

---

---

# A BILL FOR AN ACT

RELATING TO TAXATION.

**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-A Credits against income; claim limitation. (a)  
5 Notwithstanding any law to the contrary providing for a tax  
6 credit that may be claimed against a taxpayer's tax liability  
7 under section 235-110.51, 235-110.9, 241-4.8, or 431:7-209 for  
8 taxable years beginning on or after January 1, 2009, and ending  
9 before January 1, 2011, no claim for these tax credits shall  
10 exceed eighty per cent of the taxpayer's tax liability for the  
11 taxable year in which the credit is claimed, and any tax credits  
12 claimed shall not result in any credit carryovers.

13           (b) This section shall apply to investments made,  
14 renovation costs incurred, or eligible depreciable tangible  
15 property placed in service on or after May 1, 2009."

16           SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is  
17 amended by amending subsection (d) to read as follows:



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

5           (1) Allocations of the high technology business investment  
6 tax credit allowed by section 235-110.9 [7] for  
7 investments made before May 1, 2009;

8           (2) Allocations of net operating loss pursuant to section  
9 235-111.5;

10           (3) Allocations of the attractions and educational  
11 facilities tax credit allowed by section 235-110.46;  
12 or

13           (4) Allocations of low-income housing tax credits among  
14 partners under section 235-110.8."

15           SECTION 3. Section 235-110.7, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:

17           "(a) There shall be allowed to each taxpayer subject to  
18 the tax imposed by this chapter a capital goods excise tax  
19 credit which shall be deductible from the taxpayer's net income  
20 tax liability, if any, imposed by this chapter for the taxable  
21 year in which the credit is properly claimed.



1           The amount of the tax credit shall be determined by the  
2 application of the following rates against the cost of the  
3 eligible depreciable tangible personal property used by the  
4 taxpayer in a trade or business and placed in service within  
5 Hawaii after December 31, 1987. For calendar years beginning  
6 after:

7           (1) December 31, 1987, the applicable rate shall be three  
8 per cent;

9           (2) December 31, 1988, [~~and thereafter,~~] the applicable  
10 rate shall be four per cent [-];

11           (3) December 31, 2008, the applicable rate shall be zero  
12 per cent; and

13           (4) December 31, 2009, and thereafter, the applicable rate  
14 shall be four per cent.

15           For taxpayers with fiscal taxable years, the applicable  
16 rate shall be the rate for the calendar year in which the  
17 eligible depreciable tangible personal property used in the  
18 trade or business is placed in service within Hawaii.

19           In the case of a partnership, S corporation, estate, or  
20 trust, the tax credit allowable is for eligible depreciable  
21 tangible personal property which is placed in service by the  
22 entity. The cost upon which the tax credit is computed shall be



1 determined at the entity level. Distribution and share of  
2 credit shall be determined by rules.

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

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

14 SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 **"§235-110.9 High technology business investment tax**  
17 **credit.** (a) There shall be allowed to each taxpayer subject to  
18 the taxes imposed by this chapter a high technology business  
19 investment tax credit that shall be deductible from the  
20 taxpayer's net income tax liability, if any, imposed by this  
21 chapter for the taxable year in which the investment was made



1 and the following four years provided the credit is properly  
2 claimed. The tax credit shall be as follows:

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

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

7 (3) In the second year following the investment, twenty  
8 per cent;

9 (4) In the third year following the investment, ten per  
10 cent; and

11 (5) In the fourth year following the investment, ten per  
12 cent;

13 of the investment made by the taxpayer in each qualified high  
14 technology business, up to a maximum allowed credit in the year  
15 the investment was made, \$700,000; in the first year following  
16 the year in which the investment was made, \$500,000; in the  
17 second year following the year in which the investment was made,  
18 \$400,000; in the third year following the year in which the  
19 investment was made, \$200,000; and in the fourth year following  
20 the year in which the investment was made, \$200,000.

21 (b) The credit allowed under this section shall be claimed  
22 against the net income tax liability for the taxable year. For



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

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

18 (d) If at the close of any taxable year in the five-year  
19 period in subsection (a):

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



1           (2) The business or an interest in the business has been  
2                    sold by the taxpayer investing in the qualified high  
3                    technology business; or  
4           (3) The taxpayer has withdrawn the taxpayer's investment  
5                    wholly or partially from the qualified high technology  
6                    business;  
7           the credit claimed under this section shall be recaptured. The  
8           recapture shall be equal to ten per cent of the amount of the  
9           total tax credit claimed under this section in the preceding two  
10          taxable years. The amount of the credit recaptured shall apply  
11          only to the investment in the particular qualified high  
12          technology business that meets the requirements of paragraph  
13          (1), (2), or (3). The recapture provisions of this subsection  
14          shall not apply to a tax credit claimed for a qualified high  
15          technology business that does not fall within the provisions of  
16          paragraph (1), (2), or (3). The amount of the recaptured tax  
17          credit determined under this subsection shall be added to the  
18          taxpayer's tax liability for the taxable year in which the  
19          recapture occurs under this subsection.  
20          (e) Every taxpayer, before March 31 of each year in which  
21          an investment in a qualified high technology business was made

