
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 **PART I**

2 SECTION 1. The purpose of this Act is to add a new part to
3 chapter 235, Hawaii Revised Statutes, to clarify the application
4 of the capital goods excise tax credit and to identify when
5 section 235-110.7, Hawaii Revised Statutes, applies to property
6 placed in service and when the new part added to chapter 235,
7 Hawaii Revised Statutes, applies to property placed in service.

8 This Act also separates the new part added in chapter 235,
9 Hawaii Revised Statutes, into several parts in an effort to
10 provide clarity for taxpayers and practitioners that utilize the
11 capital goods excise tax credit. This Act is not intended to
12 change the application of section 235-110.7, Hawaii Revised
13 Statutes, as it applies with regard to property placed in
14 service in taxable years beginning before January 1, 2010.

15 As currently enacted, section 235-110.7, Hawaii Revised
16 Statutes, is onerous for taxpayers and practitioners to apply
17 accurately and somewhat burdensome for the department of
18 taxation to administer.

1 This Act improves the organization of section 235-110.7,
2 Hawaii Revised Statutes, and clarifies the application of the
3 capital goods excise tax credit for taxpayers that acquire and
4 use certain depreciable tangible personal property in a trade or
5 business.

6 Specifically, this Act removes, to the extent possible,
7 references to Internal Revenue Code provisions that have been
8 repealed or substantially amended, as well as adding or
9 elaborating upon several definitions taken from the Internal
10 Revenue Code, including, but not limited to, "basis", "eligible
11 property", "new eligible property", and "tangible personal
12 property". This Act also describes the necessary conditions
13 that must occur in order for the capital goods excise tax credit
14 to be properly claimed by taxpayers and the recapture
15 requirements for previously claimed credits.

16 In order to improve the organization and clarify the
17 application of this frequently used income tax credit, the
18 legislature finds that a new part should be added to chapter
19 235, Hawaii Revised Statutes, in order to clarify the
20 application of the capital goods excise tax credit for
21 practitioners and ease the burden for the department of taxation
22 to administer the credit.

1 This Act also suspends the capital goods excise tax credit
2 for calendar years 2010 and 2011.

3 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
4 amended by adding a new part to be appropriately designated and
5 to read as follows:

6 **"PART . CAPITAL GOODS EXCISE TAX CREDIT**

7 **§235-A Definitions.** For the purpose of this part:

8 "Alternative energy property" consists of the following
9 types of property:

10 (1) A boiler, the primary fuel for which shall be an
11 alternate substance. An alternate substance is any
12 substance other than oil, natural gas, or any product
13 of oil and natural gas;

14 (2) A burner, including necessary on-site equipment to
15 bring the alternate substance to the burner, for a
16 combustor other than a boiler if the primary fuel for
17 the burner will be an alternate substance;

18 (3) Equipment for turning an alternate substance into a
19 synthetic liquid, gaseous, or solid fuel;

20 (4) Equipment designed to modify existing equipment which
21 uses oil or natural gas as fuel or as feedstock so
22 that the existing equipment will use either a

- 1 substance other than oil and natural gas or oil mixed
2 with a substance other than oil and natural gas where
3 the other substance provides not less than twenty-five
4 per cent of the fuel or feedstock;
- 5 (5) Equipment to convert coal, including lignite, or any
6 non-marketable substance derived therefrom, into a
7 substitute for a petroleum or natural gas derived
8 feedstock for the manufacture of chemicals or other
9 products, or coal, including lignite, or any substance
10 derived therefrom, into methanol, ammonia, or a
11 hydroprocessed coal liquid or solid;
- 12 (6) Pollution control equipment required by federal,
13 state, or local law, ordinances, regulations, or rules
14 to be installed on or in connection with equipment
15 described in paragraphs (1) to (5);
- 16 (7) Equipment used for the unloading, transfer, storage,
17 reclaiming from storage, and preparation, including,
18 but not limited to, washing, crushing, drying, and
19 weighing, at the point of use for an alternate
20 substance for use in equipment described in paragraphs
21 (1) to (6). This includes equipment used for the

1 storage of fuel derived from garbage at the site at
2 which fuel was produced from garbage; and
3 (8) Equipment used to produce, distribute, or use energy
4 from a geothermal deposit, but only, in the case of
5 electricity generated by geothermal power, up to, but
6 not including, the electrical transmission state.

7 "Basis" means the cost of property.

8 (1) The basis of new eligible property which has been
9 constructed, reconstructed, or erected for the
10 taxpayer's use includes that portion of the cost of
11 the property that is subject to the imposition and
12 payment of tax at the rate of four per cent under
13 chapter 237 or 238.

14 (2) Whether the cost or other basis of the construction,
15 reconstruction, or erection is attributable to all or
16 part of a property placed in service may be determined
17 by engineering estimates or by cost accounting
18 records.

19 (3) In the case of reconstructed property, the cost of the
20 property does not include the adjusted basis of the
21 reconstructed property at the time the reconstruction
22 commences. However, the reconstructed property may

1 qualify as used eligible property, as defined in this
2 section, and the cost of the property may include the
3 adjusted basis of the reconstructed property at the
4 time the reconstruction commences if the adjusted
5 basis of the property is subject to the imposition and
6 payment of tax at the rate of four per cent under
7 chapter 237 or 238.

8 (4) If constructed, reconstructed, or erected property is
9 placed in service over a span of more than one taxable
10 year, the credit shall be allowed to the taxpayer for
11 a particular taxable year with respect to so much of
12 the eligible property that is subject to the
13 imposition and payment of tax at the rate of four per
14 cent under chapter 237 or 238.

15 (5) The basis of used eligible property is the cost of the
16 property that is subject to the imposition and payment
17 of tax at the rate of four per cent under chapter 237
18 or 238.

19 (6) In the case of a partnership, S corporation, estate,
20 or trust, the credit allowable is for eligible
21 property that is placed in service by the entity. The
22 basis upon which the credit is computed is determined

1 at the entity level. Each partner, S corporation
2 shareholder, or beneficiary of an estate or trust
3 shall separately take into account for its taxable
4 year with or within which the entity's taxable year
5 ends, the partner's, shareholder's, or beneficiary's
6 share of the basis and resulting credit.

7 A partner's share of the basis shall be
8 determined in accordance with the ratio in effect on
9 the date on which the eligible property is placed in
10 service in which the partners divide the general
11 profits of the partnership. The basis of partnership
12 eligible property that is subject to a special
13 allocation that is recognized under section 704(a) and
14 704(b) (with respect to partner's distributive share)
15 of the Internal Revenue Code shall be recognized for
16 purposes of the credit, and an upward basis adjustment
17 pursuant to section 754 (with respect to manner of
18 electing optional adjustment to basis of partnership
19 property) of the Internal Revenue Code is not eligible
20 for the credit. A basis adjustment under section 754
21 (with respect to manner of electing optional
22 adjustment to basis of partnership property) of the

1 Internal Revenue Code is not eligible for the credit
2 because the adjustment is not a transaction that is
3 subject to the imposition and payment of tax at the
4 rate of four per cent under chapter 237 or 238.

5 Each S corporation shareholder's basis of
6 eligible property is the shareholder's allocated share
7 of the corporation's basis in the eligible property.

8 A beneficiary's share of the basis is apportioned
9 between the entity and the beneficiaries, based on the
10 income of the entity allocable to each on the date the
11 eligible property is placed in service. The term
12 "beneficiary" includes an heir, legatee, or devisee.

13 (7) If a deduction is taken under section 179 (with
14 respect to election to expense certain depreciable
15 business assets) of the Internal Revenue Code the
16 portion of the basis of property for which the
17 deduction is taken is not considered in determining
18 the amount of credit allowable.

