
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Section 235-110.51, Hawaii Revised Statutes, is
2 amended by amending subsection (h) to read as follows:

3 "(h) The tax credit allowed under this section shall not
4 be available for taxable years beginning after December 31,
5 [~~2010.~~] 2012."

6 SECTION 2. Section 235-110.9, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "**§235-110.9 High technology business investment tax**
9 **credit.** (a) There shall be allowed to each taxpayer subject to
10 the taxes imposed by this chapter a high technology business
11 investment tax credit that shall be deductible from the
12 taxpayer's net income tax liability, if any, imposed by this
13 chapter for the taxable year in which the investment was made
14 and the following four years provided the credit is properly
15 claimed. The tax credit shall be as follows:

16 (1) In the year the investment was made, thirty-five per
17 cent;

- 1 (2) In the first year following the year in which the
2 investment was made, twenty-five per cent;
- 3 (3) In the second year following the investment, twenty
4 per cent;
- 5 (4) In the third year following the investment, ten per
6 cent; and
- 7 (5) In the fourth year following the investment, ten per
8 cent;
- 9 of the investment made by the taxpayer in each qualified high
10 technology business, up to a maximum allowed credit in the year
11 the investment was made, \$700,000; in the first year following
12 the year in which the investment was made, \$500,000; in the
13 second year following the year in which the investment was made,
14 \$400,000; in the third year following the year in which the
15 investment was made, \$200,000; and in the fourth year following
16 the year in which the investment was made, \$200,000. For
17 investments made in a qualified high technology business on or
18 after July 1, 2009, the total maximum allowed credits available
19 to all taxpayers for the sum of all of their investments in any
20 single qualified high technology business invested in a single
21 calendar year shall not exceed \$3,500,000 for the year in which
22 the investment was made; \$2,500,000 for the first year following

1 the year in which the investment was made; \$2,000,000 for the
2 second year following the year in which the investment was made;
3 \$1,000,000 for the third year following the year in which the
4 investment was made; and \$1,000,000 for the fourth year
5 following the year in which the investment was made, for a total
6 of \$10,000,000 over that five-year period. The five-year period
7 referenced in this subsection shall only refer to tax credits
8 applicable to investments that were made in qualified high
9 technology businesses on or before December 31, 2012. Under no
10 circumstances shall the reference to the five-year period be
11 interpreted to mean that the eligibility period for claiming tax
12 credits for new investments in qualified high technology
13 businesses is extended beyond December 31, 2012. For purposes
14 of this subsection, "taxpayer" shall mean the taxpayer that is
15 ultimately liable to pay any applicable taxes and shall not
16 include a partnership, limited liability company, or other pass-
17 through entity; provided that any direct or indirect investment
18 made into a qualified high technology business by a partnership,
19 limited liability company, or other pass-through entity shall be
20 deemed to have been made by their respective partners, members,
21 or other beneficial owners who are the taxpayers that are
22 ultimately liable to pay any applicable taxes.

1 (b) The credit allowed under this section shall be claimed
2 against the net income tax liability for the taxable year. For
3 the purpose of this section, "net income tax liability" means
4 net income tax liability reduced by all other credits allowed
5 under this chapter. By accepting an investment for which the
6 credit allowed under this section may be claimed, a qualified
7 high technology business consents to the public disclosure of
8 the qualified high technology business' name and status as a
9 beneficiary of the credit under this section.

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

20 (d) If at the close of any taxable year in the five-year
21 period in subsection (a) [+], any of the following recapture
22 events occurs:

1 (1) The business no longer qualifies as a qualified high
2 technology business;

3 (2) The business or an interest in the business has been
4 sold by the [~~taxpayer~~] person or entity directly
5 investing in the qualified high technology business;
6 or

7 (3) The [~~taxpayer~~] person or entity directly investing in
8 the qualified high technology business has withdrawn
9 [~~the taxpayer's~~] its investment wholly or partially
10 from the qualified high technology business;

11 then the credit claimed under this section shall be recaptured.
12 The recapture shall be equal to ten per cent of the amount of
13 the total tax credit claimed under this section in the preceding
14 two taxable years. In addition, one hundred per cent of the
15 total tax credit that would otherwise be available for the year
16 in which the recapture event occurs, and each year thereafter
17 during the five-year period set forth in subsection (a), shall
18 be disallowed. The amount of the credit recaptured or
19 disallowed shall apply only to the investment in the particular
20 qualified high technology business that meets the requirements
21 of paragraph (1), (2), or (3). The recapture and disallowed
22 credit provisions of this subsection shall not apply to a tax

1 credit claimed for a qualified high technology business that
2 does not fall within the provisions of paragraph (1), (2), or
3 (3). The amount of the recaptured tax credit determined under
4 this subsection shall be added to the taxpayer's tax liability
5 for the taxable year in which the recapture occurs under this
6 subsection.

