
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that section 235-110.7,
2 Hawaii Revised Statutes, relating to the capital goods excise
3 tax credit, has been difficult to administer for both taxpayers
4 and the department of taxation because the section references
5 Internal Revenue Code provisions as of December 31, 1984. Since
6 1984, many of these Internal Revenue Code sections have been
7 repealed or substantially amended. To assist the administration
8 of this frequently used income tax credit, this Act amends
9 section 235-110.7 to eliminate, to the extent possible,
10 references to outdated Internal Revenue Code provisions. This
11 bill is not intended to change the application of section
12 235-110.7.

13 SECTION 2. Section 235-110.7, Hawaii Revised Statutes is
14 amended to read as follows:

15 "**§235-110.7 Capital goods excise tax credit.** [~~(a) There~~
16 ~~shall be allowed to each taxpayer subject to the tax imposed by~~
17 ~~this chapter a capital goods excise tax credit which shall be~~



PROPOSED S.B. NO. 591 S.D. 1

1 ~~deductible from the taxpayer's net income tax liability, if any,~~
2 ~~imposed by this chapter for the taxable year in which the credit~~
3 ~~is properly claimed.~~

4 ~~The amount of the tax credit shall be determined by the~~
5 ~~application of the following rates against the cost of the~~
6 ~~eligible depreciable tangible personal property used by the~~
7 ~~taxpayer in a trade or business and placed in service within~~
8 ~~Hawaii after December 31, 1987. For calendar years beginning~~
9 ~~after: December 31, 1987, the applicable rate shall be three~~
10 ~~per cent; December 31, 1988, and thereafter, the applicable rate~~
11 ~~shall be four per cent. For taxpayers with fiscal taxable~~
12 ~~years, the applicable rate shall be the rate for the calendar~~
13 ~~year in which the eligible depreciable tangible personal~~
14 ~~property used in the trade or business is placed in service~~
15 ~~within Hawaii.~~

16 ~~In the case of a partnership, S corporation, estate, or~~
17 ~~trust, the tax credit allowable is for eligible depreciable~~
18 ~~tangible personal property which is placed in service by the~~
19 ~~entity. The cost upon which the tax credit is computed shall be~~
20 ~~determined at the entity level. Distribution and share of~~
21 ~~credit shall be determined by rules.~~



1 ~~In the case of eligible depreciable tangible personal~~
2 ~~property for which a credit for sales or use taxes paid to~~
3 ~~another state is allowable under section 238 3(i), the amount of~~
4 ~~the tax credit allowed under this section shall not exceed the~~
5 ~~amount of use tax actually paid under chapter 238 relating to~~
6 ~~such tangible personal property.~~

7 ~~If a deduction is taken under section 179 (with respect to~~
8 ~~election to expense certain depreciable business assets) of the~~
9 ~~Internal Revenue Code of 1954, as amended, no tax credit shall~~
10 ~~be allowed for that portion of the cost of property for which~~
11 ~~the deduction was taken.~~

12 ~~(b) If the capital goods excise tax credit allowed under~~
13 ~~subsection (a) exceeds the taxpayer's net income tax liability,~~
14 ~~the excess of credit over liability shall be refunded to the~~
15 ~~taxpayer, provided that no refunds or payment on account of the~~
16 ~~tax credit allowed by this section shall be made for amounts~~
17 ~~less than \$1.~~

18 ~~All claims for tax credits under this section, including~~
19 ~~any amended claims, must be filed on or before the end of the~~
20 ~~twelfth month following the close of the taxable year for which~~
21 ~~the credits may be claimed. Failure to comply with the~~



1 ~~foregoing provision shall constitute a waiver of the right to~~
2 ~~claim the credit.~~

3 ~~(c) Application for the capital goods excise tax credit~~
4 ~~shall be upon forms provided by the department of taxation.~~

5 ~~(d) Sections 47 (with respect to dispositions of section~~
6 ~~38 property and the recapture percentages) of the Internal~~
7 ~~Revenue Code of 1954, as amended, as of December 31, 1984, and~~
8 ~~280F as operative for this chapter (with respect to limitation~~
9 ~~on investment tax credit and depreciation for luxury~~
10 ~~automobiles; limitation where certain property used for personal~~
11 ~~purposes) of the Internal Revenue Code of 1954, as amended,~~
12 ~~shall be operative for purposes of this section.~~

13 ~~(e) As used in this section, the definition of section 38~~
14 ~~property (with respect to investment in depreciable tangible~~
15 ~~personal property) as defined by section 48(a)(1)(A), (a)(1)(B),~~
16 ~~(a)(3), (a)(4), (a)(7), (a)(8), (a)(10)(A), (b), (c), (f), (l),~~
17 ~~(m), and (s) of the Internal Revenue Code of 1954, as amended as~~
18 ~~of December 31, 1984, is operative for the purposes of this~~
19 ~~section only.~~

20 ~~As used in this section:~~

21 ~~"Cost" means (1) the actual invoice price of the tangible~~
22 ~~personal property, or (2) the basis from which depreciation is~~



1 ~~taken under section 167 (with respect to depreciation) or from~~
2 ~~which a deduction may be taken under section 168 (with respect~~
3 ~~to accelerated cost recovery system) of the Internal Revenue~~
4 ~~Code of 1954, as amended, whichever is less.~~

5 ~~"Eligible depreciable tangible personal property" is~~
6 ~~section 38 property as defined by the operative provisions of~~
7 ~~section 48 and having a depreciable life under section 167 or~~
8 ~~for which a deduction may be taken under section 168 of the~~
9 ~~federal Internal Revenue Code of 1954, as amended.~~

