

ACT 261

S.B. NO. 1314

A Bill for an Act Relating to Tax Credits.

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

PART I

SECTION 1. Section 235-20.5, Hawaii Revised Statutes, is amended to read as follows:

“§235-20.5 Tax administration special fund; established. (a) There is established a tax administration special fund, into which shall be deposited:

- (1) Fees collected under sections 235-20[;] and 235-110.9[~~—and~~
~~235-110.91~~];
- (2) Revenues collected by the special enforcement section pursuant to section 231-85; provided that in each fiscal year, of the total revenues collected by the special enforcement section, all revenues in excess of \$2,000,000 shall be deposited into the general fund; and
- (3) Fines assessed pursuant to section 237D-4.
- (b) The moneys in the fund shall be used for the following purposes:

- (1) Issuing comfort letters, letter rulings, written opinions, and other guidance to taxpayers;
- (2) Issuing certificates under sections 235-110.9 [and 235-110.91];
- (3) Administering the operations of the special enforcement section;
- (4) Funding support staff positions in the special enforcement section; and
- (5) Developing, implementing, and providing taxpayer education programs, including tax publications.”

SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.91 **Tax credit for research activities.** (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section; provided that the federal tax provisions in section 41 of the Internal Revenue Code, as that section was enacted on December 31, 2011, irrespective of any subsequent changes to section 41 of the Internal Revenue Code, shall remain in effect for purposes of determining the state income tax credit under this section; provided further that the federal tax provisions in section 41 of the Internal Revenue Code, as enacted on December 31, 2011, irrespective of any subsequent amendments to section 41 of the Internal Revenue Code, shall apply only to expenses incurred for qualified research activities after December 31, 2012.

(b) All references to Internal Revenue Code sections within sections 41 and 280C(c) of the Internal Revenue Code shall be operative for purposes of this section[-]; provided that references to the base amount in section 41 of the Internal Revenue Code shall not apply, and credit for all qualified research expenses may be taken without regard to the amount of expenses for previous years.

(c) There shall be allowed to each qualified high technology business subject to the tax imposed by this chapter an income tax credit for qualified research activities equal to the credit for research activities provided by section 41 of the Internal Revenue Code and as modified by this section; provided that, in addition to any other requirements established in this section, in order to qualify for the tax credit established in this section, the qualified high technology business shall also claim a federal tax credit for the same qualified research activities under section 41 of the Internal Revenue Code, as enacted on December 31, 2011, irrespective of any subsequent amendments to section 41 of the Internal Revenue Code. The credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(d) Every qualified high technology business, before March 31 of each year in which qualified research and development activity was conducted in the previous taxable year, shall submit a written, certified statement to the ~~director of taxation~~ department of business, economic development, and tourism identifying:

- (1) Qualified expenditures, if any, expended in the previous taxable year; and
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.
- (e) The department of business, economic development, and tourism

shall:

- (1) Maintain records of the names and addresses of the taxpayers claiming the credits under this section and the total amount of the

qualified research and development activity costs upon which the tax credit 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.

~~The [director of taxation] department of business, economic development, and tourism may assess and collect a fee to offset the costs of certifying tax credit claims under this section. [All fees collected under this section shall be deposited into the tax administration special fund established under section 235-20.5.~~

(f) ~~As used in this section:~~

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

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

~~"Qualified research expenses" shall have the same meaning as in section 41(b) of the Internal Revenue Code; provided that it shall not include research expenses incurred outside of the State.]~~

(f) If in any taxable year the annual amount of certified credits reaches \$5,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the department of business, economic development, and tourism certify a total amount of credits exceeding \$5,000,000 per taxable year. To comply with this restriction, the department of business, economic development, and tourism shall certify credits on a first come, first served basis.

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

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

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

(i) A qualified high technology business that claims the credit under this section shall complete and file with the department of business, economic development, and tourism, through that department's website, an annual survey on electronic forms prepared and prescribed by the department of business, eco-

conomic development, and tourism. The annual survey 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 jobs, temporary positions, external services procured by the business, and payroll taxes;
- (5) Filed intellectual property, including invention disclosures, provisional patents, and patents issued or granted; and
- (6) The number of new companies spun out or established to commercialize the intellectual property owned by the qualified high technology business.

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

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

(l) The department of business, economic development, and tourism, in collaboration with the department of taxation, shall use the information collected to study the effectiveness of the tax credit under this section. The department of business, economic development, and tourism shall submit a report to the legislature on the following:

- (1) The amount of tax credits claimed and total taxes paid by qualified high technology businesses;
- (2) The number of qualified high technology businesses in 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) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section.

(n) This section shall not apply to taxable years beginning after December 31, ~~[2019;]~~ 2024.

(o) 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.

“Qualified research expenses” shall have the same meaning as in section 41(b) of the Internal Revenue Code; provided that it shall not include research expenses incurred outside of the State.”

PART II

SECTION 3. Section 235-110.91, Hawaii Revised Statutes, is repealed.

PART III

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval; provided that:

- (1) Section 2 shall apply to taxable years beginning after December 31, 2019; and
- (2) Part II shall take effect on December 31, 2024.

(Approved July 5, 2019.)

Note

- 1. Edited pursuant to HRS §23G-16.5.