
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 two new sections to be appropriately
3 designated and to read as follows:

4 "§235- Credits against income; claim limitation. (a)

5 Notwithstanding any law to the contrary, no business credit
6 claimed against a taxpayer's net income tax liability under this
7 chapter or chapter 239, 241, or 431, for taxable years beginning
8 January 1, 2009, and ending before January 1, 2011, including
9 carryover business credit from prior taxable years, shall exceed
10 seventy-five per cent of the taxpayer's tax liability for the
11 taxable year in which the credit is claimed.

12 (b) Any business credit claimed between January 1, 2009,
13 and December 31, 2010, shall be subject to the credit claim
14 limitation provided in subsection (a) and shall not result in a
15 credit carryover in subsequent years.

16 (c) Any business credit claimed before January 1, 2009,
17 that resulted in a credit carryover shall be subject to the

1 credit claim limitation provided in subsection (a); provided
2 that notwithstanding any waiver for the failure to claim a
3 business credit within a specified period of time, any business
4 credit carryover applicable to a taxable year before January 1,
5 2009, may be used against tax liability in taxable years
6 beginning January 1, 2011, until exhausted.

7 (d) Business credits claimed during taxable years
8 beginning January 1, 2009, and ending before January 1, 2011,
9 shall be claimed first, and business credits generated in
10 taxable years before January 1, 2009, shall be claimed
11 thereafter; provided that, with regard to any business credit
12 properly claimed for a taxable year before January 1, 2009, the
13 specified period of time established to exhaust that business
14 credit shall be tolled until such time that business credits
15 accrued for the period beginning January 1, 2009, and ending
16 January 1, 2011, have been exhausted.

17 (e) As used in this section, "business credit" means all
18 tax credits allowed under chapters 235, 239, 241, and 431,
19 except for the following tax credits:

20 (1) Section 235-15 (relating to a tax credit for child
21 passenger restraint systems);

- 1 (2) Section 235-17 (relating to a tax credit for motion
2 picture, digital media, and film production);
- 3 (3) Section 235-55 (relating to a tax credit for resident
4 taxpayers);
- 5 (4) Section 235-55.6 (relating to a tax credit for
6 household and dependent care services);
- 7 (5) Section 235-55.7 (relating to a tax credit for low-
8 income household renters);
- 9 (6) Section 235-55.85 (relating the refundable food/excise
10 tax credit);
- 11 (7) Section 235-110.3 (relating to a tax credit for
12 ethanol facilities);
- 13 (8) Section 235-110.6 (relating to a tax credit for
14 commercial fishers' fuel);
- 15 (9) Section 235-110.8 (relating to a tax credit for low-
16 income housing);
- 17 (10) Section 235-110.91 (relating to a tax credit for
18 research activities);
- 19 (11) Section 239-6.5 (relating to the tax credit for
20 lifeline telephone services); and
- 21 (12) Any credit against any tax required by the
22 Constitution or the laws of the United States.

1 §235- Income tax credit allocations; temporary
2 treatment for pass-through entities. Notwithstanding any other
3 law to the contrary, for taxable years beginning January 1,
4 2009, and ending before January 1, 2011, allocation of tax
5 credits under this chapter shall be made in accordance with
6 subchapter K, subchapter J, or subchapter S of the Internal
7 Revenue Code."

8 SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is
9 amended by amending subsection (e) to read as follows:

10 "(e) If the credit under this section exceeds the
11 taxpayer's income tax liability, the excess of credit over
12 liability shall not be refunded to the taxpayer[~~; provided that~~
13 ~~no refunds or payments on account of the tax credit allowed by~~
14 ~~this section shall be made for amounts less than \$1]~~. All
15 claims for a credit under this section must be properly filed on
16 or before the end of the twelfth month following the close of
17 the taxable year for which the credit may be claimed. Failure
18 to comply with the foregoing provision shall constitute a waiver
19 of the right to claim the credit."