10 ~~"Placed in service" means the earliest of the following~~
11 ~~taxable years:~~

12 ~~(1) The taxable year in which, under the:~~

13 ~~(A) Taxpayer's depreciation practice, the period for~~
14 ~~depreciation; or~~

15 ~~(B) Accelerated cost recovery system, a claim for~~
16 ~~recovery allowances; with respect to such~~
17 ~~property begins; or~~

18 ~~(2) The taxable year in which the property is placed in a~~
19 ~~condition or state of readiness and availability for a~~
20 ~~specifically assigned function.~~

21 ~~"Purchase" means an acquisition of property.~~



1 ~~"Tangible personal property" means tangible personal~~
2 ~~property which is placed in service within Hawaii after~~
3 ~~December 31, 1987, and the purchase or importation of which~~
4 ~~resulted in a transaction which was subject to the imposition~~
5 ~~and payment of tax at the rate of four per cent under chapter~~
6 ~~237 or 238. "Tangible personal property" does not include~~
7 ~~tangible personal property which is an integral part of a~~
8 ~~building or structure or tangible personal property used in a~~
9 ~~foreign trade zone, as defined under chapter 212.]~~ (a) Capital
10 goods excise tax credit allowed. There shall be allowed to each
11 taxpayer subject to the tax imposed by this chapter a capital
12 goods excise tax credit which shall be deductible from the
13 taxpayer's net income tax liability, if any, imposed by this
14 chapter for the taxable year in which the credit is properly
15 claimed, if the following conditions are met:

- 16 (1) The taxpayer purchases or imports eligible property;
17 (2) The purchase or import of eligible property results in
18 a transaction that is subject to the imposition and
19 payment of tax at the rate of four per cent under
20 chapters 237 or 238;
21 (3) The eligible property is used by the taxpayer in a
22 trade or business; and



1 (4) The eligible property is placed in service within
2 Hawaii.

3 (b) Amount of credit. The amount of the tax credit shall
4 be four per cent of the basis, as defined in subsection (q), of
5 eligible property used by the taxpayer in a trade or business
6 and placed in service within Hawaii. Any credit claimed under
7 this section shall be subject to the following limitations:

8 (1) In the case of eligible property for which a credit
9 for sales or use taxes paid to another state is
10 allowable under section 238-3(i), the amount of the
11 tax credit allowed under this section shall not exceed
12 the amount of use tax actually paid under chapter 238
13 relating to such tangible personal property.

14 (2) If a deduction is taken under section 179 of the
15 Internal Revenue Code of 1986, as amended, no tax
16 credit shall be allowed for that portion of the basis
17 of property for which the deduction was taken.

18 (3) Solar and wind energy property. If a taxpayer is
19 eligible for both the income tax credit under section
20 235-12.5, and the capital goods excise tax credit for
21 a particular solar or wind energy property, the credit
22 under section 235-12.5, shall be deducted from the



1 taxpayer's net income tax liability before the capital
2 goods excise tax credit.

3 (c) Credit allowed to a partnership, S corporation, estate,
4 or trust. In the case of a partnership, S corporation, estate, or
5 trust, the tax credit allowable is for eligible property that is
6 placed in service by the entity. The basis upon which the tax
7 credit is computed shall be determined at the entity level.

8 (d) Credit is refundable. If the capital goods excise tax
9 credit allowed under subsection (a) exceeds the taxpayer's net
10 income tax liability, the excess of credit over liability shall
11 be refunded to the taxpayer; provided that no refunds or payment
12 on account of the tax credit allowed by this section shall be
13 made for amounts less than \$1.

14 (e) Time for claiming credit. All claims for tax credits
15 under this section, including any amended claims, shall be filed
16 on or before the end of the twelfth month following the close of
17 the taxable year for which the credits may be claimed. Failure
18 to comply with the foregoing provision shall constitute a waiver
19 of the right to claim the credit.

20 (f) Taxable year in which credit is allowable. The credit
21 shall be allowed only for the first taxable year in which the
22 property is placed in service by the taxpayer. If in the first



PROPOSED

S.B. NO. 591
S.D. 1

1 taxable year in which a taxpayer places property in service no
2 portion of the property qualifies as eligible property, no
3 credit shall be allowed to the taxpayer with respect to the
4 property. If a portion of the property qualifies as eligible
5 property in the first year in which the property is placed in
6 service, then a credit only as to the portion that qualifies
7 shall be allowed to the taxpayer.

8 (g) Department's forms. Application for the capital goods
9 excise tax credit shall be upon forms provided by the department
10 of taxation.

11 (h) Credit is a taxable income item. The taxpayer shall
12 treat the amount of credit allowable and claimed as a taxable
13 income item for the taxable year in which it is properly
14 recognized under the method of accounting used to compute
15 taxable income. Alternatively, the basis of eligible property
16 for depreciation or ACRS purposes for state income taxes shall
17 be reduced by the amount of credit allowable and claimed.

18 (i) Recapture of credit. Recapture of the previously
19 claimed credit applies where a recapture event occurs under
20 paragraph (2) and the percentage of credit provided in paragraph
21 (1) shall be included as income under chapter 235 or 241 in the
22 year a recapture event occurs.



