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# A BILL FOR AN ACT

RELATING TO A NEW MARKETS TAX CREDIT.

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

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

4           "§235-    New markets tax credit. (a) Section 45D (with  
5 respect to new markets tax credit) of the Internal Revenue Code  
6 shall be operative for the purposes of this chapter, except as  
7 otherwise provided in this section.

8           (b) Each taxpayer subject to the tax imposed by this  
9 chapter who holds a qualified equity investment on a credit  
10 allowance date of that investment, which occurs during the  
11 taxable year, and who has received an allowance of credit under  
12 section 45D of the Internal Revenue Code, may claim a credit  
13 against the taxpayer's net income tax liability for the taxable  
14 year. The amount of the credit shall be deductible from the  
15 taxpayer's net income tax liability, if any, imposed by this  
16 chapter for the taxable year in which the credit is properly  
17 claimed on a timely basis.



1        (c) The amount of the credit shall be one hundred per cent  
2 of the applicable percentage of the amount paid to the qualified  
3 community development entity, as defined in section 45D(c) of  
4 the Internal Revenue Code, and located in Hawaii, for the  
5 qualified investment in Hawaii at its original issue. As used  
6 in this section, "applicable percentage" means:

7        (1) Five per cent with respect to the first three credit  
8 allowance dates; and

9        (2) Six per cent with respect to the remainder of the  
10 credit allowance dates.

11        (d) The total amount of credits taken under this section  
12 shall not exceed \$ \_\_\_\_\_ per taxable year. The claim for a  
13 new markets tax credit shall be submitted to the department of  
14 taxation on forms established by the director.

15        (e) The credit allowed under this section shall be claimed  
16 against net income tax liability for the taxable year. For the  
17 purpose of deducting this tax credit, "net income tax liability"  
18 means net income tax liability reduced by all other credits  
19 allowed the taxpayer under this chapter.

20        A tax credit under this section that exceeds the taxpayer's  
21 net income tax liability may be used as a credit against the



1 taxpayer's income tax liability in subsequent years until  
2 exhausted.

3 All claims for a tax credit under this section shall be  
4 filed on or before the end of the twelfth month following the  
5 close of the taxable year for which the credit may be claimed.  
6 Failure to properly and timely claim the credit shall constitute  
7 a waiver of the right to claim the credit.

8 Section 469 (with respect to passive activity losses and  
9 credits limited) of the Internal Revenue Code shall be applied  
10 in claiming the credit under this section.

11 (f) The director of taxation may adopt rules under chapter  
12 91 and prepare any forms necessary to carry out this section.

13 (g) The director of taxation shall report twenty days  
14 prior to the regular session of 2008 and annually thereafter on  
15 the credits taken under this section."

16 SECTION 2. Chapter 241, Hawaii Revised Statutes, is  
17 amended by adding a new section to be appropriately designated  
18 and to read as follows:

19 "§241- **New markets; income tax credit.** The new markets  
20 tax credit provided under section 235- shall be operative  
21 for this chapter."



1 SECTION 3. Chapter 431:7, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 **"§431:7- New markets; insurance premium tax credit. The**  
5 **new markets tax credit provided under section 235- shall be**  
6 **operative for this chapter and may be claimed against the tax**  
7 **imposed under section 431:7-202."**

8 SECTION 4. Section 235-2.3, Hawaii Revised Statutes, is  
9 amended by amending subsection (b) to read as follows:

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

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



1 credit), except section 45D (with respect to new  
2 markets tax credit), and except sections 47 and 48, as  
3 amended, as of December 31, 1984 (with respect to  
4 certain depreciable tangible personal property). For  
5 treatment, see sections 235-110.91, 235-110.7, [~~and~~]  
6 235-110.8[+], and section 235- ;

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

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

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

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

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



- 1           (6) Section 120 (with respect to amounts received under  
2           qualified group legal services plans). For treatment,  
3           see section 235-7(a)(9) to (11);
- 4           (7) Section 122 (with respect to certain reduced uniformed  
5           services retirement pay). For treatment, see section  
6           235-7(a)(3);
- 7           (8) Section 135 (with respect to income from United States  
8           savings bonds used to pay higher education tuition and  
9           fees). For treatment, see section 235-7(a)(1);
- 10          (9) Subchapter B (sections 141 to 150) (with respect to  
11          tax exemption requirements for state and local bonds);
- 12          (10) Section 151 (with respect to allowance of deductions  
13          for personal exemptions). For treatment, see section  
14          235-54;
- 15          (11) Section 179B (with respect to expensing of capital  
16          costs incurred in complying with Environmental  
17          Protection Agency sulphur regulations);
- 18          (12) Section 181 (with respect to special rules for certain  
19          film and television productions);
- 20          (13) Section 196 (with respect to deduction for certain  
21          unused investment credits);



