
A BILL FOR AN ACT

RELATING TO AMENDING OR REPEALING HAWAII NET INCOME TAX LAWS FOR
THE PURPOSE OF DELETING OBSOLETE OR UNNECESSARY PROVISIONS.

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

1 SECTION 1. Section 235-110.9, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§235-110.9 High technology business investment tax
4 credit. (a) There shall be allowed to each taxpayer subject to
5 the taxes imposed by this chapter a high technology business
6 investment tax credit that 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 investment was made
9 and the following four years provided the credit is properly
10 claimed. The tax credit shall be as follows:

- 11 (1) In the year the investment was made, thirty-five per
12 cent;
- 13 (2) In the first year following the year in which the
14 investment was made, twenty-five per cent;
- 15 (3) In the second year following the investment, twenty
16 per cent;



1 (4) In the third year following the investment, ten per
2 cent; and

3 (5) In the fourth year following the investment, ten per
4 cent;

5 of the investment made by the taxpayer in each qualified high
6 technology business, up to a maximum allowed credit in the year
7 the investment was made, \$700,000; in the first year following
8 the year in which the investment was made, \$500,000; in the
9 second year following the year in which the investment was made,
10 \$400,000; in the third year following the year in which the
11 investment was made, \$200,000; and in the fourth year following
12 the year in which the investment was made, \$200,000.

13 (b) The credit allowed under this section shall be claimed
14 against the net income tax liability for the taxable year. For
15 the purpose of this section, "net income tax liability" means
16 net income tax liability reduced by all other credits allowed
17 under this chapter.

18 (c) If the tax credit under this section exceeds the
19 taxpayer's income tax liability for any of the five years that
20 the credit is taken, the excess of the tax credit over liability
21 may be used as a credit against the taxpayer's income tax



1 liability in subsequent years until exhausted. Every claim,
2 including amended claims, for a tax credit under this section
3 shall be filed on or before the end of the twelfth month
4 following the close of the taxable year for which the credit may
5 be claimed. Failure to comply with the foregoing provision
6 shall constitute a waiver of the right to claim the credit.

7 (d) If at the close of any taxable year in the five-year
8 period in subsection (a):

9 (1) The business no longer qualifies as a qualified high
10 technology business;

11 (2) The business or an interest in the business has been
12 sold by the taxpayer investing in the qualified high
13 technology business; or

14 (3) The taxpayer has withdrawn the taxpayer's investment
15 wholly or partially from the qualified high technology
16 business;

17 the credit claimed under this section shall be recaptured. The
18 recapture shall be equal to ten per cent of the amount of the
19 total tax credit claimed under this section in the preceding two
20 taxable years. The amount of the credit recaptured shall apply
21 only to the investment in the particular qualified high



1 technology business that meets the requirements of paragraph
 2 (1), (2), or (3). The recapture provisions of this subsection
 3 shall not apply to a tax credit claimed for a qualified high
 4 technology business that does not fall within the provisions of
 5 paragraph (1), (2), or (3). The amount of the recaptured tax
 6 credit determined under this subsection shall be added to the
 7 taxpayer's tax liability for the taxable year in which the
 8 recapture occurs under this subsection.

9 (e) Every taxpayer, before March 31 of each year in which
 10 an investment in a qualified high technology business was made
 11 in the previous taxable year, shall submit a written, certified
 12 statement to the director of taxation identifying:

13 (1) Qualified investments, if any, expended in the
 14 previous taxable year; and

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

17 (f) The department shall:

18 (1) Maintain records of the names and addresses of the
 19 taxpayers claiming the credits under this section and
 20 the total amount of the qualified investment costs
 21 upon which the tax credit is based;



- 1 (2) Verify the nature and amount of the qualifying
2 investments;
- 3 (3) Total all qualifying and cumulative investments that
4 the department certifies; and
- 5 (4) Certify the amount of the tax credit for each taxable
6 year and cumulative amount of the tax credit.

7 Upon each determination made under this subsection, the
8 department shall issue a certificate to the taxpayer verifying
9 information submitted to the department, including qualifying
10 investment amounts, the credit amount certified for each taxable
11 year, and the cumulative amount of the tax credit during the
12 credit period. The taxpayer shall file the certificate with the
13 taxpayer's tax return with the department.

14 The director of taxation may assess and collect a fee to
15 offset the costs of certifying tax credits claims under this
16 section. All fees collected under this section shall be
17 deposited into the tax administration special fund established
18 under section 235-20.5.

