

JAN 24 2013

A BILL FOR AN ACT

RELATING TO AGRICULTURE.

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

1 SECTION 1. Section 235-110.93, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " [†]§235-110.93[†] **Important agricultural land qualified**
4 **agricultural cost tax credit.** (a) There shall be allowed to
5 each taxpayer an important agricultural land qualified
6 agricultural cost tax credit that may be claimed in taxable
7 years beginning after the taxable year during which the tax
8 credit under section 235-110.46 is repealed, exhausted, or
9 expired. The credit shall be deductible from the taxpayer's net
10 income tax liability, if any, imposed by this chapter for the
11 taxable year in which the credit is properly claimed. The tax
12 credit amount shall be determined as follows:

- 13 (1) In the first year in which the credit is claimed,
14 twenty-five per cent of the lesser of the following:
15 (A) The qualified agricultural costs incurred by the
16 taxpayer after July 1, 2008; or
17 (B) \$625,000;



1 (2) In the second year in which the credit is claimed,
2 fifteen per cent of the lesser of the following:

3 (A) The qualified agricultural costs incurred by the
4 taxpayer after July 1, 2008; or

5 (B) \$250,000; and

6 (3) In the third year in which the credit is claimed, ten
7 per cent of the lesser of the following:

8 (A) The qualified agricultural costs incurred by the
9 taxpayer after July 1, 2008; or

10 (B) \$125,000.

11 The taxpayer may incur qualified agricultural costs during a
12 taxable year in anticipation of claiming the credit in future
13 taxable years during which the credit is available. The
14 taxpayer may claim the credit in any taxable year after the
15 taxable year during which the taxpayer incurred the qualified
16 agricultural costs upon which the credit is claimed. The
17 taxpayer also may claim the credit in consecutive or
18 inconsecutive taxable years until exhausted.

19 (b) Each taxpayer claiming a credit under subsection (a)
20 may receive an additional tax credit for expenditures for
21 drought mitigation projects providing water for lands, the
22 majority of which, excluding lands classified as conservation



1 lands, are important agricultural lands. Expenditures for
2 drought mitigation projects shall include but are not limited
3 to:

4 (1) Expansion or improvement of capacity to capture storm
5 water for use during droughts, including engineering
6 plans and permit costs;

7 (2) Expansion or improvement of capacity to increase
8 infiltration of storm water to encourage groundwater
9 recharge of aquifers, including engineering plans and
10 permit costs;

11 (3) Design and implementation of practices such as
12 terracing and other water retention measures that will
13 sustain the growth of crops including pasture grasses
14 during droughts, including engineering plans and
15 permit costs; and

16 (4) Expansion or improvement of water delivery systems to
17 drought prone areas, including engineering plans and
18 permit costs.

19 The amount of the additional tax credit shall be equal to
20 fifteen per cent of the expenditures for drought mitigation
21 projects incurred by the taxpayer; provided that the amount of



1 the additional tax credit shall not exceed fifteen per cent of
2 the credit amount received pursuant to subsection (a).

3 ~~[(b)]~~ (c) No other credit may be claimed under this
4 chapter for qualified agricultural costs for which a credit is
5 claimed under this section for the taxable year.

6 ~~[(c) The amount of the qualified agricultural costs~~
7 ~~eligible to be claimed under this section shall be reduced by~~
8 ~~the amount of funds received by the taxpayer during the taxable~~
9 ~~year from the irrigation repair and maintenance special fund~~
10 ~~under section 167-24.]~~

11 (d) The cost upon which the tax credit is computed shall
12 be determined at the entity level. In the case of a
13 partnership, S corporation, estate, trust, or other pass through
14 entity, distribution and share of the credit shall be determined
15 pursuant to section 235-110.7(a).

16 If a deduction is taken under section 179 (with respect to
17 election to expense depreciable business assets) of the Internal
18 Revenue Code, no tax credit shall be allowed for that portion of
19 the qualified agricultural cost for which a deduction was taken.

20 The basis of eligible property for depreciation or
21 accelerated cost recovery system purposes for state income taxes
22 shall be reduced by the amount of credit allowable and claimed.



