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

3           "**§235-110.9 High technology business investment tax**

4 **credit.** (a) There shall be allowed to each taxpayer subject to  
5 the taxes imposed by this chapter a high technology business  
6 investment tax credit that shall be deductible from the  
7 taxpayer's net income tax liability, if any, imposed by this  
8 chapter for the taxable year in which the investment was made  
9 and the following four years provided the credit is properly  
10 claimed. The tax credit shall be as follows:

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

13           (2) In the first year following the year in which the  
14 investment was made, twenty-five per cent;

15           (3) In the second year following the investment, twenty  
16 per cent;

17           (4) In the third year following the investment, ten per  
18 cent; and

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

1 referenced in this subsection shall only refer to tax credits  
2 applicable to investments that were made in qualified high  
3 technology businesses on or before December 31, 2010. Under no  
4 circumstances shall the reference to the five-year period be  
5 interpreted to mean that the eligibility period for claiming tax  
6 credits for new investments in qualified high technology  
7 businesses is extended beyond December 31, 2010. After July 1,  
8 2009, "taxpayer" shall mean the taxpayer that is ultimately  
9 liable to pay any applicable taxes and shall not include a  
10 partnership, limited liability company, or other pass-through  
11 entity; provided that any direct or indirect investment made  
12 into a qualified high technology business by a partnership,  
13 limited liability company, or other pass-through entity shall be  
14 deemed to have been made by their respective partners, members,  
15 or other beneficial owners who are the taxpayers that are  
16 ultimately liable to pay any applicable taxes.

17 (b) The credit allowed under this section shall be claimed  
18 against the net income tax liability for the taxable year. For  
19 the purpose of this section, "net income tax liability" means  
20 net income tax liability reduced by all other credits allowed  
21 under this chapter. By accepting an investment for which the  
22 credit allowed under this section may be claimed, a qualified

1 high technology business consents to the public disclosure of  
2 the qualified high technology business' name and status as a  
3 beneficiary of the credit under this section.

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

14 (d) If at the close of any taxable year in the five-year  
15 period in subsection (a) [÷], any of the following recapture  
16 events occurs:

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

19 (2) The business or an interest in the business has been  
20 sold by the [~~taxpayer~~] person or entity directly  
21 investing in the qualified high technology business;

22 or

1           (3) The [~~taxpayer~~] person or entity directly investing in  
2           the qualified high technology business has withdrawn  
3           [~~the taxpayer's~~] its investment wholly or partially  
4           from the qualified high technology business;  
5           then the credit claimed under this section shall be recaptured.  
6           The recapture shall be equal to ten per cent of the amount of  
7           the total tax credit claimed under this section in the preceding  
8           two taxable years. In addition, one hundred per cent of the  
9           total tax credit that would otherwise be available for the year  
10          in which the recapture event occurs, and each year thereafter  
11          during the five-year period set forth in subsection (a), shall  
12          be disallowed. The amount of the credit recaptured or  
13          disallowed shall apply only to the investment in the particular  
14          qualified high technology business that meets the requirements  
15          of paragraph (1), (2), or (3). The recapture and disallowed  
16          credit provisions of this subsection shall not apply to a tax  
17          credit claimed for a qualified high technology business that  
18          does not fall within the provisions of paragraph (1), (2), or  
19          (3). The amount of the recaptured or disallowed tax credit  
20          determined under this subsection shall be added to the  
21          taxpayer's tax liability for the taxable year in which the  
22          recapture or disallowed credit occurs under this subsection.

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

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

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

9 (f) The department shall:

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

14 (2) Verify the nature and amount of the qualifying  
15 investments;

16 (3) Total all qualifying and cumulative investments that  
17 the department certifies; and

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

20 Upon each determination made under this subsection, the  
21 department shall issue a certificate to the taxpayer verifying  
22 information submitted to the department, including qualifying

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

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

10 (g) As used in this section:

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

14 (1) The amount of the credit under this section that is,  
15 or is to be, received by or allocated to the taxpayer  
16 over the life of the investment, as a result of the  
17 investment; to

18 (2) The amount of the investment in the qualified high  
19 technology business.

20 "Qualified high technology business" means a business,  
21 employing or owning capital or property, or maintaining an  
22 office, in this State; provided that:

1 (1) More than fifty per cent of its total business  
2 activities are qualified research; and provided  
3 further that the business conducts more than seventy-  
4 five per cent of its qualified research in this State;  
5 or

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

9 (A) Products sold from, manufactured in, or produced  
10 in this State; or

11 (B) Services performed in this State.

12 "Qualified research" means the same as defined in section  
13 235-7.3.