19 (8) For purposes of determining the amount of credit
20 available, the basis for vehicles subject to section
21 280F (with respect to limitation on depreciation for
22 luxury automobiles; limitation where certain property

1 used for personal purposes) of the Internal Revenue
2 Code used predominantly for business purposes is
3 limited to an amount equal to the amount necessary to
4 obtain the maximum depreciation deduction allowed in
5 the first year for both luxury passenger automobiles
6 and trucks, vans and sport utility vehicles under
7 section 280F (with respect to limitation on
8 depreciation for luxury automobiles; limitation where
9 certain property used for personal purposes) of the
10 Internal Revenue Code. Use is predominantly for
11 business purposes if over fifty per cent of the total
12 use is for business purposes. This limitation applies
13 before any percentage reduction for personal use, as
14 discussed in paragraph (9).

15 If more than one taxpayer has an interest in a
16 vehicle subject to section 280F (with respect to
17 limitation on depreciation for luxury automobiles;
18 limitation where certain property used for personal
19 purposes) of the Internal Revenue Code they are
20 treated as one taxpayer for purposes of the basis
21 limitation. The limitation shall be apportioned among

1 the taxpayers according to their interests in the
2 passenger automobile.

3 (9) Listed property shall not be treated as eligible
4 property, and the credit shall be denied if the listed
5 property does not satisfy the more-than-fifty per cent
6 business use test. If the qualified business use
7 satisfies the more-than-fifty per cent business use
8 test, but is not used one hundred per cent for
9 business, the amount of credit is limited to the
10 percentage of business use. The amount of credit
11 allowable in the taxable year in which the listed
12 property is placed in service is unaffected by any
13 increase in the business use percentage in a
14 subsequent year; provided that, if there is a
15 reduction in the business use of property, then the
16 credit taken with respect to the listed property may
17 be subject to recapture as provided in section 235-C.

18 "Biomass property" means property that is a boiler, the
19 primary fuel for which is an alternate substance, a burner,
20 including necessary on-site equipment to bring the alternate
21 substance to the burner, for a combustor other than a boiler if
22 the primary fuel will be an alternate substance, or equipment

1 for converting an alternate substance into a qualified fuel,
2 including equipment used to store fuel derived from garbage at
3 the site at which the fuel was produced from garbage. For
4 purposes of defining biomass property, an alternate substance
5 means any substance other than an inorganic substance and coal,
6 including lignite, or any coal product. Biomass property also
7 includes pollution control equipment that is required to be
8 installed on or in connection with the above equipment, as well
9 as equipment used for the unloading, transfer, storage,
10 reclaiming from storage, and preparation at point of use of an
11 alternate substance for use in that equipment.

12 "Building" means any structure or edifice that encloses a
13 space within its walls, and is usually covered by a roof. The
14 term also includes any such structure that is constructed by or
15 for a lessee, even if the structure must be removed, or
16 ownership of the structure reverts to the lessor at the
17 termination of the lease.

18 "Bulk storage" means the storage of a commodity in a large
19 mass before its consumption or use.

20 "Cogeneration equipment" means property which is an
21 integral part of a system for using the same fuel to produce
22 both qualified energy and electricity at an industrial or

1 commercial facility. For purposes of this definition, the term
2 "industrial" means the purification of water and the
3 desalinization of water.

4 "Cost" means the (1) actual invoice price of the tangible
5 personal property, or (2) basis from which a deduction is taken
6 under section 167 (with respect to depreciation) or 168 (with
7 respect to accelerated cost recovery system) of the Internal
8 Revenue Code, whichever is less.

9 "Credit" means the capital goods excise tax credit.

10 "Eligible property":

11 (1) Eligible property is defined as:

12 (A) Property that is tangible personal property or
13 other tangible property;

14 (B) Recovery property, within the meaning of section
15 168 (with respect to accelerated cost recovery
16 system) of the Internal Revenue Code without
17 regard to useful life, or any other property with
18 respect to which depreciation is allowable to the
19 taxpayer; and

20 (C) Property which has an estimated useful life or
21 recovery period, determined as of the time the
22 property is placed in service, of three years or

1 more. A property shall have the same estimated
2 useful life or recovery period as that which is
3 used for depreciation or accelerated cost
4 recovery system purposes.

5 (2) Property that is eligible for the credit is:

6 (A) New eligible property; or

7 (B) Used eligible property.

8 (3) Tangible personal property, other than a central air
9 conditioning or a heating unit, may qualify as
10 eligible property regardless of whether it is used as
11 an integral part of an activity or constitutes a
12 research or storage facility used in connection with
13 the activity, as required for other tangible property.

14 (4) Eligible property shall be either recovery property
15 within the meaning of section 168 (with respect to
16 accelerated cost recovery system) of the Internal
17 Revenue Code without regard to useful life, or any
18 other property with respect to which depreciation is
19 allowed by the taxpayer.

20 (A) If only part of a property is depreciable, only a
21 pro rata portion of the property may qualify as
22 eligible property.

- 1 (B) Property does not qualify as eligible property to
2 the extent that a deduction for depreciation
3 thereon is disallowed under section 274 (with
4 respect to disallowance of certain entertainment,
5 etc., expenses) of the Internal Revenue Code.
- 6 (5) Generally, any boiler, used in Hawaii, which is
7 primarily fueled by petroleum or petroleum products,
8 including natural gas, qualifies as eligible property.
- 9 (6) Energy property qualifies as eligible property.
- 10 (7) Certain classes of property that generally do not
11 qualify as eligible property and thereby are not
12 eligible for the credit include:
- 13 (A) A building or its structural components.
- 14 (B) Property purchased for use in a foreign trade
15 zone as defined in chapter 212.
- 16 (C) Property used by an organization which is exempt
17 from the tax imposed by this chapter, unless the
18 property is used predominantly in an unrelated
19 trade or business, the income from which is
20 subject to tax under this chapter.
- 21 (D) Intangible property.
- 22 (E) Property used for lodging.

1 (8) Exceptions to paragraph (7):

2 (A) A nonlodging commercial facility that is
3 available to persons not using the lodging
4 facility on the same basis as it is available to
5 tenants of the lodging facility may qualify as
6 eligible property.

7 (B) Property used by a hotel, motel, or other similar
8 establishment in connection with the trade or
9 business of furnishing lodging where more than
10 one half of the accommodation in the hotel,
11 motel, or other similar establishment is used by
12 transients may qualify as eligible property. An
13 accommodation shall be considered to accommodate
14 transients if the rental period is normally less
15 than thirty days.

16 (C) Coin-operated vending machines and coin-operated
17 washing machines and dryers may qualify as
18 eligible property.

19 "Energy property" means certain property intended to reduce
20 the amount of oil, natural gas, or other energy consumed in
21 heating or cooling a building or used in an industrial process.

22 Energy property includes:

- 1 (1) Alternative energy property;
- 2 (2) Solar or wind energy property;
- 3 (3) Specially defined energy property;
- 4 (4) Recycling equipment;
- 5 (5) Hydroelectric generating property;
- 6 (6) Cogeneration equipment; and
- 7 (7) Biomass property.

8 "Hydroelectric generating property" means property
9 installed at a hydroelectric site that is:

- 10 (1) Equipment for increased capacity to generate
11 electricity by water up to, but not including, the
12 electrical transmission stage; and
- 13 (2) Structures for housing the generating equipment, fish
14 passageways, and dam rehabilitation property, required
15 by reason of the installation of equipment described
16 in paragraph (1).

