



GOV. MSG. NO. 849

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 16, 2009

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 199 SD1 HD1 CD2

On July 15, 2009, Senate Bill No. 199, entitled "A Bill for an Act Relating to Taxation" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this law is to amend the High Technology Business Investment Tax Credit by limiting claims to 80 percent of tax liability, allowing only one to one credit allocation ratios, and eliminating carryovers for investments made between May 1, 2009 and December 31, 2010. This law also suspends the Capital Goods Excise Tax Credit for investments, renovation costs, or the purchase of eligible depreciable tangible properties from December 1, 2008 through December 31, 2009.

This bill retains Hawaii's high technology investment tax credits as one of the most generous credits available from state governments. Investors will still be allowed to claim up to one hundred percent of the amounts invested against their tax liability and will be able to offset up to eighty percent of the actual income taxes owed each year.

However, it should be recognized that this bill changes the terms of the High Technology Investment Tax Credits eighteen months prior to the expiration of these credits. I am concerned that this sends a signal to potential investors and the business community that they cannot depend upon the continuation of a government policy that encouraged them to behave in a certain manner, presuming the same investment rules would stay in place through 2010.

Also, the suspension of the Capital Goods Excise Tax Credit is troubling because this credit assists Hawaii's businesses with capital good investments. This is the time when companies should be encouraged to make such investments as one of our economic recovery tools. Certainly encouraging the purchase of capital goods was recognized by President Obama's

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Administration when they included bonus depreciation provisions in the American Recovery and Reinvestment Act.

On balance, I believe the fiscal implications of this legislation outweigh the concerns I have noted above. For the foregoing reasons, I allowed Senate Bill No. 199 to become law as Act 178, effective July 15, 2009, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", with a stylized flourish at the end.

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235-A Credits against income; claim limitation. (a)
5 Notwithstanding any law to the contrary providing for a tax
6 credit that may be claimed against a taxpayer's tax liability
7 under section 235-110.51, 235-110.9, 241-4.8, or 431:7-209 for
8 taxable years beginning on or after January 1, 2009, and ending
9 before January 1, 2011, no claim for these tax credits shall
10 exceed eighty per cent of the taxpayer's tax liability for the
11 taxable year in which the credit is claimed, and any tax credits
12 claimed shall not result in any credit carryovers.

13 (b) This section shall apply to investments made,
14 renovation costs incurred, or eligible depreciable tangible
15 property placed in service on or after May 1, 2009."

16 SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is
17 amended by amending subsection (d) to read as follows:



1 "(d) Section 704 of the Internal Revenue Code (with
2 respect to a partner's distributive share) shall be operative
3 for purposes of this chapter; except that section 704(b) (2)
4 shall not apply to:

5 (1) Allocations of the high technology business investment
6 tax credit allowed by section 235-110.9[+] for
7 investments made before May 1, 2009;

8 (2) Allocations of net operating loss pursuant to section
9 235-111.5;

10 (3) Allocations of the attractions and educational
11 facilities tax credit allowed by section 235-110.46;
12 or

13 (4) Allocations of low-income housing tax credits among
14 partners under section 235-110.8."

15 SECTION 3. Section 235-110.7, Hawaii Revised Statutes, is
16 amended by amending subsection (a) to read as follows:

17 "(a) There shall be allowed to each taxpayer subject to
18 the tax imposed by this chapter a capital goods excise tax
19 credit which shall be deductible from the taxpayer's net income
20 tax liability, if any, imposed by this chapter for the taxable
21 year in which the credit is properly claimed.



1 The amount of the tax credit shall be determined by the
2 application of the following rates against the cost of the
3 eligible depreciable tangible personal property used by the
4 taxpayer in a trade or business and placed in service within
5 Hawaii after December 31, 1987. For calendar years beginning
6 after:

- 7 (1) December 31, 1987, the applicable rate shall be three
8 per cent;
- 9 (2) December 31, 1988, [~~and thereafter,~~] the applicable
10 rate shall be four per cent [-];
- 11 (3) December 31, 2008, the applicable rate shall be zero
12 per cent; and
- 13 (4) December 31, 2009, and thereafter, the applicable rate
14 shall be four per cent.

15 For taxpayers with fiscal taxable years, the applicable
16 rate shall be the rate for the calendar year in which the
17 eligible depreciable tangible personal property used in the
18 trade or business is placed in service within Hawaii.

19 In the case of a partnership, S corporation, estate, or
20 trust, the tax credit allowable is for eligible depreciable
21 tangible personal property which is placed in service by the
22 entity. The cost upon which the tax credit is computed shall be



1 determined at the entity level. Distribution and share of
2 credit shall be determined by rules.