14 (h) Common law principles, including the doctrine of  
15 economic substance and business purpose, shall apply to any  
16 investment. There exists a presumption that a transaction  
17 satisfies the doctrine of economic substance and business  
18 purpose to the extent that the special allocation of the high  
19 technology business tax credit has an investment tax credit  
20 ratio of 1.5 or less of credit for every dollar invested.

21 Transactions for which an investment tax credit allocation  
22 ratio greater than 1.5 but not more than 2.0 of credit for every



1 dollar invested and claimed may be reviewed by the department  
2 for applicable doctrines of economic substance and business  
3 purpose.

4 Businesses claiming a tax credit for transactions with  
5 investment tax credit allocation ratios greater than 2.0 of  
6 credit for every dollar invested shall substantiate economic  
7 merit and business purpose consistent with this section.

8 (i) This section shall not apply to taxable years  
9 beginning after December 31, 2010.

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

15 (1) Aggregate and periodic credit caps for all new  
16 investments. The maximum amount of high technology  
17 business investment tax credits available under this  
18 section shall not exceed the following amounts for the  
19 following periods:

20 (A) \$100,000,000 to be claimed over the five-year  
21 period set forth in subsection (a) for

1 investments made beginning on July 1, 2009, and  
2 through December 31, 2009;

3 (B) \$100,000,000 to be claimed over the five-year  
4 period set forth in subsection (a), for  
5 investments made during each subsequent calendar  
6 year, beginning on January 1 and through December  
7 31 of each respective calendar year, plus any  
8 carryover credits available from unused  
9 allotments from the prior calendar years and in  
10 subparagraph (A).

11 (2) Credit allotments. Beginning on July 1, 2009, the  
12 department shall allot to qualified high technology  
13 businesses up to the maximum amount of high technology  
14 business investment tax credits as provided in  
15 paragraph (1). A qualified high technology business  
16 may apply for an allotment of high technology business  
17 investment tax credits in any amount not to exceed an  
18 aggregate of \$10,000,000 for investments it receives  
19 in a single calendar year (to be claimed over the  
20 five-year period set forth in subsection (a)) for  
21 investments, as defined in section 235-1, made in a  
22 qualified high technology business in the same

1           calendar year. A qualified high technology business  
2           may apply for an allotment of high technology business  
3           investment credits, on a form prescribed by the  
4           department, on or after the day on which that  
5           qualified high technology business has received the  
6           investment for which that allotment is applied for;  
7           provided that in order to apply for that allotment,  
8           the qualified high technology business shall attest  
9           and declare to the department the amount of investment  
10           that the qualified high technology business has  
11           received for which it is applying for that allotment;  
12           provided further that the qualified high technology  
13           business submits to the department a copy of the  
14           checks, bank deposit receipts, wire transfer  
15           confirmations, or other evidence reasonably acceptable  
16           to the department to verify that the qualified high  
17           technology business has received the investment for  
18           which the allotment is being applied for. All  
19           allotments issued by the department shall be made on a  
20           first to apply basis only. Notices of all allotments  
21           and denials thereof shall be certified in writing and  
22           delivered to the respective qualified high technology

1           business by the department by email, facsimile  
2           transmission, United States Postal Service, or other  
3           means reasonably requested by the qualified high  
4           technology business and approved by the department,  
5           within one business day of the department's receipt of  
6           the application for that allotment. If a qualified  
7           high technology business does not receive the full  
8           allotment of high technology business investment tax  
9           credits applied for, the qualified high technology  
10          business may, at an investor's option, refund to that  
11          investor all or any portion of that investor's  
12          investment for which allotment was applied for. An  
13          investor's right to receive a refund of its investment  
14          shall not negate or invalidate an investment's status  
15          as being nonrefundable or at risk, as required by  
16          section 235-1. The department shall post on its  
17          website in a manner accessible to the general public  
18          the total amount of allotments made, and the total  
19          unused allotments of credits remaining available under  
20          this subsection, which posting shall be updated by the  
21          department within one business day of making any  
22          allotment of credits pursuant to this subsection.

1       (3) Non-transferable nature of allotments. All credit  
2       allotments issued by the department shall be non-  
3       transferable, non-negotiable, and non-assignable;  
4       provided that a statutory conversion in the form of  
5       business entity shall not be considered a transfer or  
6       assignment.

7       (4) Credit claims subject to audit. Notwithstanding a  
8       credit allotment under this section, every claim for  
9       credit shall be subject to audit or review by the  
10       department.

11       (k) To qualify for the high technology business investment  
12       tax credit for an investment made on or after July 1, 2009, in a  
13       qualified high technology business that constitutes a "drop-down  
14       subsidiary", prior to receiving that investment, the qualified  
15       high technology business shall be required to obtain a private  
16       comfort letter ruling from the department that confirms its  
17       status as a qualified high technology business.

