
A BILL FOR AN ACT

RELATING TO THE HIGH TECHNOLOGY BUSINESS INVESTMENT TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. In its recent report to the legislature, the
2 2005-2007 tax review commission pointed out that tax incentive
3 programs such as the high technology business investment tax
4 credit are potential "black holes" and recommended that if the
5 tax credit is retained, the legislature should increase
6 transparency and timely disclosure so that it may be evaluated
7 effectively. Such an evaluation has not been possible to date.
8 The tax review commission itself contracted for a study on the
9 costs and benefits of the tax credit, but the results of its
10 study were not definitive due to the researchers' inability to
11 access relevant data on the cost of the credit or the operations
12 of qualified high technology businesses.

13 The legislature finds that to ensure the prudent
14 stewardship of public funds, it must be able to evaluate the
15 economic impact and effectiveness of the high technology
16 business investment tax credit.

17 The purpose of this Act is to promote greater transparency
18 of information and allow for an analysis of the economic impact



1 and effectiveness of the high technology business investment tax
2 credit by the auditor, while protecting the confidentiality of
3 individual taxpayers.

4 SECTION 2. Section 235-110.9, Hawaii Revised Statutes, is
5 amended to read as follows:

6 **"§235-110.9 High technology business investment tax**
7 **credit.** (a) There shall be allowed to each taxpayer subject to
8 the taxes imposed by this chapter a high technology business
9 investment tax credit that shall be deductible from the
10 taxpayer's net income tax liability, if any, imposed by this
11 chapter for the taxable year in which the investment was made
12 and the following four years provided the credit is properly
13 claimed. The tax credit shall be as follows:

- 14 (1) In the year the investment was made, thirty-five per
15 cent;
- 16 (2) In the first year following the year in which the
17 investment was made, twenty-five per cent;
- 18 (3) In the second year following the investment, twenty
19 per cent;
- 20 (4) In the third year following the investment, ten per
21 cent; and



1 (5) In the fourth year following the investment, ten per
2 cent; of the investment made by the taxpayer in each
3 qualified high technology business, up to a maximum
4 allowed credit in the year the investment was made,
5 \$700,000; in the first year following the year in
6 which the investment was made, \$500,000; in the second
7 year following the year in which the investment was
8 made, \$400,000; in the third year following the year
9 in which the investment was made, \$200,000; and in the
10 fourth year following the year in which the investment
11 was made, \$200,000.

12 (b) The credit allowed under this section shall be claimed
13 against the net income tax liability for the taxable year. For
14 the purpose of this section, "net income tax liability" means
15 net income tax liability reduced by all other credits allowed
16 under this chapter.

17 (c) If the tax credit under this section exceeds the
18 taxpayer's income tax liability for any of the five years that
19 the credit is taken, the excess of the tax credit over liability
20 may be used as a credit against the taxpayer's income tax
21 liability in subsequent years until exhausted. Every claim,
22 including amended claims, for a tax credit under this section



1 shall be filed on or before the end of the twelfth month
2 following the close of the taxable year for which the credit may
3 be claimed. Failure to comply with the foregoing provision
4 shall constitute a waiver of the right to claim the credit.

5 (d) If at the close of any taxable year in the five year
6 period in subsection (a):

7 (1) The business no longer qualifies as a qualified high
8 technology business;

9 (2) The business or an interest in the business has been
10 sold by the taxpayer investing in the qualified high
11 technology business; ~~or~~

12 (3) The taxpayer has withdrawn the taxpayer's investment
13 wholly or partially from the qualified high technology
14 business; or

15 (4) The business fails to file the registration statement
16 as required under subsection (e);

17 the credit claimed under this section shall be recaptured. The
18 recapture shall be equal to ten per cent of the amount of the
19 total tax credit claimed under this section in the preceding two
20 taxable years. The amount of the credit recaptured shall apply
21 only to the investment in the particular qualified high
22 technology business that meets the requirements of paragraph



1 (1), (2), [~~or~~] (3), or (4). The recapture provisions of this
2 subsection shall not apply to a tax credit claimed for a
3 qualified high technology business that does not fall within the
4 provisions of paragraph (1), (2), [~~or~~] (3), or (4). The amount
5 of the recaptured tax credit determined under this subsection
6 shall be added to the taxpayer's tax liability for the taxable
7 year in which the recapture occurs under this subsection.

