2028, the maximum child tax credit will revert to a permanent amount of $2,000. This amount is indexed for inflation in taxable years beginning after 2028. The inflation adjustment is the percentage by which chained CPI for the preceding calendar year exceeds the chained CPI for 2024.

The provision makes permanent the maximum amount of the additional child tax credit per qualifying child of $1,400 adjusted for inflation ($1,700 in 2025). The provision also makes permanent the earned income threshold of $2,500 for purposes of the earned income formula.

The provision makes permanent the income phaseout threshold amounts of $400,000 for taxpayers filing jointly and $200,000 for all other taxpayers.

Under the provision, the $500 nonrefundable credit for each dependent of the taxpayer other than a qualifying child is permanent. This credit is not adjusted for inflation.

Under the provision, the SSN of the taxpayer, the taxpayer's spouse (if married filing jointly), and the qualifying child must appear on the return. The SSN for each individual must be issued before the due date of the return. Each SSN also must be issued to a citizen or national of the United States or pursuant to a provision of the Social Security Act relating to the lawful admission for employment in the United States. The provision applies rules similar to the rules of IRC section 32(d), meaning married individuals must file a joint return in order to receive the child tax credit.

These provisions are effective for taxable years beginning after December 31, 2024.

#### 2. Present State Law

Hawaii does not have a comparable child credit.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

Please see our comments on GOV-06 (HB 2306 / SB 3125).

### F. EXTENSION OF DEDUCTION FOR QUALIFIED BUSINESS INCOME AND PERMANENT ENHANCEMENT (ACT SEC. 70105, IRC SEC. 199A)

#### 1. Description of Federal Changes

For taxable years beginning after December 31, 2017, and before January 1, 2026, certain individuals, trusts, and estates may deduct 20 percent of qualified business income from a partnership, S corporation, or sole proprietorship, as well as 20 percent of aggregate qualified real estate investment trust ("REIT") dividends and qualified publicly traded partnership income.

OBBBA makes five modifications to the deduction for qualified business income. The first modification makes permanent the deduction for qualified business income (including the deduction for REIT dividends and qualified publicly traded partnership income) and the deduction for income attributable to the domestic production activities of specified agricultural or horticultural cooperatives.

The second modification increases three percentages used to calculate the deduction for qualified business income from 20 percent to 23 percent. The provision increases the percentage of the excess of taxable income over net capital gain used in determining the maximum allowable deduction for qualified business income from 20 percent to 23 percent. The provision increases the percentage of the aggregate amount of the taxpayer's qualified REIT dividends and qualified publicly traded partnership income for the taxable year used to calculate the combined qualified business income amount from 20 percent to 23 percent. Finally, the provision increases the deductible amount for each qualified trade or business from 20 percent to 23 percent of the taxpayer's qualified business income with respect to that trade or business, before applying any applicable modifications.

The third modification replaces the existing phase-in of W–2 wages, capital investment, and specified service trades or businesses with a two-step process for taxpayers whose taxable income exceeds the threshold amount. Similar to current law, step one requires a taxpayer to limit the deductible amount for each qualified trade or business (i.e., 23 percent of qualified business income) to the greater of W–2 wages or W–2 wages and capital investment for each trade or business. Unlike current law, however, there is no phase-in of the W–2 wages and

capital investment limitation over a fixed dollar phase-in range. Rather, the taxpayer compares the sum of the deductible amounts for each qualified trade or business in step one to a new phase-in rule in step two. Under step two, the taxpayer (1) takes 23 percent of qualified business income from all trades or businesses (including specified service trades or businesses) without regard to the W–2 wages and capital limitation and (2) reduces the amount in (1) by a limitation phase-in amount equal to 75 percent of the excess of taxable income over the threshold amount. The taxpayer then compares the aggregate deductible amounts under steps one and two, and includes the greater of the two amounts in combined qualified business income.

The fourth modification allows a taxpayer to include qualified BDC interest dividends in the aggregated qualified REIT dividends and qualified publicly traded partnership income used to calculate the combined qualified business amount. The provision defines a qualified BDC interest dividend as any dividend received from a business development company that has elected to be treated as a regulated investment company, to the extent that the dividend is attributable to that company's net interest income derived from a qualifying trade or business. The provision also excludes qualified BDC interest dividends from the calculation of qualified business income for a qualified trade or business.

The fifth modification indexes the threshold amounts for inflation for taxable years beginning after 2025.

The five modifications in this provision apply to taxable years beginning after December 31, 2025.

### 2. Present State Law

Hawaii has not conformed to this provision. See section 235-2.3(b), HRS.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

Our top individual tax rate is 11%, second highest in the country, while our top corporate tax rate is 6.4%, which is much more on par with what other states are charging corporations. Right now, our individual income tax law doesn't even attempt to distinguish between income that comes from a business and income that comes from wages. Because we have chosen to tax business income at a much lower rate if the income is earned in a corporation, we should seriously consider adopting section 199A here in Hawaii to give some relief to the 75% of businesses that are not in corporate form, especially the small businesses.

## G. EXTENSION OF INCREASED ESTATE AND GIFT TAX EXEMPTION AMOUNTS AND PERMANENT ENHANCEMENT (ACT SEC. 70106, IRC SEC. 2010)

### 1. Description of Federal Change

A gift tax generally is imposed on any transfer of property by gift by a U.S. citizen or resident, and an estate tax generally is imposed on the taxable estate of any person who is a U.S. citizen or resident at the time of death.

The estate and gift taxes are unified with a top tax rate of 40 percent and, under a temporary provision enacted as part of Public Law 115–97, a $10 million inflation-indexed lifetime exemption for decedents dying and gifts made after December 31, 2017, and before January 1, 2026. Accordingly, the first $10 million (plus inflation) of the aggregate of taxable gifts and the gross estate is not subject to gift or estate tax. The inflation adjustment is determined using a base year of 2010. For 2025, the exemption amount is $13.99 million.

For decedents dying and gifts made after 2025, the estate and gift tax exemption is an inflation-indexed $5 million (again with a base year of 2010). For 2026, the projected exemption amount is $7.14 million.

Exemption amounts used during life to offset gift tax reduce the amount of exemption that remains at death to offset the decedent's estate tax. Surviving spouses generally are permitted to use the unused portion of a predeceased spouse's estate and gift tax exemption.

A separate transfer tax is imposed on generation-skipping transfers in addition to any estate or gift tax imposed on such transfers. This tax generally is imposed on transfers, whether made directly or by trust or similar arrangement, to a beneficiary more than one generation below that of the transferor. The generation- skipping transfer tax is computed using a flat rate equal to the top tax rate applied to estates and an exemption equal to the estate and gift tax exemption in effect for the taxable year, reduced by amounts of exemption allocated by the transferor to generation- skipping transfers in prior taxable years. There is no spousal exemption portability for the generation-skipping transfer tax exemption.

OBBBA permanently increases the unified estate and gift tax exemption to an inflation-indexed $15 million for taxable years beginning after December 31, 2025.

The generation-skipping transfer tax exemption is also permanently increased to an inflation-indexed $15 million. The $15 million exemption amount is indexed for inflation with a base year of 2025. Accordingly, the exemption amount is $15 million for decedents dying and gifts made in calendar year 2026 and increases with inflation thereafter.

### 2. Present State Law

State law in chapter 236E, HRS, imposes an estate tax and a generation-skipping transfer tax. State law does not impose a gift tax. Section 236E-6, HRS, provides for an applicable exclusion amount that is the same as the federal applicable exclusion amount as it existed before enactment of the Tax Cuts and Jobs Act, the exemption equivalent of the unified credit

reduced by the amount of taxable gifts made by the decedent that reduces the amount of the federal applicable exclusion amount, or the exemption equivalent of the unified credit on the decedent's federal estate tax return, with adjustments for nonresidents and nonresidents not citizens.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes in light of section 236E-5(a), HRS, which states, "It is the intent of this chapter, in addition to the essential purpose of raising revenue, to conform the estate and generation-skipping transfer tax law of the State as closely as possible to the Internal Revenue Code, in order to simplify the filing of returns and minimize the taxpayers' burdens in complying with the estate and generation-skipping transfer tax law."

### H. EXTENSION OF INCREASED ALTERNATIVE MINIMUM TAX EXEMPTION AND PHASE-OUT THRESHOLDS (ACT SEC. 70107, IRC SEC. 55)

#### 1. Description of Federal Change

An alternative minimum tax ("AMT") is imposed on an individual, an estate, or a trust in an amount by which the tentative minimum tax exceeds the regular income tax for the taxable year.

The AMT exemption amounts and phase-out thresholds for individuals, which were increased starting in 2018 by the TCJA decrease for taxable years beginning after December 31, 2025. In 2026 exemption amounts for individuals are projected to be (1) $109,800 in the case of married individuals filing a joint return and surviving spouses; (2) $70,600 in the case of unmarried individuals (other than surviving spouses); and (3) $54,900 in the case of married individuals filing separate returns. For 2026 the exemption amount phase-out thresholds for individuals are projected to be (1) $209,200 in the case of married individuals filing a joint return and surviving spouses, (2) $156,900 in the case of unmarried individuals (other than surviving spouses), and (3) $104,600 in the case of married individuals filing a separate return.

The provision repeals the expiration of the TCJA increase in the AMT exemption amounts and phase-out thresholds effective for taxable years beginning after December 31, 2025.

#### 2. Present State Law

Hawaii has no alternative minimum tax, so state law in section 235-2.3(b)(1), HRS, generally does not conform to the individual alternative minimum tax.

### 3. Proposal in TAX-01

The bill contains no specific provision relating to alternative minimum tax, meaning that State law would not impose the tax.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend not imposing the alternative minimum tax, as is done now, to avoid further complexity.

## I. EXTENSION OF LIMITATION ON DEDUCTION FOR QUALIFIED RESIDENCE INTEREST (ACT SEC. 70108, IRC SEC. 163)

### 1. Description of Federal Change:

Personal interest is not deductible. Qualified residence interest is not treated as personal interest and is allowed as an itemized deduction, subject to limitations. For taxable years beginning after December 31, 2017, and before January 1, 2026, qualified residence interest means interest paid or accrued during the taxable year on acquisition indebtedness with respect to a qualified residence. A qualified residence is the taxpayer's principal residence and one other residence of the taxpayer selected to be a qualified residence. A qualified residence may be a house, apartment, condominium, mobile home, boat, or similar property.

Acquisition indebtedness is indebtedness which is incurred in acquiring, constructing, or substantially improving a qualified residence of the taxpayer and which secures the residence. In the case of a taxable year beginning after December 31, 2017, and before January 1, 2026, a taxpayer may treat no more than $750,000 of indebtedness as acquisition indebtedness ($375,000 in the case of a married individual filing separately). In the case of indebtedness incurred on or before December 15, 2017, this limitation is $1,000,000 ($500,000 in the case of a married individual filing separately). For taxable years beginning after December 31, 2025, a taxpayer may treat up to $1,000,000 ($500,000 in the case of a married individual filing separately) of indebtedness as acquisition indebtedness, regardless of when the indebtedness was incurred.

Acquisition indebtedness also includes indebtedness from the refinancing of other acquisition indebtedness, but only to the extent of the balance of the refinanced indebtedness. For example, if the taxpayer incurs $200,000 of acquisition indebtedness to acquire a principal residence and pays down the debt to $150,000, a refinancing cannot increase the taxpayer's acquisition indebtedness with respect to the residence above $150,000.

Interest on acquisition indebtedness is deductible in computing alternative minimum taxable income. However, in the case of a second residence, the acquisition indebtedness may only be incurred with respect to a house, an apartment, a condominium, or a mobile home that is not used on a transient basis.

Home equity indebtedness is indebtedness (other than acquisition indebtedness) secured by a qualified residence. For taxable years beginning after December 31, 2025, a taxpayer may

treat up to $100,000 ($50,000 in the case of a married individual filing separately) of indebtedness as home equity indebtedness. However, the amount of home equity indebtedness with respect to a qualified residence may not exceed the fair market value of the residence reduced by the acquisition indebtedness with respect to it.

For taxable years beginning after December 31, 2025, interest on qualifying home equity indebtedness is deductible (up to the specified limit) regardless of how the proceeds of the indebtedness are used.

Thus, for taxable years beginning after December 31, 2025, the aggregate limitation on a taxpayer's acquisition indebtedness and home equity indebtedness with respect to a principal residence and a second residence that may give rise to deductible interest is $1,100,000 ($550,000 for a married individual filing separately)

Under the OBBBA, the $750,000 ($375,000 in the case of a married individual filing separately) limitation on acquisition indebtedness enacted with by the TCJA is made permanent, and the exclusion of interest on home equity indebtedness from the definition of qualified residence interest is also made permanent, effective for taxable years beginning after December 31, 2025

### 2. Present State Law

State law conforms to the deduction for interest in section 163, IRC. under section 235-2.4(j), HRS, except for the following provisions: (1) 163(d)(4)(B) (defining net investment income to exclude dividends), (2) 163(e)(5)(F) (suspension of applicable high-yield discount obligation (AHYDO) rules), (3) 163(h)(3)(F) (limiting mortgage interest), and (4) 163(i)(1) as it applies to debt instruments issued after January 1, 2010, (defining AHYDO).

In other words, Hawaii law does not adopt the limits on mortgage interest for acquisition debt and for home equity loans.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## J. EXTENSION OF LIMITATION ON CASUALTY LOSS DEDUCTION (ACT SEC. 70109, IRC SEC. 165(h))

### 1. Description of Federal Change

An individual taxpayer may claim an itemized deduction for a personal casualty loss. If the loss is attributable to a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act"), then the loss is deductible only to the extent of the sum of the individual's personal casualty gains plus the amount by which aggregate net disaster-related losses exceed 10 percent of the individual taxpayer's adjusted gross income. In any taxable year beginning after December 31, 2017, and before January 1, 2026, all other personal casualty losses are deductible only to the extent that the losses do not exceed the individual's personal casualty gains.

