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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 PART I

2 SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
3 amended by adding a new section to be appropriately designated  
4 and to read as follows:

5 "§235- New markets tax credit. (a) Section 45D (with  
6 respect to new markets tax credit) of the Internal Revenue Code  
7 of 1986, as amended, shall be operative for the purposes of this  
8 chapter, except as otherwise provided in this section.

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

16 (c) The amount of the credit shall be equal to the  
17 applicable percentage of the amount paid to the qualified  
18 community development entity for the investment at its original



1 issue. The applicable percentage shall be calculated as  
2 provided in section 45D(a) (2) of the Internal Revenue Code of  
3 1986, as amended.

4 (d) For the purpose of this section, the determination of  
5 the following shall be made under the designated provisions of  
6 the Internal Revenue Code of 1986, as amended, as follows:

7 (1) Credit allowance date shall be made under section  
8 45D(a) (3);

9 (2) Qualified equity investment shall be made under  
10 section 45D(b), except that reference to "the  
11 Secretary" under section 45D(b) (1), shall be to the  
12 director;

13 (3) Qualified community development entity shall be made  
14 under section 45D(c);

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

17 (5) Low-income community shall be made under section  
18 45D(e); provided that the population tract referenced  
19 shall refer to tracts in the State;

20 (6) Recapture of credit shall be made under section  
21 45D(g); provided that the tax for the taxable year  
22 shall be increased under section 45D(g) (1) only with



1 respect to credits that were used to reduce state  
2 income tax; and

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

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

9 A tax credit under this section that exceeds the taxpayer's  
10 net income tax liability may be used as a credit against the  
11 taxpayer's income tax liability in subsequent years until  
12 exhausted. 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 and timely claim the credit shall constitute  
16 a waiver of the right to claim the credit.

17 (f) Section 469 (with respect to passive activity losses  
18 and credits limited) of the Internal Revenue Code of 1986, as  
19 amended, shall be applied in claiming the credit under this  
20 section.



1       (g) The director may adopt rules under chapter 91 and  
2 prepare any forms necessary to carry out the purposes of this  
3 section."

4       SECTION 2. Chapter 241, Hawaii Revised Statutes, is  
5 amended by adding a new section to be appropriately designated  
6 and to read as follows:

7       "§241-    New markets tax credit. The new markets tax  
8 credit provided under section 235- shall be operative for this  
9 chapter."

10       SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
11 amended by adding a new section to be appropriately designated  
12 and to read as follows:

13       "§431-    New markets tax credit. The new markets tax  
14 credit provided under section 235- shall be operative for this  
15 chapter."

16       SECTION 4. Section 235-2.3, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18       "(b) The following Internal Revenue Code subchapters,  
19 parts of subchapters, sections, subsections, and parts of  
20 subsections shall not be operative for the purposes of this  
21 chapter, unless otherwise provided:



- 1 (1) Subchapter A (sections 1 to 59A) (with respect to  
2 determination of tax liability), except section  
3 1(h) (2) (relating to net capital gain reduced by the  
4 amount taken into account as investment income),  
5 except sections 2(a), 2(b), and 2(c) (with respect to  
6 the definition of "surviving spouse" and "head of  
7 household"), except section 41 (with respect to the  
8 credit for increasing research activities), except  
9 section 42 (with respect to low-income housing  
10 credit), except section 45D (with respect to new  
11 markets tax credit), except sections 47 and 48, as  
12 amended, as of December 31, 1984 (with respect to  
13 certain depreciable tangible personal property), and  
14 except section 48(d) (3), as amended, as of  
15 February 17, 2009 (with respect to the treatment of  
16 United States Department of Treasury grants made under  
17 section 1603 of the American Recovery and Reinvestment  
18 Tax Act of 2009). For treatment, see sections  
19 235-110.91, 235-110.7, [~~and~~] 235-110.8[+], and 235- ;  
20 (2) Section 78 (with respect to dividends received from  
21 certain foreign corporations by domestic corporations  
22 choosing foreign tax credit);