17 "Integral part" means property used directly in one of the
18 activities specified as a condition under which other tangible
19 property may be considered eligible property.

20 "Lease" is defined as it is for federal income tax
21 purposes.

1 "Listed property" means passenger automobiles and other
2 property used as a means of transportation; property generally
3 used for purposes of entertainment, recreation, or amusement;
4 computers and related peripheral equipment; and other property
5 as determined by the department of taxation.

6 "Manufacturing, production, and extraction" means:

- 7 (1) Construction, reconstruction, or making of property
8 out of scrap, salvage, junk, new, or raw material by
9 processing, manipulating, refining, or changing the
10 form of an article, or by combining or assembling two
11 or more articles;
- 12 (2) Cultivation of the soil;
- 13 (3) Raising of livestock; or
- 14 (4) Mining of minerals.

15 "More-than-fifty per cent business use test" means that
16 certain business use of listed property, referred to as
17 "qualified business use," must exceed fifty per cent. For
18 purposes of determining the more-than-fifty per cent business
19 use test, use in a trade or business does not include use in an
20 investment or other activity conducted for the production of
21 income. However, if the more-than-fifty-per-cent-business-use
22 test has been met, the percentage of investment use may be added

1 in when figuring the total business use for purposes of
2 calculating the amount of credit allowable.

3 "New eligible property" means property that qualifies under
4 at least one of the following conditions:

5 (1) The property is eligible property, the original use of
6 which commences with the taxpayer after the date the
7 taxpayer acquires it;

8 (2) The property is eligible property that is:

9 (A) Sold and leased back by the same taxpayer within
10 three months of the date the property was
11 originally placed in service in Hawaii by the
12 taxpayer; or

13 (B) Leased to the same taxpayer within three months
14 of the date the property was originally placed in
15 service by that taxpayer; or

16 (3) The property is eligible property, the construction,
17 reconstruction, or erection of which is placed in
18 service by the taxpayer, but only with respect to that
19 portion of the basis as is discussed in paragraphs (1)
20 to (5) of the definition of "basis". It is not
21 necessary that the materials entering into the
22 construction, reconstruction, or erection be new in

1 use. Construction, reconstruction, or erection begins
2 when physical work is started on the construction,
3 reconstruction, or erection.

4 "Original use" means the first use to which the property is
5 put, whether or not it is the taxpayer's first use of the
6 property.

7 "Other tangible property" is tangible property, other than
8 tangible personal property that qualifies as eligible property
9 by meeting one of the following three conditions:

- 10 (1) The property is used as an integral part of
11 manufacturing, production, extraction, or furnishing
12 transportation, communication, electrical energy, gas
13 water, or sewage disposal services;
- 14 (2) The property is used as a research or storage facility
15 used in connection with an activity referred to in
16 paragraph (1); or
- 17 (3) The property is a facility used in connection with an
18 activity referred to in paragraph (1) for the bulk
19 storage of fungible commodities, including commodities
20 in a liquid or gaseous state.

1 "Placed in service" means property that is placed in
2 service in Hawaii in the earliest of the following taxable
3 years:

4 (1) The taxable year in which the period for depreciation
5 with respect to the property begins;

6 (2) The taxable year in which, under the accelerated cost
7 recovery system, a claim for recovery allowances with
8 respect to the property begins; or

9 (3) The taxable year in which the property is placed in a
10 condition or state of readiness in Hawaii and
11 available for a specifically assigned function by the
12 taxpayer.

13 In a sale-leaseback transaction, the property shall be
14 considered to be placed in service on the date the property was
15 first placed in service in Hawaii by the seller-lessee.

16 "Property used for lodging" means property that is used
17 predominantly to furnish lodging; or in connection with the
18 furnishing of lodging.

19 (1) Property used predominantly to furnish lodging
20 includes that which is used in the living quarters of
21 a lodging facility such as, for example, beds, other
22 furniture, refrigerators, ranges, and other equipment.

1 (2) A lodging facility includes an apartment house, hotel,
2 motel, dormitory or other facility, or part of a
3 facility, where sleeping accommodations are provided
4 and let; provided that the term does not include a
5 facility which is used primarily as a means of
6 transportation such as, for example, an aircraft or
7 vessel, or to provide medical or convalescent
8 services, even though sleeping accommodations are
9 provided.

10 (3) Property used predominantly in connection with the
11 furnishing of lodging includes that which is used to
12 operate a lodging facility or to serve tenants,
13 whether furnished by the owner of the lodging facility
14 or another person; provided that property used in
15 furnishing, to the management of a lodging facility or
16 its tenants, electrical energy, water, sewage disposal
17 services, gas, telephone services, or other similar
18 utility services shall not be treated as property used
19 in connection with the furnishing of lodging.

20 "Purchase" means an acquisition of property.

21 "Qualified business use" means use of listed property that
22 meets the more-than-fifty per cent business use test.

1 "Qualified energy" means steam, heat, or other forms of
2 useful energy, other than electric energy, to be used for
3 industrial, commercial, or space-heating purposes other than in
4 the production of electricity.

5 "Recapture period" means the period beginning on the first
6 day of the month the eligible property is placed in service in
7 Hawaii, and extending for a full three years.

8 "Recycling equipment" means any equipment that is used
9 exclusively to sort and prepare solid waste for recycling or in
10 the recycling of solid waste. The term recycling equipment does
11 not include any equipment used in a process after the first
12 marketable product is produced or in the case of recycling iron
13 or steel, any equipment used to reduce the waste to a molten
14 state, and in any process thereafter.

15 (1) Any equipment used in the recycling of material that
16 includes some virgin materials shall not be treated as
17 failing to meet the exclusive requirements of this
18 definition if the amount of the virgin materials is
19 ten per cent or less.

20 (2) The term recycling equipment includes any equipment
21 that is used in the conversion of solid waste into a

1 fuel or into useful energy such as steam, electricity,
2 or hot water.

3 "Sale-leaseback" is defined as it is for federal income tax
4 purposes.

5 "Sixty-six and two-thirds per cent rule" means that if a
6 partner's, shareholder's, or beneficiary's interest in the
7 entity is reduced below sixty-six and two-thirds per cent of
8 their interest at the time the credit was taken, a pro rata
9 share of the partner's, shareholder's, or beneficiary's interest
10 in the entity's eligible property shall cease to be eligible
11 property with respect to the partner, shareholder, or
12 beneficiary, and credit recapture shall be required.

13 "Solar or wind energy property" means any equipment that
14 uses solar or wind energy to generate electricity, heat or cool,
15 or provide hot water for use in a structure, or provide solar
16 process heat.

17 "Specially defined energy property" means property that is
18 installed in an existing industrial or commercial facility to
19 reduce the amount of energy consumed in the existing industrial
20 or commercial process.

1 "Specified percentage" means whichever of these two rules
2 applies: the sixty-six and two-thirds per cent rule; or the
3 thirty-three and one-third per cent rule.

4 "Structural component" means parts of a building such as
5 walls, partitions, floors, ceilings, and permanent coverings;
6 all components of a central air conditioning or heating system;
7 plumbing and plumbing fixtures; electric wiring and lighting
8 fixtures; chimneys; stairs, escalators, and elevators. The term
9 structural component does not include property that is contained
10 in or attached to a building such as production machinery, the
11 sole justification for the installation of which is to meet
12 temperature or humidity requirements that are essential for the
13 operation of other machinery of the processing of materials or
14 foodstuffs. Machinery may also meet this sole justification
15 test even though it incidentally provides for the comfort of
16 employees, or serves, to an insubstantial degree, areas where
17 the temperature or humidity requirements are not essential.