For individual taxpayers, personal casualty losses are losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty gains are recognized gains from any involuntary conversion of property not connected with a trade or business or a transaction entered into for profit, if such gains arise from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty losses are deductible to the extent they exceed $100 per casualty.

Under OBBBA, the temporary limitation on personal casualty losses in section 165(h)(5) is made permanent effective for taxable years beginning after December 31, 2025. However, the Act allows for disasters to be declared by State governors as well as by the President.

### 2. Present State Law

State law conforms to the deduction for losses in section 165, IRC. under section 235-2.4(*l*), HRS, except: (1) The amount prescribed by section 165(h)(1) (relating to the limitation per casualty) of the IRC shall be a $100 limitation per casualty; (2) Section 165(h)(3)(A) and (B) (both of which relate to special rules for personal casualty gains and losses in federally declared disasters) of the IRC is not operative; (3) Section 165(h)(5) (relating to the limitation on the deductibility of personal casualty losses that are not attributable to federally declared disasters) shall not be operative; and (4) Section 165 also applies to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3, HRS.

### 3. Proposal in TAX-01

Repeals item (3), meaning that the federal limits on non-disaster losses will become operative for Hawaii purposes and the disaster can be declared either by the President or by the Governor.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## K. TERMINATION OF MISCELLANEOUS ITEMIZED DEDUCTIONS (ACT SEC. 70110, IRC SEC. 67)

#### 1. Description of Federal Change

In determining taxable income, individuals are allowed to deduct amounts that are sometimes referred to as "below-the line" deductions. An individual who does not elect to itemize deductions is allowed a standard deduction and deductions for certain other amounts listed in IRC section 63(b) (sometimes referred to as "non-itemizer deductions," for example, the deduction for qualified business income). Instead of taking a standard deduction, an individual may elect to subtract itemized deductions in computing taxable income.

All itemized deductions other than those listed in section 67(b) are "miscellaneous itemized deductions." Deductions listed in section 67(b) (meaning deductions that are not miscellaneous itemized deductions) include the deduction for interest, the deduction for state, local, and foreign taxes, the charitable contribution deduction, and the deduction for medical expenses that exceed 7.5 per cent of adjusted gross income. Miscellaneous itemized deductions include, among many other expenses, investment expenses, legal fees, and unreimbursed employee business expenses.

Before 2018, miscellaneous itemized deductions were allowed, but only to the extent they exceeded two percent of a taxpayer's adjusted gross income. Following the 2017 enactment of TCJA, miscellaneous itemized deductions are not allowed for taxable years beginning after December 31, 2017, and before January 1, 2026.

OBBBA makes permanent the TCJA temporary repeal of miscellaneous itemized deductions effective for taxable years beginning after December 31, 2025. It also adds educator expenses to section 67(b), carving them out from the definition of miscellaneous itemized deductions.

#### 2. Present State Law

State law presently does not conform to federal treatment of miscellaneous itemized deductions. State law conforms to pre-TCJA law that allowed miscellaneous itemized deductions to the extent that they exceeded 2% of adjusted gross income.

#### 3. Proposal in TAX-01

Conform to OBBBA, meaning that miscellaneous itemized deductions will no longer be deductible.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## L. LIMITATION ON TAX BENEFIT OF ITEMIZED DEDUCTIONS (ACT SEC. 70111, IRC SEC. 68)

#### 1. Description of Federal Change:

For any taxable year beginning after 2017 and before 2026, there is no overall limitation on the benefit of itemized deductions.

Before 2018, the total amount of itemized deductions, other than the deductions for medical expenses, investment interest, and casualty, theft or gambling losses, was limited for individual taxpayers whose adjusted gross income exceeded statutorily prescribed "applicable amounts.". The otherwise allowable amount of an individual taxpayer's itemized deductions for a taxable year was reduced by the lesser of three percent of the amount by which the taxpayer's adjusted gross income exceeded the applicable amount or 80 per cent of the amount of the taxpayer's itemized deductions otherwise allowable for that year. This itemized deduction limitation was colloquially referred to as the "Pease limitation."

For 2017, the applicable amounts were $261,500 for an unmarried individual other than a head of household or a surviving spouse, $287,650 for a head of household, $313,800 for married individuals filing a joint return or for a surviving spouse, and $156,900 for married individuals filing a separate return. These amounts were indexed for inflation.

The Pease limitation becomes effective again for taxable years beginning after 2025.

In place of the Pease limitation, OBBBA provides a limitation on the tax benefit of itemized deductions. Under the provision, the amount of an individual's itemized deductions otherwise allowable for a taxable year is reduced by 2/37 of the lesser of the amount of itemized deductions otherwise allowable for the year or so much of the taxable income of the taxpayer for the year (determined without regard to the provision and increased by the amount of otherwise allowable itemized deductions) as exceeds that dollar amount at which the 37 percent rate bracket under section 1 begins in respect of the taxpayer.

The OBBBA's limitation on the tax benefit of itemized deduction applies after the application of any other limitation on the allowance of any itemized deduction (such as the adjusted-gross-income-based limitation on the charitable contribution deduction).

The provision is effective for taxable years beginning after December 31, 2025.

#### 2. Present State Law

State law applies the Pease limitation with the thresholds that were operative for federal tax year 2009.

#### 3. Proposal in TAX-01

Conform to OBBBA, but with the 2009 thresholds. As written, it means that the Pease limitation for Hawaii law would eliminate no more than 2/37 of itemized deductions otherwise allowable.

#### 4. Comments of the Tax Foundation of Hawaii

The federal law proposes to remove the limitation on itemized deductions given that all or most of the itemized deductions are going to be disallowed up front. If the federal approach to tax simplification is followed, conformity to federal law would be preferable.

### M. TERMINATION OF QUALIFIED BICYCLE COMMUTING REIMBURSEMENT EXCLUSION (ACT SEC. 70112, IRC SEC. 132(f)(8))

#### 1. Description of Federal Change

Qualified bicycle commuting reimbursements that are excludible from gross income for income tax purposes are also excluded from wages for employment tax purposes is temporarily repealed for taxable years beginning after December 31, 2017, and before January 1, 2026.

Beginning after December 31, 2025, OBBBA permanently terminates the exclusion.

#### 2. Present State Law

Conforms to federal law.

#### 3. Proposal in TAX-01

Conform to OBBBA.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

### N. EXTENSION OF LIMITATION ON EXCLUSION AND DEDUCTION FOR MOVING EXPENSES (ACT SEC. 70113, IRC SECS. 132(g) AND 217)

#### 1. Description of Federal Change

Prior to 2018, individuals were permitted an above-the-line deduction for moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee or a self-employed individual at a new principal place of work. Moving expenses were deductible only if the move meets certain conditions related to distance

from the taxpayer's former residence and the taxpayer's status as a full-time employee or as a self-employed individual performing services on a full-time basis in the new location.

TCJA eliminated the deduction for moving expenses for taxable years 2018 through 2025. However, during that period, the subsection retains the deduction for moving expenses and the rules providing for exclusions of amounts attributable to in-kind moving and storage expenses (and reimbursements or allowances for these expenses) for members of the Armed Forces (or their spouses or dependents) on active duty who move pursuant to a military order and incident to a permanent change of station.

Qualified moving expense reimbursements are excluded from an employee's gross income, and are defined as any amount received (directly or indirectly) by an individual from an employer as a payment for (or reimbursement of) expenses which would be deductible as moving expenses under section 217 if directly paid or incurred by the individual. However, any amount actually deducted by the individual is not eligible for this exclusion. Qualified moving expense reimbursements that are excludible from gross income for income tax purposes are also excluded from wages for employment tax purposes. For taxable years beginning after December 31, 2017, and before January 1, 2026, section 132(g)(2) repeals the exclusion from gross income and wages for qualified moving expense reimbursements except in the case of a member of the Armed Forces of the United States on active duty who moves pursuant to a military order and incident to a permanent change of station.

OBBBA would permanently repeal the deduction for moving expenses and the qualified moving expense reimbursement exclusion, except in the case of a member of the Armed Forces (or their spouse or child) on active duty who moves pursuant to a military order and incident to a permanent change of station effective for taxable years beginning after December 31, 2025.

### 2. Present State Law

Does not conform. Moving expenses are allowed.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## O. EXTENSION OF LIMITATION ON WAGERING LOSSES (ACT SEC. 70114, IRC SEC. 165)

### 1. Description of Federal Change

Losses sustained during the taxable year on wagering transactions are allowed as a deduction only to the extent of the gains during the taxable year from such transactions. For taxable years beginning after December 31, 2017, and before January 1, 2026, the term "losses from wagering transactions" as used in IRC sec 165(d) includes any deduction otherwise allowable under chapter 1 of the Code incurred in carrying on any wagering transaction. Thus, for such taxable years the limitation on losses from wagering transactions applies not only to the actual costs of wagers but also to other expenses incurred in connection with gambling activity (for instance, the otherwise deductible costs of travel to and from a casino).

Effective for taxable years beginning after December 31, 2025, clarification of the term "losses from wagering transactions" as used in IRC sec 165(d) is made permanent. Therefore, in the case of any taxable year beginning after December 31, 2017, such term includes any deduction otherwise allowable under chapter 1 of the Code incurred in carrying on any wagering transaction.

In addition, the allowable amount of losses is limited to 90% of losses.

### 2. Present State Law

Conforms to federal law.

### 3. Proposal in TAX-01

Conforms to OBBBA.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate. As we have written about before, however, conforming to the 90% provision may pose practical challenges.

## P. EXTENSION OF INCREASED LIMITATION ON CONTRIBUTIONS TO ABLE ACCOUNTS AND PERMANENT ENHANCEMENT (ACT SEC. 70115, IRC SEC. 529A)

### 1. Description of Federal Change

The Internal Revenue Code provides for tax-favored savings programs intended to benefit disabled individuals, known as qualified ABLE programs. A qualified ABLE program is a program established and maintained by a State or agency or instrumentality thereof. A qualified ABLE program must meet the following conditions: (1) Under the provisions of the program, contributions may be made to an account (an "ABLE account") established for the purpose of meeting the qualified disability expenses of the designated beneficiary of the account; (2) the program must limit a designated beneficiary to one ABLE account; and (3) the program must meet certain other requirements.

OBBBA makes permanent the ability of a designated beneficiary who is an employee (and for whom no contribution during the taxable year is made to a tax-advantaged defined contribution plan, a section 403(b) plan, or a governmental section 457 plan) to contribute to his or her ABLE account the lesser of his or her compensation included in gross income or an amount equal to the poverty line for a one-person household for the preceding calendar year. The beneficiary may make such a contribution regardless of whether it increases the total amount contributed (by the beneficiary or others) for the taxable year above the amount determined under section 2503(b).

Under the OBBA, the maximum annual contribution limit for an ABLE account (not including the employment-related contributions made by the designated beneficiary) is equal to the annual gift tax exclusion specified in IRC sec 2503(b) with a modified inflation adjustment. Whereas section 2503(b) adjusts the $10,000 base amount for inflation with a base year of 1997, under the provision the $10,000 base amount is adjusted for inflation with a base year of 1996. The extra year of inflation increases the annual contribution limit above what it would be under present law.

The provision is generally effective for contributions made after December 31, 2025. The modified inflation adjustment is effective for taxable years beginning after December 31, 2025.

### 2. Present State Law

Conforms to federal law, except that section 529A(c)(3) (with respect to additional tax for distributions not used for disability expenses) shall not be operative.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes to tax-privileged savings vehicles.

## Q. EXTENSION OF SAVERS CREDIT ALLOWED FOR ABLE CONTRIBUTIONS (ACT SEC. 70116, IRC SEC 25B)

### 1. Description of Federal Change

\ Eligible individuals may claim a nonrefundable tax credit (the "Saver's Credit") for qualified retirement savings contributions to certain retirement accounts. The maximum annual contribution eligible for the credit is $2,000 per individual. The credit rate depends on the adjusted gross income ("AGI") of the taxpayer. As the taxpayer's AGI increases, the saver's credit rate available to the taxpayer is reduced, until, at certain AGI levels, the credit is unavailable. For taxable years beginning in 2025, the following taxpayers may be eligible for at least some amount of credit: married taxpayers filing joint returns with AGI of $79,000 or less, taxpayers filing head of household returns with AGI of $59,250 or less, and all other taxpayers filing returns with AGI of $39,500 or less. The AGI levels used for the determination of the available credit rate are indexed for inflation.

OBBBA makes permanent the temporary provision including ABLE account contributions made by the account's designated beneficiary as eligible contributions for purposes of the saver's credit. Therefore, for taxable years beginning after December 31, 2026, eligible contributions for purposes of the credit include (and are limited to) ABLE account contributions made during the taxable year by the account's beneficiary. Effective for taxable years ending after December 31, 2025.

### 2. Present State Law

Hawaii has no comparable credit.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We agree with not creating a credit that does not now exist.

## R. EXTENSION OF ROLLOVERS FROM QUALIFIED TUITION PROGRAMS TO ABLE ACCOUNTS PERMITTED (ACT SEC. 70117, IRC SEC. 529)

### 1. Description of Federal Change

A Section 529 qualified tuition program is a program established and maintained by a State (or agency or instrumentality thereof) or by one or more eligible educational institutions, which satisfies certain requirements and under which a person may purchase tuition credits or certificates on behalf of a designated beneficiary that entitle the beneficiary to the waiver or payment of qualified education expenses of the beneficiary (a "prepaid tuition program"). Section 529 provides favorable income tax and transfer tax rules for the treatment of accounts and contracts established under qualified tuition programs. In the case of a program established and maintained by a State or agency or instrumentality thereof, a qualified tuition program also includes a program under which a person may make contributions to an account that is established for the purpose of satisfying the qualified education expenses of the designated beneficiary of the account, provided it satisfies certain specified requirements (a "savings account program"). Under both types of qualified tuition programs, a contributor establishes an account for the benefit of a particular designated beneficiary to provide for that beneficiary's qualified education expenses.

