
A BILL FOR AN ACT

RELATING TO ENERGY.

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- Renewable fuel feedstock tax credit. (a) There
5 shall be allowed to each taxpayer subject to the taxes imposed
6 by this chapter, a renewable fuel feedstock tax credit that
7 shall be applied to the taxpayer's net income tax liability, if
8 any, imposed by this chapter for the taxable year in which the
9 credit is properly claimed; provided that the taxpayer:

10 (1) Provides feedstock grown in the State to a certified
11 renewable fuels production facility, under section
12 235-110.3, for the production of renewable fuels; and

13 (2) Is domiciled or based in the State.

14 (b) The amount of the tax credit shall be equal to:

15 (1) Ten per cent of the taxpayer's operational
16 expenditures for the first taxable year that the
17 credit is claimed; and



1 (2) Five per cent of the taxpayer's operational
2 expenditures for the second taxable year that the
3 credit is claimed;
4 provided that the credit claimed by a taxpayer under this
5 section shall not exceed \$150,000 per taxable year; and provided
6 further that the aggregate amount of tax credits claimed under
7 this section for all taxpayers shall not exceed \$1,500,000 per
8 taxable year.

9 For the purposes of this section, "operational
10 expenditures" means expenses directly associated with the
11 production of feedstock grown in the State for the production of
12 renewable fuels.

13 (c) If delivery of the feedstock for which a credit under
14 this section is claimed has not occurred by the last day of the
15 twelfth month following the second taxable year that the credit
16 is claimed, the credit claimed under this section shall be
17 recaptured. The recapture shall be equal to fifty per cent of
18 the amount of the total tax credit claimed under this section in
19 the preceding two taxable years. The amount of the recaptured
20 tax credit determined under this subsection shall be added to
21 the taxpayer's tax liability for the taxable year in which the
22 recapture occurs under this subsection.



1 (d) The director of taxation shall prepare any forms that
 2 may be necessary to claim a tax credit under this section. The
 3 director may also require the taxpayer to furnish reasonable
 4 information to ascertain the validity of the claim for credit
 5 made under this section and may adopt rules necessary to
 6 effectuate the purposes of this section pursuant to chapter 91.

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

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

19 "**§235-110.3** ~~[Ethanol]~~ **Renewable fuels** facility tax credit.

20 (a) Each year during the credit period, there shall be allowed
 21 to each taxpayer subject to the taxes imposed by this chapter,
 22 ~~[an ethanol]~~ a renewable fuels facility tax credit that shall be



1 applied to the taxpayer's net income tax liability, if any,
2 imposed by this chapter for the taxable year in which the credit
3 is properly claimed[-]; provided that the taxpayer is domiciled
4 or based in the State; and provided further that the taxpayer
5 shall not claim a credit under this section for more than five
6 taxable years.

7 For each qualified [~~ethanol~~] renewable fuels production
8 facility, the annual dollar amount of the [~~ethanol~~] renewable
9 fuels facility tax credit during the [~~eight-year~~] five-year
10 period shall be equal to [~~thirty per cent of its nameplate~~
11 ~~capacity if the nameplate capacity is greater than five hundred~~
12 ~~thousand but less than fifteen million gallons.~~] thirty cents
13 per gallon or gallon equivalent of renewable fuels produced for
14 motor vehicles, ships, aviation, and electrical generation;
15 provided that the nameplate capacity of the renewable fuels
16 production facility is not less than one million gallons or
17 gallon equivalent; and provided further that the amount of tax
18 credit claimed under this section by a taxpayer shall not exceed
19 \$1,500,000 per taxable year. A taxpayer may claim this credit
20 for each qualifying [~~ethanol~~] renewable fuels facility; provided
21 that:



1 (1) The claim for this credit by any taxpayer of a
2 qualifying [~~ethanol~~] renewable fuels production
3 facility shall not exceed one hundred per cent of the
4 total of all investments made by the taxpayer in the
5 qualifying [~~ethanol~~] renewable fuels production
6 facility during the credit period;

7 (2) The qualifying [~~ethanol~~] renewable fuels production
8 facility operated at a level of production of at least
9 [~~seventy-five~~] fifty per cent of its nameplate
10 capacity on an annualized basis;

11 [~~(3) The qualifying ethanol production facility is in~~
12 ~~production on or before January 1, 2017; and]~~

13 (3) Not less than fifty per cent of the feedstock used in
14 the production of renewable fuels by the qualifying
15 renewable fuels production facility is sourced in the
16 State; and

17 (4) No taxpayer that claims the credit under this section
18 shall claim any other tax credit under this chapter
19 for the same taxable year.

20 If the qualifying renewable fuels production facility does
21 not meet the feedstock requirement of paragraph (3), the
22 taxpayer may claim a tax credit in an amount equal to forty per



1 cent of the amount that would otherwise be available; provided
2 that not less than ten per cent of the feedstock used by the
3 qualifying renewable fuels production facility is sourced in the
4 State.

