
A BILL FOR AN ACT

RELATING TO TAXATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 235-110.9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-110.9 High technology business investment tax**

4 **credit.** (a) There shall be allowed to each taxpayer subject to
5 the taxes imposed by this chapter a high technology business
6 investment tax credit that shall be deductible from the
7 taxpayer's net income tax liability, if any, imposed by this
8 chapter for the taxable year in which the investment was made
9 and the following four years provided the credit is properly
10 claimed. The tax credit shall be as follows:

11 (1) In the year the investment was made, [~~thirty-five~~
12 twenty per cent;

13 (2) In the first year following the year in which the
14 investment was made, twenty[~~-five~~] per cent;

15 (3) In the second year following the investment, twenty
16 per cent;

17 (4) In the third year following the investment, [~~ten~~
18 twenty per cent; and



1 (5) In the fourth year following the investment, [~~ten~~
2 twenty per cent;
3 of the investment made by the taxpayer in each qualified high
4 technology business, up to a maximum allowed credit in the year
5 the investment was made [~~, \$700,000; in the first year following~~
6 ~~the year in which the investment was made, \$500,000; in the~~
7 ~~second year following the year in which the investment was made,~~
8 ~~\$400,000; in the third year following the year in which the~~
9 ~~investment was made, \$200,000; and in the fourth year following~~
10 ~~the year in which the investment was made, \$200,000] or in any
11 of the four subsequent years following the year the investment
12 was made, \$400,000, and up to a maximum of \$ of credits
13 in the aggregate for all qualified taxpayers in any one taxable
14 year. The credits over the aggregate annual limit of \$
15 shall be used as provided in subsection (c).~~

16 (b) [*Repeal and reenactment on January 1, 2011. L 2007, c*
17 *206, §8.*] The credit allowed under this section shall be
18 claimed against the net income tax liability for the taxable
19 year. For the purpose of this section, "net income tax
20 liability" means net income tax liability reduced by all other
21 credits allowed under this chapter. By accepting an investment
22 for which the credit allowed under this section may be claimed,

1 a qualified high technology business consents to the public
2 disclosure of the qualified high technology business' name and
3 status as a beneficiary of the credit under this section.

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

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

17 (1) The business no longer qualifies as a qualified high
18 technology business;

19 (2) The business or an interest in the business has been
20 sold by the taxpayer investing in the qualified high
21 technology business; or



1 (3) The taxpayer has withdrawn the taxpayer's investment
2 wholly or partially from the qualified high technology
3 business;

4 the credit claimed under this section shall be recaptured. The
5 recapture shall be equal to ten per cent of the amount of the
6 total tax credit claimed under this section in the preceding two
7 taxable years. The amount of the credit recaptured shall apply
8 only to the investment in the particular qualified high
9 technology business that meets the requirements of paragraph
10 (1), (2), or (3). The recapture provisions of this subsection
11 shall not apply to a tax credit claimed for a qualified high
12 technology business that does not fall within the provisions of
13 paragraph (1), (2), or (3). The amount of the recaptured tax
14 credit determined under this subsection shall be added to the
15 taxpayer's tax liability for the taxable year in which the
16 recapture occurs under this subsection.

17 (e) Every taxpayer, before March 31 of each year in which
18 an investment in a qualified high technology business was made
19 in the previous taxable year, shall submit a written, certified
20 statement to the director of taxation identifying:

21 (1) Qualified investments, if any, expended in the
22 previous taxable year; and

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

3 (f) The department shall:

4 (1) Maintain records of the names and addresses of the
5 taxpayers claiming the credits under this section and
6 the total amount of the qualified investment costs
7 upon which the tax credit is based;

8 (2) Verify the nature and amount of the qualifying
9 investments;

10 (3) Total all qualifying and cumulative investments that
11 the department certifies; and

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

14 Upon each determination made under this subsection, the
15 department shall issue a certificate to the taxpayer verifying
16 information submitted to the department, including qualifying
17 investment amounts, the credit amount certified for each taxable
18 year, and the cumulative amount of the tax credit during the
19 credit period. The taxpayer shall file the certificate with the
20 taxpayer's tax return with the department.

21 The director of taxation may assess and collect a fee to
22 offset the costs of certifying tax credits claims under this



1 section. All fees collected under this section shall be
2 deposited into the tax administration special fund established
3 under section 235-20.5.

4 (g) As used in this section:

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

8 (1) The amount of the credit under this section that is,
9 or is to be, received by or allocated to the taxpayer
10 over the life of the investment, as a result of the
11 investment; to

12 (2) The amount of the investment in the qualified high
13 technology business.

14 "Qualified high technology business" means a business,
15 employing or owning capital or property, or maintaining an
16 office, in this State; provided that:

17 (1) More than fifty per cent of its total business
18 activities are qualified research; and provided
19 further that the business conducts more than seventy-
20 five per cent of its qualified research in this State;
21 or



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

4 (A) Products sold from, manufactured in, or produced
5 in this State; or

6 (B) Services performed in this State.

7 "Qualified research" means the same as defined in section
8 235-7.3.

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

16 Transactions for which an investment tax credit allocation
17 ratio greater than 1.5 but not more than 2.0 of credit for every
18 dollar invested and claimed may be reviewed by the department
19 for applicable doctrines of economic substance and business
20 purpose.

21 Businesses claiming a tax credit for transactions with
22 investment tax credit allocation ratios greater than 2.0 of



1 credit for every dollar invested shall substantiate economic
2 merit and business purpose consistent with this section.

3 (i) This section shall not apply to taxable years
4 beginning after December 31, [~~2010~~] 2016."

5 SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is
6 amended by amending subsection (j) to read as follows:

7 "(j) This section shall not apply to taxable years
8 beginning after December 31, [~~2010~~] 2016."

9 SECTION 3. Act 206, Session Laws of Hawaii 2004, is
10 amended by amending section 8 to read as follows:

11 "SECTION 8. This Act shall take effect on July 1, 2007,
12 and shall apply to investments received by a qualified high
13 technology business after June 30, 2007; provided that this Act
14 shall be repealed on January 1, [~~2011~~] 2017, and section 235-
15 20.5 and 235-110.9(b), Hawaii Revised Statutes, shall be
16 reenacted in the form in which they read on the day before the
17 effective day of the Act."

18 SECTION 4. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 5. This Act shall take effect upon its approval,
21 and shall be applicable to taxable years beginning after
22 December 31, 2009.



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INTRODUCED BY:

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JAN 28 2009



Report Title:

Taxation

Description:

Amends certain tax incentives for high technology and research.

