

JAN 18 2013

A BILL FOR AN ACT

RELATING TO ECONOMIC DEVELOPMENT.

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

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

4 "§235- Growing economy tax credit. (a) There shall be
5 allowed to each qualified taxpayer subject to the tax imposed by
6 this chapter a tax credit which shall be deductible from the
7 taxpayer's net income tax liability, if any, imposed by this
8 chapter for the taxable year in which the credit is properly
9 claimed. To qualify for a tax credit under this section, a
10 person shall propose a project that meets the requirements of
11 subsection (c), and enter into an agreement with the corporation
12 as provided in subsection (d).

13 (b) As used in this section:

14 "Agreement" means the agreement between a taxpayer and the
15 corporation pursuant to subsection (f).

16 "Applicant" means a taxpayer that is operating a business
17 located within or that the taxpayer plans to locate within the
18 State of Hawaii and that is engaged in interstate or intrastate



1 commerce for the purpose of manufacturing, processing,
2 assembling, warehousing, or exporting products, conducting
3 research and development, or agricultural processing, but
4 excludes retail, retail food, health, or professional services.

5 "Corporation" means the Hawaii housing finance and
6 development corporation.

7 "Department" means the department of taxation.

8 "Full-time employee" means an individual who is employed
9 for consideration for at least thirty-five hours each week.

10 "New employee" means:

11 (1) A full-time employee first employed by a taxpayer in
12 the project that is the subject of an agreement
13 pursuant to this section and who is hired after the
14 taxpayer enters into the agreement.

15 (2) The term "new employee" does not include: an employee
16 of the taxpayer who performs a job that was previously
17 performed by another employee, if that job existed for
18 at least six months before hiring the employee; an
19 employee of the taxpayer who was previously employed
20 in Hawaii; or a child, grandchild, parent, or spouse,
21 other than a spouse who is legally separated from any
22 person who has a direct or an indirect ownership



1 interest of at least five per cent in the profits,
2 capital, or value of the taxpayer.

3 "Noncompliance date" means, in the case of a taxpayer that
4 is not complying with the requirements of the agreement or this
5 section, the day following the last date upon which the taxpayer
6 was in compliance with the requirements of the agreement and
7 this section, as determined by the corporation.

8 (c) To qualify under this section, a proposed project
9 shall:

10 (1) Be located in or planned to be located in Hawaii;

11 (2) Be an expansion of an existing operation or
12 establishment of a new location. Relocation of
13 existing operations within Hawaii shall be eligible
14 for consideration only where the applicant
15 demonstrates that its current location is inadequate;

16 (3) Involve an investment of at least \$5,000,000 in
17 capital improvements to be placed in service and
18 employment of at least twenty-five new full-time
19 employees within the State; provided that if the
20 applicant has fewer than one hundred employees, the
21 proposed project shall involve an investment of at
22 least \$1,000,000 in capital improvements to be placed



1 in service and employment of at least five new full-
2 time employees within the State; and

3 (4) Upon completion, engage in exporting its goods or
4 services.

5 (d) The annual tax credit amount allowed under this
6 section shall be equal to the amount of taxes withheld by the
7 taxpayer pursuant to section 235-61 for new employees employed
8 by the taxpayer for the applicable tax year; provided that the
9 tax credit may not exceed the taxpayer's annual state income
10 tax liability for any taxable year and the tax credit shall be
11 nonrefundable. If the tax credit under this section exceeds the
12 taxpayer's net income tax liability, the excess of credit over
13 liability may be used as a tax credit against the taxpayer's net
14 income tax liability in subsequent years until exhausted;
15 provided that no tax credit earned in any taxable year shall be
16 carried over to more than five subsequent taxable years.

17 (e) Any person proposing a project to obtain a tax credit
18 under this section may apply to the department upon forms
19 furnished by the department. The application shall:

20 (1) State the applicant's intent to make a specified level
21 of investment and to hire a specified number of full-



1 time employees at a designated location in Hawaii
2 consistent with subsection (c);
3 (2) Demonstrate that, if not for the tax credit, the
4 proposed project would not occur in Hawaii. This may
5 be accomplished by showing that the applicant has
6 multi-state location options and could reasonably and
7 efficiently locate outside of the State if not for the
8 tax credit; and
9 (3) Provide a cost differential showing projected costs
10 for the applicant's proposed project in Hawaii
11 compared to the costs in the applicant's other
12 location options outside Hawaii.
13 The department may request any further documentation or
14 information of the applicant needed in furtherance of its duties
15 under this section. After receipt and review of the application
16 and any additional documentation or information, the department
17 shall submit the application and accompanying materials, if any,
18 to the corporation which may in its discretion accept the
19 application and enter into an agreement with the applicant
20 pursuant to subsection (f).