7 (e) Every taxpayer, before March 31 of each year in which
8 an investment in a qualified high technology business was made
9 in the previous taxable year, shall submit a written, certified
10 statement to the director of taxation identifying:

11 (1) Qualified investments, if any, expended in the
12 previous taxable year; and

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

15 (f) The department shall:

16 (1) Maintain records of the names and addresses of the
17 taxpayers claiming the credits under this section and
18 the total amount of the qualified investment costs
19 upon which the tax credit is based;

20 (2) Verify the nature and amount of the qualifying
21 investments;

1 (3) Total all qualifying and cumulative investments that
2 the department certifies; and

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

5 Upon each determination made under this subsection, the
6 department shall issue a certificate to the taxpayer verifying
7 information submitted to the department, including qualifying
8 investment amounts, the credit amount certified for each taxable
9 year, and the cumulative amount of the tax credit during the
10 credit period. The taxpayer shall file the certificate with the
11 taxpayer's tax return with the department.

12 The director of taxation may assess and collect a fee to
13 offset the costs of certifying tax credits claims under this
14 section. All fees collected under this section shall be
15 deposited into the tax administration special fund established
16 under section 235-20.5.

17 (g) As used in this section:

18 "Investment tax credit allocation ratio" means, with
19 respect to a taxpayer that has made an investment in a qualified
20 high technology business, the ratio of:

21 (1) The amount of the credit under this section that is,
22 or is to be, received by or allocated to the taxpayer

1 over the life of the investment, as a result of the
2 investment; to

3 (2) The amount of the investment in the qualified high
4 technology business.

5 "Qualified high technology business" means a business,
6 employing or owning capital or property, or maintaining an
7 office, in this State; provided that:

8 (1) More than fifty per cent of its total business
9 activities are qualified research; and provided
10 further that the business conducts more than seventy-
11 five per cent of its qualified research in this State;
12 or

13 (2) More than seventy-five per cent of its gross income is
14 derived from qualified research; and provided further
15 that this income is received from:

16 (A) Products sold from, manufactured in, or produced
17 in this State; or

18 (B) Services performed in this State.

19 "Qualified research" means the same as defined in section
20 235-7.3.

21 (h) Common law principles, including the doctrine of
22 economic substance and business purpose, shall apply to any

1 investment. There exists a presumption that a transaction
2 satisfies the doctrine of economic substance and business
3 purpose to the extent that the special allocation of the high
4 technology business tax credit has an investment tax credit
5 ratio of 1.5 or less of credit for every dollar invested.

6 Transactions for which an investment tax credit allocation
7 ratio greater than 1.5 but not more than 2.0 of credit for every
8 dollar invested and claimed may be reviewed by the department
9 for applicable doctrines of economic substance and business
10 purpose.

11 Businesses claiming a tax credit for transactions with
12 investment tax credit allocation ratios greater than 2.0 of
13 credit for every dollar invested shall substantiate economic
14 merit and business purpose consistent with this section.

15 (i) This section shall not apply to taxable years
16 beginning after December 31, [~~2010.~~] 2012.

17 (j) All claims of high technology business investment tax
18 credits under this section for investments in qualified high
19 technology businesses made after June 30, 2009, shall be made
20 subject to the following aggregate and periodic credit caps and
21 credit allotment procedures:

1 (1) Aggregate and periodic credit caps for all new
2 investments. The maximum amount of high technology
3 business investment tax credits available under this
4 section shall not exceed the following amounts for the
5 following periods:

6 (A) \$100,000,000 to be claimed over the five-year
7 period set forth in subsection (a) for
8 investments made beginning on July 1, 2009, and
9 through December 31, 2009;

10 (B) \$100,000,000 to be claimed over the five-year
11 period set forth in subsection (a), for
12 investments made during the calendar year
13 beginning on January 1, 2010, January 1, 2011,
14 and January 1, 2012, and through December 31 of
15 each respective calendar year, plus any carryover
16 credits available from unused allotments from the
17 prior calendar years and in subparagraph (A).

18 (2) Credit allotments. Beginning on July 1, 2009, the
19 department shall allot to qualified high technology
20 businesses up to the maximum amount of high technology
21 business investment tax credits as provided in
22 paragraph (1). A qualified high technology business

1 may apply for an allotment of high technology business
2 investment tax credits in any amount not to exceed an
3 aggregate of \$10,000,000 for investments it receives
4 in a single calendar year (to be claimed over the
5 five-year period set forth in subsection (a)) for
6 investments, as defined in section 235-1, made in a
7 qualified high technology business in the same
8 calendar year. A qualified high technology business
9 may apply for an allotment of high technology business
10 investment credits, on a form prescribed by the
11 department, on or after the day on which that
12 qualified high technology business has received the
13 investment for which that allotment is applied for;
14 provided that in order to apply for that allotment,
15 the qualified high technology business shall attest
16 and declare to the department the amount of investment
17 that the qualified high technology business has
18 received for which it is applying for that allotment;
19 provided further that the qualified high technology
20 business submits to the department a copy of the
21 checks, bank deposit receipts, wire transfer
22 confirmations, or other evidence reasonably acceptable