The OBBBA makes permanent the temporary provision that allows nontaxable rollovers from qualified tuition program to ABLE accounts, provided that (i) the rollover is completed within 60 days, (ii) the ABLE account beneficiary is either the qualified tuition program beneficiary or a member of the latter's family, and (iii) the rolled-over amount does not, when added to all other contributions to the ABLE account in the taxable year, exceed the inflation-indexed $10,000 amount under section 2503(b) (with an additional year of inflation adjustment as provided by section 110015 of the bill).

Effective for taxable years beginning after December 31, 2025.

### 2. Present State Law

Hawaii conforms to federal law except for sections 529(c)(6) (additional tax on disqualifying distributions), 529(c)(7) (treatment of elementary and secondary tuition), and 529(e)(3)(A)(iii) (allowing, as eligible expenses, purchase of computer or peripheral equipment, computer software, or Internet access).

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur with decoupling from the penalty tax provision, as Hawaii does in other qualified plan contexts, and ask the Committee to consider conforming to the other two excluded provisions to simplify compliance.

## S. EXTENSION OF TREATMENT OF CERTAIN INDIVIDUALS PERFORMING SERVICES IN THE SINAI PENINSULA AND ENHANCEMENT TO INCLUDE ADDITIONAL AREAS (ACT SEC. 70118)

### 1. Description of Federal Change

The OBBBA amends TCJA to permanently treat a qualified hazardous duty area in the same manner as a combat zone for purposes of determining eligibility for the certain tax benefits available to members of the Armed Forces. The provision also modifies the definition of qualified hazardous duty area to include (1) the Sinai Peninsula of Egypt if as of December 22, 2017, any member of the Armed Forces of the United States is entitled do special pay under 37 U.S.C. section 310 for duty subject to hostile fire or imminent danger for services per formed in such location and (2) Kenya, Mali, Burkina Faso, and Chad if as of date of enactment, any member of the Armed Forces of the United States is entitled to special pay under 37 U.S.C. section 310 for duty subject to hostile fire or imminent danger for services performed in such location. The provision is effective on January 1, 2026.

### 2. Present State Law

Hawaii has no comparable provision.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur.

## T. EXTENSION OF EXCLUSION FROM GROSS INCOME OF STUDENT LOANS DISCHARGED ON ACCOUNT OF DEATH OR DISABILITY (ACT SEC. 70119, IRC SEC. 108)

### 1. Description of Federal Change

Gross income generally includes the amount of a taxpayer's indebtedness that is discharged. An amount that otherwise would be includible in gross income as a result of the discharge of a taxpayer's indebtedness may be excluded from gross income under one of several exceptions. Under one exception, an individual's gross income does not include any amount from the forgiveness (in whole or in part) of the individual's student loan (under the definition described below) if the forgiveness is made under a provision of the loan according to which all or a part of the individual's indebtedness will be discharged if the individual works for a certain period of time in certain professions for any of a broad class of employers.

The OBBBA restores the TCJA exclusion from an individual's gross income for an otherwise includible amount from the discharge of a qualifying loan on account of a student's death or total and permanent disability. As under the TCJA, an amount from the discharge of a loan qualifies for the provision's exclusion if the loan was a (1) a student loan (under the section 108(f)(2) requirements for student loans described previously) or (2) a private education loan.

The provision's exclusion from gross income is allowed in respect of a discharge during a taxable year only if the taxpayer includes on the tax return for the year the taxpayer's Social Security number and, if the taxpayer is married, the Social Security number of the taxpayer's spouse.

Effective for discharges after December 31, 2025.

### 2. Present State Law

Hawaii conforms to federal treatment, namely including income from discharge of indebtedness except for business debt discharged by the reacquisition of a debt instrument.

### 3. Proposal in TAX-01

No change. Essentially, this means that discharge of student loan debt will create taxable income to the recipient unless the recipient is deceased or permanently and totally disabled.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## U. LIMITATION ON INDIVIDUAL DEDUCTIONS FOR CERTAIN STATE AND LOCAL TAXES, ETC. (ACT SEC. 70120, IRC SEC. 164)

### 1. Description of Federal Change

The OBBBA increases the temporary limitation, enacted by TCJA, on individual State and local tax deductions taken under section 164. The limitation amount is changed to $40,000, which is phased down based on modified adjusted gross income but is not reduced below $10,000.

These provisions are effective for taxable years beginning after December 31, 2024.

### 2. Present State Law

Hawaii does not conform to federal treatment, so that all state and local taxes are deductible without limit.

### 3. Proposal in TAX-01

No change, meaning that Hawaii continues to decouple from federal treatment, including the new IRC paragraph 164(b)(7) added by OBBBA.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal base-broadening changes and reducing the overall tax rate.

## V. NO TAX ON TIPS (ACT SEC. 70201, IRC SECS. 45B, 199A, 3401, 6041, 6050W, 6051, 6213(g) AND NEW IRC SEC. 224)

### 1. Description of Federal Changes

Under present law, tips are generally includible in an individual's gross income and are subject to Federal income and Federal employment taxes. All tips received by an individual are subject to federal income taxation including (1) cash tips received directly from customers (2) electronically paid tips from credit and debit card charge customers, and (3) tips received under a tip-splitting or tip-pooling arrangement. The value of noncash tips received, such as tickets, passes or other goods or commodities that a customer gives the individual are generally also subject to income taxation. However, service charges that an employer adds on to a customer's bill and pays to an employee are treated as wages to the individual, not tips.

The following factors generally determine whether a payment qualifies as a tip; normally, each of the following must apply: (1) the payment is made free from compulsion; (2) the customer has the right to determine the amount of the payment; (3) the payment isn't subject to negotiation or dictated by employer policy; and (4) the customer generally has the right to determine who receives the payment.

OBBBA provides a federal income tax deduction (the "tip deduction") equal to the qualified tips that an individual receives during any taxable year that are included on Form W–2's, 1099– K's or 1099–NECs, or reported by the taxpayer on Form 4317 (or successor). The deduction is up to $25,000 for qualified tips, with phase- out reduction of $100 for each $1,000 that modified adjusted income exceeds $150,000 ($300,000 joint).

"Qualified tips" are defined as any cash tip received by an individual in an occupation which traditionally and customarily received tips (including but not limited to restaurant servers, bar tenders, taxi drivers, rideshare drivers, food delivery drivers, hair dressers, hairstylists, hotel bellhops, hotel housekeepers, casino dealers, etc.) on or before December 31, 2024, as provided by the Secretary. Qualified tips do not include any amount received by an individual unless: (1) such amount is paid voluntarily without any consequence in the event of nonpayment, is not the subject of negotiation, and is determined by the payor; (2) the trade or business in the course of which the individual receives such amount is not a specified service trade or business; (3) such individual does not receive earned income in excess of the dollar amount in effect for the calendar year in which the taxable year begins; and (4) such other requirements as may be established by the Secretary in regulations or other guidance are satisfied.

In the case of qualified tips received by an individual during any taxable year in the course of any trade or business of such individual, such qualified tips are taken into account only to the extent that the gross receipts of the taxpayer from such trade or business for such taxable year (including such qualified tips) exceeds the sum of: (1) the cost of goods sold that are allocable to such receipts, plus (2) other expenses, losses, or deductions (other than the deduction allowed under this proposal), which are properly allocable to such receipts.

For individuals who do not elect to itemize their deductions, the tip deduction is allowed in addition to the standard deduction.

No tip deduction is allowed under this section with respect to qualified tips unless the taxpayer includes the Social Security number (SSN) of the individual who received such tips on his or her tax return for the taxable year. If the individual is married, such tax return must also include the SSN of such spouse. An omission of a correct SSN is treated as a mathematical or clerical error.

Tip deductions to employees are only allowed for qualified tips reported by the employer on Form W–2. With respect to returns related to wages reported to the Secretary and the employee, the total amount of tips reported by the employee to the employer is provided.

Independent contractors and sole proprietors are only eligible for the tip deduction in the following situations: (1) with respect to returns for payments made in the course of a trade or business reported to the Secretary and the payee, in the case of compensation to non-employees, there is a separate accounting of the portion of payments that have been properly designated as tips and whether such tips are received in an occupation which traditionally and customarily tips is noted; (2) with respect to returns for payments made for services and direct sales reported to the Secretary and the payee, there is a separate accounting of the portion of payments that have been properly designated as tips and whether such tips are received in an occupation which traditionally and customarily tips is noted; and (3) with respect to returns and payments relating to third party settlement organizations reported to the Secretary and the payee, there is a separate accounting of the portion of the reportable payment transactions that have been properly designated by payors as tips and whether such tips are received in an occupation which traditionally and customarily tips is noted.

The OBBBA provision applies to taxable years beginning after December 31, 2024, sunsetting in taxable years beginning after December 31, 2028.

#### 2. Present State Law

Hawaii conforms to federal treatment, namely including tips as income.

#### 3. Proposal in TAX-01

No change, meaning that Hawaii will conform to OBBBA treatment and allow the tip deduction.

#### 4. Comments of the Tax Foundation of Hawaii

We are hesitant to recommend the adoption of temporary tax changes that would increase complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

### W. NO TAX ON OVERTIME (ACT SEC. 70202, IRC SECS. 3402, 6051, 6213(g) AND NEW IRC SEC. 225)

#### 1. Description of Federal Changes

Under present law, overtime is generally includible in an individual's gross income and is subject to Federal income and Federal employment taxes.

All overtime received by an individual is subject to federal income taxation and is currently reported in Box 1 of the W–2. An employer reports overtime compensation as part of all other taxable wages, tips, and other compensation paid to the employee during the year. Currently, there is no separate reporting of overtime compensation for tax reporting purposes on either the Form W–2 or on the Form 1040.

OBBBA provides a federal income tax deduction (the "overtime deduction") equal to the qualified overtime compensation that an individual receives during the taxable year. Amounts excluded from the overtime deduction include (1) any qualified tips and (2) any amount received by an individual during a taxable year if such individual is a highly compensated employee of any employer for the calendar year in which the taxable year begins, or receives earned income in excess of the dollar amount in effect for such calendar year. A deduction up to $12,500 ($25,000 joint) for qualified overtime compensation is allowed, with phase-out reduction of $100 for each $1,000 that modified adjusted gross income exceeds $150,000 ($300,000 joint).

"Qualified overtime compensation" means overtime compensation paid to an individual required under section seven of the Fair Labor Standards Act (FLSA) that is in excess of the regular rate (as used in that section) at which such individual is employed. FLSA requires that time and a half be paid when an employee works more than 40 hours a week. In that case, the qualified overtime compensation is half of

the employee's rate of pay for hours worked over 40 hours. This applies even if the employee's arrangement allows for a different overtime rate with a different hour per week threshold.

In addition, qualified overtime compensation does not include any qualified tips as defined in OBBBA section 110101, "No tax on tips." As a result, there is no double tax benefit provided to qualified tips for which a deduction is permitted under that section and then used to determine qualified overtime compensation for purposes of calculating the overtime deduction.

For individuals who do not elect to itemize their deductions, the overtime deduction is allowed in addition to the standard deduction.

Effective for taxable years beginning after December 31, 2024, sunsetting in taxable years beginning after December 31, 2028.

### 2. Present State Law

Hawaii conforms to federal treatment, namely including overtime pay as income.

### 3. Proposal in TAX-01

Decouples from federal treatment, meaning that Hawaii will not recognize the "no tax on overtime" rules.

### 4. Comments of the Tax Foundation of Hawaii

We are hesitant to recommend the adoption of temporary tax changes that would increase complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

## X. NO TAX ON CAR LOAN INTEREST (ACT SEC. 70203, IRC SECS. 62 AND 163 AND NEW SEC. 6050AA)

### 1. Description of Federal Change

For taxable years beginning in 2025, 2026, 2027, and 2028, the provision excludes from the definition of personal interest, which is generally not deductible by individuals, qualified passenger vehicle loan interest. As a consequence, unless another rule disallows a deduction, for taxable years 2025 through 2028 a deduction is allowed for qualified passenger vehicle loan interest.

Qualified passenger vehicle loan interest means any interest that is paid or accrued during the taxable year on indebtedness incurred by the taxpayer after December 31, 2024, for the purchase of, and that is secured by a first lien on, an applicable passenger vehicle for personal use (referred to below as "auto acquisition indebtedness").

Qualified passenger vehicle loan interest does not include:

1. A loan to finance fleet sales,
2. A personal cash loan secured by a vehicle previously purchased by the taxpayer,
3. A loan incurred for the purchase of a commercial vehicle that is not used for personal purposes,
4. Any lease financing,
5. A loan to finance the purchase of vehicle with a salvage title, or
6. A loan to finance the purchase of a vehicle intended to be used for scrap or parts.

OBBBA limits the amount of interest that a taxpayer may take into account in a taxable year as qualified passenger vehicle loan interest to $10,000.

The provision reduces the amount that is otherwise allowable as a deduction for qualified passenger vehicle loan interest (after taking into account the $10,000 limitation) by 20 percent of the amount by which a taxpayer's modified adjusted gross income ("modified AGI") exceeds $100,000 (or, in the case of married individuals filing a joint return, $200,000). Accordingly, for a taxpayer with an otherwise allowable deduction of $10,000, the deduction is fully eliminated when modified AGI is at least $150,000 ($250,000 in the case of a joint return). For purposes of this income-based phaseout, modified AGI is adjusted gross income determined after application of IRC sections 86, 135, 137, 219, 221, and 469 (other Code provisions that require determination of modified AGI) and without regard to the provision and the exclusions under IRC sections 911, 931, and 933.

For purposes of the exclusion from personal interest for qualified passenger vehicle loan interest, an applicable passenger vehicle is any vehicle that is manufactured primarily for use on public streets, roads, and highways; that has at least two wheels; and that is a car, minivan, van, sport utility vehicle, pickup truck, or motorcycle. An all-terrain vehicle designed for use on land is also an applicable passenger vehicle. For this purpose an all-terrain vehicle is defined as any motorized vehicle that has three or four wheels, a seat designed to be straddled by the operator, and handlebars for steering control. An applicable passenger vehicle also includes any trailer, camper, or vehicle (designed for use on land) that is designed to provide temporary living quarters for recreational camping, or seasonal use and that is a motor vehicle or is designed to be towed by, or affixed to, a motor vehicle.