1 No deduction shall be allowed for that portion of otherwise
2 deductible qualified agricultural costs on which a credit is
3 claimed under this section.

4 (e) If the credit under this section exceeds the
5 taxpayer's net income tax liability for the taxable year, the
6 excess of the credit over liability shall be refunded to the
7 taxpayer; provided that no refunds or payments on account of the
8 credits allowed by this section shall be made for amounts less
9 than \$1.

10 All claims for a tax credit under this section, including
11 amended claims, shall be filed on or before the end of the
12 twelfth month following the close of the taxable year for which
13 the credit is claimed. Failure to comply with the foregoing
14 provision shall constitute a waiver of the right to claim the
15 credit.

16 (f) The director of taxation:

17 (1) Shall prepare any forms that may be necessary to claim
18 a credit under this section;

19 (2) May require the taxpayer to furnish information to
20 ascertain the validity of the claim for credit made
21 under this section; and



1 (3) May adopt rules pursuant to chapter 91 to effectuate
2 this section.

3 (g) The department of agriculture shall:

4 (1) Maintain records of the total amount of qualified
5 agricultural costs for each taxpayer claiming a
6 credit;

7 (2) Verify the amount of the qualified agricultural costs
8 claimed;

9 (3) Total all qualified agricultural costs claimed; and

10 (4) Certify the total amount of the tax credit for each
11 taxable year.

12 Upon each determination, the department of agriculture
13 shall issue a certificate to the taxpayer verifying the
14 qualifying agricultural costs and the credit amount certified
15 for each taxable year. For a taxable year, the department of
16 agriculture may certify a credit for a taxpayer who could have
17 claimed the credit in a previous taxable year, but chose not to
18 because the maximum annual credit amount under subsection (h)
19 was reached in that taxable year.

20 The taxpayer shall file the certificate with the taxpayer's
21 tax return with the department of taxation. Notwithstanding the
22 department of agriculture's certification authority under this



1 section, the director of taxation may audit and adjust
2 certification to conform to the facts.

3 Notwithstanding any other law to the contrary, the
4 information required by this subsection shall be available for
5 public inspection and dissemination under chapter 92F.

6 (h) If in any taxable year the annual amount of certified
7 credits reaches \$7,500,000 in the aggregate, the department of
8 agriculture shall immediately discontinue certifying credits and
9 notify the department of taxation. In no instance shall the
10 department of agriculture certify a total amount of credits
11 exceeding \$7,500,000 per taxable year. To comply with this
12 restriction, the department of agriculture shall certify credits
13 on a first come, first served basis.

14 The department of taxation shall not allow the aggregate
15 amount of credits claimed to exceed that amount per taxable
16 year.

17 (i) The department of agriculture, in consultation with
18 the department of taxation, shall annually determine the
19 information necessary to provide a quantitative and qualitative
20 assessment of the outcomes of the tax credit.

21 Every taxpayer, no later than the last day of the taxable
22 year following the close of the taxpayer's taxable year in which



1 the credit is claimed, shall submit a certified written
2 statement to the department of agriculture. Failure to provide
3 the information shall result in ineligibility and a recapture of
4 any credit already claimed for that taxable year. The amount of
5 the recaptured tax credit shall be added to the taxpayer's tax
6 liability for the taxable year in which the recapture occurs.

7 Notwithstanding any law to the contrary, a statement
8 submitted under this subsection shall be a public document.

9 (j) The department of agriculture, in consultation with
10 the department of taxation, shall annually submit a report
11 evaluating the effectiveness of the tax credit. The report
12 shall include but not be limited to findings and recommendations
13 to improve the effectiveness of the tax credit to further
14 encourage the development of agricultural businesses.

15 (k) As used in this section:

16 "Agricultural business" means any person with a commercial
17 agricultural, silvicultural, or aquacultural facility or
18 operation, including:

19 (1) The care and production of livestock and livestock
20 products, poultry and poultry products, apiary
21 products, and plant and animal production for nonfood
22 uses;



1 (2) The planting, cultivating, harvesting, and processing
2 of crops; and

3 (3) The farming or ranching of any plant or animal species
4 in a controlled salt, brackish, or freshwater
5 environment;

6 provided that the principal place of the agricultural business
7 is maintained in the State and more than fifty per cent of the
8 land the agricultural business owns or leases, excluding land
9 classified as conservation land, is important agricultural land.