1 (1) Recapture percentage. Where the recovery property or
 2 depreciable property ceases to be eligible property
 3 within the following period, which constitutes a full
 4 year after being placed in service, the accompanying
 5 percentage shall be the recapture percentage:

<u>Recapture period</u>	<u>Recapture percentage</u>
7 <u>One full year</u>	<u>100</u>
8 <u>Two full years</u>	<u>66</u>
9 <u>Three full years</u>	<u>33</u>
10 <u>Four full years</u>	<u>0</u>

11 (2) Recapture event. A recapture event occurs when:

12 (A) Property ceases to be eligible property with
 13 respect to a taxpayer. Property ceases to be
 14 eligible property with respect to a taxpayer
 15 when:

16 (i) The property ceases to be owned by taxpayer.
 17 Recapture would be triggered upon
 18 disposition of the property.

19 (ii) The property ceases to be eligible property.
 20 The cessation shall be treated as having
 21 occurred on the first day of the taxable
 22 year.



1 (B) There is a decrease in the business use of listed
2 property to less than fifty per cent. During the
3 recapture period, all or a portion of the credit
4 taken in an earlier year for listed property may
5 be subject to recapture if:

6 (i) The percentage of business use falls below
7 the percentage of business use for the year
8 the listed property was placed in service;
9 or

10 (ii) The listed property is converted from
11 business to personal use and does not
12 satisfy the more-than-fifty per cent
13 business use test. The terms "listed
14 property" and "the more-than-fifty per cent
15 business use test" are defined in
16 subsection (q).

17 (C) There is a decrease in basis of eligible
18 property. During the recapture period, all or a
19 portion of previously taken credit as determined
20 in paragraph (1) may be subject to recapture if
21 the basis of eligible property used to calculate
22 the credit decreases, either through a refund in



1 the purchase price or usage of the property for
2 personal purposes.

3 (j) Application of recapture rules to partnerships,
4 S corporations, estates, or trusts shall be as follows:

5 (1) In general. In the case of a partnership,
6 S corporation, estate, or trust, the recapture rule
7 applies to a partner, shareholder, or beneficiary who
8 originally received the benefit of a credit if within
9 the recapture period:

10 (A) The S corporation, partnership, estate, or trust
11 disposes of eligible property;

12 (B) If eligible property otherwise ceases to be
13 eligible property in the hands of the entity; or

14 (C) The partner's, shareholder's, or beneficiary's
15 interest in the entity is reduced, for example,
16 by sale of interest in the entity, below a
17 specified percentage as defined in subsection

18 (g).

19 (2) Prior recapture determination. In making a recapture
20 determination, there may be taken into account any
21 prior recapture determination made with respect to the



1 partner, shareholder, or beneficiary in connection
2 with the same property.

3 (k) Application of recapture rules to valid S corporation
4 election shall be as follows:

5 (1) In general. If a C corporation makes a valid election
6 under section 235-2.4 to be an S corporation, then on
7 the last day of the taxable year immediately preceding
8 the first taxable year for which the election is
9 effective, any eligible property the basis of which
10 was taken into account to compute the C corporation's
11 credit allowable in taxable years before the first
12 taxable year for which the election is effective and
13 which has not been disposed of or otherwise ceased to
14 be eligible property with respect to the C corporation
15 before the last day shall be considered as having
16 ceased to be eligible property with respect to the
17 C corporation and the recapture rule shall apply.

18 However, the recapture rule shall not apply if the
19 S corporation and each of its shareholders on the
20 first day of the first taxable year for which the
21 election under section 235-2.4 is to be effective, or



1 on the date of the election, whichever is later,
2 execute an agreement as is described in paragraph (2).

3 (2) The agreement shall:

4 (A) Be signed by the shareholders; and on behalf of
5 the S corporation by a person who is duly
6 authorized;

7 (B) State that if eligible property for which the
8 credit was taken is later disposed of by, or
9 ceases to be eligible property with respect to
10 the S corporation during the recapture period and
11 during a taxable year for which the S election is
12 effective, each signer agrees to notify the
13 director of a disposition or cessation and to be
14 jointly and severally liable to pay the director
15 an amount equal to the increase in tax provided
16 by the recapture rule;

17 (C) State the name, address, and taxpayer
18 identification number of each party to the
19 agreement;

20 (D) Be filed with the department of taxation for the
21 taxable year immediately preceding the first



PROPOSED S.B. NO. 591 S.D. 1

1 taxable year for which the S election is
2 effective; and
3 (E) Be filed with the department of taxation on or
4 before the due date, including extensions of
5 time, of the return, unless the director permits,
6 upon a showing of good cause, that the agreement
7 may be filed on a later date.

8 (3) Shareholder's share of the amount of credit recapture.
9 A shareholder's share of the amount of credit
10 recapture shall be determined as if the property had
11 ceased to be eligible property as of the last day of
12 the taxable year immediately preceding the first
13 taxable year for which the S election is effective;
14 provided that, the recapture percentage shall be
15 determined as if the property ceased to be eligible
16 property on the date the property actually ceased to
17 be eligible property.

18 (1) Transfer of eligible property out of Hawaii. During
19 the recapture period, all or a portion of previously taken
20 credit as determined in subsection (i)(1) shall be subject to
21 recapture if the eligible property is transferred out of the
22 State of Hawaii.



1 (m) Exceptions to the recapture rule shall be as follows:

2 (1) Transfer by reason of death. A transfer by reason of
3 death is not considered to be a disposition of
4 eligible property subject to the recapture rule. This
5 exception to the recapture rule applies to transfers
6 by reason of the death of a sole proprietor, partner,
7 S corporation shareholder, or beneficiary of an estate
8 or trust.