A vehicle is an applicable passenger vehicle only if the vehicle's final assembly occurs in the United States. For purposes of the U.S. final assembly requirement, final assembly is the process by which a manufacturer produces a vehicle at, or through the use of, a plant, factory, or other place from which the vehicle is delivered to a dealer or importer with all component parts necessary for the mechanical operation of the vehicle included with the vehicle, whether or not the component parts are permanently installed in or on the vehicle.

Interest on indebtedness may be considered qualified passenger vehicle loan interest if the indebtedness is incurred to refinance acquisition indebtedness, but only to the extent that the amount of this refinancing indebtedness does not exceed the amount of the acquisition

indebtedness and only if the refinancing indebtedness is secured by a first lien on the applicable passenger vehicle with respect to which the acquisition indebtedness was incurred.

Indebtedness that is owed to a person related to the taxpayer within the meaning of section 267(b) or 707(b)(1) is not qualified passenger vehicle loan interest.

The deduction for qualified passenger vehicle loan interest is allowed in determining a taxpayer's adjusted gross income, with the consequence that the deduction is allowable to a taxpayer who does not elect to itemize deductions.

The provision is effective for indebtedness incurred after December 31, 2024. Sunsets after 2028.

#### 2. Present State Law

Hawaii conforms to federal treatment, namely not allowing car loan interest to be deductible.

#### 3. Proposal in TAX-01

Decouples from federal treatment, meaning that Hawaii will continue to not allow car loan interest to be deductible.

#### 4. Comments of the Tax Foundation of Hawaii

We are hesitant to recommend the adoption of temporary tax changes that would increase complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

### Y. TRUMP ACCOUNTS (ACT SEC. 70204, IRC SEC. 128, NEW IRC SECS. 139J, 530A, 6434)

#### 1. Description of Federal Change

The OBBBA establishes a new type of tax-preferred account, a trust created or organized in the United States for the exclusive benefit of an individual and designated at the time of establishment as such (in such manner as the Secretary shall prescribe), provided that the written governing instrument creating the trust meets certain requirements, as described below. A Trump Account is subject to the unrelated business income tax but is otherwise exempt from tax.

To be eligible for an account, the account beneficiary must not have attained age eight on the date the account is established. The individual establishing the account must provide the trustee his or her Social Security number (SSN) as well as the account beneficiary's SSN. In addition, except in the case of a qualified rollover contribution, the Trump Account may not accept a contribution unless (1) it is in cash, (2) the account beneficiary is under age 18, (3) the

contribution does not cause the aggregate contributions for the taxable year to exceed the applicable contribution limit, and (4) the contribution is made on or after January 1, 2026. For this purpose, a qualified rollover contribution is an account from another Trump Account created for the benefit of the same account beneficiary.

The trustee of the Trump Account must be a bank or another person who demonstrates to the satisfaction of the Secretary that the manner in which the person will administer the trust will be consistent with the provision's requirements or who has so demonstrated with respect to an individual retirement plan. The account beneficiary's interest in the account must be nonforfeitable. The assets of the trust must not be commingled with other property except in a common trust fund or common investment fund, and no trust funds may be invested in any asset other than eligible investments. For this purpose, eligible investment means an investment managed by a regulated investment company that (1) tracks a well-established index of United States equities (or that invests in an equivalent diversified portfolio of United States equities), (2) does not use leverage, (3) minimizes costs, and (4) meets such other criteria as the Secretary determines appropriate.

Under the provision, the contribution limit for a Trump Account for a taxable year is $5,000 (adjusted for inflation), except that qualified rollover contributions and contributions from the Federal Government or any State, local, or tribal government are not subject to this limit. The exception from the $5,000 limit also applies to contributions made by certain tax-exempt organizations through a special program that the provision directs the Secretary to establish. The Secretary is directed to establish a program through which contributions may be made by an exempt organization described under section 501(c) to a large group of account beneficiaries provided that the Trump Accounts that will receive the contributions are selected on the basis of the location of the residence of the account beneficiaries, the school district in which such beneficiaries attend school, or another basis the Secretary deems appropriate. In addition, all account beneficiaries must receive an equal portion of the contribution. The contributions described in this paragraph that are exempt from the $5,000 limit are not included in the account beneficiary's investment in the contract.

Distributions are not permitted from the Trump Account until the account beneficiary attains age 18. At age 18, and before the account beneficiary attains age 25, the aggregate distributions must not exceed half of the cash equivalent value of the account as of the date the beneficiary turned 18. Distributions from the account that are used for qualified expenses are taxable as capital gains. Other distributions are includible in income and subject to an additional tax of 10 percent if the beneficiary is under age 30. (The portion of any distribution that is allocable to the investment in the contract is not includible in income). These distribution rules do not apply to the distribution of a qualified rollover contribution.

Qualified expenses are (1) qualified higher education expenses, (2) qualified post-secondary credentialing expenses, (3) under regulations provided by the Secretary, amounts paid or incurred with respect to any small business which the beneficiary has obtained through a small business loan, small farm loan, or similar loan, and (4) an amount used for the purchase of a principal residence of an account beneficiary who is a first-time home buyer. Upon attaining age 31, the account ceases to be a Trump Account and is treated as distributed to the account beneficiary.

An individual is only permitted to be an account beneficiary of one Trump Account. However, an exception applies if the entire amount of a Trump Account is rolled over as a qualified rollover contribution to another Trump Account. In the case of a duplicate Trump Account that does not meet the above exception, such account ceases to be treated as a Trump Account and the entire balance is treated as distributed. In addition, an excise tax is imposed equal to the amount in the account that is allocable to income

If excess contributions are made to a Trump Account, an excise tax is imposed on the account beneficiary equal to six percent of such excess for each taxable year during which excess contributions are in the account. Rules after the death of an account beneficiary are similar to the rules that apply with respect to health savings accounts.

The trustee of a Trump Account must make reports regarding the account to the Secretary and to the account beneficiary with respect to contributions, distributions, the amount of the investment of the contract, and such other matters as the Secretary may require. The reports must be filed and furnished at such time and in such manner as required by the Secretary. The provision imposes a penalty of $50 for each failure to file the report unless such failure is due to reasonable cause.

OBBBA provides a one-time payment of $1,000 to the Trump Account of each qualifying child of a taxpayer, if such qualifying child is an eligible individual. An eligible individual is a child born after December 31, 2024, and before January 1, 2029, who is a United States citizen at birth. If the Secretary determines that a Trump Account has not been established for an eligible individual by the qualifying date, the Secretary must establish the Trump Account for such eligible individual and must notify the individual with respect to whom the eligible individual is a qualifying child. The Secretary must provide such individual with the opportunity to elect to decline the Secretary's establishment of the account. The qualifying date is the first date on which a return is filed by an individual with respect to whom such eligible individual is a qualifying child with respect to the taxable year to which the return relates.

Up to $2,500 of employer contributions may be excluded from employee's gross income. The limit is indexed for inflation.

The provision is effective for taxable years beginning after December 31, 2024.

### 2. Present State Law

No comparable provision.

### 3. Proposal in TAX-01

The bill in its current form has no provision regarding IRC Sec. 530A Trump Accounts. Hawaii law by default will conform to this provision. Hawaii law by default will not conform to new IRC Sec. 6434, which provides for a $1,000 contribution by the Government to certain new Trump accounts.

#### 4. Comments of the Tax Foundation of Hawaii

As with other provisions regarding tax-privileged savings plans, the Committee should consider adding a provision in section 235-2.4, HRS, incorporating the provisions except to the extent that they impose penalties, surtaxes, or fines, such as IRC Sec. 530A(d)(5).

## Z. INCREASED DOLLAR LIMITATIONS FOR EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS (ACT SEC. 70301, IRC SEC. 168)

#### 1. Description of Federal Change

Subject to certain limitations, a taxpayer may elect "bonus depreciation" under IRC section 168(k). In various years, bonus depreciation is a substantial portion of the property's cost and is taken as an expense in the first year, with the balance depreciated over time to match the property's recovery period under the applicable depreciation system.

OBBBA allows "qualified property" a 100% bonus depreciation, meaning that the full cost of the property may be expensed in the first year.

#### 1. Present State Law

State law presently does not allow any bonus depreciation.

#### 2. Proposal in TAX-01

No change, meaning that Hawaii will not allow the 100% bonus depreciation allowed by OBBBA.

#### 3. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

## AA. FULL EXPENSING OF DOMESTIC RESEARCH AND EXPERIMENTAL EXPENDITURES (ACT SEC. 70302, NEW IRC SEC. 174A)

#### 1. Description of Federal Change

For taxable years beginning after December 31, 2021, taxpayers must capitalize and amortize specified research or experimental expenditures ratably over a five-year period (or, in the case of expenditures attributable to research that is conducted outside of the United States, over a 15-year period), beginning with the mid- point of the taxable year in which those costs are paid or incurred. Specified research or experimental expenditures are research or experimental expenditures paid or incurred in connection with a taxpayer's trade or business.

The OBBBA suspends required capitalization of domestic research or experimental expenditures for amounts paid or incurred in taxable years beginning after December 31, 2024, and before January 1, 2030. Under the provision, taxpayers may (1) deduct domestic research or experimental expenditures, (2) elect to capitalize and recover domestic research or experimental expenditures ratably over the useful life of the research (but in no case less than 60 months) beginning with the midpoint of the taxable year in which such expenditures are paid or incurred, or (3) elect to capitalize and recover domestic research or experimental expenditures over 10 years beginning with the taxable year of the expenditure. Taxpayers must continue to capitalize and amortize foreign research or experimental expenditures over 15 years beginning with the midpoint of the taxable year in which they pay or incur the expenditures.

Taxpayers may recover domestic capitalized research or experimental expenditures upon the disposition, retirement, or abandonment with respect to which such expenditures are paid or incurred. However, taxpayers may not recover foreign capitalized research or experimental expenditures, either as a deduction or a reduction to the amount realized for any property disposed, retired, or abandoned after the date of introduction (i.e., May 12, 2025).

The provision requires taxpayers to reduce their domestic research or experimental expenditures (whether expensed or capitalized) by the amount of the research credit allowed under section 41 for taxable years beginning after December 31, 2024, and before January 1, 2030. Similar to current law, taxpayers may instead elect to claim a reduced section 41 research credit.

The provision treats the requirement to capitalize and amortize research or experimental expenditures paid or incurred in taxable years beginning after December 31, 2029 (i.e., after the temporary provision terminates), as an automatic accounting method change on a cutoff basis (i.e., no section 481(a) catch-up adjustment).

The provision is generally effective for amounts paid or incurred in taxable years beginning after December 31, 2024, and before January 1, 2030. The conforming amendments, apart from the change to section 280C(c), are permanent.

A transition rule requires taxpayers to adopt the changes to domestic research or experimental expenditures as an automatic accounting method change on a cutoff basis for taxable years beginning after December 31, 2024. The provision authorizes the Secretary to prescribe rules for short taxable years that begin after December 31, 2024, and end before the date of enactment.

### 2. Present State Law

No comparable provision.

### 3. Proposal in TAX-01

Decouple, from federal treatment, meaning that Hawaii will not recognize the new federal rules.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

## BB. MODIFICATION OF LIMITATION ON BUSINESS INTEREST (ACT SEC. 70303, IRC SEC. 163)

### 1. Description of Federal Change

Section 163(j) of the Code limits the deduction for interest on business debt to the sum of (A) the business interest income of such taxpayer for such taxable year, (B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus (C) the floor plan financing interest of such taxpayer for such taxable year. Adjusted taxable income is defined as adjusted taxable income as earnings before interest and taxes, or EBIT. The term "floor plan financing indebtedness" means indebtedness (i)used to finance the acquisition of motor vehicles held for sale or lease, and (ii)secured by the inventory so acquired.

OBBBA, effective for taxable years beginning after 12/31/2024, changes the definition of adjusted taxable income to earnings before interest, taxes, depreciation, and amortization (EBITDA). This reverses a post-2021 tightening of the interest limitation, which had excluded non-cash expenses and, as a result, reduced the amount of deductible interest for many businesses.

OBBBA also allows floor plan financing to cover the purchase of a trailer or camper designed to provide temporary living quarters for recreational, camping, or seasonal use and is designed to be towed by or affixed to a motor vehicle.

### 2. Present State Law

Hawaii income tax law, although decoupling from some provisions in IRC section 163, conforms to section 163(j) of the Code.

### 3. Proposal in TAX-01

No change, meaning that Hawaii tax law would conform to the OBBBA change.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity.

## CC. EXTENSION AND ENHANCEMENT OF PAID FAMILY AND MEDICAL LEAVE CREDIT (ACT SEC. 70304, IRC SEC. 45S)

### 1. Description of Federal Change

For wages paid in taxable years beginning after December 31, 2017, and before January 1, 2026, "eligible employers" may claim a general business credit, under section 45S, equal to 12.5 percent of the amount of eligible wages (based on the normal hourly wage rate) paid to "qualifying employees" during any period in which such employees are on "family and medical leave" if the rate of payment under the program is 50 percent of the wages normally paid to an employee for actual services performed for the employer. The credit is increased by 0.25 percentage points (but not above 25 percent) for each percentage point by which the rate of payment exceeds 50 percent. The maximum amount of family and medical leave that may be taken into account with respect to any qualifying employee for any taxable year is 12 weeks.

An "eligible employer" is one which has in place a written policy that allows all qualifying full-time employees not less than two weeks of annual paid family and medical leave, and which allows all less-than-full-time qualifying employees a commensurate amount of leave (on a pro rata basis) compared to the leave provided to full-time employees. The policy must also provide that the rate of payment under the program is not less than 50 percent of the wages normally paid to any such employee for services per formed for the employer.