1 in the previous taxable year, shall submit a written, certified  
2 statement to the director of taxation identifying:

- 3 (1) Qualified investments, if any, expended in the  
4 previous taxable year; and
- 5 (2) The amount of tax credits claimed pursuant to this  
6 section, if any, in the previous taxable year.
- 7 (f) The department shall:
  - 8 (1) Maintain records of the names and addresses of the  
9 taxpayers claiming the credits under this section and  
10 the total amount of the qualified investment costs  
11 upon which the tax credit is based;
  - 12 (2) Verify the nature and amount of the qualifying  
13 investments;
  - 14 (3) Total all qualifying and cumulative investments that  
15 the department certifies; and
  - 16 (4) Certify the amount of the tax credit for each taxable  
17 year and cumulative amount of the tax credit.

18 Upon each determination made under this subsection, the  
19 department shall issue a certificate to the taxpayer verifying  
20 information submitted to the department, including qualifying  
21 investment amounts, the credit amount certified for each taxable  
22 year, and the cumulative amount of the tax credit during the





1 credit period. The taxpayer shall file the certificate with the  
2 taxpayer's tax return with the department.

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

8 (g) As used in this section:

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

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

16 (2) The amount of the investment in the qualified high  
17 technology business.

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

21 (1) More than fifty per cent of its total business  
22 activities are qualified research; and provided



1 further that the business conducts more than seventy-  
2 five per cent of its qualified research in this State;  
3 or

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

7 (A) Products sold from, manufactured in, or produced  
8 in this State; or

9 (B) Services performed in this State.

10 "Qualified research" means the same as defined in section  
11 235-7.3.

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

19 Transactions for which an investment tax credit allocation  
20 ratio greater than 1.5 but not more than 2.0 of credit for every  
21 dollar invested and claimed may be reviewed by the department



1 for applicable doctrines of economic substance and business  
2 purpose.

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

7 (i) For investments made on or after May 1, 2009,  
8 notwithstanding any other law to the contrary, no allocations,  
9 special or otherwise, of credits under this section may exceed  
10 the amount of the investment made by the taxpayer ultimately  
11 claiming this credit; and investment tax credit allocation  
12 ratios greater than 1.0 of credit for every dollar invested  
13 shall not be allowed. In addition, the credit shall be allowed  
14 only in accordance with subsection (a).

15 (j) For investments made on or after May 1, 2009, this  
16 section shall be subject to section 235-A.

17 ~~[(i)]~~ (k) This section shall not apply to taxable years  
18 beginning after December 31, 2010."

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

21 "[~~§~~241-4.5~~]~~ **Capital goods excise tax credit.** The  
22 capital goods excise tax credit provided under section 235-110.7



1 shall be operative for this chapter after December 31, 1987[-];  
2 provided that the capital goods excise tax credit shall be  
3 inoperative after December 31, 2008, and before January 1,  
4 2010."

5 SECTION 6. Section 241-4.8, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§241-4.8[+] High technology business investment tax  
8 credit. (a) The high technology business investment tax credit  
9 provided under section 235-110.9 shall be operative for this  
10 chapter on July 1, 1999.

11 (b) For investments made on or after May 1, 2009, this  
12 section shall be subject to section 235-A."

13 SECTION 7. Section 431:7-209, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§431:7-209[+] High technology business investment tax  
16 credit. (a) The high technology business investment tax credit  
17 provided under section 235-110.9 shall be operative for this  
18 chapter on July 1, 1999.

19 (b) For investments made on or after May 1, 2009, this  
20 section shall be subject to section 235-A."

21 SECTION 8. In codifying the new section added by section 1  
22 of this Act, the revisor of statutes shall substitute the



1 appropriate section number for the letter used in designating  
2 the new section in this Act.

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

5 SECTION 10. This Act shall take effect upon its approval,  
6 and shall apply to investments made, renovation costs incurred,  
7 or eligible depreciable tangible property placed in service on  
8 or after May 1, 2009.



**Report Title:**

Tax Credits; Partner's Distributive Share

**Description:**

Establishes a temporary 80% tax credit cap and restricts carryover credits for the high technology business investment tax credit and the technology infrastructure renovation tax credit for investments made after May 1, 2009 and ending before January 1, 2011. Removes the partner distributive share tax incentive for the high technology business investment tax credit. Limits investment credit allocation ratio to 1 to 1. Temporarily suspends the capital goods excise tax credit for one year. (SB199 CD2)