- 1 (3) Section 86 (with respect to social security and tier 1  
2 railroad retirement benefits);
- 3 (4) Section 103 (with respect to interest on state and  
4 local bonds). For treatment, see section 235-7(b);
- 5 (5) Section 114 (with respect to extraterritorial income).  
6 For treatment, any transaction as specified in the  
7 transitional rule for 2005 and 2006 as specified in  
8 the American Jobs Creation Act of 2004 section 101(d)  
9 and any transaction that has occurred pursuant to a  
10 binding contract as specified in the American Jobs  
11 Creation Act of 2004 section 101(f) are inoperative;
- 12 (6) Section 120 (with respect to amounts received under  
13 qualified group legal services plans). For treatment,  
14 see section 235-7(a) (9) to (11);
- 15 (7) Section 122 (with respect to certain reduced uniformed  
16 services retirement pay). For treatment, see section  
17 235-7(a) (3);
- 18 (8) Section 135 (with respect to income from United States  
19 savings bonds used to pay higher education tuition and  
20 fees). For treatment, see section 235-7(a) (1);
- 21 (9) Section 139C (with respect to COBRA premium  
22 assistance);



- 1 (10) Subchapter B (sections 141 to 150) (with respect to  
2 tax exemption requirements for state and local bonds);
- 3 (11) Section 151 (with respect to allowance of deductions  
4 for personal exemptions). For treatment, see section  
5 235-54;
- 6 (12) Section 179B (with respect to expensing of capital  
7 costs incurred in complying with Environmental  
8 Protection Agency sulphur regulations);
- 9 (13) Section 181 (with respect to special rules for certain  
10 film and television productions);
- 11 (14) Section 196 (with respect to deduction for certain  
12 unused investment credits);
- 13 (15) Section 199 (with respect to the [~~U.S.~~] United States  
14 production activities deduction);
- 15 (16) Section 222 (with respect to qualified tuition and  
16 related expenses);
- 17 (17) Sections 241 to 247 (with respect to special  
18 deductions for corporations). For treatment, see  
19 section 235-7(c);
- 20 (18) Section 280C (with respect to certain expenses for  
21 which credits are allowable). For treatment, see  
22 section 235-110.91;



- 1 (19) Section 291 (with respect to special rules relating to  
2 corporate preference items);
- 3 (20) Section 367 (with respect to foreign corporations);
- 4 (21) Section 501(c)(12), (15), (16) (with respect to exempt  
5 organizations);
- 6 (22) Section 515 (with respect to taxes of foreign  
7 countries and possessions of the United States);
- 8 (23) Subchapter G (sections 531 to 565) (with respect to  
9 corporations used to avoid income tax on  
10 shareholders);
- 11 (24) Subchapter H (sections 581 to 597) (with respect to  
12 banking institutions), except section 584 (with  
13 respect to common trust funds). For treatment, see  
14 chapter 241;
- 15 (25) Section 642(a) and (b) (with respect to special rules  
16 for credits and deductions applicable to trusts). For  
17 treatment, see sections 235-54(b) and 235-55;
- 18 (26) Section 646 (with respect to tax treatment of electing  
19 Alaska Native settlement trusts);
- 20 (27) Section 668 (with respect to interest charge on  
21 accumulation distributions from foreign trusts);





- 1 (28) Subchapter L (sections 801 to 848) (with respect to  
2 insurance companies). For treatment, see sections  
3 431:7-202 and 431:7-204;
- 4 (29) Section 853 (with respect to foreign tax credit  
5 allowed to shareholders). For treatment, see section  
6 235-55;
- 7 (30) Section 853A (with respect to credits from tax credit  
8 bonds allowed to shareholders);
- 9 (31) Subchapter N (sections 861 to 999) (with respect to  
10 tax based on income from sources within or without the  
11 United States), except sections 985 to 989 (with  
12 respect to foreign currency transactions). For  
13 treatment, see sections 235-4, 235-5, and 235-7(b),  
14 and 235-55;
- 15 (32) Section 1042(g) (with respect to sales of stock in  
16 agricultural refiners and processors to eligible farm  
17 cooperatives);
- 18 (33) Section 1055 (with respect to redeemable ground  
19 rents);
- 20 (34) Section 1057 (with respect to election to treat  
21 transfer to foreign trust, etc., as taxable exchange);