18       For purposes of this subsection, a "drop-down subsidiary"  
19       shall mean a qualified high technology business that is more  
20       than eighty per cent owned and controlled directly or  
21       indirectly, as defined in section 368(c) of the Internal Revenue  
22       Code and as stock ownership is applied pursuant to the rules in

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

15 SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is  
16 amended by amending subsection (c) to read as follows:

17 "(c) There shall be allowed to each qualified high  
18 technology business subject to the tax imposed by this chapter  
19 an income tax credit for qualified research activities equal to  
20 the credit for research activities provided by section 41 of the  
21 Internal Revenue Code and as modified by this section. The  
22 credit shall be deductible from the taxpayer's net income tax

1 liability, if any, imposed by this chapter for the taxable year  
2 in which the credit is properly claimed~~[.]~~; provided that to  
3 qualify for the tax credit after the effective date of this Act,  
4 the taxpayer shall have increased its workforce by \_\_\_\_\_ per cent  
5 from what it was at the beginning of the tax year for two  
6 consecutive years beginning after December 31, 2009."

7 SECTION 3. Section 235-110.51, Hawaii Revised Statutes, is  
8 repealed.

9 [~~"§235-110.51 Technology infrastructure renovation tax~~  
10 ~~credit.~~ (a) ~~There shall be allowed to each taxpayer subject to~~  
11 ~~the taxes imposed by this chapter, an income tax credit which~~  
12 ~~shall be deductible from the taxpayer's net income tax~~  
13 ~~liability, if any, imposed by this chapter for the taxable year~~  
14 ~~in which the credit is properly claimed.~~

15 (b) ~~The amount of the credit shall be four per cent of the~~  
16 ~~renovation costs incurred during the taxable year for each~~  
17 ~~commercial building located in Hawaii.~~

18 (c) ~~In the case of a partnership, S corporation, estate,~~  
19 ~~trust, or any developer of a commercial building, the tax credit~~  
20 ~~allowable is for renovation costs incurred by the entity for the~~  
21 ~~taxable year. The cost upon which the tax credit is computed~~

1 ~~shall be determined at the entity level. Distribution and share~~  
2 ~~of credit shall be determined pursuant to section 235-110.7(a).~~

3 ~~(d) If a deduction is taken under section 179 (with~~  
4 ~~respect to election to expense depreciable business assets) of~~  
5 ~~the Internal Revenue Code, no tax credit shall be allowed for~~  
6 ~~that portion of the renovation cost for which the deduction is~~  
7 ~~taken.~~

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

15 ~~(f) The credit allowed under this section shall be claimed~~  
16 ~~against the net income tax liability for the taxable year.~~

17 ~~(g) If the tax credit under this section exceeds the~~  
18 ~~taxpayer's income tax liability, the excess of credit over~~  
19 ~~liability may be carried forward until exhausted.~~

20 ~~(h) The tax credit allowed under this section shall not be~~  
21 ~~available for taxable years beginning after December 31, 2010.~~

22 ~~(i) As used in this section:~~



1       ~~"Net income tax liability" means income tax liability~~  
2 ~~reduced by all other credits allowed under this chapter.~~

3       ~~"Renovation costs" means costs incurred after December 31,~~  
4 ~~2000, to plan, design, install, construct, and purchase~~  
5 ~~technology-enabled infrastructure equipment to provide a~~  
6 ~~commercial building with technology-enabled infrastructure.~~

7       ~~"Technology-enabled infrastructure" means:~~

- 8       ~~(1) High speed telecommunications systems that provide~~  
9       ~~Internet access, direct satellite communications~~  
10       ~~access, and videoconferencing facilities;~~
- 11       ~~(2) Physical security systems that identify and verify~~  
12       ~~valid entry to secure spaces, detect invalid entry or~~  
13       ~~entry attempts, and monitor activity in these spaces;~~
- 14       ~~(3) Environmental systems to include heating, ventilation,~~  
15       ~~air conditioning, fire detection and suppression, and~~  
16       ~~other life safety systems; and~~
- 17       ~~(4) Backup and emergency electric power systems.~~
- 18       ~~(j) No taxpayer that claims a credit under this section~~  
19 ~~shall claim any other credit under this chapter."]~~

20       SECTION 4. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.

22       SECTION 5. This Act shall take effect on July 1, 2090.

**Report Title:**

High Technology Tax Credits; Workforce; Drop-down Subsidiary

**Description:**

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 per cent increase in workforce to continue claiming the research activities tax credit after two years. Requires a drop-down subsidiary to obtain a comfort letter. Repeals the technology infrastructure renovation tax credit. Effective 7/1/90. (SD2)