



Hawaii Technology Development Corporation
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JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

Written Statement of
Wayne Inouye
Interim Director
Hawaii Technology Development Corporation
before the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Thursday, February 1, 2024
1:00 PM
State Capitol, Conference Room #229

In consideration of
SB2497
RELATING TO TAXATION.

Chair Decoite, Vice Chair Wakai, and members of the Committee.

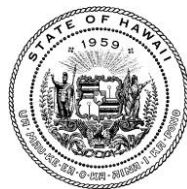
The Hawaii Technology Development Corporation (HTDC) strongly supports SB2497 that amends the tax credit for research activities by: (1) increasing the amount of the credit to \$10,000,000; (2) extending the sunset date of the credit to 12/31/29; and (3) amending the definition of qualified high technology businesses that are eligible to claim the credit.

Research activities have been effective in stimulating the economy and creating quality jobs in the State. For the past two years, the \$5,000,000 cap for the income tax credit for research activities was reached almost as soon as the online applications were opened. By supporting the amendments outlined in the bill HTDC hopes to see a wider distribution of tax credits to qualified companies for a longer period.

Thank you for the opportunity to testify.

JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION

Ka 'Oihana 'Auhau
P.O. BOX 259

HONOLULU, HAWAII 96809
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GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

**TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION**

TESTIMONY ON THE FOLLOWING MEASURE:

S.B. No. 2497, Relating to Taxation

BEFORE THE:

Senate Committee on Energy, Economic Development, and Tourism

DATE: Thursday, February 1, 2024

TIME: 1:00 p.m.

LOCATION: State Capitol, Room 229

Chair DeCoite, Vice-Chair Wakai, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 2497 for your consideration.

SB 2497 makes several changes to section 235-110.91, Hawaii Revised Statutes (HRS), which governs the tax credit for research activities, including:

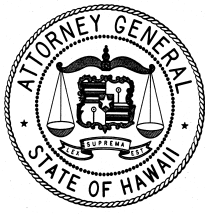
- (1) Raising the aggregate annual cap on certified credits from \$5,000,000 per year to \$10,000,000 per year;
- (2) Amending the definition of "qualified high technology business" eligible for the credit from "a business that conducts more than fifty per cent of its activities in qualified research," to a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that is domiciled and registered to do business in the State; is independently owned and operated; employs fewer than five hundred full-time or part-time employees in the State, including affiliates; and conducts more than fifty per cent of its activities in qualified research; and
- (3) Extends the sunset provision to January 1, 2030.

The bill takes effect upon its approval and applies to taxable years beginning after December 31, 2023. On December 31, 2029, section 1 of this the bill will be

repealed and section 235-110.91 HRS will be reenacted in the form in which it read on the day prior to the effective date of this bill.

The Department defers to the Department of Business, Economic Development, and Tourism (DBEDT) on its ability to continue certifying this credit in light of the bill's proposed changes. However, the Department requests that the certification requirement be maintained., as the Department does not have sufficient subject-matter expertise to properly certify this credit.

The Department is able to administer S.B. 2497 as currently written. Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:
S.B. NO. 2497, RELATING TO TAXATION.

BEFORE THE:
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

DATE: Thursday, February 1, 2024 **TIME:** 1:00 p.m.

LOCATION: State Capitol, Room 229 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Tammy Kaneshiro, Deputy Attorney General

Chair DeCoite and Members of the Committee:

The Department of Attorney General provides the following comments regarding this bill.

This bill proposes to amend the tax credit for research activities in section 235-110.91, Hawaii Revised Statutes (HRS), by: (1) increasing the amount of the credit from \$5,000,000 to \$10,000,000; (2) extending the sunset date of the credit to December 31, 2029; and (3) amending the definition of "qualified high technology businesses" that are eligible to claim the credit.

Under the bill, a "qualified high technology business" eligible to claim the refundable tax credit is defined, in part, as a "domiciled" business in the State. See page 2, line 8. The tax credit will be available to businesses domiciled in the State, but not to similarly situated businesses domiciled in another State. "Resident" is defined, in pertinent part, in section 235-1, HRS, as an individual domiciled in the State. As such, this bill may be subject to challenge under the Privileges and Immunities Clause of the United States Constitution.

