THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 1934 S.D. 1 H.D. 1

A BILL FOR AN ACT

RELATING TO TAXATION.

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

SECTION 1. The purpose of this Act is to:

(1) Establish a long-term care tax credit to be applied to premium payments for long-term care insurance;

(2) Create an incentive for small businesses to purchase long-term care insurance for their employees by providing a tax credit for the payment of their long-term care insurance premiums;

(3) Provide a tax credit for expenses related to an organ donation;

(4) Provide a land conservation incentives tax credit to encourage the preservation and protection of land in the state;

(5) Provide a tax credit equal to 15 per cent of the costs of hotel renovations;

(6) Provide a tax credit for improvements made to federally qualified health centers;

(7) Provide an income tax and general excise tax exemption for companies that provide potable water and are exempt under section 501(c)(12) of the Internal Revenue Code;

(8) Make the renewable energy technologies tax credit refundable for taxpayers with adjusted gross incomes of $20,000 or less or taxpayers whose taxable income is exclusively pension or state retirement income;

(9) Repeal the attractions and educational facilities tax credit for Ko Olina Resort and Marina, and Makaha Resort; and

(10) Provide a one-time nonrefundable tax credit to assist the victims of the December 2007 flood and wind storm in upcountry Maui and other affected areas of the 12th representative district.

PART I

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

"**§235- Long-term care tax credit.** (a) Each individual taxpayer who:

(1) Is subject to this chapter;

(2) Files an individual income tax return for a taxable year; and

(3) Is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for Hawaii state individual income tax purposes,

may claim a long-term care credit against the taxpayer's net individual income tax liability for the taxable year for which the individual's income tax return is being filed; provided that an individual who has no income taxable under this chapter and who is not claimed or is not otherwise eligible to be claimed as a dependent by a taxpayer for Hawaii state individual income tax purposes may claim this credit.

(b) The tax credit shall apply to taxpayers with an adjusted gross income of:

(1) $100,000 or less for a married couple filing jointly; or

(2) $50,000 or less for an individual taxpayer.

(c) The maximum amount of the tax credit for an individual taxpayer or a husband and wife filing a joint return for each taxable year shall be an amount equal to the lesser of the following amounts:

(1) $2,500; or

(2) Fifty per cent of the cost of any long-term care insurance premium payments made by the individual taxpayer or the husband and wife filing a joint return for the taxable year in which the payments were made;

provided that a husband and wife filing separate tax returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled under this section had a joint return been filed.

(d) If a deduction is taken under this chapter pursuant to Section 213 (with respect to medical, dental, etc., expenses) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for that portion of the cost of long-term care insurance for which the deduction was taken.

(e) The tax credit shall apply to premium payments for a long-term care insurance contract that covers:

(1) The taxpayer;

(2) The taxpayer's dependent as defined in Section 152 of the Internal Revenue Code of 1986, as amended;

(3) The taxpayer's spouse;

(4) A son or daughter of the taxpayer;

(5) A stepson or stepdaughter of the taxpayer;

(6) The father or mother of the taxpayer; or

(7) A stepfather or stepmother of the taxpayer.

(f) No refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

(g) All claims, including any amended claims, for tax credits 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 credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(h) For the purposes of this section, "long-term care insurance" shall have the same meaning as defined in section 431:10H-104."

PART II

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235-   Small business long-term care insurance premium tax credit.** (a) Each individual and corporate resident taxpayer subject to the tax imposed by this chapter and who owns a small business, as defined in this section, and files an individual or corporate net income tax return for a taxable year, regardless of adjusted gross income, may claim a small business long-term care insurance premium credit against the taxpayer's individual or corporate net income tax liability for the taxable year in which the credit is claimed and for which the income tax return is being filed; provided that an individual or corporation who has no income taxable under this chapter may claim this credit.

For the purposes of this section:

"Long-term care insurance" shall have the same meaning as defined in section 431:10H-104.

"Small business" means a for-profit enterprise consisting of fewer than one hundred full-time or part-time employees.