18 "Substantial interest" means when a transferor, or in a
19 case where the transferor is a partnership, estate or trust, or
20 S corporation, the partner, beneficiary, or shareholder, is
21 considered to have retained a substantial interest in the trade

1 or business if, after the change in form, the transferor's
2 interest in the trade or business is:

3 (1) Substantial in relation to the total income interest
4 of all the owners; or

5 (2) Equal to or greater than the transferor's interest
6 before the change in form.

7 A taxpayer shall not be considered to have retained a
8 substantial interest where the only basis for claiming
9 substantial interest is that the values of the interests
10 exchanged are equal. The determination of whether a taxpayer
11 has retained a substantial interest in the trade or business is
12 to be made immediately after the change in the form of
13 conducting the trade or business, and after each time the
14 taxpayer disposes of a portion of the taxpayer's interest in the
15 new enterprise.

16 "Tangible personal property" means any tangible property
17 except land and improvements thereto, such as buildings or other
18 inherently permanent structures, including items that are
19 structural, components of the buildings, or structures.

20 "Thirty-three and one-third per cent rule" means that once
21 there has been a recapture by reason of the sixty-six and
22 two-thirds per cent rule, there is no further recapture until

1 the partner's, shareholder's, or beneficiary's interest is
2 reduced to less than thirty-three and one-third per cent of its
3 interest at the time the credit was taken. Thereafter, any
4 reduction in interest, however small, shall again subject the
5 partner, shareholder, or beneficiary to the recapture
6 provisions.

7 "Transportation business" means airlines, bus companies,
8 shipping or trucking companies, and oil pipeline companies.

9 "Used eligible property" means property that is eligible
10 property as defined in this section and the property is not new
11 eligible property as defined in this section.

12 **§235-B Capital goods excise tax credit allowed.** (a) For
13 property placed in service or purchased pursuant to a binding
14 contract in taxable years beginning after December 31, 2011,
15 there shall be allowed to each taxpayer subject to the tax
16 imposed by this chapter a capital goods excise tax credit which
17 shall be deductible from the taxpayer's net income tax
18 liability, if any, imposed by this chapter for the taxable year
19 in which the credit is properly claimed, if the following
20 conditions are met:

21 (1) The taxpayer purchases or imports eligible property;

1 (2) The purchase or import of eligible property results in
2 a transaction that is subject to the imposition and
3 payment of tax at the rate of four per cent under
4 chapter 237 or 238;

5 (3) The eligible property is used by the taxpayer in a
6 trade or business; and

7 (4) The eligible property is placed in service in Hawaii.

8 (b) The amount of the tax credit shall be four per cent of
9 the basis of eligible property used by the taxpayer in a trade
10 or business and placed in service in Hawaii. Any credit claimed
11 under this section shall be subject to the following
12 limitations:

13 (1) In the case of eligible property for which a credit
14 for sales or use taxes paid to another state is
15 allowable under section 238-3(i), the amount of the
16 tax credit allowed under this section shall not exceed
17 the amount of use tax actually paid under chapter 238
18 relating to the tangible personal property.

19 (2) If a deduction is taken under section 179 (with
20 respect to election to expense certain depreciable
21 business assets) of the Internal Revenue Code, no tax

1 credit shall be allowed for that portion of the basis
2 of property for which the deduction was taken.

3 (3) If a taxpayer is eligible for both the income tax
4 credit under section 235-12.5, and the capital goods
5 excise tax credit for a particular solar or wind
6 energy property, the credit under section 235-12.5,
7 shall be deducted from the taxpayer's net income tax
8 liability before the capital goods excise tax credit.

9 (c) In the case of a partnership, S corporation, estate, or
10 trust, the tax credit allowable is for eligible property that is
11 placed in service in Hawaii by the entity. The basis upon which
12 the tax credit is computed shall be determined at the entity
13 level.

14 (d) If the capital goods excise tax credit allowed under
15 subsection (a) exceeds the taxpayer's net income tax liability,
16 the excess of credit over liability shall be refunded to the
17 taxpayer; provided that no refunds or payment on account of the
18 tax credit allowed by this section shall be made for amounts
19 less than \$1.

20 (e) All claims for tax credits under this section,
21 including any amended claims, shall be filed on or before the
22 end of the twelfth month following the close of the taxable year

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

4 (f) The credit shall be allowed only for the first taxable
5 year in which the property is placed in service by the taxpayer.
6 If in the first taxable year in which a taxpayer places property
7 in service no portion of the property qualifies as eligible
8 property, no credit shall be allowed to the taxpayer with
9 respect to the property. If a portion of the property qualifies
10 as eligible property in the first year in which the property is
11 placed in service, then a credit only as to the portion that
12 qualifies shall be allowed to the taxpayer. If constructed,
13 reconstructed, or erected property, qualifying as eligible
14 property, is placed in service over a span of more than one
15 taxable year, the credit shall be allowed to the taxpayer for a
16 particular taxable year with respect to so much of the eligible
17 property that is placed in service and subject to the imposition
18 and payment of tax at the rate of four per cent under chapter
19 237 or 238 in that taxable year.

20 (g) Application for the capital goods excise tax credit
21 shall be upon forms provided by the department of taxation.

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

8 **§235-C Recapture of credit.** (a) Recapture of the
 9 previously claimed credit applies where a recapture event occurs
 10 under paragraph (2) and the percentage of credit provided in
 11 paragraph (1) shall be included as income under chapter 235 or
 12 241 in the year a recapture event occurs.

13 (1) Where the recovery property or depreciable property
 14 ceases to be eligible property within the following
 15 period, which constitutes a full year after being
 16 placed in service in Hawaii, the accompanying
 17 percentage shall be the recapture percentage:

18 Recapture period	Recapture percentage
19 One full year	100
20 Two full years	66
21 Three full years	33
22 Four full years	0

- 1 (2) A recapture event occurs when:
- 2 (A) Property ceases to be eligible property with
- 3 respect to a taxpayer when:
- 4 (i) The property ceases to be owned by taxpayer.
- 5 Recapture shall be triggered upon
- 6 disposition of the property.
- 7 (ii) The property ceases to be eligible property.
- 8 The cessation shall be treated as having
- 9 occurred on the first day of the taxable
- 10 year.
- 11 (B) All or a portion of the credit taken in an
- 12 earlier year for listed property may be subject
- 13 to recapture during the recapture period if:
- 14 (i) The percentage of business use falls below
- 15 the percentage of business use for the year
- 16 the listed property was placed in service;
- 17 or
- 18 (ii) The listed property is converted from
- 19 business to personal use and does not
- 20 satisfy the more-than-fifty per cent
- 21 business use test.

1 (C) All or a portion of previously taken credit as
2 determined in paragraph (1) may be subject to
3 recapture if, during the recapture period, the
4 basis of eligible property used to calculate the
5 credit decreases, either through a refund in the
6 purchase price or usage of the property for
7 personal purposes.

8 (b) Application of recapture rules to partnerships,
9 S corporations, estates, or trusts shall be as follows:

10 (1) In the case of a partnership, S corporation, estate,
11 or trust, the recapture rule applies to a partner,
12 shareholder, or beneficiary who originally received
13 the benefit of a credit if within the recapture
14 period:

15 (A) The S corporation, partnership, estate, or trust
16 disposes of eligible property;

17 (B) If eligible property otherwise ceases to be
18 eligible property in the hands of the entity; or

19 (C) The partner's, shareholder's, or beneficiary's
20 interest in the entity is reduced, for example,
21 by sale of interest in the entity, below a
22 specified percentage as defined in section 235-A.