The OBBBA extends the paid family and medical leave credit permanently. It also modifies the credit to allow it to be claimed for an applicable percentage of premiums paid or incurred by an eligible employer during a taxable year for insurance policies that provide paid family and medical leave for qualifying employees. The provision applies to taxable years beginning after December 31, 2025

### 2. Present State Law

Federal credits are generally inoperative for State income tax purposes under section 235-2.3(b)(1), HRS. This is because state law provides its own set of credits.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

Traditionally, state law provides its own set of credits so there is no need to conform with federal credit provisions.

## DD. BUSINESS MEAL DEDUCTIONS (ACT SEC. 70305, IRC SEC. 274)

### 1. Description of Federal Change

Starting January 1, 2026, the deduction for most employer-provided meals is eliminated. This includes meals provided for the employer's convenience, such as cafeteria lunches and catered meeting meals. These expenses will no longer be deductible, except for specific exceptions like certain fishing operations and bona fide sales transactions (e.g., restaurants selling meals to customers).

The general rule allowing a 50% deduction for business meals remains unchanged, provided the expense is not lavish, the taxpayer (or employee) is present, and the meal is with a business associate or client. Meals provided during entertainment events are only deductible if purchased separately or if the cost is separately stated and not inflated.

OBBBA did not reinstate the deduction for entertainment expenses. Costs for entertainment, amusement, or recreation (such as tickets to sporting events) remain fully nondeductible. Only meals that are purchased separately from entertainment or are separately stated on an invoice and not inflated may be considered for deduction.

OBBBA continues to allow a full deduction for expenses related to employer-provided holiday parties, company picnics, and similar occasional employee appreciation events. These events must primarily benefit employees who are not highly compensated, and the 50% deduction limitation does not apply in these cases.

### 2. Present State Law

Hawaii law conforms to IRC section 274 as it existed prior to the Tax Cuts and Jobs Act.

### 3. Proposal in TAX-01

Conform to current federal law.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity.

## EE. INCREASED DOLLAR LIMITATIONS FOR EXPENSING OF CERTAIN DEPRECIABLE BUSINESS ASSETS (ACT SEC. 70306, IRC SEC. 179)

### 1. Description of Federal Change

A taxpayer generally must capitalize the cost of property used in a trade or business or held for the production of income and recover such cost over time through annual deductions for depreciation or amortization. The period for depreciation or amortization generally begins when the asset is placed in service by the taxpayer. Tangible property generally is depreciated

under the modified accelerated cost recovery system ("MACRS"), which determines depreciation for different types of property based on an assigned applicable depreciation method, recovery period, and convention. Election to expense certain depreciable business assets

Subject to certain limitations, a taxpayer may elect under section 179 to deduct (or "expense") the cost of qualifying property, rather than to recover such costs through depreciation deductions. The maximum amount a taxpayer may expense is $1,000,000 of the cost of qualifying property placed in service for the taxable year. The $1,000,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $2,500,000.

The provision increases the maximum amount a taxpayer may expense under section 179 to $2,500,000 and increases the phase out threshold amount to $4,000,000. The provision provides that the maximum amount a taxpayer may expense for taxable years beginning after 2024 is $2,500,000 of the cost of section 179 property placed in service for the taxable year. The $2,500,000 amount is reduced (but not below zero) by the amount by which the cost of section 179 property placed in service during the taxable year exceeds $4,000,000. The $2,500,000 and $4,000,000 amounts are indexed for inflation for taxable years beginning after 2025.

#### 2. Present State Law

Hawaii law allows the maximum amount expensed to be no more than $25,000.

#### 3. Proposal in TAX-01

No change (the amendments made by the bill are technical).

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

### FF. SPECIAL DEPRECIATION ALLOWANCE FOR QUALIFIED PRODUCTION PROPERTY (ACT SEC. 70307, IRC SEC. 168)

#### 1. Description of Federal Change

*100 percent depreciation allowance for qualified production property*

OBBBA provides an elective 100 percent depreciation allowance for qualified production property. Qualified production property is that portion of any nonresidential real property that meets the following requirements:

1. subject to depreciation under section 168,
2. used by the taxpayer as an integral part of a qualified production activity,

3. placed in service in the United States or any possession of the United States,
4. original use commences with the taxpayer,
5. construction begins after January 19, 2025, and before January 1, 2029,
6. subject to an election by the taxpayer to treat such portion as qualified production property, and
7. placed in service after the date of enactment and before January 1, 2031.

Qualified production property does not include the portion of any nonresidential real property used for offices, administrative services, lodging, parking, sales activities, software engineering activities, or other functions unrelated to manufacturing, production, or refining of tangible personal property.

A qualified production activity is the manufacturing, production, or refining of a qualified product. Such activities of the taxpayer must result in a substantial transformation of the property comprising the product. Production does not include activities other than agricultural production and chemical production.

A qualified product is any tangible personal property.

Qualified production property does not include any property subject to a special allowance for bonus depreciation, qualified second-generation biofuel plant property, or qualified reuse and recycling property. For the purposes of the elections not to apply the provisions for accelerated depreciation for bonus depreciation, qualified second-generation biofuel plant property, or qualified reuse and recycling property, qualified production property is treated as a separate class of property.

Qualified production property does not include any property to which the alternative depreciation system applies. For the purposes of election to use the alterative deprecation system, qualified production property is treated as a separate class of property.

Generally, qualified production property disposed of at a gain is subject to depreciation recapture under section 1245.

Special recapture rules apply if at any time during the 10-year period beginning on the date that any qualified production property is placed in service by the taxpayer, such property (1) ceases to be used by the taxpayer as an integral part of a qualified production activity, and (2) is used by the taxpayer in a productive use other than a use that is an integral part of a qualified production activity. If such a change in use occurs, section 1245 is applied to treat such property as disposed of by the taxpayer the first time a change in use occurs with respect to such property. The amount treated as ordinary income under section 1245 equals 100 percent of the amount of depreciation allowable for qualified production property. Such amount increases the taxpayer's basis in such property.

The provision applies to property placed in service after the date of enactment, July 4, 2025.

#### 2. Present State Law

No comparable provision.

#### 3. Proposal in TAX-01

This new subsection (IRC section 168(n)) would not be operative in Hawaii.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

### GG. ENHANCEMENT OF ADVANCED MANUFACTURING INVESTMENT CREDIT (ACT SEC. 70308, CODE SEC. 48D)

#### 1. Description of Federal Change

Section 48D of the Code allows a credit of 25% of qualified investment in an advanced manufacturing facility, defined as a facility to manufacture semiconductors or semiconductor manufacturing equipment.

OBBBA increases the credit percentage to 35% for property placed in service after December 31, 2025.

#### 2. Present State Law

Hawaii has no comparable credit.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We agree with not creating a credit that does not now exist.

### HH. SPACEPORTS ARE TREATED LIKE AIRPORTS UNDER EXEMPT FACILITY BOND RULES (ACT SEC. 70309, IRC SEC. 142)

#### 1. Description of Federal Change

The IRC exempts interest received on qualified private activity bonds. One type of private activity bond is the exempt facility bond described in IRC section 142.

IRC Section 142 defines exempt facility bonds as bonds issued to finance facilities that are used for specific purposes, such as airports, docks, mass commuting facilities, sewage facilities, and more. At least 95% of the net proceeds from these bonds must be used for these qualifying facilities.

For a facility to qualify under this section, it must be owned by a governmental unit. If the property is leased, it can still be treated as owned by the governmental unit if certain conditions are met, such as the lessee not having an option to purchase the property other than at fair market value.

OBBBA amends section 142 to treat spaceports similarly to airports as facilities the bond financing of which may qualify for interest exemption.

### 2. Present State Law

Hawaii law does not conform to federal tax exemption requirements for state and local bond interest. State bond statutes have their own exemption from state tax (for example, HRS sec. 39-11 for general obligation bonds, 39A-44 for special purpose revenue bonds).

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We agree that there is no need to conform to this provision.

## II. INTERNATIONAL TAXATION REFORMS

### 1. Description of Federal Changes

*a) Sec. 70311. Modifications related to foreign tax credit limitation.*

*b) Sec. 70312. Modifications to determination of deemed paid credit for taxes properly attributable to tested income.*

*c) Sec. 70313. Sourcing certain income from the sale of inventory produced in the United States.*

*d) Sec. 70321. Modification of deduction for foreign-derived deduction eligible income and net CFC tested income.*

*e) Sec. 70322. Determination of deduction eligible income.*

*f) Sec. 70323. Rules related to deemed intangible income.*

*g) Sec. 70331. Extension and modification of base erosion minimum tax amount.*

#### 2. Present State Law

State income tax law does not incorporate any of the international provisions of the Code because state law has its own system, called UDITPA (HRS chapter 235, part II) to apportion a taxpayer's income among jurisdictions that may impose income tax. Thus, Hawaii income tax law does not conform to subchapter N of the IRC (sections 861 to 999, IRC).

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur that no change is needed. Most states, including Hawaii, have a very different system of dividing the taxable income of a taxpayer among the jurisdictions that may tax it.

### JJ. BUSINESS INTEREST LIMITATION (ACT SECS. 70341, 70342; IRC SEC. 163)

#### 1. Description of Federal Change

Currently, section 163(j) of the Code limits the deduction for interest on business debt to the sum of (A) the business interest income of such taxpayer for such taxable year, (B) 30 percent of the adjusted taxable income of such taxpayer for such taxable year, plus (C) the floor plan financing interest of such taxpayer for such taxable year. Section 163(j)(8) defines adjusted taxable income as earnings before interest and taxes, or EBIT.

OBBBA amends technical provisions within section 163(j) to accommodate the substantive changes made in section 70303 of the Act, discussed above.

#### 2. Present State Law

Hawaii income tax law, although decoupling from some provisions in IRC section 163, conforms to section 163(j) of the Code.

#### 3. Proposal in TAX-01

No change, meaning that Hawaii tax law would conform to the OBBBA change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity.

## KK. OTHER INTERNATIONAL TAXATION REFORMS

### 1. Description of Federal Changes

*a) Sec. 70351. Permanent extension of look-thru rule for related controlled foreign corporations.*
*b) Sec. 70352. Repeal of election for 1-month deferral in determination of taxable year of specified foreign corporations.*
*c) Sec. 70353. Restoration of limitation on downward attribution of stock ownership in applying constructive ownership rules.*
*d) Sec. 70354. Modifications to pro rata share rules.*

### 2. Present State Law

State income tax law does not incorporate any of the international provisions of the Code because state law has its own system, called UDITPA (HRS chapter 235, part II) to apportion a taxpayer's income among jurisdictions that may impose income tax. Thus, Hawaii income tax law does not conform to subchapter N of the IRC (sections 861 to 999, IRC).

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur that no change is needed. Most states, including Hawaii, have a very different system of dividing the taxable income of a taxpayer among the jurisdictions that may tax it.

## LL. ENHANCEMENT OF EMPLOYER-PROVIDED CHILD CARE CREDIT (ACT SEC. 70401, IRC SEC 45F)

### 1. Description of Federal Change

The OBBBA increases the employer-provided child care credit to 40 percent of qualified child care expenditures (50 percent for eligible small businesses) in addition to 10 percent of qualified referral expenses allowed under present law. The total credit limit is increased to $500,000 ($600,000 for small businesses), adjusted for inflation.

The provision provides for a small business gross receipts test of less than or equal to $25 million (inflation adjusted) used on the 5-year period (rather than 3-year period) preceding the taxable year. In 2025, the small business gross receipts threshold is $31 million.

The definition of qualified child care expenditures is expanded to include amounts paid or incurred under a contract with a third- party that contracts with one or more qualified child care facilities to provide child care services. In addition, the definition of qualified child care facilities

is expanded to allow for qualified child care facilities that are jointly owned or operated by the taxpayer and other entities or persons.

The provision is effective for amounts paid or incurred after December 31, 2025.

#### 2. Present State Law

Federal credits are generally inoperative for State income tax purposes under section 235-2.3(b)(1), HRS. This is because state law provides its own set of credits.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

Traditionally, state law provides its own set of credits so there is no need to conform with federal credit provisions.

### MM. ENHANCEMENT OF ADOPTION CREDIT (ACT SEC. 70402, IRC SEC. 23)

#### 1. Description of Federal Change

A taxpayer is allowed a nonrefundable income tax credit for the amount of qualified adoption expenses that the taxpayer pays or incurs (the "adoption tax credit"). The adoption credit is allowed only to individual taxpayers, not to partnerships, corporations, or other entities.

If the amount of adoption tax credit that is allowable to a taxpayer for any year exceeds the excess of (1) the taxpayer's income tax liability (less the amount of the taxpayer's allowable foreign tax credit, and including any amount of alternative minimum tax) for that year over (2) the sum of other nonrefundable income tax credits (other than the section 25D residential clean energy credit) (items (1) and (2) referred to below as the "tax liability limitation"), the excess allowable adoption tax credit is carried to the succeeding taxable year and is added to the adoption tax credit otherwise allowable in that year. No credit may be carried forward for more than five years after the year in which the credit arose.

The OBBBA treats up to $5,000 of the adoption tax credit as refundable. This $5,000 maximum refundable amount is indexed for inflation starting in 2026.

The provision limits the maximum amount of the present law five-year carryforward of the portion of an adoption tax credit that a taxpayer is not permitted to use because it exceeds the tax payer's tax liability limitation. Under the provision the maximum amount of an unused adoption tax credit that may be carried forward is limited to the maximum amount of the adoption tax credit that is nonrefundable ($12,280 in 2025 (which equals the $17,280 maximum credit minus the $5,000 refundable portion)).

The provision is effective for taxable years beginning after December 31, 2024.

#### 2. Present State Law

Federal credits are generally inoperative for State income tax purposes under section 235-2.3(b)(1), HRS. This is because state law provides its own set of credits.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

Traditionally, state law provides its own set of credits so there is no need to conform with federal credit provisions.