(b) The tax credit under this section, may be claimed by either:

(1) An individual resident taxpayer or a husband and wife filing a joint return who own a small business; provided that a resident husband and wife filing separate tax returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled under this section had a joint return been filed; or

(2) A small business that is a corporation, partnership, limited liability company, or other form of business entity;

and may be claimed only once in the taxable year with respect to the small business, regardless of the number of owners under paragraph (1) or the number of partners or corporate officers under paragraph (2).

(c) The amount of the tax credit shall be an amount equal to the lesser of the following amounts:

(1) $500 for each employee; or

(2) Fifty per cent of any long-term care insurance premium payments made for each employee;

for the taxable year in which the payments were made.

(d) All claims, including any amended claims, for tax credits 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 credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

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

PART III

SECTION 4. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Organ donation tax credit.** (a) There shall be allowed to each individual taxpayer who is not claimed, or is not otherwise eligible to be claimed, as a dependent by another taxpayer for federal or state income tax purposes a refundable organ donation tax credit that shall be deductible from the eligible taxpayer's net income tax liability imposed by this chapter for the taxable year in which the tax credit is properly claimed.

(b) To qualify for the tax credit, the taxpayer shall be a full-time resident of the state with an adjustable gross income of less than $50,000, or less than $100,000 in the case of a joint return, who is in compliance with all applicable federal, state, and county statutes, rules, and regulations and has donated one or more of the taxpayer's human organs for the purpose of an organ transplant during the taxable year; provided that this section shall not apply to organs sold for monetary or other consideration.

(c) A taxpayer may claim the tax credit only once per lifetime for the following unreimbursed related expenses incurred by the taxpayer:

(1) Travel expenses;

(2) Lodging expenses; and

(3) Lost wages.

(d) The tax credit shall not exceed:

(1) $ per taxpayer per year; and

(2) $ for all taxpayers per year.

(e) If the tax credit under this section exceeds the taxpayer's net income tax liability, the amount of the excess tax credit shall be paid to the eligible taxpayer; provided that no refund or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

(f) 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.

(g) The director of taxation:

(1) Shall prepare forms as may be necessary to claim a tax credit under this section;

(2) May require proof of the claim for the tax credit;

(3) Shall make the allocation of tax credits under this section to qualified taxpayers on a first-to-file, first-served basis; and

(4) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(h) For the purposes of this section:

"Full-time resident of the state" means an individual who has resided in the state for twelve months of the taxable year in which the tax credit under this section is claimed.

"Human organ" or "organ" means all or part of a human liver, pancreas, kidney, intestine, or lung and also includes bone marrow."

PART IV

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

"**§235-   Land conservation incentives tax credit; definitions.** (a) As used in this section:

"Bargain sale" means a sale where a taxpayer is paid less than the fair market value for land or an interest in land.

"Conservation or preservation purpose" means:

(1) Protection of open space for scenic values;

(2) Protection of natural areas for wildlife habitat, biological diversity, or native forest cover; and

(3) Preservation of forest land, agricultural land, watersheds, streams, rainfall infiltration areas, outdoor recreation areas, including hiking, biking, and walking trails, and historic or cultural property;

provided that the resources or areas protected or preserved are designated as significant or important by a relevant state agency.

"Cultural property" means a structure, place, site, or object having historic, archaeological, scientific, architectural, or cultural significance.

"Eligible taxpayer":

(1) Means a Hawaii 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; and

<u>(2) Includes individuals, corporations, or pass-through tax entities such as trusts, estates, partnerships, limited liability companies or partnerships, S corporations, or other fiduciaries.</u>

<u>"Interest in land or real property" means a right in real property, including access, improvement, water right, fee simple interest, easement, land use easement, partial interest in real property, mineral right, remainder or future interest, or other interest or right in real property that complies with the requirements of Section 170(h)(2) of the Internal Revenue Code of 1986, as amended.</u>

<u>"Land" means real property, including rights of way, easements, privileges, water rights, and all other rights or interests related to real property.</u>

