
A BILL FOR AN ACT

RELATING TO RENEWABLE FUELS TAX CREDIT.

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

1 SECTION 1. The legislature finds that section 235-110.31,
2 Hawaii Revised Statutes, enacted by Act 202, Session Laws of
3 Hawaii 2016, establishes a renewable fuels production tax credit
4 with the intent to create a stronger market for renewable fuels
5 and promote the production of locally grown feedstock. Under
6 this process, the department of business, economic development,
7 and tourism's duties are as follows:

8 (1) Certify the amount and type of renewable fuels
9 produced and sold, including the purpose for which the
10 fuel was produced;

11 (2) Issue a certificate to the taxpayer verifying the
12 amount of renewable fuels produced and sold, the
13 credit amount certified for each taxable year, and the
14 cumulative amount of the tax credit during the credit
15 period;

16 (3) Administer the \$3,000,000 annual aggregate cap;

17 (4) Develop forms that renewable fuels taxpayers must
18 submit to both the department of taxation and the



1 department of business, economic development, and
2 tourism prior to the production of any renewable fuels
3 for the year;

4 (5) Collect data annually from the taxpayer of renewable
5 fuels producers, including the number of British
6 thermal units produced and sold; types of fuels;
7 feedstock used for renewable fuels production; number
8 of facility employees and each employee's state of
9 residency; projections for next year's British thermal
10 units production; and

11 (6) Submit written reports to the governor and legislature
12 inclusive of:

13 (A) The number, location, and production of renewable
14 fuels production facilities in the State and
15 outside the State that have claimed a credit;

16 (B) The total number of British thermal units of
17 renewable fuels, broken down by type of fuel,
18 produced and sold during the previous year; and

19 (C) The projected number of British thermal units of
20 renewable fuels production for the succeeding
21 year.



1 However, the department of business, economic development,
2 and tourism lacks: (i) expertise in tax accounting; (ii)
3 specific knowledge of fuels production industries sufficient to
4 verify the actual renewable fuels production; and (iii) the
5 required resources, including management database and budget and
6 human resource allocation, to administer the requirements. Such
7 resources or expertise would be required to effectively conduct
8 the department of business, economic development, and tourism's
9 certification and administration requirements under section 235-
10 110.31, Hawaii Revised Statutes.

11 In order to address this discrepancy, the purpose of this
12 Act is to replace the department of business, economic
13 development, and tourism's requirements associated with the
14 certification, administration, and verification of the renewable
15 fuels production tax credit with a survey of the renewable fuels
16 production tax credit. The survey would still allow the
17 department of business, economic development, and tourism to
18 assess the effectiveness of this tax credit and report its
19 findings to the governor and legislature.

20 SECTION 2. Section 235-110.31, Hawaii Revised Statutes, is
21 amended to read as follows:



1 "[+]§235-110.31[+] **Renewable fuels production tax credit.**

2 (a) As used in this section:

3 "Credit period" means a maximum period of five consecutive
4 years, beginning from the first taxable year in which a taxpayer
5 begins renewable fuels production at a level of at least fifteen
6 billion British thermal units of renewable fuels per calendar
7 year.

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

10 "Renewable feedstocks" means:

- 11 (1) Biomass crops;
- 12 (2) Agricultural residues;
- 13 (3) Oil crops, including but not limited to algae, canola,
14 jatropha, palm, soybean, and sunflower;
- 15 (4) Sugar and starch crops, including but not limited to
16 sugar cane and cassava;
- 17 (5) Other agricultural crops;
- 18 (6) Grease and waste cooking oil;
- 19 (7) Food wastes;
- 20 (8) Municipal solid wastes and industrial wastes;
- 21 (9) Water; and



1 (10) Animal residues and wastes,
2 that can be used to generate energy.

3 "Renewable fuels" means fuels produced from renewable
4 feedstocks~~[+]~~, provided that~~[+]~~ such fuel:

5 (1) ~~[The fuels shall be]~~ Is sold as a fuel~~[+]~~ in Hawaii;
6 and

7 (2) ~~[The fuels meet]~~ Meets the relevant ASTM International
8 specifications ~~[for the particular fuel]~~ or other
9 industry specifications for ~~[liquid or gaseous fuels,]~~
10 the particular fuel, including but not limited to:

11 (A) Methanol, ethanol, or other alcohols;

12 (B) Hydrogen;

13 (C) Biodiesel or renewable diesel;

14 (D) Biogas;

15 (E) Other biofuels; or

16 (F) Renewable jet fuel or renewable gasoline.

