

JAN 21 2011

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§235- New markets tax credit. (a) Section 45D (with
5 respect to new markets tax credit) of the Internal Revenue Code
6 shall be operative for the purposes of this chapter, except as
7 otherwise provided in this section.

8 (b) Each taxpayer subject to the tax imposed by this
9 chapter who holds a qualified equity investment on a credit
10 allowance date of that investment, which occurs during the
11 taxable year, may claim a credit under this section. The amount
12 of the credit shall be deductible from the taxpayer's net income
13 tax liability, if any, imposed by this chapter for the taxable
14 year in which the credit is properly claimed on a timely basis.

15 (c) The amount of the credit shall be equal to the
16 applicable percentage of the amount paid to the qualified
17 community development entity for the investment at its original



1 issue. The applicable percentage shall be calculated as
2 provided in section 45D(a)(2) of the Internal Revenue Code.

3 (d) For the purpose of this section, the determination of
4 the following shall be made under the designated provisions of
5 the Internal Revenue Code as follows:

6 (1) Credit allowance date shall be made under section
7 45D(a)(3);

8 (2) Qualified equity investment shall be made under
9 section 45D(b), except that reference to "the
10 Secretary" under section 45D(b)(1), shall be to the
11 director;

12 (3) Qualified community development entity shall be made
13 under section 45D(c);

14 (4) Qualified low-income community investment shall be
15 made under section 45D(d);

16 (5) Low-income community shall be made under section
17 45D(e);

18 (6) Recapture of credit shall be made under section
19 45D(g), except that the tax for the taxable year shall
20 be increased under section 45D(g)(1) only with respect
21 to credits that were used to reduce state income tax;

22 and



1 (7) Basis reduction shall be made under section 45D(h).

2 (e) The credit allowed under this section shall be
3 deducted from the taxpayer's net income tax liability for the
4 taxable year. For the purpose of deducting this tax credit, net
5 income tax liability means net income tax liability reduced by
6 all other credits allowed to the taxpayer under this chapter.

7 A tax credit under this section that exceeds the taxpayer's
8 net income tax liability may be used as a credit against the
9 taxpayer's income tax liability in subsequent years until
10 exhausted. All claims for a tax credit under this section shall
11 be filed on or before the end of the twelfth month following the
12 close of the taxable year for which the credit may be claimed.
13 Failure to properly and timely claim the credit shall constitute
14 a waiver of the right to claim the credit. The credit may be
15 claimed whether or not the taxpayer claims a federal credit
16 under section 45D of the Internal Revenue Code.

17 (f) Section 469 (with respect to passive activity losses
18 and credits limited) of the Internal Revenue Code shall be
19 applied in claiming the credit under this section.

20 (g) The director may adopt rules under chapter 91 and
21 prepare any forms necessary to carry out the purposes of this
22 section."



1 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The following Internal Revenue Code subchapters,
4 parts of subchapters, sections, subsections, and parts of
5 subsections shall not be operative for the purposes of this
6 chapter, unless otherwise provided:

7 (1) Subchapter A (sections 1 to 59A) (with respect to
8 determination of tax liability), except section
9 1(h)(2) (relating to net capital gain reduced by the
10 amount taken into account as investment income),
11 except sections 2(a), 2(b), and 2(c) (with respect to
12 the definition of "surviving spouse" and "head of
13 household"), except section 41 (with respect to the
14 credit for increasing research activities), except
15 section 42 (with respect to low-income housing
16 credit), except section 45D (with respect to new
17 markets tax credit), except sections 47 and 48, as
18 amended, as of December 31, 1984 (with respect to
19 certain depreciable tangible personal property), and
20 except section 48(d)(3), as amended, as of February
21 17, 2009 (with respect to the treatment of United
22 States Department of Treasury grants made under



- 1 section 1603 of the American Recovery and Reinvestment
2 Tax Act of 2009). For treatment, see sections 235-
3 110.91, 235-110.7, [~~and~~] 235-110.8[~~+~~], and 235- ;
- 4 (2) Section 78 (with respect to dividends received from
5 certain foreign corporations by domestic corporations
6 choosing foreign tax credit);
- 7 (3) Section 86 (with respect to social security and tier 1
8 railroad retirement benefits);
- 9 (4) Section 103 (with respect to interest on state and
10 local bonds). For treatment, see section 235-7(b);
- 11 (5) Section 114 (with respect to extraterritorial income).
12 For treatment, any transaction as specified in the
13 transitional rule for 2005 and 2006 as specified in
14 the American Jobs Creation Act of 2004 section 101(d)
15 and any transaction that has occurred pursuant to a
16 binding contract as specified in the American Jobs
17 Creation Act of 2004 section 101(f) are inoperative;
- 18 (6) Section 120 (with respect to amounts received under
19 qualified group legal services plans). For treatment,
20 see section 235-7(a)(9) to (11);



- 1 (7) Section 122 (with respect to certain reduced uniformed
2 services retirement pay). For treatment, see section
3 235-7(a)(3);
- 4 (8) Section 135 (with respect to income from United States
5 savings bonds used to pay higher education tuition and
6 fees). For treatment, see section 235-7(a)(1);
- 7 (9) Section 139C (with respect to COBRA premium
8 assistance);
- 9 (10) Subchapter B (sections 141 to 150) (with respect to
10 tax exemption requirements for state and local bonds);
- 11 (11) Section 151 (with respect to allowance of deductions
12 for personal exemptions). For treatment, see section
13 235-54;
- 14 (12) Section 179B (with respect to expensing of capital
15 costs incurred in complying with Environmental
16 Protection Agency sulphur regulations);
- 17 (13) Section 181 (with respect to special rules for certain
18 film and television productions);
- 19 (14) Section 196 (with respect to deduction for certain
20 unused investment credits);
- 21 (15) Section 199 (with respect to the U.S. production
22 activities deduction);