- 1 (35) Sections 1291 to 1298 (with respect to treatment of  
2 passive foreign investment companies);
- 3 (36) Subchapter Q (sections 1311 to 1351) (with respect to  
4 readjustment of tax between years and special  
5 limitations);
- 6 (37) Subchapter R (sections 1352 to 1359) (with respect to  
7 election to determine corporate tax on certain  
8 international shipping activities using per ton rate);
- 9 (38) Subchapter U (sections 1391 to 1397F) (with respect to  
10 designation and treatment of empowerment zones,  
11 enterprise communities, and rural development  
12 investment areas). For treatment, see chapter 209E;
- 13 (39) Subchapter W (sections 1400 to 1400C) (with respect to  
14 District of Columbia enterprise zone);
- 15 (40) Section 1400 (with respect to education tax  
16 benefits);
- 17 (41) Section 1400P (with respect to housing tax benefits);
- 18 (42) Section 1400R (with respect to employment relief);
- 19 (43) Section 1400T (with respect to special rules for  
20 mortgage revenue bonds);
- 21 (44) Section 1400U-1 (with respect to allocation of  
22 recovery zone bonds);



1 (45) Section 1400U-2 (with respect to recovery zone  
2 economic development bonds); and

3 (46) Section 1400U-3 (with respect to recovery zone  
4 facility bonds)."

5 SECTION 5. Section 235-2.45, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

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

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

14 (2) Allocations of net operating loss pursuant to section  
15 235-111.5;

16 (3) Allocations of the attractions and educational  
17 facilities tax credit allowed by section 235-110.46;  
18 [~~or~~]

19 (4) Allocations of low-income housing tax credits among  
20 partners under section 235-110.8~~[or]~~; or

21 (5) Allocations of the new markets tax credit allowed by  
22 section 235- ."



## 1 PART II

2 SECTION 6. Section 235-2.3, Hawaii Revised Statutes, is  
3 amended by amending subsection (b) to read as follows:

4 "(b) The following Internal Revenue Code subchapters,  
5 parts of subchapters, sections, subsections, and parts of  
6 subsections shall not be operative for the purposes of this  
7 chapter, unless otherwise provided:

8 (1) Subchapter A (sections 1 to 59A) (with respect to  
9 determination of tax liability), except section  
10 1(h)(2) (relating to net capital gain reduced by the  
11 amount taken into account as investment income),  
12 except sections 2(a), 2(b), and 2(c) (with respect to  
13 the definition of "surviving spouse" and "head of  
14 household"), except section 41 (with respect to the  
15 credit for increasing research activities), except  
16 section 42 (with respect to low-income housing  
17 credit), except sections 47 and 48, as amended, as of  
18 December 31, 1984 (with respect to certain depreciable  
19 tangible personal property), and except section  
20 48(d)(3), as amended, as of February 17, 2009 (with  
21 respect to the treatment of United States Department  
22 of Treasury grants made under section 1603 of the



- 1 American Recovery and Reinvestment Tax Act of 2009).
- 2 For treatment, see sections 235-110.91, 235-110.7, and
- 3 235-110.8;
- 4 (2) Section 78 (with respect to dividends received from
- 5 certain foreign corporations by domestic corporations
- 6 choosing foreign tax credit);
- 7 (3) Section 86 (with respect to social security and tier 1
- 8 railroad retirement benefits);
- 9 (4) Section 103 (with respect to interest on state and
- 10 local bonds). For treatment, see section 235-7(b);
- 11 (5) Section 114 (with respect to extraterritorial income).
- 12 For treatment, any transaction as specified in the
- 13 transitional rule for 2005 and 2006 as specified in
- 14 the American Jobs Creation Act of 2004 section 101(d)
- 15 and any transaction that has occurred pursuant to a
- 16 binding contract as specified in the American Jobs
- 17 Creation Act of 2004 section 101(f) are inoperative;
- 18 (6) Section 120 (with respect to amounts received under
- 19 qualified group legal services plans). For treatment,
- 20 see section 235-7(a)(9) to (11);



