
A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS.

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

1 SECTION 1. The legislature finds that green diesel,
2 biodiesel, and biojet, in addition to ethanol, are examples of
3 potential fuels that could be produced in Hawaii from locally
4 grown feedstocks. The local production of these biofuels could
5 contribute to Hawaii's renewable liquid fuel objectives, reduce
6 negative impacts of oil price volatility on Hawaii, provide a
7 measure of energy security, provide economic diversification,
8 and keep energy dollars circulating within Hawaii's economy.

9 The purpose of this Act is to expand the existing ethanol
10 facility tax credit to include other liquid biofuels and to
11 enable larger facilities to be eligible for the tax incentive,
12 without changing the level of incentive or cap per facility.

13 SECTION 2. Section 235-110.3, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "§235-110.3 [~~Ethanol~~] Biofuel facility tax credit. (a)
16 Each year during the credit period, there shall be allowed to
17 each taxpayer subject to the taxes imposed by this chapter, [an



1 ~~ethanol~~] a biofuel facility tax credit that shall be applied to
2 the taxpayer's net income tax liability, if any, imposed by this
3 chapter for the taxable year in which the credit is properly
4 claimed.

5 For each [~~qualified ethanol~~] qualifying biofuel production
6 facility, the annual dollar amount of the [~~ethanol~~] biofuel
7 facility tax credit during the eight-year period shall be equal
8 to thirty [~~per cent~~] cents per gallon of its nameplate capacity
9 if the nameplate capacity is greater than five hundred thousand
10 [~~but less than fifteen million~~] gallons. A taxpayer may claim
11 this credit for the first fifteen million gallons of capacity of
12 each qualifying [~~ethanol~~] biofuel production facility; provided
13 that:

- 14 (1) The claim for this credit by any taxpayer of a
15 qualifying [~~ethanol~~] biofuel production facility shall
16 not exceed one hundred per cent of the total of all
17 investments made by the taxpayer in the qualifying
18 [~~ethanol~~] biofuel production facility [~~during the~~
19 ~~credit period~~];
- 20 (2) The qualifying [~~ethanol~~] biofuel production facility
21 operated at a level of production of at least seventy-



1 five per cent of its nameplate capacity on an
2 annualized basis;

3 (3) The qualifying biofuel production facility is located
4 within the State and uses agricultural feedstocks for
5 at least seventy-five per cent of its production
6 output;

7 ~~[(3)]~~ (4) The qualifying [ethanol] biofuel production
8 facility is in production on or before January 1,
9 2017; and

10 ~~[(4)]~~ (5) No taxpayer that claims the credit under this
11 section shall claim any other tax credit under this
12 chapter for the same taxable year.

13 (b) As used in this section:

14 "Agricultural feedstocks" include, but are not limited to,
15 sugar cane, sweet sorghum, sugar beets, algae, and oil seeds,
16 and their agricultural byproducts, including biomass, oil,
17 fiber, or other materials.

18 "Biofuel" means ethanol, biodiesel, renewable diesel, jet
19 fuel, or other liquid fuel, which meets the relevant fuel
20 specifications of ASTM International (formerly ASTM, the
21 American Society for Testing and Materials) and is produced from
22 agricultural feedstocks.



1 "Credit period" means a maximum period of eight years
2 beginning from the first taxable year in which the qualifying
3 ~~[ethanol]~~ biofuel production facility begins production even if
4 actual production is not at seventy-five per cent of nameplate
5 capacity.

6 "Investment" means a nonrefundable capital expenditure
7 related to the development and construction of any qualifying
8 ~~[ethanol]~~ biofuel production facility, including processing
9 equipment, waste treatment systems, pipelines, and liquid
10 storage tanks at the facility or remote locations, including
11 expansions or modifications. Direct capital expenditures in
12 agricultural infrastructure, including irrigation and drainage
13 systems, land clearing and leveling, establishment of crops,
14 planting, and cultivation, where the biofuel production facility
15 and agricultural operations are integrated shall be eligible.
16 Capital expenditures shall be those direct and certain indirect
17 costs determined in accordance with section 263A (with respect
18 to capitalization and inclusion in inventory costs of certain
19 expenses) of the Internal Revenue Code, ~~[relating to uniform~~
20 ~~capitalization costs,]~~ but shall not include expenses for
21 compensation paid to officers of the taxpayer, pension and other
22 related costs, rent for land, the costs of repairing and



1 maintaining the equipment or facilities, training of operating
2 personnel, utility costs during construction, property taxes,
3 costs relating to negotiation of commercial agreements not
4 related to development or construction, or service costs that
5 can be identified specifically with a service department or
6 function or that directly benefit or are incurred by reason of a
7 service department or function. For the purposes of determining
8 a capital expenditure under this section, the provisions of
9 section 263A of the Internal Revenue Code shall apply as it read
10 on March 1, 2004. For purposes of this section, investment
11 excludes land costs and includes any investment for which the
12 taxpayer is at risk, as that term is used in section 465 (with
13 respect to deductions limited to amount at risk) of the Internal
14 Revenue Code [~~with respect to deductions limited to amount at~~
15 ~~risk~~].

