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

4           "§235-       Small business investment tax credit.   (a)

5       There shall be allowed to each taxpayer subject to the taxes  
6       imposed by this chapter, an income tax credit which shall be  
7       deductible from the taxpayer's net income tax liability, if any,  
8       imposed by this chapter for the taxable year in which the credit  
9       is properly claimed. The amount of the credit shall be equal to  
10       ten per cent of the taxpayer's qualifying investment in a small  
11       business enterprise; provided that:

12           (1)   The taxpayer may claim a credit under this section  
13                only upon the conclusion of the holding period of the  
14                qualifying investment for which a credit is claimed;  
15                and

16           (2)   The total amount of tax credits claimed under this  
17                section by a taxpayer shall not exceed \$5,000,000 per  
18                taxable year.



1       In the case of a partnership, S corporation, estate, or  
2 trust, the tax credit allowable is for every qualifying  
3 investment in a small business enterprise. The cost upon which  
4 the tax credit is computed shall be determined at the entity  
5 level. Distribution and share of credit shall be determined  
6 pursuant to section 235-110.7(a).

7       (b) As used in this section:

8       "Holding period" means:

- 9       (1) For qualifying investments made on or after July 1,  
10       2012, but before July 1, 2014, the two-year period  
11       beginning on the day the investment was made; and  
12       (2) For qualifying investments made on or after July 1,  
13       2014, the five-year period beginning on the day the  
14       investment was made.

15       "Qualifying investment" means an investment of money made  
16 on or after July 1, 2012, to acquire capital stock or other  
17 equity interest in a small business enterprise. "Qualifying  
18 investment" shall not include any investment of money the  
19 taxpayer derives, directly or indirectly, from a grant or loan  
20 from the federal government, the State, or a political  
21 subdivision.



1       "Small business enterprise" means a corporation, pass-  
2 through entity, or other person satisfying all of the following:

3       (1) According to generally accepted accounting principles,  
4 at the time of a qualifying investment:

5           (A) The enterprise's assets do not exceed  
6 \$50,000,000; or

7           (B) The enterprise's annual sales do not exceed  
8 \$10,000,000;

9       (2) Regarding the enterprises full-time employees:

10           (A) The enterprise employs at least fifty full-time  
11 employees in the State, for whom the enterprise  
12 is required to withhold taxes under section 235-  
13 61; or

14           (B) More than one-half of the enterprise's total  
15 number of full-time employees employed anywhere  
16 in the United States are employed in this State  
17 and are subject to the withholding requirement;  
18 and

19       (3) The enterprise, within six months of the taxpayer's  
20 qualifying investment, invests in or incurs cost for  
21 one or more of the following in an amount equal to or  
22 greater than the amount of the qualifying investment:



- 1           (A) Tangible personal property, other than motor  
2                   vehicles operated on public roads and highways,  
3                   used in business and physically located in the  
4                   State from the time of its acquisition by the  
5                   enterprise until the end of the investor's  
6                   holding period;
- 7           (B) Motor vehicles operated on public roads and  
8                   highways; provided that, from the time of  
9                   acquisition by the enterprise until the end of  
10                  the investor's holding period, the motor vehicles  
11                  are:
  - 12                   (i) Purchased in the State;
  - 13                   (ii) Registered in the State;
  - 14                   (iii) Used primarily for business purposes; and
  - 15                   (iv) Necessary for the operation of the  
16                          enterprise's business;
- 17           (C) Real property located in the State that is used  
18                   in business from the time of its acquisition by  
19                   the enterprise until the end of the holding  
20                   period;
- 21           (D) Intangible personal property used in business  
22                   primarily in the State, from the time of its



1           acquisition by the enterprise until the end of  
2           the holding period, including:

3           (i) Patents;

4           (ii) Copyrights;

5           (iii) Trademarks;

6           (iv) Service marks; or

7           (v) Licenses; or

8           (E) Compensation for new employees of the enterprise  
9           for whom the enterprise is required to withhold  
10           taxes under section 235-61. For the purpose of  
11           this subparagraph, compensation for new employees  
12           includes compensation for newly hired or retained  
13           employees. Compensation for new employees shall  
14           not include increased compensation for owners,  
15           officers, or managers of the enterprise.

16           (c) A taxpayer that makes a qualifying investment in a  
17           small business enterprise on or after July 1, 2012, may apply to  
18           the department of business, economic development, and tourism to  
19           obtain a small business investment certificate. The director of  
20           business, economic development, and tourism, in consultation  
21           with the director of taxation, shall prescribe the form or  
22           manner in which an applicant shall apply for the certificate,



1 devise the form of the certificate, and prescribe any records or  
2 other information an applicant shall furnish with the  
3 application to evidence the qualifying investment. The  
4 applicant shall state the amount of the intended investment.

