L E G I S L A T I V E

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SUBJECT: INCOME, Clinical trial income tax credit

BILL NUMBER: SB 436, SD-2

INTRODUCED BY: Senate Committee on Ways and Means

BRIEF SUMMARY: Adds a new section to HRS chapter 235 to allow taxpayers to claim an income tax credit of: (1) 15% of the qualified clinical trial costs incurred by a qualified clinical trial in a county with a population of over 700,000; or (2) 20% of the qualified clinical trial costs incurred by a qualified clinical trial in a county with a population of under 700,000. A qualified clinical trial occurring in more than one county may prorate its expenditures based on the amounts spent in each county.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for costs incurred by the entity for the taxable year with the cost on which the credit is computed determined at the entity level. Distribution and share of the credit shall be determined by rule. If a deduction is taken under IRC section 179 (with respect to election to expense depreciable business assets), no credit shall be allowed for that portion for which the deduction is taken. The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income tax purposes shall be reduced by the amount of credit allowable and claimed.

Credits in excess of a taxpayer's income tax liability will be refunded provided the amounts are over $1. Claims for the credit, including any amended claims, must be filed on or before the end of the twelfth month following the close of the taxable year. The director of taxation may adopt rules pursuant to HRS chapter 91 and prepare the necessary forms to claim the credit and may require proof of claim for the credit.

To qualify for the tax credit a clinical trial shall: (1) meet the definition of a qualified clinical trial, (2) have qualified clinical trial costs of at least $_________; (3) provide evidence of reasonable efforts to hire local researchers and staff; and (4) provide evidence of financial aid or in-kind contributions of educational or workforce development efforts toward the furtherance of the local science, technology and health industry.

On or after July 1, 2009, this credit shall not be available if the high technology business investment tax credit under HRS section 235-110.9 or a tax credit for research activities under HRS section 235-110.91 was claimed for any qualified clinical trial cost.

Requires a taxpayer to pre-qualify for the clinical trial credit by registering with the department of business, economic development and tourism (DBEDT). Failure to pre-qualify may constitute a waiver of the right to claim the credit. Further delineates information that must be filed by the taxpayer to validate the claim for the credit.

Requires DBEDT to: (1) maintain records of taxpayers claiming the credit; (2) obtain and total the aggregate amounts of all qualified clinical trial costs per qualified clinical trial and per qualified clinical trial per year; and (3) provide a letter to the director of taxation specifying the amount of the tax credit per qualified clinical trial for each tax year the credit is claimed and the cumulative amount of the tax credit for all years.

Directs DBEDT to issue a letter to the taxpayer regarding the qualified clinical trial, specifying the qualified clinical trial costs and the tax credit amount qualified for in each year the credit was claimed. Requires the taxpayer to file the letter with the taxpayer's tax return to the department of taxation.

Limits the total tax credits claimed per qualified clinical trial to $___million.

Defines "qualified clinical trials" and "qualified clinical trial costs" for purposes of the measure.

EFFECTIVE DATE: July 1, 2070; applicable to tax years beginning after December 31, 2070

STAFF COMMENTS: This measure proposes an incentive in the form of an income tax credit to encourage life sciences companies to conduct clinical trials in Hawaii. Tax credits generally are designed to alleviate an undue burden on those who are unable to carry that burden, largely the poor and low income. An example is the 4% general excise tax food credit for purchases made by the poor. Inasmuch as there is absolutely no relationship between the cost of conducting clinical trials in Hawaii and the taxpayer's tax burden, there is little justification for granting this tax preference which would amount to a partial subsidy of such trials by state government.

It should be remembered that giving tax breaks to one select group of taxpayers comes at the expense of all other taxpayers. As such, it is an insult to all other taxpayers that they are not deserving of such tax preferences. Rather than singling out a particular group for tax relief, concurrent efforts must be made to improve Hawaii's business climate to enhance the economic prospects for all businesses.

Finally, while the measure proposes to establish a limit on the amount of credit that may be claimed per clinical trial, it does not specify a total dollar amount that may be claimed for all clinical trials conducted in the state. Thus, it should be remembered that unless lawmakers reduce spending by an amount equal to the loss of revenues this bill represents, all other taxpayers will have to pick up the tab for this tax incentive. So instead of improving the plight of the taxpayer and the overall economic and business environment, this measure makes sure it remains difficult to survive in Hawaii. It is incredulous that lawmakers would even consider another tax credit when the state budget is already hemorrhaging by almost $2 billion.

Digested 3/19/09