- 1 (14) Section 199 (with respect to the U.S. production  
2 activities deduction);
- 3 (15) Section 222 (with respect to qualified tuition and  
4 related expenses);
- 5 (16) Sections 241 to 247 (with respect to special  
6 deductions for corporations). For treatment, see  
7 section 235-7(c);
- 8 (17) Section 280C (with respect to certain expenses for  
9 which credits are allowable). For treatment, see  
10 section 235-110.91;
- 11 (18) Section 291 (with respect to special rules relating to  
12 corporate preference items);
- 13 (19) Section 367 (with respect to foreign corporations);
- 14 (20) Section 501(c)(12), (15), (16) (with respect to exempt  
15 organizations);
- 16 (21) Section 515 (with respect to taxes of foreign  
17 countries and possessions of the United States);
- 18 (22) Subchapter G (sections 531 to 565) (with respect to  
19 corporations used to avoid income tax on  
20 shareholders);
- 21 (23) Subchapter H (sections 581 to 597) (with respect to  
22 banking institutions), except section 584 (with



- 1           respect to common trust funds). For treatment, see  
2           chapter 241;
- 3           (24) Section 642(a) and (b) (with respect to special rules  
4           for credits and deductions applicable to trusts). For  
5           treatment, see sections 235-54(b) and 235-55;
- 6           (25) Section 646 (with respect to tax treatment of electing  
7           Alaska Native settlement trusts);
- 8           (26) Section 668 (with respect to interest charge on  
9           accumulation distributions from foreign trusts);
- 10          (27) Subchapter L (sections 801 to 848) (with respect to  
11          insurance companies). For treatment, see sections  
12          431:7-202 and 431:7-204;
- 13          (28) Section 853 (with respect to foreign tax credit  
14          allowed to shareholders). For treatment, see section  
15          235-55;
- 16          (29) Subchapter N (sections 861 to 999) (with respect to  
17          tax based on income from sources within or without the  
18          United States), except sections 985 to 989 (with  
19          respect to foreign currency transactions). For  
20          treatment, see sections 235-4, 235-5, and 235-7(b),  
21          and 235-55;





- 1 (30) Section 1042(g) (with respect to sales of stock in  
2 agricultural refiners and processors to eligible farm  
3 cooperatives);
- 4 (31) Section 1055 (with respect to redeemable ground  
5 rents);
- 6 (32) Section 1057 (with respect to election to treat  
7 transfer to foreign trust, etc., as taxable exchange);
- 8 (33) Sections 1291 to 1298 (with respect to treatment of  
9 passive foreign investment companies);
- 10 (34) Subchapter Q (sections 1311 to 1351) (with respect to  
11 readjustment of tax between years and special  
12 limitations);
- 13 (35) Subchapter R (sections 1352 to 1359) (with respect to  
14 election to determine corporate tax on certain  
15 international shipping activities using per ton rate);
- 16 (36) Subchapter U (sections 1391 to 1397F) (with respect to  
17 designation and treatment of empowerment zones,  
18 enterprise communities, and rural development  
19 investment areas). For treatment, see chapter 209E;
- 20 (37) Subchapter W (sections 1400 to 1400C) (with respect to  
21 District of Columbia enterprise zone);



- 1 (38) Section 14000 (with respect to education tax  
2 benefits);
- 3 (39) Section 1400P (with respect to housing tax benefits);
- 4 (40) Section 1400R (with respect to employment relief); and
- 5 (41) Section 1400T (with respect to special rules for  
6 mortgage revenue bonds)."

7 SECTION 5. Section 235-2.45, Hawaii Revised Statutes, is  
8 amended by amending subsection (d) to read as follows:

9 "(d) Section 704 of the Internal Revenue Code (with  
10 respect to a partner's distributive share) shall be operative  
11 for purposes of this chapter; except that section 704(b)(2)  
12 shall not apply to:

- 13 (1) Allocations of the high technology business investment  
14 tax credit allowed by section 235-110.9;
- 15 (2) Allocations of net operating loss pursuant to section  
16 235-111.5;
- 17 (3) Allocations of the attractions and educational  
18 facilities tax credit allowed by section 235-110.46;  
19 [~~or~~]
- 20 (4) Allocations of low-income housing tax credits among  
21 partners under section 235-110.8[-]; or



1        (5) Allocations of new market tax credits among partners  
2                    under section 235- ."

3            SECTION 6. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5            SECTION 7. This Act, upon its approval, shall apply to  
6 taxable years beginning after December 31, 2006.



**Report Title:**

Tax Credit; New Markets

**Description:**

Provides a new markets tax credit of one hundred per cent of the amount paid to a qualified community development entity located in Hawaii for a qualified equity investment; requires taxpayer to have received an allowance of credit under section 45D of the Internal Revenue Code, the federal new markets tax credit.

(SD1)

