HOUSE OF REPRESENTATIVES
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

H.B. NO. 2245

A BILL FOR AN ACT

RELATING TO BUSINESS ENERGY TAX CREDIT.

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

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

"**§235- Business energy tax credit.** (a) There shall be allowed to each individual and corporate taxpayer who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who files an individual or corporate net income tax return for a taxable year, a business energy tax credit, which shall be deductible from the taxpayer's net income tax liability imposed by this chapter for the taxable year in which the tax credit is properly claimed.

(b) The tax credit shall apply to thirty-five per cent of the eligible project costs incurred for investments in energy conservation, recycling, renewable energy resources, co-generation, certain retrofit or new construction projects, and less-polluting transportation fuels; provided that:

(1) The tax credit is taken over five years as follows:

<u>(A) Ten per cent in the first and second years; and</u>

<u>(B) Five per cent each year for three years;</u>

<u>(2) Eligible project cost of $20,000 or less may be taken in one year;</u>

<u>(3) The taxpayer claiming the tax credit is the owner of the entity utilizing the energy saving project that is the basis for the tax credit or the lessor of the energy saving project that is used elsewhere in the State;</u>

<u>(4) A project owner may be a non-profit organization, public entity that partners with a Hawaii business, or another taxpayer who has a tax liability under this chapter;</u>

<u>(5) The taxpayer is in compliance with all applicable federal, state, and county statutes, rules, and regulations;</u>

<u>(6) Retrofit projects are at least ten per cent more efficient than the existing installation, and lighting retrofit projects are at least twenty-five per cent more efficient than existing lighting. Project owners shall report how lighting fixtures, lamps, and thermostats replaced in a lighting project will be</u>

recycled. The project shall have a payback of one to fifteen years. Rental property weatherization projects qualify for a tax credit if cost-effective, as determined by rule pursuant to chapter 91, and have a payback of one to thirty years;

(7) The installation of energy-efficient measures during new construction shall reduce energy use by a least ten per cent compared to a similar building that meets the minimum requirements as established by rule pursuant to chapter 91. The tax credit shall be thirty-five per cent of the incremental costs of making the project exceed standards established by rule pursuant to chapter 91. Lighting for new construction projects shall be ten per cent more efficient than energy code or standard industry practice. New construction projects shall have a payback of one to fifteen years;

(8) Co-generation projects are be ten per cent more efficient and have a payback of one to fifteen years;

(9) Renewable energy resource projects replace at least ten per cent of the electricity, gas, or oil used;

(10) Recycled material projects that develop new markets for recycled material or recycle materials not required by law are eligible for the tax credit; and

(11) Transportation projects that reduce employee commuting or work-related travel and investments in cleaner-burning transportation fuels qualify for the tax credit if the projects reduce work-related travel by twenty-five per cent.

(c) A project owner may exercise a pass-through option to transfer the thirty-five per cent tax credit to a pass-through partner for a lump-sum cash payment. A project owner may be a public entity or non-profit organization with no tax liability or a business with tax liability that chooses to use the pass-through option.

The pass-through option rate for the five year tax credit is 25.5 per cent. The pass-through option rate for a one year tax credit ($20,000 or less) is 30.5 per cent.

(d) If the tax credit under this section exceeds the taxpayer's net income tax liability under this chapter, any excess of the tax credit may be used as a credit against the taxpayer's income tax liability in subsequent taxable years until exhausted.

(e) If the taxpayer is a partnership, S corporation, estate, or trust, the tax credit is for eligible project costs incurred by the entity for the taxable year. The costs upon which the tax credit is computed shall be determined at the entity level. Distribution and share of the tax credit shall be determined pursuant to section 235-110.7.

(f) If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for those costs for which the deduction is taken.

(g) If at any time during the period in which the tax credits are earned under this section, the taxpayer no longer qualifies for the tax credit, the tax credits claimed under this section shall be recaptured. The recapture shall be equal to one hundred per cent of the total tax credits claimed under this section. The amount of the recaptured tax credits shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

(h) As used in this section:

"Co-generation projects" means projects that use the heat by-product of generating electricity.

"Eligible project costs" means expenses directly related to the investment under this section in energy conservation, recycling, renewable energy resources, or less-polluting transportation fuels.

"Payback" means the time needed to recoup an investment.

"Project owner" means "taxpayer".

"Renewable energy resource project" means projects that use solar, wind, hydro, geothermal, or biomass to produce energy, displace energy, or reclaim energy from waste.

(i) Every claim, including amended claims, for the tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the tax credit may be claimed. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(j) The director of taxation shall prepare such forms as may be necessary to claim a tax credit under this section, may require proof of the claim for the tax credit, and may adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(k) The department of taxation shall report to the legislature annually, no later than twenty days prior to the convening of every regular session, on the number of taxpayers claiming the tax credit and the total cost of the tax credit to the State during the past year."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2005.

INTRODUCED BY: ____________________

Kirk Caldwell

JAN 23 2006

HB 2245

Report Title:
Business Energy Tax Credit

Description:
Establishes a business energy tax credit to encourage energy preservation and efficiency.