9 (2) Transaction to which section 381(a) of the Internal
10 Revenue Code applies. A disposition of eligible
11 property in a transaction to which section 381(a) of
12 the Internal Revenue Code of 1986, as amended, applies
13 is not considered to be a disposition of eligible
14 property, subject to the recapture rule; provided
15 that, if the acquiring corporation disposes of the
16 eligible property before the close of the recapture
17 period, there shall be an early disposition and the
18 recapture rule shall be triggered.

19 (3) Mere change in form of conducting a trade or business.
20 Recapture is not required as a result of a mere change
21 in the form of conducting a trade or business if:



- 1 (A) The property is retained as eligible property in
2 the same trade or business;
- 3 (B) The transferor, or in a case where the transferor
4 is a partnership, estate or trust, or
5 S corporation, the partner, beneficiary, or
6 shareholder, of eligible property retains a
7 substantial interest in the trade or business;
- 8 (C) Substantially all the property, whether or not
9 eligible property, necessary to the trade or
10 business is transferred in the change in form;
11 and
- 12 (D) The basis of eligible property in the hands of
13 the transferee is determined in whole or in part
14 by reference to the basis of eligible property in
15 the hands of the transferor.
- 16 (4) Paragraph (3) shall not apply to the transfer of
17 eligible property if section 381 of the Internal
18 Revenue Code of 1986, as amended, applies to the
19 transfer.
- 20 (5) S corporation. Neither an election to be treated as
21 an S corporation, nor a termination or loss of
22 S corporation status automatically triggers recapture.



1 However, recapture may result if one or more of the
2 recapture events discussed in paragraph (6) occurs.

3 In determining whether a reduction in a shareholder's
4 interest will result in recapture, the 66 2/3 per cent
5 and 33 1/3 per cent rules apply even if the
6 corporation is no longer an S corporation.

7 (6) Disposition or cessation. Property ceases to be
8 eligible property with respect to a transferor, or in
9 a case where the transferor is a partnership, estate
10 or trust, or S corporation, the partner, beneficiary
11 or shareholder, and the transferor shall make a
12 recapture determination if during the recapture
13 period:

14 (A) The transferee disposes of eligible property;

15 (B) Eligible property otherwise ceases to be eligible
16 property in the hands of the transferee; or

17 (C) The transferor, or in a case where the transferor
18 is a partnership, estate or trust, or

19 S corporation, the partner, beneficiary, or
20 shareholder, does not retain a substantial

21 interest in the trade or business directly or
22 indirectly through ownership in other entities;



PROPOSED

S.B. NO. 591
S.D. 1

1 provided that the other entities' bases in the
2 interests are determined in whole or in part by
3 reference to the bases of the interest in the
4 hands of the transferor.

5 (n) Transfer between spouses incident to divorce. A
6 transfer between spouses incident to divorce is not considered
7 to be a disposition, subject to the recapture rule. Subsequent
8 to a transfer between spouses or incident to divorce, a
9 disposition by the transferee during the recapture period may
10 result in recapture to the same extent as if the disposition had
11 been made by the transferor at that later date.

12 (o) Property destroyed by casualty. The recapture rule
13 shall not apply to eligible property which is disposed of or
14 otherwise ceases to be eligible property with respect to the
15 taxpayer as a result of its destruction or damage by fire,
16 storm, shipwreck, or other casualty, or theft.

17 (p) Downward basis adjustment pursuant to section 754 of
18 the Internal Revenue Code. In the case of a partnership, a
19 downward basis adjustment pursuant to section 754 of the
20 Internal Revenue Code of 1986, as amended, is not subject to
21 recapture because use of the property is not considered to be
22 terminated for purposes of the credit.



1 (q) Definitions. For purposes of this section:

2 "33 1/3 per cent rule" means that once there has been a
3 recapture by reason of the 66 2/3 per cent rule, there is no
4 further recapture until the partner's, shareholder's, or
5 beneficiary's interest is reduced to less than 33 1/3 per cent
6 of its interest at the time the credit was taken. Thereafter,
7 any reduction in interest, however small, shall again subject
8 the partner, shareholder, or beneficiary to the recapture
9 provisions.

10 "66 2/3 per cent rule" means that if a partner's,
11 shareholder's, or beneficiary's interest in the entity is
12 reduced below 66 2/3 per cent of its interest at the time the
13 credit was taken, a pro rata share of the partner's,
14 shareholder's, or beneficiary's interest in the entity's
15 eligible property shall cease to be eligible property with
16 respect to the partner, shareholder, or beneficiary, and credit
17 recapture shall be required.

18 "ACRS" means the accelerated cost recovery system.

19 "Alternative energy property" consists of the following
20 types of property:

21 (1) A boiler, the primary fuel for which shall be an
22 alternate substance. An alternate substance is any



PROPOSED

1 substance other than oil, natural gas, or any product
2 of oil and natural gas;

3 (2) A burner, including necessary on-site equipment to
4 bring the alternate substance to the burner, for a
5 combustor other than a boiler if the primary fuel for
6 the burner will be an alternate substance;

7 (3) Equipment for turning an alternate substance into a
8 synthetic liquid, gaseous, or solid fuel;

9 (4) Equipment designed to modify existing equipment which
10 uses oil or natural gas as fuel or as feedstock so
11 that the existing equipment will use either a
12 substance other than oil and natural gas or oil mixed
13 with a substance other than oil and natural gas where
14 the other substance will provide not less than
15 twenty-five per cent of the fuel or feedstock;

