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# 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7 repealed or substantially amended.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 restates the  
9 capital goods excise tax credit to eliminate references to  
10 outdated Internal Revenue Code provisions. This Act is not  
11 intended to change the application of the capital goods excise  
12 tax credit.

13           In addition, federal and state case law on the federal  
14 investment tax credit, which the capital goods excise tax credit  
15 is based upon, has recognized that computer software is eligible  
16 tangible personal property. This Act further clarifies that  
17 computer software is eligible depreciable tangible personal



1 property in recognition of case law authority, notwithstanding a  
2 contrary practice by the department of taxation.

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

6 "PART . CAPITAL GOODS EXCISE TAX CREDIT

7 §235-A Definitions. For the purpose of this part:

8 "Alternative energy property" consists of the following  
9 types of property:

- 10 (1) A boiler, the primary fuel for which shall be an  
11 alternate substance. An alternate substance is any  
12 substance other than oil, natural gas, or any product  
13 of oil and natural gas;
- 14 (2) A burner, including necessary on-site equipment to  
15 bring the alternate substance to the burner, for a  
16 combustor other than a boiler if the primary fuel for  
17 the burner will be an alternate substance;
- 18 (3) Equipment for turning an alternate substance into a  
19 synthetic liquid, gaseous, or solid fuel;
- 20 (4) Equipment designed to modify existing equipment which  
21 uses oil or natural gas as fuel or as feedstock so  
22 that the existing equipment will use either a



1 substance other than oil and natural gas or oil mixed  
2 with a substance other than oil and natural gas where  
3 the other substance provides not less than twenty-five  
4 per cent of the fuel or feedstock;

5 (5) Equipment to convert coal, including lignite, or any  
6 non-marketable substance derived therefrom, into a  
7 substitute for a petroleum or natural gas derived  
8 feedstock for the manufacture of chemicals or other  
9 products, or coal, including lignite, or any substance  
10 derived therefrom, into methanol, ammonia, or a  
11 hydroprocessed coal liquid or solid;

12 (6) Pollution control equipment required by federal,  
13 state, or local law, ordinances, regulations, or rules  
14 to be installed on or in connection with equipment  
15 described in paragraphs (1) to (5);

16 (7) Equipment used for the unloading, transfer, storage,  
17 reclaiming from storage, and preparation, including,  
18 but not limited to, washing, crushing, drying, and  
19 weighing, at the point of use for an alternate  
20 substance for use in equipment described in paragraphs  
21 (1) to (6). This includes equipment used for the



1 storage of fuel derived from garbage at the site at  
2 which fuel was produced from garbage; and

- 3 (8) Equipment used to produce, distribute, or use energy  
4 from a geothermal deposit, but only, in the case of  
5 electricity generated by geothermal power, up to, but  
6 not including, the electrical transmission state.

7 "Basis" means the cost of property.

- 8 (1) The basis of new eligible property which has been  
9 constructed, reconstructed, or erected for the  
10 taxpayer's use includes that portion of the cost of  
11 the property that is subject to the imposition and  
12 payment of tax at the rate of four per cent under  
13 chapter 237 or 238.

- 14 (2) Whether the cost or other basis of the construction,  
15 reconstruction, or erection is attributable to all or  
16 part of a property placed in service may be determined  
17 by engineering estimates or by cost accounting  
18 records.

- 19 (3) In the case of reconstructed property, the cost of the  
20 property does not include the adjusted basis of the  
21 reconstructed property at the time the reconstruction  
22 commences. However, the reconstructed property may



1           qualify as used eligible property, as discussed in  
2           this section, and the cost of the property may include  
3           the adjusted basis of the reconstructed property at  
4           the time the reconstruction commences if the adjusted  
5           basis of the property is subject to the imposition and  
6           payment of tax at the rate of four per cent under  
7           chapter 237 or 238.

8           (4) If constructed, reconstructed, or erected property is  
9           placed in service over a span of more than one taxable  
10          year, the credit shall be allowed to the taxpayer for  
11          a particular taxable year with respect to so much of  
12          the eligible property that is subject to the  
13          imposition and payment of tax at the rate of four per  
14          cent under chapter 237 or 238.

15          (5) The basis of used eligible property is the cost of the  
16          property that is subject to the imposition and payment  
17          of tax at the rate of four per cent under chapter 237  
18          or 238.

19          (6) In the case of a partnership, S corporation, estate,  
20          or trust, the credit allowable is for eligible  
21          property that is placed in service by the entity. The  
22          basis upon which the credit is computed is determined



1 at the entity level. Each partner, S corporation  
2 shareholder, or beneficiary of an estate or trust  
3 shall separately take into account for its taxable  
4 year with or within which the entity's taxable year  
5 ends, the partner's, shareholder's, or beneficiary's  
6 share of the basis and resulting credit.

7 A partner's share of the basis shall be  
8 determined in accordance with the ratio in effect on  
9 the date on which the eligible property is placed in  
10 service in which the partners divide the general  
11 profits of the partnership. The basis of partnership  
12 eligible property that is subject to a special  
13 allocation that is recognized under section 704(a) and  
14 704(b) (with respect to partner's distributive share)  
15 of the Internal Revenue Code shall be recognized for  
16 purposes of the credit, and an upward basis adjustment  
17 pursuant to section 754 (with respect to manner of  
18 electing optional adjustment to basis of partnership  
19 property) of the Internal Revenue Code is not eligible  
20 for the credit. A basis adjustment under section 754  
21 (with respect to manner of electing optional  
22 adjustment to basis of partnership property) of the



1 Internal Revenue Code is not eligible for the credit  
2 because the adjustment is not a transaction that is  
3 subject to the imposition and payment of tax at the  
4 rate of four per cent under chapter 237 or 238.

