

ACT 174

S.B. NO. 1248

A Bill for an Act Relating to State Enterprise Zones.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that in these difficult economic times of lower revenues for the State and closure of key businesses, government must seek ways to encourage and expedite economic growth and diversity.

The State’s enterprise zones program in the department of business, economic development, and tourism was established to stimulate business and industrial growth through regulatory flexibility and tax incentives in areas that are viable for neighborhood revitalization.

The purpose of this Act is to:

- (1) Add a definition of “eligible business activity” and clarify the definitions of “qualified business” and “service business”;
- (2) Allow limited liability companies to be qualified businesses and service businesses;
- (3) Extend the tax credits and exemptions for businesses engaged in the manufacturing of tangible personal property or in the producing or processing of agricultural products under section 209E-10, Hawaii Revised Statutes, for an additional three years;
- (4) Limit the general excise tax exemption for qualified businesses engaged in the production of genetically-engineered agricultural products under section 209E-11, Hawaii Revised Statutes, to a total of ten years;
- (5) Allow the receipts, sales, and employees of a business’s establishments in all enterprise zones located within the same county to count toward qualification requirements; and
- (6) Delete obsolete provisions.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

- 1. By adding a new definition to read:
““Eligible business activity” means the:

- (1) Manufacture of tangible personal property, the wholesale sale of tangible personal property as described in section 237-4, or a service business as defined in this section;
- (2) Production of agricultural products where the business is a producer as defined in section 237-5, or the processing of agricultural products, all or some of which were grown within an enterprise zone;
- (3) Research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products; or
- (4) Production of electric power from wind energy for sale primarily to a public utility company for resale to the public.”

2. By amending the definitions of “qualified business” and “service business” to read:

““Qualified business” means any corporation, partnership, limited liability company, or sole proprietorship authorized to do business in the State that is qualified under section 209E-9, subject to the state corporate or individual income tax under chapter 235, and is[:] engaged in an eligible business activity as defined in this chapter.

- ~~(1) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter;~~
- ~~(2) Engaged in producing agricultural products where the business is a producer as defined in section 237-5, or engaged in processing agricultural products, all or some of which were grown within an enterprise zone;~~
- ~~(3) Engaged in research, development, sale, or production of all types of genetically engineered medical, agricultural, or maritime biotechnology products; or~~
- ~~(4) Engaged in producing electric power from wind energy for sale primarily to a public utility company for resale to the public.]~~

“Service business” means any corporation, partnership, limited liability company, or sole proprietorship that repairs ships, aircraft, or assisted technology equipment, provides telecommunication services, information technology design and production services, medical and health care services, or education and training services as defined in this chapter.”

SECTION 3. Section 209E-4, Hawaii Revised Statutes, is amended to read as follows:

“§209E-4 Enterprise zone designation. (a) The governing body of any county may apply in writing to the department to have an area declared to be an enterprise zone. The application shall include a description of the location of the area or areas in question, and a general statement identifying proposed local incentives to complement the state and any federal incentives.

(b) The governor, upon the recommendation of the director, shall approve the designation of up to six areas in each county as enterprise zones for a period of twenty years. Any such area shall be located in one United States census tract or two or more contiguous United States census tracts in accordance with the most recent decennial United States Census. The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following criteria:

- (1) Twenty-five per cent or more of the population have incomes below eighty per cent of the median family income of the county; or
- (2) The unemployment rate is 1.5 times the state average.

~~[(e) Notwithstanding subsection (b), census tract #405 within the county of Kauai shall be eligible for designation as an enterprise zone. The eligibility for designation shall remain in effect until January 1, 1997, unless the governor earlier determines that the eligibility is no longer necessary.~~

~~(d) Notwithstanding subsection (b) or (c), only lands classified as agricultural in the Waialua district on Oahu, as defined in section 4-1(3)(D), shall be designated an enterprise zone on July 1, 1997, and the designation shall remain in effect until June 30, 2002.]”~~

SECTION 4. Section 209E-9, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), and (c) to read:

“(a) Any business firm may be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Begins the operation of a trade or business in an eligible business activity within an enterprise zone;
- (2) During each taxable year has at least fifty per cent of its enterprise zone [establishment’s] establishments’ gross receipts attributable to the active conduct of trade or business within [the] enterprise [zone;] zones located within the same county; and
- (3) Either:
 - (A) Increases its average annual number of full-time employees employed at the business’s establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of its first tax year of participation, and during each subsequent taxable year at least maintains that higher level of employment; or
 - (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within [the] enterprise [zone] zones located within the same county by two per cent annually.

For business firms engaged in producing or processing agricultural products, receipts from value-added products made from crops grown within ~~an~~ enterprise ~~zone] zones located within the same county~~ and sold at retail pursuant to the limits of subsection (e) shall count toward the gross receipts requirement under paragraph (2).