"The Privileges and Immunities Clause, U.S. Const., art. IV, § 2, provides that the Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several states." Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287, 290 (1998) (internal brackets and quotation marks omitted). The Privileges and Immunities Clause "prohibits a State from denying nonresidents a general tax exemption provided to

residents." Id. at 302. The Clause requires "substantial equality of treatment" for resident and nonresident taxpayers, such that "[w]here nonresidents are subject to different treatment, there must be 'reasonable grounds for . . . diversity of treatment,'" id. at 298 (quoting Travis v. Yale & Towne Mfg. Co., 252 U.S. 60, 79 (1920)). Thus, "the Privileges and Immunities Clause bars 'discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States.'" Id. (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948)). Accordingly, to overcome a challenge under the Privileges and Immunities Clause to a law that distinguishes between residents and nonresidents, a state must demonstrate that (1) "there is a substantial reason for the difference in treatment"; and (2) "the discrimination practiced against nonresidents bears a substantial relationship to the State's objective." Id. (quoting Supreme Court of N.H. v. Piper, 470 U.S. 274, 284 (1985)) (internal quotations omitted).

The U.S. Supreme Court has struck down a taxing scheme that only impacted nonresidents noting: "[t]he overwhelming fact, as the State concedes, is that the tax falls exclusively on the income of nonresidents; and it is not offset even approximately by other taxes imposed upon residents alone." Austin v. New Hampshire, 420 U.S. 656, 665, 95 S. Ct. 1191, 1197 (1975). Because a "qualified high technology business" eligible to claim the refundable tax credit must be domiciled in the State under the amended definition, this bill may be subject to challenge under the Privileges and Immunities Clause.

Therefore, we suggest amending the definition of "qualified high technology business" on page 2, line 8, by removing the word "domiciled."

Thank you for the opportunity to provide comments.



Chamber of Commerce HAWAII

The Voice of Business

Testimony to the Senate Committee on Energy, Economic Development, and Tourism
Thursday, February 1, 2024, at 1PM
Conference Room 229

RE: SB2497 Relating to Taxation

Chair DeCoite, Vice Chair Wakai, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports SB2497**, which amends the tax credit for research activities by increasing the amount of the credit to \$10,000,000, extends the sunset date, and amends the definition of qualified high technology businesses.

As advocates for innovation, The Chamber endorses the allocation of funds for research and development purposes. Investing in these endeavors not only propels scientific progress but also cultivates a culture of creativity and problem-solving. By supporting R&D, we pave the way for groundbreaking discoveries, technological advancements, and economic growth, ensuring a more lucrative future for our state.

To diversify Hawaii's economy and help Hawaii's economic recovery. The state needs to support Hawaii companies who are stuck between research and product realization. This bill will increase the aggregate cap so that more technology companies will be able to apply for the tax credit. In addition. It will narrow the qualifying criteria to encourage Hawaii-based R&D and will extend the program for an additional 5 years.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 2,000+ businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

Thank you for the opportunity to testify.



Statement of
Hermann Kugeler
Vice President of Business Development
Makai Ocean Engineering, Inc.
before the
Senate Committee on Energy, Economic Development, and Tourism
Thursday, February 1, 2024
1:00 pm
Videoconference
State Capitol, Conference Room 229
In consideration of
SB2497
RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.

Chair DeCoite, Vice Chair Wakai, and Members of the Committee

Makai Ocean Engineering, Inc. **SUPPORTS SB2497** with a request to increase the maximum credit cap to \$15,000,000 per year.

Makai is a locally-owned and operated technology company based in Hawai`i for 50 years. We are currently performing R&D on a variety of exciting ocean technology projects, including autonomous underwater vehicles, ocean thermal energy conversion (OTEC) and seawater air conditioning (SWAC) systems, submarine and subsea cable systems, and a Department of Energy project to grow and harvest macroalgae offshore in Hawaiian waters to produce a renewable biofuel alternative for transportation.

Makai has been successful in bringing in tens of millions of dollars in R&D funds from federal and international sponsors to Hawai`i, helping to stem the tide of “brain drain” of talented kama`aina kids going to the mainland. Makai is not unique among Hawaii technology companies in this. There is a tech community here that has made a strong economic impact in terms of high paying jobs, and demonstrated success in commercializing R&D, which has increased taxable revenue for the state, and brought home kama`aina scientists and engineers.

