July 5, 2016

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Eighth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Joseph M. Souki,
Speaker and Members of the House of Representatives
Twenty-Eighth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Souki, and Members of the Legislature:

This is to inform you that on July 5, 2016, the following bill was signed into law:

SB2652 SD2 HD2 CD1 RELATING TO TAXATION
ACT 202 (16)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i
A BILL FOR AN ACT

RELATING TO TAXATION.

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

SECTION 1. Hawaii is vulnerable to soaring prices or
disruptions of its energy imports, which can hinder, cripple, or
even devastate the State's economy and the well-being of its
inhabitants. As the most isolated land mass on Earth, Hawaii
imports nearly ninety per cent of its energy and almost one
hundred per cent of its transportation resources. The
legislature finds that it is critical for Hawaii to ensure
greater energy security by becoming more self-sufficient in its
energy and food supply.

The legislature also finds that providing additional
support to Hawaii's agriculture industry could help to reduce
reliance on imports and to foster job growth in the State. The
legislature believes that creating a stronger market for
renewable fuels will promote the production of locally-grown
feedstock.

The purpose of this Act is to:

(1) Establish a renewable fuels production tax credit to
achieve greater energy security for Hawaii; and
(2) Repeal the ethanol facility tax credit.

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

"SECTION 235- Renewable fuels production tax credit. (a) As used in this section:

"Credit period" means a maximum period of five consecutive years, beginning from the first taxable year in which a taxpayer begins renewable fuels production at a level of at least fifteen billion British thermal units of renewable fuels per year.

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

"Renewable feedstocks" means:

(1) Biomass crops;
(2) Agricultural residues;
(3) Oil crops, including but not limited to algae, canola, jatropha, palm, soybean, and sunflower;
(4) Sugar and starch crops, including but not limited to sugar cane and cassava;
(5) Other agricultural crops;
(6) Grease and waste cooking oil;
(7) Food wastes;
(8) Municipal solid wastes and industrial wastes;
(9) Water; and
(10) Animal residues and wastes,
that can be used to generate energy.

"Renewable fuels" means fuels produced from renewable feedstocks; provided that:

(1) The fuels shall be sold as a fuel; and
(2) The fuels meet the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels, including but not limited to:
(A) Methanol, ethanol, or other alcohols;
(B) Hydrogen;
(C) Biodiesel or renewable diesel;
(D) Biogas;
(E) Other biofuels; or
(F) Renewable jet fuel or renewable gasoline.

(b) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, a renewable fuels production tax credit that shall be
applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

For each taxpayer producing renewable fuels, the annual dollar amount of the renewable fuels production tax credit during the five-year credit period shall be equal to 20 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in Hawaii; provided that the taxpayer's production of renewable fuels is not less than fifteen billion British thermal units of renewable fuels per year; provided further that the amount of the tax credit claimed under this section by a taxpayer shall not exceed $3,000,000 per taxable year. No other tax credit may be claimed under this chapter for the costs related to renewable fuels production that are used to properly claim a tax credit under this section for the taxable year.

(c) The department of business, economic development, and tourism shall:

(1) Verify the amount and type of renewable fuels produced and sold, including the purpose for which the fuel was produced;
(2) Total all renewable fuels production that the department of business, economic development, and tourism certifies for purposes of paragraph (3); and

(3) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the amount of renewable fuels produced and sold, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director of taxation may audit and adjust the certification to conform to the facts.

If in any year, the annual amount of certified credits reaches $3,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no
instance shall the total amount of certified credits exceed $3,000,000 per year. Notwithstanding any other law to the contrary, the verification and certification information compiled by the department of business, economic development, and tourism shall be available for public inspection and dissemination under chapter 92F.

(d) If the credit under this section exceeds the taxpayer’s net income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer’s net income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(e) Prior to production of any renewable fuels for the year, the taxpayer shall provide written notice of the taxpayer’s intention to begin production of renewable fuels. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business,
economic development, and tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and taxpayer's contact information. Notwithstanding any other law to the contrary, this taxpayer and facility information shall be available for public inspection and dissemination under chapter 92F.

