

JAN 23 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 235-110.3, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§235-110.3 ~~[Ethanol]~~ Biofuel facility tax credit. (a)
4 Each year during the credit period, there shall be allowed to
5 each taxpayer subject to the taxes imposed by this chapter, ~~[an~~
6 ~~ethanol]~~ a biofuel facility tax credit that shall be applied to
7 the taxpayer's net income tax liability, if any, imposed by this
8 chapter for the taxable year in which the credit is properly
9 claimed.

10 For each qualified ~~[ethanol]~~ biofuel production facility,
11 the annual dollar amount of the ~~[ethanol]~~ biofuel facility tax
12 credit during the eight-year period shall be equal to ~~[thirty~~
13 ~~per cent of its nameplate capacity]~~ 40 cents per gallon produced
14 if the nameplate capacity of the qualified biofuel production
15 facility is greater than five hundred thousand gallons but less
16 than fifteen million gallons. A taxpayer may claim this credit
17 for each qualifying ~~[ethanol]~~ biofuel facility; provided that:



- 1 (1) The claim for this credit by any taxpayer of a
2 qualifying [~~ethanol~~] biofuel production facility shall
3 not exceed one hundred per cent of the total of all
4 investments made by the taxpayer in the qualifying
5 [~~ethanol~~] biofuel production facility during the
6 credit period;
- 7 (2) The qualifying [~~ethanol~~] biofuel production facility
8 operated at a level of production of at least seventy-
9 five per cent of its nameplate capacity on an
10 annualized basis;
- 11 (3) The qualifying [~~ethanol~~] biofuel production facility
12 is in production on or before January 1, 2017; and
- 13 (4) No taxpayer that claims the credit under this section
14 shall claim any other tax credit under this chapter
15 for the same taxable year.

16 (b) As used in this section:

17 "Credit period" means a maximum period of eight years
18 beginning from the first taxable year in which the qualifying
19 [~~ethanol~~] biofuel production facility begins production even if
20 actual production is not at seventy-five per cent of nameplate
21 capacity.



1 "Investment" means a nonrefundable capital expenditure
2 related to the development and construction of any qualifying
3 [~~ethanol~~] biofuel production facility, including processing
4 equipment, waste treatment systems, pipelines, and liquid
5 storage tanks at the facility or remote locations, including
6 expansions or modifications. Capital expenditures shall be
7 those direct and certain indirect costs determined in accordance
8 with section 263A (with respect to capitalization and inclusion
9 in inventory costs of certain expenses) of the Internal Revenue
10 Code, relating to uniform capitalization costs, but shall not
11 include expenses for compensation paid to officers of the
12 taxpayer, pension and other related costs, rent for land, the
13 costs of repairing and maintaining the equipment or facilities,
14 training of operating personnel, utility costs during
15 construction, property taxes, costs relating to negotiation of
16 commercial agreements not related to development or
17 construction, or service costs that can be identified
18 specifically with a service department or function or that
19 directly benefit or are incurred by reason of a service
20 department or function. For the purposes of determining a
21 capital expenditure under this section, the provisions of
22 section 263A of the Internal Revenue Code shall apply as it read



1 on March 1, 2004. For purposes of this section, investment
2 excludes land costs and includes any investment for which the
3 taxpayer is at risk, as that term is used in section 465 (with
4 respect to deductions limited to amount at risk) of the Internal
5 Revenue Code [~~with respect to deductions limited to amount at~~
6 ~~risk~~].

7 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel
8 production facility's production design capacity, in gallons of
9 motor fuel grade [~~ethanol~~] biofuel per year. Nameplate capacity
10 shall be determined by the facility owner and shall not exceed
11 the amount of production actually recorded during a consecutive
12 seven-day period multiplied by fifty-two.

13 "Net income tax liability" means net income tax liability
14 reduced by all other credits allowed under this chapter.

