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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 235-110.51, Hawaii Revised Statutes, is  
2 amended to read as follows:

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).



1 (d) If a deduction is taken under [~~section~~] Section 179  
2 (with respect to election to expense depreciable business  
3 assets) of the Internal Revenue Code, no tax credit shall be  
4 allowed for that portion of the renovation cost for which the  
5 deduction is taken.

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

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

15 (g) If the tax credit under this section exceeds the  
16 taxpayer's income tax liability, the excess of credit over  
17 liability may be carried forward until exhausted.

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

20 (i) As used in this section:

21 "Net income tax liability" means income tax liability  
22 reduced by all other credits allowed under this chapter.



1 "Renovation costs" means costs incurred after December 31,  
2 2000, to plan, design, install, construct, and purchase  
3 technology-enabled infrastructure equipment to provide a  
4 commercial building with technology-enabled infrastructure.

5 "Technology-enabled infrastructure" means:

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

18 (k) Beginning on July 1, 2010, no tax liability under this  
19 chapter shall be reduced by a credit under this section until  
20 July 1, 2013."

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



1           "§235-110.9 High technology business investment tax  
2 credit. (a) There shall be allowed to each taxpayer subject to  
3 the taxes imposed by this chapter a high technology business  
4 investment tax credit that shall be deductible from the  
5 taxpayer's net income tax liability, if any, imposed by this  
6 chapter for the taxable year in which the investment was made  
7 and the following four years provided the credit is properly  
8 claimed. The tax credit shall be as follows:

9           (1) In the year the investment was made, thirty-five per  
10 cent;

11           (2) In the first year following the year in which the  
12 investment was made, twenty-five per cent;

13           (3) In the second year following the investment, twenty  
14 per cent;

15           (4) In the third year following the investment, ten per  
16 cent; and

17           (5) In the fourth year following the investment, ten per  
18 cent;

19 of the investment made by the taxpayer in each qualified high  
20 technology business, up to a maximum allowed credit in the year  
21 the investment was made, \$700,000; in the first year following  
22 the year in which the investment was made, \$500,000; in the



1 second year following the year in which the investment was made,  
2 \$400,000; in the third year following the year in which the  
3 investment was made, \$200,000; and in the fourth year following  
4 the year in which the investment was made, \$200,000.

5 (b) The credit allowed under this section shall be claimed  
6 against the net income tax liability for the taxable year. For  
7 the purpose of this section, "net income tax liability" means  
8 net income tax liability reduced by all other credits allowed  
9 under this chapter. By accepting an investment for which the  
10 credit allowed under this section may be claimed, a qualified  
11 high technology business consents to the public disclosure of  
12 the qualified high technology business' name and status as a  
13 beneficiary of the credit under this section.

14 (c) If the tax credit under this section exceeds the  
15 taxpayer's income tax liability for any of the five years that  
16 the credit is taken, the excess of the tax credit over liability  
17 may be used as a credit against the taxpayer's income tax  
18 liability in subsequent years until exhausted. Every claim,  
19 including amended claims, for a tax credit under this section  
20 shall be filed on or before the end of the twelfth month  
21 following the close of the taxable year for which the credit may



1 be claimed. Failure to comply with the foregoing provision  
2 shall constitute a waiver of the right to claim the credit.

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

5 (1) The business no longer qualifies as a qualified high  
6 technology business;

7 (2) The business or an interest in the business has been  
8 sold by the taxpayer investing in the qualified high  
9 technology business; or

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

13 the credit claimed under this section shall be recaptured. The  
14 recapture shall be equal to ten per cent of the amount of the  
15 total tax credit claimed under this section in the preceding two  
16 taxable years. The amount of the credit recaptured shall apply  
17 only to the investment in the particular qualified high

18 technology business that meets the requirements of paragraph

19 (1), (2), or (3). The recapture provisions of this subsection  
20 shall not apply to a tax credit claimed for a qualified high

21 technology business that does not fall within the provisions of  
22 paragraph (1), (2), or (3). The amount of the recaptured tax



1 credit determined under this subsection shall be added to the  
2 taxpayer's tax liability for the taxable year in which the  
3 recapture occurs under this subsection.

