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# A BILL FOR AN ACT

RELATING TO NEW MARKETS TAX CREDITS.

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

1 PART I

2 SECTION 1. The legislature finds that the business  
3 community, nonprofit organizations, and other entrepreneurs  
4 require a functional, service-oriented agency that is readily  
5 available to provide business counseling, financial backing, and  
6 general support to foster real community-based economic  
7 development for the various products and services demonstrating  
8 and embracing Hawaii's diversified economy.

9 The Hawaii community-based economic development technical  
10 and financial assistance program in the department of business,  
11 economic development, and tourism, was established for this  
12 purpose. The program was established by the legislature in Act  
13 111, Session Laws of Hawaii 1990, and codified as chapter 210D,  
14 Hawaii Revised Statutes, to provide financial assistance to  
15 community-based businesses and enterprises through low-interest  
16 loans and grants to qualifying applicants.

17 There are various programs provided by the federal  
18 government, nonprofits, and foundations, and there are



1 opportunities provided by public-private partnerships that  
2 further these goals. These programs and partnerships can be  
3 used to provide a portion of the funding needed by economic  
4 development projects. The project funding provided by Hawaii  
5 will be made more efficient and more effective if it is provided  
6 in the form most compatible with such programs and in the manner  
7 most suitable to optimize all sources of funding. To achieve  
8 this, some modifications are necessary to the types of financial  
9 products offered by the community-based economic development  
10 program and the manner in which those products are provided  
11 along with an increase in the total amount that may be provided  
12 for an individual project and borrower.

13 The purpose of this part is to:

- 14 (1) Define "community development entity" to allow  
15 financing to be provided by Hawaii through a structure  
16 that facilitates the use of federal new markets tax  
17 credits;
- 18 (2) Expand the methods of delivering funding to a project  
19 by providing loans to capitalize a community  
20 development entity and to provide guarantees or other  
21 credit enhancements that will facilitate private



1 lenders' participation in new markets tax credit  
2 financing; and  
3 (3) Adjust loan maximums and establish guarantees or  
4 credit enhancements to reflect current available  
5 funding and facilitate monetization of existing  
6 project assets for purposes of new markets tax credit  
7 financing.

8 SECTION 2. Section 210D-2, Hawaii Revised Statutes, is  
9 amended by adding a new definition to be appropriately inserted  
10 and to read as follows:

11 "Community development entity" has the same meaning as in  
12 section 45D(c) (1) of the Internal Revenue Code."

13 SECTION 3. Section 210D-8, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "**§210D-8 Powers and duties.** The department shall have the  
16 necessary powers to carry out the purposes of this chapter,  
17 including the following:

18 (1) With advice from the council, prescribe the  
19 qualifications for eligibility of applicants for  
20 loans, ~~and~~ grants~~[-]~~, guarantees, and credit  
21 enhancements;



- 1 (2) With advice from the council, establish preferences  
2 and priorities in determining eligibility for  
3 financial assistance;
- 4 (3) Establish the conditions, consistent with the purpose  
5 of this chapter, for the awarding of financial  
6 assistance;
- 7 (4) Provide for inspection at reasonable hours of  
8 facilities, books, and records of a community-based  
9 organization that has applied for or has been awarded  
10 financial assistance and require the submission of  
11 progress and final reports;
- 12 (5) Provide loans [~~and~~], grants, guarantees, and credit  
13 enhancements for community-based economic development  
14 activities and community-based enterprises for  
15 purposes consistent with this chapter;
- 16 (6) Provide, participate in, and acquire loans used to  
17 capitalize entities that make financing available for  
18 activities and enterprises, including community  
19 development entities;
- 20 [~~(6)~~] (7) Determine the necessity for and the extent of  
21 security required [~~in a loan,~~] for loans, guarantees,  
22 and credit enhancements;



- 1       ~~[(7)]~~ (8) Prescribe and provide appropriate management  
2                   counseling and monitoring of business activities;
- 3       ~~[(8)]~~ (9) Administer the Hawaii community-based economic  
4                   development revolving fund;
- 5       ~~[(9)]~~ (10) Include in its budget for subsequent fiscal,  
6                   periods amounts necessary to effectuate the purposes  
7                   of this chapter;
- 8       ~~[(10)]~~ (11) Participate in loans made to qualified persons  
9                   by private lenders;
- 10      ~~[(11)]~~ (12) Establish interest rates chargeable by the State  
11                   for ~~[direct and participation]~~ loans; [and]
- 12      (13) Establish interest rates, fees, and charges chargeable  
13                   by the State for guarantees and credit enhancements;  
14                   and
- 15      ~~[(12)]~~ (14) Adopt rules pursuant to chapter 91 to implement  
16                   this chapter."

