

JAN 25 2023

A BILL FOR AN ACT

RELATING TO 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

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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
22 credit shall be deductible from the taxpayer's net income tax

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1 liability, if any, imposed by this chapter for the taxable year
2 in which the credit is properly claimed. Each taxpayer,
3 together with all of its related entities, shall not be eligible
4 for any more than \$1,000,000 in tax credits provided by this
5 section per taxable year.

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

- 14 (1) Qualified expenditures, if any, expended in the
15 previous taxable year; ~~[and]~~
- 16 (2) The amount of tax credits claimed pursuant to this
17 section, if any, in the previous taxable year~~[-]~~;
- 18 (3) The industry sector or sectors in which the qualified
19 high technology business conducts business, as set
20 forth in paragraphs (2) to (8) of the definition of
21 "qualified research" in section 235-7.3(c);

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

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

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

11 (7) The number of new companies spun out or established in
12 Hawaii to commercialize the intellectual property
13 owned by the qualified high technology business.

14 Failure to meet the requirements of this subsection shall
15 constitute a waiver of the right to claim the credit.

16 The department of business, economic development, and
17 tourism shall request information in each of these categories
18 sufficient to measure the effectiveness of the tax credit under
19 this section. The department of business, economic development,
20 and tourism may request any additional information necessary to
21 measure the effectiveness of the tax credit, such as additional
22 information related to patents.

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1 (e) The department of business, economic development, and
2 tourism shall:

3 (1) Maintain records of the names and addresses of the
4 taxpayers claiming the credits under this section and
5 the total amount of the qualified research and
6 development activity costs upon which the tax credit
7 is based;

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

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

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

15 Upon each determination made under this subsection, the
16 department of business, economic development, and tourism shall
17 issue a certificate to the taxpayer verifying information
18 submitted to the department of business, economic development,
19 and tourism, including the qualifying costs or expenditure
20 amounts, the credit amount certified for each taxable year, and
21 the cumulative amount of the tax credit during the credit
22 period. The taxpayer shall file the certificate with the

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1 taxpayer's tax return with the department of taxation.
2 Notwithstanding the authority of the department of business,
3 economic development, and tourism under this section, the
4 director of taxation may audit and adjust the tax credit amount
5 to conform to the facts.

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

9 (f) If in any [~~taxable~~] calendar year the annual amount of
10 certified credits reaches \$5,000,000 in the aggregate, the
11 department of business, economic development, and tourism shall
12 immediately discontinue certifying credits and notify the
13 department of taxation. In no instance shall the department of
14 business, economic development, and tourism certify a total
15 amount of credits exceeding \$5,000,000 per [~~taxable~~] calendar
16 year. To comply with this restriction, the department of
17 business, economic development, and tourism shall certify
18 credits on a [~~first come, first served~~] first-come, first-served
19 basis[-], which shall be determined based on the date a complete
20 application is received by the department of business, economic
21 development, and tourism; provided that a taxpayer who is unable
22 to receive a credit certification solely because the \$5,000,000

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1 aggregate cap has been reached shall receive certification
2 priority in the following calendar year for the certification
3 requested in the submitted application if the taxpayer is still
4 eligible to claim that tax credit under subsection (h). In no
5 event shall this subsection be interpreted to extend the
6 deadline to claim the credit under subsection (h). The
7 department of taxation, in conjunction with the department of
8 business, economic development, and tourism, shall issue
9 guidance addressing the allocation of credits when the amount of
10 credits requested in complete applications received on the same
11 day exceeds the amount of credit available for allocation.

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

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

21 (h) All claims for a tax credit under this section shall
22 be filed on or before the end of the twelfth month following the

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1 close of the taxable year for which the credit may be claimed.
2 Failure to properly claim the credit shall constitute a waiver
3 of the right to claim the credit.