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

8 (1) Qualified investments, 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 (f) 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 investment costs  
16 upon which the tax credit is based;

17 (2) Verify the nature and amount of the qualifying  
18 investments;

19 (3) Total all qualifying and cumulative investments that  
20 the department certifies; and

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



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

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

13           (g) As used in this section:

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

17           (1) The amount of the credit under this section that is,  
18 or is to be, received by or allocated to the taxpayer  
19 over the life of the investment, as a result of the  
20 investment; to

21           (2) The amount of the investment in the qualified high  
22 technology business.





1 "Qualified high technology business" means a business,  
2 employing or owning capital or property, or maintaining an  
3 office, in this [~~State,~~] state; provided that:

4 (1) More than fifty per cent of its total business  
5 activities are qualified research; and provided  
6 further that the business conducts more than seventy-  
7 five per cent of its qualified research in this  
8 [~~State,~~] state; or

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

12 (A) Products sold from, manufactured in, or produced  
13 in this [~~State,~~] state; or

14 (B) Services performed in this [~~State,~~] state.

15 "Qualified research" means the same as defined in section  
16 235-7.3.

17 (h) Common law principles, including the doctrine of  
18 economic substance and business purpose, shall apply to any  
19 investment. There exists a presumption that a transaction  
20 satisfies the doctrine of economic substance and business  
21 purpose to the extent that the special allocation of the high



1 technology business tax credit has an investment tax credit  
2 ratio of 1.5 or less of credit for every dollar invested.

3 Transactions for which an investment tax credit allocation  
4 ratio greater than 1.5 but not more than 2.0 of credit for every  
5 dollar invested and claimed may be reviewed by the department  
6 for applicable doctrines of economic substance and business  
7 purpose.

8 Businesses claiming a tax credit for transactions with  
9 investment tax credit allocation ratios greater than 2.0 of  
10 credit for every dollar invested shall substantiate economic  
11 merit and business purpose consistent with this section.

12 (i) For investments made on or after May 1, 2009,  
13 notwithstanding any other law to the contrary, no allocations,  
14 special or otherwise, of credits under this section may exceed  
15 the amount of the investment made by the taxpayer ultimately  
16 claiming this credit; and investment tax credit allocation  
17 ratios greater than 1.0 of credit for every dollar invested  
18 shall not be allowed. In addition, the credit shall be allowed  
19 only in accordance with subsection (a).

20 (j) For investments made on or after May 1, 2009, this  
21 section shall be subject to section 235-109.5.



1 (k) This section shall not apply to taxable years  
2 beginning after December 31, 2010.

3 (l) Beginning on July 1, 2010, no tax liability under this  
4 chapter shall be reduced by a credit under this section until  
5 July 1, 2013."

6 SECTION 3. Section 241-4.8, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) The high technology business investment tax credit  
9 provided under section 235-110.9 shall be operative for this  
10 chapter on July 1, 1999[-]; provided that beginning on July 1,  
11 2010, no tax liability under this chapter shall be reduced by a  
12 credit under this section until July 1, 2013."

13 SECTION 4. Section 431:7-209, Hawaii Revised Statutes, is  
14 amended by amending subsection (a) to read as follows:

15 "(a) The high technology business investment tax credit  
16 provided under section 235-110.9 shall be operative for this  
17 chapter on July 1, 1999[-]; provided that beginning on July 1,  
18 2010, no tax liability under this chapter shall be reduced by a  
19 credit under this section until July 1, 2013."

20 SECTION 5. This Act does not affect rights and duties that  
21 matured, penalties that were incurred, and proceedings that were  
22 begun before its effective date.



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 2010.



**Report Title:**

High Tech Tax Credits; Temporary Deferment of Credits

**Description:**

Beginning on July 1, 2010, temporarily disallows tax liabilities from being reduced by credits under the Technology Infrastructure Renovation Tax Credit and High Technology Business Investment Tax Credit until July 1, 2013. (HB2962.HD1)

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