15 "Qualifying [~~ethanol~~] biofuel production" means ethanol or
16 biodiesel produced from renewable, organic feedstocks, or waste
17 materials, including fats, oils, grease, and municipal solid
18 waste. All qualifying production shall be fermented, distilled,
19 gasified, or produced by physical chemical conversion methods
20 such as reformation and catalytic conversion and dehydrated at
21 the facility.



1 "Qualifying [~~ethanol~~] biofuel production facility" or
2 "facility" means a facility located in Hawaii which produces
3 motor fuel grade [~~ethanol~~] biofuel meeting the minimum
4 specifications by the American Society of Testing and Materials
5 standard D-4806, as amended.

6 (c) In the case of a taxable year in which the cumulative
7 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
8 biofuel production facility exceeds the cumulative investment
9 made in the qualifying [~~ethanol~~] biofuel production facility by
10 the taxpayer, only that portion that does not exceed the
11 cumulative investment shall be claimed and allowed.

12 (d) The department of business, economic development, and
13 tourism shall:

- 14 (1) Maintain records of the total amount of investment
15 made by each taxpayer in a facility;
- 16 (2) Verify the amount of the qualifying investment;
- 17 (3) Total all qualifying and cumulative investments that
18 the department of business, economic development, and
19 tourism certifies; and
- 20 (4) Certify the total amount of the tax credit for each
21 taxable year and the cumulative amount of the tax
22 credit during the credit period.



1 Upon each determination, the department of business,
2 economic development, and tourism shall issue a certificate to
3 the taxpayer verifying the qualifying investment amounts, the
4 credit amount certified for each taxable year, and the
5 cumulative amount of the tax credit during the credit period.
6 The taxpayer shall file the certificate with the taxpayer's tax
7 return with the department of taxation. Notwithstanding the
8 department of business, economic development, and tourism's
9 certification authority under this section, the director of
10 taxation may audit and adjust certification to conform to the
11 facts.

12 If in any year, the annual amount of certified credits
13 reaches \$12,000,000 in the aggregate, the department of
14 business, economic development, and tourism shall immediately
15 discontinue certifying credits and notify the department of
16 taxation. In no instance shall the total amount of certified
17 credits exceed \$12,000,000 per year. Notwithstanding any other
18 law to the contrary, this information shall be available for
19 public inspection and dissemination under chapter 92F.

20 (e) If the credit under this section exceeds the
21 taxpayer's income tax liability, the excess of credit over
22 liability shall be refunded to the taxpayer; provided that no



1 refunds or payments on account of the tax credit allowed by this
2 section shall be made for amounts less than \$1. All claims for
3 a credit under this section [~~must~~] shall be properly filed on or
4 before the end of the twelfth month following the close of the
5 taxable year for which the credit may be claimed. Failure to
6 comply with the foregoing provision shall constitute a waiver of
7 the right to claim the credit.

8 (f) If a qualifying [~~ethanol~~] biofuel production facility
9 or an interest therein is acquired by a taxpayer prior to the
10 expiration of the credit period, the credit allowable under
11 subsection (a) for any period after [~~such~~] the acquisition shall
12 be equal to the credit that would have been allowable under
13 subsection (a) to the prior taxpayer had the taxpayer not
14 disposed of the interest. If an interest is disposed of during
15 any year for which the credit is allowable under subsection (a),
16 the credit shall be allowable between the parties on the basis
17 of the number of days during the year the interest was held by
18 each taxpayer. In no case shall the credit allowed under
19 subsection (a) be allowed after the expiration of the credit
20 period.

21 (g) Once the total nameplate capacities of qualifying
22 [~~ethanol~~] biofuel production facilities built within the State



1 reaches or exceeds a level of forty million gallons per year,
2 credits under this section shall not be allowed for new
3 ~~[ethanol]~~ biofuel production facilities. If a new facility's
4 production capacity would cause the statewide ~~[ethanol]~~ biofuel
5 production capacity to exceed forty million gallons per year,
6 only the ~~[ethanol]~~ biofuel production capacity that does not
7 exceed the statewide forty million gallon per year level shall
8 be eligible for the credit.