1 (2) In making a recapture determination, there may be
2 taken into account any prior recapture determination
3 made with respect to the partner, shareholder, or
4 beneficiary in connection with the same property.

5 (c) Application of recapture rules to valid S corporation
6 election shall be as follows:

7 (1) If a C corporation makes a valid election under
8 section 235-2.45 and part VII to be an S corporation,
9 then on the last day of the taxable year immediately
10 preceding the first taxable year for which the
11 election is effective, any eligible property the basis
12 of which was taken into account to compute the
13 C corporation's credit allowable in taxable years
14 before the first taxable year for which the election
15 is effective and which has not been disposed of or
16 otherwise ceased to be eligible property with respect
17 to the C corporation before the last day shall be
18 considered as having ceased to be eligible property
19 with respect to the C corporation and the recapture
20 rule shall apply. However, the recapture rule shall
21 not apply if the S corporation and each of its
22 shareholders on the first day of the first taxable

1 year for which the election under section 235-2.45 and
2 part VII is to be effective, or on the date of the
3 election, whichever is later, execute an agreement as
4 is described in paragraph (2).

5 (2) The agreement shall:

6 (A) Be signed by the shareholders; and on behalf of
7 the S corporation by a person who is duly
8 authorized;

9 (B) State that if eligible property for which the
10 credit was taken is later disposed of by, or
11 ceases to be eligible property with respect to,
12 the S corporation during the recapture period and
13 during a taxable year for which the S election is
14 effective, each signer agrees to notify the
15 director of taxation of a disposition or
16 cessation and to be jointly and severally liable
17 to pay the director of taxation an amount equal
18 to the increase in tax provided by the recapture
19 rule;

20 (C) State the name, address, and taxpayer
21 identification number of each party to the
22 agreement;

1 (D) Be filed with the department of taxation for the
2 taxable year immediately preceding the first
3 taxable year for which the S election is
4 effective; and

5 (E) Be filed with the department of taxation on or
6 before the due date, including extensions of
7 time, of the return, unless the director of
8 taxation permits, upon a showing of good cause,
9 the agreement to be filed on a later date.

10 (3) A shareholder's share of the amount of credit
11 recapture shall be determined as if the property had
12 ceased to be eligible property as of the last day of
13 the taxable year immediately preceding the first
14 taxable year for which the S election is effective;
15 provided that the recapture percentage shall be
16 determined as if the property ceased to be eligible
17 property on the date the property actually ceased to
18 be eligible property.

19 (d) During the recapture period, all or a portion of
20 previously taken credit as determined in subsection (a)(1) shall
21 be subject to recapture if the eligible property is transferred
22 out of the State.

- 1 (e) Exceptions to the recapture rule shall be as follows:
- 2 (1) A transfer by reason of death is not considered to be
- 3 a disposition of eligible property subject to the
- 4 recapture rule. This exception to the recapture rule
- 5 applies to transfers by reason of the death of a sole
- 6 proprietor, partner, S corporation shareholder, or
- 7 beneficiary of an estate or trust.
- 8 (2) A disposition of eligible property in a transaction to
- 9 which section 381(a) (with respect to carryovers in
- 10 certain corporate acquisitions) of the Internal
- 11 Revenue Code applies is not considered to be a
- 12 disposition of eligible property, subject to the
- 13 recapture rule; provided that, if the acquiring
- 14 corporation disposes of the eligible property before
- 15 the close of the recapture period, there shall be an
- 16 early disposition and the recapture rule shall be
- 17 triggered.
- 18 (3) Recapture is not required as a result of a mere change
- 19 in the form of conducting a trade or business if:
- 20 (A) The property is retained as eligible property in
- 21 the same trade or business;

1 (B) The transferor, or in a case where the transferor
2 is a partnership, estate or trust, or
3 S corporation, the partner, beneficiary, or
4 shareholder, of eligible property retains a
5 substantial interest in the trade or business;

6 (C) Substantially all the property, whether or not
7 eligible property, necessary to the trade or
8 business is transferred in the change in form;
9 and

10 (D) The basis of eligible property in the hands of
11 the transferee is determined in whole or in part
12 by reference to the basis of eligible property in
13 the hands of the transferor.

14 (4) Paragraph (3) shall not apply to the transfer of
15 eligible property if section 381 (with respect to
16 carryovers in certain corporate acquisitions) of the
17 Internal Revenue Code applies to the transfer.

18 (5) Neither an election to be treated as an S corporation,
19 nor a termination or loss of S corporation status
20 automatically triggers recapture. However, recapture
21 may result if one or more of the recapture events
22 discussed in paragraph (6) occurs. In determining

1 whether a reduction in a shareholder's interest will
2 result in recapture, the sixty-six and two-thirds per
3 cent and thirty-three and one-third per cent rules
4 apply even if the corporation is no longer an S
5 corporation.

6 (6) Property ceases to be eligible property with respect
7 to a transferor, or in a case where the transferor is
8 a partnership, estate or trust, or S corporation, the
9 partner, beneficiary or shareholder, and the
10 transferor shall make a recapture determination if
11 during the recapture period:

12 (A) The transferee disposes of eligible property;

13 (B) Eligible property otherwise ceases to be eligible
14 property in the hands of the transferee; or

15 (C) The transferor, or in a case where the transferor
16 is a partnership, estate or trust, or

17 S corporation, the partner, beneficiary, or

18 shareholder, does not retain a substantial

19 interest in the trade or business directly or

20 indirectly through ownership in other entities;

21 provided that the other entities' bases in the

22 interests are determined in whole or in part by

1 reference to the bases of the interest in the
2 hands of the transferor.

3 (f) A transfer between spouses incident to divorce is not
4 considered to be a disposition, subject to the recapture rule.
5 Subsequent to a transfer between spouses or incident to divorce,
6 a disposition by the transferee during the recapture period may
7 result in recapture to the same extent as if the disposition had
8 been made by the transferor at that later date.

9 (g) The recapture rule shall not apply to eligible
10 property that is disposed of or otherwise ceases to be eligible
11 property with respect to the taxpayer as a result of its
12 destruction or damage by fire, storm, shipwreck, or other
13 casualty, or theft.

14 (h) In the case of a partnership, a downward basis
15 adjustment pursuant to section 754 (with respect to manner of
16 electing optional adjustment to basis of partnership property)
17 of the Internal Revenue Code is not subject to recapture. Use
18 of the property is not considered to be terminated for purposes
19 of the credit."

20 SECTION 3. Section 235-110.7, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:

1 "(a) [~~There~~] For property placed in service or purchased
2 pursuant to a binding contract in taxable years beginning before
3 July 1, 2009, there shall be allowed to each taxpayer subject to
4 the tax imposed by this chapter a capital goods excise tax
5 credit which shall be deductible from the taxpayer's net income
6 tax liability, if any, imposed by this chapter for the taxable
7 year in which the credit is properly claimed. Except as
8 provided in the preceding sentence, for taxable years beginning
9 on or after July 1, 2009, and ending on or before December 31,
10 2011, there shall not be allowed a capital goods excise tax
11 credit to any taxpayer.

12 The amount of the tax credit shall be determined by the
13 application of the following rates against the cost of the
14 eligible depreciable tangible personal property used by the
15 taxpayer in a trade or business and placed in service within
16 Hawaii after December 31, 1987. For calendar years beginning
17 after: December 31, 1987, the applicable rate shall be three
18 per cent; December 31, 1988, and thereafter, the applicable rate
19 shall be four per cent. For taxpayers with fiscal taxable
20 years, the applicable rate shall be the rate for the calendar
21 year in which the eligible depreciable tangible personal

1 property used in the trade or business is placed in service
2 within Hawaii.