- 1 (16) Section 222 (with respect to qualified tuition and
2 related expenses);
- 3 (17) Sections 241 to 247 (with respect to special
4 deductions for corporations). For treatment, see
5 section 235-7(c);
- 6 (18) Section 280C (with respect to certain expenses for
7 which credits are allowable). For treatment, see
8 section 235-110.91;
- 9 (19) Section 291 (with respect to special rules relating to
10 corporate preference items);
- 11 (20) Section 367 (with respect to foreign corporations);
- 12 (21) Section 501(c)(12), (15), (16) (with respect to exempt
13 organizations);
- 14 (22) Section 515 (with respect to taxes of foreign
15 countries and possessions of the United States);
- 16 (23) Subchapter G (sections 531 to 565) (with respect to
17 corporations used to avoid income tax on
18 shareholders);
- 19 (24) Subchapter H (sections 581 to 597) (with respect to
20 banking institutions), except section 584 (with
21 respect to common trust funds). For treatment, see
22 chapter 241;



- 1 (25) Section 642(a) and (b) (with respect to special rules
2 for credits and deductions applicable to trusts). For
3 treatment, see sections 235-54(b) and 235-55;
- 4 (26) Section 646 (with respect to tax treatment of electing
5 Alaska Native settlement trusts);
- 6 (27) Section 668 (with respect to interest charge on
7 accumulation distributions from foreign trusts);
- 8 (28) Subchapter L (sections 801 to 848) (with respect to
9 insurance companies). For treatment, see sections
10 431:7-202 and 431:7-204;
- 11 (29) Section 853 (with respect to foreign tax credit
12 allowed to shareholders). For treatment, see section
13 235-55;
- 14 (30) Section 853A (with respect to credits from tax credit
15 bonds allowed to shareholders);
- 16 (31) Subchapter N (sections 861 to 999) (with respect to
17 tax based on income from sources within or without the
18 United States), except sections 985 to 989 (with
19 respect to foreign currency transactions). For
20 treatment, see sections 235-4, 235-5, and 235-7(b),
21 and 235-55;



- 1 (32) Section 1042(g) (with respect to sales of stock in
2 agricultural refiners and processors to eligible farm
3 cooperatives);
- 4 (33) Section 1055 (with respect to redeemable ground
5 rents);
- 6 (34) Section 1057 (with respect to election to treat
7 transfer to foreign trust, etc., as taxable exchange);
- 8 (35) Sections 1291 to 1298 (with respect to treatment of
9 passive foreign investment companies);
- 10 (36) Subchapter Q (sections 1311 to 1351) (with respect to
11 readjustment of tax between years and special
12 limitations);
- 13 (37) Subchapter R (sections 1352 to 1359) (with respect to
14 election to determine corporate tax on certain
15 international shipping activities using per ton rate);
- 16 (38) Subchapter U (sections 1391 to 1397F) (with respect to
17 designation and treatment of empowerment zones,
18 enterprise communities, and rural development
19 investment areas). For treatment, see chapter 209E;
- 20 (39) Subchapter W (sections 1400 to 1400C) (with respect to
21 District of Columbia enterprise zone);



- 1 (40) Section 14000 (with respect to education tax
2 benefits);
- 3 (41) Section 1400P (with respect to housing tax benefits);
- 4 (42) Section 1400R (with respect to employment relief);
- 5 (43) Section 1400T (with respect to special rules for
6 mortgage revenue bonds);
- 7 (44) Section 1400U-1 (with respect to allocation of
8 recovery zone bonds);
- 9 (45) Section 1400U-2 (with respect to recovery zone
10 economic development bonds); and
- 11 (46) Section 1400U-3 (with respect to recovery zone
12 facility bonds)."

13 SECTION 3. Section 235-2.45, Hawaii Revised Statutes, is
14 amended by amending subsection (d) to read as follows:

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

- 19 (1) Allocations of the high technology business investment
20 tax credit allowed by section 235-110.9 for
21 investments made before May 1, 2009;



- 1 (2) Allocations of net operating loss pursuant to section
- 2 235-111.5;
- 3 (3) Allocations of the attractions and educational
- 4 facilities tax credit allowed by section 235-110.46;
- 5 [~~or~~]
- 6 (4) Allocations of low-income housing tax credits among
- 7 partners under section 235-110.8[-]; or
- 8 (5) Allocations of the new markets tax credit allowed by
- 9 section 235- ."

10 SECTION 4. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act, upon its approval, shall apply to
 13 taxable years beginning after December 31, 2010.

14

INTRODUCED BY:



A handwritten signature in black ink, appearing to read "J. Kari Gell", is written over a horizontal line.



Report Title:

New Markets Tax Credit; Section 704(b)(2)

Description:

Establishes a new markets tax credit for a taxpayer that holds a qualified equity investment on a credit allowance date. Provides an exemption for the new markets tax credit from the requirements of section 704(b)(2) of the Internal Revenue Code.

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

