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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

**1** **PART I**

**2** SECTION 1. The purpose of this part is to add a new part  
**3** to chapter 235, Hawaii Revised Statutes, to clarify the  
**4** application of the capital goods excise tax credit and to  
**5** identify when section 235-110.7, Hawaii Revised Statutes,  
**6** applies to property placed in service and when the new part  
**7** added to chapter 235, Hawaii Revised Statutes, applies to  
**8** property placed in service.

**9** This part also separates the new part added in chapter 235,  
**10** Hawaii Revised Statutes, into several parts in an effort to  
**11** provide clarity for taxpayers and practitioners that utilize the  
**12** capital goods excise tax credit. This part is not intended to  
**13** change the application of section 235-110.7, Hawaii Revised  
**14** Statutes, as it applies with regard to property placed in  
**15** service in taxable years beginning before July 1, 2009.

**16** As currently enacted, section 235-110.7, Hawaii Revised  
**17** Statutes, is onerous for taxpayers and practitioners to apply

1 accurately and somewhat burdensome for the department of  
2 taxation to administer.

3 This part improves the organization of section 235-110.7,  
4 Hawaii Revised Statutes, and clarifies the application of the  
5 capital goods excise tax credit for taxpayers that acquire and  
6 use certain depreciable tangible personal property in a trade or  
7 business.

8 Specifically, this part removes, to the extent possible,  
9 references to Internal Revenue Code provisions that have been  
10 repealed or substantially amended, as well as adding or  
11 elaborating upon several definitions taken from the Internal  
12 Revenue Code, including, but not limited to, "basis", "eligible  
13 property", "new eligible property", and "tangible personal  
14 property". This part also describes the necessary conditions  
15 that must occur in order for the capital goods excise tax credit  
16 to be properly claimed by taxpayers and the recapture  
17 requirements for previously claimed credits.

18 In order to improve the organization and clarify the  
19 application of this frequently used income tax credit, the  
20 legislature finds that a new part should be added to chapter  
21 235, Hawaii Revised Statutes, in order to clarify the  
22 application of the capital goods excise tax credit for

1 practitioners and ease the burden for the department of taxation  
2 to administer the credit.

3 This part also suspends the capital goods excise tax credit  
4 for calendar years 2010 and 2011.

5 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
6 amended by adding a new part to be appropriately designated and  
7 to read as follows:

8 **"PART . CAPITAL GOODS EXCISE TAX CREDIT**

9 **§235-A Definitions.** For the purpose of this part:

10 "Alternative energy property" consists of the following  
11 types of property:

12 (1) A boiler, the primary fuel for which shall be an  
13 alternate substance. An alternate substance is any  
14 substance other than oil, natural gas, or any product  
15 of oil and natural gas;

16 (2) A burner, including necessary on-site equipment to  
17 bring the alternate substance to the burner, for a  
18 combustor other than a boiler if the primary fuel for  
19 the burner will be an alternate substance;

20 (3) Equipment for turning an alternate substance into a  
21 synthetic liquid, gaseous, or solid fuel;

- 1           (4)   Equipment designed to modify existing equipment which  
2           uses oil or natural gas as fuel or as feedstock so  
3           that the existing equipment will use either a  
4           substance other than oil and natural gas or oil mixed  
5           with a substance other than oil and natural gas where  
6           the other substance provides not less than twenty-five  
7           per cent of the fuel or feedstock;
- 8           (5)   Equipment to convert coal, including lignite, or any  
9           non-marketable substance derived therefrom, into a  
10          substitute for a petroleum or natural gas derived  
11          feedstock for the manufacture of chemicals or other  
12          products, or coal, including lignite, or any substance  
13          derived therefrom, into methanol, ammonia, or a  
14          hydroprocessed coal liquid or solid;
- 15          (6)   Pollution control equipment required by federal,  
16          state, or local law, ordinances, regulations, or rules  
17          to be installed on or in connection with equipment  
18          described in paragraphs (1) to (5);
- 19          (7)   Equipment used for the unloading, transfer, storage,  
20          reclaiming from storage, and preparation, including,  
21          but not limited to, washing, crushing, drying, and  
22          weighing, at the point of use for an alternate

1 substance for use in equipment described in paragraphs  
2 (1) to (6). This includes equipment used for the  
3 storage of fuel derived from garbage at the site at  
4 which fuel was produced from garbage; and

5 (8) Equipment used to produce, distribute, or use energy  
6 from a geothermal deposit, but only, in the case of  
7 electricity generated by geothermal power, up to, but  
8 not including, the electrical transmission state.

9 "Basis" means the cost of property.

10 (1) The basis of new eligible property which has been  
11 constructed, reconstructed, or erected for the  
12 taxpayer's use includes that portion of the cost of  
13 the property that is subject to the imposition and  
14 payment of tax at the rate of four per cent under  
15 chapter 237 or 238.

16 (2) Whether the cost or other basis of the construction,  
17 reconstruction, or erection is attributable to all or  
18 part of a property placed in service may be determined  
19 by engineering estimates or by cost accounting  
20 records.

21 (3) In the case of reconstructed property, the cost of the  
22 property does not include the adjusted basis of the

1 reconstructed property at the time the reconstruction  
2 commences. However, the reconstructed property may  
3 qualify as used eligible property, as defined in this  
4 section, and the cost of the property may include the  
5 adjusted basis of the reconstructed property at the  
6 time the reconstruction commences if the adjusted  
7 basis of the property is subject to the imposition and  
8 payment of tax at the rate of four per cent under  
9 chapter 237 or 238.

10 (4) If constructed, reconstructed, or erected property is  
11 placed in service over a span of more than one taxable  
12 year, the credit shall be allowed to the taxpayer for  
13 a particular taxable year with respect to so much of  
14 the eligible property that is subject to the  
15 imposition and payment of tax at the rate of four per  
16 cent under chapter 237 or 238.

17 (5) The basis of used eligible property is the cost of the  
18 property that is subject to the imposition and payment  
19 of tax at the rate of four per cent under chapter 237  
20 or 238.

21 (6) In the case of a partnership, S corporation, estate,  
22 or trust, the credit allowable is for eligible

1 property that is placed in service by the entity. The  
2 basis upon which the credit is computed is determined  
3 at the entity level. Each partner, S corporation  
4 shareholder, or beneficiary of an estate or trust  
5 shall separately take into account for its taxable  
6 year with or within which the entity's taxable year  
7 ends, the partner's, shareholder's, or beneficiary's  
8 share of the basis and resulting credit.

9 A partner's share of the basis shall be  
10 determined in accordance with the ratio in effect on  
11 the date on which the eligible property is placed in  
12 service in which the partners divide the general  
13 profits of the partnership. The basis of partnership  
14 eligible property that is subject to a special  
15 allocation that is recognized under section 704(a) and  
16 704(b) (with respect to partner's distributive share)  
17 of the Internal Revenue Code shall be recognized for  
18 purposes of the credit, and an upward basis adjustment  
19 pursuant to section 754 (with respect to manner of  
20 electing optional adjustment to basis of partnership  
21 property) of the Internal Revenue Code is not eligible  
22 for the credit. A basis adjustment under section 754

1 (with respect to manner of electing optional  
2 adjustment to basis of partnership property) of the  
3 Internal Revenue Code is not eligible for the credit  
4 because the adjustment is not a transaction that is  
5 subject to the imposition and payment of tax at the  
6 rate of four per cent under chapter 237 or 238.

7 Each S corporation shareholder's basis of  
8 eligible property is the shareholder's allocated share  
9 of the corporation's basis in the eligible property.  
10 A beneficiary's share of the basis is apportioned  
11 between the entity and the beneficiaries, based on the  
12 income of the entity allocable to each on the date the  
13 eligible property is placed in service. The term  
14 "beneficiary" includes an heir, legatee, or devisee.

15 (7) If a deduction is taken under section 179 (with  
16 respect to election to expense certain depreciable  
17 business assets) of the Internal Revenue Code the  
18 portion of the basis of property for which the  
19 deduction is taken is not considered in determining  
20 the amount of credit allowable.