<u>"Public or private conservation agency" means a governmental body or a private nonprofit charitable corporation or trust authorized to do business in the state that is organized and operated for natural resources, land, or historic conservation purposes, has tax-exempt status as a public charity under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and has the power to acquire, hold, or maintain land or interests in land.</u>

(b) There shall be allowed to every eligible taxpayer a land conservation incentives tax credit that shall be deductible from the taxpayer's net income tax liability imposed by this chapter for taxable years beginning on or after January 1, 2008; provided that a husband and wife filing separate returns for a taxable year for which a joint return could have been filed by them shall claim only the tax credit to which they would have been entitled had a joint return been filed.

(c) The tax credit shall apply to an eligible taxpayer who:

(1) Donates land in perpetuity or completes a bargain sale in perpetuity to the state, or public or private conservation agency that fulfills a conservation or preservation purpose; provided that any donation or sale of a less-than-fee interest shall also qualify as a charitable contribution deduction under Section 170(h) of the Internal Revenue Code of 1986, as amended; or

(2) Voluntarily invests in the management of land to protect or enhance a conservation or preservation purpose under a land protection agreement, conservation management agreement, or other legal

instrument that is consistent with a conservation or preservation purpose.

(d) Donations of land for open space for the purpose of fulfilling density requirements to obtain subdivision or building permits do not qualify for the land conservation incentives tax credit.

(e) The amount of the tax credit shall be:

(1) Fifty per cent of the fair market value of the land or interest in land that an eligible taxpayer donates in perpetuity on or after January 1, 2008, for a conservation or preservation purpose to the state, or public or private conservation agency; or

(2) Fifty per cent of the amount invested in the management of land pursuant to subsection (c)(2).

(f) The amount of the tax credit shall not exceed $2,500,000 per donation regardless of the value of the land or interest in land; provided that if the tax credit under this section exceeds the taxpayer's net income tax liability under this chapter, any excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent taxable years until exhausted.

An eligible taxpayer may claim the land conservation incentives tax credit only once per taxable year.

(g) The tax credit claimed by a pass-through tax entity may be used either by the pass-through tax entity or a member, manager, partner, shareholder, or beneficiary of the pass-through entity, in proportion to the total interest of the member, manager, partner, shareholder, or beneficiary; provided that:

(1) There is in fact a pass-through; and

(2) The tax credit may be claimed only once by either the pass-through entity or the member, manager, partner, shareholder, or beneficiary, but not both.

(h) 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.

(i) The director of taxation:

(1) Shall prepare forms necessary to claim a tax credit under this section;

(2) May require proof of the claim for the tax credit; and

(3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(j) The chairperson of the board of land and natural resources may adopt rules pursuant to chapter 91 to effectuate this section."

PART V

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

"§235- **Hotel renovation tax credit.** (a) There shall be allowed to each taxpayer, subject to the taxes imposed by this chapter and chapter 237D, an income tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The amount of the credit shall be fifteen per cent of the renovation costs incurred during the taxable year for each hotel facility located in the state and shall not include the construction or renovation costs for which another credit was claimed under this chapter for the taxable year.

(c) In the case of a partnership, S corporation, estate, or trust, the tax credit shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

(d) If a deduction is taken under Section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the renovation cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(e) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.

(f) As used in this section:

"Hotel facility" means an establishment consisting of any building or structure used primarily for the business of providing, for consideration, transient hotel accommodation lodging facilities, and that furnishes, as part of its routine operations, one or more customary lodging services, other than living accommodations and furniture and fixtures, including restaurant facilities, room attendant or bell services, telephone switchboard operations, laundry services, or concierge services, and is subject to the transient accommodations tax under chapter 237D. "Hotel facility" does not include any building that is used or contains any room that is used as a "condominium" as defined under section 514B-3 or "timeshare unit" as defined under section 514E-1.

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

"Renovation" means any costs incurred after December 31, 2007, for plans, design, construction, and equipment related to renovations, alterations, or modifications to a hotel facility.