5 Each S corporation shareholder's basis of  
6 eligible property is the shareholder's allocated share  
7 of the corporation's basis in the eligible property.

8 A beneficiary's share of the basis is apportioned  
9 between the entity and the beneficiaries, based on the  
10 income of the entity allocable to each on the date the  
11 eligible property is placed in service. The term  
12 "beneficiary" includes an heir, legatee, or devisee.

13 (7) If a deduction is taken under section 179 (with  
14 respect to election to expense certain depreciable  
15 business assets) of the Internal Revenue Code the  
16 portion of the basis of property for which the  
17 deduction is taken is not considered in determining  
18 the amount of credit allowable.

19 (8) For purposes of determining the amount of credit  
20 available, the basis for vehicles subject to section  
21 280F (with respect to limitation on depreciation for  
22 luxury automobiles; limitation where certain property



1 used for personal purposes) of the Internal Revenue  
2 Code used predominantly for business purposes is  
3 limited to an amount equal to the amount necessary to  
4 obtain the maximum depreciation deduction allowed in  
5 the first year for both luxury passenger automobiles  
6 and trucks, vans and sport utility vehicles under  
7 section 280F (with respect to limitation on  
8 depreciation for luxury automobiles; limitation where  
9 certain property used for personal purposes) of the  
10 Internal Revenue Code. Use is predominantly for  
11 business purposes if over fifty per cent of the total  
12 use is for business purposes. This limitation applies  
13 before any percentage reduction for personal use, as  
14 discussed in paragraph (9).

15 If more than one taxpayer has an interest in a  
16 vehicle subject to section 280F (with respect to  
17 limitation on depreciation for luxury automobiles;  
18 limitation where certain property used for personal  
19 purposes) of the Internal Revenue Code they are  
20 treated as one taxpayer for purposes of the basis  
21 limitation. The limitation shall be apportioned among





1 the taxpayers according to their interests in the  
2 passenger automobile.

3 (9) Listed property shall not be treated as eligible  
4 property, and the credit shall be denied if the listed  
5 property does not satisfy the more-than-fifty per cent  
6 business use test. If the qualified business use  
7 satisfies the more-than-fifty per cent business use  
8 test, but is not used one hundred per cent for  
9 business, the amount of credit is limited to the  
10 percentage of business use. The amount of credit  
11 allowable in the taxable year in which the listed  
12 property is placed in service is unaffected by any  
13 increase in the business use percentage in a  
14 subsequent year; provided that, if there is a  
15 reduction in the business use of property, then the  
16 credit taken with respect to the listed property may  
17 be subject to recapture as provided in section 235-C.

18 "Biomass property" means property that is a boiler, the  
19 primary fuel for which is an alternate substance, a burner,  
20 including necessary on-site equipment to bring the alternate  
21 substance to the burner, for a combustor other than a boiler if  
22 the primary fuel will be an alternate substance, or equipment



1 for converting an alternate substance into a qualified fuel,  
2 including equipment used to store fuel derived from garbage at  
3 the site at which the fuel was produced from garbage. For  
4 purposes of defining biomass property, an alternate substance  
5 means any substance other than an inorganic substance and coal,  
6 including lignite, or any coal product. Biomass property also  
7 includes pollution control equipment that is required to be  
8 installed on or in connection with the above equipment, as well  
9 as equipment used for the unloading, transfer, storage,  
10 reclaiming from storage, and preparation at point of use of an  
11 alternate substance for use in that equipment.

12 "Building" means any structure or edifice that encloses a  
13 space within its walls, and is usually covered by a roof. The  
14 term also includes any such structure that is constructed by or  
15 for a lessee, even if the structure must be removed, or  
16 ownership of the structure reverts to the lessor at the  
17 termination of the lease.

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

20 "Cogeneration equipment" means property which is an  
21 integral part of a system for using the same fuel to produce  
22 both qualified energy and electricity at an industrial or



1 commercial facility. For purposes of this definition, the term  
2 "industrial" means the purification of water and the  
3 desalinization of water.

4 "Computer software" means a pre-written set of instructions  
5 or statements, that is capable of causing a computer to  
6 indicate, perform, or achieve a particular function, task, or  
7 result that has a general applicability and is made through a  
8 non-exclusive license or other permission to use the pre-written  
9 set of instructions, and which has not been prepared at the  
10 special request of the purchaser to meet the purchaser's  
11 particular needs.

12 "Cost" means the basis from which a deduction is taken  
13 under section 167 (with respect to depreciation) or 168 (with  
14 respect to accelerated cost recovery system) of the Internal  
15 Revenue Code and includes the installation of acquired capital  
16 goods.

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

18 "Eligible property."

19 (1) Eligible property is defined as:

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



- 1 (B) Recovery property, within the meaning of section  
2 168 (with respect to accelerated cost recovery  
3 system) of the Internal Revenue Code without  
4 regard to useful life, or any other property with  
5 respect to which depreciation is allowable to the  
6 taxpayer; and
- 7 (C) Property which has an estimated useful life or  
8 recovery period, determined as of the time the  
9 property is placed in service, of three years or  
10 more. A property shall have the same estimated  
11 useful life or recovery period as that which is  
12 used for depreciation or accelerated cost  
13 recovery system purposes.
- 14 (2) Property which is eligible for the credit is:
- 15 (A) New eligible property; or  
16 (B) Used eligible property.
- 17 (3) Tangible personal property, other than a central air  
18 conditioning or a heating unit, may qualify as  
19 eligible property regardless of whether it is used as  
20 an integral part of an activity or constitutes a  
21 research or storage facility used in connection with  
22 the activity, as required for other tangible property.



