

S.B. NO. 2888

JAN 23 2014

A BILL FOR AN ACT

RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

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

1 SECTION 1. Section 235-110.91, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-110.91 Tax credit for research activities.** (a)
4 Section 41 (with respect to the credit for increasing research
5 activities) and section 280C(c) (with respect to certain
6 expenses for which the credit for increasing research activities
7 are allowable) of the Internal Revenue Code shall be operative
8 for the purposes of this chapter as provided in this section;
9 provided that the federal tax provisions in section 41 of the
10 Internal Revenue Code, as that section was enacted on December
11 31, 2011, irrespective of any subsequent changes to section 41
12 of the Internal Revenue Code, shall remain in effect for
13 purposes of determining the state income tax credit under this
14 section; provided further that the federal tax provisions in
15 section 41 of the Internal Revenue Code, as enacted on December
16 31, 2011, irrespective of any subsequent amendments to section
17 41 of the Internal Revenue Code, shall apply only to expenses

1 incurred for qualified research activities after December 31,
2 2012.

3 (b) All references to Internal Revenue Code sections
4 within sections 41 and 280C(c) of the Internal Revenue Code
5 shall be operative for purposes of this section[-] , and shall
6 apply only to expenses incurred for qualified research
7 activities after December 31, 2012.

8 (c) There shall be allowed to each qualified high
9 technology business subject to the tax imposed by this chapter
10 an income tax credit for qualified research activities equal to
11 the credit for research activities provided by section 41 of the
12 Internal Revenue Code and as modified by this section; provided
13 that, in addition to any other requirements established in this
14 section, in order to qualify for the tax credit established in
15 this section, the qualified high technology business shall also
16 claim a federal tax credit for the same qualified research
17 activities under section 41 of the Internal Revenue Code [~~as~~
18 ~~enacted on December 31, 2011, irrespective of any subsequent~~
19 ~~amendments to section 41 of the Internal Revenue Code]~~. The
20 credit shall be deductible from the taxpayer's net income tax
21 liability, if any, imposed by this chapter for the taxable year
22 in which the credit is properly claimed.

1 ~~[(d) Every qualified high technology business, before~~
2 ~~March 31 of each year in which qualified research and~~
3 ~~development activity was conducted in the previous taxable year,~~
4 ~~shall submit a written, certified statement to the director of~~
5 ~~taxation identifying:~~

6 ~~(1) Qualified expenditures, if any, expended in the~~
7 ~~previous taxable year; and~~

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

10 ~~(e) The department shall:~~

11 ~~(1) Maintain records of the names and addresses of the~~
12 ~~taxpayers claiming the credits under this section and~~
13 ~~the total amount of the qualified research and~~
14 ~~development activity costs upon which the tax credit~~
15 ~~is based;~~

16 ~~(2) Verify the nature of the qualifying research activity~~
17 ~~and the amount of the qualifying costs or~~
18 ~~expenditures;~~

19 ~~(3) Total all qualifying and cumulative costs or~~
20 ~~expenditures that the department certifies; and~~

21 ~~(4) Certify the amount of the tax credit for each taxable~~
22 ~~year and cumulative amount of the tax credit.~~

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

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

14 ~~(f)]~~ (d) As used in this section:

15 "Basic research" under section 41(e) of the Internal
16 Revenue Code shall not include research conducted outside of the
17 State.

18 "Qualified high technology business" shall have the same
19 meaning as in section 235-7.3(c).

20 "Qualified research" shall have the same meaning as in
21 section 41(d) of the Internal Revenue Code~~[-]~~ and shall not
22 include research conducted outside of the State.

1 "Qualified research expenses" shall have the same meaning
2 as in section 41(b) of the Internal Revenue Code; provided that
3 it shall not include research [~~expenses incurred~~] conducted
4 outside of the State.

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

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

16 [~~(i)~~] (g) A qualified high technology business that claims
17 the credit under this section shall complete and file with the
18 department of business, economic development, and tourism,
19 through that department's website, an annual survey on
20 electronic forms prepared and prescribed by the department of
21 business, economic development, and tourism. The annual survey
22 shall be filed before June 30 of each calendar year following
23 the [~~calendar~~] the close of the taxpayer's taxable year in which

1 the credit [~~may be~~] is claimed under this section. The
2 department of business, economic development, and tourism may
3 adjust the due date of the annual survey by rules adopted
4 pursuant to chapter 91. Failure by the qualified high
5 technology business to submit the annual survey by the due date
6 established under this subsection shall be deemed to be a waiver
7 of the right to claim the credit under this section.

8 [~~(j)~~] (h) The annual survey under subsection [~~(i)~~] (g)
9 shall include the following information for the time period or
10 periods specified by the department of business, economic
11 development, and tourism:

- 12 (1) Identification of the industry sector or sectors in
13 which the qualified high technology business conducts
14 business, as set forth in paragraphs (2) to (8) of the
15 definition of "qualified research" in section
16 235-7.3(c);
- 17 (2) Total expenditures and the qualified expenditures, if
18 any, expended in the previous taxable year;
- 19 (3) Revenue and expense data, including a breakdown of any
20 licensing royalty or other forms of income generated
21 from intellectual property;
- 22 (4) Hawaii employment and wage data, including the numbers
23 of full-time and part-time employees retained, new

1 jobs, temporary positions, external services procured
2 by the business, and payroll taxes;

3 (5) Filed intellectual property, including invention
4 disclosures, provisional patents, and patents issued
5 or granted; [~~and~~]

6 (6) The number of new companies spun out or established to
7 commercialize the intellectual property owned by the
8 qualified high technology business[~~-~~]; and

9 (7) The amount of tax credits claimed pursuant to this
10 section.