"Taxpayer" means an owner of a hotel facility located in the state.

(g) If the tax 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 payment on account of the tax credits allowed by this section shall be made for amounts less than $1.

All claims for a 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 credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(h) The director of taxation:

(1) Shall prepare forms as may be necessary to claim a tax credit under this section;

(2) May require proof of the claim for the tax credit; and

(3) May adopt rules pursuant to chapter 91 to effectuate the purposes of this section.

(i) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 2013, for building permits submitted to the appropriate county agency before December 31, 2014, and shall not be available for taxable years beginning after December 31, 2019."

PART VI

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

"§235- **Qualified improvement tax credit.** (a) There shall be allowed to each taxpayer who operates a federally qualified health center a qualified improvement tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the year in which the credit is properly claimed.

(b) To claim a credit under this section, the taxpayer shall have incurred qualified improvement costs that exceed $150,000 in the taxable year for which the credit is claimed; provided that:

(1) All qualified improvement costs, including the first $150,000, shall be eligible for the qualified improvement tax credit; and

(2) Qualified improvement costs claimed in any taxable year shall be reduced by an amount equal to state or county funding, or both, received during the same taxable year for which the tax credit is being claimed.

(c) The amount of the qualified improvement tax credit shall be equal to:

(1) Twenty-five per cent of the qualified improvement costs incurred up to and including $2,000,000; plus

(2) Fifteen per cent of the qualified improvement costs greater than $2,000,000, up to and including $5,000,000; plus

(3) Ten per cent of the qualified improvement costs greater than $5,000,000.

The total tax credits claimed under this section, during the ten consecutive taxable years beginning after December 31, 2008, and before January 1, 2019, shall not exceed $ in the aggregate for each federally qualified health center.

(d) 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 that portion of the qualified improvement costs for which the deduction is taken.

(e) The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowed and claimed under this chapter.

(f) If the amount of the tax credit claimed in any year exceeds the total of the federally qualified health center's net income tax liability for that taxable year, the excess of credit over liability shall be refunded to the taxpayer for the federally qualified health center; provided that no refunds or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

All claims for a tax credit under this chapter shall be filed on or before the end of the twelfth month following the close of the initial taxable year for which the credit may be claimed. Failure to comply with this section shall constitute a waiver of the right to claim the credit.

(g) The tax credit allowed under this chapter shall be available for qualified improvement costs incurred during taxable years beginning after December 31, 2008, and before January 1, 2019.

(h) If a tax credit is claimed under this section, no other tax credit under this chapter may be claimed for the same qualified improvement costs.

(i) The director of taxation:

(1) Shall prepare forms as may be necessary to claim a tax credit under this section; and

(2) May require proof of the claim for the tax credit.

(j) As used in this section, unless the context otherwise requires:

"Federally qualified health center" or "center" means an entity that has entered into an agreement with the federal

Centers for Medicare and Medicaid Services, to meet medicare program requirements under Title 42 Code of Federal Regulations Section 405.2434, and is receiving a grant under Section 330 of the Public Health Service Act, or is receiving funding from the recipient of a grant under Section 330 of the Public Health Service Act.

"Qualified equipment" means any device, instrument, appliance, system, or apparatus that is intended for use in the diagnosis, mitigation, treatment, cure, or prevention of disease, the promotion of bodily wellness, or medical record-keeping, that has a useful life of more than one year and costs more than $50,000.

"Qualified facility" means any building or structure owned or leased by a federally qualified health center.

"Qualified improvement costs" means the costs, including costs for plans, design, construction, or equipment permanently affixed to a building or structure, related to new construction, alteration, or modification of a qualified facility and purchases of qualified equipment."