17           SECTION 4. Section 210D-9, Hawaii Revised Statutes, is  
18 amended to read as follows:

19           "**§210D-9 Loans** ~~[; limitation and terms]~~. Loans made under  
20 this chapter shall be ~~[for the purposes and in accordance with~~  
21 ~~the terms specified in paragraphs (1) and (2) and shall be made~~



1 ~~only to applicants who meet the eligibility requirements~~  
2 ~~specified therein.] limited to the following:~~

3 (1) Community-based enterprise establishment and  
4 improvement loans may be made to provide for:

5 (A) The start-up costs, purchase or improvement of a  
6 community-based enterprise or working capital;

7 and

8 (B) The purchase, construction, or improvement of  
9 facilities; ~~[and]~~

10 (2) Operating loans may be made to carry on and improve an  
11 existing enterprise, including:

12 (A) The purchase of equipment; and

13 (B) The payment of production and marketing expenses  
14 including materials, labor, and services~~[-]~~; or

15 (3) Loans to entities that capitalize community  
16 development entities that use the proceeds to make  
17 loans to borrowers.

18 ~~[The loans shall be for an amount not to exceed \$250,000~~  
19 ~~and for a term not to exceed ten years.] "~~

20 SECTION 5. Section 210D-10, Hawaii Revised Statutes, is  
21 amended to read as follows:



1            "§210D-10 Terms and limitations of loans[-], guarantees,  
2 and credit enhancements. [~~Loans shall be made to qualified~~  
3 ~~applicants with the]~~ The following terms and conditions[+] shall  
4 apply:

5            (1) The amount of the outstanding balance on all loans,  
6 guarantees, and other credit enhancements issued under  
7 this chapter to any one applicant at any one time  
8 shall not exceed [~~\$250,000+~~] \$5,000,000;

9            (2) The maximum term of a loan, guarantee, or credit  
10 enhancement shall not exceed ten years;

11           (3) Each loan shall bear simple interest at a rate of not  
12 less than three and not more than six per cent a year,  
13 depending on the nature of the loan; [~~and]~~

14           (4) Interest rates for guarantees and credit enhancements  
15 shall not be more than the market rate for similar  
16 instruments; and

17           [~~(4)~~] (5) The commencement date for the repayment of the  
18 first installment on principal and interest of each  
19 loan may be deferred by the director of business,  
20 economic development, and tourism for a period not to  
21 exceed two years."

22    PART II

1 SECTION 6. The purpose of this part is to establish a new  
2 markets tax credit.

3 SECTION 7. Chapter 235, Hawaii Revised Statutes, is  
4 amended by adding a new section to be appropriately designated  
5 and to read as follows:

6 "§235- New markets tax credit. (a) Section 45D (with  
7 respect to new markets tax credit) of the Internal Revenue Code  
8 shall be operative for the purposes of this chapter, except as  
9 otherwise provided in this section.

10 (b) Each taxpayer, subject to the tax imposed by this  
11 chapter, who holds a qualified equity investment on a credit  
12 allowance date of that investment that occurs during the taxable  
13 year may claim a credit under this section. The amount of the  
14 credit shall be deductible from the taxpayer's net income tax  
15 liability, if any, imposed by this chapter for the taxable year  
16 in which the credit is properly claimed.

17 (c) The amount of the credit shall be equal to the  
18 applicable percentage of the amount paid to the qualified  
19 community development entity for the investment at its original  
20 issue. The applicable percentage shall be calculated as the  
21 amount provided in section 45D(a)(2) of the Internal Revenue  
22 Code.





1        (d) For the purpose of this section, the determination of  
2 the following shall be made under the designated provisions of  
3 the Internal Revenue Code, as follows:

4        (1) Credit allowance date shall be made under section  
5        45D(a)(3);

6        (2) Qualified equity investment shall be made under  
7        section 45D(b), except that reference to "the  
8        Secretary" under section 45D(b)(1), shall be to the  
9        director of taxation;

10       (3) Qualified community development entity shall be made  
11       under section 45D(c)(1);

12       (4) Qualified low-income community investment shall be  
13       made under section 45D(d);

14       (5) Low-income community shall be made under section  
15       45D(e); provided that the population census tract  
16       referenced shall refer to tracts in the State;  
17       provided further that "low-income community" has the  
18       same meaning as in section 45D(e)(1)(B), except that  
19       the percentage of median family income used for this  
20       determination shall be half that provided in that  
21       section;



1       (6) Recapture of credit shall be made under section  
2           45D(g); provided that the tax for the taxable year,  
3           and five previous taxable years if applicable, shall  
4           be increased under section 45D(g)(1) only with respect  
5           to credits that were used to reduce state income tax;  
6           and

7       (7) Basis reduction shall be made under section 45D(h).