16 "Nameplate capacity" means the qualifying [~~ethanol~~] biofuel
17 production facility's production design capacity, in gallons of
18 [~~motor fuel grade ethanol~~] biofuel per year.

19 "Net income tax liability" means net income tax liability
20 reduced by all other credits allowed under this chapter.

21 "Qualifying [~~ethanol~~] biofuel production" means [~~ethanol~~]
22 biofuel produced from [~~renewable, organic~~] agricultural



1 feedstocks [~~or waste materials, including municipal solid~~
2 waste]. All qualifying production shall be fermented,
3 distilled, transesterified, gasified, pyrolized, or produced by
4 other physical, chemical, biochemical, or thermochemical
5 conversion [~~methods such as reformation and catalytic conversion~~
6 and ~~dehydrated at the facility~~].

7 "Qualifying [~~ethanol~~] biofuel production facility" or
8 "facility" means a facility located in Hawaii [~~which~~] that
9 produces [~~meter~~] fuel grade [~~ethanol meeting the minimum~~
10 ~~specifications by the American Society of Testing and Materials~~
11 ~~standard D-4806, as amended.~~] biofuel meeting the relevant ASTM
12 International (formerly ASTM, the American Society for Testing
13 and Materials) specifications for the particular fuel.

14 (c) In the case of a taxable year in which the cumulative
15 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
16 biofuel production facility exceeds the cumulative investment
17 made in the qualifying [~~ethanol~~] biofuel production facility by
18 the taxpayer, only that portion that does not exceed the
19 cumulative investment shall be claimed and allowed.

20 (d) The department of business, economic development, and
21 tourism shall:



- 1 (1) Maintain records of the total amount of investment
- 2 made by each taxpayer in a facility;
- 3 (2) Verify the amount of the qualifying investment;
- 4 (3) Total all qualifying and cumulative investments that
- 5 the department of business, economic development, and
- 6 tourism certifies; and
- 7 (4) Certify the total amount of the tax credit for each
- 8 taxable year and the cumulative amount of the tax
- 9 credit during the credit period.

10 Upon each determination, the department of business,
11 economic development, and tourism shall issue a certificate to
12 the taxpayer verifying the qualifying investment amounts, the
13 credit amount certified for each taxable year, and the
14 cumulative amount of the tax credit during the credit period.
15 The taxpayer shall file the certificate with the taxpayer's tax
16 return with the department of taxation. Notwithstanding the
17 department of business, economic development, and tourism's
18 certification authority under this section, the director of
19 taxation may audit and adjust certification to conform to the
20 facts.

21 If in any year, the annual amount of certified credits
22 reaches [~~\$12,000,000~~] the annual limit in the aggregate, the



1 department of business, economic development, and tourism shall
2 immediately discontinue certifying credits and notify the
3 department of taxation. In no instance shall the total amount
4 of certified credits exceed [~~\$12,000,000~~] the annual limit per
5 year. Notwithstanding any other law to the contrary, this
6 information shall be available for public inspection and
7 dissemination under chapter 92F.

8 (e) If the credit under this section exceeds the
9 taxpayer's income tax liability, the excess of credit over
10 liability shall be refunded to the taxpayer; provided that no
11 refunds or payments on account of the tax credit allowed by this
12 section shall be made for amounts less than \$1. All claims for
13 a credit under this section [~~must~~] shall be properly filed on or
14 before the end of the twelfth month following the close of the
15 taxable year for which the credit may be claimed. Failure to
16 comply with the foregoing provision shall constitute a waiver of
17 the right to claim the credit.

18 (f) If a qualifying [~~ethanol~~] biofuel production facility
19 or an interest therein is acquired by a taxpayer prior to the
20 expiration of the credit period, the credit allowable under
21 subsection (a) for any period after such acquisition shall be
22 equal to the credit that would have been allowable under



1 subsection (a) to the prior taxpayer had the taxpayer not
2 disposed of the interest. If an interest is disposed of during
3 any year for which the credit is allowable under subsection (a),
4 the credit shall be allowable between the parties on the basis
5 of the number of days during the year the interest was held by
6 each taxpayer. In no case shall the credit allowed under
7 subsection (a) be allowed after the expiration of the credit
8 period.