21 (8) For purposes of determining the amount of credit  
22 available, the basis for vehicles subject to section



1           280F (with respect to limitation on depreciation for  
2           luxury automobiles; limitation where certain property  
3           used for personal purposes) of the Internal Revenue  
4           Code used predominantly for business purposes is  
5           limited to an amount equal to the amount necessary to  
6           obtain the maximum depreciation deduction allowed in  
7           the first year for both luxury passenger automobiles  
8           and trucks, vans and sport utility vehicles under  
9           section 280F (with respect to limitation on  
10          depreciation for luxury automobiles; limitation where  
11          certain property used for personal purposes) of the  
12          Internal Revenue Code. Use is predominantly for  
13          business purposes if over fifty per cent of the total  
14          use is for business purposes. This limitation applies  
15          before any percentage reduction for personal use, as  
16          discussed in paragraph (9).

17                 If more than one taxpayer has an interest in a  
18          vehicle subject to section 280F (with respect to  
19          limitation on depreciation for luxury automobiles;  
20          limitation where certain property used for personal  
21          purposes) of the Internal Revenue Code they are  
22          treated as one taxpayer for purposes of the basis

1           limitation. The limitation shall be apportioned among  
2           the taxpayers according to their interests in the  
3           passenger automobile.

4           (9) Listed property shall not be treated as eligible  
5           property, and the credit shall be denied if the listed  
6           property does not satisfy the more-than-fifty per cent  
7           business use test. If the qualified business use  
8           satisfies the more-than-fifty per cent business use  
9           test, but is not used one hundred per cent for  
10          business, the amount of credit is limited to the  
11          percentage of business use. The amount of credit  
12          allowable in the taxable year in which the listed  
13          property is placed in service is unaffected by any  
14          increase in the business use percentage in a  
15          subsequent year; provided that, if there is a  
16          reduction in the business use of property, then the  
17          credit taken with respect to the listed property may  
18          be subject to recapture as provided in section 235-C.

19          "Biomass property" means property that is a boiler, the  
20          primary fuel for which is an alternate substance, a burner,  
21          including necessary on-site equipment to bring the alternate  
22          substance to the burner, for a combustor other than a boiler if

1 the primary fuel will be an alternate substance, or equipment  
2 for converting an alternate substance into a qualified fuel,  
3 including equipment used to store fuel derived from garbage at  
4 the site at which the fuel was produced from garbage. For  
5 purposes of defining biomass property, an alternate substance  
6 means any substance other than an inorganic substance and coal,  
7 including lignite, or any coal product. Biomass property also  
8 includes pollution control equipment that is required to be  
9 installed on or in connection with the above equipment, as well  
10 as equipment used for the unloading, transfer, storage,  
11 reclaiming from storage, and preparation at point of use of an  
12 alternate substance for use in that equipment.

13 "Building" means any structure or edifice that encloses a  
14 space within its walls, and is usually covered by a roof. The  
15 term also includes any such structure that is constructed by or  
16 for a lessee, even if the structure must be removed, or  
17 ownership of the structure reverts to the lessor at the  
18 termination of the lease.

19 "Bulk storage" means the storage of a commodity in a large  
20 mass before its consumption or use.

21 "Cogeneration equipment" means property which is an  
22 integral part of a system for using the same fuel to produce

1 both qualified energy and electricity at an industrial or  
2 commercial facility. For purposes of this definition, the term  
3 "industrial" means the purification of water and the  
4 desalinization of water.

5 "Cost" means the (1) actual invoice price of the tangible  
6 personal property, or (2) basis from which a deduction is taken  
7 under section 167 (with respect to depreciation) or 168 (with  
8 respect to accelerated cost recovery system) of the Internal  
9 Revenue Code, whichever is less.

10 "Credit" means the capital goods excise tax credit.

11 "Eligible property":

12 (1) Eligible property is defined as:

13 (A) Property that is tangible personal property or  
14 other tangible property;

15 (B) Recovery property, within the meaning of section  
16 168 (with respect to accelerated cost recovery  
17 system) of the Internal Revenue Code without  
18 regard to useful life, or any other property with  
19 respect to which depreciation is allowable to the  
20 taxpayer; and

21 (C) Property which has an estimated useful life or  
22 recovery period, determined as of the time the

1 property is placed in service, of three years or  
2 more. A property shall have the same estimated  
3 useful life or recovery period as that which is  
4 used for depreciation or accelerated cost  
5 recovery system purposes.

6 (2) Property that is eligible for the credit is:

7 (A) New eligible property; or

8 (B) Used eligible property.

9 (3) Tangible personal property, other than a central air  
10 conditioning or a heating unit, may qualify as  
11 eligible property regardless of whether it is used as  
12 an integral part of an activity or constitutes a  
13 research or storage facility used in connection with  
14 the activity, as required for other tangible property.

15 (4) Eligible property shall be either recovery property  
16 within the meaning of section 168 (with respect to  
17 accelerated cost recovery system) of the Internal  
18 Revenue Code without regard to useful life, or any  
19 other property with respect to which depreciation is  
20 allowed by the taxpayer.

1 (A) If only part of a property is depreciable, only a  
2 pro rata portion of the property may qualify as  
3 eligible property.

4 (B) Property does not qualify as eligible property to  
5 the extent that a deduction for depreciation  
6 thereon is disallowed under section 274 (with  
7 respect to disallowance of certain entertainment,  
8 etc., expenses) of the Internal Revenue Code.

9 (5) Generally, any boiler, used in Hawaii, which is  
10 primarily fueled by petroleum or petroleum products,  
11 including natural gas, qualifies as eligible property.

12 (6) Energy property qualifies as eligible property.

13 (7) Certain classes of property that generally do not  
14 qualify as eligible property and thereby are not  
15 eligible for the credit include:

16 (A) A building or its structural components.

17 (B) Property purchased for use in a foreign trade  
18 zone as defined in chapter 212.

19 (C) Property used by an organization which is exempt  
20 from the tax imposed by this chapter, unless the  
21 property is used predominantly in an unrelated

1 trade or business, the income from which is  
2 subject to tax under this chapter.

3 (D) Intangible property.

4 (E) Property used for lodging.

5 (8) Exceptions to paragraph (7):

6 (A) A nonlodging commercial facility that is  
7 available to persons not using the lodging  
8 facility on the same basis as it is available to  
9 tenants of the lodging facility may qualify as  
10 eligible property.

11 (B) Property used by a hotel, motel, or other similar  
12 establishment in connection with the trade or  
13 business of furnishing lodging where more than  
14 one half of the accommodation in the hotel,  
15 motel, or other similar establishment is used by  
16 transients may qualify as eligible property. An  
17 accommodation shall be considered to accommodate  
18 transients if the rental period is normally less  
19 than thirty days.

20 (C) Coin-operated vending machines and coin-operated  
21 washing machines and dryers may qualify as  
22 eligible property.

1 "Energy property" means certain property intended to reduce  
2 the amount of oil, natural gas, or other energy consumed in  
3 heating or cooling a building or used in an industrial process.

4 Energy property includes:

- 5 (1) Alternative energy property;
- 6 (2) Solar or wind energy property;
- 7 (3) Specially defined energy property;
- 8 (4) Recycling equipment;
- 9 (5) Hydroelectric generating property;
- 10 (6) Cogeneration equipment; and
- 11 (7) Biomass property.

12 "Hydroelectric generating property" means property  
13 installed at a hydroelectric site that is:

- 14 (1) Equipment for increased capacity to generate  
15 electricity by water up to, but not including, the  
16 electrical transmission stage; and
- 17 (2) Structures for housing the generating equipment, fish  
18 passageways, and dam rehabilitation property, required  
19 by reason of the installation of equipment described  
20 in paragraph (1).



1 "Integral part" means property used directly in one of the  
2 activities specified as a condition under which other tangible  
3 property may be considered eligible property.

4 "Lease" is defined as it is for federal income tax  
5 purposes.

6 "Listed property" means passenger automobiles and other  
7 property used as a means of transportation; property generally  
8 used for purposes of entertainment, recreation, or amusement;  
9 computers and related peripheral equipment; and other property  
10 as determined by the department of taxation.