8       (e) The credit allowed under this section shall be  
9       deducted from the taxpayer's net income tax liability for the  
10       taxable year. For the purpose of deducting this tax credit, net  
11       income tax liability means net income tax liability reduced by  
12       all other credits allowed to the taxpayer under this chapter.

13       A tax credit under this section that exceeds the taxpayer's  
14       net income tax liability may be used as a credit against the  
15       taxpayer's income tax liability in subsequent years until  
16       exhausted. All claims for a tax credit under this section shall  
17       be filed on or before the end of the twelfth month following the  
18       close of the taxable year for which the credit may be claimed.  
19       Failure to properly and timely claim the credit shall constitute  
20       a waiver of the right to claim the credit.



1        (f) Section 469 (with respect to passive activity losses  
2 and credits limited) of the Internal Revenue Code shall be  
3 applied in claiming the credit under this section.

4        (g) The director of taxation may adopt rules under chapter  
5 91 and prepare any forms necessary to carry out the purposes of  
6 this section."

7        SECTION 8. Chapter 241, Hawaii Revised Statutes, is  
8 amended by adding a new section to be appropriately designated  
9 and to read as follows:

10        "§241-    New markets tax credit.    The new markets tax  
11 credit provided under section 235-    shall be operative for this  
12 chapter."

13        SECTION 9. Chapter 431, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16        "§431-    New markets tax credit.    The new markets tax  
17 credit provided under section 235-    shall be operative for this  
18 chapter."

19        SECTION 10. Section 235-2.3, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:

21        "(b) The following Internal Revenue Code subchapters,  
22 parts of subchapters, sections, subsections, and parts of



1 subsections shall not be operative for the purposes of this  
2 chapter, unless otherwise provided:

3 (1) Subchapter A (sections 1 to 59A) (with respect to  
4 determination of tax liability), except section  
5 1(h)(2) (relating to net capital gain reduced by the  
6 amount taken into account as investment income),  
7 except sections 2(a), 2(b), and 2(c) (with respect to  
8 the definition of "surviving spouse" and "head of  
9 household"), except section 41 (with respect to the  
10 credit for increasing research activities), except  
11 section 42 (with respect to low-income housing  
12 credit), except section 45D (with respect to new  
13 markets tax credit), except sections 47 and 48, as  
14 amended, as of December 31, 1984, (with respect to  
15 certain depreciable tangible personal property), and  
16 except section 48(d)(3), as amended, as of February  
17 17, 2009, (with respect to the treatment of United  
18 States Department of Treasury grants made under  
19 section 1603 of the American Recovery and Reinvestment  
20 Tax Act of 2009). For treatment, see sections 235-  
21 110.91, 235-110.7, [~~and~~] 235-110.8 [~~+~~], and 235- ;



- 1           (2) Section 78 (with respect to dividends received from  
2           certain foreign corporations by domestic corporations  
3           choosing foreign tax credit);
- 4           (3) Section 86 (with respect to social security and tier 1  
5           railroad retirement benefits);
- 6           (4) Section 103 (with respect to interest on state and  
7           local bonds). For treatment, see section 235-7(b);
- 8           (5) Section 114 (with respect to extraterritorial income).  
9           For treatment, any transaction as specified in the  
10          transitional rule for 2005 and 2006 as specified in  
11          the American Jobs Creation Act of 2004 section 101(d)  
12          and any transaction that has occurred pursuant to a  
13          binding contract as specified in the American Jobs  
14          Creation Act of 2004 section 101(f) are inoperative;
- 15          (6) Section 120 (with respect to amounts received under  
16          qualified group legal services plans). For treatment,  
17          see section 235-7(a)(9) to (11);
- 18          (7) Section 122 (with respect to certain reduced uniformed  
19          services retirement pay). For treatment, see section  
20          235-7(a)(3);



