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# A BILL FOR AN ACT

RELATING TO AGRICULTURAL TAXATION.

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

1           SECTION 1. In 1978, voters approved article XI, section 3,  
2 of the Constitution of the State of Hawaii, which sets out the  
3 framework for state policies to promote agriculture and the  
4 conservation of productive agricultural lands in the State.  
5 Article XI, section 3, reads as follows:

6           "The State shall conserve and protect  
7 agricultural lands, promote diversified agriculture,  
8 increase agricultural self sufficiency and assure the  
9 availability of agriculturally suitable lands. The  
10 legislature shall provide standards and criteria to  
11 accomplish the foregoing.

12           Lands identified by the State as important  
13 agricultural lands needed to fulfill the purposes  
14 above shall not be reclassified by the State or  
15 rezoned by its political subdivisions without meeting  
16 the standards and criteria established by the  
17 legislature and approved by a two-thirds vote of the



1 body responsible for the reclassification or rezoning  
2 action."

3 Thus, during the 2005 legislature, Act 183 was signed into  
4 law. Act 183 provides standards, criteria, and mechanisms to  
5 fulfill the intent and purpose of article XI, section 3, of the  
6 Constitution of the State of Hawaii and enables the  
7 implementation of the constitutional mandate as set forth above.

8 Act 183 also recognized that while land is the basic  
9 resource for agriculture and the supply of lands suitable for  
10 agriculture is an irreplaceable resource, the long-term  
11 viability of agriculture also depends on factors that affect the  
12 profitability of agriculture, such as:

- 13 (1) Commodity prices;
- 14 (2) Availability of water for irrigation;
- 15 (3) Agricultural research and outreach;
- 16 (4) Application of production technologies;
- 17 (5) Marketing; and
- 18 (6) Availability and cost of transportation services.

19 Hawaii's agricultural producers face operating costs that  
20 increasingly threaten the viability of their agricultural  
21 operations and the sustainability of agriculture in Hawaii. The  
22 legislature further finds that opportunities should be made for



1 farmers and landowners with the ability to promote the long-term  
2 viability of agricultural use of lands.

3 Therefore, the intent of this Act is to provide for the  
4 development of incentives for agricultural viability in Hawaii,  
5 particularly for agricultural businesses that farm important  
6 agricultural lands and for landowners of important agricultural  
7 lands. This incentive mechanism would be designed to promote  
8 the retention of important agricultural lands for viable  
9 agricultural use over the long term.

10 The purpose of this Act is to further implement Act 183 and  
11 provide for an important agricultural lands agricultural  
12 business investment tax credit.

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

16 **"§235- Agricultural business investment tax credit.**

17 (a) There shall be allowed to each taxpayer subject to the  
18 taxes imposed by this chapter an agricultural business  
19 investment tax credit that shall be deductible from the  
20 taxpayer's net income tax liability, if any, imposed by this  
21 chapter for the taxable year in which the qualified expenses  
22 were incurred and the following four years; provided the credit



1 is properly claimed. The tax credit for single or multiple  
2 agricultural business investments made by the taxpayer shall be  
3 as follows:

4 (1) In the year the agricultural business investment is  
5 made, fifty per cent of the qualified expenses up to a  
6 maximum of \$1,250,000;

7 (2) In the first year following the year in which the  
8 agricultural business investment was made, twenty per  
9 cent of the qualified expenses up to a maximum of  
10 \$500,000;

11 (3) In the second year following the year in which the  
12 agricultural business investment was made, ten per  
13 cent of the qualified expenses up to a maximum of  
14 \$250,000;

15 (4) In the third year following the year in which the  
16 agricultural business investment was made, ten per  
17 cent of the qualified expenses up to a maximum of  
18 \$250,000; and

19 (5) In the fourth year following the year in which the  
20 agricultural business investment was made, ten per  
21 cent of the qualified expenses up to a maximum of  
22 \$250,000.



1        (b) The credit allowed under this section may be claimed  
2 against the net income tax liability for the taxable year.

3        (c) If the tax credit under this section exceeds the  
4 taxpayer's income tax liability for any of the five years that  
5 the credit is taken, the excess of the tax credit over liability  
6 may be used as a credit against the taxpayer's income tax  
7 liability in subsequent years until exhausted. Every claim,  
8 including amended claims, for a tax credit under this section  
9 shall be filed on or before the end of the twelfth month  
10 following the close of the taxable year for which the credit may  
11 be claimed. Failure to comply with the foregoing provision  
12 shall constitute a waiver of the right to claim the credit.

13        (d) This tax credit shall apply to agricultural business  
14 investments made by the agricultural business, as well as by  
15 entities or individuals investing capital in the agricultural  
16 business from other sources.

17        (e) If at the close of any taxable year in the five-year  
18 period in subsection (a):

19        (1) The business no longer qualifies as a qualified  
20 agricultural business;



1       (2) The business or an interest in the business has been  
2       sold by the taxpayer investing in the qualified  
3       agricultural business; or  
4       (3) The taxpayer has withdrawn the taxpayer's agricultural  
5       business investment wholly or partially from the  
6       qualified agricultural business,  
7       a portion of the credit claimed under this section shall be  
8       recaptured. The recapture amount shall be ten per cent of the  
9       amount of the total tax credit claimed under this section in the  
10       preceding two taxable years. The amount of the credit  
11       recaptured shall apply only to the agricultural business  
12       investment in the particular qualified agricultural business  
13       that meets the requirements of paragraph (1), (2), or (3). The  
14       recapture provisions of this subsection shall not apply to a tax  
15       credit claimed for a qualified agricultural business that does  
16       not fall within the provisions of paragraph (1), (2), or (3).  
17       The amount of the recaptured tax credit determined under this  
18       subsection shall be added to the taxpayer's tax liability for  
19       the taxable year in which the recapture occurs under this  
20       subsection.  
21       (f) Every taxpayer who made an agricultural business  
22       investment, before March 31 following the year in which the



1 agricultural business investment was made, shall submit a  
2 written, certified statement to the director of taxation  
3 identifying:

4 (1) Agricultural business investments, if any, expended in  
5 the previous taxable year; and

6 (2) The amount of tax credits claimed pursuant to this  
7 section, if any, in the previous taxable year.