This bill allows Hawaii companies like Makai to outshine mainland peers in competitive federal R&D projects, bring home R&D dollars that greatly exceed the initial investment, and create a critical mass and a truly vibrant industry of innovative R&D companies in Hawaii. It helps expand and diversify Hawaii’s economy, and enable our tech industry to support high-paying, highly-skilled professional jobs for our keiki here at home.

This is why we **SUPPORT SB2497**, with the request to increase the maximum credit cap to \$15,000,000 per year, which would allow broader support of Hawaii’s Qualified high technology business, many of which were not able to receive the credits in prior years, because all of the funding was allocated in the first 23 seconds. This bill enables these businesses to continue spending monies on wages, materials and subcontractors **IN THE STATE OF HAWAII** and recognizes the importance of Hawaii’s innovation industries to our economy.

SB-2497

Submitted on: 1/30/2024 7:28:17 PM

Testimony for EET on 2/1/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ronald Weidenbach	Testifying for Hawaii Fish Company Inc.	Support	Written Testimony Only

Comments:

Hawaii Fish Company Inc. is a Hawaii-registered, family-owned, small business in Waialua, Oahu focused on innovative aquaculture technology R&D and local food production. We strongly support SB2497 which provides the opportunity for qualified high technology companies to obtain R&D tax credits on a first-come, first-served basis for R&D work conducted in Hawaii. This tax credit will help to offset the rising costs of performing high technology R&D work in Hawaii.



Written Statement of
MATTHEW SULLIVAN
DIRECTOR OF PRODUCT, OCEANIT

Before the
SENATE COMMITTEE ON ECONOMIC DEVELOPMENT AND TOURISM

Thursday, February 1, 2024, 1:00 p.m.
State Capitol, Conference Room 229 & Videoconference

In Support and Requested Changes to
SB2497 RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES

To: Senator Lynn DeCoite, Chair, Senator Glenn Wakai, Vice Chair and Members of the Committee

From: Matthew Sullivan, Director of Product

Re: Testimony in Support of SB2497

Honorable Chair, Vice-Chair and Committee Members: Thank you for the opportunity to submit testimony in **Support of SB2497**. I am submitting this testimony in my capacity as Director of Product at Oceanit.

Oceanit is one of the largest local science and engineering companies in the State of Hawaii and has been around for over 39 years. We employ over 100 local scientists and engineers in specialized fields such as artificial intelligence and nanomaterials, addressing global problems such as climate change and energy transformation.

We support SB249 as Hawaii's R&D tax credit is one of the few state policies to support the local tech industry.

The Hawaii R&D tax credit is a good investment for the State; therefore, the sunset date should be extended to 2030.

According to a 2021 UHERO report titled *The Hawaii Research Activity Tax Credit: Is It Effective and How Can It Be Improved?*, every \$1 in tax credits claimed generates an additional \$1-2 in additional spending in the State by private firms.

According to the *Report on Hawaii Tax Credit for Research Activities for Tax Year 2022* prepared by DBEDT, the average annual wage was \$88,612 for the 26 Qualified High Technology Businesses (QHTB) that applied for the Hawaii tax credit for research activities for the tax year 2022. In addition, 37 of 50 states in the U.S. offer an R&D tax credit. Hawaii's R&D tax credit enables Hawaii companies to compete with other states to recruit and retain more local talent and stem Hawaii's "Brain Drain".

To grow our local tech industry, the annual \$5 million cap should be increased.

In 2022, 26 companies applied for the Hawaii tax credit but only 9 received it due to the \$5 million annual cap. In aggregate, the 26 QHTBs generated a total of \$262.4 million in revenue from all goods and services produced in Hawaii, \$227.9 million as operating costs, and paid a total of \$101.1 million as payroll. A \$10 million cap will allow all Hawaii Qualified High Technology Businesses to receive the credit.



Hawaii Aerospace Corporation
3367 Waiialae Avenue Suite A.
Honolulu, Hawaii 96816 USA
EIN: 81-4980883 CAGE CODE: 75MP0

Written Statement of
Ryan Bradley, President
Hawaii Aerospace Corporation

Before the
SENATE COMMITTEE ON ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Thursday, February 1, 2024
1:00 p.m.
State Capitol, Conference Room 229 & Videoconference

In Support of
SB2497 RELATING TO TAXATION

To: Chair Senator Lynn Decoite and Vice Chair Glenn Wakai and Members of the Committee
From: Ryan Bradley, President of Hawaii Aerospace
Re: Testimony in Support of SB2497

Honorable Chair, Vice-Chair and Committee Members:

Thank you for the opportunity to submit testimony in **Support of SB2497**.

