
A BILL FOR AN ACT

RELATING TO HIGH TECHNOLOGY TAX INCENTIVES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature renewed its commitment to the
2 growth and development of high technology businesses in Hawaii
3 under Act 221, Session Laws of Hawaii 2001 (Act 221), which
4 expanded tax incentives for qualified high technology businesses
5 to provide a direct means of addressing the urgent need for
6 venture financing.

7 In providing these expanded incentives, the legislature's
8 purpose was to:

- 9 (1) Nurture and grow the high-technology sector of
10 Hawaii's economy;
- 11 (2) Establish a clean industry with a relatively low need
12 for land, energy, and other physical resources; and
- 13 (3) Provide Hawaii's residents with highly-skilled,
14 living-wage jobs.

15 However, there is a need for more information that would
16 allow the legislature to evaluate whether the incentives in Act
17 221 have been successful. The 2005-2007 Tax Review Commission



1 stated that definitive results on the costs and benefits of the
2 high technology business investment tax credit could not be
3 calculated because of the inability to gather current data on
4 the credits. Specifically, data after tax year 2003 was
5 unavailable on the amount of the tax credits claimed and the
6 employment statistics of qualified high technology businesses
7 that were assisted by the credit. It appears that the
8 appropriate information is being filed with the department of
9 taxation, but the department has not been able to issue the
10 desired reports.

11 Reports by the department of taxation and the department of
12 business, economic development, and tourism on the effectiveness
13 of the credits were confusing and inconsistent. All parties
14 agree that better information is needed to evaluate the true
15 costs and benefits associated with the tax incentives and to
16 determine the best means of ensuring that the incentives achieve
17 their intended objectives.

18 The purpose of this Act is to increase the transparency of,
19 and allow a more accurate evaluation of, Hawaii's high-
20 technology tax incentives by requiring:

21 (1) The department of taxation to make an initial report
22 to the legislature by October 1, 2007, of summary



1 statistics on all currently available information and
2 data collected from high technology businesses;
3 (2) Qualified high technology businesses benefiting from
4 the high technology business investment and research
5 activities tax credits to submit employment
6 information to the department of taxation for taxable
7 years beginning after December 2006; and
8 (3) The department of taxation to annually report summary
9 statistics and an evaluation of the effectiveness of
10 the tax credits to the legislature by September 1st of
11 2008, and September 1st of each year thereafter,
12 and by appropriating funds for these purposes.

13 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "**§235- High technology; other reporting requirements.**

17 (a) A qualified high technology business claiming a tax credit
18 under section 235-110.9 or 235-110.91, or receiving an
19 investment for which the credit under section 235-110.9 may be
20 claimed, shall complete and file a complete annual survey with
21 the director of taxation on forms prepared and prescribed by the



1 department. The annual survey shall be filed before March 31 of
2 each year following the year in which:

3 (1) An investment in the qualified high technology
4 business was made; or

5 (2) Qualified research and development activity was
6 conducted.

7 The department may adjust the due date of the annual survey by
8 rule.

9 (b) The annual survey shall include the following
10 information for the time period or periods specified by the
11 department:

12 (1) The taxpayer's net income tax liability;

13 (2) Whether the credit was assigned under section 235-
14 110.9 or 235-110.91 and who assigned the credit; and

15 (3) Information about the employment positions in the
16 qualified high technology business in the state,
17 including:

18 (A) The total number of positions;

19 (B) The number of these positions filled by Hawaii
20 residents;

21 (C) The number of new positions;



- 1 (D) The number of new positions filled by Hawaii
2 residents;
- 3 (E) Full-time, part-time, and temporary positions as
4 a percentage of total employment;
- 5 (F) Of the total number of positions, the number of
6 positions falling within the following wage
7 bands:
- 8 (i) Less than \$30,000;
9 (ii) \$30,000 or greater, but less than \$60,000;
10 or
11 (iii) \$60,000 or greater; provided that a wage
12 band containing fewer than three individuals
13 may be combined with another wage band;
14 and
- 15 (G) For each of the wage bands in subparagraph (F),
16 the number of positions that have employer-
17 provided medical, dental, and retirement
18 benefits.

19 The department may request additional information necessary to
20 measure the results of the tax credit program, to be submitted
21 at the same time as the survey. In preparing the survey, the
22 department shall ensure that qualified high technology



1 businesses are not subject to duplicative reporting
2 requirements. The department shall define "full-time position",
3 "part-time position", "temporary position", and "new position"
4 by rule.