- 1 (7) Section 122 (with respect to certain reduced uniformed  
2 services retirement pay). For treatment, see section  
3 235-7(a)(3);
- 4 (8) Section 135 (with respect to income from United States  
5 savings bonds used to pay higher education tuition and  
6 fees). For treatment, see section 235-7(a)(1);
- 7 (9) Section 139C (with respect to COBRA premium  
8 assistance);
- 9 (10) Subchapter B (sections 141 to 150) (with respect to  
10 tax exemption requirements for state and local bonds);
- 11 (11) Section 151 (with respect to allowance of deductions  
12 for personal exemptions). For treatment, see section  
13 235-54;
- 14 (12) Section 179B (with respect to expensing of capital  
15 costs incurred in complying with Environmental  
16 Protection Agency sulphur regulations);
- 17 (13) Section 181 (with respect to special rules for certain  
18 film and television productions);
- 19 (14) Section 196 (with respect to deduction for certain  
20 unused investment credits);
- 21 (15) Section 199 (with respect to the U.S. production  
22 activities deduction);



- 1 (16) Section 222 (with respect to qualified tuition and  
2 related expenses);
- 3 (17) Sections 241 to 247 (with respect to special  
4 deductions for corporations). For treatment, see  
5 section 235-7(c);
- 6 (18) Section 280C (with respect to certain expenses for  
7 which credits are allowable). For treatment, see  
8 section 235-110.91;
- 9 (19) Section 291 (with respect to special rules relating to  
10 corporate preference items);
- 11 (20) Section 367 (with respect to foreign corporations);
- 12 (21) Section 501(c)(12), (15), (16) (with respect to exempt  
13 organizations); except that section 501(c)(12) shall  
14 be operative for companies that provide potable water;
- 15 (22) Section 515 (with respect to taxes of foreign  
16 countries and possessions of the United States);
- 17 (23) Subchapter G (sections 531 to 565) (with respect to  
18 corporations used to avoid income tax on  
19 shareholders);
- 20 (24) Subchapter H (sections 581 to 597) (with respect to  
21 banking institutions), except section 584 (with



- 1           respect to common trust funds). For treatment, see  
2           chapter 241;
- 3       (25) Section 642(a) and (b) (with respect to special rules  
4           for credits and deductions applicable to trusts). For  
5           treatment, see sections 235-54(b) and 235-55;
- 6       (26) Section 646 (with respect to tax treatment of electing  
7           Alaska Native settlement trusts);
- 8       (27) Section 668 (with respect to interest charge on  
9           accumulation distributions from foreign trusts);
- 10      (28) Subchapter L (sections 801 to 848) (with respect to  
11         insurance companies). For treatment, see sections  
12         431:7-202 and 431:7-204;
- 13      (29) Section 853 (with respect to foreign tax credit  
14         allowed to shareholders). For treatment, see section  
15         235-55;
- 16      (30) Section 853A (with respect to credits from tax credit  
17         bonds allowed to shareholders);
- 18      (31) Subchapter N (sections 861 to 999) (with respect to  
19         tax based on income from sources within or without the  
20         United States), except sections 985 to 989 (with  
21         respect to foreign currency transactions). For