Hawaii's R&D tax credit is one of the few state policies to support the local tech industry. Hawaii Aerospace Corp is a local company in Kaimuki, Hawaii that maintains an agile team of well-trained and motivated Scientists, Engineers, Technicians and Craftsman. Specifically, this credit has allowed Hawaii Aerospace to participate in the research and development of instrumentation for flagship NASA science missions. These missions expand our fundamental understanding of the Universe however, along with the tax credit, they also provide opportunity for our local tech community to expand and thrive by offering services including research and development, engineering support, integration.

The tax credit for research activities will bring more technical jobs to Hawaii as well as many long-term investments to Hawaii's economy. This bill provides a refundable R&D income tax credit for qualified research activities in the State of Hawai'i, to help provide longer-term continuity for Hawaii's tech industry.

We strongly **support SB2497**, specifically:

1. To extend the sunset date to 2029; and
2. To increase the amount of the tax credit to \$10,000,000.00.

LATE

SB-2497

Submitted on: 1/31/2024 3:19:53 PM

Testimony for EET on 2/1/2024 1:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Charlie Field	Testifying for PacMar Technologies	Support	Written Testimony Only

Comments:

On behalf of PacMar Technologies, we strongly support SB2497. Increasing the aggregate amount of credits available is very important as we understand there are typically around \$13.5M in total applicant requests per year and many valuable research companies apply within the first minute the application opens, but get denied because funding runs out.

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 305

Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME TAX, Extension of Tax Credit for Research Activities

BILL NUMBER: SB 2497

INTRODUCED BY: DECOITE, CHANG, FEVELLA, KIDANI, MCKELVEY, MORIWAKI, Wakai

EXECUTIVE SUMMARY: Amends the tax credit for research activities by: (1) increasing the amount of the credit to \$10,000,000; (2) extending the sunset date of the credit to 12/31/29; and (3) amending the definition of qualified high technology businesses that are eligible to claim the credit.

SYNOPSIS: Amends section 235-110.91(f), HRS, to increase the annual cap from \$5 million to \$10 million.

Amends section 235-110.91(n), HRS, to extend the sunset date of the credit for five years to December 31, 2029.

Amends section 235-110.91(o), HRS, to change the definition of “qualified high technology business” as a for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and registered to do business in the State; (2) Is independently owned and operated; (3) Employs fewer than five hundred full-time or part-time employees in the State, including affiliates; and (4) Conducts more than fifty per cent of its activities in qualified research.

Makes other technical and conforming amendments.

EFFECTIVE DATE: Upon approval, shall apply to taxable years beginning after December 31, 2023; provided that on December 31, 2029, section 1 shall be repealed.

STAFF COMMENTS: The legislature by Act 270, SLH 2013, reestablished the income tax credit for qualified research activities that expired on 12/31/10. The prior version of that law, under Act 221, SLH 2001, offered a credit for qualified research activities that was a flat percentage of qualified research expenses in Hawaii without regard to the federal base amount (the federal credit is supposed to be an incentive to increase research activities, so the federal credit is based on incremental research expenses). When Act 270 brought the credit back, it did so as an incremental credit, like the federal credit.

Act 261, SLH 2019, amended the credit by reinserting the phrase “provided that references to the base amount shall not apply and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years.”

Substantively, over the last decade, Hawaii has adopted various tax incentives to encourage the development of high technology businesses in the state. The acts provided investment and

research credits as well as income exclusions providing tax relief to high tech businesses and individuals associated with high tech businesses. While the focus on high technology in the last few years is commendable, it fails to recognize that investments are made with the prospect that the venture will yield a profit. If the prospects for making a profit are absent, no amount of tax credits will attract investment from outside Hawaii's capital short environment. People do not invest to lose money. It should be remembered that until Hawaii's high cost of living can be addressed, all the tax incentives in the world will not make a difference in attracting new investment to Hawaii. The only attractive aspect for resident investors to plow money into such activities is the fact that the credit provides a way to avoid paying state taxes.

At a minimum, lawmakers should carefully examine the results that have come out of this 20-year-old incentive to see if the State has gotten its money's worth. If it hasn't, how can an extension or increase in the credit be justified?

Digested: 1/30/2024