HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2010
STATE OF HAWAII

H.B. NO. 2984 H.D. 2 S.D. 2

A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

SECTION 1. Following the 2009 legislative session, the chairs of the senate committee on economic development and technology and the house committee on economic revitalization, business, and military affairs convened a technology caucus work group to bring together industry stakeholders and interested policymakers to develop recommendations for legislation to enhance Hawaii's struggling economy. The work group provided a forum to review the current status of Hawaii's science and technology industry, identify state or county actions that impede long-term growth and expansion of technology companies, and develop recommendations to address these impediments. The work group also identified best practices supporting the growth and development of science and technology industries in other jurisdictions to aid in developing proposed suggestions for future legislation.

The purpose of this Act is to implement, in part, the recommendations of the technology caucus work group.

SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

"(j) This section shall not apply to taxable years beginning after December 31, [~~2010.~~] 2011."

SECTION 3. Section 235-110.51, Hawaii Revised Statutes, is repealed.

["~~**§235-110.51 Technology infrastructure renovation tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.~~

~~(b) The amount of the credit shall be four per cent of the renovation costs incurred during the taxable year for each commercial building located in Hawaii.~~

~~(c) In the case of a partnership, S corporation, estate, trust, or any developer of a commercial building, the tax credit allowable is for renovation costs incurred by the entity for the taxable year. 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).~~

~~(d) If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the renovation cost for which the deduction is taken.~~

~~(e) The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.~~

~~(f) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.~~

~~(g) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of credit over liability may be carried forward until exhausted.~~

~~(h) The tax credit allowed under this section shall not be available for taxable years beginning after December 31, 2010.~~

~~(i) As used in this section:~~

~~"Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.~~

~~"Renovation costs" means costs incurred after December 31, 2000, to plan, design, install, construct, and purchase technology-enabled infrastructure equipment to provide a commercial building with technology-enabled infrastructure.~~

~~"Technology-enabled infrastructure" means:~~

~~(1) High speed telecommunications systems that provide Internet access, direct satellite communications access, and videoconferencing facilities;~~

~~(2) Physical security systems that identify and verify valid entry to secure spaces, detect invalid entry or entry attempts, and monitor activity in these spaces;~~

~~(3) Environmental systems to include heating, ventilation, air conditioning, fire detection and suppression, and other life safety systems; and~~

~~(4) Backup and emergency electric power systems.~~

~~(j) No taxpayer that claims a credit under this section shall claim any other credit under this chapter.~~"]

SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is repealed.

["~~**§235-110.9 High technology business investment tax credit.**~~ ~~(a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a high technology business~~

~~investment tax credit that shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed. The tax credit shall be as follows:~~

~~(1) In the year the investment was made, thirty-five per cent;~~

~~(2) In the first year following the year in which the investment was made, twenty-five per cent;~~

~~(3) In the second year following the investment, twenty per cent;~~

~~(4) In the third year following the investment, ten per cent; and~~

~~(5) In the fourth year following the investment, ten per cent;~~

~~of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit in the year the investment was made, $700,000; in the first year following the year in which the investment was made, $500,000; in the second year following the year in which the investment was made, $400,000; in the third year following the year in which the~~

~~investment was made, $200,000; and in the fourth year following the year in which the investment was made, $200,000.~~

~~(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter. By accepting an investment for which the credit allowed under this section may be claimed, a qualified high technology business consents to the public disclosure of the qualified high technology business' name and status as a beneficiary of the credit under this section.~~

~~(c) If the tax credit under this section exceeds the taxpayer's income tax liability for any of the five years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. Every claim, including amended claims, for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.~~

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

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

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

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

~~the credit claimed under this section shall be recaptured. The recapture shall be equal to ten per cent of the amount of the total tax credit claimed under this section in the preceding two taxable years. The amount of the credit recaptured shall apply only to the investment in the particular qualified high technology business that meets the requirements of paragraph (1), (2), or (3). The recapture provisions of this subsection shall not apply to a tax credit claimed for a qualified high technology business that does not fall within the provisions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the~~

~~taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.~~

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

~~(1) Qualified investments, if any, expended in the previous taxable year; and~~

~~(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.~~

~~(f) The department shall:~~

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

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

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

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

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

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

~~(g) As used in this section:~~

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

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

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

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

~~(1) More than fifty per cent of its total business activities are qualified research; and provided further that the business conducts more than seventy-five per cent of its qualified research in this State; or~~

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

~~(A) Products sold from, manufactured in, or produced in this State; or~~

~~(B) Services performed in this State.~~

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

~~(h) Common law principles, including the doctrine of economic substance and business purpose, shall apply to any investment. There exists a presumption that a transaction satisfies the doctrine of economic substance and business purpose to the extent that the special allocation of the high~~

~~technology business tax credit has an investment tax credit ratio of 1.5 or less of credit for every dollar invested.~~

~~Transactions for which an investment tax credit allocation ratio greater than 1.5 but not more than 2.0 of credit for every dollar invested and claimed may be reviewed by the department for applicable doctrines of economic substance and business purpose.~~

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

~~(i) For investments made on or after May 1, 2009, notwithstanding any other law to the contrary, no allocations, special or otherwise, of credits under this section may exceed the amount of the investment made by the taxpayer ultimately claiming this credit; and investment tax credit allocation ratios greater than 1.0 of credit for every dollar invested shall not be allowed. In addition, the credit shall be allowed only in accordance with subsection (a).~~

~~(j) For investments made on or after May 1, 2009, this section shall be subject to section 235-109.5.~~

~~(k) This section shall not apply to taxable years beginning after December 31, 2010.~~"]

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2050.

Report Title:
Tax Credit; Research Activities

Description:
Extends the end date for the tax credit for research activities from December 31, 2010, to December 31, 2011. Repeals remaining tax credit provisions of Act 221, Session Laws of Hawaii 2001. Effective 7/1/2050.

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