- 1 (8) Section 135 (with respect to income from United States  
2 savings bonds used to pay higher education tuition and  
3 fees). For treatment, see section 235-7(a)(1);
- 4 (9) Section 139C (with respect to COBRA premium  
5 assistance);
- 6 (10) Subchapter B (sections 141 to 150) (with respect to  
7 tax exemption requirements for state and local bonds);
- 8 (11) Section 151 (with respect to allowance of deductions  
9 for personal exemptions). For treatment, see section  
10 235-54;
- 11 (12) Section 179B (with respect to expensing of capital  
12 costs incurred in complying with Environmental  
13 Protection Agency sulphur regulations);
- 14 (13) Section 181 (with respect to special rules for certain  
15 film and television productions);
- 16 (14) Section 196 (with respect to deduction for certain  
17 unused investment credits);
- 18 (15) Section 199 (with respect to the [~~U.S.~~] United States  
19 production activities deduction);
- 20 (16) Section 222 (with respect to qualified tuition and  
21 related expenses);



- 1 (17) Sections 241 to 247 (with respect to special  
2 deductions for corporations). For treatment, see  
3 section 235-7(c);
- 4 (18) Section 280C (with respect to certain expenses for  
5 which credits are allowable). For treatment, see  
6 section 235-110.91;
- 7 (19) Section 291 (with respect to special rules relating to  
8 corporate preference items);
- 9 (20) Section 367 (with respect to foreign corporations);
- 10 (21) Section 501(c)(12), (15), (16) (with respect to exempt  
11 organizations); except that section 501(c)(12) shall  
12 be operative for companies that provide potable water;
- 13 (22) Section 515 (with respect to taxes of foreign  
14 countries and possessions of the United States);
- 15 (23) Subchapter G (sections 531 to 565) (with respect to  
16 corporations used to avoid income tax on  
17 shareholders);
- 18 (24) Subchapter H (sections 581 to 597) (with respect to  
19 banking institutions), except section 584 (with  
20 respect to common trust funds). For treatment, see  
21 chapter 241;



- 1 (25) Section 642(a) and (b) (with respect to special rules  
2 for credits and deductions applicable to trusts). For  
3 treatment, see sections 235-54(b) and 235-55;
- 4 (26) Section 646 (with respect to tax treatment of electing  
5 Alaska Native settlement trusts);
- 6 (27) Section 668 (with respect to interest charge on  
7 accumulation distributions from foreign trusts);
- 8 (28) Subchapter L (sections 801 to 848) (with respect to  
9 insurance companies). For treatment, see sections  
10 431:7-202 and 431:7-204;
- 11 (29) Section 853 (with respect to foreign tax credit  
12 allowed to shareholders). For treatment, see section  
13 235-55;
- 14 (30) Section 853A (with respect to credits from tax credit  
15 bonds allowed to shareholders);
- 16 (31) Subchapter N (sections 861 to 999) (with respect to  
17 tax based on income from sources within or without the  
18 United States), except sections 985 to 989 (with  
19 respect to foreign currency transactions). For  
20 treatment, see sections 235-4, 235-5, and 235-7(b),  
21 and 235-55;





- 1 (32) Section 1042(g) (with respect to sales of stock in  
2 agricultural refiners and processors to eligible farm  
3 cooperatives);
- 4 (33) Section 1055 (with respect to redeemable ground  
5 rents);
- 6 (34) Section 1057 (with respect to election to treat  
7 transfer to foreign trust, etc., as taxable exchange);
- 8 (35) Sections 1291 to 1298 (with respect to treatment of  
9 passive foreign investment companies);
- 10 (36) Subchapter Q (sections 1311 to 1351) (with respect to  
11 readjustment of tax between years and special  
12 limitations);
- 13 (37) Subchapter R (sections 1352 to 1359) (with respect to  
14 election to determine corporate tax on certain  
15 international shipping activities using per ton rate);
- 16 (38) Subchapter U (sections 1391 to 1397F) (with respect to  
17 designation and treatment of empowerment zones,  
18 enterprise communities, and rural development  
19 investment areas). For treatment, see chapter 209E;
- 20 (39) Subchapter W (sections 1400 to 1400C) (with respect to  
21 District of Columbia enterprise zone);



- 1 (40) Section 14000 (with respect to education tax  
2 benefits);
- 3 (41) Section 1400P (with respect to housing tax benefits);
- 4 (42) Section 1400R (with respect to employment relief);
- 5 (43) Section 1400T (with respect to special rules for  
6 mortgage revenue bonds);
- 7 (44) Section 1400U-1 (with respect to allocation of  
8 recovery zone bonds);
- 9 (45) Section 1400U-2 (with respect to recovery zone  
10 economic development bonds); and
- 11 (46) Section 1400U-3 (with respect to recovery zone  
12 facility bonds)."