1 (4) Eligible property shall be either recovery property  
2 within the meaning of section 168 (with respect to  
3 accelerated cost recovery system) of the Internal  
4 Revenue Code without regard to useful life, or any  
5 other property with respect to which depreciation is  
6 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 (with  
13 respect to disallowance of certain entertainment,  
14 etc., expenses) of the Internal Revenue Code.

15 (5) Generally, any boiler, used in Hawaii, which is  
16 primarily fueled by petroleum or petroleum products,  
17 including natural gas, qualifies as eligible property.

18 (6) Energy property qualifies as eligible property.

19 (7) Certain classes of property that generally do not  
20 qualify as eligible property and thereby are not  
21 eligible for the credit include:

22 (A) A building or its structural components.

- 1 (B) Property purchased for use in a foreign trade
- 2 zone as defined in chapter 212.
- 3 (C) Property used by an organization which is exempt
- 4 from the tax imposed by this chapter, unless the
- 5 property is used predominantly in an unrelated
- 6 trade or business, the income from which is
- 7 subject to tax under this chapter.
- 8 (D) Intangible property.
- 9 (E) Property used for lodging.
- 10 (8) Exceptions to paragraph (7):
- 11 (A) A nonlodging commercial facility that is
- 12 available to persons not using the lodging
- 13 facility on the same basis as it is available to
- 14 tenants of the lodging facility may qualify as
- 15 eligible property.
- 16 (B) Property used by a hotel, motel, or other similar
- 17 establishment in connection with the trade or
- 18 business of furnishing lodging where more than
- 19 one half of the accommodation in the hotel,
- 20 motel, or other similar establishment is used by
- 21 transients may qualify as eligible property. An
- 22 accommodation shall be considered to accommodate



1 transients if the rental period is normally less  
2 than thirty days.

3 (C) Coin-operated vending machines and coin-operated  
4 washing machines and dryers may qualify as  
5 eligible property.

6 (9) Eligible depreciable tangible personal property  
7 includes computer software.

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

11 Energy property includes:

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

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



- 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).

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





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:



- 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 in Hawaii by the  
4 taxpayer; or
- 5 (B) Leased to the same taxpayer within three months  
6 of the date the property was originally placed in  
7 service by that taxpayer; or
- 8 (3) The property is eligible property, the construction,  
9 reconstruction, or erection of which is placed in  
10 service by the taxpayer, but only with respect to that  
11 portion of the basis as is discussed in paragraphs (1)  
12 to (5) of the definition of "basis". It is not  
13 necessary that the materials entering into the  
14 construction, reconstruction, or erection be new in  
15 use. Construction, reconstruction, or erection begins  
16 when physical work is started on the construction,  
17 reconstruction, or erection.
- 18 "Original use" means the first use to which the property is  
19 put, whether or not it is the taxpayer's first use of the  
20 property.



1 "Other tangible property" is tangible property, other than  
2 tangible personal property that qualifies as eligible property  
3 by meeting one of the following three conditions:

4 (1) The property is used as an integral part of  
5 manufacturing, production, extraction, or furnishing  
6 transportation, communication, electrical energy, gas  
7 water, or sewage disposal services;

8 (2) The property is used as a research or storage facility  
9 used in connection with an activity referred to in  
10 paragraph (1); or

11 (3) The property is a facility used in connection with an  
12 activity referred to in paragraph (1) for the bulk  
13 storage of fungible commodities, including commodities  
14 in a liquid or gaseous state.

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

18 (1) The taxable year in which the period for depreciation  
19 with respect to the property begins;

20 (2) The taxable year in which, under the accelerated cost  
21 recovery system, a claim for recovery allowances with  
22 respect to the property begins; or



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

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

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

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

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



1 services, even though sleeping accommodations are  
2 provided.

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

13 "Purchase" means an acquisition of property.

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

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

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



1 "Recycling equipment" means any equipment that is used  
2 exclusively to sort and prepare solid waste for recycling or in  
3 the recycling of solid waste. The term recycling equipment does  
4 not include any equipment used in a process after the first  
5 marketable product is produced or in the case of recycling iron  
6 or steel, any equipment used to reduce the waste to a molten  
7 state, and in any process thereafter.

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

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

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

19 "Sixty-six and two-thirds per cent rule" means that if a  
20 partner's, shareholder's, or beneficiary's interest in the  
21 entity is reduced below sixty-six and two-thirds per cent of  
22 their interest at the time the credit was taken, a pro rata



1 share of the partner's, shareholder's, or beneficiary's interest  
2 in the entity's eligible property shall cease to be eligible  
3 property with respect to the partner, shareholder, or  
4 beneficiary, and credit recapture shall be required.

5 "Solar or wind energy property" means any equipment which  
6 uses solar or wind energy to generate electricity, heat or cool,  
7 or provide hot water for use in a structure, or provide solar  
8 process heat.

9 "Specially defined energy property" means property which is  
10 installed in an existing industrial or commercial facility to  
11 reduce the amount of energy consumed in the existing industrial  
12 or commercial process.

13 "Specified percentage" means whichever of these two rules  
14 applies: sixty-six and two-thirds per cent rule; or the  
15 thirty-three and one-third per cent rule.

16 "Structural component" means parts of a building such as  
17 walls, partitions, floors, ceilings, and permanent coverings;  
18 all components of a central air conditioning or heating system;  
19 plumbing and plumbing fixtures; electric wiring and lighting  
20 fixtures, chimneys; stairs, escalators, and elevators. The term  
21 structural component does not include property which is  
22 contained in or attached to a building such as production



1 machinery, the sole justification for the installation of which  
2 is to meet temperature or humidity requirements that are  
3 essential for the operation of other machinery of the processing  
4 of materials or foodstuffs. Machinery may also meet this sole  
5 justification test even though it incidentally provides for the  
6 comfort of employees, or serves, to an insubstantial degree,  
7 areas where the temperature or humidity requirements are not  
8 essential.