(b) A business firm may also be eligible to be designated a qualified business for purposes of this chapter if the business:

- (1) Is actively engaged in the conduct of a trade or business in an eligible business activity in an area immediately prior to ~~an~~ the area being designated an enterprise zone;
- (2) Meets the requirements of subsection (a)(2); and
- (3) Either:
 - (A) Increases its average annual number of full-time employees employed at the [business’s] business’s establishment or establishments ~~located~~ within [the] enterprise [zone] zones located within the same county by at least ten per cent by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation[;], and for businesses eligible for tax credits extending past the seventh year, at least maintains that higher level of employment during each subsequent taxable year; provided that the percentage increase shall be based upon the employee count at the beginning of the initial year of operation within the enterprise [zone;] zone or zones; or

- (B) Increases its gross sales of agricultural crops produced, or agricultural products processed within ~~[the enterprise zone]~~ enterprise zones located within the same county by two per cent annually.

(c) After designation ~~[as]~~ of an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department that provides the information necessary for the department to determine if it may certify the applicability of the tax credits and exemptions provided in this chapter for the business firm ~~[qualifies as a qualified business]~~. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county.”

2. By amending subsection (e) to read:

“(e) Tangible personal property shall be sold at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property shall take place in ~~[the same]~~ an enterprise zone located within the same county in which the tangible personal property is sold. Services shall be sold at an establishment of a qualified business engaged in a service business within an enterprise zone ~~[and the services shall be delivered in the same enterprise zone in which sold. Any services rendered outside an enterprise zone shall not be deemed to be the services of a qualified business].~~”

SECTION 5. Section 209E-10, Hawaii Revised Statutes, is amended to read as follows:

“**§209E-10 State business tax credit.** (a) The department shall certify annually to the department of taxation the applicability of the tax credit provided in this chapter for a qualified business against any taxes due the State. Except for the general excise tax, the credit shall be eighty per cent of the tax due for the first tax year, seventy per cent of the tax due for the second tax year, sixty per cent of the tax due for the third year, fifty per cent of the tax due the fourth year, forty per cent of the tax due the fifth year, thirty per cent of the tax due the sixth year, and twenty per cent of the tax due the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year at the rate of twenty per cent of the tax due for each of the subsequent three tax years. Any tax credit not usable shall not be applied to future tax years.

(b) When a partnership is eligible for a tax credit under this section, each partner shall be eligible for the tax credit provided for in this section on the partner's income tax return in proportion to the amount of income received by the partner from the partnership. Any qualified business having taxable income from business activity, both within and without the enterprise zone, shall allocate and apportion its taxable income attributable to the conduct of business. Tax credits provided for in this section shall only apply to taxable income of a qualified business attributable to the conduct of business within ~~[the]~~ enterprise ~~[zone.]~~ zones located within the same county.

(c) In addition to any tax credit authorized under this section, any qualified business shall be entitled to a tax credit against any taxes due the State in an amount equal to a percentage of unemployment taxes paid. The amount of the credit shall be equal to eighty per cent of the unemployment taxes paid during the first year, seventy per cent of the taxes paid during the second year, sixty per cent of the taxes paid during the third year, fifty per cent of the taxes paid during the fourth year, forty per cent of the taxes paid during the fifth year, thirty per cent of the taxes paid during the sixth year, and twenty per cent of the taxes paid

during the seventh year. For qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the credit shall continue after the seventh year in an amount equal to twenty per cent of the taxes paid during each of the subsequent three tax years.

(d) Tax credits provided for in subsection (c) shall only apply to the unemployment tax paid on employees employed at the qualified ~~[business]~~ business's establishment or establishments ~~[located]~~ within ~~[the]~~ enterprise ~~[zone]~~ zones located within the same county. Any tax credit not usable shall not be applied to future tax years.”

SECTION 6. Section 209E-11, Hawaii Revised Statutes, is amended to read as follows:

“§209E-11 State general excise exemptions. The department shall certify annually to the department of taxation that any qualified business is exempt from the payment of general excise taxes on the gross proceeds from ~~[the manufacture of tangible personal property, the wholesale sale of tangible personal property, the engaging in a service business by a qualified business, or the engaging in research, development, sale, or production of all types of genetically engineered medical, agricultural, or maritime biotechnology products;]~~ an eligible business activity as defined in this chapter; provided that agricultural businesses other than those engaged in the production of genetically-engineered agricultural products shall not be exempt from the payment of general excise taxes on the gross proceeds of agricultural retail sales. The gross proceeds received by a contractor licensed under chapter 444 shall be exempt from the general excise tax for construction within an enterprise zone performed for a qualified business within an enterprise zone~~[-]~~ or a business that has been approved by the department to enroll into the enterprise zone program. The exemption shall extend for a period not to exceed seven years; provided that for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products, the exemption shall extend for a period not to exceed ten years; provided further that if a force majeure event occurs, then the period of time shall be tolled until the force majeure event ceases.”

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

SECTION 8. This Act shall take effect on July 1, 2009.

(Approved July 10, 2009.)