
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- Tax credits; ineligibility.** Notwithstanding any
5 other law to the contrary, no taxpayer shall be eligible to
6 claim any tax credit, in whole or in part, under this chapter if
7 grants or moneys received from the federal, state, or county
8 government were used to pay the costs incurred or investments
9 made with such funds were used as the basis of the claim for the
10 tax credit."

11 SECTION 2. Section 235-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "investment" to read as
13 follows:

14 "\"Investment\" means a nonrefundable investment, at risk,
15 [~~as that term is used in section 465 (with respect to deductions~~
16 ~~limited to amount at risk) of the Internal Revenue Code,~~] in a
17 qualified high technology business, of cash that is transferred
18 to the qualified high technology business, the transfer of which



1 is in connection with a transaction in exchange for stock,
2 ~~[interests in partnerships, joint ventures, or other entities,~~
3 ~~licenses (exclusive or nonexclusive), rights to use technology,~~
4 ~~marketing rights,]~~ a partnership interest, limited liability
5 company interest, joint venture or similar entity interest,
6 warrants, options, or any ~~[items similar to those included in~~
7 ~~this definition, including but not limited to options or rights~~
8 ~~to acquire any of the items included in this definition.]~~ other
9 regulated security. The nonrefundable investment is entirely at
10 risk of loss where repayment depends upon the success of the
11 qualified high technology business. ~~[If the money invested is~~
12 ~~to be repaid to the taxpayer, no repayment except for dividends~~
13 ~~or interest shall be made for at least one year from the date~~
14 ~~the investment is made. The annual amount of any dividend and~~
15 ~~interest payment to the taxpayer shall not exceed twelve per~~
16 ~~cent of the amount of the investment.]~~ For an investment of
17 cash to qualify as an investment defined in this section, the
18 money invested cannot be repaid in any form for five years from
19 the date of investment. Notwithstanding the previous sentence,
20 nothing in this definition is construed as limiting the payment
21 of dividends on account of an investment in stock from the
22 qualified high technology business' earnings and profits."



1 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:

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

7 ~~[(1) Allocations of the high technology business investment~~
8 ~~tax credit allowed by section 235-110.9;~~

9 ~~(2) Allocations of net operating loss pursuant to section~~
10 ~~235-111.5;~~

11 ~~(3)]~~ (1) Allocations of the attractions and educational
12 facilities tax credit allowed by section 235-110.46;
13 or

14 ~~[(4)]~~ (2) Allocations of low-income housing tax credits
15 among partners under section 235-110.8."

16 SECTION 4. Section 235-20, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "[~~+~~]**\$235-20**[~~+~~] **Comfort letters; authority to assess fees;**
19 **established.** The department may assess and collect a fee for
20 the issuance of any comfort letter of the department. All fees
21 collected under this section shall be deposited into the tax



1 administration special fund established under section 235-20.5.

2 Beginning July 1, 2009, the department shall assess a fee of:

3 (1) \$5,000 for any comfort letter from the department
4 under section 235-7.3, 235-9.5, 235-110.9, and 235-
5 110.91; and

6 (2) \$2,000 for any certification issued under section 235-
7 110.9 or 235-110.91.

8 The department may, without regard to chapter 91, increase or
9 decrease the amount of any fee assessed under this section;
10 provided such fee does not exceed \$10,000."

11 SECTION 5. Section 235-20.5, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§235-20.5 Tax administration special fund; established.**

14 There is established a tax administration special fund, into
15 which shall be deposited:

16 (1) [~~fees~~] Fees collected under sections 235-20, 235-
17 110.9, and 235-110.91[~~and~~];

18 (2) [~~penalties~~] Penalties collected under section 2 of Act
19 206 [~~+~~]Session Laws of Hawaii 2007[~~+~~]; and

20 (3) Any amounts appropriated by the legislature.

21 The moneys in the fund shall be expended by the department
22 to offset the costs associated with[~~+~~



- 1 ~~(1) Issuing comfort letters,~~
- 2 ~~(2) Administering the tax credit under section 235-110.9,~~
- 3 ~~including issuing certificates; and~~
- 4 ~~(3) Issuing certificates under section 235-110.91]~~
- 5 administering title 14."

6 SECTION 6. Section 235-110.51, Hawaii Revised Statutes, is
7 amended by amending subsection (h) to read as follows:

8 "(h) The tax credit allowed under this section shall not
9 be available for taxable years beginning after December 31,
10 ~~[2010-]~~ 2015."

