

JAN 23 2009

---

# A BILL FOR AN ACT

---

RELATING TO TAXATION.

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

1       SECTION 1. Section 235-2.4, Hawaii Revised Statutes, is  
2 amended by amending subsection (n) to read as follows:

3       "(n) Section 469 (with respect to passive [~~activities~~]  
4 activity losses and credits limited) of the Internal Revenue  
5 Code shall be operative for the purposes of this chapter[-];  
6 provided that section 469(d)(1) shall not include any deduction  
7 provided by section 167(a) (with respect to depreciation) of the  
8 Internal Revenue Code as operative for this chapter. Passive  
9 activity credit as used in section 469 as operative for this  
10 chapter shall include only those credits which fall under the  
11 subparts specified in section 469(d)(2)(A) (with respect to  
12 business related credits and other vehicle credits) of the  
13 Internal Revenue Code and which have specifically been made  
14 operative for purposes of this chapter. For the purpose of  
15 computing the offset for rental real estate activities for state  
16 income tax purposes, adjusted gross income as used in section



469 as operative for this chapter means federal adjusted gross income."

SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to:

(1) Allocations of the high technology business investment tax credit allowed by section 235-110.9;

(2) Allocations of net operating loss pursuant to section 235-111.5;

(3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; [or]

(4) Allocations of low-income housing tax credits among partners under section 235-110.8[-]; or

(5) Allocations of the renewable energy technologies income tax credit allowed under section 235-12.5."

SECTION 3. Section 235-12.5, Hawaii Revised Statutes, is amended to read as follows:



1       "§235-12.5 Renewable energy technologies; income tax  
2 credit. (a) When the requirements of subsection ~~[(e)]~~ (d) are  
3 met, each individual or corporate taxpayer that files an  
4 individual or corporate net income tax return for a taxable year  
5 may claim a tax credit under this section against the Hawaii  
6 state individual or corporate net income tax. The tax credit  
7 may be claimed for every eligible renewable energy technology  
8 system that is installed and placed in service in the State by a  
9 taxpayer during the taxable year. This credit shall be  
10 available for systems installed and placed in service in the  
11 State after June 30, 2003. The tax credit may be claimed as  
12 follows:

- 13       ~~[(1) Solar thermal energy systems for:~~
- 14               ~~(A) Single family residential property for which a~~  
15               ~~building permit was issued prior to January 1,~~  
16               ~~2010: thirty five per cent of the actual cost or~~  
17               ~~\$2,250, whichever is less,~~
- 18               ~~(B) Multi-family residential property: thirty five~~  
19               ~~per cent of the actual cost or \$350 per unit,~~  
20               ~~whichever is less, and~~
- 21               ~~(C) Commercial property: thirty five per cent of the~~  
22               ~~actual cost or \$250,000, whichever is less,~~



~~(2) Wind powered energy systems for:~~

~~(A) Single family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;~~

~~(B) Multi family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and~~

~~(C) Commercial property: twenty per cent of the actual cost or \$500,000, whichever is less; and~~

~~(3) Photovoltaic energy systems for:~~

~~(A) Single family residential property: thirty five per cent of the actual cost or \$5,000, whichever is less;~~

~~(B) Multi family residential property: thirty five per cent of the actual cost or \$350 per unit, whichever is less; and~~

~~(C) Commercial property: thirty five per cent of the actual cost or \$500,000, whichever is less;]~~

(1) For each solar energy system, the credit is thirty-five per cent of the actual cost or the cap amount determined in subsection (b), whichever is less;



(2) For each wind-powered energy system, the credit is  
twenty per cent of the actual cost or the cap amount  
determined in subsection (b), whichever is less; and

(3) For each solar electric energy system:

(A) The nonrefundable credit is thirty-five per cent  
of the actual cost or the cap amount determined  
in subsection (b), whichever is less; and

(B) The refundable credit is twenty-four and one-half  
per cent of the actual cost or the cap amount  
determined in subsection (b), whichever is less;

provided that multiple owners of a single system shall be  
entitled to a single tax credit; and provided further that the  
tax credit shall be apportioned between the owners in proportion  
to their contribution to the cost of the system.