- 1 treatment, see sections 235-4, 235-5, and 235-7(b),  
2 and 235-55;
- 3 (32) Section 1042(g) (with respect to sales of stock in  
4 agricultural refiners and processors to eligible farm  
5 cooperatives);
- 6 (33) Section 1055 (with respect to redeemable ground  
7 rents);
- 8 (34) Section 1057 (with respect to election to treat  
9 transfer to foreign trust, etc., as taxable exchange);
- 10 (35) Sections 1291 to 1298 (with respect to treatment of  
11 passive foreign investment companies);
- 12 (36) Subchapter Q (sections 1311 to 1351) (with respect to  
13 readjustment of tax between years and special  
14 limitations);
- 15 (37) Subchapter R (sections 1352 to 1359) (with respect to  
16 election to determine corporate tax on certain  
17 international shipping activities using per ton rate);
- 18 (38) Subchapter U (sections 1391 to 1397F) (with respect to  
19 designation and treatment of empowerment zones,  
20 enterprise communities, and rural development  
21 investment areas). For treatment, see chapter 209E;



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

15       SECTION 7. Section 237-4, Hawaii Revised Statutes, is

16 amended by amending subsection (a) to read as follows:

17       "(a) "Wholesaler" or "jobber" applies only to a person

18 making sales at wholesale. Only the following are sales at

19 wholesale:

- 20       (1) Sales to a licensed retail merchant, jobber, or other
- 21            licensed seller for purposes of resale;



1           (2) Sales to a licensed manufacturer of materials or  
2           commodities that are to be incorporated by the  
3           manufacturer into a finished or saleable product  
4           (including the container or package in which the  
5           product is contained) during the course of its  
6           preservation, manufacture, or processing, including  
7           preparation for market, and that will remain in [~~such~~]  
8           a finished or saleable product in [~~such~~] a form as to  
9           be perceptible to the senses, which finished or  
10          saleable product is to be sold and not otherwise used  
11          by the manufacturer;

12          (3) Sales to a licensed producer or cooperative  
13          association of materials or commodities that are to be  
14          incorporated by the producer or by the cooperative  
15          association into a finished or saleable product that  
16          is to be sold and not otherwise used by the producer  
17          or cooperative association, including specifically  
18          materials or commodities expended as essential to the  
19          planting, growth, nurturing, and production of  
20          commodities that are sold by the producer or by the  
21          cooperative association;



- 1           (4) Sales to a licensed contractor, of materials or  
2           commodities that are to be incorporated by the  
3           contractor into the finished work or project required  
4           by the contract and that will remain in [~~such~~] a  
5           finished work or project in [~~such~~] a form as to be  
6           perceptible to the senses;
- 7           (5) Sales to a licensed producer, or to a cooperative  
8           association described in section [~~237-23(a)(7)~~] 237-  
9           23(a)(8) for sale to a licensed producer, or to a  
10          licensed person operating a feed lot, of poultry or  
11          animal feed, hatching eggs, semen, replacement stock,  
12          breeding services for the purpose of raising or  
13          producing animal or poultry products for disposition  
14          as described in section 237-5 or for incorporation  
15          into a manufactured product as described in paragraph  
16          (2) or for the purpose of breeding, hatching, milking,  
17          or egg laying other than for the customer's own  
18          consumption of the meat, poultry, eggs, or milk so  
19          produced; provided that in the case of a feed lot  
20          operator, only the segregated cost of the feed  
21          furnished by the feed lot operator as part of the feed  
22          lot operator's service to a licensed producer of



1 poultry or animals to be butchered or to a cooperative  
2 association described in section [~~237-23(a)(7)~~] 237-  
3 23(a)(8) of [~~such~~] the licensed producers shall be  
4 deemed to be a sale at wholesale; and provided further  
5 that any amount derived from the furnishing of feed  
6 lot services, other than the segregated cost of feed,  
7 shall be deemed taxable at the service business rate.  
8 This paragraph shall not apply to the sale of feed for  
9 poultry or animals to be used for hauling,  
10 transportation, or sports purposes;

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

21 (7) Sales to a licensed producer, or to a cooperative  
22 association described in section [~~237-23(a)(7)~~] 237-