11 SECTION 7. Section 235-110.9, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§235-110.9 High technology business investment tax**
14 **credit.** (a) There shall be allowed to each taxpayer subject to
15 the taxes imposed by this chapter a high technology business
16 investment tax credit that shall be deductible from the
17 taxpayer's net income tax liability, if any, imposed by this
18 chapter for the taxable year in which the investment was made
19 and the following four years provided the credit is properly
20 claimed. The tax credit shall be as follows:

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

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

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

5 (4) In the third year following the investment, ten per
6 cent; and

7 (5) In the fourth year following the investment, ten per
8 cent;

9 of the investment made by the taxpayer in each qualified high
10 technology business, up to a maximum allowed credit in the year
11 the investment was made, \$700,000; in the first year following
12 the year in which the investment was made, \$500,000; in the
13 second year following the year in which the investment was made,
14 \$400,000; in the third year following the year in which the
15 investment was made, \$200,000; and in the fourth year following
16 the year in which the investment was made, \$200,000. The
17 aggregate of the credits claimed by taxpayers for investments in
18 any single qualified high technology business in a taxable year
19 shall not exceed \$10,000,000. For taxable years beginning after
20 December 31, 2009, the aggregate of the credits claimed by all
21 taxpayers for investments in qualified high technology business
22 in a taxable year shall not exceed \$50,000,000.



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

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

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



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

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

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

9 the credit claimed under this section shall be recaptured. The
10 recapture shall be equal to ~~ten~~ fifty per cent of the amount
11 of the total tax credit claimed under this section in the
12 preceding two taxable years~~[-]~~; provided that if a qualified
13 high technology business ceases to qualify as a qualified high
14 tech business as a result of its business activities being
15 relocated outside Hawaii, then the fifty per cent recapture
16 amount shall be increased to one hundred per cent. The amount
17 of the credit recaptured shall apply only to the investment in
18 the particular qualified high technology business that meets the
19 requirements of paragraph (1), (2), or (3). The recapture
20 provisions of this subsection shall not apply to a tax credit
21 claimed for a qualified high technology business that does not
22 fall within the provisions of paragraph (1), (2), or (3). The



1 amount of the recaptured tax credit determined under this
2 subsection shall be added to the taxpayer's tax liability for
3 the taxable year in which the recapture occurs under this
4 subsection.

5 (e) Every taxpayer, before [~~March 31~~] April 1 of each year
6 in which an investment in a qualified high technology business
7 was made in the previous taxable year, shall submit a written,
8 certified statement to the director of taxation identifying:

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



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

3 Upon each determination made under this subsection, the
4 department shall issue a certificate to the taxpayer verifying
5 information submitted to the department, including qualifying
6 investment amounts, the credit amount certified for each taxable
7 year, and the cumulative amount of the tax credit during the
8 credit period. The taxpayer shall file the certificate with the
9 taxpayer's tax return with the department.

10 The director of taxation may assess and collect a fee to
11 offset the costs of certifying tax credits claims under this
12 section. All fees collected under this section shall be
13 deposited into the tax administration special fund established
14 under section 235-20.5.

15 (g) For purposes of administering the tax credit under
16 this section, Sections 6676 (with respect to erroneous refund
17 claims), 6694 (with respect to understatements of taxpayer's
18 liability by tax return preparer), 6700 (with respect to
19 promoting abusive tax shelters), and 7404 (with respect to
20 actions to enjoin tax return preparers) of the Internal Revenue
21 Code shall be operative.



1 The Internal Revenue Code shall be applied using changes in
2 nomenclature and other language, including the omission of
3 inapplicable language, where necessary to effectuate the intent
4 of this section.

5 This subsection shall be interpreted to give effect to the
6 legislative intent that the operative penalties of the Internal
7 Revenue Code conformed to under this subsection apply as if each
8 penalty were set forth in this chapter and that unnecessary
9 wording or unnecessary references to sections of the Internal
10 Revenue Code contained in the operative penalty sections shall
11 be omitted where applicable and clearly inconsistent with the
12 intent of this section.

13 ~~[(g)]~~ (h) As used in this section:

14 ~~["Investment tax credit allocation ratio" means, with~~
15 ~~respect to a taxpayer that has made an investment in a qualified~~
16 ~~high technology business, the ratio of:~~

17 ~~(1) The amount of the credit under this section that is,~~
18 ~~or is to be, received by or allocated to the taxpayer~~
19 ~~over the life of the investment, as a result of the~~
20 ~~investment, to~~

21 ~~(2) The amount of the investment in the qualified high~~
22 ~~technology business.]~~



1 "Qualified high technology business" means a business,
2 employing or owning capital or property, or maintaining an
3 office, in this [~~State,~~] state; provided that:

4 (1) More than [~~fifty~~] seventy-five per cent of its total
5 business activities are qualified research[~~, and~~
6 ~~provided further that the business conducts more than~~
7 ~~seventy five per cent of its qualified research]~~
8 activities conducted in this [~~State,~~] state; and

9 (2) More than seventy-five per cent of its [~~gross income~~
10 ~~is derived from qualified research; and provided~~
11 ~~further that this income is received from:~~

12 ~~(A) Products sold from, manufactured in, or produced~~
13 ~~in this State; or~~

14 ~~(B) Services performed in this State.]~~ workforce
15 conducting the qualified research activities is
16 comprised of employees or independent contractors
17 physically performing services in this state.