20 SECTION 3. Section 235-110.6, Hawaii Revised Statutes, is
21 amended by amending subsection (c) to read as follows:

1 "(c) The tax credit claimed under this section by the
2 principal operator shall be deductible from the principal
3 operator's individual or corporate income tax liability, if any,
4 for the tax year in which the credit is properly claimed;
5 provided that a husband and wife filing separate returns for a
6 taxable year for which a joint return could have been made by
7 them shall claim only the tax credit to which they would have
8 been entitled had a joint return been filed. If the tax credit
9 claimed by the principal operator under this section exceeds the
10 amount of the income tax payments due from the principal
11 operator, the excess of credit over payments due shall not be
12 refunded to the principal operator[; ~~provided that the tax~~
13 ~~credit properly claimed by a principal operator who has no~~
14 ~~income tax liability shall be paid to the principal operator;~~
15 ~~and provided further no refunds or payments on account of the~~
16 ~~tax credit allowed by this section shall be made for amounts~~
17 ~~less than \$1]."~~

18 SECTION 4. Section 235-71, Hawaii Revised Statutes, is
19 amended by amending subsection (c) to read as follows:

20 "(c) In the case of a shareholder of a regulated
21 investment company there is hereby allowed a credit in the
22 amount of the tax imposed on the amount of capital gains which

1 by section 852(b)(3)(D) of the Internal Revenue Code is required
2 to be included in the shareholder's return and on which there
3 has been paid to the State by the regulated investment company
4 the tax at the rate imposed by subsection (b); the amount of
5 this credit may be applied [~~or refunded~~] as provided in section
6 235-110[~~7~~], but may not be refunded."

7 SECTION 5. Section 235-110.7, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) If the capital goods excise tax credit allowed under
10 subsection (a) exceeds the taxpayer's net income tax liability,
11 the excess of credit over liability shall not be refunded to the
12 taxpayer[~~; provided that no refunds or payment on account of the~~
13 ~~tax credit allowed by this section shall be made for amounts~~
14 ~~less than \$1~~].

15 All claims for tax credits under this section, including
16 any amended claims, must be filed on or before the end of the
17 twelfth month following the close of the taxable year for which
18 the credits may be claimed. Failure to comply with the
19 foregoing provision shall constitute a waiver of the right to
20 claim the credit."

21 SECTION 6. Section 235-110.91, Hawaii Revised Statutes, is
22 amended to read as follows:

1 **"§235-110.91 Tax credit for research activities.** (a)
2 Section 41 (with respect to the credit for increasing research
3 activities) and section 280C(c) (with respect to certain
4 expenses for which the credit for increasing research activities
5 are allowable) of the Internal Revenue Code shall be operative
6 for the purposes of this chapter as provided in this section;
7 except that references to the base amount shall not apply and
8 credit for all qualified research expenses may be taken without
9 regard to the amount of expenses for previous years. If section
10 41 of the Internal Revenue Code is repealed or terminated prior
11 to January 1, 2011, its provisions shall remain in effect for
12 purposes of the income tax law of the State as modified by this
13 section, as provided for in subsection (j).

14 (b) All references to Internal Revenue Code sections
15 within sections 41 and 280C(c) of the Internal Revenue Code
16 shall be operative for purposes of this section.

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.

3 (d) Every qualified high technology business, before March
4 31 of each year in which qualified research and development
5 activity was conducted in the previous taxable year, shall
6 submit a written, certified statement to the director of
7 taxation identifying:

8 (1) Qualified expenditures, if any, expended in the
9 previous taxable year; and

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

12 (e) The department shall:

13 (1) Maintain records of the names and addresses of the
14 taxpayers claiming the credits under this section and
15 the total amount of the qualified research and
16 development activity costs upon which the tax credit
17 is based;

18 (2) Verify the nature and amount of the qualifying costs
19 or expenditures;

20 (3) Total all qualifying and cumulative costs or
21 expenditures that the department certifies; and

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

3 Upon each determination made under this subsection, the
4 department shall issue a certificate to the taxpayer verifying
5 information submitted to the department, including the
6 qualifying costs or expenditure amounts, the credit amount
7 certified for each taxable year, and the cumulative amount of
8 the tax credit during the credit period. The taxpayer shall
9 file the certificate with the taxpayer's tax return with the
10 department.

