

JAN 21 2022

A BILL FOR AN ACT

RELATING TO THE 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
11 December 31, 2011, irrespective of any subsequent changes to
12 section 41 of the Internal Revenue Code, shall remain in effect
13 for purposes of determining the state income tax credit under
14 this section; provided further that the federal tax provisions
15 in section 41 of the Internal Revenue Code, as enacted on
16 December 31, 2011, irrespective of any subsequent amendments to
17 section 41 of the Internal Revenue Code, shall apply only to



1 expenses incurred for qualified research activities after
2 December 31, 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; provided that
6 references to the base amount in section 41 of the Internal
7 Revenue Code shall not apply, and credit for all qualified
8 research expenses may be taken without regard to the amount of
9 expenses for previous years.

10 (c) There shall be allowed to each qualified high
11 technology business subject to the tax imposed by this chapter
12 an income tax credit for qualified research activities equal to
13 the credit for research activities provided by section 41 of the
14 Internal Revenue Code and as modified by this section; provided
15 that, in addition to any other requirements established in this
16 section, in order to qualify for the tax credit established in
17 this section, the qualified high technology business shall also
18 claim a federal tax credit for the same qualified research
19 activities under section 41 of the Internal Revenue Code, as
20 enacted on December 31, 2011, irrespective of any subsequent
21 amendments to section 41 of the Internal Revenue Code. The



1 credit shall be deductible from the taxpayer's net income tax
2 liability, if any, imposed by this chapter for the taxable year
3 in which the credit is properly claimed. Each taxpayer,
4 together with all of its related entities including subsidiaries
5 or business entities with common ownership structures, shall not
6 be eligible for more than \$2,500,000 in tax credits provided by
7 this section per taxable year.

8 (d) ~~[Every]~~ To be eligible for the tax credit, every
9 qualified high technology business, [before March 31 of each
10 year] no later than the last day of the third month immediately
11 following the end of each taxable year in which qualified
12 research and development activity was conducted ~~[in the previous~~
13 ~~taxable year]~~, shall, at a minimum, submit [a written, certified
14 ~~statement]~~ each of the following to the department of business,
15 economic development, and tourism ~~[identifying]:~~

16 (1) Qualified expenditures, if any, expended in the
17 previous taxable year; ~~[and]~~

18 (2) The amount of tax credits claimed pursuant to this
19 section, if any, in the previous taxable year~~[+]~~;

20 (3) The industry sector or sectors in which the qualified
21 high technology business conducts business, as set



1 forth in paragraphs (2) to (8) of the definition of
2 "qualified research" in section 235-7.3(c);

3 (4) Revenue and expense data, including a breakdown of any
4 licensing royalty or other forms of income generated
5 from intellectual property;

6 (5) Hawaii employment and wage data, including the numbers
7 of full-time and part-time employees retained, new
8 jobs, temporary positions, external services procured
9 by the business, and payroll taxes;

10 (6) The number of filed intellectual property, including
11 invention disclosures, provisional patents, and
12 patents issued or granted;

13 (7) The number of new companies spun out or established in
14 Hawaii to commercialize the intellectual property
15 owned by the qualified high technology business; and

16 (8) A written declaration signed by an officer of the
17 qualified high technology business certifying that the
18 information that is submitted is true and correct as
19 to every material matter; provided that the
20 certification shall be subject to the penalties



1 provided in section 231-36, including monetary fines
2 or imprisonment.

3 Failure to meet the requirements of this subsection shall
4 constitute a waiver of the right to claim the tax credit.

5 The department of business, economic development, and
6 tourism shall request information in the categories identified
7 in paragraphs (1) to (8) sufficient to measure the effectiveness
8 of the tax credit under this section. The department of
9 business, economic development, and tourism may request any
10 additional information necessary to measure the effectiveness of
11 the tax credit, such as additional information related to
12 patents.

13 (e) The department of business, economic development, and
14 tourism shall:

15 (1) Maintain records of the names and addresses of the
16 taxpayers claiming the credits under this section and
17 the total amount of the qualified research and
18 development activity costs upon which the tax credit
19 is based;



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

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

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

Upon each determination made under this subsection, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying information submitted to the department of business, economic development, and tourism, including the qualifying costs or expenditure amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation.

Notwithstanding the authority of the department of business, economic development, and tourism under this section, the director of taxation may audit and adjust the tax credit amount to conform to the facts.



1 The department of business, economic development, and
2 tourism may assess and collect a fee to offset the costs of
3 certifying tax credit claims under this section.

4 (f) If in any [~~taxable~~] calendar year the annual amount of
5 certified credits reaches [~~\$5,000,000~~] \$15,000,000 in the
6 aggregate, the department of business, economic development, and
7 tourism shall immediately discontinue certifying credits and
8 notify the department of taxation. In no instance shall the
9 department of business, economic development, and tourism
10 certify a total amount of credits exceeding [~~\$5,000,000~~]
11 \$15,000,000 per [~~taxable~~] calendar year. To comply with this
12 restriction, the department of business, economic development,
13 and tourism shall certify credits on a [~~first-come, first~~
14 ~~served~~] first-come, first-served basis[-], which is determined
15 based on the date and time a complete application is received by
16 the department of business, economic development, and tourism.
17 If all \$15,000,000 is not expended within the first twenty-four
18 hours that the applications are made available, the department
19 of business, economic development, and tourism shall certify any
20 remaining credits after that date to companies on a pro rata
21 basis.



1 The department of taxation shall not allow the aggregate
2 amount of credits claimed to exceed that amount per taxable
3 year.

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

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

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



~~the calendar year in which the credit may be claimed under this section. The department of business, economic development, and tourism may adjust the due date of the annual survey by rules adopted pursuant to chapter 91.~~

~~(j) The annual survey under subsection (i) shall include the following information for the time period or periods specified by the department of business, economic development, and tourism:~~

~~(1) Identification of the industry sector or sectors in which the qualified high technology business conducts business, as set forth in paragraphs (2) to (8) of the definition of "qualified research" in section 235-7.3(c);~~

~~(2) Total expenditures and the qualified expenditures, if any, expended in the previous taxable year;~~

~~(3) Revenue and expense data, including a breakdown of any licensing royalty or other forms of income generated from intellectual property;~~

~~(4) Hawaii employment and wage data, including the numbers 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.~~

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

20 ~~(k)]~~ (i) The department of business, economic development,
21 and tourism shall use information collected under this section



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

12 ~~[(1)]~~ (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;



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

(4) External services and materials procured by the businesses;

(5) The compensation levels of jobs provided by qualified high technology businesses;

(6) Qualified research activities; and

(7) Any other factors the department of business, economic development, and tourism deems relevant.

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

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

~~[(n)]~~ (l) This section shall not apply to taxable years beginning after December 31, 2024.

~~[(o)]~~ (m) As used in this section:

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

"Qualified research" shall have the same meaning as in section 41(d) of the Internal Revenue Code.



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 outside of the
4 State."

5 SECTION 2. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 3. This Act, upon its approval, shall apply to
8 taxable years beginning after December 31, 2021.

9
INTRODUCED BY:  _____



S.B. NO. 2599

Report Title:

Tax Credit for Research Activities; Requirements; Survey;
Certification; Caps

Description:

Adds a cap for an eligible taxpayer and the taxpayer's related entities per taxable year; consolidates the survey and certification requirements; amends the annual aggregate cap; and requires certification on a first-come, first-served basis to be based on the date a complete application is received, subject to certain conditions, for the tax credit for research activities.

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