17 (b) Each year during the credit period, there shall be
18 allowed to each taxpayer subject to the taxes imposed by this
19 chapter, a renewable fuels production tax credit that shall be
20 applied to the taxpayer's net income tax liability, if any,



1 imposed by this chapter for the taxable year in which the credit
2 is properly claimed.

3 For each taxpayer producing renewable fuels, the annual
4 dollar amount of the renewable fuels production tax credit
5 during the five-year credit period shall be equal to 20 cents
6 per seventy-six thousand British thermal units of renewable
7 fuels using the lower heating value sold for distribution in
8 Hawaii; provided that the taxpayer's production of renewable
9 fuels is not less than fifteen billion British thermal units of
10 renewable fuels per calendar year; provided further that the
11 amount of the tax credit claimed under this section by a
12 taxpayer shall not exceed \$3,000,000 per taxable year. No other
13 tax credit may be claimed under this chapter for the costs
14 ~~[related to]~~ incurred in producing the renewable fuels
15 ~~[production]~~ that are used to properly claim a tax credit under
16 this section for the taxable year.

17 (c) ~~[The department of business, economic development, and~~
18 ~~tourism shall:~~

19 ~~(1) Verify the amount and type of renewable fuels produced~~
20 ~~and sold, including the purpose for which the fuel was~~
21 ~~produced;~~



1 ~~(2) Total all renewable fuels production that the~~
2 ~~department of business, economic development, and~~
3 ~~tourism certifies for purposes of paragraph (3); and~~

4 ~~(3) Certify the total amount of the tax credit for each~~
5 ~~taxable year and the cumulative amount of the tax~~
6 ~~credit during the credit period.~~

7 ~~Upon each determination, the department of business, economic~~
8 ~~development, and tourism shall issue a certificate to the~~
9 ~~taxpayer verifying the amount of renewable fuels produced and~~
10 ~~sold, the credit amount certified for each taxable year, and the~~
11 ~~cumulative amount of the tax credit during the credit period.~~

12 ~~The taxpayer shall file the certificate with the taxpayer's tax~~
13 ~~return with the department of taxation. Notwithstanding the~~
14 ~~department of business, economic development, and tourism's~~
15 ~~certification authority under this section, the director of~~
16 ~~taxation may audit and adjust the certification to conform to~~
17 ~~the facts.~~

18 ~~If in any year, the annual amount of certified credits~~
19 ~~reaches \$3,000,000 in the aggregate, the department of business,~~
20 ~~economic development, and tourism shall immediately discontinue~~
21 ~~certifying credits and notify the department of taxation. In no~~



1 ~~instance shall the total amount of certified credits exceed~~
2 ~~\$3,000,000 per year. Notwithstanding any other law to the~~
3 ~~contrary, the verification and certification information~~
4 ~~compiled by the department of business, economic development,~~
5 ~~and tourism shall be available for public inspection and~~
6 ~~dissemination under chapter 92F.] Not later than thirty days~~
7 ~~following the close of the calendar year, every taxpayer~~
8 ~~claiming a credit under this section shall complete and file a~~
9 ~~certified statement with the department of business, economic~~
10 ~~development, and tourism in the form prescribed by the~~
11 ~~department of business, economic development, and tourism~~
12 ~~providing the following information:~~

- 13 (1) The type, quantity, and British thermal unit value,
14 using the lower heating value, of each qualified fuel,
15 broken down by the type of fuel, produced and sold
16 during the previous calendar year;
- 17 (2) The feedstock used for each type of qualified fuel;
- 18 (3) The proposed total amount of credit to which the
19 taxpayer is entitled;



1 (4) The number of full-time and number of part-time
2 employees of the facility and those employees' states
3 of residency, totaled per state; and

4 (5) The number and location of all renewable fuel
5 production facilities within and outside of the State;
6 provided that the taxpayer claiming the credit is responsible
7 for any costs related to obtaining the certification.