In the case of a partnership, S corporation, estate, or  
trust, the tax credit allowable is for every eligible renewable  
energy technology system that is installed and placed in service  
in the State by the entity. The cost upon which the tax credit  
is computed shall be determined at the entity level.

~~[Distribution and share of credit shall be determined pursuant  
to section 235-110.7(a).]~~



1        (b) The amount of credit allowed for each eligible  
2 renewable energy technology system shall not exceed the  
3 applicable cap amount, which is determined as follows:

4        (1) For each solar energy system, the cap amount shall be:

5            (A) \$2,250 per system for single-family residential  
6            property;

7            (B) \$350 per unit per system for multi-family  
8            residential property; and

9            (C) \$250,000 per system for commercial property.

10        (2) For each wind-powered energy system, the cap amount  
11        shall be:

12            (A) \$1,500 per system for single-family residential  
13            property;

14            (B) \$200 per unit per system for multi-family  
15            residential property; and

16            (C) \$500,000 per system for commercial property.

17        (3) For each solar electric energy system, the cap amount  
18        shall be:

19            (A) \$5,000 per system for single-family residential  
20            property;

21            (B) \$350 per unit per system for multi-family  
22            residential property; and



1            (C) \$500,000 per system for commercial property.

2            ~~[(b)]~~ (c) For the purposes of this section:

3            "Actual cost" means costs related to the renewable energy  
4 technology systems under subsection (a), including accessories  
5 and installation, but not including the cost of consumer  
6 incentive premiums unrelated to the operation of the system or  
7 offered with the sale of the system and costs for which another  
8 credit is claimed under this chapter.

9            "Household use" means any use of heated water that is a  
10 common use in a residential setting, including when those common  
11 uses are applied in a commercial context.

12            "Net income tax" means a net income tax liability arising  
13 under chapter 235, chapter 241, or article 7 of chapter 431.

14            "Renewable energy technology system" means a new system  
15 that captures and converts a renewable source of energy, such as  
16 ~~[wind, heat (solar thermal), or light (photovoltaic), from the~~  
17 ~~sun]~~ sun or wind energy, into:

18            (1) A usable source of thermal or mechanical energy;

19            (2) Electricity; or

20            (3) Fuel.



1       "Solar electric energy system" means a renewable energy  
2 technology system that generates electricity from the sun's  
3 energy.

4       "Solar energy system" means a renewable energy technology  
5 system where the primary purpose of the system is to use energy  
6 from the sun to exclusively heat water for household use.

7       ~~["Solar or wind energy system" means any identifiable~~  
8 ~~facility, equipment, apparatus, or the like that converts~~  
9 ~~insolation or wind energy to useful thermal or electrical energy~~  
10 ~~for heating, cooling, or reducing the use of other types of~~  
11 ~~energy that are dependent upon fossil fuel for their generation.~~

12       ~~(e)]~~ (d) For taxable years beginning after December 31,  
13 2005, the dollar amount of any utility rebate shall be deducted  
14 from the cost of the qualifying system and its installation  
15 before applying the state tax credit.

16       ~~[(d)]~~ (e) The director of taxation shall prepare any forms  
17 that may be necessary to claim a tax credit under this section,  
18 including forms identifying the technology type of each tax  
19 credit claimed under this section, whether for ~~[solar thermal,~~  
20 ~~photovoltaic from the sun,~~] sun or wind~~[-]~~ energy. The director  
21 may also require the taxpayer to furnish reasonable information  
22 to ascertain the validity of the claim for credit made under



1 this section and may adopt rules necessary to effectuate the  
2 purposes of this section pursuant to chapter 91.

3 ~~[(e)]~~ (f) If the tax credit under this section exceeds the  
4 taxpayer's income tax liability, the excess of the credit over  
5 liability may be used as a credit against the taxpayer's income  
6 tax liability in subsequent years until exhausted~~[-]~~, unless  
7 otherwise elected by the taxpayer pursuant to subsection (g) or  
8 (h). All claims for the tax credit under this section,

9 including amended claims, shall be filed on or before the end of  
10 the twelfth month following the close of the taxable year for  
11 which the credit may be claimed. Failure to comply with this  
12 subsection shall constitute a waiver of the right to claim the  
13 credit.

