

JAN 21 2022

A BILL FOR AN ACT

RELATING TO SMALL BUSINESS HIRING TAX CREDIT.

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

1 SECTION 1. The legislature finds that small businesses
2 play an integral role in Hawaii's economy and its workforce.
3 The legislature also finds that small businesses in Hawaii
4 continue to be adversely affected by the disruptions caused by
5 the coronavirus disease 2019 (COVID-19) pandemic, and that it is
6 essential to provide them with financial relief to continue
7 operating and hiring employees during their economic hardship.

8 Accordingly, the purpose of this Act is to establish a
9 nonrefundable small business hiring tax credit that may be
10 applied against the net income tax liability of qualified small
11 business employers, in an amount equal to \$1,000 for each net
12 increase in the number of qualified employees not to exceed a
13 total of \$25,000 for any qualified small business employer;
14 provided that the cumulative amount of tax credits claimed shall
15 not exceed \$100,000,000.



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

"§235- Small business hiring tax credit. (a) There shall be allowed to each qualified small business employer subject to the taxes imposed by this chapter, a small business hiring tax credit that shall be deductible from the qualified small business employer's net income tax liability, if any, imposed by this chapter for the taxable year beginning on or after January 1, 2022, and before January 1, 2023; provided that the qualified small business employer receives a tentative tax credit reservation amount from the department pursuant to this section.

(b) The tax credit allowed under this section shall be in an amount equal to \$1,000 for each net increase in the number of qualified employees employed by the qualified small business employer calculated pursuant to subsection (c); provided that the total amount of tax credit allocated under this section shall not exceed \$25,000 for any qualified small business employer and a cumulative total of \$100,000,000 for the State.



1 (c) The net increase in the number of qualified employees
2 of a qualified small business employer used to determine the
3 amount of tax credit allowed under this section shall be equal
4 to the result of subtracting the number calculated pursuant to
5 paragraph (1) from the number calculated pursuant to paragraph
6 (2) below:

7 (1) The average number of monthly full-time equivalent
8 qualified employees employed by the qualified small
9 business employer during the three-month period
10 beginning on April 1, 2021, and ending on June 30,
11 2021. The average number of monthly full-time
12 equivalent qualified employees is determined by adding
13 the total number of monthly full-time equivalent
14 qualified employees employed by the qualified small
15 business employer for all three months and dividing
16 the total by three.

17 (2) The lesser of either of the following:

18 (A) The average number of monthly full-time
19 equivalent qualified employees employed by the
20 qualified small business employer during the
21 three-month period beginning on April 1, 2022,



1 and ending on June 30, 2022. The average number
2 of monthly full-time equivalent qualified
3 employees is determined by adding the total
4 number of monthly full-time equivalent qualified
5 employees employed by the qualified small
6 business employer for all three months and
7 dividing the total by three; or

8 (B) The average number of monthly full-time
9 equivalent qualified employees employed by the
10 qualified small business employer during the
11 twelve-month period beginning on July 1, 2021,
12 and ending on June 30, 2022. The average number
13 of monthly full-time equivalent qualified
14 employees is determined by adding the total
15 number of monthly full-time equivalent qualified
16 employees employed by the qualified small
17 business employer for all twelve months and
18 dividing the total by twelve.

19 (d) The tax credit allowed under this section shall be
20 claimed against the qualified small business employer's net
21 income tax liability for the taxable year beginning on or after



1 January 1, 2022, and before January 1, 2023; provided that if
2 the tax credit allocated to a qualified small business employer
3 under this section exceeds the qualified small business
4 employer's net income tax liability for the taxable year
5 beginning on or after January 1, 2022, and before January 1,
6 2023, the excess of the tax credit over the net income tax
7 liability may be used as a tax credit against the qualified
8 small business employer's net income tax liability in the
9 subsequent four taxable years, until the tax credit is
10 exhausted; provided that any excess of the tax credit remaining
11 after the qualified small business employer's filing of its
12 return for the taxable year beginning on or after January 1,
13 2026, and before January 1, 2027, shall be forfeited and shall
14 not be refunded to the qualified small business employer.