11 "Manufacturing, production, and extraction" means:

12 (1) Construction, reconstruction, or making of property  
13 out of scrap, salvage, junk, new, or raw material by  
14 processing, manipulating, refining, or changing the  
15 form of an article, or by combining or assembling two  
16 or more articles;

17 (2) Cultivation of the soil;

18 (3) Raising of livestock; or

19 (4) Mining of minerals.

20 "More-than-fifty per cent business use test" means that  
21 certain business use of listed property, referred to as  
22 "qualified business use," must exceed fifty per cent. For

1 purposes of determining the more-than-fifty per cent business  
2 use test, use in a trade or business does not include use in an  
3 investment or other activity conducted for the production of  
4 income. However, if the more-than-fifty-per-cent-business-use  
5 test has been met, the percentage of investment use may be added  
6 in when figuring the total business use for purposes of  
7 calculating the amount of credit allowable.

8 "New eligible property" means property that qualifies under  
9 at least one of the following conditions:

10 (1) The property is eligible property, the original use of  
11 which commences with the taxpayer after the date the  
12 taxpayer acquires it;

13 (2) The property is eligible property that is:

14 (A) Sold and leased back by the same taxpayer within  
15 three months of the date the property was  
16 originally placed in service in Hawaii by the  
17 taxpayer; or

18 (B) Leased to the same taxpayer within three months  
19 of the date the property was originally placed in  
20 service by that taxpayer; or

21 (3) The property is eligible property, the construction,  
22 reconstruction, or erection of which is placed in

1 service by the taxpayer, but only with respect to that  
2 portion of the basis as is discussed in paragraphs (1)  
3 to (5) of the definition of "basis". It is not  
4 necessary that the materials entering into the  
5 construction, reconstruction, or erection be new in  
6 use. Construction, reconstruction, or erection begins  
7 when physical work is started on the construction,  
8 reconstruction, or erection.

9 "Original use" means the first use to which the property is  
10 put, whether or not it is the taxpayer's first use of the  
11 property.

12 "Other tangible property" is tangible property, other than  
13 tangible personal property that qualifies as eligible property  
14 by meeting one of the following three conditions:

15 (1) The property is used as an integral part of  
16 manufacturing, production, extraction, or furnishing  
17 transportation, communication, electrical energy, gas  
18 water, or sewage disposal services;

19 (2) The property is used as a research or storage facility  
20 used in connection with an activity referred to in  
21 paragraph (1); or

1           (3) The property is a facility used in connection with an  
2           activity referred to in paragraph (1) for the bulk  
3           storage of fungible commodities, including commodities  
4           in a liquid or gaseous state.

5           "Placed in service" means property that is placed in  
6           service in Hawaii in the earliest of the following taxable  
7           years:

- 8           (1) The taxable year in which the period for depreciation  
9           with respect to the property begins;
- 10          (2) The taxable year in which, under the accelerated cost  
11          recovery system, a claim for recovery allowances with  
12          respect to the property begins; or
- 13          (3) The taxable year in which the property is placed in a  
14          condition or state of readiness in Hawaii and  
15          available for a specifically assigned function by the  
16          taxpayer.

17          In a sale-leaseback transaction, the property shall be  
18          considered to be placed in service on the date the property was  
19          first placed in service in Hawaii by the seller-lessee.

20          "Property used for lodging" means property that is used  
21          predominantly to furnish lodging; or in connection with the  
22          furnishing of lodging.

- 1 (1) Property used predominantly to furnish lodging  
2 includes that which is used in the living quarters of  
3 a lodging facility such as, for example, beds, other  
4 furniture, refrigerators, ranges, and other equipment.
- 5 (2) A lodging facility includes an apartment house, hotel,  
6 motel, dormitory or other facility, or part of a  
7 facility, where sleeping accommodations are provided  
8 and let; provided that the term does not include a  
9 facility which is used primarily as a means of  
10 transportation such as, for example, an aircraft or  
11 vessel, or to provide medical or convalescent  
12 services, even though sleeping accommodations are  
13 provided.
- 14 (3) Property used predominantly in connection with the  
15 furnishing of lodging includes that which is used to  
16 operate a lodging facility or to serve tenants,  
17 whether furnished by the owner of the lodging facility  
18 or another person; provided that property used in  
19 furnishing, to the management of a lodging facility or  
20 its tenants, electrical energy, water, sewage disposal  
21 services, gas, telephone services, or other similar

1 utility services shall not be treated as property used  
2 in connection with the furnishing of lodging.

3 "Purchase" means an acquisition of property.

4 "Qualified business use" means use of listed property that  
5 meets the more-than-fifty per cent business use test.

6 "Qualified energy" means steam, heat, or other forms of  
7 useful energy, other than electric energy, to be used for  
8 industrial, commercial, or space-heating purposes other than in  
9 the production of electricity.

10 "Recapture period" means the period beginning on the first  
11 day of the month the eligible property is placed in service in  
12 Hawaii, and extending for a full three years.

13 "Recycling equipment" means any equipment that is used  
14 exclusively to sort and prepare solid waste for recycling or in  
15 the recycling of solid waste. The term recycling equipment does  
16 not include any equipment used in a process after the first  
17 marketable product is produced or in the case of recycling iron  
18 or steel, any equipment used to reduce the waste to a molten  
19 state, and in any process thereafter.

20 (1) Any equipment used in the recycling of material that  
21 includes some virgin materials shall not be treated as  
22 failing to meet the exclusive requirements of this

1 definition if the amount of the virgin materials is  
2 ten per cent or less.

3 (2) The term recycling equipment includes any equipment  
4 that is used in the conversion of solid waste into a  
5 fuel or into useful energy such as steam, electricity,  
6 or hot water.

7 "Sale-leaseback" is defined as it is for federal income tax  
8 purposes.

9 "Sixty-six and two-thirds per cent rule" means that if a  
10 partner's, shareholder's, or beneficiary's interest in the  
11 entity is reduced below sixty-six and two-thirds per cent of  
12 their interest at the time the credit was taken, a pro rata  
13 share of the partner's, shareholder's, or beneficiary's interest  
14 in the entity's eligible property shall cease to be eligible  
15 property with respect to the partner, shareholder, or  
16 beneficiary, and credit recapture shall be required.

17 "Solar or wind energy property" means any equipment that  
18 uses solar or wind energy to generate electricity, heat or cool,  
19 or provide hot water for use in a structure, or provide solar  
20 process heat.

21 "Specially defined energy property" means property that is  
22 installed in an existing industrial or commercial facility to

1 reduce the amount of energy consumed in the existing industrial  
2 or commercial process.

3 "Specified percentage" means whichever of these two rules  
4 applies: the sixty-six and two-thirds per cent rule; or the  
5 thirty-three and one-third per cent rule.

6 "Structural component" means parts of a building such as  
7 walls, partitions, floors, ceilings, and permanent coverings;  
8 all components of a central air conditioning or heating system;  
9 plumbing and plumbing fixtures; electric wiring and lighting  
10 fixtures; chimneys; stairs, escalators, and elevators. The term  
11 structural component does not include property that is contained  
12 in or attached to a building such as production machinery, the  
13 sole justification for the installation of which is to meet  
14 temperature or humidity requirements that are essential for the  
15 operation of other machinery of the processing of materials or  
16 foodstuffs. Machinery may also meet this sole justification  
17 test even though it incidentally provides for the comfort of  
18 employees, or serves, to an insubstantial degree, areas where  
19 the temperature or humidity requirements are not essential.

20 "Substantial interest" means when a transferor, or in a  
21 case where the transferor is a partnership, estate or trust, or  
22 S corporation, the partner, beneficiary, or shareholder, is



1 considered to have retained a substantial interest in the trade  
2 or business if, after the change in form, the transferor's  
3 interest in the trade or business is:

- 4 (1) Substantial in relation to the total income interest  
5 of all the owners; or
- 6 (2) Equal to or greater than the transferor's interest  
7 before the change in form.

8 A taxpayer shall not be considered to have retained a  
9 substantial interest where the only basis for claiming  
10 substantial interest is that the values of the interests  
11 exchanged are equal. The determination of whether a taxpayer  
12 has retained a substantial interest in the trade or business is  
13 to be made immediately after the change in the form of  
14 conducting the trade or business, and after each time the  
15 taxpayer disposes of a portion of the taxpayer's interest in the  
16 new enterprise.