9 "Substantial interest" means when a transferor, or in a  
10 case where the transferor is a partnership, estate or trust, or  
11 S corporation, the partner, beneficiary, or shareholder, is  
12 considered to have retained a substantial interest in the trade  
13 or business if, after the change in form, the transferor's  
14 interest in the trade or business is:

- 15 (1) Substantial in relation to the total income interest  
16 of all the owners; or  
17 (2) Equal to or greater than the transferor's interest  
18 before the change in form.

19 A taxpayer shall not be considered to have retained a  
20 substantial interest where the only basis for claiming  
21 substantial interest is that the values of the interests  
22 exchanged are equal. The determination of whether a taxpayer





1 has retained a substantial interest in the trade or business is  
2 to be made immediately after the change in the form of  
3 conducting the trade or business, and after each time the  
4 taxpayer disposes of a portion of the taxpayer's interest in the  
5 new enterprise.

6 "Tangible personal property" means any tangible property  
7 except land and improvements thereto, such as buildings or other  
8 inherently permanent structures, including items that are  
9 structural, components of the buildings, or structures.

10 "Thirty-three and one-third per cent rule" means that once  
11 there has been a recapture by reason of the sixty-six and  
12 two-thirds per cent rule, there is no further recapture until  
13 the partner's, shareholder's, or beneficiary's interest is  
14 reduced to less than thirty-three and one-third per cent of its  
15 interest at the time the credit was taken. Thereafter, any  
16 reduction in interest, however small, shall again subject the  
17 partner, shareholder, or beneficiary to the recapture  
18 provisions.

19 "Transportation business" means airlines, bus companies,  
20 shipping or trucking companies, and oil pipeline companies.



1 "Used eligible property" means property that is eligible  
2 property as defined in this section and the property is not new  
3 eligible property as defined in this subsection.

4 **§235-B Capital goods excise tax credit allowed. (a)**

5 There shall be allowed to each taxpayer subject to the tax  
6 imposed by this chapter a capital goods excise tax credit which  
7 shall be deductible from the taxpayer's net income tax  
8 liability, if any, imposed by this chapter for the taxable year  
9 in which the credit is properly claimed, if the following  
10 conditions are met:

- 11 (1) The taxpayer purchases or imports eligible property;
  - 12 (2) The purchase or import of eligible property results in  
13 a transaction that is subject to the imposition and  
14 payment of tax at the rate of four per cent under  
15 chapter 237 or 238;
  - 16 (3) The eligible property is used by the taxpayer in a  
17 trade or business; and
  - 18 (4) The eligible property is placed in service in Hawaii.
- 19 (b) The amount of the tax credit shall be four per cent of  
20 the basis of eligible property used by the taxpayer in a trade  
21 or business and placed in service in Hawaii. Any credit claimed



1 under this section shall be subject to the following  
2 limitations:

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

9 (2) If a deduction is taken under section 179 (with  
10 respect to election to expense certain depreciable  
11 business assets) of the Internal Revenue Code, no tax  
12 credit shall be allowed for that portion of the basis  
13 of property for which the deduction was taken.

14 (3) If a taxpayer is eligible for both the income tax  
15 credit under section 235-12.5, and the capital goods  
16 excise tax credit for a particular solar or wind  
17 energy property, the credit under section 235-12.5,  
18 shall be deducted from the taxpayer's net income tax  
19 liability before the capital goods excise tax credit.

20 (c) In the case of a partnership, S corporation, estate, or  
21 trust, the tax credit allowable is for eligible property that is  
22 placed in service in Hawaii by the entity. The basis upon which



1 the tax credit is computed shall be determined at the entity  
2 level.

3 (d) If the capital goods excise tax credit allowed under  
4 subsection (a) exceeds the taxpayer's net income tax liability,  
5 the excess of credit over liability shall be refunded to the  
6 taxpayer; provided that no refunds or payment on account of the  
7 tax credit allowed by this section shall be made for amounts  
8 less than \$1.

9 (e) All claims for tax credits under this section,  
10 including any amended claims, shall be filed on or before the  
11 end of the twelfth month following the close of the taxable year  
12 for which the credits may be claimed. Failure to comply with  
13 the foregoing provision shall constitute a waiver of the right  
14 to claim the credit.

15 (f) The credit shall be allowed only for the first taxable  
16 year in which the property is placed in service by the taxpayer.  
17 If in the first taxable year in which a taxpayer places property  
18 in service no portion of the property qualifies as eligible  
19 property, no credit shall be allowed to the taxpayer with  
20 respect to the property. If a portion of the property qualifies  
21 as eligible property in the first year in which the property is



1 placed in service, then a credit only as to the portion that  
2 qualifies shall be allowed to the taxpayer.

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

5 (h) The taxpayer shall treat the amount of credit  
6 allowable and claimed as a taxable income item for the taxable  
7 year in which it is properly recognized under the method of  
8 accounting used to compute taxable income. Alternatively, the  
9 basis of eligible property for depreciation or the accelerated  
10 cost recovery system purposes for state income taxes shall be  
11 reduced by the amount of credit allowable and claimed.

12 **§235-C Recapture of credit.** (a) Recapture of the  
13 previously claimed credit applies where a recapture event occurs  
14 under paragraph (2) and the percentage of credit provided in  
15 paragraph (1) shall be included as income under chapter 235 or  
16 241 in the year a recapture event occurs.

