L E G I S L A T I V E

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SUBJECT: INCOME, Tax credit for research activities

BILL NUMBER: HB 1401

INTRODUCED BY: Yamashita, Aquino, Cullen, Har, Ichiyama, Oshiro, Say, Tsuji and 1 Democrat

BRIEF SUMMARY: Amends HRS section 235-110.91 to amend the definition of qualified high technology business as a business that conducts more than ____% of its activities in qualified research.

Requires a qualified high technology business that claims the credit under this section to complete and file with the director of taxation, through the department website, an annual survey on electronic forms prepared and prescribed by the department. Requires the survey to be filed before June 30 of each year following the calendar year in which the credit is claimed under this section. Permits the department to adjust the due date of the annual survey by rule.

The survey shall include: (1) identification of the industry sector in which the qualified high technology business conducts business; (2) qualified expenditures; (3) revenue and expense data; (4) Hawaii employment and wage data including the number of full and part-time employees retained, new jobs, temporary positions, external services procured by the business, and payroll taxes; and (5) intellectual property, including invention disclosures, provisional patents, and patents issued or granted.

The department of taxation may request any additional information necessary to measure the effectiveness of the tax credit, such as information related to patents. The department of taxation shall use information collected under this section and through its other reporting requirements prepare summary descriptive statistics by category. The information shall be reported at the aggregate level to prevent compromising identities of qualified high technology business investors or other confidential information. The department of taxation shall also identify each qualified high technology business that is the beneficiary of tax credits claimed under this section. The department of taxation shall report the information required under this subsection to the legislature by September 1 of each year.

Directs the department of taxation to use the information collected to study the effectiveness of the tax credit under this section. The department of taxation shall report on the amount of tax credits claimed and total taxes paid by qualified high technology businesses; the number of qualified high technology businesses in each industry sector; jobs created; external services and materials procured by the businesses; compensation levels; qualified research activities; and any other factor the department of taxation deems relevant. The department shall report the results of its study to the legislature by December 1 of each year.

This section shall not apply to taxable years beginning after December 31, 2015.

EFFECTIVE DATE: July 1, 2013; applicable to tax years beginning after December 31, 2012.

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STAFF COMMENTS: The legislature by Act 178, SLH 1999, and Act 221, SLH 2001, enacted various tax incentives to encourage the development of high technology businesses in the state. These acts provided investment and research credits, as well as income exclusions and tax incentives, to encourage high tech businesses and individuals associated with high tech businesses to locate in the state. It should be noted that while the credit for research activities enacted by Act 178, SLH 1999, expired on 12/31/10, this measure attempts to reenact the credit. It is questionable whether the methodology proposed by this measure is appropriate. Since the credit expired on 12/31/10, the method proposed by this measure merely changes the expiration date of the existing statutory language and provides that the provision shall be effective for tax years beginning after December 31, 2012 in an attempt to reenact the expired credit. It would appear to be more appropriate to restate the provisions as language in a new section under the income tax law.

While the focus on high technology in the last few years is commendable, it fails to recognize that investments are made with the prospect that the venture will yield a profit. If the prospects for making a profit are absent, no amount of tax credits will attract investment from outside Hawaii's capital short environment. People do not invest to lose money. It should be remembered that until Hawaii's high cost of living can be addressed, all the tax incentives in the world will not make a difference in attracting new investment to Hawaii. The only attractive aspect for resident investors to plough money into such activities is the fact that the credit provides a way to avoid paying state taxes.

Given the fiasco of Act 221 which amounted to nothing more than an outright give away of precious state tax dollars on a dollar-for-dollar basis, this proposal, and all others proposing added business targeted tax credits, should give lawmakers reason for pause before heading down the same disastrous path again.

Digested 2/4/13