13 SECTION 11. Section 235-2.45, Hawaii Revised Statutes, is  
14 amended by amending subsection (d) to read as follows:

15 "(d) Section 704 of the Internal Revenue Code (with  
16 respect to a partner's distributive share) shall be operative  
17 for purposes of this chapter; except that section 704(b)(2)  
18 shall not apply to:

- 19 (1) Allocations of the high technology business investment  
20 tax credit allowed by section 235-110.9 for  
21 investments made before May 1, 2009;



- 1 (2) Allocations of net operating loss pursuant to section
- 2 235-111.5;
- 3 (3) Allocations of the attractions and educational
- 4 facilities tax credit allowed by section 235-110.46;
- 5 [~~or~~]
- 6 (4) Allocations of low-income housing tax credits among
- 7 partners under section 235-110.8[-]; or
- 8 (5) Allocations of the new markets tax credit allowed by
- 9 section 235- ."

10 SECTION 12. Section 237-4, Hawaii Revised Statutes, is  
 11 amended by amending subsection (a) to read as follows:

12 "(a) "Wholesaler" or "jobber" applies only to a person  
 13 making sales at wholesale. Only the following are sales at  
 14 wholesale:

- 15 (1) Sales to a licensed retail merchant, jobber, or other
- 16 licensed seller for purposes of resale;
- 17 (2) Sales to a licensed manufacturer of materials or
- 18 commodities that are to be incorporated by the
- 19 manufacturer into a finished or saleable product
- 20 (including the container or package in which the
- 21 product is contained) during the course of its
- 22 preservation, manufacture, or processing, including



1 preparation for market, and that will remain in such  
2 finished or saleable product in such form as to be  
3 perceptible to the senses, which finished or saleable  
4 product is to be sold and not otherwise used by the  
5 manufacturer;

6 (3) Sales to a licensed producer or cooperative  
7 association of materials or commodities that are to be  
8 incorporated by the producer or by the cooperative  
9 association into a finished or saleable product that  
10 is to be sold and not otherwise used by the producer  
11 or cooperative association, including specifically  
12 materials or commodities expended as essential to the  
13 planting, growth, nurturing, and production of  
14 commodities that are sold by the producer or by the  
15 cooperative association;

16 (4) Sales to a licensed contractor, of materials or  
17 commodities that are to be incorporated by the  
18 contractor into the finished work or project required  
19 by the contract and that will remain in such finished  
20 work or project in such form as to be perceptible to  
21 the senses;



1           (5) Sales to a licensed producer, or to a cooperative  
2           association described in section [~~237-23(a)(7)~~] 237-  
3           23(a)(8) for sale to a licensed producer, or to a  
4           licensed person operating a feed lot, of poultry or  
5           animal feed, hatching eggs, semen, replacement stock,  
6           breeding services for the purpose of raising or  
7           producing animal or poultry products for disposition  
8           as described in section 237-5 or for incorporation  
9           into a manufactured product as described in paragraph  
10          (2) or for the purpose of breeding, hatching, milking,  
11          or egg laying other than for the customer's own  
12          consumption of the meat, poultry, eggs, or milk so  
13          produced; provided that in the case of a feed lot  
14          operator, only the segregated cost of the feed  
15          furnished by the feed lot operator as part of the feed  
16          lot operator's service to a licensed producer of  
17          poultry or animals to be butchered or to a cooperative  
18          association described in section [~~237-23(a)(7)~~] 237-  
19          23(a)(8) of such licensed producers shall be deemed to  
20          be a sale at wholesale; and provided further that any  
21          amount derived from the furnishing of feed lot  
22          services, other than the segregated cost of feed,



1 shall be deemed taxable at the service business rate.

2 This paragraph shall not apply to the sale of feed for  
3 poultry or animals to be used for hauling,

4 transportation, or sports purposes;

5 (6) Sales to a licensed producer, or to a cooperative  
6 association described in section [~~237-23(a)(7)~~] 237-  
7 23(a)(8) for sale to the producer, of seed or  
8 seedstock for producing agricultural and aquacultural  
9 products, or bait for catching fish (including the  
10 catching of bait for catching fish), which  
11 agricultural and aquacultural products or fish are to  
12 be disposed of as described in section 237-5 or to be  
13 incorporated in a manufactured product as described in  
14 paragraph (2);