PART VII

SECTION 8. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

(1) Subchapter A ([~~sections~~] Sections 1 to 59A) (with respect to determination of tax liability), except [~~section~~] Section 1(h)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except [~~sections~~] Sections 2(a), 2(b), and 2(c) (with respect to the definition of "surviving spouse" and "head of household"), except [~~section~~] Section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;

(2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);

(3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);

(4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);

(5) Section 114 (with respect to extraterritorial income). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 [~~section~~] Section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 [~~section~~] Section 101(f) are inoperative;

(6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);

(7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);

(8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);

(9) Subchapter B ([~~sections~~] Sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);

(10) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;

(11) Section 179B (with respect to expensing of capital costs incurred in complying with Environmental Protection Agency sulphur regulations);

(12) Section 181 (with respect to special rules for certain film and television productions);

(13) Section 196 (with respect to deduction for certain unused investment credits);

(14) Section 199 (with respect to the U.S. production activities deduction);

(15) Section 222 (with respect to qualified tuition and related expenses);

(16) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);

(17) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;

(18) Section 291 (with respect to special rules relating to corporate preference items);

(19) Section 367 (with respect to foreign corporations);

(20) Section 501(c)(12),(15), and (16) (with respect to exempt organizations); except for companies that provide potable water under Section 501(c)(12);

(21) Section 515 (with respect to taxes of foreign countries and possessions of the United States);

(22) Subchapter G ([~~sections~~] Sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);

(23) Subchapter H ([~~sections~~] Sections 581 to 597) (with respect to banking institutions), except [~~section~~] Section 584 (with respect to common trust funds). For treatment, see chapter 241;

(24) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;

(25) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);

(26) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);

(27) Subchapter L ([~~sections~~] Sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;

(28) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;

(29) Subchapter N ([~~sections~~] Sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except [~~sections~~] Sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;

(30) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);

(31) Section 1055 (with respect to redeemable ground rents);

(32) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);

(33) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);

(34) Subchapter Q ([~~sections~~] Sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);

(35) Subchapter R ([~~sections~~] Sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);

(36) Subchapter U ([~~sections~~] Sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E;

(37) Subchapter W ([~~sections~~] Sections 1400 to 1400C) (with respect to District of Columbia enterprise zone);

(38) Section 1400O (with respect to education tax benefits);

(39) Section 1400P (with respect to housing tax benefits);

(40) Section 1400R (with respect to employment relief); and

(41) Section 1400T (with respect to special rules for mortgage revenue bonds)."

SECTION 9. Section 237-23, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to the following persons:

(1) Public service companies as that term is defined in section 239-2, with respect to the gross income, either actual gross income or gross income estimated and adjusted, that is included in the measure of the tax imposed by chapter 239;

(2) Public utilities owned and operated by the State or any county, or other political subdivision thereof;

(3) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself, operating under the lodge system, and providing for the payment of death, sick, accident, prepaid legal services, or other benefits to the members of the societies, orders, or associations, and to their dependents;

(4) Corporations, associations, trusts, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by [~~section~~] Section 202 of the Housing Act of 1959, as amended, as well as that of operating a prepaid legal services plan, as well as that of operating or managing a homeless facility, or any other program for the homeless authorized under part VII of chapter 356D;

(5) Business leagues, chambers of commerce, boards of trade, civic leagues, agricultural and horticultural organizations, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare that shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual;

(6) Hospitals, infirmaries, and sanitaria;

(7) Cooperative associations incorporated under chapter 421 or Code [~~section~~] Section 521 cooperatives which

fully meet the requirements of section 421-23, except Code section 521 cooperatives need not be organized in Hawaii; provided that:

(A) The exemption shall apply only to the gross income derived from activities that are pursuant to purposes and powers authorized by chapter 421, except those provisions pertaining to or requiring corporate organization in Hawaii do not apply to Code [~~section~~] Section 521 cooperatives;

(B) The exemption shall not relieve any person who receives any proceeds of sale from the association of the duty of returning and paying the tax on the total gross proceeds of the sales on account of which the payment was made, in the same amount and at the same rate as would apply thereto had the sales been made directly by the person, and all those persons shall be so taxable; and

(C) As used in this paragraph, "[~~section~~] Section 521 cooperatives" mean associations that qualify as a cooperative under [~~section~~] Section 521 (with respect to exemption of farmers' cooperatives from tax) of the Internal Revenue Code of 1986, as amended;