1 (f) Any taxpayer qualifying for a project under this
2 section shall submit to the corporation on a form to be created
3 by the corporation all of the following:

4 (1) A detailed description of the project that is the
5 subject of the agreement, including the location and
6 amount of capital investment and jobs to be created;

7 (2) The first taxable year for which the tax credit is
8 anticipated to be claimed and the projected amount of
9 the tax credit that will be allowed for each taxable
10 year of the project;

11 (3) A certification that the applicant will maintain
12 operations at the project location for a minimum of
13 five years;

14 (4) The projected number of new employees that are
15 anticipated to be employed by the taxpayer during each
16 taxable year of the project;

17 (5) A certification that the applicant will annually
18 report to the corporation the number of new employees
19 and the amount of taxes withheld by the applicant in
20 connection with the new employees pursuant to section
21 235-61;



- 1 (6) A statement that authorizes the corporation to verify
2 with the appropriate state agencies the amounts
3 reported under paragraph (5);
- 4 (7) Financial records that demonstrate that the applicant
5 has the financial means to make the minimum level of
6 investment required for the project, the time period
7 for placing the improvements in service, and the
8 designated location in Hawaii for the improvements;
- 9 (8) A provision that, if in the determination of the
10 corporation the total number of new employees falls
11 below a specified level, the allowance of tax credit
12 shall be suspended until the number of new employees
13 equals or exceeds the agreement amount; and
- 14 (9) Any other performance conditions or contract
15 provisions that the corporation determines are
16 appropriate.
- 17 (g) Upon the corporation's receipt and verification of the
18 information required by subsection (f), and its determination
19 that the taxpayer is in compliance with all of the requirements
20 of the agreement, the corporation shall issue to the taxpayer a
21 certificate of verification for the applicable tax year and



1 submit a copy of the certification of verification to the
2 department.

3 (h) In the case of a partnership, S corporation, estate,
4 or trust, the tax credit allowable is for the qualified costs
5 incurred by the entity for the taxable year. The cost upon
6 which the tax credit is computed shall be determined at the
7 entity level. Distribution and share of the tax credit shall be
8 determined pursuant to section 704(b) (with respect to partner's
9 distributive share) of the Internal Revenue Code.

10 (i) If the corporation determines that a taxpayer who has
11 received a tax credit under this section is not complying with
12 any requirement of the agreement or all of the provisions of
13 this section, the corporation shall provide notice to the
14 taxpayer of the alleged noncompliance, and allow the taxpayer a
15 hearing pursuant to chapter 91. If, after such notice and any
16 hearing, the corporation determines that a noncompliance exists,
17 the corporation shall issue to the department a notice to that
18 effect, stating the noncompliance date.

19 (j) The corporation may adopt rules, pursuant to chapter
20 91, necessary to implement this section."

21 SECTION 2. New statutory material is underscored.

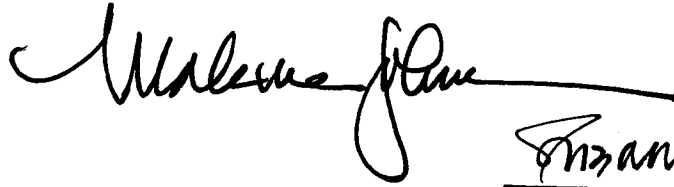
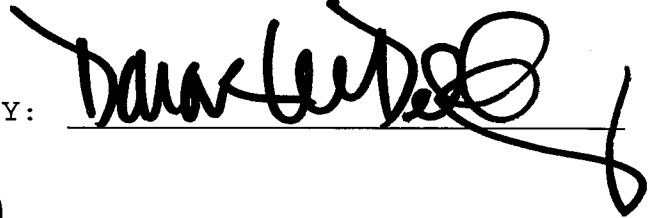


S.B. NO. 215

1 SECTION 3. This Act shall take effect on its approval and
2 shall apply to taxable years beginning after December 31, 2012;
3 provided that on January 1, 2017, this Act shall be repealed.

4

INTRODUCED BY:



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S.B. NO. 215

Report Title:

Economic Development; Tax Credits; Hawaii Housing Finance and Development Corporation

Description:

Creates tax credits as an incentive for companies to expand or locate their operations in Hawaii and increase employment. Provides for an application and agreement process with the department of taxation and Hawaii housing finance and development corporation to obtain the tax credits. Repeals on 1/1/2017.

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