17 "Tangible personal property" means any tangible property  
18 except land and improvements thereto, such as buildings or other  
19 inherently permanent structures, including items that are  
20 structural, components of the buildings, or structures.

21 "Thirty-three and one-third per cent rule" means that once  
22 there has been a recapture by reason of the sixty-six and

1 two-thirds per cent rule, there is no further recapture until  
2 the partner's, shareholder's, or beneficiary's interest is  
3 reduced to less than thirty-three and one-third per cent of its  
4 interest at the time the credit was taken. Thereafter, any  
5 reduction in interest, however small, shall again subject the  
6 partner, shareholder, or beneficiary to the recapture  
7 provisions.

8 "Transportation business" means airlines, bus companies,  
9 shipping or trucking companies, and oil pipeline companies.

10 "Used eligible property" means property that is eligible  
11 property as defined in this section and the property is not new  
12 eligible property as defined in this section.

13 **§235-B Capital goods excise tax credit allowed.** (a) For  
14 property placed in service in taxable years beginning after  
15 December 31, 2011, there shall be allowed to each taxpayer  
16 subject to the tax imposed by this chapter a capital goods  
17 excise tax credit which shall be deductible from the taxpayer's  
18 net income tax liability, if any, imposed by this chapter for  
19 the taxable year in which the credit is properly claimed, if the  
20 following conditions are met:

21 (1) The taxpayer purchases or imports eligible property;

1           (2) The purchase or import of eligible property results in  
2           a transaction that is subject to the imposition and  
3           payment of tax at the rate of four per cent under  
4           chapter 237 or 238;

5           (3) The eligible property is used by the taxpayer in a  
6           trade or business; and

7           (4) The eligible property is placed in service in Hawaii.

8           (b) The amount of the tax credit shall be four per cent of  
9           the basis of eligible property used by the taxpayer in a trade  
10          or business and placed in service in Hawaii. Any credit claimed  
11          under this section shall be subject to the following  
12          limitations:

13          (1) In the case of eligible property for which a credit  
14          for sales or use taxes paid to another state is  
15          allowable under section 238-3(i), the amount of the  
16          tax credit allowed under this section shall not exceed  
17          the amount of use tax actually paid under chapter 238  
18          relating to the tangible personal property.

19          (2) If a deduction is taken under section 179 (with  
20          respect to election to expense certain depreciable  
21          business assets) of the Internal Revenue Code, no tax

1 credit shall be allowed for that portion of the basis  
2 of property for which the deduction was taken.

3 (3) If a taxpayer is eligible for both the income tax  
4 credit under section 235-12.5, and the capital goods  
5 excise tax credit for a particular solar or wind  
6 energy property, the credit under section 235-12.5,  
7 shall be deducted from the taxpayer's net income tax  
8 liability before the capital goods excise tax credit.

9 (c) In the case of a partnership, S corporation, estate, or  
10 trust, the tax credit allowable is for eligible property that is  
11 placed in service in Hawaii by the entity. The basis upon which  
12 the tax credit is computed shall be determined at the entity  
13 level.

14 (d) If the capital goods excise tax credit allowed under  
15 subsection (a) exceeds the taxpayer's net income tax liability,  
16 the excess of credit over liability shall be refunded to the  
17 taxpayer; provided that no refunds or payment on account of the  
18 tax credit allowed by this section shall be made for amounts  
19 less than \$1.

20 (e) All claims for tax credits under this section,  
21 including any amended claims, shall be filed on or before the  
22 end of the twelfth month following the close of the taxable year

1 for which the credits may be claimed. Failure to comply with  
2 the foregoing provision shall constitute a waiver of the right  
3 to claim the credit.

4 (f) The credit shall be allowed only for the first taxable  
5 year in which the property is placed in service by the taxpayer.  
6 If in the first taxable year in which a taxpayer places property  
7 in service no portion of the property qualifies as eligible  
8 property, no credit shall be allowed to the taxpayer with  
9 respect to the property. If a portion of the property qualifies  
10 as eligible property in the first year in which the property is  
11 placed in service, then a credit only as to the portion that  
12 qualifies shall be allowed to the taxpayer. If constructed,  
13 reconstructed, or erected property, qualifying as eligible  
14 property, is placed in service over a span of more than one  
15 taxable year, the credit shall be allowed to the taxpayer for a  
16 particular taxable year with respect to so much of the eligible  
17 property that is placed in service and subject to the imposition  
18 and payment of tax at the rate of four per cent under chapter  
19 237 or 238 in that taxable year.

20 (g) Application for the capital goods excise tax credit  
21 shall be upon forms provided by the department of taxation.

1 (h) The taxpayer shall treat the amount of credit  
 2 allowable and claimed as a taxable income item for the taxable  
 3 year in which it is properly recognized under the method of  
 4 accounting used to compute taxable income. Alternatively, the  
 5 basis of eligible property for depreciation or the accelerated  
 6 cost recovery system purposes for state income taxes shall be  
 7 reduced by the amount of credit allowable and claimed.

8 **§235-C Recapture of credit.** (a) Recapture of the  
 9 previously claimed credit applies where a recapture event occurs  
 10 under paragraph (2) and the percentage of credit provided in  
 11 paragraph (1) shall be included as income under chapter 235 or  
 12 241 in the year a recapture event occurs.

13 (1) Where the recovery property or depreciable property  
 14 ceases to be eligible property within the following  
 15 period, which constitutes a full year after being  
 16 placed in service in Hawaii, the accompanying  
 17 percentage shall be the recapture percentage:

18	Recapture period	Recapture percentage
19	One full year	100
20	Two full years	66
21	Three full years	33
22	Four full years	0

- 1           (2) A recapture event occurs when:
- 2                (A) Property ceases to be eligible property with
- 3                    respect to a taxpayer when:
- 4                       (i) The property ceases to be owned by taxpayer.
- 5                            Recapture shall be triggered upon
- 6                            disposition of the property.
- 7                       (ii) The property ceases to be eligible property.
- 8                            The cessation shall be treated as having
- 9                            occurred on the first day of the taxable
- 10                          year.
- 11                (B) All or a portion of the credit taken in an
- 12                    earlier year for listed property may be subject
- 13                    to recapture during the recapture period if:
- 14                       (i) The percentage of business use falls below
- 15                            the percentage of business use for the year
- 16                            the listed property was placed in service;
- 17                            or
- 18                       (ii) The listed property is converted from
- 19                            business to personal use and does not
- 20                            satisfy the more-than-fifty per cent
- 21                            business use test.

1 (C) All or a portion of previously taken credit as  
2 determined in paragraph (1) may be subject to  
3 recapture if, during the recapture period, the  
4 basis of eligible property used to calculate the  
5 credit decreases, either through a refund in the  
6 purchase price or usage of the property for  
7 personal purposes.

8 (b) Application of recapture rules to partnerships,  
9 S corporations, estates, or trusts shall be as follows:

10 (1) In the case of a partnership, S corporation, estate,  
11 or trust, the recapture rule applies to a partner,  
12 shareholder, or beneficiary who originally received  
13 the benefit of a credit if within the recapture  
14 period:

15 (A) The S corporation, partnership, estate, or trust  
16 disposes of eligible property;

17 (B) If eligible property otherwise ceases to be  
18 eligible property in the hands of the entity; or

19 (C) The partner's, shareholder's, or beneficiary's  
20 interest in the entity is reduced, for example,  
21 by sale of interest in the entity, below a  
22 specified percentage as defined in section 235-A.



1           (2) In making a recapture determination, there may be  
2           taken into account any prior recapture determination  
3           made with respect to the partner, shareholder, or  
4           beneficiary in connection with the same property.

