

Honolulu, Hawaii

March 6, 2009

RE: H.B. No. 1451
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Sir:

Your Committee on Finance, to which was referred H.B. No. 1451, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TAXATION,"

begs leave to report as follows:

The purpose of this bill is to continue providing financial support for Hawaii's high tech industry while also mitigating revenue losses to the State by, among other things:

- (1) Extending the availability of the Technology Infrastructure Renovation Tax Credit (Renovation Credit), High Technology Business Investment Tax Credit (Investment Credit), and the Tax Credit for Research Activities (Research Credit) to December 31, 2015;
- (2) For the Investment Credit, establishing:
 - (A) A limit of \$10,000,000 on the aggregate of credits that may be claimed by taxpayers in a taxable year for investments in a single qualified high technology business (QHTB); and
 - (B) An unspecified limit on the aggregate of credits claimed in a taxable year by all taxpayers for investments in QHTBs;

and



- (3) Establishing an Investment Credit Review Board to review taxpayer appeals in cases where the Department of Taxation (DOTAX) denies certification of a credit for investment in a QHTB that is a wholly-owned subsidiary.

DRC and International Alliance of Theatrical Stage Employees Local 665 supported this bill. The Hawaii Government Employees Association and Pacific Biodiesel opposed this bill. DOTAX; ThinkTech Hawaii, Inc.; Tax Foundation of Hawaii; PacifiCap Group; Enterprise Honolulu; Sopogy; Hawaii Venture Capital Association; Cardax Pharmaceuticals; Pacific Light & Power; Pukoa Scientific; Pipeline Micro; DataHouse Consulting, Inc.; Natural Power Concepts; Pacific LightNet; IUE, LLC; Cellular Bioengineering, Inc.; Archinoetics; Island Film; Oceanit; NovaSol; Hawaii Science & Technology Council; OmniGreen Renewables LLC; Island Film Group; Hyperspective Studios; Monsanto Hawaii; Oceantronics, Inc.; Edutainment Resources, Inc.; Claim Check; Shinkawa Limited; Charles Michael Brotman Music, LLC; MIX808; Accuity LLP; Kobayashi Development Group, LLC; Ocean Engineering & Energy Systems, Inc.; Pacific Aquaculture and Biotechnology, LLC; Hawaii Crop Improvement Association; Superb Development & Service Corporation; Analytical Planning Consultants, Inc.; Aloha Island, Inc.; Real-Time Genomics; and numerous concerned individuals submitted comments.

Your Committee has amended this measure by:

- (1) Instead of December 31, 2015, making the Investment Credit and Research Credit available up to December 31, 2011;
- (2) For taxable years beginning after December 31, 2009, inserting a limit of \$50,000,000 on the aggregate of credits claimed in a taxable year by all taxpayers for investments in QHTBs;
- (3) Deleting the Investment Credit Review Board;
- (4) Prohibiting taxpayers from claiming an income tax credit if the costs incurred or investments made for claiming the tax credit were paid for by grants or moneys received from federal, state, or county government;
- (5) Clarifying the definition of "investment" under the Income Tax Law;



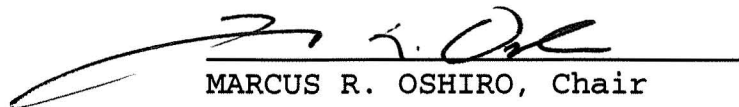
- (6) Making Section 704(b)(2) of the Internal Revenue Code, with respect to a partner's distributive share, apply to allocations of the Investment Credit and the sale of high technology net operating loss pursuant to section 235-111.5, Hawaii Revised Statutes (HRS);
- (7) Beginning July 1, 2009, requiring DOTAX to assess:
 - (A) A \$5,000 fee for certain comfort letters issued by DOTAX; and
 - (B) A \$2,000 fee for certification issued under the Investment Credit or Research Credit;and allowing DOTAX to increase or decrease the amount of the fee; provided that no fee exceeds \$10,000;
- (8) Adding legislative appropriations as a source of funding for the Tax Administration Special Fund (Special Fund) and allowing the use of Special Fund monies for general tax administration purposes;
- (9) Changing the amount of the recapture provision under the Investment Credit from 10 to 50 percent of the amount of Investment Credits claimed in the preceding two taxable years and imposing a 100 percent recapture provision if a QHTB ceases to qualify as such due to its business activities being relocated outside of Hawaii;
- (10) Extending the deadline for the submittal of certified statements required of taxpayers claiming the Investment Credit from March 31 of the year following the investment in a QHTB to April 1;
- (11) Making Sections 6676 (with respect to erroneous refund claims), 6694 (with respect to understatements of taxpayer's liability by tax return preparer), 6700 (with respect to promoting abusive tax shelters), and 7404 (with respect to actions to enjoin tax return preparers) of the Internal Revenue Code operative for administering the Investment Credit;
- (12) Changing the definition of a "QHTB" by specifying that to qualify as a QHTB, more than 75 percent of a business's:



- (A) Total business activities are qualified research activities conducted in Hawaii; and
 - (B) Workforce conducting the qualified research activities is comprised of employees or independent contractors physically performing services in Hawaii;
- (13) Changing the definition of "qualified research" under the Investment Credit to mean the same as in Section 41(d) of the Internal Revenue Code;
 - (14) Repealing the provisions requiring that common law principles, including the doctrine of economic substance and business purpose, apply to any investment under the Investment Credit;
 - (15) Changing its effective date to July 1, 2020, to encourage further discussion; and
 - (16) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1451, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1451, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Finance,



MARCUS R. OSHIRO, Chair