16 (5) Equipment to convert coal, including lignite, or any
17 non-marketable substance derived therefrom, into a
18 substitute for a petroleum or natural gas derived
19 feedstock for the manufacture of chemicals or other
20 products, or coal, including lignite, or any substance
21 derived therefrom, into methanol, ammonia, or a
22 hydroprocessed coal liquid or solid;



PROPOSED

1 (6) Pollution control equipment required by federal,
 2 state, or local law, ordinances, regulations, or rules
 3 to be installed on or in connection with equipment
 4 described in paragraphs (1) to (5) of this definition;

5 (7) Equipment used for the unloading, transfer, storage,
 6 reclaiming from storage, and preparation, including,
 7 but not limited to, washing, crushing, drying, and
 8 weighing, at the point of use for an alternate
 9 substance for use in equipment described in paragraphs
 10 (1) to (6) of this definition. This includes
 11 equipment used for the storage of fuel derived from
 12 garbage at the site at which fuel was produced from
 13 garbage; and

14 (8) Equipment used to produce, distribute, or use energy
 15 from a geothermal deposit, but only, in the case of
 16 electricity generated by geothermal power, up to, but
 17 not including, the electrical transmission state.

18 "Basis" means the cost of property.

19 (1) In general. The basis of new eligible property which
 20 has been constructed, reconstructed, or erected for
 21 the taxpayer's use includes that portion of the cost
 22 of the property that is subject to the imposition and



PROPOSED

S.B. NO. 591
S.D. 1

1 payment of tax at the rate of four per cent under
2 chapter 237 or 238.

3 (2) Whether the cost or other basis of the construction,
4 reconstruction, or erection is attributable to all or
5 part of a property placed in service may be determined
6 by engineering estimates or by cost accounting
7 records.

8 (3) In the case of reconstructed property, the cost of the
9 property does not include the adjusted basis of the
10 reconstructed property at the time the reconstruction
11 commences. However, the reconstructed property may
12 qualify as used eligible property, as discussed in
13 this subsection, and the cost of the property may
14 include the adjusted basis of the reconstructed
15 property at the time the reconstruction commences if
16 the adjusted basis of the property is subject to the
17 imposition and payment of tax at the rate of four per
18 cent under chapter 237 or 238.

19 (4) If constructed, reconstructed, or erected property is
20 placed in service over a span of more than one taxable
21 year, the credit shall be allowed to the taxpayer for
22 a particular taxable year with respect to so much of



PROPOSED

S.B. NO. 591
S.D. 1

1 the eligible property that is subject to the
2 imposition and payment of tax at the rate of four per
3 cent under chapter 237 or 238.

4 (5) Basis of used eligible property. The basis of used
5 eligible property is the cost of the property that is
6 subject to the imposition and payment of tax at the
7 rate of four per cent under chapter 237 or 238.

8 (6) Basis for eligible property of a partnership,
9 S corporation, estate, or trust. In the case of a
10 partnership, S corporation, estate, or trust, the
11 credit allowable is for eligible property that is
12 placed in service by the entity. The basis upon which
13 the credit is computed is determined at the entity
14 level. Each partner, S corporation shareholder, or
15 beneficiary of an estate or trust shall separately
16 take into account for its taxable year with or within
17 which the entity's taxable year ends, the partner's,
18 shareholder's, or beneficiary's share of the basis and
19 resulting credit. A partner's share of the basis
20 shall be determined in accordance with the ratio in
21 effect on the date on which the eligible property is
22 placed in service in which the partners divide the



PROPOSED

S.B. NO. 591
S.D. 1

1 general profits of the partnership. The basis of
2 partnership eligible property that is subject to a
3 special allocation that is recognized under section
4 704(a) and 704(b) of the Internal Revenue Code of
5 1986, as amended, shall be recognized for purposes of
6 the credit, and an upward basis adjustment pursuant to
7 section 754 of the Internal Revenue Code of 1986, as
8 amended, is not eligible for the credit. A basis
9 adjustment under section 754 of the Internal Revenue
10 Code of 1986, as amended, is not eligible for the
11 credit because the adjustment is not a transaction
12 that is subject to the imposition and payment of tax
13 at the rate of four per cent under chapter 237 or 238.
14 Each S corporation shareholder's basis of eligible
15 property is the shareholder's allocated share of the
16 corporation's basis in the eligible property. A
17 beneficiary's share of the basis is apportioned
18 between the entity and the beneficiaries, based on the
19 income of the entity allocable to each on the date the
20 eligible property is placed in service. The term
21 "beneficiary" includes an heir, legatee, or devisee.



PROPOSED**S.B. NO. 591
S.D. 1**

1 (7) Basis limitation if a deduction is taken under section
2 179 of the Internal Revenue Code. If a deduction is
3 taken under section 179 of the Internal Revenue Code
4 of 1986, as amended, the portion of the basis of
5 property for which the deduction is taken is not
6 considered in determining the amount of credit
7 allowable.

8 (8) Basis limitation for vehicles subject to section 280F
9 of the Internal Revenue Code. For purposes of
10 determining the amount of credit available, the basis
11 for vehicles subject to section 280F of the Internal
12 Revenue Code of 1986, as amended, used predominantly
13 for business purposes is limited to an amount equal to
14 the amount necessary to obtain the maximum
15 depreciation deduction allowed in the first year for
16 both luxury passenger automobiles and trucks, vans and
17 sport utility vehicles under section 280F of the
18 Internal Revenue Code of 1986, as amended. Use is
19 predominantly for business purposes if over fifty per
20 cent of the total use is for business purposes. This
21 limitation applies before any percentage reduction for
22 personal use, as discussed in paragraph (9). If more



PROPOSED

S.B. NO. 591
S.D. 1

1 than one taxpayer has an interest in a vehicle subject
2 to section 280F of the Internal Revenue Code of 1986,
3 as amended, they are treated as one taxpayer for
4 purposes of the basis limitation. The limitation is
5 to be apportioned among the taxpayers according to
6 their interests in the passenger automobile.