15 (7) Sales to a licensed producer, or to a cooperative  
16 association described in section [~~237-23(a)(7)~~] 237-  
17 23(a)(8) for sale to such producer; of polypropylene  
18 shade cloth; of polyfilm; of polyethylene film; of  
19 cartons and such other containers, wrappers, and  
20 sacks, and binders to be used for packaging eggs,  
21 vegetables, fruits, and other agricultural and  
22 aquacultural products; of seedlings and cuttings for



1 producing nursery plants or aquacultural products; or  
2 of chick containers; which cartons and such other  
3 containers, wrappers, and sacks, binders, seedlings,  
4 cuttings, and containers are to be used as described  
5 in section 237-5, or to be incorporated in a  
6 manufactured product as described in paragraph (2);

7 (8) Sales of tangible personal property where:

8 (A) Tangible personal property is sold upon the order  
9 or request of a licensed seller for the purpose  
10 of rendering a service in the course of the  
11 person's service business or calling, or upon the  
12 order or request of a person subject to tax under  
13 section 237D-2 for the purpose of furnishing  
14 transient accommodations;

15 (B) The tangible personal property becomes or is used  
16 as an identifiable element of the service  
17 rendered; and

18 (C) The cost of the tangible personal property does  
19 not constitute overhead to the licensed seller;  
20 the sale shall be subject to section 237-13.3;

21 (9) Sales to a licensed leasing company of capital goods  
22 that have a depreciable life, are purchased by the



1 leasing company for lease to its customers, and are  
2 thereafter leased as a service to others;

3 (10) Sales of services to a licensed seller engaging in a  
4 business or calling whenever:

5 (A) Either:

6 (i) In the context of a service-to-service  
7 transaction, a service is rendered upon the  
8 order or request of a licensed seller for  
9 the purpose of rendering another service in  
10 the course of the seller's service business  
11 or calling, including a dealer's furnishing  
12 of goods or services to the purchaser of  
13 tangible personal property to fulfill a  
14 warranty obligation of the manufacturer of  
15 the property;

16 (ii) In the context of a service-to-tangible  
17 personal property transaction, a service is  
18 rendered upon the order or request of a  
19 licensed seller for the purpose of  
20 manufacturing, producing, or preparing  
21 tangible personal property to be sold;





- 1           (iii) In the context of a services-to-contracting
- 2                           transaction, a service is rendered upon the
- 3                           order or request of a licensed contractor as
- 4                           defined in section 237-6 for the purpose of
- 5                           assisting that licensed contractor; or
- 6           (iv) In the context of a services-to-transient
- 7                           accommodations rental transaction, a service
- 8                           is rendered upon the order or request of a
- 9                           person subject to tax under section 237D-2
- 10                          for the purpose of furnishing transient
- 11                          accommodations;
- 12        (B) The benefit of the service passes to the customer
- 13                           of the licensed seller, licensed contractor, or
- 14                           person furnishing transient accommodations as an
- 15                           identifiable element of the other service or
- 16                           property to be sold, the contracting, or the
- 17                           furnishing of transient accommodations;
- 18        (C) The cost of the service does not constitute
- 19                           overhead to the licensed seller, licensed
- 20                           contractor, or person furnishing transient
- 21                           accommodations;



- 1 (D) The gross income of the licensed seller is not  
2 divided between the licensed seller and another  
3 licensed seller, contractor, or person furnishing  
4 transient accommodations for imposition of the  
5 tax under this chapter;
- 6 (E) The gross income of the licensed seller is not  
7 subject to a deduction under this chapter or  
8 chapter 237D; and
- 9 (F) The resale of the service, tangible personal  
10 property, contracting, or transient  
11 accommodations is subject to the tax imposed  
12 under this chapter at the highest tax rate.
- 13 Sales subject to this paragraph shall be subject to  
14 section 237-13.3;
- 15 (11) Sales to a licensed retail merchant, jobber, or other  
16 licensed seller of bulk condiments or prepackaged  
17 single-serving packets of condiments that are provided  
18 to customers by the licensed retail merchant, jobber,  
19 or other licensed seller;
- 20 (12) Sales to a licensed retail merchant, jobber, or other  
21 licensed seller of tangible personal property that  
22 will be incorporated or processed by the licensed



1 retail merchant, jobber, or other licensed seller into  
2 a finished or saleable product during the course of  
3 its preparation for market (including disposable,  
4 nonreturnable containers, packages, or wrappers, in  
5 which the product is contained and that are generally  
6 known and most commonly used to contain food or  
7 beverage for transfer or delivery), and which finished  
8 or saleable product is to be sold and not otherwise  
9 used by the licensed retail merchant, jobber, or other  
10 licensed seller;