5           (c) Application of recapture rules to valid S corporation  
6 election shall be as follows:

7           (1) If a C corporation makes a valid election under  
8           section 235-2.45 and part VII to be an S corporation,  
9           then on the last day of the taxable year immediately  
10          preceding the first taxable year for which the  
11          election is effective, any eligible property the basis  
12          of which was taken into account to compute the  
13          C corporation's credit allowable in taxable years  
14          before the first taxable year for which the election  
15          is effective and which has not been disposed of or  
16          otherwise ceased to be eligible property with respect  
17          to the C corporation before the last day shall be  
18          considered as having ceased to be eligible property  
19          with respect to the C corporation and the recapture  
20          rule shall apply. However, the recapture rule shall  
21          not apply if the S corporation and each of its  
22          shareholders on the first day of the first taxable

1 year for which the election under section 235-2.45 and  
2 part VII is to be effective, or on the date of the  
3 election, whichever is later, execute an agreement as  
4 is described in paragraph (2).

5 (2) The agreement shall:

6 (A) Be signed by the shareholders; and on behalf of  
7 the S corporation by a person who is duly  
8 authorized;

9 (B) State that if eligible property for which the  
10 credit was taken is later disposed of by, or  
11 ceases to be eligible property with respect to,  
12 the S corporation during the recapture period and  
13 during a taxable year for which the S election is  
14 effective, each signer agrees to notify the  
15 director of taxation of a disposition or  
16 cessation and to be jointly and severally liable  
17 to pay the director of taxation an amount equal  
18 to the increase in tax provided by the recapture  
19 rule;

20 (C) State the name, address, and taxpayer  
21 identification number of each party to the  
22 agreement;

1 (D) Be filed with the department of taxation for the  
2 taxable year immediately preceding the first  
3 taxable year for which the S election is  
4 effective; and

5 (E) Be filed with the department of taxation on or  
6 before the due date, including extensions of  
7 time, of the return, unless the director of  
8 taxation permits, upon a showing of good cause,  
9 the agreement to be filed on a later date.

10 (3) A shareholder's share of the amount of credit  
11 recapture shall be determined as if the property had  
12 ceased to be eligible property as of the last day of  
13 the taxable year immediately preceding the first  
14 taxable year for which the S election is effective;  
15 provided that the recapture percentage shall be  
16 determined as if the property ceased to be eligible  
17 property on the date the property actually ceased to  
18 be eligible property.

19 (d) During the recapture period, all or a portion of  
20 previously taken credit as determined in subsection (a)(1) shall  
21 be subject to recapture if the eligible property is transferred  
22 out of the State.

- 1 (e) Exceptions to the recapture rule shall be as follows:
- 2 (1) A transfer by reason of death is not considered to be
- 3 a disposition of eligible property subject to the
- 4 recapture rule. This exception to the recapture rule
- 5 applies to transfers by reason of the death of a sole
- 6 proprietor, partner, S corporation shareholder, or
- 7 beneficiary of an estate or trust.
- 8 (2) A disposition of eligible property in a transaction to
- 9 which section 381(a) (with respect to carryovers in
- 10 certain corporate acquisitions) of the Internal
- 11 Revenue Code applies is not considered to be a
- 12 disposition of eligible property, subject to the
- 13 recapture rule; provided that, if the acquiring
- 14 corporation disposes of the eligible property before
- 15 the close of the recapture period, there shall be an
- 16 early disposition and the recapture rule shall be
- 17 triggered.
- 18 (3) Recapture is not required as a result of a mere change
- 19 in the form of conducting a trade or business if:
- 20 (A) The property is retained as eligible property in
- 21 the same trade or business;

1 (B) The transferor, or in a case where the transferor  
2 is a partnership, estate or trust, or  
3 S corporation, the partner, beneficiary, or  
4 shareholder, of eligible property retains a  
5 substantial interest in the trade or business;

6 (C) Substantially all the property, whether or not  
7 eligible property, necessary to the trade or  
8 business is transferred in the change in form;  
9 and

10 (D) The basis of eligible property in the hands of  
11 the transferee is determined in whole or in part  
12 by reference to the basis of eligible property in  
13 the hands of the transferor.

14 (4) Paragraph (3) shall not apply to the transfer of  
15 eligible property if section 381 (with respect to  
16 carryovers in certain corporate acquisitions) of the  
17 Internal Revenue Code applies to the transfer.

18 (5) Neither an election to be treated as an S corporation,  
19 nor a termination or loss of S corporation status  
20 automatically triggers recapture. However, recapture  
21 may result if one or more of the recapture events  
22 discussed in paragraph (6) occurs. In determining

1           whether a reduction in a shareholder's interest will  
2           result in recapture, the sixty-six and two-thirds per  
3           cent and thirty-three and one-third per cent rules  
4           apply even if the corporation is no longer an S  
5           corporation.

6           (6) Property ceases to be eligible property with respect  
7           to a transferor, or in a case where the transferor is  
8           a partnership, estate or trust, or S corporation, the  
9           partner, beneficiary or shareholder, and the  
10          transferor shall make a recapture determination if  
11          during the recapture period:

- 12          (A) The transferee disposes of eligible property;
- 13          (B) Eligible property otherwise ceases to be eligible  
14          property in the hands of the transferee; or
- 15          (C) The transferor, or in a case where the transferor  
16          is a partnership, estate or trust, or  
17          S corporation, the partner, beneficiary, or  
18          shareholder, does not retain a substantial  
19          interest in the trade or business directly or  
20          indirectly through ownership in other entities;  
21          provided that the other entities' bases in the  
22          interests are determined in whole or in part by

1 reference to the bases of the interest in the  
2 hands of the transferor.

3 (f) A transfer between spouses incident to divorce is not  
4 considered to be a disposition, subject to the recapture rule.  
5 Subsequent to a transfer between spouses or incident to divorce,  
6 a disposition by the transferee during the recapture period may  
7 result in recapture to the same extent as if the disposition had  
8 been made by the transferor at that later date.

9 (g) The recapture rule shall not apply to eligible  
10 property that is disposed of or otherwise ceases to be eligible  
11 property with respect to the taxpayer as a result of its  
12 destruction or damage by fire, storm, shipwreck, or other  
13 casualty, or theft.

14 (h) In the case of a partnership, a downward basis  
15 adjustment pursuant to section 754 (with respect to manner of  
16 electing optional adjustment to basis of partnership property)  
17 of the Internal Revenue Code is not subject to recapture. Use  
18 of the property is not considered to be terminated for purposes  
19 of the credit."

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

1           "(a) [~~There~~] For property placed in service or purchased  
2 pursuant to a binding contract in taxable years beginning before  
3 July 1, 2009, there shall be allowed to each taxpayer subject to  
4 the tax imposed by this chapter a capital goods excise tax  
5 credit which shall be deductible from the taxpayer's net income  
6 tax liability, if any, imposed by this chapter for the taxable  
7 year in which the credit is properly claimed. Except as  
8 provided in the preceding sentence, for taxable years beginning  
9 on or after July 1, 2009, and ending before January 1, 2012,  
10 there shall not be allowed a capital goods excise tax credit to  
11 any taxpayer.

12           The amount of the tax credit shall be determined by the  
13 application of the following rates against the cost of the  
14 eligible depreciable tangible personal property used by the  
15 taxpayer in a trade or business and placed in service within  
16 Hawaii after December 31, 1987. For calendar years beginning  
17 after: December 31, 1987, the applicable rate shall be three  
18 per cent; December 31, 1988, and thereafter, the applicable rate  
19 shall be four per cent. For taxpayers with fiscal taxable  
20 years, the applicable rate shall be the rate for the calendar  
21 year in which the eligible depreciable tangible personal



1 property used in the trade or business is placed in service  
2 within Hawaii.

3 In the case of a partnership, S corporation, estate, or  
4 trust, the tax credit allowable is for eligible depreciable  
5 tangible personal property which is placed in service by the  
6 entity. The cost upon which the tax credit is computed shall be  
7 determined at the entity level. Distribution and share of  
8 credit shall be determined by rules.

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

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

20 SECTION 4. In codifying the new sections added by section  
21 2 of this part, the revisor of statutes shall substitute

1 appropriate section numbers for the letters used in designating  
2 the new sections in this part.

3 **PART II**

4 SECTION 5. The legislature finds that tax credits and tax  
5 exemptions provide an important set of tools for Hawaii's  
6 economic diversification. At the same time, especially during  
7 economic downturns, it is incumbent on state policymakers to  
8 thoroughly evaluate existing tax credits and tax exemptions to  
9 determine whether they are fulfilling the purposes for which  
10 they were adopted, as well as providing solid returns on public  
11 investment.