(f) The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days following the start of production. The notice shall include the production start date and expected renewable fuels production for the next twelve months. Notwithstanding any other law to the contrary, this production information shall be available for public inspection and dissemination under chapter 92F.

(g) Each calendar year during the credit period, the taxpayer shall provide information to the director of business, economic development, and tourism on:

(1) The number of British thermal units of renewable fuels produced and sold during the previous calendar year;

(2) The type of fuels;
(3) Feedstocks used for renewable fuels production;
(4) The number of employees of the facility and each employee's state of residency; and
(5) The projected number of British thermal units of renewable fuels production for the succeeding year.
(h) In the case of a partnership, S corporation, estate, or trust, distribution and share of the renewable fuels production tax credit shall be determined pursuant to section 704(b) (with respect to partner's distributive share) of the Internal Revenue Code.
(i) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the governor and legislature regarding the production and sale of renewable fuels. The report shall include:
(1) The number, location, and production of renewable fuels production facilities in the State and outside the State that have claimed a credit under this section;
(2) The total number of British thermal units of renewable fuels, broken down by type of fuel, produced and sold during the previous year; and

(3) The projected number of British thermal units of renewable fuels production for the succeeding year.

(j) The director of taxation shall prepare forms that may be necessary to claim a credit under this section. The director of taxation may require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91."

SECTION 3. Section 235-110.3, Hawaii Revised Statutes, is repealed.

"§235-110.3 - Ethanol facility tax credit. (a) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an ethanol facility tax credit that shall be applied to the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed."
For each qualified ethanol production facility, the annual dollar amount of the ethanol facility tax credit during the eight-year period shall be equal to thirty-per-cent of its nameplate capacity if the nameplate capacity is greater than five hundred thousand but less than fifteen million gallons. A taxpayer may claim this credit for each qualifying ethanol facility, provided that:

(1) The claim for this credit by any taxpayer of a qualifying ethanol production facility shall not exceed one hundred per-cent of the total of all investments made by the taxpayer in the qualifying ethanol production facility during the credit period;

(2) The qualifying ethanol production facility operated at a level of production of at least seventy-five-per-cent of its nameplate capacity on an annualized basis;

(3) The qualifying ethanol production facility is in production on or before January 1, 2017; and

(4) No taxpayer that claims the credit under this section shall claim any other tax credit under this chapter for the same taxable year.

(5) As used in this section:
"Credit period" means a maximum period of eight years beginning from the first taxable year in which the qualifying ethanol production facility begins production even if actual production is not at seventy-five per cent of nameplate capacity.

"Investment" means a nonrefundable capital expenditure related to the development and construction of any qualifying ethanol production facility, including processing equipment, waste treatment systems, pipelines, and liquid storage tanks at the facility or remote locations, including expansions or modifications. Capital expenditures shall be those direct and certain indirect costs determined in accordance with section 263A of the Internal Revenue Code, relating to uniform capitalization costs, but shall not include expenses for compensation paid to officers of the taxpayer, pension and other related costs, rent for land, the costs of repairing and maintaining the equipment or facilities, training of operating personnel, utility costs during construction, property taxes, costs relating to negotiation of commercial agreements not related to development or construction, or service costs that can be identified specifically with a service department or
function or that directly benefit or are incurred by reason of a
service department or function. For the purposes of determining
a capital expenditure under this section, the provisions of
section 263A of the Internal Revenue Code shall apply as it read
on March 1, 2004. For purposes of this section, investment
excludes land costs and includes any investment for which the
taxpayer is at risk, as that term is used in section 465 of the
Internal Revenue Code (with respect to deductions limited to
amount at risk).

"Nameplate capacity" means the qualifying ethanol
production facility's production design capacity, in gallons of
motor fuel grade ethanol per year.

