
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- New markets tax credit. (a) Section 45D (with
5 respect to new markets tax credit) of the Internal Revenue Code
6 shall be operative for the purposes of this chapter, except as
7 otherwise provided in this section.

8 (b) Each taxpayer subject to the tax imposed by this
9 chapter who holds a qualified equity investment on a credit
10 allowance date of that investment, which occurs during the
11 taxable year, may claim a credit against the taxpayer's net
12 income tax liability for the taxable year. The amount of the
13 credit shall be deductible from the taxpayer's net income tax
14 liability, if any, imposed by this chapter for the taxable year
15 in which the credit is properly claimed on a timely basis.

16 (c) For the purposes of this section:

17 "Credit allowance date" means:



1 (1) The date on which a qualified equity investment is
2 initially made; and

3 (2) Thereafter, each of the six anniversary dates of the
4 date in paragraph (1).

5 "Low-income community" means any population census tract
6 if:

7 (1) The poverty rate for a tract is at least twenty per
8 cent; or

9 (2) In the case of a tract:

10 (A) Not located within a metropolitan area, the
11 median family income for the tract does not
12 exceed eighty per cent of statewide median family
13 income; or

14 (B) Located within a metropolitan area, the median
15 family income for the tract does not exceed
16 eighty per cent of the greater of the statewide
17 median family income or the metropolitan area
18 median family income.

19 "Qualified active low-income community business" means,
20 with respect to any taxable year, any corporation (including a
21 nonprofit corporation) or partnership if for the taxable year:



- 1 (1) At least fifty per cent of the total gross income of
2 the entity is derived from the active conduct of a
3 qualified business within any low-income community;
- 4 (2) A substantial portion of the use of the tangible
5 property of the entity (whether owned or leased) is
6 within any low-income community;
- 7 (3) A substantial portion of the services performed for
8 the entity by its employees are performed in any
9 low-income community;
- 10 (4) Less than five per cent of the average of the
11 aggregate unadjusted bases of the property of the
12 entity is attributable to collectibles, as defined in
13 section 408 (m) (2) (with respect to individual
14 retirement accounts) of the Internal Revenue Code,
15 other than collectibles that are held primarily for
16 sale to customers in the ordinary course of business;
17 and
- 18 (5) Less than five per cent of the average of the
19 aggregate unadjusted bases of the property of the
20 entity is attributable to nonqualified financial
21 property, as defined in section 1397C (e) (with



1 respect to enterprise zone business defined) of the
2 Internal Revenue Code.

3 "Qualified business" shall have the same meaning as
4 provided in section 1397C(d) (with respect to enterprise zone
5 business defined) of the Internal Revenue Code, except that:

6 (1) In lieu of applying paragraph (2)(B) thereof, the
7 rental to others of real property located in any
8 low-income community shall be treated as a qualified
9 business if there are substantial improvements located
10 on the property; and

11 (2) Paragraph (3) thereof shall not apply.

12 "Qualified community development entity" means any domestic
13 corporation or partnership if:

14 (1) The primary mission of the entity is serving, or
15 providing investment capital for, low-income
16 communities or low-income persons;

17 (2) The entity maintains accountability to residents of
18 low-income communities through their representation on
19 any governing board of the entity or on any advisory
20 board to the entity; and

21 (3) The entity is certified by the Secretary of the
22 Department of the Treasury for purposes of this



1 section as being a qualified community development
2 entity.

3 "Qualified equity investment" means any equity investment
4 in a qualified community development entity if:

- 5 (1) The investment is acquired by the taxpayer at its
6 original issue (directly or through an underwriter)
7 solely in exchange for cash;
8 (2) Substantially all of the cash is used by the qualified
9 community development entity to make qualified
10 low-income community investments; and
11 (3) The investment is designated for purposes of this
12 section by the qualified community development entity.

13 "Qualified low-income community investment" means:

- 14 (1) Any capital or equity investment in, or loan to, any
15 qualified active low-income community business;
16 (2) The purchase from another qualified community
17 development entity of any loan made by such entity
18 which is a qualified low-income community investment;
19 (3) Financial counseling and other services specified in
20 regulations prescribed by the Secretary of the
21 Department of the Treasury to businesses located in,
22 and residents of, low-income communities; and



1 (4) Any equity investment in, or loan to, any qualified
2 community development entity.

3 (d) The amount of the credit shall be equal to the
4 applicable percentage of the amount paid to the qualified
5 community development entity for the investment at its original
6 issue. As used in this section, "applicable percentage" means:

7 (1) Five per cent with respect to the first three credit
8 allowance dates; and

9 (2) Six per cent with respect to the remainder of the
10 credit allowance dates.

11 (e) An application for a new markets tax credit shall be
12 submitted to the director on forms established by the department
13 prior to the use of the credit.

14 (f) The credit allowed under this section shall be claimed
15 against net income tax liability for the taxable year. For the
16 purpose of deducting this tax credit, "net income tax liability"
17 means net income tax liability reduced by all other credits
18 allowed to the taxpayer under this chapter.