10 "Important agricultural lands" means lands identified and
11 designated as important agricultural lands pursuant to part III
12 of chapter 205.

13 "Net income tax liability" means income tax liability
14 reduced by all other credits allowed under this chapter.

15 "Qualified agricultural costs" means expenditures for:

16 (1) The plans, design, engineering, construction,
17 renovation, repair, maintenance, and equipment for:

18 (A) Roads or utilities, primarily for agricultural
19 purposes, where the majority of the lands
20 serviced by the roads or utilities, excluding
21 lands classified as conservation lands, are
22 important agricultural lands;



- 1 (B) Agricultural processing facilities in the State,
2 primarily for agricultural purposes, where the
3 majority of the crops or livestock processed,
4 harvested, treated, washed, handled, or packaged
5 are from agricultural businesses;
- 6 (C) Water wells, reservoirs, dams, water storage
7 facilities, water pipelines, ditches, or
8 irrigation systems in the State, primarily for
9 agricultural purposes, providing water for lands,
10 the majority of which, excluding lands classified
11 as conservation lands, are important agricultural
12 lands; and
- 13 (D) Agricultural housing in the State, exclusively
14 for agricultural purposes; provided that:
 - 15 (i) The housing units are occupied solely by
16 farmers or employees for agricultural
17 businesses and their immediate family
18 members;
 - 19 (ii) The housing units are owned by the
20 agricultural business;
 - 21 (iii) The housing units are in the general
22 vicinity, as determined by the department of



1 agriculture, of agricultural lands owned or
2 leased by the agricultural business; and

3 (iv) The housing units conform to any other
4 conditions that may be required by the
5 department of agriculture;

6 (2) Feasibility studies, regulatory processing, and legal
7 and accounting services related to the items under
8 paragraph (1);

9 (3) Equipment, primarily for agricultural purposes, used
10 to cultivate, grow, harvest, or process agricultural
11 products by an agricultural business; and

12 (4) Regulatory processing, studies, and legal and other
13 consultant services related to obtaining or retaining
14 sufficient water for agricultural activities and
15 retaining the right to farm on lands identified as
16 important agricultural lands.

17 (1) The department of agriculture shall cease certifying
18 credits pursuant to this section after the fourth taxable year
19 following the taxable year during which the credits are first
20 claimed; provided that a taxpayer with accumulated, but
21 unclaimed, certified credits may continue claiming the credits
22 in subsequent taxable years until exhausted.



1 [+] (m) [+] The department of taxation, in consultation with
2 the department of agriculture, shall submit to the legislature
3 an annual report, no later than twenty days prior to the
4 convening of each regular session, beginning with the regular
5 session of 2010, regarding the quantitative and qualitative
6 assessment of the impact of the important agricultural land
7 qualified agricultural cost tax credit."

8 SECTION 2. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so much
10 thereof as may be necessary for fiscal year 2013-2014 for
11 staffing or other expenses necessary to implement the tax
12 credits established or amended by this Act.

13 . The sum appropriated shall be expended by the department of
14 agriculture for the purposes of this Act.

15 SECTION 3. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2013-2014 for
18 staffing and consultant expenses necessary to implement the tax
19 credits established or amended by this Act.

20 The sum appropriated shall be expended by the department of
21 taxation for the purposes of this Act.



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect on July 1, 2013;
4 provided that section 1 shall take effect on January 1, 2013,
5 and shall apply to the taxable years beginning after December
6 31, 2012.

7

INTRODUCED BY: Clarence A. Dickerson



Suzanne Chun

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S.B. NO. 176

Report Title:

Agriculture; Drought Mitigation; Tax Credit; Appropriation

Description:

Amends the important agricultural land qualified agricultural cost tax credit to allow an additional fifteen per cent credit for drought mitigation. Deletes reference to a repealed special fund. Appropriates funds for staffing and consulting expenses.

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