1           23(a)(8) for sale to [~~such~~] the licensed producer; of  
2 polypropylene shade cloth; of polyfilm; of  
3 polyethylene film; of cartons and [~~such~~] other  
4 containers, wrappers, and sacks, and binders to be  
5 used for packaging eggs, vegetables, fruits, and other  
6 agricultural and aquacultural products; of seedlings  
7 and cuttings for producing nursery plants or  
8 aquacultural products; or of chick containers; which  
9 cartons and [~~such~~] other containers, wrappers, and  
10 sacks, binders, seedlings, cuttings, and containers  
11 are to be used as described in section 237-5, or to be  
12 incorporated in a manufactured product as described in  
13 paragraph (2);

14       (8) Sales of tangible personal property where:

15           (A) Tangible personal property is sold upon the order  
16           or request of a licensed seller for the purpose  
17           of rendering a service in the course of the  
18           person's service business or calling, or upon the  
19           order or request of a person subject to tax under  
20           section 237D-2 for the purpose of furnishing  
21           transient accommodations;



1 (B) The tangible personal property becomes or is used  
2 as an identifiable element of the service  
3 rendered; and

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

7 (9) Sales to a licensed leasing company of capital goods  
8 that have a depreciable life, are purchased by the  
9 leasing company for lease to its customers, and are  
10 thereafter leased as a service to others;

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

13 (A) Either:

14 (i) In the context of a service-to-service  
15 transaction, a service is rendered upon the  
16 order or request of a licensed seller for  
17 the purpose of rendering another service in  
18 the course of the seller's service business  
19 or calling, including a dealer's furnishing  
20 of goods or services to the purchaser of  
21 tangible personal property to fulfill a



1                   warranty obligation of the manufacturer of  
2                   the property;

3                   (ii) In the context of a service-to-tangible  
4                   personal property transaction, a service is  
5                   rendered upon the order or request of a  
6                   licensed seller for the purpose of  
7                   manufacturing, producing, or preparing  
8                   tangible personal property to be sold;

9                   (iii) In the context of a services-to-contracting  
10                  transaction, a service is rendered upon the  
11                  order or request of a licensed contractor as  
12                  defined in section 237-6 for the purpose of  
13                  assisting that licensed contractor; or

14                  (iv) In the context of a services-to-transient  
15                  accommodations rental transaction, a service  
16                  is rendered upon the order or request of a  
17                  person subject to tax under section 237D-2  
18                  for the purpose of furnishing transient  
19                  accommodations;

20                  (B) The benefit of the service passes to the customer  
21                  of the licensed seller, licensed contractor, or  
22                  person furnishing transient accommodations as an





1           identifiable element of the other service or  
2           property to be sold, the contracting, or the  
3           furnishing of transient accommodations;  
4           (C) The cost of the service does not constitute  
5           overhead to the licensed seller, licensed  
6           contractor, or person furnishing transient  
7           accommodations;  
8           (D) The gross income of the licensed seller is not  
9           divided between the licensed seller and another  
10          licensed seller, contractor, or person furnishing  
11          transient accommodations for imposition of the  
12          tax under this chapter;  
13          (E) The gross income of the licensed seller is not  
14          subject to a deduction under this chapter or  
15          chapter 237D; and  
16          (F) The resale of the service, tangible personal  
17          property, contracting, or transient  
18          accommodations is subject to the tax imposed  
19          under this chapter at the highest tax rate.  
20          Sales subject to this paragraph shall be subject to  
21          section 237-13.3;



1       (11) Sales to a licensed retail merchant, jobber, or other  
2           licensed seller of bulk condiments or prepackaged  
3           single-serving packets of condiments that are provided  
4           to customers by the licensed retail merchant, jobber,  
5           or other licensed seller;

6       (12) Sales to a licensed retail merchant, jobber, or other  
7           licensed seller of tangible personal property that  
8           will be incorporated or processed by the licensed  
9           retail merchant, jobber, or other licensed seller into  
10          a finished or saleable product during the course of  
11          its preparation for market (including disposable,  
12          nonreturnable containers, packages, or wrappers, in  
13          which the product is contained and that are generally  
14          known and most commonly used to contain food or  
15          beverage for transfer or delivery), and [~~which~~] the  
16          finished or saleable product is to be sold and not  
17          otherwise used by the licensed retail merchant,  
18          jobber, or other licensed seller;