5 (b) As used in this section:

6 "Credit period" means a maximum period of [~~eight~~] five
7 years beginning from the first taxable year in which the
8 qualifying [~~ethanol~~] renewable fuels production facility begins
9 production even if actual production is not at [~~seventy-five~~]
10 fifty per cent of nameplate capacity.

11 "Investment" means a nonrefundable capital expenditure
12 related to the development and construction of any qualifying
13 [~~ethanol~~] renewable fuels production facility, including
14 processing equipment, waste treatment systems, pipelines,
15 geothermal wells, and liquid storage tanks at the facility or
16 remote locations, including expansions or modifications.
17 Capital expenditures shall be those direct and certain indirect
18 costs determined in accordance with section 263A of the Internal
19 Revenue Code, relating to uniform capitalization costs, but
20 shall not include expenses for compensation paid to officers of
21 the taxpayer, pension and other related costs, rent for land,
22 the costs of repairing and maintaining the equipment or



1 facilities, training of operating personnel, utility costs
2 during construction, property taxes, costs relating to
3 negotiation of commercial agreements not related to development
4 or construction, or service costs that can be identified
5 specifically with a service department or function or that
6 directly benefit or are incurred by reason of a service
7 department or function. For the purposes of determining a
8 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 of the
13 Internal Revenue Code (with respect to deductions limited to
14 amount at risk).

15 "Nameplate capacity" means the qualifying [~~ethanol~~]
16 renewable fuels production facility's production design
17 capacity, in gallons or gallon equivalent of [~~meter~~] fuel grade
18 [~~ethanol~~] renewable fuels 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~~] renewable fuel production" means
22 [~~ethanol produced from renewable, organic feedstocks, or waste~~]



1 ~~materials, including municipal solid waste. All qualifying~~
2 ~~production shall be fermented, distilled, gasified, or produced~~
3 ~~by physical chemical conversion methods such as reformation and~~
4 ~~catalytic conversion and dehydrated at the facility.] production~~
5 of:

6 (1) Methanol, ethanol, or other alcohols;

7 (2) Blends of gasoline with eighty-five per cent or more
8 of alcohol;

9 (3) Propane;

10 (4) Hydrogen;

11 (5) Biodiesel or renewable diesel;

12 (6) Biofuels derived from biological materials, including
13 algae; or

14 (7) Renewable jet fuel, renewable gasoline, or liquid or
15 gaseous fuels;

16 provided that the renewable fuel shall be sold in the State for
17 ground transportation, sea transportation; aviation; or
18 electrical generation.

19 "Qualifying [~~ethanol~~] renewable fuels production facility"

20 or "facility" means a facility located in Hawaii [~~which~~] that

21 produces [~~meter~~] fuel grade [~~ethanol meeting the minimum~~

22 ~~specifications by the American Society of Testing and Materials~~



1 ~~standard D-4806, as amended.]~~ renewable fuels meeting the
2 relevant American Society of Testing and Materials International
3 specifications for the particular fuel or other specifications
4 for electrical production.

5 (c) In the case of a taxable year in which the cumulative
6 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
7 renewable fuels production facility exceeds the cumulative
8 investment made in the qualifying [~~ethanol~~] renewable fuels
9 production facility by the taxpayer, only that portion that does
10 not exceed the cumulative investment shall be claimed and
11 allowed.

12 (d) The department of business, economic development, and
13 tourism shall:

14 (1) Maintain records of the total amount of investment
15 made by each taxpayer in a facility;

16 (2) Verify the amount [~~of the qualifying investment;~~] and
17 type of renewable fuels produced, including the
18 purpose for which the fuel was produced;

19 (3) Total all qualifying [~~and cumulative investments~~]
20 renewable fuel production that the department of
21 business, economic development, and tourism certifies;
22 and



1 (4) Certify the total amount of the tax credit for each
2 taxable year and the cumulative amount of the tax
3 credit during the credit period.

4 Upon each determination, the department of business,
5 economic development, and tourism shall issue a certificate to
6 the taxpayer verifying the qualifying [~~investment amounts,~~
7 amounts of renewable fuel production, the credit amount
8 certified for each taxable year, and the cumulative amount of
9 the tax credit during the credit period. The taxpayer shall
10 file the certificate with the taxpayer's tax return with the
11 department of taxation. Notwithstanding the department of
12 business, economic development, and tourism's certification
13 authority under this section, the director of taxation may audit
14 and adjust certification to conform to the facts.

15 If in any year, the annual amount of certified credits
16 reaches [~~\$12,000,000~~] \$10,500,000 in the aggregate, the
17 department of business, economic development, and tourism shall
18 immediately discontinue certifying credits and notify the
19 department of taxation. In no instance shall the total amount
20 of certified credits exceed [~~\$12,000,000~~] \$10,500,000 per year.
21 Notwithstanding any other law to the contrary, this information



1 shall be available for public inspection and dissemination under
2 chapter 92F.