17 (1) Recapture percentage. Where the recovery property or  
18 depreciable property ceases to be eligible property  
19 within the following period, which constitutes a full  
20 year after being placed in service in Hawaii, the  
21 accompanying percentage shall be the recapture  
22 percentage:



	Recapture period	Recapture percentage
1		
2	One full year	100
3	Two full years	66
4	Three full years	33
5	Four full years	0

6 (2) A recapture event occurs when:

7 (A) Property ceases to be eligible property with  
8 respect to a taxpayer when:

9 (i) The property ceases to be owned by taxpayer.

10 Recapture shall be triggered upon  
11 disposition of the property.

12 (ii) The property ceases to be eligible property.

13 The cessation shall be treated as having  
14 occurred on the first day of the taxable  
15 year.

16 (B) All or a portion of the credit taken in an  
17 earlier year for listed property may be subject  
18 to recapture during the recapture period if:

19 (i) The percentage of business use falls below  
20 the percentage of business use for the year  
21 the listed property was placed in service;  
22 or



1 (ii) The listed property is converted from  
2 business to personal use and does not  
3 satisfy the more-than-fifty per cent  
4 business use test.

5 (C) All or a portion of previously taken credit as  
6 determined in paragraph (1) may be subject to  
7 recapture if, during the recapture period, the  
8 basis of eligible property used to calculate the  
9 credit decreases, either through a refund in the  
10 purchase price or usage of the property for  
11 personal purposes.

12 (b) Application of recapture rules to partnerships,  
13 S corporations, estates, or trusts shall be as follows:

14 (1) In the case of a partnership, S corporation, estate,  
15 or trust, the recapture rule applies to a partner,  
16 shareholder, or beneficiary who originally received  
17 the benefit of a credit if within the recapture  
18 period:

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

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



1 (C) The partner's, shareholder's, or beneficiary's  
2 interest in the entity is reduced, for example,  
3 by sale of interest in the entity, below a  
4 specified percentage as defined in section 235-A.

5 (2) In making a recapture determination, there may be  
6 taken into account any prior recapture determination  
7 made with respect to the partner, shareholder, or  
8 beneficiary in connection with the same property.

9 (c) Application of recapture rules to valid S corporation  
10 election shall be as follows:

11 (1) If a C corporation makes a valid election under  
12 section 235-4.5 and part VII to be an S corporation,  
13 then on the last day of the taxable year immediately  
14 preceding the first taxable year for which the  
15 election is effective, any eligible property the basis  
16 of which was taken into account to compute the  
17 C corporation's credit allowable in taxable years  
18 before the first taxable year for which the election  
19 is effective and which has not been disposed of or  
20 otherwise ceased to be eligible property with respect  
21 to the C corporation before the last day shall be  
22 considered as having ceased to be eligible property





1 with respect to the C corporation and the recapture  
2 rule shall apply. However, the recapture rule shall  
3 not apply if the S corporation and each of its  
4 shareholders on the first day of the first taxable  
5 year for which the election under section 235-4.5 and  
6 part VII is to be effective, or on the date of the  
7 election, whichever is later, execute an agreement as  
8 is described in paragraph (2).

9 (2) The agreement shall:

10 (A) Be signed by the shareholders; and on behalf of  
11 the S corporation by a person who is duly  
12 authorized;

13 (B) State that if eligible property for which the  
14 credit was taken is later disposed of by, or  
15 ceases to be eligible property with respect to  
16 the S corporation during the recapture period and  
17 during a taxable year for which the S election is  
18 effective, each signer agrees to notify the  
19 director of taxation of a disposition or  
20 cessation and to be jointly and severally liable  
21 to pay the director of taxation an amount equal



1 to the increase in tax provided by the recapture  
2 rule;

3 (C) State the name, address, and taxpayer  
4 identification number of each party to the  
5 agreement;

6 (D) Be filed with the department of taxation for the  
7 taxable year immediately preceding the first  
8 taxable year for which the S election is  
9 effective; and

10 (E) Be filed with the department of taxation on or  
11 before the due date, including extensions of  
12 time, of the return, unless the director of  
13 taxation permits, upon a showing of good cause,  
14 that the agreement may be filed on a later date.

15 (3) A shareholder's share of the amount of credit  
16 recapture shall be determined as if the property had  
17 ceased to be eligible property as of the last day of  
18 the taxable year immediately preceding the first  
19 taxable year for which the S election is effective;  
20 provided that the recapture percentage shall be  
21 determined as if the property ceased to be eligible



1 property on the date the property actually ceased to  
2 be eligible property.

3 (d) During the recapture period, all or a portion of  
4 previously taken credit as determined in subsection (a)(1) shall  
5 be subject to recapture if the eligible property is transferred  
6 out of the State.

7 (e) Exceptions to the recapture rule shall be as follows:

8 (1) A transfer by reason of death is not considered to be  
9 a disposition of eligible property subject to the  
10 recapture rule. This exception to the recapture rule  
11 applies to transfers by reason of the death of a sole  
12 proprietor, partner, S corporation shareholder, or  
13 beneficiary of an estate or trust.

14 (2) A disposition of eligible property in a transaction to  
15 which section 381(a) (with respect to carryovers in  
16 certain corporate acquisitions) of the Internal  
17 Revenue Code applies is not considered to be a  
18 disposition of eligible property, subject to the  
19 recapture rule; provided that, if the acquiring  
20 corporation disposes of the eligible property before  
21 the close of the recapture period, there shall be an



1 early disposition and the recapture rule shall be  
2 triggered.

3 (3) Recapture is not required as a result of a mere change  
4 in the form of conducting a trade or business if:

5 (A) The property is retained as eligible property in  
6 the same trade or business;

7 (B) The transferor, or in a case where the transferor  
8 is a partnership, estate or trust, or  
9 S corporation, the partner, beneficiary, or  
10 shareholder, of eligible property retains a  
11 substantial interest in the trade or business;

12 (C) Substantially all the property, whether or not  
13 eligible property, necessary to the trade or  
14 business is transferred in the change in form;  
15 and

16 (D) The basis of eligible property in the hands of  
17 the transferee is determined in whole or in part  
18 by reference to the basis of eligible property in  
19 the hands of the transferor.