11 The director of taxation may assess and collect a fee to
12 offset the costs of certifying tax credit claims under this
13 section. All fees collected under this section shall be
14 deposited into the tax administration special fund established
15 under section 235-20.5.

16 (f) As used in this section:

17 "Basic research" under section 41(e) of the Internal
18 Revenue Code shall not include research conducted outside of the
19 State.

20 "Qualified high technology business" means the same as in
21 section 235-110.9.

1 "Qualified research" under section 41(d)(1) of the Internal
2 Revenue Code shall not include research conducted outside of the
3 State.

4 (g) If the tax credit for qualified research activities
5 claimed by a taxpayer exceeds the amount of income tax payment
6 due from the taxpayer, the excess of the tax credit over
7 payments due shall be refunded to the taxpayer; provided that no
8 refund on account of the tax credit allowed by this section
9 shall be made for amounts less than \$1.

10 (h) All claims for a tax credit under this section shall
11 be filed on or before the end of the twelfth month following the
12 close of the taxable year for which the credit may be claimed.
13 Failure to properly claim the credit shall constitute a waiver
14 of the right to claim the credit.

15 (i) After June 30, 2009, no expenditure or expense that
16 has been financed with funds that represent an investment for
17 which a credit was or will be claimed by any taxpayer pursuant
18 to section 235-110.9 is eligible for credit under this section.

19 [~~i~~] (j) The director of taxation may adopt any rules
20 under chapter 91 and forms necessary to carry out this section.

21 [~~j~~] (k) This section shall not apply to taxable years
22 beginning after December 31, 2010."

1 SECTION 7. Section 235-110.51, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§235-110.51 Technology infrastructure renovation tax~~
4 ~~credit.~~ (a) ~~There shall be allowed to each taxpayer subject to~~
5 ~~the taxes imposed by this chapter, an income tax credit which~~
6 ~~shall be deductible from the taxpayer's net income tax~~
7 ~~liability, if any, imposed by this chapter for the taxable year~~
8 ~~in which the credit is properly claimed.~~

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

12 (c) ~~In the case of a partnership, S corporation, estate,~~
13 ~~trust, or any developer of a commercial building, the tax credit~~
14 ~~allowable is for renovation costs incurred by the entity for the~~
15 ~~taxable year. The cost upon which the tax credit is computed~~
16 ~~shall be determined at the entity level. Distribution and share~~
17 ~~of credit shall be determined pursuant to section 235-110.7(a).~~

18 (d) ~~If a deduction is taken under section 179 (with~~
19 ~~respect to election to expense depreciable business assets) of~~
20 ~~the Internal Revenue Code, no tax credit shall be allowed for~~
21 ~~that portion of the renovation cost for which the deduction is~~
22 ~~taken.~~

1 ~~(e) The basis of eligible property for depreciation or~~
2 ~~accelerated cost recovery system purposes for state income taxes~~
3 ~~shall be reduced by the amount of credit allowable and claimed.~~
4 ~~In the alternative, the taxpayer shall treat the amount of the~~
5 ~~credit allowable and claimed as a taxable income item for the~~
6 ~~taxable year in which it is properly recognized under the method~~
7 ~~of accounting used to compute taxable income.~~

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

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

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

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

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

18 ~~"Renovation costs" means costs incurred after December 31,~~
19 ~~2000, to plan, design, install, construct, and purchase~~
20 ~~technology-enabled infrastructure equipment to provide a~~
21 ~~commercial building with technology-enabled infrastructure.~~

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

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

13 SECTION 8. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 9. This Act shall take effect upon its approval
16 and shall apply to taxable years beginning after December 31,
17 2008; provided that this Act shall be repealed on January 1,
18 2015.

Report Title:

Tax Credit; Reduction; Suspension of Carryover

Description:

Reduces tax credits allowed under chapters 235, 239, 241, and 431, HRS, by 75 per cent for taxable years beginning on or after January 1, 2009, and ending before January 1, 2011. Suspends the use of tax credit carryovers generated from taxable years beginning before January 1, 2009, until January 1, 2011. Changes certain tax credits from refundable to non-refundable tax credits. Repeals the technology infrastructure renovation tax credit allowed under section 235-110.51, HRS. (SD1 Proposed)