19 A tax credit under this section that exceeds the taxpayer's
20 net income tax liability may be used as a credit against the
21 taxpayer's income tax liability in subsequent years, until
22 exhausted. All claims for a tax credit under this section shall



1 be filed on or before the end of the twelfth month following the
2 close of the taxable year for which the credit may be claimed.
3 Failure to properly and timely claim the credit shall constitute
4 a waiver of the right to claim the credit.

5 Section 469 (with respect to passive activity losses and
6 credits limited) of the Internal Revenue Code shall be applied
7 in claiming the credit under this section.

8 (g) The department may recapture any portion of a tax
9 credit allowed under this section if:

- 10 (1) Any amount of federal tax credit that might be
11 available with respect to the qualified equity
12 investment that generated the tax credit under this
13 section is recaptured under section 45D of the
14 Internal Revenue Code; provided that the department's
15 recapture shall be proportionate to the federal
16 recapture with respect to the qualified equity
17 investment;
- 18 (2) The qualified community development entity redeems or
19 makes a principal repayment with respect to the
20 qualified equity investment that generated the tax
21 credit prior to the final credit allowance date of the
22 qualified equity investment; provided that the



1 department's recapture shall be proportionate to the
2 amount of the redemption or repayment with respect to
3 the qualified equity investment; or

4 (3) The qualified community development entity fails to
5 invest at least eighty-five per cent of the purchase
6 price of the qualified equity investment in qualified
7 low-income community investments within twelve months
8 of the issuance of the qualified equity investment and
9 maintain the same level of investment in qualified
10 low-income community investments until the last credit
11 allowance date for the qualified equity investment.

12 For purposes of calculating the amount of qualified
13 low-income community investments held by a qualified
14 community development entity, an investment shall be
15 considered held by the entity even if the investment
16 has been sold or repaid provided that the entity
17 reinvests an amount equal to the capital returned to
18 or recovered from the original investment, exclusive
19 of any profits realized, in another qualified active
20 low-income community business in this state within
21 twelve months of the receipt of the capital. A
22 qualified community development entity may not be



1 required to reinvest capital returned from qualified
2 low-income community investments after the sixth
3 anniversary of the issuance of the qualified equity
4 investment, the proceeds of which were used to make
5 the qualified low-income community investment, and the
6 qualified low-income community investment shall be
7 considered held by the issuer through the qualified
8 equity investment's final credit allowance date.

9 The department shall provide notice to the qualified
10 community development entity of any proposed recapture of tax
11 credits pursuant to this subsection. The entity shall have
12 ninety days to cure any deficiency indicated in the department's
13 original recapture notice and avoid the recapture. If the
14 entity fails or is unable to cure the deficiency within the
15 ninety-day period, the department shall provide the entity and
16 the taxpayer from whom the credit is to be recaptured with a
17 final order of recapture. Any tax credit for which a final
18 recapture order has been issued shall be recaptured by the
19 department from the taxpayer who claimed the tax credit on a tax
20 return.



1 (h) All references to Internal Revenue Code subsections
2 within section 45D shall, to the extent not inconsistent with
3 this section, be operative for purposes of this section.

4 (i) The director may adopt rules under chapter 91 and
5 prepare any forms necessary to carry out the purposes of this
6 section."

7 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) The following Internal Revenue Code subchapters,
10 parts of subchapters, sections, subsections, and parts of
11 subsections shall not be operative for the purposes of this
12 chapter, unless otherwise provided:

13 (1) Subchapter A (sections 1 to 59A) (with respect to
14 determination of tax liability), except section
15 1(h)(2) (relating to net capital gain reduced by the
16 amount taken into account as investment income),
17 except sections 2(a), 2(b), and 2(c) (with respect to
18 the definition of "surviving spouse" and "head of
19 household"), except section 41 (with respect to the
20 credit for increasing research activities), except
21 section 42 (with respect to low-income housing
22 credit), except section 45D (with respect to new



1 markets tax credit), and except sections 47 and 48, as
2 amended, as of December 31, 1984 (with respect to
3 certain depreciable tangible personal property). For
4 treatment, see sections 235-110.91, 235-110.7, [and]
5 235-110.8[+], and section 235- ;

6 (2) Section 78 (with respect to dividends received from
7 certain foreign corporations by domestic corporations
8 choosing foreign tax credit);

9 (3) Section 86 (with respect to social security and tier 1
10 railroad retirement benefits);

11 (4) Section 103 (with respect to interest on state and
12 local bonds). For treatment, see section 235-7(b);

13 (5) Section 114 (with respect to extraterritorial income).