20 (4) Paragraph (3) shall not apply to the transfer of  
21 eligible property if section 381 (with respect to



1 carryovers in certain corporate acquisitions) of the  
2 Internal Revenue Code applies to the transfer.

3 (5) Neither an election to be treated as an S corporation,  
4 nor a termination or loss of S corporation status  
5 automatically triggers recapture. However, recapture  
6 may result if one or more of the recapture events  
7 discussed in paragraph (6) occurs. In determining  
8 whether a reduction in a shareholder's interest will  
9 result in recapture, the sixty-six and two-thirds per  
10 cent and thirty-three and one-third per cent rules  
11 apply even if the corporation is no longer an S  
12 corporation.

13 (6) Property ceases to be eligible property with respect  
14 to a transferor, or in a case where the transferor is  
15 a partnership, estate or trust, or S corporation, the  
16 partner, beneficiary or shareholder, and the  
17 transferor shall make a recapture determination if  
18 during the recapture period:

19 (A) The transferee disposes of eligible property;

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



1           (C) The transferor, or in a case where the transferor  
2           is a partnership, estate or trust, or  
3           S corporation, the partner, beneficiary, or  
4           shareholder, does not retain a substantial  
5           interest in the trade or business directly or  
6           indirectly through ownership in other entities;  
7           provided that the other entities' bases in the  
8           interests are determined in whole or in part by  
9           reference to the bases of the interest in the  
10          hands of the transferor.

11          (f) A transfer between spouses incident to divorce is not  
12         considered to be a disposition, subject to the recapture rule.  
13         Subsequent to a transfer between spouses or incident to divorce,  
14         a disposition by the transferee during the recapture period may  
15         result in recapture to the same extent as if the disposition had  
16         been made by the transferor at that later date.

17          (g) The recapture rule shall not apply to eligible  
18         property which is disposed of or otherwise ceases to be eligible  
19         property with respect to the taxpayer as a result of its  
20         destruction or damage by fire, storm, shipwreck, or other  
21         casualty, or theft.



1           (h) In the case of a partnership, a downward basis  
2 adjustment pursuant to section 754 (with respect to manner of  
3 electing optional adjustment to basis of partnership property)  
4 of the Internal Revenue Code is not subject to recapture. Use  
5 of the property is not considered to be terminated for purposes  
6 of the credit."

7           SECTION 3. Section 235-2.3, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

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

13           (1) Subchapter A (sections 1 to 59A) (with respect to  
14 determination of tax liability), except section  
15 1(h)(2) (relating to net capital gain reduced by the  
16 amount taken into account as investment income),  
17 except sections 2(a), 2(b), and 2(c) (with respect to  
18 the definition of "surviving spouse" and "head of  
19 household"), except section 41 (with respect to the  
20 credit for increasing research activities), except  
21 section 42 (with respect to low-income housing  
22 credit) [~~and except sections 47 and 48, as amended,~~



1 ~~as of December 31, 1984 (with respect to certain~~  
2 ~~depreciable tangible personal property)]. For~~  
3 treatment, see sections 235-110.91[~~, 235-110.7,~~] and  
4 235-110.8;

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

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

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

12 (5) Section 114 (with respect to extraterritorial income).

13 For treatment, any transaction as specified in the  
14 transitional rule for 2005 and 2006 as specified in  
15 the American Jobs Creation Act of 2004 section 101(d)  
16 and any transaction that has occurred pursuant to a  
17 binding contract as specified in the American Jobs  
18 Creation Act of 2004 section 101(f) are inoperative;

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





- 1 (7) Section 122 (with respect to certain reduced uniformed  
2 services retirement pay). For treatment, see section  
3 235-7(a)(3);
- 4 (8) Section 135 (with respect to income from United States  
5 savings bonds used to pay higher education tuition and  
6 fees). For treatment, see section 235-7(a)(1);
- 7 (9) Subchapter B (sections 141 to 150) (with respect to  
8 tax exemption requirements for state and local bonds);
- 9 (10) Section 151 (with respect to allowance of deductions  
10 for personal exemptions). For treatment, see section  
11 235-54;
- 12 (11) Section 179B (with respect to expensing of capital  
13 costs incurred in complying with Environmental  
14 Protection Agency sulphur regulations);
- 15 (12) Section 181 (with respect to special rules for certain  
16 film and television productions);
- 17 (13) Section 196 (with respect to deduction for certain  
18 unused investment credits);
- 19 (14) Section 199 (with respect to the U.S. production  
20 activities deduction);
- 21 (15) Section 222 (with respect to qualified tuition and  
22 related expenses);



- 1 (16) Sections 241 to 247 (with respect to special  
2 deductions for corporations). For treatment, see  
3 section 235-7(c);
- 4 (17) Section 280C (with respect to certain expenses for  
5 which credits are allowable). For treatment, see  
6 section 235-110.91;
- 7 (18) Section 291 (with respect to special rules relating to  
8 corporate preference items);
- 9 (19) Section 367 (with respect to foreign corporations);
- 10 (20) Section 501(c)(12), (15), (16) (with respect to exempt  
11 organizations);
- 12 (21) Section 515 (with respect to taxes of foreign  
13 countries and possessions of the United States);
- 14 (22) Subchapter G (sections 531 to 565) (with respect to  
15 corporations used to avoid income tax on  
16 shareholders);
- 17 (23) Subchapter H (sections 581 to 597) (with respect to  
18 banking institutions), except section 584 (with  
19 respect to common trust funds). For treatment, see  
20 chapter 241;



