
A BILL FOR AN ACT

RELATING TO HIGH TECHNOLOGY TAX CREDITS.

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

1 SECTION 1. The technology infrastructure renovation tax
2 credit, high technology business investment tax credit, and tax
3 credit for research activities (sections 235-110.51, 235-110.9,
4 235-110.91, Hawaii Revised Statutes (2009), respectively) were
5 repealed by operation of law on December 31, 2010. Measures to
6 extend the sunset dates of the tax credits were not enacted
7 prior to their repeal.

8 The purpose of this Act is to reenact the tax credits.

9 SECTION 2. Chapter 235, Hawaii Revised Statutes, is
10 amended by adding three new sections to be appropriately
11 designated and to read as follows:

12 "§235- Technology infrastructure renovation tax credit.

13 (a) There shall be allowed to each taxpayer subject to the
14 taxes imposed by this chapter, an income tax credit which shall
15 be deductible from the taxpayer's net income tax liability, if
16 any, imposed by this chapter for the taxable year in which the
17 credit is properly claimed.



1 (b) The amount of the credit shall be four per cent of the
2 renovation costs incurred during the taxable year for each
3 commercial building located in Hawaii.

4 (c) In the case of a partnership, S corporation, estate,
5 trust, or any developer of a commercial building, the tax credit
6 allowable is for renovation costs incurred by the entity for the
7 taxable year. The cost upon which the tax credit is computed
8 shall be determined at the entity level. Distribution and share
9 of credit shall be determined pursuant to section 235-110.7(a).

10 (d) If a deduction is taken under section 179 (with
11 respect to election to expense depreciable business assets) of
12 the Internal Revenue Code, no tax credit shall be allowed for
13 that portion of the renovation cost for which the deduction is
14 taken.

15 (e) The basis of eligible property for depreciation or
16 accelerated cost recovery system purposes for state income taxes
17 shall be reduced by the amount of credit allowable and claimed.
18 In the alternative, the taxpayer shall treat the amount of the
19 credit allowable and claimed as a taxable income item for the
20 taxable year in which it is properly recognized under the method
21 of accounting used to compute taxable income.



1 (f) The credit allowed under this section shall be claimed
2 against the net income tax liability for the taxable year.

3 (g) If the tax credit under this section exceeds the
4 taxpayer's income tax liability, the excess of credit over
5 liability may be carried forward until exhausted.

6 (h) The tax credit allowed under this section shall not be
7 available for taxable years beginning after December 31, 2015.

8 (i) As used in this section:

9 "Net income tax liability" means income tax liability
10 reduced by all other credits allowed under this chapter.

11 "Renovation costs" means costs incurred after December 31,
12 2000, to plan, design, install, construct, and purchase
13 technology-enabled infrastructure equipment to provide a
14 commercial building with technology-enabled infrastructure.

15 "Technology-enabled infrastructure" means:

16 (1) High speed telecommunications systems that provide
17 internet access, direct satellite communications
18 access, and videoconferencing facilities;

19 (2) Physical security systems that identify and verify
20 valid entry to secure spaces, detect invalid entry or
21 entry attempts, and monitor activity in these spaces;



- 1 (3) Environmental systems including heating, ventilation,
2 air conditioning, fire detection and suppression, and
3 other life safety systems; and
- 4 (4) Backup and emergency electric power systems.

5 (j) No taxpayer that claims a credit under this section
6 shall claim any other credit under this chapter.

7 §235- High technology business investment tax credit.

8 (a) There shall be allowed to each taxpayer subject to the
9 taxes imposed by this chapter a high technology business
10 investment tax credit that shall be deductible from the
11 taxpayer's net income tax liability, if any, imposed by this
12 chapter for the taxable year in which the investment was made
13 and the following four years provided the credit is properly
14 claimed. The tax credit shall be as follows:

- 15 (1) In the year the investment was made, thirty-five per
16 cent;
- 17 (2) In the first year following the year in which the
18 investment was made, twenty-five per cent;
- 19 (3) In the second year following the investment, twenty
20 per cent;
- 21 (4) In the third year following the investment, ten per
22 cent; and



1 (5) In the fourth year following the investment, ten per
2 cent;
3 of the investment made by the taxpayer in each qualified high
4 technology business, up to a maximum allowed credit in the year
5 the investment was made, \$700,000; in the first year following
6 the year in which the investment was made, \$500,000; in the
7 second year following the year in which the investment was made,
8 \$400,000; in the third year following the year in which the
9 investment was made, \$200,000; and in the fourth year following
10 the year in which the investment was made, \$200,000.

11 (b) The credit allowed under this section shall be claimed
12 against the net income tax liability for the taxable year. For
13 the purpose of this section, "net income tax liability" means
14 net income tax liability reduced by all other credits allowed
15 under this chapter.