19 (g) As used in this section:



1 "Investment tax credit allocation ratio" means, with
2 respect to a taxpayer that has made an investment in a qualified
3 high technology business, the ratio of:

4 (1) The amount of the credit under this section that is,
5 or is to be, received by or allocated to the taxpayer
6 over the life of the investment, as a result of the
7 investment; to

8 (2) The amount of the investment in the qualified high
9 technology business.

10 "Qualified high technology business" means a business,
11 employing or owning capital or property, or maintaining an
12 office, in this State; provided that:

13 (1) More than fifty per cent of its total business
14 activities are qualified research; and provided
15 further that the business conducts more than seventy-
16 five per cent of its qualified research in this State;
17 or

18 (2) More than seventy-five per cent of its gross income is
19 derived from qualified research; and provided further
20 that this income is received from:



1 (A) Products sold from, manufactured in, or produced
2 in this State; or

3 (B) Services performed in this State.

4 "Qualified research" means the same as defined in section
5 235-7.3.

6 (h) Common law principles, including the doctrine of
7 economic substance and business purpose, shall apply to any
8 investment. There exists a presumption that a transaction
9 satisfies the doctrine of economic substance and business
10 purpose to the extent that the special allocation of the high
11 technology business tax credit has an investment tax credit
12 ratio of 1.5 or less of credit for every dollar invested.

13 Transactions for which an investment tax credit allocation
14 ratio greater than 1.5 but not more than 2.0 of credit for every
15 dollar invested and claimed may be reviewed by the department
16 for applicable doctrines of economic substance and business
17 purpose.

18 Businesses claiming a tax credit for transactions with
19 investment tax credit allocation ratios greater than 2.0 of
20 credit for every dollar invested shall substantiate economic
21 merit and business purpose consistent with this section.



1 (i) For investments made on or after May 1, 2009,
2 notwithstanding any other law to the contrary, no allocations,
3 special or otherwise, of credits under this section may exceed
4 the amount of the investment made by the taxpayer ultimately
5 claiming this credit; and investment tax credit allocation
6 ratios greater than 1.0 of credit for every dollar invested
7 shall not be allowed. In addition, the credit shall be allowed
8 only in accordance with subsection (a).

9 ~~[(j) For investments made on or after May 1, 2009, this~~
10 ~~section shall be subject to section 235-109.5.~~

11 ~~(k)]~~ (j) This section shall not apply to taxable years
12 beginning after December 31, 2010."

13 SECTION 2. Section 241-4.8, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "**§241-4.8 High technology business investment tax credit.**

16 ~~[(a)]~~ The high technology business investment tax credit
17 provided under section 235-110.9 shall be operative for this
18 chapter on July 1, 1999.

19 ~~[(b) For investments made on or after May 1, 2009, this~~
20 ~~section shall be subject to section 235-109.5.]"~~



1 SECTION 3. Section 431:7-209, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§431:7-209 High technology business investment tax
4 credit. [~~a~~] The high technology business investment tax
5 credit provided under section 235-110.9 shall be operative for
6 this chapter on July 1, 1999.

7 [~~b~~ For investments made on or after May 1, 2009, this
8 section shall be subject to section 235-109.5.] "

9 SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is
10 amended by amending subsection (d) to read as follows:

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

- 15 (1) Allocations of the high technology business investment
- 16 tax credit allowed by section 235-110.9 for
- 17 investments made before May 1, 2009;
- 18 (2) Allocations of net operating loss pursuant to section
- 19 235-111.5;



1 ~~[(3) Allocations of the attractions and educational~~
2 ~~facilities tax credit allowed by section 235-110.46,]~~

3 or

4 ~~[(4)]~~ (3) Allocations of low-income housing tax credits
5 among partners under section 235-110.8."

6 SECTION 5. Section 235-109.5, Hawaii Revised Statutes, is
7 repealed.

8 ~~["~~§235-109.5~~ Credits against income, claim limitation.~~

9 ~~(a) Notwithstanding any law to the contrary providing for a tax~~
10 ~~credit that may be claimed against a taxpayer's tax liability~~
11 ~~under section 235-110.51, 235-110.9, 241-4.8, or 431:7-209 for~~
12 ~~taxable years beginning on or after January 1, 2009, and ending~~
13 ~~before January 1, 2011, no claim for these tax credits shall~~
14 ~~exceed eighty per cent of the taxpayer's tax liability for the~~
15 ~~taxable year in which the credit is claimed, and any tax credits~~
16 ~~claimed shall not result in any credit carryovers.~~