(8) Persons affected with Hansen's disease and kokuas, with respect to business within the county of Kalawao;

(9) Corporations, companies, associations, or trusts organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit of any private stockholder or individual; provided that the exemption shall apply only to the activities of those persons in the conduct of cemeteries and shall not apply to any activity the primary purpose of which is to produce income, even though the income is to be used for or in the furtherance of the exempt activities of those persons; [~~and~~]

(10) Nonprofit shippers associations operating under [~~part~~] Part 296 of the Civil Aeronautics Board Economic Regulations[~~.~~]; and

(11) Companies that provide potable water and are exempt under Section 501(c)(12) of the Internal Revenue Code of 1986, as amended."

PART VIII

SECTION 10. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:

"§235-12.5 **Renewable energy technologies; income tax credit.** (a) When the requirements of subsection (c) are met, each individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the [~~State~~] state by a taxpayer during the taxable year. This credit shall be available for systems installed and placed in service in the [~~State~~] state after June 30, 2003. The tax credit may be claimed as follows:

(1) Solar thermal energy systems for:

(A) Single-family residential property: thirty-five per cent of the actual cost or $2,250, whichever is less;

(B) Multi-family residential property: thirty-five per cent of the actual cost or $350 per unit, whichever is less; and

(C) Commercial property: thirty-five per cent of the actual cost or $250,000, whichever is less;

(2) Wind-powered energy systems for:

(A) Single-family residential property: twenty per cent of the actual cost or $1,500, whichever is less;

(B) Multi-family residential property: twenty per cent of the actual cost or $200 per unit, whichever is less; and

(C) Commercial property: twenty per cent of the actual cost or $500,000, whichever is less; and

(3) Photovoltaic energy systems for:

(A) Single-family residential property: thirty-five per cent of the actual cost or $5,000, whichever is less;

(B) Multi-family residential property: thirty-five per cent of the actual cost or $350 per unit, whichever is less; and

(C) Commercial property: thirty-five per cent of the actual cost or $500,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service in the [~~State~~] state by the entity. 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).

(b) For the purposes of this section:

"Actual cost" means costs related to the renewable energy technology systems under subsection (a), including accessories and installation, but not including the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system and costs for which another credit is claimed under this chapter.

"Renewable energy technology system" means a new system that captures and converts a renewable source of energy, such as wind, heat (solar thermal), or light (photovoltaic) from the sun into:

(1) A usable source of thermal or mechanical energy;

(2) Electricity; or

(3) Fuel.

"Solar or wind energy system" means any identifiable facility, equipment, apparatus, or the like that converts insolation or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.

(c) For taxable years beginning after December 31, 2005, the dollar amount of any utility rebate shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a tax credit under this section, including forms identifying the technology type of each tax credit claimed under this section, whether for solar thermal, photovoltaic from the sun, or wind. The director may also require the taxpayer to furnish reasonable 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.

(e) [~~If~~] Except as provided in subsection (f), if the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

(f) Tax credits properly claimed by an individual taxpayer:

(1) Whose taxable income is exempt from taxation under section 235-7(a)(2) or (3); or

(2) Whose adjusted gross income is $20,000 or less. For purposes of this paragraph, a husband and wife filing a joint return shall be treated as separate taxpayers;

shall be refunded to the taxpayer after being credited against the taxpayer's income tax liability for the taxable year.

(g) All claims for the tax credit under this section, including amended claims, shall be 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 this subsection shall constitute a waiver of the right to claim the credit.

[~~(f) By or before December, 2005, to~~] (h) To the extent feasible, using existing resources to assist the energy-efficiency policy review and evaluation, the department shall assist with data collection on the following:

(1) The number of renewable energy technology systems that have qualified for a tax credit during the past year by:

(A) Technology type (solar thermal, photovoltaic from the sun, and wind); and

(B) Taxpayer type (corporate and individual); [~~and~~] and

(2) The total cost of the tax credit to the State during the past year by:

(A) Technology type; and

(B) Taxpayer type."