5 (c) If a qualified high technology business fails to file
6 a complete annual survey under this section with the department
7 by the due date or any extension thereof, the qualified high
8 technology business otherwise entitled to the tax credit shall
9 be assessed a penalty of \$1,000 per month for each month the
10 annual survey is not filed, up to a maximum of three months. If
11 a complete annual survey has not been filed three months after
12 the due date or any extension thereof, the qualified high
13 technology business otherwise entitled to the tax credit shall
14 not be eligible to claim or assign the credit under section 235-
15 110.9 or 235-110.91, as the case may be, for the taxable year
16 prior to the year in which the person failed to timely file a
17 complete annual survey.

18 (d) The department shall use information collected under
19 this section or under other requirements of the department to
20 prepare the report required under section 231-3.4(b).



1 (e) The reporting requirements under this section shall
2 only be applicable to qualified high technology businesses and
3 shall not apply to individual investors.

4 (f) The department shall adopt rules pursuant to chapter
5 91 to implement this section."

6 SECTION 3. Section 231-3.4, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "[~~+~~]**§231-3.4**[~~+~~] **Publication of reports.** (a) The
9 department of taxation shall publish reports on the following:

- 10 (1) Hawaii income patterns--individuals;
- 11 (2) Hawaii income patterns--corporations, proprietorships,
- 12 and partnerships; and
- 13 (3) Tax credits.

14 The department shall make each of these reports available in
15 both paper form and commonly accessible electronic forms for a
16 reasonable fee.

17 (b) The department shall, no later than October 1, 2007,
18 and annually thereafter, prepare and submit to the legislature a
19 report pertaining to qualified high technology businesses and
20 related tax incentives provided under sections 235-7.3, 235-9.5,
21 235-110.51, 235-110.9, and 235-110.91.



1 In preparing the report, the department shall include
2 summary descriptive statistics on the aforementioned sections;
3 provided that no fewer than three taxpayers shall be included in
4 any category.

5 Reports prepared after October 1, 2007, shall also:

6 (1) Identify each qualified high technology business
7 receiving credits under section 235-110.9 or 235-
8 110.91; and

9 (2) Evaluate the effectiveness of the tax credits under
10 sections 235-110.9 and 235-110.91. The department
11 shall measure the effect of the tax credits on:

12 (A) Job creation;

13 (B) The number of jobs created in the state;

14 (C) Company growth;

15 (D) The diversification of the state's economy;

16 (E) The movement of firms;

17 (F) The introduction of new products;

18 (G) Growth in research and development investment;

19 (H) The consolidation of firms operating in the
20 state; and

21 (I) Other factors as the department determines.



1 The department's initial report shall be based on all
 2 information currently available to the department. Reports
 3 prepared after October 1, 2007, shall be submitted to the
 4 legislature no later than September 1 of the current year. All
 5 reports shall be public, and the department shall make reports
 6 available in both paper form and commonly accessible electronic
 7 forms for a reasonable fee.

8 [~~b~~] (c) The department shall explore and implement all
 9 reasonable methods of covering the costs of publication and
 10 distribution of the reports, including but not limited to:

11 (1) Setting reasonable fees that will cover the costs of
 12 producing and distributing the reports in paper and
 13 electronic form; and

14 (2) Negotiating licensing fees with commercial information
 15 providers for rights to carry the reports on-line or
 16 in other electronic storage methods."

17 SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is
 18 amended as follows:

19 1. By amending subsection (b) to read:

20 "(b) The credit allowed under this section shall be claimed
 21 against the net income tax liability for the taxable year. For
 22 the purpose of this section, "net income tax liability" means



1 net income tax liability reduced by all other credits allowed
2 under this chapter. By claiming the credit, a qualified high
3 technology business consents to the public disclosure of the
4 taxpayer's name and the taxpayer's status as a claimant of the
5 credit under this section."

6 2. By amending subsections (d), (e), and (f) to read:

7 (d) If at the close of any taxable year in the [~~five-year~~]
8 five-year period in subsection (a):

9 (1) The business no longer qualifies as a qualified high
10 technology business;

11 (2) The business or an interest in the business has been
12 sold by the taxpayer investing in the qualified high
13 technology business; or

14 (3) The taxpayer has withdrawn the taxpayer's investment
15 wholly or partially from the qualified high technology
16 business[+],

17 the credit claimed under this section shall be recaptured. The
18 recapture shall be equal to [~~ten~~] one hundred per cent of the
19 amount of the total tax credit claimed under this section in the
20 preceding [~~two~~] five taxable years. The amount of the credit
21 recaptured shall apply only to the investment in the particular
22 qualified high technology business that meets the requirements



1 of paragraph (1), (2), or (3). The recapture provisions of this
2 subsection shall not apply to a tax credit claimed for a
3 qualified high technology business that does not fall within the
4 provisions of paragraph (1), (2), or (3). The amount of the
5 recaptured tax credit determined under this subsection shall be
6 added to the taxpayer's tax liability for the taxable year in
7 which the recapture occurs under this subsection.