17 ~~(b) This section shall apply to investments made,~~
18 ~~renovation costs incurred, or eligible depreciable tangible~~
19 ~~property placed in service on or after May 1, 2009."]~~

20 SECTION 6. Section 235-110.46, Hawaii Revised Statutes, is
21 repealed.



1 ~~["§235-110.46] Attractions and educational facilities tax~~
2 ~~credit; Ko Olina Resort and Marina; Makaha Resort.~~ (a) There
3 shall be allowed to each qualified taxpayer subject to the taxes
4 imposed by this chapter or chapter 237, 237D, 238, 239, 241, or
5 431, a tax credit [that] may be claimed for taxable years
6 beginning after December 31, 2004, for qualified costs in the
7 development of facilities for attractions and educational
8 purposes at Ko Olina Resort and Marina and at Makaha Resort.
9 The tax credit shall be deductible from the taxpayer's net
10 income tax liability, if any, imposed by this chapter and, at
11 the election of the taxpayer, from the tax liability imposed by
12 chapters 237, 237D, 238, 239, 241, and 431.

13 ~~(b) The tax credit earned shall be equal to the qualified~~
14 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~
15 ~~maximum of \$75,000,000 of credits in the aggregate for all~~
16 ~~qualified taxpayers for all years; provided that notwithstanding~~
17 ~~the amount of tax credits earned in any year, a maximum of~~
18 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~
19 ~~taxpayers may be used in any one taxable year. The credits over~~
20 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~
21 ~~case of a partnership, limited liability company, S corporation,~~



1 ~~estate, trust, or association of apartment owners, the tax~~
2 ~~credit allowable is for qualified costs incurred by the entity.~~
3 ~~The costs upon which the tax credit is computed shall be~~
4 ~~determined at the entity level.~~

5 ~~(c) To qualify for the tax credit, a taxpayer shall:~~

6 ~~(1) Have expended qualified costs on and be developing a~~
7 ~~world class aquarium and marine science and mammal~~
8 ~~research facility at Ko Olina Resort and Marina; and~~

9 ~~(2) Dedicate one half of the net operating income of the~~
10 ~~world class aquarium to the State, beginning on the~~
11 ~~first day of the seventeenth year following the year~~
12 ~~in which the attractions and educational facilities~~
13 ~~credit was first taken; or~~

14 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~
15 ~~portion of the Makaha Resort for use as training and~~
16 ~~educational facilities for a period of not less than~~
17 ~~six years to a taxpayer meeting the requirements of~~
18 ~~subsection (c) (1).~~

19 ~~(d) If the tax credit under this section exceeds~~
20 ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~
21 ~~taxable year or exceeds the taxpayer's tax liability under this~~



1 ~~chapter or chapters 237, 237D, 238, 239, 241, and 431 for any~~
2 ~~year for which the credit is taken, the excess of the tax credit~~
3 ~~may be used as a credit against the taxpayer's tax liability for~~
4 ~~the taxes set forth in this section in subsequent years until~~
5 ~~exhausted; provided that the taxpayer may continue to claim the~~
6 ~~credit provided in this section if the qualified costs are~~
7 ~~incurred before June 1, 2009, subject to the monetary ceilings~~
8 ~~in subsection (b).~~

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

15 ~~(f) If, at any time during the six year period in which~~
16 ~~tax credits are earned under this section, the costs incurred no~~
17 ~~longer meet the definition of qualified costs, the credits~~
18 ~~claimed under this section shall be recaptured. The recapture~~
19 ~~shall be equal to one hundred per cent of the total tax credits~~
20 ~~claimed under this section for the preceding taxable year;~~
21 ~~provided that the amount of the credits recaptured shall apply~~



1 ~~only to those costs that no longer meet the definition of~~
2 ~~qualified costs. The amount of the recaptured tax credits~~
3 ~~determined under this subsection shall be added to the~~
4 ~~taxpayer's tax liability for the taxable year in which the~~
5 ~~recapture occurs under this subsection.~~

6 ~~(g) If any credit is claimed under this section, then no~~
7 ~~taxpayer shall claim a credit under any chapter identified in~~
8 ~~this section for the same qualified costs for which a credit is~~
9 ~~claimed under this section.~~

10 ~~(h) The director of taxation shall prepare any forms that~~
11 ~~may be necessary to claim a credit under this section. The~~
12 ~~director may also require the taxpayer to furnish information to~~
13 ~~ascertain the validity of the claims for credits made under this~~
14 ~~section and may adopt rules necessary to effectuate the purposes~~
15 ~~of this section pursuant to chapter 91.~~