12 The purposes of this part are to institute an ongoing  
13 program of evaluation of those tax credits and tax exemptions  
14 that have no sunset dates, require the department of taxation  
15 and department of business, economic development, and tourism,  
16 to compile the necessary information to enable the legislature  
17 to evaluate tax credits and exemptions with consistent  
18 standards, and to sunset those credits and exemptions that the  
19 department of taxation and legislature do not believe should be  
20 extended. Over time, as economic conditions change, different  
21 combinations of tax credits and tax exemptions serve as the

1 State's key tools to promote or discourage particular behavior  
2 among residents and businesses.

3 For existing tax credits and tax exemptions that have a  
4 sunset date, the purpose of this part is to require the  
5 department of taxation, with the assistance of the department of  
6 business, economic development, and tourism, to compile accurate  
7 information on their usage and whether they are fulfilling the  
8 purposes for which they were adopted, as well as providing solid  
9 returns on public investment. The department of business,  
10 economic development, and tourism shall provide the department  
11 of taxation with data on the dynamic economic impact of each tax  
12 credit and tax exemption identified in this part. The data to  
13 be provided by the department of business, economic development,  
14 and tourism shall be modeled to provide comparable evaluation  
15 data as the department of business, economic development, and  
16 tourism's renewable energies credit analysis, or the State of  
17 New Mexico's film credit analysis.

18 SECTION 6. Section 235-20.5, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 **"§235-20.5 Tax administration special fund; established.**

21 There is established a tax administration special fund, into  
22 which shall be deposited fees collected under sections 235-20,

1 235-110.9, and 235-110.91, and penalties collected under  
2 section 2 of Act 206, ~~[+]Session Laws of Hawaii 2007[+]~~. The  
3 moneys in the fund shall be expended by the department to offset  
4 the costs associated with:

- 5 (1) Issuing comfort letters;
- 6 (2) Administering the tax credit under ~~[section]~~ sections  
7 235-110.9~~[7]~~ and 235-110.91, including issuing  
8 certificates; and
- 9 (3) ~~[Issuing certificates under section 235-110.91.]~~  
10 Compiling usage and other relevant economic data to  
11 analyze the costs and benefits of the State's tax  
12 laws."

13 SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§237-24.3 Additional amounts not taxable.** In addition to  
16 the amounts not taxable under section 237-24, this chapter shall  
17 not apply to:

- 18 (1) Amounts received from the loading, transportation, and  
19 unloading of agricultural commodities shipped for a  
20 producer or produce dealer on one island of this State  
21 to a person, firm, or organization on another island  
22 of this State. ~~[The]~~ For purposes of this paragraph,

1           the terms "agricultural commodity", "producer", and  
2           "produce dealer" shall be defined in the same manner  
3           as they are defined in section 147-1; provided that  
4           agricultural commodities need not have been produced  
5           in the State;

6           (2) Amounts received from the loading, transportation, and  
7           unloading of agricultural products shipped for a  
8           producer on one island of this State to a person,  
9           firm, or organization on another island of this State.

10          For purposes of this paragraph, the terms  
11          "agricultural products" and "producer" shall be  
12          defined in the same manner as they are defined in  
13          section 237-5;

14          ~~(2)~~ (3) Amounts received from sales of:

15           (A) Intoxicating liquor as the term "liquor" is  
16           defined in chapter 244D;

17           (B) Cigarettes and tobacco products as defined in  
18           chapter 245; and

19           (C) Agricultural, meat, or fish products;

20           to any person or common carrier in interstate or  
21           foreign commerce, or both, whether ocean-going or air,

1 for consumption out-of-state on the shipper's vessels  
2 or airplanes;

3 [~~3~~] (4) Amounts received by the manager, submanager, or  
4 board of directors of:

5 (A) An association of owners of a condominium  
6 property regime established in accordance with  
7 chapter 514A or 514B; or

8 (B) A nonprofit homeowners or community association  
9 incorporated in accordance with chapter 414D or  
10 any predecessor thereto and existing pursuant to  
11 covenants running with the land,

12 in reimbursement of sums paid for common expenses;

13 [~~4~~] (5) Amounts received or accrued from:

14 (A) The loading or unloading of cargo from ships,  
15 barges, vessels, or aircraft, whether or not the  
16 ships, barges, vessels, or aircraft travel  
17 between the State and other states or countries  
18 or between the islands of the State;

19 (B) Tugboat services including pilotage fees  
20 performed within the State, and the towage of  
21 ships, barges, or vessels in and out of state  
22 harbors, or from one pier to another; and

1 (C) The transportation of pilots or governmental  
2 officials to ships, barges, or vessels offshore;  
3 rigging gear; checking freight and similar  
4 services; standby charges; and use of moorings  
5 and running mooring lines;

6 [~~(5)~~] (6) Amounts received by an employee benefit plan by  
7 way of contributions, dividends, interest, and other  
8 income; and amounts received by a nonprofit  
9 organization or office, as payments for costs and  
10 expenses incurred for the administration of an  
11 employee benefit plan; provided that this exemption  
12 shall not apply to any gross rental income or gross  
13 rental proceeds received after June 30, 1994, as  
14 income from investments in real property in this  
15 State; and provided further that gross rental income  
16 or gross rental proceeds from investments in real  
17 property received by an employee benefit plan after  
18 June 30, 1994, under written contracts executed prior  
19 to July 1, 1994, shall not be taxed until the  
20 contracts are renegotiated, renewed, or extended, or  
21 until after December 31, 1998, whichever is earlier.  
22 For the purposes of this paragraph, "employee benefit

1 plan" means any plan as defined in section 1002(3) of  
2 title 29 of the United States Code, as amended;

3 [~~(6)~~] (7) Amounts received for purchases made with United  
4 States Department of Agriculture food coupons under  
5 the federal food stamp program, and amounts received  
6 for purchases made with United States Department of  
7 Agriculture food vouchers under the Special  
8 Supplemental Foods Program for Women, Infants and  
9 Children;

10 [~~(7)~~] (8) Amounts received by a hospital, infirmary,  
11 medical clinic, health care facility, pharmacy, or a  
12 practitioner licensed to administer the drug to an  
13 individual for selling prescription drugs or  
14 prosthetic devices to an individual; provided that  
15 this paragraph shall not apply to any amounts received  
16 for services provided in selling prescription drugs or  
17 prosthetic devices. As used in this paragraph:

18 "Prescription drugs" are those drugs defined  
19 under section 328-1 and dispensed by filling or  
20 refilling a written or oral prescription by a  
21 practitioner licensed under law to administer the drug



1 and sold by a licensed pharmacist under section 328-16  
2 or practitioners licensed to administer drugs; and

3 "Prosthetic device" means any artificial device  
4 or appliance, instrument, apparatus, or contrivance,  
5 including their components, parts, accessories, and  
6 replacements thereof, used to replace a missing or  
7 surgically removed part of the human body, which is  
8 prescribed by a licensed practitioner of medicine,  
9 osteopathy, or podiatry and which is sold by the  
10 practitioner or which is dispensed and sold by a  
11 dealer of prosthetic devices; provided that  
12 "prosthetic device" shall not mean any auditory,  
13 ophthalmic, dental, or ocular device or appliance,  
14 instrument, apparatus, or contrivance;

15 [~~(8)~~] (9) Taxes on transient accommodations imposed by  
16 chapter 237D and passed on and collected by operators  
17 holding certificates of registration under that  
18 chapter;

19 [~~(9)~~] (10) Amounts received as dues by an unincorporated  
20 merchants association from its membership for  
21 advertising media, promotional, and advertising costs  
22 for the promotion of the association for the benefit

1 of its members as a whole and not for the benefit of  
2 an individual member or group of members less than the  
3 entire membership;

4 ~~[(10)]~~ (11) Amounts received by a labor organization for  
5 real property leased to:

6 (A) A labor organization; or

7 (B) A trust fund established by a labor organization  
8 for the benefit of its members, families, and  
9 dependents for medical or hospital care, pensions  
10 on retirement or death of employees,  
11 apprenticeship and training, and other membership  
12 service programs.