8 (e) Every taxpayer, before March 31 of each year in which
9 an investment in a qualified high technology business was made
10 in the previous taxable year, shall submit a written, certified
11 statement to the director of taxation identifying:

- 12 (1) Qualified investments, if any, expended in the
13 previous taxable year; [~~and~~]
- 14 (2) The amount of tax credits claimed pursuant to this
15 section, if any, in the previous taxable year[~~;~~];
- 16 (3) The name of the qualified high technology business;
- 17 (4) The qualified high technology businesses activity of
18 the taxpayer, including the North American Industrial
19 Classification System codes under which the taxpayer
20 does business;
- 21 (5) The number of employees, if any, employed by the
22 taxpayer, including a breakdown of full-time, part-



1 time, and temporary positions as a percentage of total
2 employment;

3 (6) The annual wages paid to employees of the taxpayer
4 under paragraph (5), according to the following wage
5 ranges:

6 (A) Less than thirty thousand dollars;

7 (B) Thirty thousand dollars or greater, but less than
8 sixty thousand dollars; and

9 (C) Sixty thousand dollars or greater;

10 (7) The costs incurred by the taxpayer doing business in
11 the state; and

12 (8) The number of trademarks, patents, and copyrights
13 applied for and obtained during the year.

14 (f) The department shall:

15 (1) Maintain records of the names and addresses of the
16 taxpayers claiming the credits under this section and
17 the total amount of the qualified investment costs
18 upon which the tax credit is based;

19 (2) Verify the nature and amount of the qualifying
20 investments;

21 (3) Total all qualifying and cumulative investments that
22 the department certifies; and



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

3 Upon each determination made under this subsection, the
4 department shall issue a certificate to the taxpayer verifying
5 information submitted to the department, including qualifying
6 investment amounts, the credit amount certified for each taxable
7 year, and the cumulative amount of the tax credit during the
8 credit period. The taxpayer shall file the certificate with the
9 taxpayer's tax return with the department.

10 The director of taxation may assess and collect a fee to
11 offset the costs of certifying tax credits claims under this
12 section. All fees collected under this section shall be
13 deposited into the tax administration special fund established
14 under section 235-20.5.

15 (g) The director of taxation shall allow the auditor to
16 access and analyze the information under subsection (f), only to
17 the extent necessary to conduct analyses of the economic impact
18 of the tax credit provided by this section.

19 The department of labor and industrial relations shall
20 allow the auditor to access and analyze any information or data
21 maintained by the department of labor and industrial relations



1 that is related to the tax credit provided under this section
2 for the purposes of conducting its economic impact analyses.

3 The auditor shall report its findings and recommendations
4 twenty days prior to the convening of every regular legislative
5 session. Except for the names of the qualifying high technology
6 businesses, the information shall be reported in anonymous or
7 aggregate form.

8 [~~g~~] (h) As used in this section:

9 "Investment tax credit allocation ratio" means, with
10 respect to a taxpayer that has made an investment in a qualified
11 high technology business, the ratio of:

12 (1) The amount of the credit under this section that is,
13 or is to be, received by or allocated to the taxpayer
14 over the life of the investment, as a result of the
15 investment; to

16 (2) The amount of the investment in the qualified high
17 technology business.

18 "Qualified high technology business" means a business,
19 employing or owning capital or property, or maintaining an
20 office, in this [~~State~~] state; provided that:

21 (1) More than fifty per cent of its total business
22 activities are qualified research; and provided



1 further that the business conducts more than seventy-
2 five per cent of its qualified research in this
3 [~~State~~] state; or

4 (2) More than seventy-five per cent of its gross income is
5 derived from qualified research; and provided further
6 that this income is received from:

7 (A) Products sold from, manufactured in, or produced
8 in this [~~State~~] state; or

9 (B) Services performed in this [~~State~~] state.

10 "Qualified research" means the same as defined in section
11 235-7.3.

12 [~~(h)~~] (i) Common law principles, including the doctrine of
13 economic substance and business purpose, shall apply to any
14 investment. There exists a presumption that a transaction
15 satisfies the doctrine of economic substance and business
16 purpose to the extent that the special allocation of the high
17 technology business tax credit has an investment tax credit
18 ratio of 1.5 or less of credit for every dollar invested.

19 Transactions for which an investment tax credit allocation
20 ratio greater than 1.5 but not more than 2.0 of credit for every
21 dollar invested and claimed may be reviewed by the department



1 for applicable doctrines of economic substance and business
2 purpose.

3 Businesses claiming a tax credit for transactions with
4 investment tax credit allocation ratios greater than 2.0 of
5 credit for every dollar invested shall substantiate economic
6 merit and business purpose consistent with this section.

7 ~~(i)~~ (j) This section shall not apply to taxable years
8 beginning after December 31, 2010."

9 SECTION 3. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2007-2008 for the
12 purposes of this Act.

13 The sum appropriated shall be expended by the auditor for
14 the purposes of this Act.

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

17 SECTION 5. This Act shall take effect upon its approval;
18 provided that section 3 shall take effect on July 1, 2007.

19
INTRODUCED BY: 

Report Title:

Auditor; High Technology Business Investment Tax Credit

Description:

Adds additional requirements to the taxpayer's written, certified statement that is required for the high technology business investment tax credit. Requires the Director of Taxation and Department of Labor and Industrial Relations to allow the Auditor to access and analyze certain information related to the tax credit. Requires the Auditor to submit an annual report.