4 ~~[(i) A qualified high technology business that claims the~~
5 ~~credit under this section shall complete and file with the~~
6 ~~department of business, economic development, and tourism,~~
7 ~~through that department's website, an annual survey on~~
8 ~~electronic forms prepared and prescribed by the department of~~
9 ~~business, economic development, and tourism. The annual survey~~
10 ~~shall be filed before June 30 of each calendar year following~~
11 ~~the calendar year in which the credit may be claimed under this~~
12 ~~section. The department of business, economic development, and~~
13 ~~tourism may adjust the due date of the annual survey by rules~~
14 ~~adopted pursuant to chapter 91.~~

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

19 ~~(1) Identification of the industry sector or sectors in~~
20 ~~which the qualified high technology business conducts~~
21 ~~business, as set forth in paragraphs (2) to (8) of the~~

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- 1 definition of "qualified research" in section
2 235-7.3(c);
- 3 ~~(2) Total expenditures and the qualified expenditures, if~~
4 ~~any, expended in the previous taxable year;~~
- 5 ~~(3) Revenue and expense data, including a breakdown of any~~
6 ~~licensing royalty or other forms of income generated~~
7 ~~from intellectual property;~~
- 8 ~~(4) Hawaii employment and wage data, including the numbers~~
9 ~~of full-time and part-time employees retained, new~~
10 ~~jobs, temporary positions, external services procured~~
11 ~~by the business, and payroll taxes;~~
- 12 ~~(5) Filed intellectual property, including invention~~
13 ~~disclosures, provisional patents, and patents issued~~
14 ~~or granted; and~~
- 15 ~~(6) The number of new companies spun out or established to~~
16 ~~commercialize the intellectual property owned by the~~
17 ~~qualified high technology business.~~

18 ~~The department of business, economic development, and~~
19 ~~tourism shall request information in each of these categories~~
20 ~~sufficient to measure the effectiveness of the tax credit under~~
21 ~~this section. The department of business, economic development,~~
22 ~~and tourism may request any additional information necessary to~~

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1 ~~measure the effectiveness of the tax credit, such as information~~
2 ~~related to patents. In preparing the survey and requesting any~~
3 ~~additional information, the department of business, economic~~
4 ~~development, and tourism shall ensure that qualified high~~
5 ~~technology businesses are not subject to duplicative reporting~~
6 ~~requirements.~~

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

20 ~~(l)~~ (j) The department of business, economic
21 development, and tourism, in collaboration with the department
22 of taxation, shall use the information collected to study the

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1 effectiveness of the tax credit under this section. The
2 department of business, economic development, and tourism shall
3 submit a report to the legislature on the following:

- 4 (1) The amount of tax credits claimed and total taxes paid
5 by qualified high technology businesses;
- 6 (2) The number of qualified high technology businesses in
7 each industry sector;
- 8 (3) The numbers and types of jobs created by qualified
9 high technology businesses;
- 10 (4) External services and materials procured by the
11 businesses;
- 12 (5) The compensation levels of jobs provided by qualified
13 high technology businesses;
- 14 (6) Qualified research activities; and
- 15 (7) Any other factors the department of business, economic
16 development, and tourism deems relevant.

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

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

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

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

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

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

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

12 SECTION 2. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act, upon its approval, shall apply to
15 taxable years beginning after December 31, 2022.

16

17

INTRODUCED BY:



18

BY REQUEST

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Report Title:

Tax Credit for Research Activities

Description:

Consolidates the survey and certification requirements for the research activities tax credit. Requires the certification based on the date a complete application is received subject to certain conditions. Adds a cap for an eligible taxpayer and the taxpayer's related entities.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

PURPOSE: To consolidate the survey and the certification requirements for the research activities tax credit, require the certification based on the date a complete application is received, subject to certain conditions, and add a cap for an eligible taxpayer and the taxpayer's related entities.

MEANS: Amend section 235-110.91, Hawaii Revised Statutes.

JUSTIFICATION: The amendments consolidate the survey and the certification to ease some of the administrative burden, require the certification based on the date a complete application is received, subject to certain conditions, and add a cap to ensure that a single company does not claim the entire allotment for the tax credit.

Impact on the public: Eases submission requirements and distributes tax credits to qualified companies.

Impact on the department and other agencies: Eases administrative burden.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-143.

OTHER AFFECTED AGENCIES: Department of Taxation.

EFFECTIVE DATE: Upon its approval, shall apply to taxable years beginning after December 31, 2022.