8 ~~(d) [If the credit under this section exceeds the~~
9 ~~taxpayer's net income tax liability, the excess of the credit~~
10 ~~over liability may be used as a credit against the taxpayer's~~
11 ~~net income tax liability in subsequent years until exhausted.~~
12 ~~All claims for a credit under this section shall be properly~~
13 ~~filed on or before the end of the twelfth month following the~~
14 ~~close of the taxable year for which the credit may be claimed.~~
15 ~~Failure to comply with the foregoing provision shall constitute~~
16 ~~a waiver of the right to claim the credit.] Within thirty~~
17 ~~calendar days after the due date of the statement required under~~
18 ~~subsection (c), the department of business, economic~~
19 ~~development, and tourism shall:~~

20 (1) Acknowledge receipt of the statement in writing; and



1 (2) Issue a certificate to the taxpayer reporting the
2 amount of renewable fuels produced and sold, the
3 amount of credit that the taxpayer is entitled to
4 claim for the previous calendar year, and the
5 cumulative amount of the tax credit during the credit
6 period.

7 ~~(e) [Prior to production of any renewable fuels for the~~
8 ~~year, the taxpayer shall provide written notice of the~~
9 ~~taxpayer's intention to begin production of renewable fuels.~~
10 ~~The information shall be provided to the department of taxation~~
11 ~~and the department of business, economic development, and~~
12 ~~tourism on forms provided by the department of business,~~
13 ~~economic development, and tourism, and shall include information~~
14 ~~on the taxpayer, facility location, facility production~~
15 ~~capacity, anticipated production start date, and taxpayer's~~
16 ~~contact information. Notwithstanding any other law to the~~
17 ~~contrary, this taxpayer and facility information shall be~~
18 ~~available for public inspection and dissemination under chapter~~
19 ~~92F.] The taxpayer shall file the certificate issued under~~
20 ~~subsection (d) with the taxpayer's tax return with the~~



1 department of taxation. The director of taxation may audit and
2 adjust the certification to conform to the facts.

3 (f) [~~The taxpayer shall provide written notice to the~~
4 ~~director of taxation and the director of business, economic~~
5 ~~development, and tourism within thirty days following the start~~
6 ~~of production. The notice shall include the production start~~
7 ~~date and expected renewable fuels production for the next twelve~~
8 ~~months. Notwithstanding any other law to the contrary, this~~
9 ~~production information shall be available for public inspection~~
10 ~~and dissemination under chapter 92F.] The total amount of tax
11 credits allowed under this section shall not exceed \$3,000,000
12 for all taxpayers in any taxable year. If the credit claims
13 under this section exceed \$3,000,000 for all eligible taxpayers
14 in any given calendar year, the \$3,000,000 shall be divided
15 among all eligible taxpayers for that year in proportion to the
16 total amount of renewable fuels produced by all eligible
17 taxpayers. Upon reaching \$3,000,000 in the aggregate, the
18 department of business, economic development, and tourism shall
19 immediately discontinue issuing certificates and notify the
20 department of taxation. In no instance shall the total dollar
21 amount of certificates issued exceed \$3,000,000 per year.~~



1 (g) ~~[Each calendar year during the credit period, the~~
2 ~~taxpayer shall provide information to the director of business,~~
3 ~~economic development, and tourism on:~~

4 ~~(1) The number of British thermal units of renewable fuels~~
5 ~~produced and sold during the previous calendar year;~~

6 ~~(2) The type of fuels;~~

7 ~~(3) Feedstocks used for renewable fuels production;~~

8 ~~(4) The number of employees of the facility and each~~
9 ~~employee's state of residency; and~~

10 ~~(5) The projected number of British thermal units of~~
11 ~~renewable fuels production for the succeeding year.]~~

12 Notwithstanding any other law to the contrary, the information
13 compiled by the department of business, economic development,
14 and tourism shall be available for public inspection and
15 dissemination subject to chapter 92F.