8 (g) The department shall:

9 (1) Maintain records of the names and addresses of the  
10 taxpayers claiming the credits under this section and  
11 the total amount of the agricultural business  
12 investment costs upon which the tax credit is based;

13 (2) Verify the nature and amount of the agricultural  
14 business investments;

15 (3) Total all cumulative agricultural business investments  
16 that the department certifies; and

17 (4) Certify the amount of the tax credit for each taxable  
18 year and cumulative amount of the tax credit.

19 Upon each determination made under this subsection and with  
20 the assistance of the agribusiness development corporation, the  
21 department shall issue a certificate to the taxpayer verifying  
22 information submitted to the department, including agricultural



1 business investment amounts, the credit amount certified for  
2 each taxable year, and the cumulative amount of the tax credit  
3 during the credit period. The taxpayer shall file the  
4 certificate with the taxpayer's tax return with the department.

5 The director of taxation may assess and collect a fee from  
6 taxpayers claiming a credit pursuant to this section to offset  
7 the costs of certifying tax credit claims under this section.  
8 All fees collected under this section shall be deposited into  
9 the tax administration special fund established under section  
10 235-20.5.

11 (h) The agribusiness development corporation shall  
12 determine what information is necessary on an annual basis to  
13 enable a quantitative and qualitative assessment of the outcomes  
14 of the tax credit to be determined. Every taxpayer claiming the  
15 agricultural business investment tax credit shall submit this  
16 information to the agribusiness development corporation. Any  
17 taxpayer failing to do so shall not be eligible to receive the  
18 tax credit.

19 (i) The tax credit allowed under this section shall be  
20 available for taxable years beginning after December 31, \_\_\_\_\_,  
21 and shall not be available for taxable years beginning after  
22 December 31, \_\_\_\_\_.





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

7        (k) As used in this section:

8        "Agricultural business investment" means a nonrefundable  
9 monetary investment in a qualified agricultural business that is  
10 used for qualified expenses. The nonrefundable investment shall  
11 be entirely at risk of loss where repayment depends upon the  
12 success of the qualified agricultural business. If the money  
13 invested is to be repaid to the taxpayer, no repayment except  
14 for dividends or interest shall be made for at least one year  
15 from the date the investment is made. The annual amount of any  
16 dividend and interest payment to the taxpayer shall not exceed  
17 twelve per cent of the amount of the investment.

18        "Important agricultural land" means land identified and  
19 designated as important agricultural land pursuant to part III  
20 of chapter 205.

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



1       "Qualified agricultural business" means a business actively  
2 engaged in commercial agriculture, silviculture, or aquaculture  
3 as determined by the agribusiness development corporation, with  
4 a portion of the lands used in the business identified and  
5 designated as important agricultural lands.

6       "Qualified expenses" means expenditures made by a qualified  
7 agricultural business, including expenditures for:

- 8       (1) The care and production of livestock and livestock  
9       products, poultry and poultry products, apiary  
10       products, and plant and animal production for nonfood  
11       uses;
- 12       (2) The planting, cultivating, harvesting, and processing  
13       of crops; and
- 14       (3) The farming or ranching of any plant or animal species  
15       in a controlled salt, brackish, or freshwater  
16       environment."

17       SECTION 3. The agribusiness development corporation, in  
18 consultation with the department of taxation, shall pre-qualify,  
19 pre-approve, monitor, and evaluate any taxpayer applying for or  
20 who has used the agricultural business investment tax credit.  
21 The agribusiness development corporation, in consultation with  
22 the department of taxation, shall also monitor and evaluate the



1 effectiveness of the agricultural business investment tax  
2 credit.

3 SECTION. 4. The agribusiness development corporation shall  
4 report to the legislature on an annual basis no later than  
5 twenty days prior to the beginning of each regular session, its  
6 evaluation and effectiveness of the tax credit. The report  
7 shall also include the corporation's findings and  
8 recommendations to improve the effectiveness of the tax credit  
9 to further encourage the development of agricultural businesses  
10 situated on lands designated as important agricultural lands.

11 SECTION 5. There is appropriated out of the general  
12 revenues of the State of Hawaii the sum of \$ or so much  
13 thereof as may be necessary for fiscal year 2007-2008 and the  
14 sum of \$ or so much thereof as may be necessary for  
15 fiscal year 2008-2009 to the agribusiness development  
16 corporation for the costs of collecting and analyzing data  
17 related to the use of the agricultural business investment tax  
18 credit.

19 The sums appropriated shall be expended by the department  
20 of agriculture.

21 SECTION 6. New statutory material is underscored.



# S.B. NO. 1221

1 SECTION 7. This Act shall take effect on July 1, 2007.

2

INTRODUCED BY: *Bruno K. D. B/R*



**Report Title:**

Agricultural business investment tax credit.

**Description:**

Establishes the agricultural business investment tax credit.