1 to the department to verify that the qualified high
2 technology business has received the investment for
3 which the allotment is being applied for. All
4 allotments issued by the department shall be made on a
5 first to apply basis only. Notices of all allotments
6 and denials thereof shall be certified in writing and
7 delivered to the respective qualified high technology
8 business by the department by email, fax, United
9 States Postal Service, or other means reasonably
10 requested by the qualified high technology business
11 and approved by the department, within one business
12 day of the department's receipt of the application for
13 that allotment. If a qualified high technology
14 business does not receive the full allotment of high
15 technology business investment tax credits applied
16 for, the qualified high technology business may, at an
17 investor's option, refund to that investor all or any
18 portion of that investor's investment for which
19 allotment was applied for. An investor's right to
20 receive a refund of its investment shall not negate or
21 invalidate an investment's status as being
22 nonrefundable or at risk, as required by section 235-

1 1. The department shall post on its website in a
2 manner accessible to the general public the total
3 amount of allotments made, and the total unused
4 allotments of credits remaining available under this
5 subsection, which posting shall be updated by the
6 department within one business day of making any
7 allotment of credits pursuant to this subsection.

8 (3) Non-transferable nature of allotments. All credit
9 allotments issued by the department shall be non-
10 transferable, non-negotiable, and non-assignable;
11 provided that a statutory conversion in the form of
12 business entity shall not be considered a transfer or
13 assignment.

14 (4) Credit claims subject to audit. Notwithstanding a
15 credit allotment under this section, every claim for
16 credit shall be subject to audit or review by the
17 department.

18 (k) To qualify for the high technology business investment
19 tax credit for an investment made on or after July 1, 2009, in a
20 qualified high technology business that constitutes a "drop-down
21 subsidiary", prior to receiving that investment, the qualified
22 high technology business shall be required to obtain a private

1 letter comfort ruling from the department that confirms its
2 status as a qualified high technology business.

3 For purposes of this subsection, a "drop-down subsidiary"
4 shall mean a qualified high technology business that is more
5 than eighty per cent owned and controlled directly or
6 indirectly, as defined in section 368(c) of the Internal Revenue
7 Code and as stock ownership is applied pursuant to the rules in
8 section 318 (with respect to constructive ownership of stock) of
9 the Internal Revenue Code, by any company or entity that in the
10 previous taxable year either owned assets located in the State
11 of Hawaii worth more than \$100,000,000 or earned gross income
12 within the State of Hawaii of more than \$50,000,000. This
13 subsection and the ownership and control principles set forth in
14 sections 368(c) and 318 of the Internal Revenue Code shall apply
15 equally whether a drop-down subsidiary is a corporation,
16 partnership, or limited liability company, provided that
17 ownership of more than eighty per cent of either a capital
18 interest or a profits interest of a partnership or limited
19 liability company shall be deemed to be ownership of more than
20 eighty per cent of that partnership or limited liability company
21 for purposes of this subsection."

1 SECTION 3. Section 235-110.91, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) Section 41 (with respect to the credit for increasing
5 research activities) and section 280C(c) (with respect to
6 certain expenses for which the credit for increasing research
7 activities are allowable) of the Internal Revenue Code shall be
8 operative for the purposes of this chapter as provided in this
9 section; except that references to the base amount shall not
10 apply and credit for all qualified research expenses may be
11 taken without regard to the amount of expenses for previous
12 years. If section 41 of the Internal Revenue Code is repealed
13 or terminated prior to January 1, [~~2011,~~] 2012, its provisions
14 shall remain in effect for purposes of the income tax law of the
15 State as modified by this section, as provided for in subsection
16 (j)."

17 2. By amending subsection (j) to read:

18 "(j) This section shall not apply to taxable years
19 beginning after December 31, [~~2010,~~] 2012."

20 SECTION 4. Act 206, Session Laws of Hawaii 2007, is
21 amended by amending section 8 to read as follows:

1 "SECTION 8. This Act shall take effect on July 1, 2007,
2 and shall apply to investments received by a qualified high
3 technology business after June 30, 2007; provided that this Act
4 shall be repealed on January 1, [~~2011,~~] 2013, and [~~sections~~]
5 section 235-20.5 [~~and 235-110.9(b)~~], Hawaii Revised Statutes,
6 shall be reenacted in the form in which [~~they~~] it read on the
7 day before the effective date of this Act."

8 SECTION 5. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 6. This Act shall take effect on July 1, 2009.

Report Title:

High Technology Tax Credits; Extension; Drop-down Subsidiary

Description:

Extends the high technology business investment, research activities, and technology infrastructure renovation tax credits to 12/31/2012. Provides aggregate caps on the high technology business investment tax credit for each qualified high technology business and disallows 100% of the credit in the year that a recapture event occurs and each year thereafter. Requires a drop-down subsidiary to obtain a comfort letter.
(SD1)