11 (13) Sales of amusements subject to taxation under section  
12 237-13(4) to a licensed seller engaging in a business  
13 or calling whenever:

14 (A) Either:

15 (i) In the context of an amusement-to-service  
16 transaction, an amusement is rendered upon  
17 the order or request of a licensed seller  
18 for the purpose of rendering another service  
19 in the course of the seller's service  
20 business or calling;

21 (ii) In the context of an amusement-to-tangible  
22 personal property transaction, an amusement



1 is rendered upon the order or request of a  
2 licensed seller for the purpose of selling  
3 tangible personal property; or

4 (iii) In the context of an amusement-to-amusement  
5 transaction, an amusement is rendered upon  
6 the order or request of a licensed seller  
7 for the purpose of rendering another  
8 amusement in the course of the person's  
9 amusement business;

10 (B) The benefit of the amusement passes to the  
11 customer of the licensed seller as an  
12 identifiable element of the other service,  
13 tangible personal property to be sold, or  
14 amusement;

15 (C) The cost of the amusement does not constitute  
16 overhead to the licensed seller;

17 (D) The gross income of the licensed seller is not  
18 divided between the licensed seller and another  
19 licensed seller, person furnishing transient  
20 accommodations, or person rendering an amusement  
21 for imposition of the tax under chapter 237;



1 (E) The gross income of the licensed seller is not  
2 subject to a deduction under this chapter; and  
3 (F) The resale of the service, tangible personal  
4 property, or amusement is subject to the tax  
5 imposed under this chapter at the highest rate.

6 As used in this paragraph, "amusement" means  
7 entertainment provided as part of a show for which  
8 there is an admission charge. Sales subject to this  
9 paragraph shall be subject to section 237-13.3; and

10 (14) Sales by a printer to a publisher of magazines or  
11 similar printed materials containing advertisements,  
12 when the publisher is under contract with the  
13 advertisers to distribute a minimum number of  
14 magazines or similar printed materials to the public  
15 or defined segment of the public, whether or not there  
16 is a charge to the persons who actually receive the  
17 magazines or similar printed materials."

18 SECTION 13. Section 237-23, Hawaii Revised Statutes, is  
19 amended by amending subsections (a), (b), and (c) to read as  
20 follows:

21 "(a) This chapter shall not apply to the following  
22 persons:



- 1           (1) Public service companies as that term is defined in  
2           section 239-2, with respect to the gross income,  
3           either actual gross income or gross income estimated  
4           and adjusted, that is included in the measure of the  
5           tax imposed by chapter 239;
- 6           (2) Public utilities owned and operated by the State or  
7           any county, or other political subdivision thereof;
- 8           (3) Fraternal benefit societies, orders, or associations,  
9           operating under the lodge system, or for the exclusive  
10          benefit of the members of the fraternity itself,  
11          operating under the lodge system, and providing for  
12          the payment of death, sick, accident, prepaid legal  
13          services, or other benefits to the members of the  
14          societies, orders, or associations, and to their  
15          dependents;
- 16          (4) Corporations, associations, trusts, or societies  
17          organized and operated exclusively for religious,  
18          charitable, scientific, or educational purposes, as  
19          well as that of operating senior citizens housing  
20          facilities qualifying for a loan under the laws of the  
21          United States as authorized by section 202 of the  
22          Housing Act of 1959, as amended, as well as that of



1 operating a prepaid legal services plan, as well as  
2 that of operating or managing a homeless facility, or  
3 any other program for the homeless authorized under  
4 part XVII of chapter 346;

5 (5) Business leagues, chambers of commerce, boards of  
6 trade, civic leagues, agricultural and horticultural  
7 organizations, and organizations operated exclusively  
8 for the benefit of the community and for the promotion  
9 of social welfare that shall include the operation of  
10 a prepaid legal service plan, and from which no profit  
11 inures to the benefit of any private stockholder or  
12 individual;

13 (6) Hospitals, infirmaries, and sanitararia;

14 (7) Companies that provide potable water and are tax  
15 exempt under section 501(c)(12) of the Internal  
16 Revenue Code;

17 [~~7~~] (8) Cooperative associations incorporated under  
18 chapter 421 or Code section 521 cooperatives which  
19 fully meet the requirements of section 421-23, except  
20 Code section 521 cooperatives need not be organized in  
21 Hawaii; provided that:



- 1 (A) The exemption shall apply only to the gross  
2 income derived from activities that are pursuant  
3 to purposes and powers authorized by chapter 421,  
4 except those provisions pertaining to or  
5 requiring corporate organization in Hawaii do not  
6 apply to Code section 521 cooperatives;
- 7 (B) The exemption shall not relieve any person who  
8 receives any proceeds of sale from the  
9 association of the duty of returning and paying  
10 the tax on the total gross proceeds of the sales  
11 on account of which the payment was made, in the  
12 same amount and at the same rate as would apply  
13 thereto had the sales been made directly by the  
14 person, and all those persons shall be so  
15 taxable; and
- 16 (C) As used in this paragraph, "section 521  
17 cooperatives" mean associations that qualify as a  
18 cooperative under section 521 (with respect to  
19 exemption of farmers' cooperatives from tax) of  
20 the Internal Revenue Code [~~ef 1986, as amended~~];





- 1       ~~[(8)]~~ (9) Persons affected with Hansen's disease and  
2                   kokuas, with respect to business within the county of  
3                   Kalawao;
- 4       ~~[(9)]~~ (10) Corporations, companies, associations, or trusts  
5                   organized for the establishment and conduct of  
6                   cemeteries no part of the net earnings of which inures  
7                   to the financial benefit of any private stockholder or  
8                   individual; provided that the exemption shall apply  
9                   only to the activities of those persons in the conduct  
10                  of cemeteries and shall not apply to any activity the  
11                  primary purpose of which is to produce income, even  
12                  though the income is to be used for or in the  
13                  furtherance of the exempt activities of those persons;  
14                  and
- 15       ~~[(10)]~~ (11) Nonprofit shippers associations operating under  
16                  part 296 of the Civil Aeronautics Board Economic  
17                  Regulations.
- 18       (b) The exemptions enumerated in subsection (a)(3) to  
19       ~~[(6)]~~ (7) shall apply only:
- 20       (1) To those persons who shall have registered with the  
21                  department of taxation by filing a written application  
22                  for registration in such form as the department shall



1           prescribe, shall have paid the registration fee of  
2           \$20, and shall have had the exemption allowed by the  
3           department or by a court or tribunal of competent  
4           jurisdiction upon appeal from any assessment resulting  
5           from disallowance of the exemption by the department;

6           (2) To activities from which no profit inures to the  
7           benefit of any private stockholder or individual,  
8           except for death or other benefits to the members of  
9           fraternal societies; and

10          (3) To the fraternal, religious, charitable, scientific,  
11          educational, communal, or social welfare activities of  
12          such persons, or to the activities of such hospitals,  
13          infirmaries, [~~and~~] sanitarium [~~as such~~], and potable  
14          water companies, and not to any activity the primary  
15          purpose of which is to produce income even though the  
16          income is to be used for or in furtherance of the  
17          exempt activities of such persons [~~-~~] performing the  
18          exempt activities.

19          (c) To obtain allowance of an exemption:

20          (1) A person under subsection (a) (3) to [~~(6)~~] (7), who  
21          has received or applied for recognition of tax exempt  
22          status under section 501(c) (3), (4), (6), [~~or~~] (8), or



1           (12) of the Internal Revenue Code [~~of 1986, as~~  
2           amended], or who is a subordinate person of a person  
3           who has received a group exemption letter under  
4           section 501(c)(3), (4), (6), [~~or~~] (8), or (12) of the  
5           Internal Revenue Code [~~of 1986, as amended~~], shall  
6           register with the department by filing a statement  
7           attaching a copy of the exemption or application for  
8           recognition of exempt status and any particular facts  
9           that the department may require; and

10          (2) All other persons under subsection (a)(3) to (6) shall  
11          file an application for exemption in the form of an  
12          affidavit or affidavits setting forth in general all  
13          facts affecting the right to the exemption and such  
14          particular facts as the department may require, to  
15          which shall be attached such records, papers, and  
16          other information as the department may prescribe."

17    PART III

18          SECTION 14. Statutory material to be repealed is bracketed  
19          and stricken. New statutory material is underscored.

20          SECTION 15. This Act shall take effect upon its approval.



**Report Title:**

Economic Development; New Markets Tax Credits; Loans; Community Development Entity

**Description:**

Expands methods for delivering funding to a community development entity by allowing guarantees and credit enhancements. Increases total maximum funding amounts from \$250,000 to \$5,000,000. Establishes new markets tax credits. Makes conforming amendments. (SD1)

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