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

13 (f) If a qualifying [~~ethanol~~] renewable fuels production
14 facility or an interest therein is acquired by a taxpayer prior
15 to the expiration of the credit period, the credit allowable
16 under subsection (a) for any period after such acquisition shall
17 be equal to the credit that would have been allowable under
18 subsection (a) to the prior taxpayer had the taxpayer not
19 disposed of the interest. If an interest is disposed of during
20 any year for which the credit is allowable under subsection (a),
21 the credit shall be allowable between the parties on the basis
22 of the number of days during the year the interest was held by



1 each taxpayer. In no case shall the credit allowed under
2 subsection (a) be allowed after the expiration of the credit
3 period.

4 (g) Once the total nameplate capacities of qualifying
5 ~~[ethanol]~~ renewable fuels production facilities built within the
6 State reaches or exceeds a level of forty million gallons per
7 year, credits under this section shall not be allowed for new
8 ~~[ethanol]~~ renewable fuels production facilities. If a new
9 facility's production capacity would cause the statewide
10 ~~[ethanol]~~ renewable fuels production capacity to exceed forty
11 million gallons per year, only the ~~[ethanol]~~ renewable fuels
12 production capacity that does not exceed the statewide forty
13 million gallon per year level shall be eligible for the credit.

14 (h) Prior to construction of any new qualifying ~~[ethanol]~~
15 renewable fuels production facility, the taxpayer shall provide
16 written notice of the taxpayer's intention to begin construction
17 of a qualifying ~~[ethanol]~~ renewable fuels production facility.
18 The information shall be provided to the department of taxation
19 and the department of business, economic development, and
20 tourism on forms provided by the department of business,
21 economic development, and tourism, and shall include information
22 on the taxpayer, facility location, facility production



1 capacity, anticipated production start date, and the taxpayer's
2 contact information. Notwithstanding any other law to the
3 contrary, this information shall be available for public
4 inspection and dissemination under chapter 92F.

5 (i) The taxpayer shall provide written notice to the
6 director of taxation and the director of business, economic
7 development, and tourism within thirty days following the start
8 of production. The notice shall include the production start
9 date and expected [~~ethanol~~] renewable fuel production for the
10 next twenty-four months. Notwithstanding any other law to the
11 contrary, this information shall be available for public
12 inspection and dissemination under chapter 92F.

13 (j) If a qualifying [~~ethanol~~] renewable fuels production
14 facility fails to achieve an average annual production of at
15 least [~~seventy-five~~] fifty per cent of its nameplate capacity
16 for two consecutive years, the stated capacity of that facility
17 may be revised by the director of business, economic
18 development, and tourism to reflect actual production for the
19 purposes of determining statewide production capacity under
20 subsection (g) and allowable credits for that facility under
21 subsection (a). Notwithstanding any other law to the contrary,



1 this information shall be available for public inspection and
2 dissemination under chapter 92F.

3 (k) Each calendar year during the credit period, the
4 taxpayer shall provide information to the director of business,
5 economic development, and tourism on the number of gallons of
6 [~~ethanol~~] renewable fuels produced and sold during the previous
7 calendar year, how much was sold in Hawaii versus overseas,
8 feedstocks used for [~~ethanol~~] renewable fuel production, the
9 number of employees of the facility, and the projected number of
10 gallons of [~~ethanol~~] renewable fuel production for the
11 succeeding year.

12 (l) In the case of a partnership, S corporation, estate,
13 or trust, the tax credit allowable is for every qualifying
14 [~~ethanol~~] renewable fuels production facility. The cost upon
15 which the tax credit is computed shall be determined at the
16 entity level. Distribution and share of credit shall be
17 determined pursuant to section 235-110.7(a).

18 (m) Following each year in which a credit under this
19 section has been claimed, the director of business, economic
20 development, and tourism shall submit a written report to the
21 governor and legislature regarding the production and sale of
22 [~~ethanol~~] renewable fuels. The report shall include:



- 1 (1) The number, location, and nameplate capacities of
2 qualifying [~~ethanol~~] renewable fuels production
3 facilities in the State;
- 4 (2) The total number of gallons of [~~ethanol~~] renewable
5 fuels produced and sold during the previous year; and
- 6 (3) The projected number of gallons of [~~ethanol~~] renewable
7 fuel production for the succeeding year.
- 8 (n) The director of taxation shall prepare forms that may
9 be necessary to claim a credit under this section.

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

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



1 SECTION 4. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2012.
3

INTRODUCED BY: Denny Coffman
Puro Ob

JAN 20 2012



Report Title:

Renewable Fuels; Feedstock; Tax Credit

Description:

Amends the ethanol facility income tax credit to apply to several types of renewable fuel and reduces the aggregate dollar cap for the credit. Establishes a tax credit for the growing of feedstock to be used in renewable fuel production and establishes an aggregate cap. Applies to taxable years beginning after 12/31/12.

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