- 1       (24) Section 642(a) and (b) (with respect to special rules  
2           for credits and deductions applicable to trusts). For  
3           treatment, see sections 235-54(b) and 235-55;
- 4       (25) Section 646 (with respect to tax treatment of electing  
5           Alaska Native settlement trusts);
- 6       (26) Section 668 (with respect to interest charge on  
7           accumulation distributions from foreign trusts);
- 8       (27) Subchapter L (sections 801 to 848) (with respect to  
9           insurance companies). For treatment, see sections  
10          431:7-202 and 431:7-204;
- 11       (28) Section 853 (with respect to foreign tax credit  
12          allowed to shareholders). For treatment, see section  
13          235-55;
- 14       (29) Subchapter N (sections 861 to 999) (with respect to  
15          tax based on income from sources within or without the  
16          United States), except sections 985 to 989 (with  
17          respect to foreign currency transactions). For  
18          treatment, see sections 235-4, 235-5, and 235-7(b),  
19          and 235-55;
- 20       (30) Section 1042(g) (with respect to sales of stock in  
21          agricultural refiners and processors to eligible farm  
22          cooperatives);



- 1 (31) Section 1055 (with respect to redeemable ground  
2 rents);
- 3 (32) Section 1057 (with respect to election to treat  
4 transfer to foreign trust, etc., as taxable exchange);
- 5 (33) Sections 1291 to 1298 (with respect to treatment of  
6 passive foreign investment companies);
- 7 (34) Subchapter Q (sections 1311 to 1351) (with respect to  
8 readjustment of tax between years and special  
9 limitations);
- 10 (35) Subchapter R (sections 1352 to 1359) (with respect to  
11 election to determine corporate tax on certain  
12 international shipping activities using per ton rate);
- 13 (36) Subchapter U (sections 1391 to 1397F) (with respect to  
14 designation and treatment of empowerment zones,  
15 enterprise communities, and rural development  
16 investment areas). For treatment, see chapter 209E;
- 17 (37) Subchapter W (sections 1400 to 1400C) (with respect to  
18 District of Columbia enterprise zone);
- 19 (38) Section 14000 (with respect to education tax  
20 benefits);
- 21 (39) Section 1400P (with respect to housing tax benefits);
- 22 (40) Section 1400R (with respect to employment relief); and



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

3 SECTION 4. Section 235-12.5, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) When the requirements of subsection (c) are met, each  
6 individual or corporate taxpayer that files an individual or  
7 corporate net income tax return for a taxable year may claim a  
8 tax credit under this section against the Hawaii state  
9 individual or corporate net income tax. The tax credit may be  
10 claimed for every eligible renewable energy technology system  
11 that is installed and placed in service in the State by a  
12 taxpayer during the taxable year. This credit shall be  
13 available for systems installed and placed in service in the  
14 State after June 30, 2003. The tax credit may be claimed as  
15 follows:

16 (1) Solar thermal energy systems for:

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

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



- 1 (C) Commercial property: thirty-five per cent of the  
2 actual cost or \$250,000, whichever is less;
- 3 (2) Wind-powered energy systems for:
- 4 (A) Single-family residential property: twenty per  
5 cent of the actual cost or \$1,500, whichever is  
6 less;
- 7 (B) Multi-family residential property: twenty per  
8 cent of the actual cost or \$200 per unit,  
9 whichever is less; and
- 10 (C) Commercial property: twenty per cent of the  
11 actual cost or \$500,000, whichever is less; and
- 12 (3) Photovoltaic energy systems for:
- 13 (A) Single-family residential property: thirty-five  
14 per cent of the actual cost or \$5,000, whichever  
15 is less;
- 16 (B) Multi-family residential property: thirty-five  
17 per cent of the actual cost or \$350 per unit,  
18 whichever is less; and
- 19 (C) Commercial property: thirty-five per cent of the  
20 actual cost or \$500,000, whichever is less;

21 provided that multiple owners of a single system shall be  
22 entitled to a single tax credit; and provided further that the



1 tax credit shall be apportioned between the owners in proportion  
2 to their contribution to the cost of the system.

3 In the case of a partnership, S corporation, estate, or  
4 trust, the tax credit allowable is for every eligible renewable  
5 energy technology system that is installed and placed in service  
6 in the State by the entity. The cost upon which the tax credit  
7 is computed shall be determined at the entity level.

8 Distribution and share of credit shall be determined pursuant to  
9 [~~section 235-110.7(a).~~] \_\_\_\_\_."

10 SECTION 5. Section 235-110.3, Hawaii Revised Statutes, is  
11 amended by amending subsection (1) to read as follows:

12 "(1) In the case of a partnership, S corporation, estate,  
13 or trust, the tax credit allowable is for every qualifying  
14 ethanol production facility. The cost upon which the tax credit  
15 is computed shall be determined at the entity level.

16 Distribution and share of credit shall be determined pursuant to  
17 [~~section 235-110.7(a).~~] \_\_\_\_\_."

18 SECTION 6. Section 235-110.51, Hawaii Revised Statutes, is  
19 amended by amending subsection (c) to read as follows:

20 "(c) In the case of a partnership, S corporation, estate,  
21 trust, or any developer of a commercial building, the tax credit  
22 allowable is for renovation costs incurred by the entity for the



1 taxable year. The cost upon which the tax credit is computed  
2 shall be determined at the entity level. Distribution and share  
3 of credit shall be determined pursuant to [~~section 235-~~  
4 ~~110.7(a).~~] \_\_\_\_\_."

