
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 provides
10 feedstock to a certified renewable fuels production facility,
11 under section 235-110.3, for the production of renewable fuels.

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

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

16 (2) Five per cent of the taxpayer's operational
17 expenditures for the second taxable year that the
18 credit is claimed;



1 provided that the credit claimed by a taxpayer under this
2 section shall not exceed \$150,000 per taxable year; and provided
3 further that the aggregate amount of tax credits claimed under
4 this section for all taxpayers shall not exceed \$1,500,000 per
5 taxable year.

6 For the purposes of this section, "operational
7 expenditures" means expenses directly associated with the
8 production of feedstock for the production of renewable fuels.

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

19 (d) The director of taxation shall prepare any forms that
20 may be necessary to claim a tax credit under this section. The
21 director may also require the taxpayer to furnish reasonable
22 information to ascertain the validity of the claim for credit



1 made under this section and may adopt rules necessary to
2 effectuate the purposes of this section pursuant to chapter 91.
3 (e) If the tax credit under this section exceeds the
4 taxpayer's income tax liability, the excess of the credit over
5 liability shall be refunded to the taxpayer; provided that no
6 refunds or payments on account of the tax credit allowed under
7 this section shall be made for amounts less than \$1. All claims
8 for the tax credit under this section, including amended claims,
9 shall be filed on or before the end of the twelfth month
10 following the close of the taxable year for which the credit may
11 be claimed. Failure to comply with this subsection shall
12 constitute a waiver of the right to claim the credit."

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

15 "**§235-110.3** [~~Ethanol~~] **Renewable fuels facility tax credit.**

16 (a) Each year during the credit period, there shall be allowed
17 to each taxpayer subject to the taxes imposed by this chapter,
18 [~~an ethanol~~] a renewable fuels facility tax credit that shall be
19 applied to the taxpayer's net income tax liability, if any,
20 imposed by this chapter for the taxable year in which the credit
21 is properly claimed[-]; provided that the taxpayer shall not



1 claim a credit under this section for more than five taxable
2 years.

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

18 (1) The claim for this credit by any taxpayer of a
19 qualifying [~~ethanol~~] renewable fuels production
20 facility shall not exceed one hundred per cent of the
21 total of all investments made by the taxpayer in the



1 qualifying [~~ethanol~~] renewable fuels production
2 facility during the credit period;

3 (2) The qualifying [~~ethanol~~] renewable fuels production
4 facility operated at a level of production of at least
5 [~~seventy-five~~] fifty per cent of its nameplate
6 capacity on an annualized basis; and

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

9 +~~4~~] (3) No taxpayer that claims the credit under this
10 section shall claim any other tax credit under this
11 chapter for the same taxable year.

12 (b) As used in this section:

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

18 "Investment" means a nonrefundable capital expenditure
19 related to the development and construction of any qualifying
20 [~~ethanol~~] renewable fuels production facility, including
21 processing equipment, waste treatment systems, pipelines,
22 geothermal wells, and liquid storage tanks at the facility or



1 remote locations, including expansions or modifications.
2 Capital expenditures shall be those direct and certain indirect
3 costs determined in accordance with section 263A of the Internal
4 Revenue Code, relating to uniform capitalization costs, but
5 shall not include expenses for compensation paid to officers of
6 the taxpayer, pension and other related costs, rent for land,
7 the costs of repairing and maintaining the equipment or
8 facilities, training of operating personnel, utility costs
9 during construction, property taxes, costs relating to
10 negotiation of commercial agreements not related to development
11 or construction, or service costs that can be identified
12 specifically with a service department or function or that
13 directly benefit or are incurred by reason of a service
14 department or function. For the purposes of determining a
15 capital expenditure under this section, the provisions of
16 section 263A of the Internal Revenue Code shall apply as it read
17 on March 1, 2004. For purposes of this section, investment
18 excludes land costs and includes any investment for which the
19 taxpayer is at risk, as that term is used in section 465 of the
20 Internal Revenue Code (with respect to deductions limited to
21 amount at risk).



1 "Nameplate capacity" means the qualifying [~~ethanol~~]
2 renewable fuels production facility's production design
3 capacity, in gallons or gallon equivalents of [~~motor~~] fuel grade
4 [~~ethanol~~] renewable fuels per year.

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

7 "Qualifying [~~ethanol~~] renewable fuel production" means
8 [~~ethanol produced from renewable, organic feedstocks, or waste~~
9 ~~materials, including municipal solid waste. All qualifying~~
10 ~~production shall be fermented, distilled, gasified, or produced~~
11 ~~by physical chemical conversion methods such as reformation and~~
12 ~~catalytic conversion and dehydrated at the facility.] production~~

13 of:

- 14 (1) Methanol, ethanol, or other alcohols;
- 15 (2) Blends of gasoline with eighty-five per cent or more
16 of alcohol;
- 17 (3) Propane;
- 18 (4) Hydrogen;
- 19 (5) Biodiesel or renewable diesel;
- 20 (6) Biofuels derived from biological materials, including
21 algae; or



1 (7) Renewable jet fuel, renewable gasoline, or liquid or
2 gaseous fuels;
3 provided that the renewable fuel shall be sold in the State for
4 ground transportation, sea transportation, aviation, or
5 electrical generation.