13 As used in this paragraph, "labor organization" means  
14 a labor organization exempt from federal income tax  
15 under section 501(c)(5) of the Internal Revenue Code,  
16 as amended;

17 ~~[(11)]~~ (12) Amounts received from foreign diplomats and  
18 consular officials who are holding cards issued or  
19 authorized by the United States Department of State  
20 granting them an exemption from state taxes; and

21 ~~[(12)]~~ (13) Amounts received as rent for the rental or  
22 leasing of aircraft or aircraft engines used by the

1 lessees or renters for interstate air transportation  
2 of passengers and goods. For purposes of this  
3 paragraph, payments made pursuant to a lease shall be  
4 considered rent regardless of whether the lease is an  
5 operating lease or a financing lease. The definition  
6 of "interstate air transportation" is the same as in  
7 49 U.S.C. 40102."

8 SECTION 8. **Tax credits and exemptions; evaluation; report.**

9 (a) The department of taxation and the department of business,  
10 economic development, and tourism shall perform an evaluation of  
11 the following tax credits or tax exemptions and submit an  
12 evaluation of the fiscal impacts and economic benefits of each  
13 credit and exemption required by this section to the legislature  
14 by no later than twenty days prior to the convening of the  
15 regular session of 2010; provided that if the department of  
16 taxation, with the assistance of the department of business,  
17 economic development, and tourism, does not submit a complete  
18 and accurate evaluation of the following tax credits and tax  
19 exemptions by no later than twenty days prior to the convening  
20 of the regular session of 2011, thereby curtailing the  
21 legislature's ability to assess the tax credit or tax exemption  
22 pursuant to the department of taxation's recommendations, then

1 each of the applicable tax credits and tax exemptions shall not  
2 be available to be claimed for taxable years beginning after  
3 December 31, 2010:

4 (1) Section 235-15, Hawaii Revised Statutes (tax credits  
5 to promote the purchase of child passenger restraint  
6 systems);

7 (2) Section 235-110.2, Hawaii Revised Statutes (credit for  
8 school repair and maintenance);

9 (3) Section 237-24.3, Hawaii Revised Statutes (general  
10 excise tax; additional amounts not taxable);

11 (4) Section 237-24.9, Hawaii Revised Statutes (general  
12 excise tax; aircraft service and maintenance  
13 facility);

14 (5) Section 237-29.53, Hawaii Revised Statutes (general  
15 excise tax; exemption for contracting or services  
16 exported out of state);

17 (6) Section 237-29.55, Hawaii Revised Statutes (general  
18 excise tax; exemption for sale of tangible personal  
19 property for resale at wholesale);

20 (7) Section 237-29.8, Hawaii Revised Statutes (general  
21 excise tax; call centers; exemption; engaging in  
22 business; definitions); and

1 (8) Section 239-12, Hawaii Revised Statutes (public  
2 service company tax; call centers; exemption; engaging  
3 in business; definitions).

4 (b) The department of taxation and the department of  
5 business, economic development, and tourism shall perform an  
6 evaluation of the following tax credits or tax exemptions and  
7 submit an evaluation of the fiscal impacts and economic benefits  
8 of each credit and exemption required by this section to the  
9 legislature by no later than twenty days prior to the convening  
10 of the regular session of 2011; provided that if the department  
11 of taxation, with the assistance of the department of business,  
12 economic development, and tourism, does not submit a complete  
13 and accurate evaluation of the following tax credits and tax  
14 exemptions by no later than twenty days prior to the convening  
15 of the regular session of 2012, thereby curtailing the  
16 legislature's ability to assess the tax credit or tax exemption  
17 pursuant to the department of taxation's recommendations, then  
18 each of the applicable tax credits and tax exemptions shall not  
19 be available to be claimed for taxable years beginning after  
20 December 31, 2011:

21 (1) Section 235-110.6, Hawaii Revised Statutes (fuel tax  
22 credit for commercial fishers);

- 1 (2) Section 237-16.8, Hawaii Revised Statutes (general  
2 excise tax; exemption of certain convention,  
3 conference, and trade show fees);
- 4 (3) Section 237-23.5, Hawaii Revised Statutes (general  
5 excise tax; related entities; common paymaster;  
6 certain exempt transactions);
- 7 (4) Section 237-24.5, Hawaii Revised Statutes (general  
8 excise tax; additional exemptions);
- 9 (5) Section 237-24.7, Hawaii Revised Statutes (general  
10 excise tax; additional amounts not taxable);
- 11 (6) Section 237-24.75, Hawaii Revised Statutes (general  
12 excise tax; additional exemptions);
- 13 (7) Section 237-25, Hawaii Revised Statutes (general  
14 excise tax; exemptions of sales and gross proceeds of  
15 sales to federal government, and credit unions); and
- 16 (8) Section 237-29.5, Hawaii Revised Statutes (general  
17 excise tax; exemption for sales of tangible personal  
18 property shipped out of state).
- 19 (c) The department of taxation and the department of  
20 business, economic development, and tourism shall perform an  
21 evaluation of the following tax credits or tax exemptions and  
22 submit an evaluation of the fiscal impacts and economic benefits

1 of each credit and exemption required by this section to the  
2 legislature by no later than twenty days prior to the convening  
3 of the regular session of 2012; provided that if the department  
4 of taxation, with the assistance of the department of business,  
5 economic development, and tourism, does not submit a complete  
6 and accurate evaluation of the following tax credits and tax  
7 exemptions by no later than twenty days prior to the convening  
8 of the regular session of 2013, thereby curtailing the  
9 legislature's ability to assess the tax credit or tax exemption  
10 pursuant to the department of taxation's recommendations, then  
11 each of the applicable tax credits and tax exemptions shall not  
12 be available to be claimed for taxable years beginning after  
13 December 31, 2012:

- 14 (1) Section 209E-10, Hawaii Revised Statutes (state  
15 business tax credit);
- 16 (2) Section 209E-11, Hawaii Revised Statutes (state  
17 general excise exemptions);
- 18 (3) Section 235-55.85, Hawaii Revised Statutes (refundable  
19 food/excise tax credit);
- 20 (4) Section 235-55.91, Hawaii Revised Statutes (credit for  
21 employment of vocational rehabilitation referrals);

- 1 (5) Section 235-71, Hawaii Revised Statutes (tax on  
2 corporations; rates; credit of shareholder of  
3 regulated investment company);
- 4 (6) Section 237-26, Hawaii Revised Statutes (general  
5 excise tax; exemption of certain scientific contracts  
6 with the United States);
- 7 (7) Section 237-27, Hawaii Revised Statutes (general  
8 excise tax; exemption of certain petroleum refiners);
- 9 (8) Section 237-27.5, Hawaii Revised Statutes (general  
10 excise tax; air pollution control facility);
- 11 (9) Section 237-27.6, Hawaii Revised Statutes (general  
12 excise tax; solid waste processing, disposal, and  
13 electric generating facility; certain amounts exempt);  
14 and
- 15 (10) Section 244D-4.3, Hawaii Revised Statutes (liquor tax;  
16 exemption for sales of liquor out of state).
- 17 (d) The department of taxation and the department of  
18 business, economic development, and tourism shall perform an  
19 evaluation of the following tax credits or tax exemptions and  
20 submit an evaluation of the fiscal impacts and economic benefits  
21 of each credit and exemption required by this section to the  
22 legislature by no later than twenty days prior to the convening



1 of the regular session of 2013; provided that if the department  
2 of taxation, with the assistance of the department of business,  
3 economic development, and tourism, does not submit a complete  
4 and accurate evaluation of the following tax credits by no later  
5 than twenty days prior to the convening of the regular session  
6 of 2014, thereby curtailing the legislature's ability to assess  
7 the tax credit or tax exemption pursuant to the department of  
8 taxation's recommendations, then each of the applicable tax  
9 credits and tax exemptions shall not be available to be claimed  
10 for taxable years beginning after December 31, 2013; provided  
11 that the potential repeal of the tax credits in paragraphs (7)  
12 and (11) of this subsection and the tax exemption in paragraph  
13 (9) of this subsection shall not apply to those projects  
14 approved before January 1, 2014:

