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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 235-110.3, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsections (a) and (b) to read:

4 "(a) Each year during the credit period, there shall be  
5 allowed to each taxpayer subject to the taxes imposed by this  
6 chapter, an ethanol facility tax credit that shall be applied to  
7 the taxpayer's net income tax liability, if any, imposed by this  
8 chapter for the taxable year in which the credit is properly  
9 claimed.

10 For each [~~qualified~~] qualifying ethanol production  
11 facility, the annual dollar amount of the ethanol facility tax  
12 credit during the eight-year period shall be equal to [~~thirty~~  
13 ~~per cent of its nameplate capacity~~] forty cents per gallon  
14 produced if the nameplate capacity of the qualifying ethanol  
15 production facility is greater than five hundred thousand  
16 gallons but less than fifteen million gallons. A taxpayer may  
17 claim this credit for each qualifying ethanol production  
18 facility; provided that:



1 (1) The claim for this credit by any taxpayer of a  
2 qualifying ethanol production facility shall not  
3 exceed one hundred per cent of the total of all  
4 investments made by the taxpayer in the qualifying  
5 ethanol production facility during the credit period;

6 (2) The qualifying ethanol production facility operated at  
7 a level of production of at least seventy-five per  
8 cent of its nameplate capacity on an annualized basis;

9 (3) The qualifying ethanol production facility is in  
10 production on or before January 1, 2017; and

11 (4) No taxpayer that claims the credit under this section  
12 shall claim any other tax credit under this chapter  
13 for the same taxable year.

14 (b) As used in this section:

15 "Credit period" means a maximum period of eight years  
16 beginning from the first taxable year in which the qualifying  
17 ethanol production facility begins production even if actual  
18 production is not at seventy-five per cent of nameplate  
19 capacity.

20 "Investment" means a nonrefundable capital expenditure  
21 related to the development and construction of any qualifying  
22 ethanol production facility, including processing equipment,



1 waste treatment systems, pipelines, and liquid storage tanks at  
2 the facility or remote locations, including expansions or  
3 modifications. Capital expenditures shall be those direct and  
4 certain indirect costs determined in accordance with [~~section~~]  
5 Section 263A (with respect to capitalization and inclusion in  
6 inventory costs of certain expenses) of the Internal Revenue  
7 Code, relating to uniform capitalization costs, but shall not  
8 include expenses for compensation paid to officers of the  
9 taxpayer, pension and other related costs, rent for land, the  
10 costs of repairing and maintaining the equipment or facilities,  
11 training of operating personnel, utility costs during  
12 construction, property taxes, costs relating to negotiation of  
13 commercial agreements not related to development or  
14 construction, or service costs that can be identified  
15 specifically with a service department or function or that  
16 directly benefit or are incurred by reason of a service  
17 department or function. For the purposes of determining a  
18 capital expenditure under this section, the provisions of  
19 [~~section~~] Section 263A of the Internal Revenue Code shall apply  
20 as it read on March 1, 2004. For purposes of this section,  
21 investment excludes land costs and includes any investment for  
22 which the taxpayer is at risk, as that term is used in [~~section~~]



1 Section 465 (with respect to deductions limited to amount at  
2 risk) of the Internal Revenue Code [~~(with respect to deductions~~  
3 limited to amount at risk)].

4 "Nameplate capacity" means the qualifying ethanol  
5 production facility's production design capacity, in gallons of  
6 motor fuel grade ethanol per year. Nameplate capacity shall be  
7 determined by the facility owner and shall not exceed the amount  
8 of production actually recorded during a consecutive seven-day  
9 period multiplied by fifty-two.

10 "Net income tax liability" means net income tax liability  
11 reduced by all other credits allowed under this chapter.

12 "Qualifying ethanol production" means ethanol or biodiesel  
13 produced from renewable, organic feedstocks[7] excluding Zea  
14 mays L., or waste materials[7] including fats, oils, grease, and  
15 municipal solid waste. All qualifying production shall be  
16 fermented, distilled, gasified, or produced by physical chemical  
17 conversion methods such as reformation and catalytic conversion  
18 and dehydrated at the facility.

19 "Qualifying ethanol production facility" or "facility"  
20 means a facility located in Hawaii which produces motor fuel  
21 grade ethanol meeting the minimum specifications by the American  
22 Society of Testing and Materials standard D-4806, as amended."



1           2. By amending subsection (k) to read:

2           "(k) Each calendar year during the credit period, the  
3 taxpayer shall provide information to the director of business,  
4 economic development, and tourism on the number of gallons of  
5 ethanol produced and sold during the previous calendar year, how  
6 much was sold in Hawaii versus overseas, the percentage of  
7 Hawaii-grown feedstocks and the percentage of other feedstocks  
8 used for ethanol production, the number of employees of the  
9 facility, and the projected number of gallons of ethanol  
10 production for the succeeding year."

11           SECTION 2. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13           SECTION 3. This Act shall take effect upon its approval,  
14 and shall apply to taxable years beginning after December 31,  
15 2008.

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INTRODUCED BY:

 *BJA*

JAN 28 2009



**Report Title:**

Ethanol Facilities; Nameplate Capacity; Tax Credit

**Description:**

Amends the definition of nameplate capacity for ethanol facilities. Revises the allowable tax credit for qualified ethanol production facilities to 40 cents per gallon of ethanol produced. Excludes corn (*Zea mays* L.) as an organic feedstock for the production of ethanol.