3 In the case of eligible depreciable tangible personal
4 property for which a credit for sales or use taxes paid to
5 another state is allowable under section 238-3(i), the amount of
6 the tax credit allowed under this section shall not exceed the
7 amount of use tax actually paid under chapter 238 relating to
8 such tangible personal property.

9 If a deduction is taken under section 179 (with respect to
10 election to expense certain depreciable business assets) of the
11 Internal Revenue Code of 1954, as amended, no tax credit shall
12 be allowed for that portion of the cost of property for which
13 the deduction was taken."

14 SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is
15 amended to read as follows:

16 **"§235-110.9 High technology business investment tax**
17 **credit.** (a) There shall be allowed to each taxpayer subject to
18 the taxes imposed by this chapter a high technology business
19 investment tax credit that shall be deductible from the
20 taxpayer's net income tax liability, if any, imposed by this
21 chapter for the taxable year in which the investment was made



1 and the following four years provided the credit is properly
2 claimed. The tax credit shall be as follows:

3 (1) In the year the investment was made, thirty-five per
4 cent;

5 (2) In the first year following the year in which the
6 investment was made, twenty-five per cent;

7 (3) In the second year following the investment, twenty
8 per cent;

9 (4) In the third year following the investment, ten per
10 cent; and

11 (5) In the fourth year following the investment, ten per
12 cent;

13 of the investment made by the taxpayer in each qualified high
14 technology business, up to a maximum allowed credit in the year
15 the investment was made, \$700,000; in the first year following
16 the year in which the investment was made, \$500,000; in the
17 second year following the year in which the investment was made,
18 \$400,000; in the third year following the year in which the
19 investment was made, \$200,000; and in the fourth year following
20 the year in which the investment was made, \$200,000.

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



1 the purpose of this section, "net income tax liability" means
2 net income tax liability reduced by all other credits allowed
3 under this chapter. By accepting an investment for which the
4 credit allowed under this section may be claimed, a qualified
5 high technology business consents to the public disclosure of
6 the qualified high technology business' name and status as a
7 beneficiary of the credit under this section.

8 (c) If the tax credit under this section exceeds the
9 taxpayer's income tax liability for any of the five years that
10 the credit is taken, the excess of the tax credit over liability
11 may be used as a credit against the taxpayer's income tax
12 liability in subsequent years until exhausted. Every claim,
13 including amended claims, for a tax credit under this section
14 shall be filed on or before the end of the twelfth month
15 following the close of the taxable year for which the credit may
16 be claimed. Failure to comply with the foregoing provision
17 shall constitute a waiver of the right to claim the credit.

18 (d) If at the close of any taxable year in the five-year
19 period in subsection (a):

20 (1) The business no longer qualifies as a qualified high
21 technology business;



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

4 (3) The taxpayer has withdrawn the taxpayer's investment
5 wholly or partially from the qualified high technology
6 business;

7 the credit claimed under this section shall be recaptured. The
8 recapture shall be equal to ten per cent of the amount of the
9 total tax credit claimed under this section in the preceding two
10 taxable years. The amount of the credit recaptured shall apply
11 only to the investment in the particular qualified high
12 technology business that meets the requirements of paragraph
13 (1), (2), or (3). The recapture provisions of this subsection
14 shall not apply to a tax credit claimed for a qualified high
15 technology business that does not fall within the provisions of
16 paragraph (1), (2), or (3). The amount of the recaptured tax
17 credit determined under this subsection shall be added to the
18 taxpayer's tax liability for the taxable year in which the
19 recapture occurs under this subsection.

20 (e) Every taxpayer, before March 31 of each year in which
21 an investment in a qualified high technology business was made



1 in the previous taxable year, shall submit a written, certified
2 statement to the director of taxation identifying:

- 3 (1) Qualified investments, if any, expended in the
4 previous taxable year; and
- 5 (2) The amount of tax credits claimed pursuant to this
6 section, if any, in the previous taxable year.
- 7 (f) The department shall:
 - 8 (1) Maintain records of the names and addresses of the
9 taxpayers claiming the credits under this section and
10 the total amount of the qualified investment costs
11 upon which the tax credit is based;
 - 12 (2) Verify the nature and amount of the qualifying
13 investments;
 - 14 (3) Total all qualifying and cumulative investments that
15 the department certifies; and
 - 16 (4) Certify the amount of the tax credit for each taxable
17 year and cumulative amount of the tax credit.