19       (13) Sales of amusements subject to taxation under section  
20          237-13(4) to a licensed seller engaging in a business  
21          or calling whenever:

22           (A) Either:



- 1           (i) In the context of an amusement-to-service
- 2           transaction, an amusement is rendered upon
- 3           the order or request of a licensed seller
- 4           for the purpose of rendering another service
- 5           in the course of the seller's service
- 6           business or calling;
- 7           (ii) In the context of an amusement-to-tangible
- 8           personal property transaction, an amusement
- 9           is rendered upon the order or request of a
- 10          licensed seller for the purpose of selling
- 11          tangible personal property; or
- 12          (iii) In the context of an amusement-to-amusement
- 13          transaction, an amusement is rendered upon
- 14          the order or request of a licensed seller
- 15          for the purpose of rendering another
- 16          amusement in the course of the person's
- 17          amusement business;
- 18          (B) The benefit of the amusement passes to the
- 19          customer of the licensed seller as an
- 20          identifiable element of the other service,
- 21          tangible personal property to be sold, or
- 22          amusement;



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

3 (D) The gross income of the licensed seller is not  
4 divided between the licensed seller and another  
5 licensed seller, person furnishing transient  
6 accommodations, or person rendering an amusement  
7 for imposition of the tax under chapter 237;

8 (E) The gross income of the licensed seller is not  
9 subject to a deduction under this chapter; and

10 (F) The resale of the service, tangible personal  
11 property, or amusement is subject to the tax  
12 imposed under this chapter at the highest rate.

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

17 (14) Sales by a printer to a publisher of magazines or  
18 similar printed materials containing advertisements,  
19 when the publisher is under contract with the  
20 advertisers to distribute a minimum number of  
21 magazines or similar printed materials to the public  
22 or defined segment of the public, whether or not there



1 is a charge to the persons who actually receive the  
2 magazines or similar printed materials."

3 SECTION 8. Section 237-23, Hawaii Revised Statutes, is  
4 amended by amending subsections (a), (b), and (c) to read as  
5 follows:

6 "(a) This chapter shall not apply to the following  
7 persons:

- 8 (1) Public service companies as that term is defined in  
9 section 239-2, with respect to the gross income,  
10 either actual gross income or gross income estimated  
11 and adjusted, that is included in the measure of the  
12 tax imposed by chapter 239;
- 13 (2) Public utilities owned and operated by the State or  
14 any county, or other political subdivision thereof;
- 15 (3) Fraternal benefit societies, orders, or associations,  
16 operating under the lodge system, or for the exclusive  
17 benefit of the members of the fraternity itself,  
18 operating under the lodge system, and providing for  
19 the payment of death, sick, accident, prepaid legal  
20 services, or other benefits to the members of the  
21 societies, orders, or associations, and to their  
22 dependents;



- 1           (4) Corporations, associations, trusts, or societies  
2           organized and operated exclusively for religious,  
3           charitable, scientific, or educational purposes, as  
4           well as that of operating senior citizens housing  
5           facilities qualifying for a loan under the laws of the  
6           United States as authorized by section 202 of the  
7           Housing Act of 1959, as amended, as well as that of  
8           operating a prepaid legal services plan, as well as  
9           that of operating or managing a homeless facility, or  
10          any other program for the homeless authorized under  
11          part XVII of chapter 346;
- 12          (5) Business leagues, chambers of commerce, boards of  
13          trade, civic leagues, agricultural and horticultural  
14          organizations, and organizations operated exclusively  
15          for the benefit of the community and for the promotion  
16          of social welfare that shall include the operation of  
17          a prepaid legal service plan, and from which no profit  
18          inures to the benefit of any private stockholder or  
19          individual;
- 20          (6) Hospitals, infirmaries, and sanitararia;



1        (7) Companies that provide potable water and are tax  
2        exempt under section 501(c)(12) of the Internal  
3        Revenue Code of 1986, as amended;