PART IX

SECTION 11. Section 235-110.46, Hawaii Revised Statutes, is repealed.

["~~**[§235-110.46] Attractions and educational facilities tax credit; Ko Olina Resort and Marina; Makaha Resort.**~~ ~~(a) There shall be allowed to each qualified taxpayer subject to the taxes imposed by this chapter or chapter 237, 237D, 238, 239, 241, or 431, a tax credit [that] may be claimed for taxable years beginning after December 31, 2004, for qualified costs in the development of facilities for attractions and educational purposes at Ko Olina Resort and Marina and at Makaha Resort.~~

~~The tax credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter and, at the election of the taxpayer, from the tax liability imposed by chapters 237, 237D, 238, 239, 241, and 431.~~

~~(b) The tax credit earned shall be equal to the qualified costs incurred from June 1, 2003, through May 31, 2009, up to a maximum of $75,000,000 of credits in the aggregate for all qualified taxpayers for all years; provided that notwithstanding the amount of tax credits earned in any year, a maximum of $7,500,000 of tax credits in the aggregate for all qualified taxpayers may be used in any one taxable year. The credits over $7,500,000 shall be used as provided in subsection (d). In the case of a partnership, limited liability company, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for qualified costs incurred by the entity. The costs upon which the tax credit is computed shall be determined at the entity level.~~

~~(c) To qualify for the tax credit, a taxpayer shall:~~

~~(1) Have expended qualified costs on and be developing a world-class aquarium and marine science and mammal research facility at Ko Olina Resort and Marina; and~~

~~(2) Dedicate one-half of the net operating income of the world-class aquarium to the State, beginning on the first day of the seventeenth year following the year in which the attractions and educational facilities credit was first taken; or~~

~~(3) Acquire or own the Makaha Resort, and lease or sell a portion of the Makaha Resort for use as training and educational facilities for a period of not less than six years to a taxpayer meeting the requirements of subsection (c)(1).~~

~~(d) If the tax credit under this section exceeds $7,500,000 in the aggregate for all qualified taxpayers for any taxable year or exceeds the taxpayer's tax liability under this chapter or chapters 237, 237D, 238, 239, 241, and 431 for any year for which the credit is taken, the excess of the tax credit may be used as a credit against the taxpayer's tax liability for the taxes set forth in this section in subsequent years until exhausted; provided that the taxpayer may continue to claim the credit provided in this section if the qualified costs are incurred before June 1, 2009, subject to the monetary ceilings in subsection (b).~~

~~(e) Every claim, including amended claims, for a 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 credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.~~

~~(f) If, at any time during the six-year period in which tax credits are earned under this section, the costs incurred no longer meet the definition of qualified costs, the 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 for the preceding taxable year; provided that the amount of the credits recaptured shall apply only to those costs that no longer meet the definition of qualified costs. The amount of the recaptured tax credits determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.~~

~~(g) If any credit is claimed under this section, then no taxpayer shall claim a credit under any chapter identified in this section for the same qualified costs for which a credit is claimed under this section.~~

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

~~Every qualified taxpayer, no later than March 31 of each year in which qualified costs were expended in the previous taxable year, shall submit a written, certified statement to the director of business, economic development, and tourism, in the form specified by the director of business, economic development, and tourism, identifying:~~

~~(1) Qualified costs, if any, expended in the previous taxable year;~~

~~(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and~~

~~(3) The tax liability under this chapter and chapters 237, 237D, 238, 239, 241, and 431 against which the tax credits are claimed.~~

~~Any other law to the contrary notwithstanding, a statement submitted under this subsection shall be a public document.~~

~~(i) The department of business, economic development, and tourism shall maintain records of the names of taxpayers eligible for the credits and the total amount of qualified costs incurred from June 1, 2003, through May 31, 2009. The department of business, economic development, and tourism shall verify all qualified costs and, upon each determination, shall issue a certificate to the taxpayer certifying:~~