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

"Qualifying ethanol production" means ethanol produced from
renewable, organic feedstocks, or waste materials, including
municipal solid waste. All qualifying production shall be
fermented, distilled, gasified, or produced by physical chemical
conversion methods such as reformation and catalytic conversion
and dehydrated at the facility.
"Qualifying ethanol production facility" or "facility"
means a facility located in Hawaii which produces motor fuel
grade ethanol meeting the minimum specifications by the American
(c) In the case of a taxable year in which the cumulative
claims for the credit by the taxpayer of a qualifying ethanol
production facility exceeds the cumulative investment made in
the qualifying ethanol production facility by the taxpayer, only
that portion that does not exceed the cumulative investment
shall be claimed and allowed.
(d) The department of business, economic development, and
tourism shall:
(1) Maintain records of the total amount of investment
made by each taxpayer in a facility;
(2) Verify the amount of the qualifying investment;
(3) Total all qualifying and cumulative investments that
the department of business, economic development, and
tourism certifies; and
(4) Certify the total amount of the tax credit for each
taxable year and the cumulative amount of the tax
credit during the credit period.
Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer’s tax return with the department of taxation. Notwithstanding the department of business, economic development, and tourism’s certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

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

e) If the credit under this section exceeds the taxpayer’s income tax liability, the excess of credit over
liability shall be refunded to the taxpayer, provided that no

refunds or payments on account of the tax credit allowed by this

section shall be made for amounts less than $1. All claims for

a credit under this section must be properly filed on or before

the end of the twelfth month following the close of the taxable

year for which the credit may be claimed. Failure to comply

with the foregoing provision shall constitute a waiver of the

right to claim the credit.

(f) If a qualifying ethanol production facility or an

interest therein is acquired by a taxpayer prior to the

expiration of the credit period, the credit allowable under

subsection (a) for any period after such acquisition shall be

equal to the credit that would have been allowable under

subsection (a) to the prior taxpayer had the taxpayer not

disposed of the interest. If an interest is disposed of during

any year for which the credit is allowable under subsection (a),

the credit shall be allowable between the parties on the basis

of the number of days during the year the interest was held by

each taxpayer. In no case shall the credit allowed under

subsection (a) be allowed after the expiration of the credit

period.
(g) Once the total nameplate capacities of qualifying ethanol production facilities built within the State reaches or exceeds a level of forty million gallons per year, credits under this section shall not be allowed for new ethanol production facilities. If a new facility’s production capacity would cause the statewide ethanol production capacity to exceed forty million gallons per year, only the ethanol production capacity that does not exceed the statewide forty million gallon per year level shall be eligible for the credit.

(h) Prior to construction of any new qualifying ethanol production facility, the taxpayer shall provide written notice of the taxpayer’s intention to begin construction of a qualifying ethanol production facility. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and the taxpayer’s contact information.

Notwithstanding any other law to the contrary, this information
shall be available for public inspection and dissemination under chapter 92F.

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

   (j) If a qualifying ethanol production facility fails to achieve an average annual production of at least seventy-five percent of its nameplate capacity for two consecutive years, the stated capacity of that facility may be revised by the director of business, economic development, and tourism to reflect actual production for the purposes of determining statewide production capacity under subsection (g) and allowable credits for that facility under subsection (a). Notwithstanding any other law to the contrary, this information shall be available for public inspection and dissemination under chapter 92F.
(k) Each calendar year during the credit period, the taxpayer shall provide information to the director of business, economic development, and tourism on the number of gallons of ethanol produced and sold during the previous calendar year, how much was sold in Hawaii versus overseas, feedstocks used for ethanol production, the number of employees of the facility, and the projected number of gallons of ethanol production for the succeeding year.

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

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

(1) The number, location, and nameplate capacities of qualifying ethanol production facilities in the State;
(2) The total number of gallons of ethanol produced and sold during the previous year; and

(3) The projected number of gallons of ethanol production for the succeeding year.

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

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

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.
SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2016; provided that section 2 shall be repealed on December 31, 2021.

APPROVED this 5 day of JUL, 2016

GOVERNOR OF THE STATE OF HAWAII