5 To qualify for a certificate, an applicant shall satisfy  
6 both of the following:

7 (1) The taxpayer shall make a qualifying investment on or  
8 after July 1, 2012; and

9 (2) The taxpayer shall pledge not to sell or otherwise  
10 dispose of the qualifying investment before the  
11 conclusion of the applicable holding period.

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



1       The department of business, economic development, and  
2 tourism shall not issue a small business investment certificate  
3 to a taxpayer representing an amount of qualifying investment in  
4 excess of the amount of the intended investment indicated on the  
5 taxpayer's application for the certificate.

6       If in any year, the annual amount of certified credits  
7 reaches \$50,000,000 in the aggregate, the department of  
8 business, economic development, and tourism shall immediately  
9 discontinue certifying credits and notify the department of  
10 taxation. In no instance shall the total amount of certified  
11 credits exceed \$50,000,000 per year. Notwithstanding any other  
12 law to the contrary, this information shall be available for  
13 public inspection and dissemination under chapter 92F.

14       The director of business, economic development, and tourism  
15 may adopt rules necessary to effectuate the purposes of this  
16 section pursuant to chapter 91, including rules governing the  
17 following:

- 18       (1) Documents, records, or other information taxpayers  
19       shall in support of an application for a small  
20       business investment certificate;
- 21       (2) Any information a small business enterprise shall  
22       provide for the purposes of this section;



1        (3) Determination of the number of full-time employees of  
2            a small business enterprise;

3        (4) Verification of a small business enterprise's  
4            investment in tangible personal property and  
5            intangible personal property, including when such  
6            investments have been made and where the property is  
7            used in business; and

8        (5) Circumstances under which a small business enterprise  
9            or taxpayer may be subverting the purposes of this  
10           section.

11        (e) Before the end of the applicable holding period of a  
12        qualifying investment, each enterprise in which a qualifying  
13        investment was made for which a small business investment  
14        certificate has been issued, upon the request of the department  
15        of business, economic development, and tourism, shall provide to  
16        the department of business, economic development, and tourism  
17        records or other evidence satisfactory to the department of  
18        business, economic development, and tourism that the enterprise  
19        is a small business enterprise for the purposes of this section.  
20        No credit may be claimed under this section if the department of  
21        business, economic development, and tourism finds that an  
22        enterprise is not a small business enterprise for the purposes





1 of this section. The department of business, economic  
2 development, and tourism shall compile and maintain a register  
3 of small business enterprises qualifying under this section and  
4 shall certify the register to the department of taxation.

5 (f) If the credit under this section exceeds the  
6 taxpayer's income tax liability, the excess of credit over  
7 liability may be used as a credit against the taxpayer's income  
8 tax liability in subsequent years until exhausted. All claims  
9 for a credit under this section must be properly filed on or  
10 before the end of the twelfth month following the close of the  
11 taxable year for which the credit may be claimed. Failure to  
12 comply with the foregoing provision shall constitute a waiver of  
13 the right to claim the credit.

14 (g) The director of taxation shall prepare any forms that  
15 may be necessary to claim a tax credit under this section. The  
16 director may also require the taxpayer to furnish reasonable  
17 information to ascertain the validity of the claim for credit  
18 made under this section and may adopt rules necessary to  
19 effectuate the purposes of this section pursuant to chapter 91."

20 SECTION 2. New statutory material is underscored.

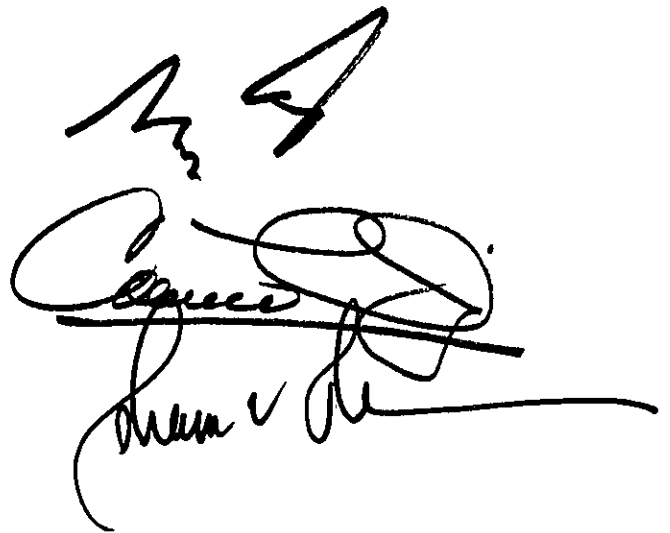


1 SECTION 3. This Act, upon its approval, shall apply to  
2 taxable years beginning after December 31, 2011.

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INTRODUCED BY:

  
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JAN 20 2012



# H.B. NO. 2239

**Report Title:**

Small Business Investment Tax Credit

**Description:**

Establishes a tax credit for certain investments in small business enterprises.

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