3 In the case of a partnership, S corporation, estate, or
4 trust, the tax credit allowable is for eligible depreciable
5 tangible personal property which is placed in service by the
6 entity. The cost upon which the tax credit is computed shall be
7 determined at the entity level. Distribution and share of
8 credit shall be determined by rules.

9 In the case of eligible depreciable tangible personal
10 property for which a credit for sales or use taxes paid to
11 another state is allowable under section 238-3(i), the amount of
12 the tax credit allowed under this section shall not exceed the
13 amount of use tax actually paid under chapter 238 relating to
14 such tangible personal property.

15 If a deduction is taken under section 179 (with respect to
16 election to expense certain depreciable business assets) of the
17 Internal Revenue Code of 1954, as amended, no tax credit shall
18 be allowed for that portion of the cost of property for which
19 the deduction was taken."

20 SECTION 4. In codifying the new sections added by section
21 2 of this part, the revisor of statutes shall substitute

1 appropriate section numbers for the letters used in designating
2 the new sections in this part.

3 **PART II**

4 SECTION 5. The legislature finds that tax credits and tax
5 exemptions provide an important set of tools for Hawaii's
6 economic diversification. At the same time, especially during
7 economic downturns, it is incumbent on state policymakers to
8 thoroughly evaluate existing tax credits and tax exemptions to
9 determine whether they are fulfilling the purposes for which
10 they were adopted, as well as providing solid returns on public
11 investment.

12 The purposes of this Act are to institute an ongoing
13 program of evaluation of those tax credits and tax exemptions
14 that have no sunset dates, require the department of taxation
15 and department of business, economic development, and tourism,
16 to compile the necessary information to enable the legislature
17 to evaluate tax credits and exemptions with consistent
18 standards, and to sunset those credits and exemptions that the
19 department of taxation and legislature do not believe should be
20 extended. Over time, as economic conditions change, different
21 combinations of tax credits and tax exemptions serve as the

1 State's key tools to promote or discourage particular behavior
2 among residents and businesses.

3 For existing tax credits and tax exemptions that have a
4 sunset date, the purpose of this Act is to require the
5 department of taxation, with the assistance of the department of
6 business, economic development, and tourism, to compile accurate
7 information on their usage and whether they are fulfilling the
8 purposes for which they were adopted, as well as providing solid
9 returns on public investment. The department of business,
10 economic development, and tourism shall provide the department
11 of taxation with data on the dynamic economic impact of each tax
12 credit and tax exemption identified in this Act. The data to be
13 provided by the department of business, economic development,
14 and tourism shall be modeled to provide comparable evaluation
15 data as the department of business, economic development, and
16 tourism's renewable energies credit analysis, or the State of
17 New Mexico's film credit analysis.

18 SECTION 6. Section 235-20.5, Hawaii Revised Statutes, is
19 amended to read as follows:

20 **"§235-20.5 Tax administration special fund; established.**

21 There is established a tax administration special fund, into
22 which shall be deposited fees collected under sections 235-20,

1 235-110.9, and 235-110.91, and penalties collected under
2 section 2 of Act 206, ~~[+]Session Laws of Hawaii 2007[+]~~. The
3 moneys in the fund shall be expended by the department to offset
4 the costs associated with:

- 5 (1) Issuing comfort letters;
- 6 (2) Administering the tax credit under ~~[section]~~ sections
7 235-110.9~~[7]~~ and 235-110.91, including issuing
8 certificates; and
- 9 (3) ~~[Issuing certificates under section 235-110.91.]~~
10 Compiling usage and other relevant economic data to
11 analyze the costs and benefits of the State's tax
12 laws."

13 SECTION 7. Section 237-24.3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§237-24.3 Additional amounts not taxable.** In addition to
16 the amounts not taxable under section 237-24, this chapter shall
17 not apply to:

- 18 (1) Amounts received from the loading, transportation, and
19 unloading of agricultural commodities shipped for a
20 producer or produce dealer on one island of this State
21 to a person, firm, or organization on another island
22 of this State. ~~[The]~~ For purposes of this paragraph,

1 the terms "agricultural commodity", "producer", and
2 "produce dealer" shall be defined in the same manner
3 as they are defined in section 147-1; provided that
4 agricultural commodities need not have been produced
5 in the State;

6 (2) Amounts received from the loading, transportation, and
7 unloading of agricultural products shipped for a
8 producer on one island of this State to a person,
9 firm, or organization on another island of this State.

10 For purposes of this paragraph, the terms
11 "agricultural products" and "producer" shall be
12 defined in the same manner as they are defined in
13 section 237-5;

14 ~~(2)~~ (3) Amounts received from sales of:

15 (A) Intoxicating liquor as the term "liquor" is
16 defined in chapter 244D;

17 (B) Cigarettes and tobacco products as defined in
18 chapter 245; and

19 (C) Agricultural, meat, or fish products;

20 to any person or common carrier in interstate or
21 foreign commerce, or both, whether ocean-going or air,

1 for consumption out-of-state on the shipper's vessels
2 or airplanes;

3 [~~3~~] (4) Amounts received by the manager, submanager, or
4 board of directors of:

5 (A) An association of owners of a condominium
6 property regime established in accordance with
7 chapter 514A or 514B; or

8 (B) A nonprofit homeowners or community association
9 incorporated in accordance with chapter 414D or
10 any predecessor thereto and existing pursuant to
11 covenants running with the land,

12 in reimbursement of sums paid for common expenses;

13 [~~4~~] (5) Amounts received or accrued from:

14 (A) The loading or unloading of cargo from ships,
15 barges, vessels, or aircraft, whether or not the
16 ships, barges, vessels, or aircraft travel
17 between the State and other states or countries
18 or between the islands of the State;

19 (B) Tugboat services including pilotage fees
20 performed within the State, and the towage of
21 ships, barges, or vessels in and out of state
22 harbors, or from one pier to another; and

1 (C) The transportation of pilots or governmental
2 officials to ships, barges, or vessels offshore;
3 rigging gear; checking freight and similar
4 services; standby charges; and use of moorings
5 and running mooring lines;

6 [~~(5)~~] (6) Amounts received by an employee benefit plan by
7 way of contributions, dividends, interest, and other
8 income; and amounts received by a nonprofit
9 organization or office, as payments for costs and
10 expenses incurred for the administration of an
11 employee benefit plan; provided that this exemption
12 shall not apply to any gross rental income or gross
13 rental proceeds received after June 30, 1994, as
14 income from investments in real property in this
15 State; and provided further that gross rental income
16 or gross rental proceeds from investments in real
17 property received by an employee benefit plan after
18 June 30, 1994, under written contracts executed prior
19 to July 1, 1994, shall not be taxed until the
20 contracts are renegotiated, renewed, or extended, or
21 until after December 31, 1998, whichever is earlier.