18 "Qualified research" means [~~the same as defined in section~~
19 ~~235-7.3.]~~ the same as in Section 41(d) of the Internal Revenue
20 Code.

21 [~~(h) Common law principles, including the doctrine of~~
22 ~~economic substance and business purpose, shall apply to any~~



1 ~~investment. There exists a presumption that a transaction~~
2 ~~satisfies the doctrine of economic substance and business~~
3 ~~purpose to the extent that the special allocation of the high~~
4 ~~technology business tax credit has an investment tax credit~~
5 ~~ratio of 1.5 or less of credit for every dollar invested.~~

6 ~~Transactions for which an investment tax credit allocation~~
7 ~~ratio greater than 1.5 but not more than 2.0 of credit for every~~
8 ~~dollar invested and claimed may be reviewed by the department~~
9 ~~for applicable doctrines of economic substance and business~~
10 ~~purpose.~~

11 ~~Businesses claiming a tax credit for transactions with~~
12 ~~investment tax credit allocation ratios greater than 2.0 of~~
13 ~~credit for every dollar invested shall substantiate economic~~
14 ~~merit and business purpose consistent with this section.]~~

15 (i) This section shall not apply to taxable years
16 beginning after December 31, ~~[2010.]~~ 2011."

17 SECTION 8. Section 235-110.91, Hawaii Revised Statutes, is
18 amended as follows:

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

20 "(a) Section 41 (with respect to the credit for increasing
21 research activities) and section 280C(c) (with respect to
22 certain expenses for which the credit for increasing research



1 activities are allowable) of the Internal Revenue Code shall be
2 operative for the purposes of this chapter as provided in this
3 section; except that references to the base amount shall not
4 apply and credit for all qualified research expenses may be
5 taken without regard to the amount of expenses for previous
6 years. If section 41 of the Internal Revenue Code is repealed
7 or terminated prior to January 1, ~~[2011,]~~ 2015, its provisions
8 shall remain in effect for purposes of the income tax law of the
9 State as modified by this section, as provided for in subsection
10 (j)."

11 2. By amending subsection (d) to read:

12 "(d) Every ~~[qualified high technology business,]~~ taxpayer,
13 before March 31 of each year in which an investment in a
14 qualified [research and development activity was conducted] high
15 technology business was made in the previous taxable year, shall
16 submit a written, certified statement to the director of
17 taxation identifying:

- 18 (1) Qualified ~~[expenditures,]~~ investments, if any,
19 [expended] made in the previous taxable year; ~~[and]~~
20 (2) Whether any qualified investment made in the previous
21 taxable year was made in a qualified high technology
22 business that is a wholly-owned subsidiary; and



1 ~~[-(2)]~~ (3) The amount of tax credits claimed pursuant to
2 this section, if any, in the previous taxable year."

3 3. By amending subsection (j) to read:

4 "(j) This section shall not apply to taxable years
5 beginning after December 31, ~~[2010-]~~ 2011."

6 SECTION 9. Act 206, Session Laws of Hawaii 2007, is
7 amended by amending section 8 to read as follows:

8 "SECTION 8. This Act shall take effect on July 1, 2007,
9 and shall apply to investments received by a qualified high
10 technology business after June 30, 2007; provided that this Act
11 shall be repealed on January 1, 2011, and ~~[sections]~~ section
12 235-20.5 ~~[and 235-110-9(b)]~~, Hawaii Revised Statutes, shall be
13 reenacted in the form in which ~~[they]~~ it read on the day before
14 the effective date of this Act."

15 SECTION 10. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 11. This Act shall take effect on July 1, 2020.



Report Title:

High Technology Tax Credits; Administration

Description:

Extends the availability of the high technology business investment, research activities, and technology infrastructure renovation tax credits. Beginning January 1, 2010, caps aggregate high tech business investment credits for a year to \$50,000,000. Caps aggregate high tech business investment credits in a year for investments in a single qualified high tech business to \$10,000,000. Strengthens administrative oversight of tax credits. (HB1451 HD2)