9 (g) ~~[Once the total nameplate capacities of qualifying~~
10 ~~ethanol production facilities built within the State reaches or~~
11 ~~exceeds a level of forty million gallons per year, credits under~~
12 ~~this section shall not be allowed for new ethanol production~~
13 ~~facilities. If a new facility's production capacity would cause~~
14 ~~the statewide ethanol production capacity to exceed forty~~
15 ~~million gallons per year, only the ethanol production capacity~~
16 ~~that does not exceed the statewide forty million gallon per year~~
17 ~~level shall be eligible for the credit.] Qualifying biofuel~~
18 production facilities that produce ethanol shall be eligible for
19 a combined maximum of \$9,000,000 of annual credits. Qualifying
20 biofuel production facilities producing biofuels other than
21 ethanol shall be eligible for a combined maximum of \$3,000,000
22 of annual credits. If qualifying biofuel production facilities



1 producing ethanol or qualifying biofuel production facilities
2 producing biofuels other than ethanol are built such that the
3 maximum eligible credits are met or exceeded for that category
4 of facility, then no further credits under this section shall be
5 allowed for new qualifying biofuel production facilities within
6 that category for the tax year in which the limit is met or
7 exceeded.

8 (h) Prior to construction of any new qualifying [~~ethanol~~]
9 biofuel production facility, the taxpayer shall provide written
10 notice of the taxpayer's intention to begin construction of a
11 qualifying [~~ethanol~~] biofuel production facility. The
12 information shall be provided to the department of taxation and
13 the department of business, economic development, and tourism on
14 forms provided by the department of business, economic
15 development, and tourism, and shall include information on the
16 taxpayer, facility location, facility production capacity,
17 anticipated production start date, and the taxpayer's contact
18 information. Notwithstanding any other law to the contrary,
19 this information shall be available for public inspection and
20 dissemination under chapter 92F.

21 (i) The taxpayer shall provide written notice to the
22 director of taxation and the director of business, economic



1 development, and tourism within thirty days following the start
2 of production. The notice shall include the production start
3 date and expected [~~ethanol~~] biofuel fuel production for the next
4 twenty-four months. Notwithstanding any other law to the
5 contrary, this information shall be available for public
6 inspection and dissemination under chapter 92F.

7 (j) If a qualifying [~~ethanol~~] biofuel production facility
8 fails to achieve an average annual production of at least
9 seventy-five per cent of its nameplate capacity for two
10 consecutive years, the stated capacity of that facility may be
11 revised by the director of business, economic development, and
12 tourism to reflect actual production for the purposes of
13 determining [~~statewide production capacity under subsection (g)~~
14 ~~and~~] allowable credits for that facility under subsection (a).
15 Notwithstanding any other law to the contrary, this information
16 shall be available for public inspection and dissemination under
17 chapter 92F.

18 (k) Each calendar year during the credit period, the
19 taxpayer shall provide information to the director of business,
20 economic development, and tourism on the [~~number of~~] gallons [~~of~~
21 ~~ethanol~~] and type of biofuel produced and sold during the
22 previous calendar year, how much was sold in Hawaii versus



1 overseas, percentage of Hawaii-grown feedstocks used for
2 ~~[ethanol]~~ biofuel production, the number of employees of the
3 facility, and the projected ~~[number of]~~ gallons ~~[of ethanol]~~ and
4 type of biofuel production for the succeeding year.

5 (1) In the case of a partnership, S corporation, estate,
6 or trust, the tax credit allowable is for every qualifying
7 ~~[ethanol]~~ biofuel production facility. The cost upon which the
8 tax credit is computed shall be determined at the entity level.
9 Distribution and share of credit shall be determined pursuant to
10 section 235-110.7(a).

11 (m) Following each year in which a credit under this
12 section has been claimed, the director of business, economic
13 development, and tourism shall ~~[submit a written]~~ include in its
14 annual report to the governor and legislature ~~[regarding the~~
15 ~~production and sale of ethanol. The report shall include:]~~ the
16 following:

17 (1) The number, location, and nameplate capacities of
18 qualifying ~~[ethanol]~~ biofuel production facilities in
19 the State;

20 (2) The total number of gallons of ~~[ethanol]~~ biofuel
21 produced and sold by those facilities during the
22 previous year; and



1 (3) The projected number of gallons of [~~ethanol production~~
2 ~~for~~] biofuel expected to be produced in the succeeding
3 year.

4 (n) The director of taxation shall prepare forms that may
5 be necessary to claim a credit under this section.

6 Notwithstanding the department of business, economic
7 development, and tourism's certification authority under this
8 section, the director may audit and adjust certification to
9 conform to the facts. The director may also require the
10 taxpayer to furnish information to ascertain the validity of the
11 claim for credit made under this section and may adopt rules
12 necessary to effectuate the purposes of this section pursuant to
13 chapter 91."

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act, upon its approval, shall apply to
17 taxable years beginning after December 31, 2009.

18



Report Title:

Renewable Fuels; Biofuels; Tax Credit

Description:

Expands the existing ethanol facility tax credit to include other liquid biofuels. (SD1)

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