4        [~~(7)~~] (8) Cooperative associations incorporated under  
5        chapter 421 or Code section 521 cooperatives which  
6        fully meet the requirements of section 421-23, except  
7        Code section 521 cooperatives need not be organized in  
8        Hawaii; provided that:

9        (A) The exemption shall apply only to the gross  
10       income derived from activities that are pursuant  
11       to purposes and powers authorized by chapter 421,  
12       except those provisions pertaining to or  
13       requiring corporate organization in Hawaii do not  
14       apply to Code section 521 cooperatives;

15       (B) The exemption shall not relieve any person who  
16       receives any proceeds of sale from the  
17       association of the duty of returning and paying  
18       the tax on the total gross proceeds of the sales  
19       on account of which the payment was made, in the  
20       same amount and at the same rate as would apply  
21       thereto had the sales been made directly by the



1 person, and all those persons shall be so  
 2 taxable; and

3 (C) As used in this paragraph, "section 521  
 4 cooperatives" mean associations that qualify as a  
 5 cooperative under section 521 (with respect to  
 6 exemption of farmers' cooperatives from tax) of  
 7 the Internal Revenue Code of 1986, as amended;

8 [~~(8)~~] (9) Persons affected with Hansen's disease and  
 9 kokuas, with respect to business within the county of  
 10 Kalawao;

11 [~~(9)~~] (10) Corporations, companies, associations, or trusts  
 12 organized for the establishment and conduct of  
 13 cemeteries no part of the net earnings of which inures  
 14 to the financial benefit of any private stockholder or  
 15 individual; provided that the exemption shall apply  
 16 only to the activities of those persons in the conduct  
 17 of cemeteries and shall not apply to any activity the  
 18 primary purpose of which is to produce income, even  
 19 though the income is to be used for or in the  
 20 furtherance of the exempt activities of those persons;  
 21 and





1       ~~[(+10)]~~ (11) Nonprofit shippers associations operating under  
2                   part 296 of the Civil Aeronautics Board Economic  
3                   Regulations.

4           (b) The exemptions enumerated in subsection (a) (3) to  
5 ~~[(+6)]~~ (7) shall apply only:

6           (1) To those persons who shall have registered with the  
7                   department of taxation by filing a written application  
8                   for registration in such form as the department shall  
9                   prescribe, shall have paid the registration fee of  
10                  \$20, and shall have had the exemption allowed by the  
11                  department or by a court or tribunal of competent  
12                  jurisdiction upon appeal from any assessment resulting  
13                  from disallowance of the exemption by the department;

14          (2) To activities from which no profit inures to the  
15                  benefit of any private stockholder or individual,  
16                  except for death or other benefits to the members of  
17                  fraternal societies; and

18          (3) To the fraternal, religious, charitable, scientific,  
19                  educational, communal, or social welfare activities of  
20                  ~~[such]~~ persons, or to the activities of ~~[such]~~  
21                  hospitals, infirmaries, ~~[and]~~ sanitarium ~~[as such]~~, and  
22                  potable water companies, and not to any activity the



1 primary purpose of which is to produce income even  
2 though the income is to be used for or in furtherance  
3 of the exempt activities of [~~such~~] persons[~~]~~  
4 performing the exempt activities.

5 (c) To obtain allowance of an exemption:

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

18 (2) All other persons under subsection (a) (3) to (6) shall  
19 file an application for exemption in the form of an  
20 affidavit or affidavits setting forth in general all  
21 facts affecting the right to the exemption and [~~such~~]  
22 any particular facts as the department may require, to





**Report Title:**

New Markets Tax Credit; Potable Water Tax Exemption

**Description:**

Establishes a new markets tax credit for qualified equity investment on a credit allowance date and that is exempt from the requirements of section 704(b)(2) of the Internal Revenue Code; restricts community development entity investments to low-income communities in Hawaii; includes franchise taxes and insurance premium taxes eligible for the tax credit. Exempts federally tax exempt companies that supply potable water from the state income and general excise taxes. (HD1 Proposed)

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