11 The department of business, economic development, and
12 tourism shall request information in each of these categories
13 sufficient to measure the effectiveness of the tax credit under
14 this section. The department of business, economic development,
15 and tourism may request any additional information necessary to
16 measure the effectiveness of the tax credit, such as information
17 related to patents. In preparing the survey and requesting any
18 additional information, the department of business, economic
19 development, and tourism shall ensure that qualified high
20 technology businesses are not subject to duplicative reporting
21 requirements.

22 [~~(i)~~] (i) The department of business, economic
23 development, and tourism shall use information collected under

1 this section and through its other reporting requirements to
2 prepare summary descriptive statistics by category. The
3 information shall be reported at the aggregate level to prevent
4 compromising identities of qualified high technology business
5 investors or other confidential information. The department of
6 business, economic development, and tourism shall also identify
7 each qualified high technology business that is the beneficiary
8 of tax credits claimed under this section. The department of
9 business, economic development, and tourism shall report the
10 information required under this subsection to the legislature by
11 September 1 of each year.

12 ~~[(i)]~~ (j) The department of business, economic
13 development, and tourism, in collaboration with the department
14 of taxation, shall use the information collected to study the
15 effectiveness of the tax credit under this section. The
16 department of business, economic development, and tourism shall
17 submit a report to the legislature on the following:

18 (1) The amount of tax credits claimed and total taxes paid
19 by qualified high technology businesses;

20 (2) The number of qualified high technology businesses in
21 each industry sector;

22 (3) The numbers and types of jobs created by qualified
23 high technology businesses;

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- 1 (4) External services and materials procured by the
- 2 businesses;
- 3 (5) The compensation levels of jobs provided by qualified
- 4 high technology businesses;
- 5 (6) Qualified research activities; and
- 6 (7) Any other factors the department of business, economic
- 7 development, and tourism deems relevant.

8 The department of business, economic development, and tourism
9 shall submit the report to the legislature by September 1 of
10 each year.

11 [~~(m)~~] (k) The director of taxation may adopt any rules
12 under chapter 91 and forms necessary to carry out this section.

13 [~~(n)~~] (l) This section shall not apply to taxable years
14 beginning after December 31, 2019."


15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act, upon its approval, shall take effect
18 on July 1, 2014, and shall apply to taxable years beginning
19 after December 31, 2013.

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INTRODUCED BY: 

23

BY REQUEST

Report Title:

Taxes; Tax Credit for Research Activities

Description:

Clarifies that the credit is not available for research conducted outside of the State. Eliminates the requirement that the department of taxation certify all research credit claims. Clarifies that failure of the taxpayer to submit the required survey to the Department of Business, Economic Development, and Tourism is a waiver of the right to claim the credit.

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

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

PURPOSE: The purpose of this bill is to correct and clarify existing law regarding the Tax Credit for Research Activities under section 235-110.91, Hawaii Revised Statutes (HRS).

MEANS: Amend section 235-110.91, HRS.

JUSTIFICATION: Act 270, Session Laws of Hawaii 2013, reenacted the Hawaii Tax Credit for Research Activities ("TCRA") for taxable years from 2013 to 2019. This measure amends Act 270 to make it clear that qualifying research activities must be done in Hawaii in order for the costs to qualify for the TCRA. Act 270 required that a cost be incurred in Hawaii in order for the cost to be qualifying research cost. However, where a cost is incurred does not necessarily mean that the research expense will be performed in Hawaii. For example, a contract that is negotiated and signed in Hawaii can be classified as incurred in Hawaii. This measure clarifies that any qualifying research cost must be performed in Hawaii in order to qualify for the TCRA.

Finally, this measure eliminates the requirement that the taxpayer obtain a certification from the Department concerning its claim for the credit. This certification requirement does not assist the Department with compliance enforcement and it creates an impression in the taxpayer that by

certifying the credit, the department has audited and accepted the same. Given the complexity of the credit and the very short timeframe in which the certification must be obtained, it is only possible for the Department to give a cursory overview at the time of certification. Since the information sought by the certification will be provided to the Department of Business, Economic Development, and Tourism in the survey required by statute to be submitted by the taxpayer to Department of Business, Economic Development and Tourism, certification by the department is duplicative and unnecessary. This measure also makes clear that submission of the survey is a requirement to making a valid claim for the credit.

Impact on the public: This measure makes clear that qualifying research activities must be done in Hawaii. It also eliminates duplicative reporting requirements, thereby easing the burden on the taxpayer.

Impact on the department and other agencies: The change is expected to assist the department in enforcing the tax laws and in insuring that the credit is claimed on Hawaii based performance costs.

GENERAL FUND: None. This measure is to clarify existing law.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: None.

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EFFECTIVE DATE:

July 1, 2014. Applies to taxable years beginning after December 31, 2013.