

JAN 20 2023

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# A BILL FOR AN ACT

RELATING TO TAX CREDITS 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



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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, as determined under  
5 section 267(b) of the Internal Revenue Code of 1986, as amended,  
6 and all business entities under common control, as determined  
7 under sections 414(b), 414(c), and 1563(a) of the Internal  
8 Revenue Code of 1986, as amended, shall be eligible for no more  
9 than \$1,500,000 in tax credits provided by this section per  
10 taxable year.

11 (d) Every qualified high technology business shall:  
12 (1) Be registered to do business in the State; and  
13 (2) Occupy a business location and address in the State  
14 where at least seventy-five per cent of the business'  
15 employees are located.

16 [~~(d) Every~~] (e) To be eligible for the tax credit, every  
17 qualified high technology business, [before] no later than  
18 March 31 of each year immediately following the end of the  
19 previous taxable year in which qualified research and  
20 development activity was conducted [in the previous taxable  
21 year], shall submit [a written, certified statement] each of the



1 following, at minimum, to the department of business, economic  
2 development, and tourism [~~identifying~~]:

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

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

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

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

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

18 (6) The number of filed intellectual property, including  
19 invention disclosures, provisional patents, and  
20 patents issued or granted;



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- 1        (7) The number of new companies spun out or established in  
2        the State to commercialize the intellectual property  
3        owned by the qualified high technology business; and  
4        (8) A written declaration signed by an officer of the  
5        qualified high technology business certifying that the  
6        information submitted pursuant to this subsection is  
7        true and correct as to every material matter; provided  
8        that the certification shall be subject to the  
9        penalties provided in section 231-36.

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

12        The department of business, economic development, and  
13 tourism shall request information in each of the categories  
14 identified in paragraphs (1) through (8) sufficient to measure  
15 the effectiveness of the tax credit under this section. The  
16 department of business, economic development, and tourism may  
17 request any additional information necessary to measure the  
18 effectiveness of the tax credit, including additional  
19 information related to patents.

20        [~~e~~] (f) The department of business, economic  
21 development, and tourism shall:



- 1           (1) Maintain records of the names and addresses of the  
2           taxpayers claiming the credits under this section and  
3           the total amount of the qualified research and  
4           development activity costs upon which the tax credit  
5           is based;
- 6           (2) Verify the nature of the qualifying research activity  
7           and the amount of the qualifying costs or  
8           expenditures;
- 9           (3) Total all qualifying and cumulative costs or  
10          expenditures that the department certifies; and
- 11          (4) Certify the amount of the tax credit for each taxable  
12          year and cumulative amount of the tax credit.

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



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

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

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



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

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

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



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

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

- 9 ~~(1) Identification of the industry sector or sectors in~~  
10 ~~which the qualified high technology business conducts~~  
11 ~~business, as set forth in paragraphs (2) to (8) of the~~  
12 ~~definition of "qualified research" in section 235-~~  
13 ~~7.3(c);~~
- 14 ~~(2) Total expenditures and the qualified expenditures, if~~  
15 ~~any, expended in the previous taxable year;~~
- 16 ~~(3) Revenue and expense data, including a breakdown of any~~  
17 ~~licensing royalty or other forms of income generated~~  
18 ~~from intellectual property;~~
- 19 ~~(4) Hawaii employment and wage data, including the numbers~~  
20 ~~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)]~~ (j) 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       ~~(l)~~ (k) 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;



- 1           (3) The numbers and types of jobs created by qualified  
2           high technology businesses;
- 3           (4) External services and materials procured by the  
4           businesses;
- 5           (5) The compensation levels of jobs provided by qualified  
6           high technology businesses;
- 7           (6) Qualified research activities; and
- 8           (7) Any other factors the department of business, economic  
9           development, and tourism deems relevant.

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

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

15       ~~[(n)]~~ (m) This section shall not apply to taxable years  
16 beginning after December 31, ~~[2024.]~~ 2029.

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

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

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



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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. Act 261, Session Laws of Hawaii 2019, is  
6 amended by amending section 5 to read as follows:

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

- 9 (1) Section 2 shall apply to taxable years beginning after  
10 December 31, 2019; and  
11 (2) Part II shall take effect on December 31, [~~2024~~]  
12 2029."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect upon its approval;  
16 provided that section 1 shall apply to taxable years beginning  
17 after December 31, 2023.

18

INTRODUCED BY: \_\_\_\_\_



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**Report Title:**

Research Activities; Tax Credit

**Description:**

Limits the tax credits for research activities each taxpayer may receive to \$1,500,000 per taxable year. Requires that every qualified high technology business be registered to do business in the State and occupy a business location and address in the State where at least seventy-five per cent of the company's employees are located to be eligible to receive tax credits for research activities. Increases the amount of available certified credits from \$5,000,000 per year to \$15,000,000 per year. Extends the sunset date for tax credits for research activities from December 31, 2024 to December 31, 2029.

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