14 For treatment, any transaction as specified in the
15 transitional rule for 2005 and 2006 as specified in
16 the American Jobs Creation Act of 2004 section 101(d)
17 and any transaction that has occurred pursuant to a
18 binding contract as specified in the American Jobs
19 Creation Act of 2004 section 101(f) are inoperative;

20 (6) Section 120 (with respect to amounts received under
21 qualified group legal services plans). For treatment,
22 see section 235-7(a)(9) to (11);



- 1 (7) Section 122 (with respect to certain reduced uniformed
2 services retirement pay). For treatment, see section
3 235-7(a)(3);
- 4 (8) Section 135 (with respect to income from United States
5 savings bonds used to pay higher education tuition and
6 fees). For treatment, see section 235-7(a)(1);
- 7 (9) Subchapter B (sections 141 to 150) (with respect to
8 tax exemption requirements for state and local bonds);
- 9 (10) Section 151 (with respect to allowance of deductions
10 for personal exemptions). For treatment, see section
11 235-54;
- 12 (11) Section 179B (with respect to expensing of capital
13 costs incurred in complying with Environmental
14 Protection Agency sulphur regulations);
- 15 (12) Section 181 (with respect to special rules for certain
16 film and television productions);
- 17 (13) Section 196 (with respect to deduction for certain
18 unused investment credits);
- 19 (14) Section 199 (with respect to the U.S. production
20 activities deduction);
- 21 (15) Section 222 (with respect to qualified tuition and
22 related expenses);



- 1 (16) Sections 241 to 247 (with respect to special
2 deductions for corporations). For treatment, see
3 section 235-7(c);
- 4 (17) Section 280C (with respect to certain expenses for
5 which credits are allowable). For treatment, see
6 section 235-110.91;
- 7 (18) Section 291 (with respect to special rules relating to
8 corporate preference items);
- 9 (19) Section 367 (with respect to foreign corporations);
- 10 (20) Section 501(c)(12), (15), (16) (with respect to exempt
11 organizations);
- 12 (21) Section 515 (with respect to taxes of foreign
13 countries and possessions of the United States);
- 14 (22) Subchapter G (sections 531 to 565) (with respect to
15 corporations used to avoid income tax on
16 shareholders);
- 17 (23) Subchapter H (sections 581 to 597) (with respect to
18 banking institutions), except section 584 (with
19 respect to common trust funds). For treatment, see
20 chapter 241;



- 1 (24) Section 642(a) and (b) (with respect to special rules
2 for credits and deductions applicable to trusts). For
3 treatment, see sections 235-54(b) and 235-55;
- 4 (25) Section 646 (with respect to tax treatment of electing
5 Alaska Native settlement trusts);
- 6 (26) Section 668 (with respect to interest charge on
7 accumulation distributions from foreign trusts);
- 8 (27) Subchapter L (sections 801 to 848) (with respect to
9 insurance companies). For treatment, see sections
10 431:7-202 and 431:7-204;
- 11 (28) Section 853 (with respect to foreign tax credit
12 allowed to shareholders). For treatment, see section
13 235-55;
- 14 (29) Subchapter N (sections 861 to 999) (with respect to
15 tax based on income from sources within or without the
16 United States), except sections 985 to 989 (with
17 respect to foreign currency transactions). For
18 treatment, see sections 235-4, 235-5, and 235-7(b),
19 and 235-55;
- 20 (30) Section 1042(g) (with respect to sales of stock in
21 agricultural refiners and processors to eligible farm
22 cooperatives);



- 1 (31) Section 1055 (with respect to redeemable ground
2 rents);
- 3 (32) Section 1057 (with respect to election to treat
4 transfer to foreign trust, etc., as taxable exchange);
- 5 (33) Sections 1291 to 1298 (with respect to treatment of
6 passive foreign investment companies);
- 7 (34) Subchapter Q (sections 1311 to 1351) (with respect to
8 readjustment of tax between years and special
9 limitations);
- 10 (35) Subchapter R (sections 1352 to 1359) (with respect to
11 election to determine corporate tax on certain
12 international shipping activities using per ton rate);
- 13 (36) Subchapter U (sections 1391 to 1397F) (with respect to
14 designation and treatment of empowerment zones,
15 enterprise communities, and rural development
16 investment areas). For treatment, see chapter 209E;
- 17 (37) Subchapter W (sections 1400 to 1400C) (with respect to
18 District of Columbia enterprise zone);
- 19 (38) Section 14000 (with respect to education tax
20 benefits);
- 21 (39) Section 1400P (with respect to housing tax benefits);
- 22 (40) Section 1400R (with respect to employment relief); and



1 (41) Section 1400T (with respect to special rules for
2 mortgage revenue bonds)."

3 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
4 amended by amending subsection (d) to read as follows:

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

9 (1) Allocations of the high technology business investment
10 tax credit allowed by section 235-110.9 for
11 investments made before May 1, 2009;

12 (2) Allocations of net operating loss pursuant to section
13 235-111.5;

14 (3) Allocations of the attractions and educational
15 facilities tax credit allowed by section 235-110.46;

16 [~~or~~]

17 (4) Allocations of low-income housing tax credits among
18 partners under section 235-110.8 ~~[]~~; or

19 (5) Allocations of the new markets tax credit allowed by
20 section 235- ."

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



1 SECTION 5. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2009.

3

Report Title:

New Markets Tax Credit; Section 704(b)(2)

Description:

Establishes a new markets tax credit for a taxpayer that holds a qualified equity investment on a credit allowance date. Provides an exemption for the new markets tax credit from the requirements of section 704(b)(2) of the Internal Revenue Code. Authorizes the department of taxation to recapture any portion of a tax credit. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