8 (e) Every taxpayer, before March 31 of each year in which
9 an investment in a qualified high technology business was made
10 in the previous taxable year, shall submit a written, certified
11 statement to the director of taxation identifying:

12 (1) Qualified investments, if any, expended in the
13 previous taxable year; and

14 (2) The amount of tax credits claimed pursuant to this
15 section, if any, in the previous taxable year.

16 Every qualified high technology business that claims a credit or
17 receives an investment for which a credit may be claimed under
18 this section shall also submit the annual survey required by
19 section 235- to the director of taxation.

20 (f) The department shall:

21 (1) Maintain records of the names and addresses of the
22 taxpayers claiming the credits under this section and



1 the total amount of the qualified investment costs
2 upon which the tax credit is based;

3 (2) Verify the nature and amount of the qualifying
4 investments;

5 (3) Total all qualifying and cumulative investments that
6 the department certifies; and

7 (4) Certify the amount of the tax credit for each taxable
8 year and cumulative amount of the tax credit.

9 Upon each determination made under this subsection, the
10 department shall issue a certificate to the taxpayer verifying
11 information submitted to the department, including qualifying
12 investment amounts, the credit amount certified for each taxable
13 year, [~~and~~] the cumulative amount of the tax credit during the
14 credit period[~~-~~], and any survey required under section 235- .

15 The taxpayer shall file the certificate with the taxpayer's tax
16 return with the department.

17 The director of taxation may assess and collect a fee to
18 offset the costs of certifying tax credits claims under this
19 section. All fees collected under this section shall be
20 deposited into the tax administration special fund established
21 under section 235-20.5."



1 SECTION 5. Section 235-110.91, Hawaii Revised Statutes, is
2 amended by amending subsections (c) to (e) to read as follows:

3 "(c) There shall be allowed to each qualified high
4 technology business subject to the tax imposed by this chapter
5 an income tax credit for qualified research activities equal to
6 the credit for research activities provided by section 41 of the
7 Internal Revenue Code and as modified by this section. The
8 credit shall be deductible from the taxpayer's net income tax
9 liability, if any, imposed by this chapter for the taxable year
10 in which the credit is properly claimed. By claiming the
11 credit, the taxpayer consents to the public disclosure of the
12 taxpayer's name and the taxpayer's status as a claimant of the
13 credit under this section.

14 (d) Every qualified high technology business, before March
15 31 of each year in which qualified research and development
16 activity was conducted in the previous taxable year, shall
17 submit a written, certified statement to the director of
18 taxation identifying:

- 19 (1) Qualified expenditures, if any, expended in the
20 previous taxable year; and
- 21 (2) The amount of tax credits claimed pursuant to this
22 section, if any, in the previous taxable year.



1 Every qualified high technology business shall also submit the
2 annual survey required by section 235- to the director of
3 taxation.

4 (e) The department shall:

5 (1) Maintain records of the names and addresses of the
6 taxpayers claiming the credits under this section and
7 the total amount of the qualified research and
8 development activity costs upon which the tax credit
9 is based;

10 (2) Verify the nature and amount of the qualifying costs
11 or expenditures;

12 (3) Total all qualifying and cumulative costs or
13 expenditures that the department certifies; and

14 (4) Certify the amount of the tax credit for each taxable
15 year and cumulative amount of the tax credit.

16 Upon each determination made under this subsection, the
17 department shall issue a certificate to the taxpayer verifying
18 information submitted to the department, including the
19 qualifying costs or expenditure amounts, the credit amount
20 certified for each taxable year, [~~and~~] the cumulative amount of
21 the tax credit during the credit period[-], and the survey



1 required under section 235- . The taxpayer shall file the
2 certificate with the taxpayer's tax return with the department."

3 SECTION 6. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$, or so
5 much thereof as may be necessary for fiscal year 2007-2008, and
6 the same sum, or so much thereof as may be necessary for fiscal
7 year 2008-2009, for additional resources as may be necessary to
8 prepare the reports required under section 3 pertaining to
9 qualified high technology businesses and related tax incentives
10 provided under sections 235-7.3, 235-9.5, 235-110.51, 235-110.9,
11 and 235-110.91, Hawaii Revised Statutes.

12 The sums appropriated shall be expended by the department
13 of taxation for the purposes of this Act.

14 SECTION 7. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 8. This Act shall take effect on July 1, 2020.



Report Title:

High Technology Tax Incentives; Industry and Agency Reporting

Description:

Requires Department of Taxation to report to the Legislature on all available information and data collected from high technology businesses and thereafter submit an annual report of summary statistics on tax incentives and an evaluation of the effectiveness of high tech investment and research tax credits. Requires qualified high technology businesses benefiting from the high tech business investment and research activities tax credits to submit employment information to the Department of Taxation. Increases amount of recapture. Appropriates funds. Effective July 1, 2020. (SB898 HD2)