7 (9) Basis limitation for listed property that does not
8 satisfy the more-than-fifty per cent business use
9 test. Listed property will not be treated as eligible
10 property, and the credit is denied if the listed
11 property does not satisfy the more-than-fifty per cent
12 business use test. If the qualified business use
13 satisfies the more-than-fifty per cent business use
14 test, but is not used one hundred per cent for
15 business, the amount of credit is limited to the
16 percentage of business use. The amount of credit
17 allowable in the taxable year in which the listed
18 property is placed in service is unaffected by any
19 increase in the business use percentage in a
20 subsequent year; provided that, if there is a
21 reduction in the business use of property, then the



1 credit taken with respect to the listed property may
2 be subject to recapture as provided in subsection (i).

3 "Biomass property" means property that is a boiler, the
4 primary fuel for which is an alternate substance, a burner,
5 including necessary on-site equipment to bring the alternate
6 substance to the burner, for a combustor other than a boiler if
7 the primary fuel will be an alternate substance, or equipment
8 for converting an alternate substance into a qualified fuel,
9 including equipment used to store fuel derived from garbage at
10 the site at which such fuel was produced from garbage. For
11 purposes of defining biomass property, an alternate substance
12 means any substance other than an inorganic substance and coal,
13 including lignite, or any coal product. Biomass property also
14 includes pollution control equipment which is required to be
15 installed on or in connection with the above equipment, as well
16 as equipment used for the unloading, transfer, storage,
17 reclaiming from storage, and preparation at point of use of an
18 alternate substance for use in that equipment.

19 "Building" means any structure or edifice that encloses a
20 space within its walls, and is usually covered by a roof. The
21 term also includes any such structure that is constructed by or
22 for a lessee, even if the structure must be removed, or



PROPOSED

S.B. NO. 591 S.D. 1

1 ownership of the structure reverts to the lessor at the
2 termination of the lease.

3 "Bulk storage" means the storage of a commodity in a large
4 mass before its consumption or use.

5 "Cogeneration equipment" means property which is an
6 integral part of a system for using the same fuel to produce
7 both qualified energy and electricity at an industrial or
8 commercial facility. For purposes of this paragraph, the term
9 "industrial" means the purification of water and the
10 desalinization of water.

11 "Cost" means the lesser of either:

- 12 (1) The actual invoice price of eligible property; or
- 13 (2) The basis from which a deduction is taken under
- 14 section 167 or 168 of the Internal Revenue Code of
- 15 1986, as amended.

16 "Credit" means the capital goods excise tax credit.

17 "Eligible property."

18 (1) Eligible property is defined as:

- 19 (A) Property which is tangible personal property or
- 20 other tangible property;

- 21 (B) Recovery property, within the meaning of section
- 22 168 of the Internal Revenue Code of 1986, as



PROPOSED

S.B. NO. 591
S.D. 1

1 amended, without regard to useful life, or any
2 other property with respect to which depreciation
3 is allowable to the taxpayer; and

4 (C) Property which has an estimated useful life or
5 recovery period, determined as of the time the
6 property is placed in service, of three years or
7 more. A property shall have the same estimated
8 useful life or recovery period as that which is
9 used for depreciation or ACRS purposes.

10 (2) Property which is eligible for the credit is (A) new
11 eligible property or (B) used eligible property. The
12 terms "new eligible property" and "used eligible
13 property" are defined in this subsection.

14 (3) Tangible personal property, other than a central air
15 conditioning or heating unit, may qualify as eligible
16 property regardless of whether it is used as an
17 "integral part" of an activity, as defined in this
18 subsection, or constitutes a research or storage
19 facility used in connection with such activity, as
20 required for "other tangible property," as defined in
21 this subsection.



PROPOSED

S.B. NO. 591
S.D. 1

- 1 (4) Recovery or depreciable property requirement.
2 Eligible property shall be either recovery property
3 within the meaning of section 168 of the Internal
4 Revenue Code of 1986, as amended, without regard to
5 useful life, or any other property with respect to
6 which depreciation is allowed by the taxpayer.
- 7 (A) If only part of a property is depreciable, only a
8 pro rata portion of the property may qualify as
9 eligible property.
- 10 (B) Property does not qualify as eligible property to
11 the extent that a deduction for depreciation
12 thereon is disallowed under section 274 of the
13 Internal Revenue Code of 1986, as amended.
- 14 (5) Boilers fueled by oil or gas. Generally, any boiler,
15 used in Hawaii, which is primarily fueled by petroleum
16 or petroleum products, including natural gas,
17 qualifies as eligible property.
- 18 (6) Energy property. Energy property, as defined in this
19 subsection, qualifies as eligible property.
- 20 (7) Property which generally does not qualify as eligible
21 property. Certain classes of property that generally



PROPOSED

S.B. NO. 591
S.D. 1

1 do not qualify as eligible property and thereby are
2 not eligible for the credit include:

3 (A) A building or its structural components.

4 (B) Property purchased for use in a foreign trade
5 zone as defined in chapter 212.