- 15 (1) Section 235-12.5, Hawaii Revised Statutes (renewable  
16 energy technologies; income tax credit);
- 17 (2) Section 235-55, Hawaii Revised Statutes (tax credits  
18 for resident taxpayers);
- 19 (3) Section 235-55.6, Hawaii Revised Statutes (expenses  
20 for household and dependent care services necessary  
21 for gainful employment);

- 1 (4) Section 235-55.7, Hawaii Revised Statutes (income tax  
2 credit for low-income household renters);
- 3 (5) Section 235-110.3, Hawaii Revised Statutes (ethanol  
4 facility tax credit);
- 5 (6) Section 235-110.7, Hawaii Revised Statutes (capital  
6 goods excise tax credit);
- 7 (7) Section 235-110.8, Hawaii Revised Statutes (low-income  
8 housing tax credit);
- 9 (8) Section 237-23, Hawaii Revised Statutes (general  
10 excise tax; exemptions, persons exempt, applications  
11 for exemption), except for section 237-23(a)(1),  
12 Hawaii Revised Statutes (public service companies);
- 13 (9) Section 237-29, Hawaii Revised Statutes (general  
14 excise tax; exemptions for certified or approved  
15 housing projects);
- 16 (10) Section 239-6.5, Hawaii Revised Statutes (public  
17 service company tax; tax credit for lifeline telephone  
18 service subsidy); and
- 19 (11) Section 241-4.7, Hawaii Revised Statutes (low-income  
20 housing; income tax credit).
- 21 (e) The reports submitted by the department of taxation  
22 and the department of business, economic development, and

1 tourism under this Act shall provide usage and revenue data,  
2 economic analyses, and other information sufficient to enable  
3 the legislature to determine whether the tax credits and tax  
4 exemptions evaluated have achieved or are achieving their  
5 intended objectives, whether they are consistent with public  
6 policies, and whether they should be continued, modified, or  
7 repealed.

8 If the department of taxation recommends that a tax credit  
9 or tax exemption should be modified, it shall include in its  
10 report, with the assistance of the departments listed in  
11 subsection (f) (2), the proposed draft legislation to implement  
12 the recommended modifications.

13 If the department of taxation recommends that the law  
14 establishing a tax credit or tax exemption should be continued  
15 in its current form, it shall make appropriate recommendations,  
16 with assistance of the departments listed in subsection (f) (2),  
17 to improve the operation of the tax credit or tax exemption,  
18 including, but not limited to, recommendations for appropriate  
19 restrictions to be placed on the tax credit or tax exemption and  
20 whether to use a five-year or ten-year sunset provision. In  
21 accordance with this section, the recommendation from the  
22 department of taxation to continue the tax credit or tax

1 exemption in its current form or recommendation to modify the  
2 credit shall be received before the applicable tax credit or tax  
3 exemption is scheduled to sunset pursuant to this section.

4 The reports submitted by the department of taxation under  
5 this Act shall also include recommendations for the evaluation  
6 of other tax credits and exemptions in the future.

7 (f) In evaluating the tax credits and tax exemptions the  
8 department of taxation shall:

- 9 (1) Obtain from the department of business, economic  
10 development, and tourism an economic impact analysis;
- 11 (2) Establish a technical advisory group, which may  
12 include the department of labor and industrial  
13 relations, department of agriculture, department of  
14 commerce and consumer affairs, department of  
15 transportation, department of human services,  
16 department of business, economic development, and  
17 tourism, and representatives of Hawaii's non-profit  
18 sector to help identify and develop the data elements  
19 needed for the analyses; and
- 20 (3) Collect, process, and analyze data from federal,  
21 state, and local government sources.

1 SECTION 9. The department of taxation shall perform an  
2 evaluation of the following tax credits or tax exemptions and  
3 submit a report of the evaluation to the legislature by no later  
4 than twenty days prior to the convening of the regular session  
5 as specified below:

6 (1) Section 235-17, Hawaii Revised Statutes (motion  
7 picture, digital media, and film production income tax  
8 credit), one year before the expiration date, as  
9 specified in that section;

10 (2) Section 235-110.51, Hawaii Revised Statutes  
11 (technology infrastructure renovation tax credit), one  
12 year before the expiration date, as specified in that  
13 section;

14 (3) Section 235-110.9, Hawaii Revised Statutes (high  
15 technology business investment tax credit), one year  
16 before the expiration date, as specified in that  
17 section; and

18 (4) Section 235-110.91, Hawaii Revised Statutes (tax  
19 credit for research activities), one year before the  
20 expiration date, as specified in that section.

21 The tax credits identified in this subsection are not being  
22 extended in any manner. The tax credits identified in this

1 section are existing tax credits with expiration dates that  
2 shall be reviewed in a uniform and systematic manner prior to  
3 their respective repeal dates, similar to those tax credits  
4 evaluated that do not have expiration dates, to determine  
5 whether those tax credits have fulfilled the purposes for which  
6 they were enacted.

7 SECTION 10. The department of taxation shall perform an  
8 evaluation of the following tax exemptions and submit a report  
9 of the evaluation to the legislature by no later than twenty  
10 days prior to the convening of the 2010 regular session:

- 11 (1) Section 237-24, Hawaii Revised Statutes (general  
12 excise tax; amounts not taxable); and  
13 (2) Section 237-28.1, Hawaii Revised Statutes (general  
14 excise tax; exemption of certain shipbuilding and ship  
15 repair business).

16 The evaluation of the tax exemptions in this section shall  
17 achieve the objectives identified and set forth in subsections  
18 (e) and (f) of section 8 of this Act.

19 **PART III**

20 SECTION 11. Section 373K-2, Hawaii Revised Statutes, is  
21 amended by amending subsection (a) to read as follows:

1           "(a) Where any client company uses the services of  
2 assigned employees and co-employs assigned employees with a  
3 professional employment organization, the client company and the  
4 professional employment organization, with respect to the  
5 assigned employees, shall not be exempt from the requirements of  
6 any federal, state, or county law, including labor or employment  
7 laws, collective bargaining rights, anti-discrimination  
8 provisions, or other laws with respect to the protection and  
9 rights of employees, including chapters 377 and 378, that would  
10 apply to the assigned employees if the assigned employees were  
11 employees of the client company alone, and were not co-employees  
12 of the professional employment organization.

13           These employee rights shall not be abrogated by any  
14 contract or agreement between the client company and the  
15 professional employment organization, or the professional  
16 employment organization and the assigned employee, which  
17 contains terms or conditions that could not be lawfully  
18 contained in a contract or agreement directly between the client  
19 company and the assigned employee in which no professional  
20 employment organization is involved. [~~Notwithstanding any~~  
21 ~~statute, local ordinance, executive order, rule, or regulation~~  
22 ~~to the contrary, where the laws, rights, and protections~~

1 ~~referred to in this section define or require a determination of~~  
2 ~~the "employer",]~~ For purposes of chapter 237, the employer shall  
3 be deemed to be the client company and not the professional  
4 employment organization. The department of labor and industrial  
5 relations shall notify the department of taxation in writing of  
6 any violation of this subsection."

7 SECTION 12. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 13. This Act shall take effect on July 1, 2050;  
10 provided that part I of this Act shall take effect upon  
11 approval.



**Report Title:**

Tax Credits; Tax Exemptions; Evaluation; Report

**Description:**

Amends the capital goods excise tax credit so that it applies only to property placed in service or purchased pursuant to a binding contract in taxable years beginning before July 1, 2009; suspends the credit for taxable years beginning on or after July 1, 2009, and ending on or before December 31, 2011; and adds a new part for property placed in service or purchased pursuant to a binding contract in taxable years beginning after December 31, 2011. Requires the department of taxation, with the assistance of the department of business, economic development, and tourism, to evaluate certain tax credits and tax exemptions and report to the legislature. Requires the department of taxation to give recommendations and for the legislature to implement those recommendations prior to the mandate for those tax credits and tax exemptions to sunset. Amends the application of professional employment organizations for the purposes of chapter 237, Hawaii Revised Statutes (general excise tax). Effective 7/1/50. (SD2)