16 (h) ~~[In the case of a partnership, S corporation, estate,~~
17 ~~or trust, distribution and share of the renewable fuels~~
18 ~~production tax credit shall be determined pursuant to section~~
19 ~~704(b) (with respect to partner's distributive share) of the~~
20 ~~Internal Revenue Code.] If the credit under this section exceeds~~
21 the taxpayer's net income tax liability, the excess of the



1 credit over liability may be used as a credit against the
 2 taxpayer's net income tax liability in subsequent years until
 3 exhausted. All claims for a credit under this section shall be
 4 properly filed on or before the end of the twelfth month
 5 following the close of the taxable year for which the credit may
 6 be claimed. Failure to comply with the foregoing provision or
 7 to provide the certified statement required under subsection (c)
 8 shall constitute a waiver of the right to claim the credit.

9 (i) ~~[Following each year in which a credit under this~~
 10 ~~section has been claimed, the director of business, economic~~
 11 ~~development, and tourism shall submit a written report to the~~
 12 ~~governor and legislature regarding the production and sale of~~
 13 ~~renewable fuels. The report shall include:~~

14 ~~(1) The number, location, and production of renewable~~
 15 ~~fuels production facilities in the State and outside~~
 16 ~~the State that have claimed a credit under this~~
 17 ~~section;~~

18 ~~(2) The total number of British thermal units of renewable~~
 19 ~~fuels, broken down by type of fuel, produced and sold~~
 20 ~~during the previous year; and~~



1 ~~(3) The projected number of British thermal units of~~
2 ~~renewable fuels production for the succeeding year.]~~

3 Prior to production of any renewable fuels for the calendar
4 year, the taxpayer shall provide written notice of the
5 taxpayer's intention to begin production of renewable fuels.
6 The written notice shall be provided to the department of
7 taxation and the department of business, economic development,
8 and tourism, and shall include information on the taxpayer,
9 facility location, facility production capacity, anticipated
10 production start date, and the taxpayer's contact information.
11 Notwithstanding any other law to the contrary, the written
12 notice described in this subsection, including taxpayer and
13 facility information, shall be available for public inspection
14 and dissemination subject to chapter 92F.

15 (j) ~~[The director of taxation shall prepare forms that may~~
16 ~~be necessary to claim a credit under this section. The director~~
17 ~~of taxation may require the taxpayer to furnish information to~~
18 ~~ascertain the validity of the claim for credit made under this~~
19 ~~section and may adopt rules necessary to effectuate the purposes~~
20 ~~of this section pursuant to chapter 91.]~~ The taxpayer shall
21 provide written notice to the director of taxation and the



1 director of business, economic development, and tourism within
2 thirty days following the start of production. The notice shall
3 include the production start date and expected renewable fuels
4 production for the next twelve months. Notwithstanding any
5 other law to the contrary, the written notice described in this
6 subsection shall be available for public inspection and
7 dissemination subject to chapter 92F.

8 (k) In the case of a partnership, S corporation, estate,
9 or trust, distribution and share of the renewable fuels
10 production tax credit shall be determined pursuant to section
11 704(b) (with respect to a partner's distributive share) of the
12 Internal Revenue Code of 1986, as amended. For a fiscal year
13 taxpayer, the taxpayer shall report such credit in the taxable
14 year in which the calendar year end is included.

15 (l) Following each calendar year in which a credit under
16 this section has been claimed, the director of business,
17 economic development, and tourism shall submit a written report
18 to the governor and legislature regarding the production and
19 sale of renewable fuels. The report shall include:



- 1 (1) The number and location of renewable fuels production
2 facilities in the State and outside the State that
3 have claimed a credit under this section;
4 (2) The total number of British thermal units of renewable
5 fuels, broken down by type of fuel produced and sold
6 during the previous calendar year; and
7 (3) The projected number of British thermal units of
8 renewable fuels production for the succeeding year.
9 (m) The director of taxation shall prepare forms that may
10 be necessary to claim a credit under this section. The director
11 of taxation may require the taxpayer to furnish information to
12 ascertain the validity of the claim for credit made under this
13 section and may adopt rules pursuant to chapter 91 necessary to
14 effectuate the purposes of this section."

15 SECTION 3. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 4. This Act, upon its approval, shall apply to
18 taxable calendar years beginning after December 31, 2017.

19



Report Title:

Tax Credit; Renewable Fuels Production

Description:

Replaces the Department of Business, Economic Development, and Tourism requirements related to the certification, administration and verification of the renewable fuels production tax credit with a survey. (SD1)

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