6 "Qualifying [~~ethanol~~] renewable fuels production facility"
7 or "facility" means a facility located in Hawaii [~~which~~] that
8 produces [~~motor~~] fuel grade [~~ethanol meeting the minimum~~
9 ~~specifications by the American Society of Testing and Materials~~
10 ~~standard D 4806, as amended.~~] renewable fuels meeting the
11 relevant ASTM International specifications for the particular
12 fuel or other specifications for electrical production.

13 (c) In the case of a taxable year in which the cumulative
14 claims for the credit by the taxpayer of a qualifying [~~ethanol~~]
15 renewable fuels production facility exceeds the cumulative
16 investment made in the qualifying [~~ethanol~~] renewable fuels
17 production facility by the taxpayer, only that portion that does
18 not exceed the cumulative investment shall be claimed and
19 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;~~] and
4 type of renewable fuels produced, including the
5 purpose for which the fuel was produced;
- 6 (3) Total all qualifying [~~and cumulative investments]~~
7 renewable fuel production that the department of
8 business, economic development, and tourism certifies;
9 and
- 10 (4) Certify the total amount of the tax credit for each
11 taxable year and the cumulative amount of the tax
12 credit during the credit period.

13 Upon each determination, the department of business,
14 economic development, and tourism shall issue a certificate to
15 the taxpayer verifying the qualifying [~~investment amounts,~~]
16 amounts of renewable fuel production, the credit amount
17 certified for each taxable year, and the cumulative amount of
18 the tax credit during the credit period. The taxpayer shall
19 file the certificate with the taxpayer's tax return with the
20 department of taxation. Notwithstanding the department of
21 business, economic development, and tourism's certification



1 authority under this section, the director of taxation may audit
2 and adjust certification to conform to the facts.

3 If in any year, the annual amount of certified credits
4 reaches [~~\$12,000,000~~] \$10,500,000 in the aggregate, the
5 department of business, economic development, and tourism shall
6 immediately discontinue certifying credits and notify the
7 department of taxation. In no instance shall the total amount
8 of certified credits exceed [~~\$12,000,000~~] \$10,500,000 per year.
9 Notwithstanding any other law to the contrary, this information
10 shall be available for public inspection and dissemination under
11 chapter 92F.

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



1 (f) If a qualifying [~~ethanol~~] renewable fuels production
2 facility or an interest therein is acquired by a taxpayer prior
3 to the expiration of the credit period, the credit allowable
4 under subsection (a) for any period after such acquisition shall
5 be equal to the credit that would have been allowable under
6 subsection (a) to the prior taxpayer had the taxpayer not
7 disposed of the interest. If an interest is disposed of during
8 any year for which the credit is allowable under subsection (a),
9 the credit shall be allowable between the parties on the basis
10 of the number of days during the year the interest was held by
11 each taxpayer. In no case shall the credit allowed under
12 subsection (a) be allowed after the expiration of the credit
13 period.

14 (g) Once the total nameplate capacities of qualifying
15 [~~ethanol~~] renewable fuels production facilities built within the
16 State reaches or exceeds a level of [~~forty~~] thirty-five million
17 gallons per year, credits under this section shall not be
18 allowed for new [~~ethanol~~] qualifying renewable fuels production
19 facilities. If a new facility's production capacity would cause
20 the statewide [~~ethanol~~] renewable fuels production capacity to
21 exceed [~~forty~~] thirty-five million gallons per year, only the
22 [~~ethanol~~] renewable fuels production capacity that does not



1 exceed the statewide [~~forty~~] thirty-five million gallon per year
2 level shall be eligible for the credit.

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

16 (i) The taxpayer shall provide written notice to the
17 director of taxation and the director of business, economic
18 development, and tourism within thirty days following the start
19 of production. The notice shall include the production start
20 date and expected [~~ethanol~~] renewable fuel production for the
21 next twenty-four months. Notwithstanding any other law to the



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

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

14 (k) Each calendar year during the credit period, the
15 taxpayer shall provide information to the director of business,
16 economic development, and tourism on the number of gallons of
17 [~~ethanol~~] renewable fuels produced and sold during the previous
18 calendar year, how much was sold in Hawaii versus overseas,
19 feedstocks used for [~~ethanol~~] renewable fuel production, the
20 number of employees of the facility, and the projected number of
21 gallons of [~~ethanol~~] renewable fuel production for the
22 succeeding year.



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

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

12 (1) The number, location, and nameplate capacities of
13 qualifying ~~[ethanol]~~ renewable fuels production
14 facilities in the State;

15 (2) The total number of gallons or gallon equivalents of
16 ~~[ethanol]~~ renewable fuels produced and sold during the
17 previous year; and

18 (3) The projected number of gallons or gallon equivalents
19 of ~~[ethanol]~~ renewable fuel production for the
20 succeeding year.

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



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

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act, upon its approval, shall apply to
12 taxable years beginning after December 31, 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 December 31, 2012. Effective December 31, 2012. (HB2262, HD1)

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