6 (C) Property used by an organization which is exempt
7 from the tax imposed by chapter 235, unless the
8 property is used predominantly in an unrelated
9 trade or business, the income from which is
10 subject to tax under chapter 235.

11 (D) Intangible property.

12 (E) Property used for lodging.

13 (8) Exceptions to paragraph (7):

14 (A) A nonlodging commercial facility that is
15 available to persons not using the lodging
16 facility on the same basis as it is available to
17 tenants of the lodging facility may qualify as
18 eligible property.

19 (B) Property used by a hotel, motel, or other similar
20 establishment in connection with the trade or
21 business of furnishing lodging where more than
22 one half of the accommodation in the hotel,



PROPOSED

1 motel, or other similar establishment is used by
 2 transients may qualify as eligible property. An
 3 accommodation will be considered to accommodate
 4 transients if the rental period is normally less
 5 than thirty days.

6 (C) Coin-operated vending machines and coin-operated
 7 washing machines and dryers may qualify as
 8 eligible property.

9 "Energy property" means certain property intended to reduce
 10 the amount of oil, natural gas, or other energy consumed in
 11 heating or cooling a building or used in an industrial process.

12 Energy property includes:

- 13 (1) Alternative energy property;
- 14 (2) Solar or wind energy property;
- 15 (3) Specially defined energy property;
- 16 (4) Recycling equipment;
- 17 (5) Hydroelectric generating property;
- 18 (6) Cogeneration equipment; and
- 19 (7) Biomass property.

20 "Hydroelectric generating property" means property
 21 installed at a hydroelectric site which is:



PROPOSED

S.B. NO. 591
S.D. 1

1 (1) Equipment for increased capacity to generate
2 electricity by water up to, but not including, the
3 electrical transmission stage; and

4 (2) Structures for housing the generating equipment, fish
5 passageways, and dam rehabilitation property, required
6 by reason of the installation of equipment described
7 in paragraph (1) of this definition.

8 "Integral part" means property used directly in one of the
9 activities specified as a condition under which other tangible
10 property may be considered eligible property.

11 "Lease" is defined as it is for federal income tax
12 purposes.

13 "Listed property" means passenger automobiles and other
14 property used as a means of transportation; property generally
15 used for purposes of entertainment, recreation, or amusement;
16 computers and related peripheral equipment; and other property
17 as determined by the department of taxation.

18 "Manufacturing, production, and extraction" means:

19 (1) Construction, reconstruction, or making of property
20 out of scrap, salvage, junk, new, or raw material by
21 processing, manipulating, refining, or changing the



PROPOSED

S.B. NO. 591
S.D. 1

1 form of an article, or by combining or assembling two
2 or more articles;

3 (2) Cultivation of the soil;

4 (3) Raising of livestock; or

5 (4) Mining of minerals.

6 "More-than-fifty per cent business use test" means that
7 certain business use of listed property, referred to as
8 "qualified business use," must exceed fifty per cent. For
9 purposes of determining the more-than-fifty per cent business
10 use test, use in a trade or business does not include use in an
11 investment or other activity conducted for the production of
12 income. However, if the more-than-fifty-per-cent-business-use
13 test has been met, the percentage of investment use may be added
14 in when figuring the total business use for purposes of
15 calculating the amount of credit allowable.

16 "New eligible property" means property that qualifies under
17 at least one of the following conditions:

18 (1) The property is eligible property, the original use of
19 which commences with the taxpayer after the date the
20 taxpayer acquires it;

21 (2) The property is eligible property that is:



PROPOSED

S.B. NO. 591
S.D. 1

1 (A) Sold and leased back by the same taxpayer within
2 three months of the date the property was

3 originally placed in service by the taxpayer; or

4 (B) Leased to the same taxpayer within three months

5 of the date the property was originally placed in

6 service by that taxpayer; or

7 (3) The property is eligible property, the construction,

8 reconstruction, or erection of which is placed in

9 service by the taxpayer, but only with respect to that

10 portion of the basis as is discussed in paragraphs (1)

11 through (5) of the definition of "basis" in this

12 subsection. It is not necessary that the materials

13 entering into the construction, reconstruction, or

14 erection be new in use. Construction, reconstruction,

15 or erection begins when physical work is started on

16 the construction, reconstruction, or erection.

17 "Original use" means the first use to which the property is
18 put, whether or not it is the taxpayer's first use of the
19 property.

20 "Other tangible property" is tangible property, other than
21 tangible personal property, as defined in this subsection, which



1 qualifies as eligible property by meeting one of the following
2 three conditions:

- 3 (1) The property is used as an integral part of
4 manufacturing, production, extraction, or furnishing
5 transportation, communication, electrical energy, gas
6 water, or sewage disposal services;
- 7 (2) The property is used as a research or storage facility
8 used in connection with an activity referred to in
9 paragraph (1) of this definition; or
- 10 (3) The property is a facility used in connection with an
11 activity referred to in paragraph (1) of this
12 definition for the bulk storage of fungible
13 commodities, including commodities in a liquid or
14 gaseous state.

15 "Placed in service" means property that is placed in
16 service in the earliest of the following taxable years:

- 17 (1) The taxable year in which the period for depreciation
18 with respect to the property begins;
- 19 (2) The taxable year in which, under ACRS, a claim for
20 recovery allowances with respect to the property
21 begins; or



PROPOSED S.B. NO. 591 S.D. 1

1 (3) The taxable year in which the property is placed in a
2 condition or state of readiness and available for a
3 specifically assigned function by the taxpayer.