### NN. RECOGNIZING INDIAN TRIBAL GOVERNMENTS FOR PURPOSES OF DETERMINING WHETHER A CHILD HAS SPECIAL NEEDS FOR PURPOSES OF THE ADOPTION CREDIT (ACT SEC. 70403, IRC SEC. 23(d)(3))

#### 1. Description of Federal Change

For taxable years beginning after December 31, 2024, the OBBBA provides an Indian tribal government the same authority as a State for purposes of determining a child is a child with special needs for the adoption credit.

#### 2. Present State Law

Federal credits are generally inoperative for State income tax purposes under section 235-2.3(b)(1), HRS. This is because state law provides its own set of credits.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

Traditionally, state law provides its own set of credits so there is no need to conform with federal credit provisions.

### OO. ENHANCEMENT OF THE DEPENDENT CARE ASSISTANCE PROGRAM (ACT SEC. 70404, IRC SEC. 129)

#### 1. Description of Federal Change

IRC Section 129 governs Dependent Care Assistance Programs (DCAPs), which are employer-established plans that provide financial assistance for dependent care to enable

employees (and their spouses) to work or seek employment. The amounts provided under a qualified DCAP are excluded from the employee's gross income, offering a tax advantage.

OBBBA doubles the maximum amount which may be excluded from gross income, to $7,500 ($3,750 in the case of a separate return by a married individual).

#### 2. Present State Law

Hawaii law conforms to IRC sec. 129.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity.

### PP. ENHANCEMENT OF CHILD AND DEPENDENT CARE TAX CREDIT (ACT SEC. 70405, IRC SEC. 21).

#### 1. Description of Federal Change

IRC Section 21 allows taxpayers to claim a credit against their tax liability for certain employment-related expenses incurred for the care of qualifying individuals. This credit is designed to assist individuals who need to pay for care services in order to work.

The term "qualifying individual" includes:

- A dependent child under the age of 13.
- A dependent who is physically or mentally incapable of self-care and lives with the taxpayer for more than half the year.
- A spouse who is physically or mentally incapable of self-care and lives with the taxpayer for more than half the year.

The credit is calculated as a percentage of the employment-related expenses incurred. The applicable percentage is generally 50%, but it can be reduced based on the taxpayer's adjusted gross income (AGI). the percentage decreases by 1% for each $2,000 (or fraction thereof) by which the taxpayer's AGI exceeds $75,000.

The expenses that qualify for the credit include:

- Payments for household services (e.g., cleaning, cooking) that enable the taxpayer to work.
- Payments for care of a qualifying individual, provided these services are necessary for the taxpayer to maintain gainful employment.

The credit is subject to certain limitations, including maximum amounts that can be claimed based on the number of qualifying individuals. For instance, the maximum amount of expenses that can be considered for the credit is $3,000 for one qualifying individual and $6,000 for two or more qualifying individuals.

#### 2. Present State Law

Hawaii law does not conform. Hawaii has its own dependent care credit.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

Traditionally, state law provides its own set of credits so there is no need to conform with federal credit provisions.

### QQ. TAX CREDIT FOR CONTRIBUTIONS OF INDIVIDUALS TO SCHOLARSHIP GRANTING ORGANIZATIONS (ACT SEC. 70411, NEW IRC SECS. 25F AND 139K)

#### 1. Description of Federal Change

Under existing law, IRC sec. 117 excludes from gross income amounts received as a scholarship or fellowship grant, but only when the recipient is a degree candidate at a postsecondary educational institution. In other words, §117 applies to college and graduate school students, not K–12 students.

That means (1) scholarships for elementary or secondary school students are not covered by §117, (2) unless they qualify as a gift under §102, which is a different, uncertain standard.

Congress wanted a clear, statutory exclusion specifically for K–12 scholarship programs. Thus, OBBBA creates an exclusion for scholarships awarded to K-12 students. It also creates a nonrefundable income tax credit that is equal to the aggregate amount of qualified contributions made by the taxpayer during the taxable year to a scholarship granting organization. The credit allowed to a taxpayer for a taxable year may not exceed the greater of 10 percent of the taxpayer's aggregate gross income or $5,000.

A "scholarship granting organization" is any organization (a) that is described in section 501(c)(3), is exempt from tax under section 501(a), and is not a private foundation; (b) substantially all of the activities of which are providing scholarships for qualified elementary or secondary education expenses of eligible students; (c) that prevents the co-mingling of qualified contributions with other amounts by maintaining one or more separate accounts exclusively for qualified contributions; and (d) that either meets the requirements to be a scholarship granting organization (discussed below) or was eligible on the date of enactment to receive contributions for which the donor is entitled to a State tax credit if the contributions are used by the

organization to provide scholarships. An "eligible student" is an individual who is a member of a household with annual income of no greater than 300 percent of the area median gross income (within the meaning of that term in section 42) and is eligible to enroll in a public elementary or secondary school.

The provision is effective for taxable years ending after December 31, 2025,

#### 2. Present State Law

Federal credits are generally inoperative for State income tax purposes under section 235-2.3(b)(1), HRS. This is because state law provides its own set of credits. However, state law by default will conform to the exclusion in new section 139K.

#### 3. Proposal in TAX-01

Decouples from section 139K.

#### 4. Comments of the Tax Foundation of Hawaii

We recommend that state law conform to section 139K to make the treatment of scholarships given to K-12 students clear. We concur with the non-adoption of the corresponding federal credit.

### RR. EXCLUSION FOR CERTAIN EMPLOYER PAYMENTS OF STUDENT LOANS (ACT SEC. 70412, IRC SEC. 127)

#### 1. Description of Federal Change

Under section 127, an employee may exclude from gross income for income tax purposes and the employer may exclude from wages for employment tax purposes up to $5,250 annually of educational assistance provided by the employer to the employee. For the exclusion to apply, certain requirements must be satisfied as outlined in IRC sec 127(b).

For purposes of the exclusion, "educational assistance" means the payment by an employer of expenses incurred by or on behalf of the employee for education of the employee including, but not limited to, tuition, fees and similar payments, books, supplies, and equipment, and the provision by the employer of courses of instruction for the employee, including books, supplies, and equipment. Educational assistance also includes the payment by an employer to the employee or to a lender of principal or interest on any qualified education loan (as defined in section 221(d)(1)) incurred by the employee for education of the employee. Only student loan payments made before January 1, 2026, qualify as educational assistance.

In the absence of the specific exclusion for employer-provided educational assistance under section 127, employer-provided educational assistance is excludable from gross income for income tax purposes and wages for employment tax purposes only if the education expenses qualify as a working condition fringe benefit under section 132(d) or as a qualified tuition reduction under section 117(d). In general, education qualifies as a working condition fringe

benefit if the employee could have deducted the education expenses under section 162 if the employee paid for the education. In general, education expenses are deductible by an individual under section 162 if the education (1) maintains or improves a skill required in a trade or business currently engaged in by the taxpayer, or (2) meets the express requirements of the taxpayer's employer, applicable law, or regulations imposed as a condition of continued employment. However, education expenses are generally not deductible if they relate to certain minimum educational requirements or to education or training that enables a taxpayer to begin working in a new trade or business.

The OBBBA removes the requirement that a student loan payment must be made before January 1, 2026, to qualify as "educational assistance." As a result, the provision makes the exclusion for employer payments of qualified education loans permanent. The provision would also inflation adjust the maximum exclusion under section 127 for taxable years beginning after 2026.

The provision applies to payments made after December 31, 2025.

#### 2. Present State Law

Hawaii conforms to federal section 127.

#### 3. Proposal in TAX-01

No change, meaning that Hawaii will conform to this federal change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

### SS. ADDITIONAL ELEMENTARY, SECONDARY, AND HOME SCHOOL EXPENSES TREATED AS QUALIFIED HIGHER EDUCATION EXPENSES FOR PURPOSES OF 529 ACCOUNTS (ACT SEC. 70413, IRC SEC. 529)

#### 1. Description of Federal Change

Section 529 qualified tuition programs, also referred to as "qualified tuition programs" can either be a "prepaid tuition program" that allows a person to purchase on behalf of a designated beneficiary tuition credits or certificates that entitle the beneficiary to the waiver or payment of the beneficiary's qualified higher education expenses. The other type of program, sometimes referred to as a college savings plan, allows a person to make contributions to an account that is established for the purpose of satisfying the qualified higher education expenses of the designated beneficiary of the account.

The OBBBA provides that the following expenses in connection with the enrollment or attendance of a designated beneficiary at an elementary or secondary public, private, or religious school, or in connection with a homeschool, are qualified higher education expenses: tuition (as

under present law), curriculum and curricular materials, books or other instructional materials, online educational materials, tuition for certain tutoring or educational classes outside of the home, fees for certain tests, fees for dual enrollment in an institution of higher education, and certain educational therapies for students with disabilities.

Under the provision, these elementary and secondary school expenses are considered qualified higher education expenses for all purposes of section 529, including the prohibition on excess contributions. As a consequence, a beneficiary's elementary and secondary school expenses may be taken into account in determining whether a contribution to a qualified tuition program is prohibited because the contribution would be in excess of the amount necessary to provide for the beneficiary's qualified higher education expenses.

Furthermore, starting in 2026, the annual limit on 529 withdrawals for K–12 expenses increases from $10,000 to $20,000 per beneficiary. This enlarged limit applies to both traditional school tuition and the newly expanded list of permitted educational expenses.

The provision is effective for distributions made after the date of enactment.

#### 2. Present State Law

Hawaii conforms to federal law except for sections 529(c)(6) (additional tax on disqualifying distributions), 529(c)(7) (treatment of elementary and secondary tuition), and 529(e)(3)(A)(iii) (allowing, as eligible expenses, purchase of computer or peripheral equipment, computer software, or Internet access).

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur with decoupling from the penalty tax provision, as Hawaii does in other qualified plan contexts, and ask the Committee to consider conforming to the other two excluded provisions to simplify compliance.

### TT. CERTAIN POSTSECONDARY CREDENTIALING EXPENSES TREATED AS QUALIFIED HIGHER EDUCATION EXPENSES FOR PURPOSES OF 529 ACCOUNTS (ACT SEC. 70414, IRC SEC. 529)

#### 1. Description of Federal Change

The OBBBA treats a broad category of postsecondary credentialing expenses as qualified higher education expenses for all purposes of section 529. These "qualified postsecondary credentialing expenses" are tuition, fees, books, supplies, and equipment required for the enrollment or attendance of a designated beneficiary in a recognized "postsecondary credential program," or any other expense in connection with enrollment in or attendance at such a program

if such expenses would, if incurred in connection with enrollment in or attendance at an eligible educational institution, be considered qualified higher education expenses before application of the provision; fees for testing required to obtain or maintain a recognized credential; and, fees for continuing education if such education is required to maintain a recognized postsecondary credential.

For this purpose, a "recognized postsecondary credential program" means a program to obtain a recognized postsecondary credential if (a) such program is included on a list prepared under section 122(d) of the Workforce Innovation and Opportunity Act; (b) such program is listed in the WEAMS Public directory (or successor) maintained by the Department of Veterans Affairs; (c) an examination (developed or administered by an organization widely recognized as providing reputable credentials in the occupation) is required to obtain or maintain a postsecondary credential and the organization recognizes the program as providing training or education that prepares individuals to take the examination; or, (d) such program is identified by the Treasury Secretary, after consultation with the Labor Secretary, as being a reputable program for obtaining a recognized postsecondary credential.

A "recognized postsecondary credential" means any postsecondary employment credential that is industry recognized, any certificate of completion of an apprenticeship that is registered and certified with the Secretary of Labor under the National Apprenticeship Act, any occupational or professional license issued or recognized by a State or the Federal government, and any recognized postsecondary credential as defined under section 3 of the Work force Innovation and Opportunity Act.

The provision is effective for distributions made after the date of enactment.

### 2. Present State Law

Hawaii conforms to federal law except for sections 529(c)(6) (additional tax on disqualifying distributions), 529(c)(7) (treatment of elementary and secondary tuition), and 529(e)(3)(A)(iii) (allowing, as eligible expenses, purchase of computer or peripheral equipment, computer software, or Internet access).

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur with decoupling from the penalty tax provision, as Hawaii does in other qualified plan contexts, and ask the Committee to consider conforming to the other two excluded provisions to simplify compliance.

## UU. TAX-EXEMPT ORGANIZATION INTERMEDIATE SANCTIONS MODIFICATIONS

### 1. Description of Federal Changes

*a) Modification of Excise Tax on Investment Income of Certain Private Colleges and Universities (ACT SEC. 70415, IRC SEC 6033 AND SEC. 4968)*

*b) Expanding Application of Tax on Excess Compensation Within Tax-Exempt Organizations (ACT SEC. 70416, IRC SEC. 4960)*

### 2. Present State Law

State income tax law does not impose excise taxes on exempt organizations.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur with not conforming to this provision.

## VV. RENEWAL AND ENHANCEMENT OF OPPORTUNITY ZONES (ACT SEC. 70421, IRC SECS. 1400Z–1, 1400Z–2, 6011, AND 6724 AND NEW SECS. 6039K, 6039L, AND 6726)

### 1. Description of Federal Change

Investments in qualified opportunity funds are entitled to three tax benefits, at the taxpayer's election: (1) a temporary deferral of the capital gain reinvested in the qualified opportunity zone ; (2) a permanent 10 or 15 percent reduction in the amount of such gain that must be recognized if the investment is held for five or seven years, respectively; and (3) a permanent exclusion of future gains resulting from the investment in the opportunity zone if the investment is held for at least 10 years.

OBBBA makes numerous amendments; which include designation of additional qualified opportunity zones, additional information reporting requirements and data to be reported by the Secretary applying to taxable years beginning after July 4, 2025.

