
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) Regarding the enterprise's full-time employees:

4 (A) The enterprise employs at least fifty full-time
5 employees in the State, for whom the enterprise
6 is required to withhold taxes under section
7 235-61; or

8 (B) More than one-half of the enterprise's total
9 number of full-time employees employed anywhere
10 in the United States are employed in this State
11 and are required to withhold taxes under section
12 235-61; and

13 (2) The enterprise, within six months of the taxpayer's
14 qualifying investment, invests in or incurs costs for
15 one or more of the following in an amount equal to or
16 greater than the amount of the qualifying investment:

17 (A) Tangible personal property, other than motor
18 vehicles operated on public roads and highways,
19 used in business and physically located in the
20 State from the time of its acquisition by the
21 enterprise until the end of the investor's
22 holding period;



1 (B) Motor vehicles operated on public roads and
2 highways; provided that, from the time of
3 acquisition by the enterprise until the end of
4 the investor's holding period, the motor vehicles
5 are:

- 6 (i) Purchased in the State;
- 7 (ii) Registered in the State;
- 8 (iii) Used primarily for business purposes; and
- 9 (iv) Necessary for the operation of the
10 enterprise's business;

11 (C) Real property located in the State that is used
12 in business from the time of its acquisition by
13 the enterprise until the end of the holding
14 period;

15 (D) Intangible personal property used in business
16 primarily in the State, from the time of its
17 acquisition by the enterprise until the end of
18 the holding period, including:

- 19 (i) Patents;
- 20 (ii) Copyrights;
- 21 (iii) Trademarks;
- 22 (iv) Service marks; or



1 (v) Licenses; or
2 (E) Compensation for new employees of the enterprise
3 for whom the enterprise is required to withhold
4 taxes under section 235-61. For the purpose of
5 this subparagraph, compensation for new employees
6 includes compensation for newly hired or retained
7 employees. Compensation for new employees shall
8 not include increased compensation for owners,
9 officers, or managers of the enterprise.

10 (c) A taxpayer that makes a qualifying investment in a
11 small business enterprise on or after July 1, 2012, may apply to
12 the department of business, economic development, and tourism to
13 obtain a small business investment certificate. The director of
14 business, economic development, and tourism, in consultation
15 with the director of taxation, shall prescribe the form or
16 manner in which an applicant shall apply for the certificate,
17 devise the form of the certificate, and prescribe any records or
18 other information an applicant shall furnish with the
19 application to evidence the qualifying investment. The
20 applicant shall state the amount of the intended investment.

21 To qualify for a certificate, an applicant shall satisfy
22 both of the following:



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

3 (2) The taxpayer shall pledge not to sell or otherwise
4 dispose of the qualifying investment before the
5 conclusion of the applicable holding period.

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

16 The department of business, economic development, and
17 tourism shall not issue a small business investment certificate
18 to a taxpayer representing an amount of qualifying investment in
19 excess of the amount of the intended investment indicated on the
20 taxpayer's application for the certificate.

21 If in any year, the annual amount of certified credits
22 reaches \$50,000,000 in the aggregate, the department of



1 business, economic development, and tourism shall immediately
2 discontinue certifying credits and notify the department of
3 taxation. In no instance shall the total amount of certified
4 credits exceed \$50,000,000 per year. Notwithstanding any other
5 law to the contrary, this information shall be available for
6 public inspection and dissemination under chapter 92F.

7 The director of business, economic development, and tourism
8 may adopt rules necessary to effectuate the purposes of this
9 section pursuant to chapter 91, including rules governing the
10 following:

- 11 (1) Documents, records, or other information taxpayers
12 shall provide in support of an application for a small
13 business investment certificate;
- 14 (2) Any information a small business enterprise shall
15 provide for the purposes of this section;
- 16 (3) Determination of the number of full-time employees of
17 a small business enterprise;
- 18 (4) Verification of a small business enterprise's
19 investment in tangible personal property and
20 intangible personal property, including when such
21 investments have been made and where the property is
22 used in business; and



1 (5) Circumstances under which a small business enterprise
2 or taxpayer may be subverting the purposes of this
3 section.

4 (e) Before the end of the applicable holding period of a
5 qualifying investment, each enterprise in which a qualifying
6 investment was made for which a small business investment
7 certificate has been issued, upon the request of the department
8 of business, economic development, and tourism, shall provide to
9 the department of business, economic development, and tourism
10 records or other evidence satisfactory to the department of
11 business, economic development, and tourism that the enterprise
12 is a small business enterprise for the purposes of this section.
13 No credit may be claimed under this section if the department of
14 business, economic development, and tourism finds that an
15 enterprise is not a small business enterprise for the purposes
16 of this section. The department of business, economic
17 development, and tourism shall compile and maintain a register
18 of small business enterprises qualifying under this section and
19 shall certify the register to the department of taxation.

20 (f) If the credit under this section exceeds the
21 taxpayer's net income tax liability, the excess of credit over
22 liability may be used as a credit against the taxpayer's income



1 tax liability in subsequent years until exhausted. All claims
2 including amended claims, for a credit under this section must
3 be properly filed on or before the end of the twelfth month
4 following the close of the taxable year for which the credit may
5 be claimed. Failure to comply with the foregoing provision
6 shall constitute a waiver of the right to claim the credit.

7 (g) In addition to the small business investment
8 certificate prepared pursuant to subsection (c), the director of
9 taxation shall prepare any forms that may be necessary to claim
10 a tax credit under this section. The director may also require
11 the taxpayer to furnish reasonable information to ascertain the
12 validity of the claim for credit made under this section and may
13 adopt rules necessary to effectuate the purposes of this section
14 pursuant to chapter 91."

15 SECTION 2. New statutory material is underscored.

16 SECTION 3. This Act, upon its approval, shall apply to
17 taxable years beginning after December 31, 2112.



Report Title:

Small Business Investment Tax Credit

Description:

Establishes a tax credit for certain investments in small business enterprises. (HB2239 HD1)

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