5 SECTION 7. Section 241-4.5, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[~~f~~]**§241-4.5**[~~}]~~ **Capital goods excise tax credit.** The  
8 capital goods excise tax credit provided under [~~section 235-~~  
9 ~~110.7~~] \_\_\_\_\_ shall be operative for this chapter after  
10 December 31, 1987."

11 SECTION 8. Section 235-110.7, Hawaii Revised Statutes, is  
12 repealed:

13 [~~"§235-110.7 Capital goods excise tax credit. (a) There~~  
14 ~~shall be allowed to each taxpayer subject to the tax imposed by~~  
15 ~~this chapter a capital goods excise tax credit which shall be~~  
16 ~~deductible from the taxpayer's net income tax liability, if any,~~  
17 ~~imposed by this chapter for the taxable year in which the credit~~  
18 ~~is properly claimed.~~

19 ~~The amount of the tax credit shall be determined by the~~  
20 ~~application of the following rates against the cost of the~~  
21 ~~eligible depreciable tangible personal property used by the~~  
22 ~~taxpayer in a trade or business and placed in service within~~





1 ~~Hawaii after December 31, 1987. For calendar years beginning~~  
2 ~~after: December 31, 1987, the applicable rate shall be three~~  
3 ~~per cent; December 31, 1988, and thereafter, the applicable rate~~  
4 ~~shall be four per cent. For taxpayers with fiscal taxable~~  
5 ~~years, the applicable rate shall be the rate for the calendar~~  
6 ~~year in which the eligible depreciable tangible personal~~  
7 ~~property used in the trade or business is placed in service~~  
8 ~~within Hawaii.~~

9 ~~In the case of a partnership, S corporation, estate, or~~  
10 ~~trust, the tax credit allowable is for eligible depreciable~~  
11 ~~tangible personal property which is placed in service by the~~  
12 ~~entity. The cost upon which the tax credit is computed shall be~~  
13 ~~determined at the entity level. Distribution and share of~~  
14 ~~credit shall be determined by rules.~~

15 ~~In the case of eligible depreciable tangible personal~~  
16 ~~property for which a credit for sales or use taxes paid to~~  
17 ~~another state is allowable under section 238-3(i), the amount of~~  
18 ~~the tax credit allowed under this section shall not exceed the~~  
19 ~~amount of use tax actually paid under chapter 238 relating to~~  
20 ~~such tangible personal property.~~

21 ~~If a deduction is taken under section 179 (with respect to~~  
22 ~~election to expense certain depreciable business assets) of the~~



1 ~~Internal Revenue Code of 1954, as amended, no tax credit shall~~  
2 ~~be allowed for that portion of the cost of property for which~~  
3 ~~the deduction was taken.~~

4 ~~(b) If the capital goods excise tax credit allowed under~~  
5 ~~subsection (a) exceeds the taxpayer's net income tax liability,~~  
6 ~~the excess of credit over liability shall be refunded to the~~  
7 ~~taxpayer; provided that no refunds or payment on account of the~~  
8 ~~tax credit allowed by this section shall be made for amounts~~  
9 ~~less than \$1.~~

10 ~~All claims for tax credits under this section, including~~  
11 ~~any amended claims, must be filed on or before the end of the~~  
12 ~~twelfth month following the close of the taxable year for which~~  
13 ~~the credits may be claimed. Failure to comply with the~~  
14 ~~foregoing provision shall constitute a waiver of the right to~~  
15 ~~claim the credit.~~

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

18 ~~(d) Sections 47 (with respect to dispositions of section~~  
19 ~~38 property and the recapture percentages) of the Internal~~  
20 ~~Revenue Code of 1954, as amended, as of December 31, 1984, and~~  
21 ~~280F as operative for this chapter (with respect to limitation~~  
22 ~~on investment tax credit and depreciation for luxury~~



1 ~~automobiles; limitation where certain property used for personal~~  
2 ~~purposes) of the Internal Revenue Code of 1954, as amended,~~  
3 ~~shall be operative for purposes of this section.~~

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

11 ~~As used in this section:~~

12 ~~"Cost" means (1) the actual invoice price of the tangible~~  
13 ~~personal property, or (2) the basis from which depreciation is~~  
14 ~~taken under section 167 (with respect to depreciation) or from~~  
15 ~~which a deduction may be taken under section 168 (with respect~~  
16 ~~to accelerated cost recovery system) of the Internal Revenue~~  
17 ~~Code of 1954, as amended, whichever is less.~~

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



1       ~~"Placed in service" means the earliest of the following~~  
2 ~~taxable years:~~

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

4           ~~(A) Taxpayer's depreciation practice, the period for~~  
5           ~~depreciation; or~~

6           ~~(B) Accelerated cost recovery system, a claim for~~  
7           ~~recovery allowances, with respect to such~~  
8           ~~property begins; or~~

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

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

13       ~~"Tangible personal property" means tangible personal~~  
14 ~~property which is placed in service within Hawaii after~~  
15 ~~December 31, 1987, and the purchase or importation of which~~  
16 ~~resulted in a transaction which was subject to the imposition~~  
17 ~~and payment of tax at the rate of four per cent under chapter~~  
18 ~~237 or 238. "Tangible personal property" does not include~~  
19 ~~tangible personal property which is an integral part of a~~  
20 ~~building or structure or tangible personal property used in a~~  
21 ~~foreign trade zone, as defined under chapter 212." ]~~



1 SECTION 9. In codifying the new sections added by  
2 section 2 of this Act, the revisor of statutes shall substitute  
3 appropriate section numbers for the letters used in designating  
4 the new sections in this Act.

5 SECTION 10. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 11. This Act shall take effect upon approval and  
8 shall apply to taxable years beginning after December 31, 2008;  
9 provided that section 3 shall not apply to property placed in  
10 service in Hawaii prior to January 1, 2008.



**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. (SB591 SD3)