22 For the purposes of this paragraph, "employee benefit

1 plan" means any plan as defined in section 1002(3) of
2 title 29 of the United States Code, as amended;

3 [~~(6)~~] (7) Amounts received for purchases made with United
4 States Department of Agriculture food coupons under
5 the federal food stamp program, and amounts received
6 for purchases made with United States Department of
7 Agriculture food vouchers under the Special
8 Supplemental Foods Program for Women, Infants and
9 Children;

10 [~~(7)~~] (8) Amounts received by a hospital, infirmary,
11 medical clinic, health care facility, pharmacy, or a
12 practitioner licensed to administer the drug to an
13 individual for selling prescription drugs or
14 prosthetic devices to an individual; provided that
15 this paragraph shall not apply to any amounts received
16 for services provided in selling prescription drugs or
17 prosthetic devices. As used in this paragraph:

18 "Prescription drugs" are those drugs defined
19 under section 328-1 and dispensed by filling or
20 refilling a written or oral prescription by a
21 practitioner licensed under law to administer the drug

1 and sold by a licensed pharmacist under section 328-16
2 or practitioners licensed to administer drugs; and

3 "Prosthetic device" means any artificial device
4 or appliance, instrument, apparatus, or contrivance,
5 including their components, parts, accessories, and
6 replacements thereof, used to replace a missing or
7 surgically removed part of the human body, which is
8 prescribed by a licensed practitioner of medicine,
9 osteopathy, or podiatry and which is sold by the
10 practitioner or which is dispensed and sold by a
11 dealer of prosthetic devices; provided that
12 "prosthetic device" shall not mean any auditory,
13 ophthalmic, dental, or ocular device or appliance,
14 instrument, apparatus, or contrivance;

15 [~~(8)~~] (9) Taxes on transient accommodations imposed by
16 chapter 237D and passed on and collected by operators
17 holding certificates of registration under that
18 chapter;

19 [~~(9)~~] (10) Amounts received as dues by an unincorporated
20 merchants association from its membership for
21 advertising media, promotional, and advertising costs
22 for the promotion of the association for the benefit

1 of its members as a whole and not for the benefit of
2 an individual member or group of members less than the
3 entire membership;

4 ~~[(10)]~~ (11) Amounts received by a labor organization for
5 real property leased to:

6 (A) A labor organization; or

7 (B) A trust fund established by a labor organization
8 for the benefit of its members, families, and
9 dependents for medical or hospital care, pensions
10 on retirement or death of employees,
11 apprenticeship and training, and other membership
12 service programs.

13 As used in this paragraph, "labor organization" means
14 a labor organization exempt from federal income tax
15 under section 501(c)(5) of the Internal Revenue Code,
16 as amended;

17 ~~[(11)]~~ (12) Amounts received from foreign diplomats and
18 consular officials who are holding cards issued or
19 authorized by the United States Department of State
20 granting them an exemption from state taxes; and

21 ~~[(12)]~~ (13) Amounts received as rent for the rental or
22 leasing of aircraft or aircraft engines used by the

1 lessees or renters for interstate air transportation
2 of passengers and goods. For purposes of this
3 paragraph, payments made pursuant to a lease shall be
4 considered rent regardless of whether the lease is an
5 operating lease or a financing lease. The definition
6 of "interstate air transportation" is the same as in
7 49 U.S.C. 40102."

8 SECTION 8. **Tax credits and exemptions; evaluation; report.**

9 (a) The department of taxation and the department of business,
10 economic development, and tourism shall perform an evaluation of
11 the following tax credits or tax exemptions and submit an
12 evaluation of the fiscal impacts and economic benefits of each
13 credit and exemption required by this section to the legislature
14 by no later than twenty days prior to the convening of the
15 regular session of 2010; provided that if the department of
16 taxation, with the assistance of the department of business,
17 economic development, and tourism, does not submit a complete
18 and accurate evaluation of the following tax credits and tax
19 exemptions by no later than twenty days prior to the convening
20 of the regular session of 2011, thereby curtailing the
21 legislature's ability to assess the tax credit or tax exemption
22 pursuant to the department of taxation's recommendations, then

1 each of the applicable tax credits and tax exemptions shall not
2 be available to be claimed for taxable years beginning after
3 December 31, 2010:

4 (1) Section 235-15, Hawaii Revised Statutes (tax credits
5 to promote the purchase of child passenger restraint
6 systems);

7 (2) Section 235-110.2, Hawaii Revised Statutes (credit for
8 school repair and maintenance);

9 (3) Section 237-24.3, Hawaii Revised Statutes (general
10 excise tax; additional amounts not taxable);

11 (4) Section 237-24.9, Hawaii Revised Statutes (general
12 excise tax; aircraft service and maintenance
13 facility);

14 (5) Section 237-29.53, Hawaii Revised Statutes (general
15 excise tax; exemption for contracting or services
16 exported out of state);

17 (6) Section 237-29.55, Hawaii Revised Statutes (general
18 excise tax; exemption for sale of tangible personal
19 property for resale at wholesale);

20 (7) Section 237-29.8, Hawaii Revised Statutes (general
21 excise tax; call centers; exemption; engaging in
22 business; definitions); and

1 (8) Section 239-12, Hawaii Revised Statutes (public
2 service company tax; call centers; exemption; engaging
3 in business; definitions).

4 (b) The department of taxation and the department of
5 business, economic development, and tourism shall perform an
6 evaluation of the following tax credits or tax exemptions and
7 submit an evaluation of the fiscal impacts and economic benefits
8 of each credit and exemption required by this section to the
9 legislature by no later than twenty days prior to the convening
10 of the regular session of 2011; provided that if the department
11 of taxation, with the assistance of the department of business,
12 economic development, and tourism, does not submit a complete
13 and accurate evaluation of the following tax credits and tax
14 exemptions by no later than twenty days prior to the convening
15 of the regular session of 2012, thereby curtailing the
16 legislature's ability to assess the tax credit or tax exemption
17 pursuant to the department of taxation's recommendations, then
18 each of the applicable tax credits and tax exemptions shall not
19 be available to be claimed for taxable years beginning after
20 December 31, 2011:

21 (1) Section 235-110.6, Hawaii Revised Statutes (fuel tax
22 credit for commercial fishers);

- 1 (2) Section 237-16.8, Hawaii Revised Statutes (general
2 excise tax; exemption of certain convention,
3 conference, and trade show fees);
- 4 (3) Section 237-23.5, Hawaii Revised Statutes (general
5 excise tax; related entities; common paymaster;
6 certain exempt transactions);
- 7 (4) Section 237-24.5, Hawaii Revised Statutes (general
8 excise tax; additional exemptions);
- 9 (5) Section 237-24.7, Hawaii Revised Statutes (general
10 excise tax; additional amounts not taxable);
- 11 (6) Section 237-24.75, Hawaii Revised Statutes (general
12 excise tax; additional exemptions);
- 13 (7) Section 237-25, Hawaii Revised Statutes (general
14 excise tax; exemptions of sales and gross proceeds of
15 sales to federal government, and credit unions); and
- 16 (8) Section 237-29.5, Hawaii Revised Statutes (general
17 excise tax; exemption for sales of tangible personal
18 property shipped out of state).
- 19 (c) The department of taxation and the department of
20 business, economic development, and tourism shall perform an
21 evaluation of the following tax credits or tax exemptions and
22 submit an evaluation of the fiscal impacts and economic benefits

1 of each credit and exemption required by this section to the
2 legislature by no later than twenty days prior to the convening
3 of the regular session of 2012; provided that if the department
4 of taxation, with the assistance of the department of business,
5 economic development, and tourism, does not submit a complete
6 and accurate evaluation of the following tax credits and tax
7 exemptions by no later than twenty days prior to the convening
8 of the regular session of 2013, thereby curtailing the
9 legislature's ability to assess the tax credit or tax exemption
10 pursuant to the department of taxation's recommendations, then
11 each of the applicable tax credits and tax exemptions shall not
12 be available to be claimed for taxable years beginning after
13 December 31, 2012:

- 14 (1) Section 209E-10, Hawaii Revised Statutes (state
15 business tax credit);
- 16 (2) Section 209E-11, Hawaii Revised Statutes (state
17 general excise exemptions);
- 18 (3) Section 235-55.85, Hawaii Revised Statutes (refundable
19 food/excise tax credit);
- 20 (4) Section 235-55.91, Hawaii Revised Statutes (credit for
21 employment of vocational rehabilitation referrals);