### 2. Present State Law

Conforms to federal law, except that state benefits only apply to qualified opportunity zones designated as such by the Governor of Hawaii.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

### WW. MODIFICATIONS TO LOW-INCOME HOUSING CREDIT (ACT SEC. 70422, IRC SEC. 42)

#### 1. Description of Federal Change

A taxpayer may claim the low-income housing credit annually over a 10-year period for the costs of building or rehabilitating rental housing occupied by low-income tenants. To be eligible for the credit, a low-income building must have received a credit allocation from the State or been financed with the proceeds of certain tax-exempt bonds that are subject to the private activity bond volume limit. For any calendar year, the total amount of housing credits available for allocation by a State is limited to the State housing credit ceiling. However, the amount of housing credit allocated to a low-income building reduces the State housing credit ceiling only once, in the year the housing credit is allocated.

OBBBA makes the credit permanent. Also, the population component of the State housing credit ceiling (after application of the cost-of-living adjustment) is increased by multiplying the dollar amounts for that year by 1.125.

Additionally, the OBBBA modifies the tax-exempt bond financing requirement to allow additional buildings financed with tax-exempt bonds to qualify for housing credits without receiving a credit allocation from the State housing credit ceiling. As under present law, a building may be allowed four-percent credits without receiving a credit allocation if 50 percent or more of the aggregate basis of the building and the land on which the building is located is financed by the proceeds of one or more tax-exempt bonds. In addition, under the provision, a building may be allowed four-percent credits without receiving a credit allocation if at least 25 percent (rather than 50 percent) of the aggregate basis of the building is financed with one or more qualified obligations, and one or more of such obligations (1) are part of an issue the issue date of which is after December 31, 2025, and (2) provides the financing for at least five percent of the aggregate basis of the building and the land on which the building is located. A qualified obligation is a tax-exempt bond which is part of an issue the issue date of which is before January 1, 2030.

#### 2. Present State Law

Does not conform, because the State has its own credits.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur that there is no need to conform or make this credit operative for State purposes.

## XX. REINSTATEMENT OF PARTIAL DEDUCTION FOR CHARITABLE CONTRIBUTIONS OF INDIVIDUALS WHO DO NOT ELECT TO ITEMIZE (ACT SEC. 70424, IRC SEC. 170(p))

### 1. Description of Federal Change

An income tax deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization. For individuals, the deduction for charitable contributions is available only to a taxpayer who elects to itemize deductions.

For a taxable year that begins in 2021, under IRC section 170(p), an individual who does not itemize deductions may claim a deduction in an amount not to exceed $300 ($600 in the case of a joint return) for certain charitable contributions. The deduction is not available for contributions made during a taxable year that begins after 2021. Contributions taken into account for this purpose include only contributions made in cash during the taxable year to a charitable organization described in section 170(b)(1)(A), other than contributions to (i) a supporting organization described in section 509(a)(3) or (ii) for the establishment of a new, or maintenance of an existing, donor advised fund (as defined in section 4966(d)(2)). Contributions of noncash property, such as securities, are not qualified contributions. Qualified contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A qualifying charitable contribution does not include an amount that is treated as a contribution in the taxable year by reason of being carried forward from a prior contribution year under section 170(b)(1)(G) or (d)(1).

OBBBA reinstates the section 170(p) deduction for taxable years beginning after December 31, 2024, and before January 1, 2029. The provision sets the maximum deduction amount to $300 for taxpayers who are married filing jointly and to $150 for all other taxpayers.

Effective to taxable years beginning after December 31, 2024.

### 2. Present State Law

Hawaii conforms to federal section 170.

### 3. Proposal in TAX-01

No change, meaning that Hawaii will conform to this federal change.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

## YY. FLOOR ON DEDUCTION OF CHARITABLE CONTRIBUTIONS

### 1. Description of Federal Change

*a) 0.5 PERCENT FLOOR ON DEDUCTION OF CONTRIBUTIONS MADE BY INDIVIDUALS (ACT SEC. 70425, IRC SEC. 170)*

*b) 1 PERCENT FLOOR ON DEDUCTION OF CONTRIBUTIONS MADE BY CORPORATIONS (ACT SEC. 70426, IRC SEC. 170)*

For individuals, limits the deduction for charitable contributions to the amount in excess of 0.5% of the taxpayer's contribution base, generally AGI.

Disallowed amounts ("below-floor" gifts) may be carried forward, but only if the taxpayer has a year in which contributions exceed the remaining applicable AGI limitations (e.g., the 60% cap for cash gifts).

If there is no carryforward opportunity, the disallowed portion is permanently lost.

The 0.5% floor applies regardless of the type of property donated and sits on top of the existing tiered percentage-of-AGI limits under IRC §170.

For corporations, limits the deduction for charitable contributions to the amount in excess of 1% of the taxpayer's taxable income.

Contributions disallowed solely because of the 1% floor may be carried forward for up to five years, but only if the corporation had contributions exceeding the 10% ceiling in the year of the contribution. If not, the disallowed 1% amount is lost, not carried forward.

### 2. Present State Law

Hawaii conforms to federal section 170.

### 3. Proposal in TAX-01

No change, meaning that Hawaii will conform to this federal change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

### ZZ. PERMANENT INCREASE IN LIMITATION ON COVER OVER OF TAX ON DISTILLED SPIRITS (ACT SEC. 70428, CODE SEC. 7652)

#### 1. Description of Federal Change

The bill amends the federal liquor tax.

#### 2. Present State Law

Hawaii does not conform to this section of the Code and has a separate liquor tax.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur.

### AAA. NONPROFIT COMMUNITY DEVELOPMENT ACTIVITIES IN REMOTE NATIVE VILLAGES (ACT SEC. 70428, 70429, NO IRC SEC. 170)

#### 1. Description of Federal Change

Allows harvesting, processing, transportation, sales, and marketing of fish and fish products of the Bering Sea and Aleutian Islands statistical and reporting areas to qualify as exempt function activities for purposes of the IRC.

Allows an enhanced deduction for certain expenses incurred in support of Native Alaskan subsistence whaling.

#### 2. Present State Law

Hawaii generally conforms to the exempt organization provisions of the Code.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur.

## BBB. EXCEPTION TO PERCENTAGE OF COMPLETION METHOD OF ACCOUNTING FOR CERTAIN RESIDENTIAL CONSTRUCTION CONTRACTS (ACT SEC. 70430, IRC SEC. 460)

#### 1. Description of Federal Change

Section 460 of the Code generally requires taxpayers to use the percentage of completion method to determine income from long-term contracts. There is a small contractor exception for any residential construction contract, or for taxpayers with average annual gross receipts of $31 million or less over the prior three years and contracts expected to be completed within two years.

OBBBA adds a proviso stating that capitalization rules of IRC section 263A apply for any residential construction contract, except for home construction contracts, unless the average gross receipts test is met and the contract is expected to be completed within three years.

#### 2. Present State Law

Hawaii generally conforms to section 460 of the Code .

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

## CCC. EXPANSION OF QUALIFIED SMALL BUSINESS STOCK GAIN EXCLUSION (ACT SEC. 70431, CODE SEC. 1202)

#### 1. Description of Federal Change

Noncorporate taxpayers could exclude gain realized on the sale of qualified small business stock (QSBS) held for more than 5 years (subject to limitations at both stockholder and corporate levels).

Under OBBBA, for stock acquired after July 4, 2025, the applicable percentage of gain is excluded:

- 50% for stock held for 3 years

- 75% for stock held for 4 years
- 100% for stock held for 5 years

There are still complicated (but modified) rules for determining the aggregate limits – basically higher limits.

#### 2. Present State Law

Hawaii generally conforms to section 1202 of the Code, except that Hawaii does not apply special rules for 2009 and parts of 2010 that are contained in section 1202(a)(3), and it also does not apply the 100% exclusion for stock acquired during certain periods in 2010 and thereafter.

#### 3. Proposal in TAX-01

Adopts section 1202 of the Code as it existed as of December 31, 2024, with the same exclusions as in current law.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to the federal changes and reducing the overall tax rate.

### DDD. REVISION OF REPORTING REQUIREMENTS

#### 1. Description of Federal Change

*a) REPEAL OF REVISION TO DE MINIMIS RULES FOR THIRD PARTY NETWORK TRANSACTIONS (ACT SEC. 70432, IRC SEC. 6050W, 3406)*

*b) INCREASE IN THRESHOLD FOR REQUIRING INFORMATION REPORTING WITH RESPECT TO CERTAIN PAYEES (ACT SEC. 70433, IRC SEC. 6041)*

#### 2. Present State Law

Hawaii generally does not conform to the administrative and reporting provisions of the IRC. Although section 235-2.5(b), HRS, allows the Department to adopt administrative provisions of the IRC by rule, the Department's IRC conformity rule, section 18-235-2.3, was last amended in 1994 and contains no reference to the affected IRC sections.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur.

## EEE. TREATMENT OF CERTAIN QUALIFIED SOUND RECORDING PRODUCTIONS (ACT SEC. 70434, IRC SECS. 168 AND 181)

#### 1. Description of Federal Change

Under IRC section 181, a taxpayer may elect to deduct up to $15 million of the aggregate production costs of any qualified film, television or live theatrical production that commences before January 1, 2026.

OBBBA expands the special expensing rules for qualified film, television, and live theatrical productions under section 181 to include aggregate qualified sound recording production costs of up to $150,000 per taxable year. A *qualified sound recording production* is a sound recording (as defined in 17 U.S.C. sec. 101) produced and recorded in the United States. Like qualified film and television productions or qualified live theatrical productions, the section 181 deduction only applies to qualified sound recordings that commence before January 1, 2026.

The practical impact is that only sound recordings that commence in taxable years ending after the date of enactment and before January 1, 2026, will be eligible for the section 181 deduction.

OBBBA also expands the definition of qualified property eligible for bonus depreciation to include qualified sound recording productions placed in service before January 1, 2029. A qualified sound recording production is placed in service at the time of initial release or broadcast.

These provision applies to productions commencing in taxable years ending after July 4, 2025.

#### 2. Present State Law

Hawaii does conform to section 181 of the Code but does not conform to the bonus depreciation provisions of section 168(k).

#### 3. Proposal in TAX-01

No change, meaning that Hawaii will continue to conform to the section 181 deduction and will not allow bonus depreciation.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

## FFF. EXCLUSION OF INTEREST ON LOANS SECURED BY RURAL OR AGRICULTURAL REAL PROPERTY (ACT SEC. 70435, NEW IRC SEC. 139L).

#### 1. Description of Federal Change

Section 139L was designed to lower the cost of borrowing in rural and agricultural markets by encouraging lenders to offer loans collateralized by farmland, rural property, and agricultural real estate. It does this by allowing banks and similar institutions to exclude a portion of interest income from federal taxation.

Qualified lenders may exclude 25% of the interest they receive on any qualified real estate loan from gross income.

A qualified lender includes:

- FDIC insured banks or savings associations
- State or federally regulated insurance companies
- Entities wholly owned by U.S. domestic bank holding companies (meeting statutory criteria)
- Entities wholly owned by domestic insurance holding companies
- Federally chartered Farm Credit System instrumentalities (but only for loans on agricultural property)

A qualified real estate loan:

- Must be secured by rural or agricultural real estate, or a leasehold mortgage on such property.
- Must be made to a non-foreign borrower (i.e., not a "specified foreign entity").
- Must be originated after July 4, 2025 (the date of enactment).

#### 2. Present State Law

No comparable provision exists.

#### 3. Proposal in TAX-01

Decoupling, meaning that Hawaii will not recognize the section 139L exclusion for state law purposes.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity. We understand that some States have been reluctant to adopt this provision because of the revenue cost.

### GGG. REDUCTION OF TRANSFER AND MANUFACTURING TAXES FOR CERTAIN DEVICES (ACT SEC. 70436, IRC SEC. 5811)

#### 1. Description of Federal Change

The IRC imposes an excise tax on the transfer of firearms. The tax rate was $200 in the case of a machine gun or destructive device, and $5 on any other firearm.

OBBBA changed the tax rate on any other firearm to zero.

#### 2. Present State Law

No comparable provision exists.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We concur.

### HHH. GAIN FROM THE SALE OR EXCHANGE OF QUALIFIED FARMLAND PROPERTY TO QUALIFIED FARMERS (ACT SEC. 70437, NEW IRC SEC. 1062)

#### 1. Description of Federal Change

A taxpayer who realizes gain from selling or exchanging qualified farmland property to a qualified farmer may elect to pay the portion of income tax attributable to that gain in 4 equal annual installments.

Qualified farmland property:

- Must be U.S. real property;
- Must have been used or leased for farming purposes during substantially all of the 10-year period preceding the sale;
- Must be subject to a restriction prohibiting use other than farming for 10 years after the sale; and
- Use/lease by partnerships or S corporations passes through to the partners/shareholders.

A qualified farmer is defined with reference to 7 U.S.C. section 1308-1(b) and (c).

#### 2. Present State Law

No comparable provision exists.

#### 3. Proposal in TAX-01

Decoupling, meaning that Hawaii will not allow the gain to be spread over time.

#### 4. Comments of the Tax Foundation of Hawaii

This provision is designed to help farmers afford the tax that is imposed on the gain from the sale of qualified farmland property. We recommend that the State consider conforming to this provision.

## III. EXTENSION OF RULES FOR TREATMENT OF CERTAIN DISASTER-RELATED PERSONAL CASUALTY LOSSES (ACT SEC. 70438, IRC SEC. 165)

#### 1. Description of Federal Change

An individual taxpayer may claim an itemized deduction for a personal casualty loss. If the loss is attributable to a disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (the "Stafford Act"), then the loss is deductible only to the extent of the sum of the individual's personal casualty gains plus the amount by which aggregate net disaster-related losses exceed 10 percent of the individual taxpayer's adjusted gross income. In any taxable year beginning after December 31, 2017, and before January 1, 2026, all other personal casualty losses are deductible only to the extent that the losses do not exceed the individual's personal casualty gains.

For individual taxpayers, personal casualty losses are losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty gains are recognized gains from any involuntary conversion of property not connected with a trade or business or a transaction entered into for profit, if such gains arise from fire, storm, shipwreck, or other casualty, or from theft. Personal casualty losses are deductible to the extent they exceed $100 per casualty.