18 Upon each determination made under this subsection, the
19 department shall issue a certificate to the taxpayer verifying
20 information submitted to the department, including qualifying
21 investment amounts, the credit amount certified for each taxable
22 year, and the cumulative amount of the tax credit during the



1 credit period. The taxpayer shall file the certificate with the
2 taxpayer's tax return with the department.

3 The director of taxation may assess and collect a fee to
4 offset the costs of certifying tax credits claims under this
5 section. All fees collected under this section shall be
6 deposited into the tax administration special fund established
7 under section 235-20.5.

8 (g) As used in this section:

9 "Investment tax credit allocation ratio" means, with
10 respect to a taxpayer that has made an investment in a qualified
11 high technology business, the ratio of:

12 (1) The amount of the credit under this section that is,
13 or is to be, received by or allocated to the taxpayer
14 over the life of the investment, as a result of the
15 investment; to

16 (2) The amount of the investment in the qualified high
17 technology business.

18 "Qualified high technology business" means a business,
19 employing or owning capital or property, or maintaining an
20 office, in this State; provided that:

21 (1) More than fifty per cent of its total business
22 activities are qualified research; and provided



1 further that the business conducts more than seventy-
2 five per cent of its qualified research in this State;
3 or

4 (2) More than seventy-five per cent of its gross income is
5 derived from qualified research; and provided further
6 that this income is received from:

7 (A) Products sold from, manufactured in, or produced
8 in this State; or

9 (B) Services performed in this State.

10 "Qualified research" means the same as defined in section
11 235-7.3.

12 (h) Common law principles, including the doctrine of
13 economic substance and business purpose, shall apply to any
14 investment. There exists a presumption that a transaction
15 satisfies the doctrine of economic substance and business
16 purpose to the extent that the special allocation of the high
17 technology business tax credit has an investment tax credit
18 ratio of 1.5 or less of credit for every dollar invested.

19 Transactions for which an investment tax credit allocation
20 ratio greater than 1.5 but not more than 2.0 of credit for every
21 dollar invested and claimed may be reviewed by the department



1 for applicable doctrines of economic substance and business
2 purpose.

3 Businesses claiming a tax credit for transactions with
4 investment tax credit allocation ratios greater than 2.0 of
5 credit for every dollar invested shall substantiate economic
6 merit and business purpose consistent with this section.

7 (i) For investments made on or after May 1, 2009,
8 notwithstanding any other law to the contrary, no allocations,
9 special or otherwise, of credits under this section may exceed
10 the amount of the investment made by the taxpayer ultimately
11 claiming this credit; and investment tax credit allocation
12 ratios greater than 1.0 of credit for every dollar invested
13 shall not be allowed. In addition, the credit shall be allowed
14 only in accordance with subsection (a).

15 (j) For investments made on or after May 1, 2009, this
16 section shall be subject to section 235-A.

17 ~~[(i)]~~ (k) This section shall not apply to taxable years
18 beginning after December 31, 2010."

19 SECTION 5. Section 241-4.5, Hawaii Revised Statutes, is
20 amended to read as follows:

21 " ~~[(i)]~~ §241-4.5 ~~[(i)]~~ Capital goods excise tax credit. The
22 capital goods excise tax credit provided under section 235-110.7



1 shall be operative for this chapter after December 31, 1987[-];
2 provided that the capital goods excise tax credit shall be
3 inoperative after December 31, 2008, and before January 1,
4 2010."

5 SECTION 6. Section 241-4.8, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[+]§241-4.8[+] High technology business investment tax
8 credit. (a) The high technology business investment tax credit
9 provided under section 235-110.9 shall be operative for this
10 chapter on July 1, 1999.

11 (b) For investments made on or after May 1, 2009, this
12 section shall be subject to section 235-A."

13 SECTION 7. Section 431:7-209, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§431:7-209[+] High technology business investment tax
16 credit. (a) The high technology business investment tax credit
17 provided under section 235-110.9 shall be operative for this
18 chapter on July 1, 1999.

19 (b) For investments made on or after May 1, 2009, this
20 section shall be subject to section 235-A."

21 SECTION 8. In codifying the new section added by section 1
22 of this Act, the revisor of statutes shall substitute the



1 appropriate section number for the letter used in designating
2 the new section in this Act.

3 SECTION 9. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 10. This Act shall take effect upon its approval,
6 and shall apply to investments made, renovation costs incurred,
7 or eligible depreciable tangible property placed in service on
8 or after May 1, 2009.

APPROVED this day of , 2009

GOVERNOR OF THE STATE OF HAWAII