- 1 (5) Section 235-71, Hawaii Revised Statutes (tax on
2 corporations; rates; credit of shareholder of
3 regulated investment company);
- 4 (6) Section 237-26, Hawaii Revised Statutes (general
5 excise tax; exemption of certain scientific contracts
6 with the United States);
- 7 (7) Section 237-27, Hawaii Revised Statutes (general
8 excise tax; exemption of certain petroleum refiners);
- 9 (8) Section 237-27.5, Hawaii Revised Statutes (general
10 excise tax; air pollution control facility);
- 11 (9) Section 237-27.6, Hawaii Revised Statutes (general
12 excise tax; solid waste processing, disposal, and
13 electric generating facility; certain amounts exempt);
14 and
- 15 (10) Section 244D-4.3, Hawaii Revised Statutes (liquor tax;
16 exemption for sales of liquor out of state).
- 17 (d) The department of taxation and the department of
18 business, economic development, and tourism shall perform an
19 evaluation of the following tax credits or tax exemptions and
20 submit an evaluation of the fiscal impacts and economic benefits
21 of each credit and exemption required by this section to the
22 legislature by no later than twenty days prior to the convening

1 of the regular session of 2013; provided that if the department
2 of taxation, with the assistance of the department of business,
3 economic development, and tourism, does not submit a complete
4 and accurate evaluation of the following tax credits by no later
5 than twenty days prior to the convening of the regular session
6 of 2014, thereby curtailing the legislature's ability to assess
7 the tax credit or tax exemption pursuant to the department of
8 taxation's recommendations, then each of the applicable tax
9 credits and tax exemptions shall not be available to be claimed
10 for taxable years beginning after December 31, 2013; provided
11 that the potential repeal of the tax credits in paragraphs (7)
12 and (11) of this subsection and the tax exemption in paragraph
13 (9) of this subsection shall not apply to those projects
14 approved before January 1, 2014:

- 15 (1) Section 235-12.5, Hawaii Revised Statutes (renewable
16 energy technologies; income tax credit);
- 17 (2) Section 235-55, Hawaii Revised Statutes (tax credits
18 for resident taxpayers);
- 19 (3) Section 235-55.6, Hawaii Revised Statutes (expenses
20 for household and dependent care services necessary
21 for gainful employment);

- 1 (4) Section 235-55.7, Hawaii Revised Statutes (income tax
2 credit for low-income household renters);
- 3 (5) Section 235-110.3, Hawaii Revised Statutes (ethanol
4 facility tax credit);
- 5 (6) Section 235-110.7, Hawaii Revised Statutes (capital
6 goods excise tax credit);
- 7 (7) Section 235-110.8, Hawaii Revised Statutes (low-income
8 housing tax credit);
- 9 (8) Section 237-23, Hawaii Revised Statutes (general
10 excise tax; exemptions, persons exempt, applications
11 for exemption), except for section 237-23(a)(1),
12 Hawaii Revised Statutes (public service companies);
- 13 (9) Section 237-29, Hawaii Revised Statutes (general
14 excise tax; exemptions for certified or approved
15 housing projects);
- 16 (10) Section 239-6.5, Hawaii Revised Statutes (public
17 service company tax; tax credit for lifeline telephone
18 service subsidy); and
- 19 (11) Section 241-4.7, Hawaii Revised Statutes (low-income
20 housing; income tax credit).
- 21 (e) The reports submitted by the department of taxation
22 and the department of business, economic development, and

1 tourism under this Act shall provide usage and revenue data,
2 economic analyses, and other information sufficient to enable
3 the legislature to determine whether the tax credits and tax
4 exemptions evaluated have achieved or are achieving their
5 intended objectives, whether they are consistent with public
6 policies, and whether they should be continued, modified, or
7 repealed.

8 If the department of taxation recommends that a tax credit
9 or tax exemption should be modified, it shall include in its
10 report, with the assistance of the departments listed in
11 subsection (f) (2), the proposed draft legislation to implement
12 the recommended modifications.

13 If the department of taxation recommends that the law
14 establishing a tax credit or tax exemption should be continued
15 in its current form, it shall make appropriate recommendations,
16 with assistance of the departments listed in subsection (f) (2),
17 to improve the operation of the tax credit or tax exemption,
18 including, but not limited to, recommendations for appropriate
19 restrictions to be placed on the tax credit or tax exemption and
20 whether to use a five-year or ten-year sunset provision. In
21 accordance with this section, the recommendation from the
22 department of taxation to continue the tax credit or tax

1 exemption in its current form or recommendation to modify the
2 credit shall be received before the applicable tax credit or tax
3 exemption is scheduled to sunset pursuant to this section.

4 The reports submitted by the department of taxation under
5 this Act shall also include recommendations for the evaluation
6 of other tax credits and exemptions in the future.

7 (f) In evaluating the tax credits and tax exemptions the
8 department of taxation shall:

- 9 (1) Obtain from the department of business, economic
10 development, and tourism an economic impact analysis;
- 11 (2) Establish a technical advisory group, which may
12 include the department of labor and industrial
13 relations, department of agriculture, department of
14 commerce and consumer affairs, department of
15 transportation, department of human services,
16 department of business, economic development, and
17 tourism, and representatives of Hawaii's non-profit
18 sector to help identify and develop the data elements
19 needed for the analyses; and
- 20 (3) Collect, process, and analyze data from federal,
21 state, and local government sources.

1 SECTION 9. The department of taxation shall perform an
2 evaluation of the following tax credits or tax exemptions and
3 submit a report of the evaluation to the legislature by no later
4 than twenty days prior to the convening of the regular session
5 as specified below:

6 (1) Section 235-17, Hawaii Revised Statutes (motion
7 picture, digital media, and film production income tax
8 credit), one year before the expiration date, as
9 specified in that section;

10 (2) Section 235-110.51, Hawaii Revised Statutes
11 (technology infrastructure renovation tax credit), one
12 year before the expiration date, as specified in that
13 section;

14 (3) Section 235-110.9, Hawaii Revised Statutes (high
15 technology business investment tax credit), one year
16 before the expiration date, as specified in that
17 section; and

18 (4) Section 235-110.91, Hawaii Revised Statutes (tax
19 credit for research activities), one year before the
20 expiration date, as specified in that section.

21 The tax credits identified in this subsection are not being
22 extended in any manner. The tax credits identified in this

1 section are existing tax credits with expiration dates that
2 shall be reviewed in a uniform and systematic manner prior to
3 their respective repeal dates, similar to those tax credits
4 evaluated that do not have expiration dates, to determine
5 whether those tax credits have fulfilled the purposes for which
6 they were enacted.

7 SECTION 10. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 11. This Act shall take effect on July 1, 2050;
10 provided that part I of this Act shall take effect upon
11 approval.

Report Title:

Tax Credits; Tax Exemptions; Evaluation; Report

Description:

Amends the capital goods excise tax credit so that it applies only to property placed in service or purchased pursuant to a binding contract in taxable years beginning before July 1, 2009; suspends the credit for taxable years beginning on or after July 1, 2009, and ending on or before December 31, 2011; and adds a new part for property placed in service or purchased pursuant to a binding contract in taxable years beginning after December 31, 2011. Requires the department of taxation, with the assistance of the department of business, economic development, and tourism, to evaluate certain tax credits and tax exemptions and report to the legislature. Requires the department of taxation to give recommendations and for the legislature to implement those recommendations prior to the mandate for those tax credits and tax exemptions to sunset. (SD1)