16 (c) If the tax credit under this section exceeds the
17 taxpayer's income tax liability for any of the five years that
18 the credit is taken, the excess of the tax credit over liability
19 may be used as a credit against the taxpayer's income tax
20 liability in subsequent years until exhausted. Every claim,
21 including amended claims, for a tax credit under this section
22 shall be filed on or before the end of the twelfth month



1 following the close of the taxable year for which the credit may
2 be claimed. Failure to comply with the foregoing provision
3 shall constitute a waiver of the right to claim the credit.

4 (d) If at the close of any taxable year in the five-year
5 period in subsection (a):

6 (1) The business no longer qualifies as a qualified high
7 technology business;

8 (2) The business or an interest in the business has been
9 sold by the taxpayer investing in the qualified high
10 technology business; or

11 (3) The taxpayer has withdrawn the taxpayer's investment
12 wholly or partially from the qualified high technology
13 business;

14 the credit claimed under this section shall be recaptured. The
15 recapture shall be equal to ten per cent of the amount of the
16 total tax credit claimed under this section in the preceding two
17 taxable years. The amount of the credit recaptured shall apply
18 only to the investment in the particular qualified high
19 technology business that meets the requirements of paragraph
20 (1), (2), or (3). The recapture provisions of this subsection
21 shall not apply to a tax credit claimed for a qualified high
22 technology business that does not fall within the provisions of



1 paragraph (1), (2), or (3). The amount of the recaptured tax
2 credit determined under this subsection shall be added to the
3 taxpayer's tax liability for the taxable year in which the
4 recapture occurs under this subsection.

5 (e) Every taxpayer, before March 31 of each year in which
6 an investment in a qualified high technology business was made
7 in the previous taxable year, shall submit a written, certified
8 statement to the director of taxation identifying:

9 (1) Qualified investments, if any, expended in the
10 previous taxable year; and

11 (2) The amount of tax credits claimed pursuant to this
12 section, if any, in the previous taxable year.

13 (f) The department shall:

14 (1) Maintain records of the names and addresses of the
15 taxpayers claiming the credits under this section and
16 the total amount of the qualified investment costs
17 upon which the tax credit is based;

18 (2) Verify the nature and amount of the qualifying
19 investments;

20 (3) Total all qualifying and cumulative investments that
21 the department certifies; and



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

3 Upon each determination made under this subsection, the
4 department shall issue a certificate to the taxpayer verifying
5 information submitted to the department, including qualifying
6 investment amounts, the credit amount certified for each taxable
7 year, and the cumulative amount of the tax credit during the
8 credit period. The taxpayer shall file the certificate with the
9 taxpayer's tax return with the department.

10 The director of taxation may assess and collect a fee to
11 offset the costs of certifying tax credits claims under this
12 section. All fees collected under this section shall be
13 deposited into the tax administration special fund established
14 under section 235-20.5.

15 (g) As used in this section:

16 "Investment tax credit allocation ratio" means, with
17 respect to a taxpayer that has made an investment in a qualified
18 high technology business, the ratio of:

19 (1) The amount of the credit under this section that is,
20 or is to be, received by or allocated to the taxpayer
21 over the life of the investment, as a result of the
22 investment; to



1 (2) The amount of the investment in the qualified high
2 technology business.

3 "Qualified high technology business" means a business,
4 employing or owning capital or property, or maintaining an
5 office, in this State; provided that:

6 (1) More than fifty per cent of its total business
7 activities are qualified research; and provided
8 further that the business conducts more than seventy-
9 five per cent of its qualified research in this State;

10 or

11 (2) More than seventy-five per cent of its gross income is
12 derived from qualified research; and provided further
13 that this income is received from:

14 (A) Products sold from, manufactured in, or produced
15 in this State; or

16 (B) Services performed in this State.

17 "Qualified research" means the same as defined in section
18 235-7.3.

19 (h) Common law principles, including the doctrine of
20 economic substance and business purpose, shall apply to any
21 investment. There exists a presumption that a transaction
22 satisfies the doctrine of economic substance and business



1 purpose to the extent that the special allocation of the high
2 technology business tax credit has an investment tax credit
3 ratio of 1.5 or less of credit for every dollar invested.

4 Transactions for which an investment tax credit allocation
5 ratio greater than 1.5 but not more than 2.0 of credit for every
6 dollar invested and claimed may be reviewed by the department
7 for applicable doctrines of economic substance and business
8 purpose.

9 Businesses claiming a tax credit for transactions with
10 investment tax credit allocation ratios greater than 2.0 of
11 credit for every dollar invested shall substantiate economic
12 merit and business purpose consistent with this section.