14 ~~[(f) By or before December, 2005, to the extent feasible,~~  
15 ~~using existing resources to assist the energy efficiency policy~~  
16 ~~review and evaluation, the department shall assist with data~~  
17 ~~collection on the following:~~

18 ~~(1) The number of renewable energy technology systems that~~  
19 ~~have qualified for a tax credit during the past year~~  
20 ~~by:~~

21 ~~(A) Technology type (solar thermal, photovoltaic from~~  
22 ~~the sun, and wind); and~~



1           ~~(B) Taxpayer type (corporate and individual); and~~

2           ~~(2) The total cost of the tax credit to the State during~~  
3           ~~the past year by:~~

4           ~~(A) Technology type; and~~

5           ~~(B) Taxpayer type.~~

6           ~~(g) For systems installed and placed in service in 2009,~~  
7           ~~no residential home developer shall be entitled to claim the~~  
8           ~~credit under subsections (a) (1) (A), (a) (2) (A), and (a) (3) (A). A~~  
9           ~~residential home developer is defined as a person who holds more~~  
10           ~~than one residential dwelling for sale as inventory.]~~

11           (g) For each solar energy system or solar electric energy  
12           system, a taxpayer may elect to reduce the eligible credit  
13           amount by thirty per cent, and if this reduced tax credit  
14           exceeds the taxpayer's net income tax liability, the excess of  
15           the credit over liability may be refunded to the taxpayer  
16           pursuant to a properly claimed election as provided under this  
17           subsection. If a taxpayer has no net income tax liability, then  
18           the taxpayer may receive the entire reduced tax credit as a  
19           refund; provided that no refund on account of the non-reduced or  
20           reduced tax credit allowed by this section shall be made for  
21           amounts less than \$1.



1        The election required by this subsection shall be made in a  
2 manner prescribed by the director on the taxpayer's return for  
3 the taxable year in which the renewable energy technology system  
4 is installed and placed in service. A separate election may be  
5 made for each separate system that generates a credit. An  
6 election once made is irrevocable.

7        (h) Notwithstanding the election under subsection (g), an  
8 individual taxpayer may make a pension low-income election for  
9 any renewable energy technology system which allows the taxpayer  
10 to receive the excess of the renewable energy technologies  
11 income tax credit over net income tax liability automatically as  
12 a refund to the taxpayer, if:

13        (1) All of the taxpayer's income is exempt from taxation  
14 under section 235-7(a)(2), or (3); or

15        (2) Taxpayers with a filing status of single or married  
16 filing separate and adjusted gross income of \$20,000  
17 or less and taxpayers with a filing status of married  
18 filing joint, head of household, or qualifying widower  
19 with dependent child and adjusted gross income of  
20 \$40,000 or less;

21 provided that if a tax credit is properly claimed by a taxpayer  
22 who has no net income tax liability, the entire tax credit shall



1 be paid to the taxpayer as a refund; provided further that no  
2 refund on account of the tax credit allowed by this subsection  
3 shall be made for amounts less than \$1. A husband and wife who  
4 do not file a joint tax return shall only be entitled to make  
5 the pension low-income election to the extent that they would  
6 have been entitled to make the pension low-income election had  
7 they filed a joint tax return.

8 The pension low-income election provided in this subsection  
9 shall be made in a manner prescribed by the director on the  
10 taxpayer's return for the taxable year in which the renewable  
11 energy technology system is installed and placed in service. A  
12 separate pension low-income election may be made for each  
13 separate system that generates a credit. A pension low-income  
14 election once made is irrevocable.

15 (i) No taxpayer shall be allowed a credit under this  
16 section for a solar water heater system required by section  
17 196-6.5 that is installed and placed in service on any newly  
18 constructed residence authorized by a building permit issued on  
19 or after January 1, 2010."

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



1       SECTION 5. This Act, upon its approval, shall apply to  
2 taxable years beginning after December 31, 2008.

3

INTRODUCED BY:

Mike Hubbard

John M.

John M.

Will Egan



**Report Title:**

Renewable Energy Technologies Income Tax Credit

**Description:**

Amends the renewable energy technologies income tax credit to make the credit refundable for certain taxpayers, prohibit special allocations of the credit by pass-through entities, and prevents passive activity losses from including a depreciation deduction.