16 ~~Every qualified taxpayer, no later than March 31 of each~~
17 ~~year in which qualified costs were expended in the previous~~
18 ~~taxable year, shall submit a written, certified statement to the~~
19 ~~director of business, economic development, and tourism, in the~~
20 ~~form specified by the director of business, economic~~
21 ~~development, and tourism, identifying:~~



- 1 ~~(1) Qualified costs, if any, expended in the previous~~
2 ~~taxable year;~~
- 3 ~~(2) The amount of tax credits claimed pursuant to this~~
4 ~~section, if any, in the previous taxable year; and~~
- 5 ~~(3) The tax liability under this chapter and chapters 237,~~
6 ~~237D, 238, 239, 241, and 431 against which the tax~~
7 ~~credits are claimed.~~

8 ~~Any other law to the contrary notwithstanding, a statement~~
9 ~~submitted under this subsection shall be a public document.~~

10 ~~(i) The department of business, economic development, and~~
11 ~~tourism shall maintain records of the names of taxpayers~~
12 ~~eligible for the credits and the total amount of qualified costs~~
13 ~~incurred from June 1, 2003, through May 31, 2009. The~~
14 ~~department of business, economic development, and tourism shall~~
15 ~~verify all qualified costs and, upon each determination, shall~~
16 ~~issue a certificate to the taxpayer certifying:~~

- 17 ~~(1) The amount of the qualified costs; and~~
- 18 ~~(2) The amount of tax credit that the taxpayer is allowed~~
19 ~~to use for the taxable year.~~

20 ~~The department of business, economic development, and~~
21 ~~tourism shall certify no more than \$7,500,000 in credits in the~~



1 ~~aggregate for all taxpayers for each taxable year, provided that~~
2 ~~the department may verify qualified costs of no more than~~
3 ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~
4 ~~taxpayer shall file the certificate with the taxpayer's return~~
5 ~~with the department of taxation.~~

6 ~~(j) As used in this section:~~

7 ~~"Ko Olina Resort and Marina" means the six hundred forty-~~
8 ~~two acres reclassified to urban district by Decision and Order~~
9 ~~entered on September 12, 1985, in Docket A83-562, by the land~~
10 ~~use commission.~~

11 ~~"Makaha Resort" means the three hundred thirty two acre~~
12 ~~property identified as tax map keys (1) 8-04-002 parcels 51, 52,~~
13 ~~53, 54, 55, and 67 and (1) 8-04-029-142.~~

14 ~~"Qualified costs" means any costs for plans, design, and~~
15 ~~construction, costs for equipment that is permanently affixed to~~
16 ~~a building or structure, and acquisition of facilities for~~
17 ~~educational purposes, up to a total of \$75,000,000 in the~~
18 ~~aggregate, incurred after May 31, 2003, and before June 1, 2009,~~
19 ~~at either or both of:~~

20 ~~(1) Ko Olina Resort and Marina for the development of~~
21 ~~facilities for attractions and educational purposes,~~



1 ~~and for infrastructure within the Ko Olina Resort and~~
2 ~~Marina that is directly related to those facilities,~~
3 ~~including a world class aquarium, marine science and~~
4 ~~mammal research facilities, international sports~~
5 ~~training complex, a travel industry management intern~~
6 ~~campus, infrastructure for the transfer of ocean~~
7 ~~waters to the aquarium or marine mammal facilities, or~~
8 ~~both, seawater air conditioning, and other educational~~
9 ~~facilities developed or operated in cooperation with~~
10 ~~the University of Hawaii or other educational~~
11 ~~institutions, or~~

12 ~~(2) Makaha Resort for the development of a training and~~
13 ~~educational facility within a working resort and~~
14 ~~hotel,~~

15 ~~provided that "qualified costs" shall not include land~~
16 ~~acquisition costs.~~

17 ~~"Qualified taxpayer" means a person who fulfills the~~
18 ~~requirements of subsection (c)."]~~

19 SECTION 7. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.



1 SECTION 8. This Act shall not cause the expiration of any
2 tax credits legally claimed and carried forward in accordance
3 with law in effect prior to enactment of this Act.

4 SECTION 9. This Act shall take effect upon its approval.



Report Title:

Net Income Tax; Tax Credit

Description:

Repeals various sections of Hawaii net income tax laws for the purpose of deleting obsolete and unnecessary provisions. (HB147 HD1)

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