Congress has at times enacted more generous casualty loss provisions in response to specific natural disasters.

Division EE of Public Law 116–260, the Taxpayer Certainty and Disaster Tax Relief Act of 2020 ("TCDTRA"), as modified by the Federal Disaster Tax Relief Act of 2023 ("FDTRA"), provides special rules for "qualified disaster-related personal casualty losses." These losses include personal casualty losses arising in a qualified disaster area on or after the first day of the incident period of the applicable qualified disaster which are attributable to that qualified

disaster. These losses are deductible without regard to whether aggregate net losses exceed 10 percent of a taxpayer's adjusted gross income and to the extent they exceed $500 per casualty. These losses are allowed as a deduction in addition to the standard deduction and are allowed against alternative minimum taxable income.

As modified by FDTRA, a "qualified disaster area" refers to an area with respect to which a major disaster has been declared by the President during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment of FDTRA, under section 401 of the Stafford Act, if the incident period of the disaster with respect to which the declaration is made begins on or after December 28, 2019, and on or before the date of enactment of FDTRA. A qualified disaster area does not include any area with respect to which a major disaster had been declared only by reason of COVID–19.

A "qualified disaster" is, with respect to the applicable qualified disaster area, the disaster by reason of which a major disaster was declared with respect to that area.

The "incident period" is, with respect to the applicable qualified disaster, the period specified by the Federal Emergency Management Agency as the period during which the disaster occurred, except that the period is not treated as ending after the date which is 30 days after the date of enactment of FDTRA.

For purposes of personal casualty losses arising in a qualified disaster area, the OBBBA broadens TCDTRA's definition of qualified disaster area (as modified by FDTRA) to include any area with respect to which a major disaster was declared by the President during the period beginning on January 1, 2020, and ending on the date which is 60 days after the date of enactment of the provision, under section 401 of Stafford Act if the incident period of the disaster begins on or after December 28, 2019, and on or before the date of enactment of the provision. The incident period will be treated as ending no later than the date which is 30 days after the date of enactment of the provision.

Under the OBBBA, certain disaster-related personal casualty losses attributable to major disasters beginning any time after the date of enactment of TCDTRA and through the date of enactment are provided the same treatment as qualified disaster-related personal casualty losses under TCDTRA effective on the date of enactment.

### 2. Present State Law

Hawaii generally conforms to federal section 165, but, with respect to casualty losses, states that the amount prescribed by section 165(h)(1) shall be a $100 limitation per casualty. It also states that section 165(h)(3)(A) and (B) are not operative. Note that 165(h)(3)(A) and (B) are definitions.

### 3. Proposal in TAX-01

Deletes language saying that Hawaii does not recognize the limitation on the deductibility of personal casualty losses that are not attributable to federally declared disasters.

#### 4. Comments of the Tax Foundation of Hawaii

Current law and the proposal in TAX-01 need to be reevaluated because they do not seem to make sense as now written.

With regard to section 165(h)(1), the $100 amount is not a limitation per casualty. Rather, it provides that the first $100 of casualty losses are not deductible. Second, the treatment of section 165(h)(3)(A) and (B) needs to be revisited because those provisions are definitional only.

It appears that the bill is trying to conform to the federal casualty loss rules as amended by OBBBA, but technical corrections are needed.

## JJJ. RESTORATION OF TAXABLE REIT SUBSIDIARY ASSET TEST (ACT SEC. 70439, CODE SEC. 856)

#### 1. Description of Federal Change

Section 856 of the IRC describes real estate investment trusts, or REITs, which are tax-favored in that although REITs are corporations, they are allowed a deduction for dividends paid to their shareholders.

One part of the definition of a REIT requires that in order to qualify, the REIT must receive only passive rent income and may not receive income from operating an active business, such as operating a hotel. Instead, a REIT is allowed to have a taxable REIT subsidiary, or TRS, that then is allowed to operate the hotel and pay rent to the REIT.

One of the requirements to qualify as a REIT was that not more than 20% of the value of its total assets is its stock interest in taxable REIT subsidiaries. OBBBA changed the percentage to 25%.,

#### 2. Present State Law

Hawaii tax law conforms to IRC section 856.

#### 3. Proposal in TAX-01

No change.

#### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to reduce complexity.

## KKK. TERMINATION OF GREEN NEW DEAL SUBSIDIES AND ENHANCEMENT OF AMERICA-FIRST ENERGY POLICY

### 1. Description of Federal Changes

*a) Termination of previously-owned clean vehicle credit (Act sec. 70501, IRC sec. 25E).*

*b) Termination of clean vehicle credit (Act sec. 70502, IRC sec. 30D)*

*c) Termination of qualified commercial clean vehicles credit (Act sec. 70503, IRC sec.45W)*

*d) Termination of alternative fuel vehicle refueling property credit (Act sec. 70504, IRC sec. 45W)*

*e) Termination of energy efficient home improvement credit (Act sec. 70505, IRC sec. 25C)*

*f) Termination of residential clean energy credit (Act sec. 70506, IRC sec. 25D)*

*g) Termination of energy efficient commercial buildings deduction (Act sec. 70507, IRC sec. 179D)*

*h) Termination of new energy efficient home credit (Act sec. 70508, IRC sec. 45L)*

*i) Termination of cost recovery for energy property (Act sec. 70509, IRC sec. 168(e)(3))*

*j) Modifications of zero-emission nuclear power production credit (Act sec. 70510, IRC sec. 45U)*

*k) Termination of clean hydrogen production credit (Act sec. 70511, IRC sec. 45V)*

*l) Termination and restrictions on clean electricity production credit (Act sec. 70512, IRC sec. 45Y, new sec. 6695B)*

*m) Termination and restrictions on clean electricity investment credit (Act sec. 70513, IRC sec. 48E)*

*n) Phase-out and restrictions on advanced manufacturing production credit (Act sec. 70514, IRC sec. 45X)*

*o) Restriction on the extension of advanced energy project credit program (Act sec. 70515, IRC sec. 48C)*

*p) Extension and modification of clean fuel production credit (Act sec. 70521, IRC sec. 45Z, 6426, 40A, 6418)*

*q) Restrictions on carbon oxide sequestration credit (Act sec. 70522, IRC sec. 45Q)*

*r) Intangible drilling and development costs taken into account for purposes of computing adjusted financial statement income (Act sec. 70523, IRC sec. 56A)*

*s) Income from hydrogen storage, carbon capture, advanced nuclear, hydropower, and geothermal energy added to qualifying income of certain publicly traded partnerships (Act sec. 70524, IRC sec. 7704)*

*t) Allow for payments to certain individuals who dye fuel (Act sec. 70525, IRC new sec. 6435)*

### 2. Present State Law

Hawaii tax law does not conform to any of the federal credit provisions (IRC secs. 1 to 59A).

Hawaii tax law does conform to the accelerated cost recovery system depreciation (IRC sec. 168) except for sections 168(j) (relating to property on Indian reservations), 168(k) (relating to the special allowance for certain property acquired during the period specified therein), and 168(m) (relating to the special allowance for certain reuse and recycling property).

Hawaii tax law does conform to the energy efficient commercial buildings deduction (IRC sec. 179D).

Hawaii tax law generally does not conform to IRC provisions not in chapter 1 (namely, Hawaii by default does not conform to IRC sections 1401 and higher).

### 3. Proposal in TAX-01

No change, meaning that Hawaii will conform to the termination of cost recovery for energy property affecting IRC sec. 168(e)(3) and the termination of energy efficient commercial buildings deduction affecting IRC sec. 179D, but will adopt no other changes.

### 4. Comments of the Tax Foundation of Hawaii

We concur. We generally recommend conforming to federal changes in chapter 1 to reduce complexity.

## LLL. LIMITATION ON EXCESS BUSINESS LOSSES OF NONCORPORATE TAXPAYERS (ACT SEC. 70601, IRC SEC. 461)

### 1. Description of Federal Changes

An excess business loss of a taxpayer other than a corporation is not allowed for the taxable year (IRC sec 461(l)). An excess business loss not allowed for a taxable year is treated as a net operating loss ("NOL") for the taxable year that is carried over to subsequent taxable years under the applicable NOL carryover rules. As extended by the Inflation Reduction Act, excess business loss provision is in effect from 2021 through 2028.

An excess business loss for the taxable year is the excess of aggregate deductions of the taxpayer attributable to trades or businesses of the taxpayer (determined without regard to the limitation of the provision) over the sum of aggregate gross income or gain attributable to trades or businesses of the taxpayer plus a threshold amount. The threshold amount is indexed for inflation for taxable years beginning after 2018. The threshold amount for a taxable year beginning in 2025 is $313,000 as indexed (or, in the case of a joint return, twice the otherwise applicable threshold amount, or $626,000 for 2025 as indexed).

The aggregate business deductions taken into account to determine the excess business loss of the taxpayer for the taxable year that are attributable to trades or businesses of the taxpayer are determined without regard to any deduction under section 172 (relating to NOLs) or 199A (relating to the deduction for qualified business income).

OBBBA makes permanent the limitation on excess business loss of a taxpayer other than a corporation (section 461(1)). Specifically, the section 461(1) limitation applies for taxable years beginning after December 31, 2020. The provision also provides that the limitation on excess farm losses (section 461(j)) does not apply for taxable years beginning after December 31, 2017.

Additionally, OBBBA modifies the section 461(1) limitation. A loss disallowed under the section 461(1)(1) limitation for a taxable year beginning after December 31, 2024 is carried forward to the subsequent taxable year as a loss attributable to a trade or business (other than a trade or business of performing services as an employee) arising in the subsequent taxable year. The amount carried forward is therefore included in calculating the subsequent taxable year's section 461(1)(1) limitation.

These provisions are effective for taxable years beginning after December 31, 2025.

#### 2. Present State Law

State law normally conforms to section 461, IRC.

#### 3. Proposal in TAX-01

No change, meaning that federal changes will be operative for State income tax purposes.

#### 4. Comments of the Tax Foundation of Hawaii

Traditionally, net operating losses have been allowed for State income tax purposes under section 235-7(d), HRS. NOLs must be computed differently for federal and state purposes because of federal-state differences that inevitably exist.

### MMM. TREATMENT OF PAYMENTS FROM PARTNERSHIPS TO PARTNERS FOR PROPERTY OR SERVICES (ACT SEC. 70602, IRC SEC. 707)

#### 1. Description of Federal Changes

Makes a technical change to IRC section 707(a)(2).

#### 2. Present State Law

State law normally conforms to section 707, IRC.

### 3. Proposal in TAX-01

No change, meaning that federal changes will be operative for State income tax purposes.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to decrease complexity.

## NNN. EXCESSIVE EMPLOYEE REMUNERATION FROM CONTROLLED GROUP MEMBERS AND ALLOCATION OF DEDUCTION (ACT SEC. 70603, IRC SEC. 162(m))

### 1. Description of Federal Change

Section 162(m) provides an explicit limitation on the deductibility of compensation expenses in the case of publicly traded corporate employers. OBBBA adds an entity aggregation rule to section 162(m) for purposes of the deduction disallowance. The rule provides that in the case of any publicly held corporation which is a member of a controlled group, if any person which is a member of such controlled group provides applicable employee remuneration to an individual who is a specified covered employee of such controlled group and the aggregate amount of applicable employee remuneration provided by all such members with respect to such specified covered employee exceeds $1,000,000 then the deduction allowed to such members of the controlled group for the applicable employee remuneration paid to such specified covered employee is limited to $1,000,000. Controlled group means any group treated as a single employer under the rules used to treat related entities as a single employer for other employee benefit purposes.

A specified covered employee means (1) a covered employee described in paragraphs (A), (B) or (D) of section 162(m)(3) with respect to the publicly held corporation which is a member of such controlled group, and (2) any employee described in section 162(m)(3)(C) if such subparagraph were applied by taking into account the employees of all members of the controlled group.

In any case in which remuneration is paid to the specified covered employee by more than one member of the controlled group for a taxable year and the aggregate amount of such remuneration exceeds $1 million (determined without regard to this rule), the provision allocates the amount of the $1 million deduction among each member of the controlled group that paid remuneration to such specified covered employee for the taxable year. The term "allocable limitation amount" means with respect to any member of the controlled group with respect to any specified covered employee of such controlled group, the amount which bears the same ratio to $1,000,000 as (1) the amount of applicable employee remuneration provided by such member with respect to such specified covered employee bears to (2) the aggregate amount of applicable employee remuneration provided by all such members with respect to such specified covered employee.

The provision applies to taxable years beginning after December 31, 2025.

### 2. Present State Law

State law generally conforms to section 162, IRC.

### 3. Proposal in TAX-01

No change, meaning that federal changes will be operative for State income tax purposes.

### 4. Comments of the Tax Foundation of Hawaii

We generally recommend conforming to federal changes to decrease complexity.

## OOO. EXCISE TAX ON CERTAIN REMITTANCE TRANSFERS (ACT SEC. 70604, NEW IRC SEC. 4475)

### 1. Description of Federal Change

OBBBA imposes a new excise tax equal to 1% of the amount of a remittance transfer.

### 2. Present State Law

No comparable provision.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur.

## PPP. ENFORCEMENT PROVISIONS RELATING TO CREDITS

### 1. Description of Federal Changes

*a) ENFORCEMENT PROVISIONS WITH RESPECT TO COVID-RELATED EMPLOYEE RETENTION CREDITS (ACT SEC. 70605, CODE SECS. 3134, 6676) – Enacts due diligence requirements.*

*b) SEC. 70606. SOCIAL SECURITY NUMBER REQUIREMENT FOR AMERICAN OPPORTUNITY AND LIFETIME LEARNING CREDITS (ACT SEC. 70606, CODE SECS, 25A, 6213)*

### 2. Present State Law

No comparable provision.

### 3. Proposal in TAX-01

No change.

### 4. Comments of the Tax Foundation of Hawaii

We concur.