13 (i) For investments made on or after May 1, 2009,
14 notwithstanding any other law to the contrary, no allocations,
15 special or otherwise, of credits under this section may exceed
16 the amount of the investment made by the taxpayer ultimately
17 claiming this credit; and investment tax credit allocation
18 ratios greater than 1.0 of credit for every dollar invested
19 shall not be allowed. In addition, the credit shall be allowed
20 only in accordance with subsection (a).

21 (j) For investments made on or after May 1, 2009, this
22 section shall be subject to section 235-109.5.



1 (k) This section shall not apply to taxable years
2 beginning after December 31, 2015.

3 §235- Tax credit for research activities. (a) Section
4 41 (with respect to the credit for increasing research
5 activities) and section 280C(c) (with respect to certain
6 expenses for which the credit for increasing research activities
7 are allowable) of the Internal Revenue Code shall be operative
8 for the purposes of this chapter as provided in this section;
9 except that references to the base amount shall not apply and
10 credit for all qualified research expenses may be taken without
11 regard to the amount of expenses for previous years. If section
12 41 of the Internal Revenue Code is repealed or terminated prior
13 to January 1, 2016, its provisions shall remain in effect for
14 purposes of the income tax law of the State as modified by this
15 section, as provided for in subsection (j).

16 (b) All references to Internal Revenue Code sections
17 within sections 41 and 280C(c) of the Internal Revenue Code
18 shall be operative for purposes of this section.

19 (c) There shall be allowed to each qualified high
20 technology business subject to the tax imposed by this chapter
21 an income tax credit for qualified research activities equal to
22 the credit for research activities provided by section 41 of the



1 Internal Revenue Code and as modified by this section. The
2 credit shall be deductible from the taxpayer's net income tax
3 liability, if any, imposed by this chapter for the taxable year
4 in which the credit is properly claimed.

5 (d) Every qualified high technology business, before March
6 31 of each year in which qualified research and development
7 activity was conducted in the previous taxable year, shall
8 submit a written, certified statement to the director of
9 taxation identifying:

10 (1) Qualified expenditures, if any, expended in the
11 previous taxable year; and

12 (2) The amount of tax credits claimed pursuant to this
13 section, if any, in the previous taxable year.

14 (e) The department shall:

15 (1) Maintain records of the names and addresses of the
16 taxpayers claiming the credits under this section and
17 the total amount of the qualified research and
18 development activity costs upon which the tax credit
19 is based;

20 (2) Verify the nature and amount of the qualifying costs
21 or expenditures;



- 1 (3) Total all qualifying and cumulative costs or
2 expenditures that the department certifies; and
3 (4) Certify the amount of the tax credit for each taxable
4 year and cumulative amount of the tax credit.

5 Upon each determination made under this subsection, the
6 department shall issue a certificate to the taxpayer verifying
7 information submitted to the department, including the
8 qualifying costs or expenditure amounts, the credit amount
9 certified for each taxable year, and the cumulative amount of
10 the tax credit during the credit period. The taxpayer shall
11 file the certificate with the taxpayer's tax return with the
12 department.

13 The director of taxation may assess and collect a fee to
14 offset the costs of certifying tax credit claims under this
15 section. All fees collected under this section shall be
16 deposited into the tax administration special fund established
17 under section 235-20.5.

18 (f) As used in this section:
19 "Basic research" under section 41(e) of the Internal
20 Revenue Code shall not include research conducted outside of the
21 State.



1 "Qualified high technology business" means the same as in
2 section 235-110.9.

3 "Qualified research" under section 41(d)(1) of the Internal
4 Revenue Code shall not include research conducted outside of the
5 State.

6 (g) If the tax credit for qualified research activities
7 claimed by a taxpayer exceeds the amount of income tax payment
8 due from the taxpayer, the excess of the tax credit over
9 payments due shall be refunded to the taxpayer; provided that no
10 refund on account of the tax credit allowed by this section
11 shall be made for amounts less than \$1.

12 (h) All claims for a tax credit under this section shall
13 be filed on or before the end of the twelfth month following the
14 close of the taxable year for which the credit may be claimed.
15 Failure to properly claim the credit shall constitute a waiver
16 of the right to claim the credit.

17 (i) The director of taxation may adopt any rules under
18 chapter 91 and forms necessary to carry out this section.

19 (j) This section shall not apply to taxable years
20 beginning after December 31, 2015."

21 SECTION 3. New statutory material is underscored.



1 SECTION 4. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2010.

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INTRODUCED BY: _____

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JAN 21 2011



Report Title:

Technology Tax Credits; Reenactment

Description:

Reenacts the high technology business investment, research activities, and technology infrastructure renovation tax credits.

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