9 (h) Prior to construction of any new qualifying ~~[ethanol]~~
10 biofuel production facility, the taxpayer shall provide written
11 notice of the taxpayer's intention to begin construction of a
12 qualifying ~~[ethanol]~~ biofuel production facility. The
13 information shall be provided to the department of taxation and
14 the department of business, economic development, and tourism on
15 forms provided by the department of business, economic
16 development, and tourism, and shall include information on the
17 taxpayer, facility location, facility production capacity,
18 anticipated production start date, and the taxpayer's contact
19 information. Notwithstanding any other law to the contrary,
20 this information shall be available for public inspection and
21 dissemination under chapter 92F.



1 (i) The taxpayer shall provide written notice to the
2 director of taxation and the director of business, economic
3 development, and tourism within thirty days following the start
4 of production. The notice shall include the production start
5 date and expected [~~ethanol-fuel~~] biofuel production for the next
6 twenty-four months. Notwithstanding any other law to the
7 contrary, this information shall be available for public
8 inspection and dissemination under chapter 92F.

9 (j) If a qualifying [~~ethanol~~] biofuel production facility
10 fails to achieve an average annual production of at least
11 seventy-five per cent of its nameplate capacity for two
12 consecutive years, the stated capacity of that facility may be
13 revised by the director of business, economic development, and
14 tourism to reflect actual production for the purposes of
15 determining statewide production capacity under subsection (g)
16 and allowable credits for that facility under subsection (a).
17 Notwithstanding any other law to the contrary, this information
18 shall be available for public inspection and dissemination under
19 chapter 92F.

20 (k) Each calendar year during the credit period, the
21 taxpayer shall provide information to the director of business,
22 economic development, and tourism on the number of gallons of



1 [ethanol] biofuel produced and sold during the previous calendar
2 year, how much was sold in Hawaii versus overseas, percentage of
3 Hawaii-grown feedstocks and other feedstocks used for [ethanol]
4 biofuel production, the number of employees of the facility, and
5 the projected number of gallons of [ethanol] biofuel production
6 for the succeeding year.

7 (1) In the case of a partnership, S corporation, estate,
8 or trust, the tax credit allowable is for every qualifying
9 [ethanol] biofuel production facility. The cost upon which the
10 tax credit is computed shall be determined at the entity level.
11 Distribution and share of credit shall be determined pursuant to
12 section 235-110.7(a).

13 (m) Following each year in which a credit under this
14 section has been claimed, the director of business, economic
15 development, and tourism shall submit a written report to the
16 governor and legislature regarding the production and sale of
17 [ethanol] biofuel. The report shall include:

18 (1) The number, location, and nameplate capacities of
19 qualifying [ethanol] biofuel production facilities in
20 the State;

21 (2) The total number of gallons of [ethanol] biofuel
22 produced and sold during the previous year; and



1 (3) The projected number of gallons of [~~ethanol~~] biofuel
2 production for the succeeding year.

3 (n) The director of taxation shall prepare forms that may
4 be necessary to claim a credit under this section.

5 Notwithstanding the department of business, economic
6 development, and tourism's certification authority under this
7 section, the director may audit and adjust certification to
8 conform to the facts. The director may also require the
9 taxpayer to furnish information to ascertain the validity of the
10 claim for credit made under this section and may adopt rules
11 necessary to effectuate the purposes of this section pursuant to
12 chapter 91."

13 SECTION 2. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 3. This Act, upon its approval, shall apply to
16 taxable years beginning after December 31, 2008.

17

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Report Title:

Biofuels Facility; Nameplate Capacity; Gallons Produced

Description:

Amends the definition of nameplate capacity for biofuels facilities and revises the allowable tax credit to be equal to 40 cents per gallon of biofuel produced.