4 In a sale-leaseback transaction, the property shall be
5 considered to be placed in service on the date the property was
6 first placed in service by the seller-lessee.

7 "Property used for lodging" means property which is used
8 predominantly to furnish lodging; or in connection with the
9 furnishing of lodging.

10 (1) Property used predominantly to furnish lodging
11 includes that which is used in the living quarters of
12 a lodging facility such as, for example, beds, other
13 furniture, refrigerators, ranges, and other equipment.

14 (2) A lodging facility includes an apartment house, hotel,
15 motel, dormitory or other facility, or part of a
16 facility, where sleeping accommodations are provided
17 and let; provided that the term does not include a
18 facility which is used primarily as a means of
19 transportation such as, for example, an aircraft or
20 vessel, or to provide medical or convalescent
21 services, even though sleeping accommodations are
22 provided.



PROPOSED

S.B. NO. 591
S.D. 1

1 (3) Property used predominantly in connection with the
2 furnishing of lodging includes that which is used to
3 operate a lodging facility or to serve tenants,
4 whether furnished by the owner of the lodging facility
5 or another person; provided that, property used in
6 furnishing, to the management of a lodging facility or
7 its tenants, electrical energy, water, sewage disposal
8 services, gas, telephone services or other similar
9 utility services shall not be treated as property used
10 in connection with the furnishing of lodging.

11 "Purchase" means an acquisition of property.

12 "Qualified business use" means use of listed property that
13 meets the more-than-fifty per cent business use test.

14 "Qualified energy" means steam, heat, or other forms of
15 useful energy, other than electric energy, to be used for
16 industrial, commercial, or space-heating purposes other than in
17 the production of electricity.

18 "Recapture period" means the period beginning on the first
19 day of the month the eligible property is placed in service, and
20 extending for a full three years.

21 "Recycling equipment" means any equipment that is used
22 exclusively to sort and prepare solid waste for recycling or in



1 the recycling of solid waste. The term recycling equipment does
2 not include any equipment used in a process after the first
3 marketable product is produced or in the case of recycling iron
4 or steel, any equipment used to reduce the waste to a molten
5 state, and in any process thereafter.

6 (1) Ten per cent virgin material allowed. Any equipment
7 used in the recycling of material which includes some
8 virgin materials shall not be treated as failing to
9 meet the exclusive requirements of this definition if
10 the amount of the virgin materials is ten per cent or
11 less.

12 (2) The term recycling equipment includes any equipment
13 that is used in the conversion of solid waste into a
14 fuel or into useful energy such as steam, electricity,
15 or hot water.

16 "Sale-leaseback" is defined as it is for federal income tax
17 purposes.

18 "Solar or wind energy property" means any equipment which
19 uses solar or wind energy to generate electricity, heat or cool,
20 or provide hot water for use in a structure, or provide solar
21 process heat.



1 "Specially defined energy property" means property which is
2 installed in an existing industrial or commercial facility to
3 reduce the amount of energy consumed in the existing industrial
4 or commercial process.

5 "Specified percentage" means whichever of these two rules
6 applies: 66 2/3 per cent rule; or 33 1/3 per cent rule.

7 "Structural component" means parts of a building such as
8 walls, partitions, floors, ceilings, and permanent coverings;
9 all components of a central air conditioning or heating system;
10 plumbing and plumbing fixtures; electric wiring and lighting
11 fixtures, chimneys; stairs, escalators, and elevators. The term
12 structural component does not include property which is
13 contained in or attached to a building such as production
14 machinery, the sole justification for the installation of which
15 is to meet temperature or humidity requirements that are
16 essential for the operation of other machinery of the processing
17 of materials or foodstuffs. Machinery may also meet this sole
18 justification test even though it incidentally provides for the
19 comfort of employees, or serves, to an insubstantial degree,
20 areas where the temperature or humidity requirements are not
21 essential.



PROPOSED**S.B. NO. 591
S.D. 1**

1 "Substantial interest" means when a transferor, or in a
2 case where the transferor is a partnership, estate or trust, or
3 S corporation, the partner, beneficiary, or shareholder, is
4 considered to have retained a substantial interest in the trade
5 or business if, after the change in form, the transferor's
6 interest in the trade or business is:

7 (1) Substantial in relation to the total income interest
8 of all the owners; or

9 (2) Equal to or greater than the transferor's interest
10 before the change in form.

11 A taxpayer shall not be considered to have retained a
12 substantial interest where the only basis for claiming
13 substantial interest is that the values of the interests
14 exchanged are equal. The determination of whether a taxpayer
15 has retained a substantial interest in the trade or business is
16 to be made immediately after the change in the form of
17 conducting the trade or business, and after each time the
18 taxpayer disposes of a portion of the taxpayer's interest in the
19 new enterprise.

20 "Tangible personal property" means any tangible property
21 except land and improvements thereto, such as buildings or other



PROPOSED

1 inherently permanent structures, including items that are
2 structural, components of the buildings, or structures.

3 "Transportation business" means airlines, bus companies,
4 shipping or trucking companies, and oil pipeline companies.

5 "Used eligible property" means property that is eligible
6 property as defined in this subsection and the property is not
7 new eligible property as defined in this subsection."

8 SECTION 3. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 4. This Act shall take affect upon approval and
11 shall apply to taxable years beginning after December 31, 2008.



PROPOSED

Report Title:

Capital Goods Excise Tax Credit; Repeal and Reenactment

Description:

Repeals and reenacts the capital goods excise tax credit in order to reflect the definitions and other references to the Internal Revenue Code of 1954, as amended. (SD1)