~~(1) The amount of the qualified costs; and~~

~~(2) The amount of tax credit that the taxpayer is allowed to use for the taxable year.~~

~~The department of business, economic development, and tourism shall certify no more than $7,500,000 in credits in the aggregate for all taxpayers for each taxable year; provided that the department may verify qualified costs of no more than $75,000,000 from June 1, 2003, through May 31, 2009. The taxpayer shall file the certificate with the taxpayer's return with the department of taxation.~~

~~(j) As used in this section:~~

~~"Ko Olina Resort and Marina" means the six hundred forty-two acres reclassified to urban district by Decision and Order entered on September 12, 1985, in Docket A83-562, by the land use commission.~~

~~"Makaha Resort" means the three hundred thirty-two acre property identified as tax map keys (1) 8-04-002 parcels 51, 52, 53, 54, 55, and 67 and (1) 8-04-029-142.~~

~~"Qualified costs" means any costs for plans, design, and construction, costs for equipment that is permanently affixed to a building or structure, and acquisition of facilities for educational purposes, up to a total of $75,000,000 in the aggregate, incurred after May 31, 2003, and before June 1, 2009, at either or both of:~~

~~(1) Ko Olina Resort and Marina for the development of facilities for attractions and educational purposes, and for infrastructure within the Ko Olina Resort and Marina that is directly related to those facilities, including a world-class aquarium, marine science and mammal research facilities, international sports training complex, a travel industry management intern campus, infrastructure for the transfer of ocean waters to the aquarium or marine mammal facilities, or both, seawater air conditioning, and other educational facilities developed or operated in cooperation with the University of Hawaii or other educational institutions; or~~

~~(2) Makaha Resort for the development of a training and educational facility within a working resort and hotel;~~

~~provided that "qualified costs" shall not include land acquisition costs.~~

~~"Qualified taxpayer" means a person who fulfills the requirements of subsection (c).~~"]

PART X

SECTION 12. (a) There shall be allowed to each taxpayer in the upcountry Maui area and other areas in the twelfth representative district who are not claimed, or are otherwise eligible to be claimed, as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who files an income tax return for a taxable year, a one-time nonrefundable tax credit that shall be deducted from the taxpayer's net income tax liability imposed by chapter 235, Hawaii Revised Statutes.

(b) The amount of the nonrefundable tax credit shall be per cent of the costs incurred by the taxpayer for repairs, insurance, rental, or other expenses or costs related to the damage caused to the taxpayer's real or personal property in the upcountry Maui area and other affected areas in the twelfth representative district by the flood and wind storm of December 2007, provided that:

(1) The expenses or costs are not reimbursed by insurance proceeds or disaster relief payments from government agencies or nonprofit organizations;

(2) The tax credit shall not exceed $ per taxpayer; and

(3) No refund or payment on account of the tax credit allowed by this section shall be made for amounts less than $1.

(c) If the tax credit under this section exceeds the taxpayer's net income tax liability, 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.

(d) If a deduction is taken under Section 179 (with respect to election to expense certain depreciable businesses assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the expenses for which the deduction is taken.

(e) The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(f) No taxpayer that claims the tax credit under this section shall claim any other credit for the same losses or other expenses or costs.

(g) Every claim, including amended claims, for the tax credit under this section shall be filed on or before December 31, 2008. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(h) The director of taxation:

(1) Shall determine the applicability of this Act with respect to the boundaries and locations of the flood and wind storm of December 2007 in the upcountry Maui area and other affected areas in the twelfth representative district that are subject to this Act;

(2) Shall prepare any forms as may be necessary to claim a tax credit under this Act;

(3) May require proof of the claim for the tax credit; and

(4) May adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to effectuate the purposes of this Act.

PART XI

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

SECTION 14. This Act shall take effect on July 1, 2020.

S.B. NO. 1934
S.D. 1
H.D. 1

Report Title:
Tax Credits

Description:
Adds various tax credits and repeals the Ko Olina Resort and Marina and Makaha Resort tax credit. (SB1934 HD1)