15 (e) A qualified small business employer who wishes to
16 receive a tax credit under this section shall apply for a
17 tentative tax credit reservation amount from the department.

18 (1) The application for a tentative tax credit reservation
19 amount under this section shall include:

20 (A) The name of the qualified small business
21 employer;



1 (B) A valid federal employer identification number of
2 the qualified small business employer;

3 (C) A valid general excise tax license number of the
4 qualified small business employer;

5 (D) The net increase in the number of qualified
6 employees employed by the qualified small
7 business employer, as calculated pursuant to
8 subsection (c); and

9 (E) Any other information and documentation deemed
10 necessary by the department for the purposes of
11 enforcing this section.

12 (2) The qualified small business employer shall submit the
13 application to the department during the period
14 beginning on November 1, 2022, and ending on
15 November 30, 2022, or an earlier date as determined by
16 the department upon reaching the cumulative total tax
17 credit allocation limit for the State set forth in
18 subsection (b). Applications received by the
19 department after November 30, 2022, or any other
20 earlier date as determined by the department pursuant
21 to this paragraph shall not be accepted by the



1 department. The determination of the date and time an
2 application is received shall be made by the
3 department, which shall not be subject to appeal or
4 review under any administrative or judicial
5 proceeding.

6 (f) The department shall administer the allocation of
7 tentative tax credit reservation amounts as follows:

8 (1) The department shall allocate tentative tax credit
9 reservation amounts to qualified small business
10 employers on a first-come-first-served basis, and for
11 each application received, the total amount of tax
12 credit available for allocation shall be reduced by an
13 amount equal to the allocated tentative credit
14 reservation amount;

15 (2) The tentative tax credit reservation amount for a
16 qualified small business employer shall be equal to
17 the net increase in the number of qualified employees
18 employed by the qualified small business employer
19 calculated pursuant to subsection (c), as reported on
20 the application, multiplied by \$1,000; provided that
21 the total amount of tax credit under this section



1 shall not exceed the limit set forth in section (b)
2 for any qualified small business employer;

3 (3) The department shall, within thirty days of receiving
4 an application, notify the applicant of the tentative
5 tax credit reservation amount allocated to the
6 qualified small business employer; provided that the
7 amount allocated shall not constitute a determination
8 by the department with respect to any of the
9 requirements of this section or eligibility for the
10 tax credit authorized by this section; and

11 (4) The department shall periodically post on its website
12 the cumulative total of tentative tax credit
13 reservation amounts allocated pursuant to this section
14 and the remaining tax credit amount available for
15 allocation.

16 (g) A tax credit under this section shall be allowed only
17 for tax credits claimed on timely filed original returns. The
18 determination of the date an original return is filed shall be
19 made by the department, which shall not be subject to appeal or
20 review under any administrative or judicial proceeding.



1 (h) The department may disallow or reduce a qualified
2 small business employer's tentative tax credit reservation
3 amount if the qualified small business employer fails to provide
4 information or documentation requested by the department within
5 fifteen calendar days after the department requests the
6 information.

7 (i) A qualified small business employer that becomes a
8 converted entity subsequent to receiving a tax credit
9 reservation amount from the department pursuant to subsections
10 (e) and (f) may transfer any unused tax credit amounts to the
11 converted entity and apply those amounts against the net income
12 tax liability of the converted entity, as specified under this
13 section.

14 (j) No interest shall be paid on an amount of tax credited
15 to a qualified small business employer or converted entity
16 pursuant to this section.

17 (k) For purposes of this section, all employees of the
18 trades or businesses that are treated as related under section
19 267, 318, or 707 of the Internal Revenue Code of 1986, as
20 amended, shall be treated as employed by a single qualified
21 small business employer.



1 (l) Notwithstanding part VII of this chapter, if a S
2 corporation elects to apply the full amount of the tax credit
3 under this section against its net income tax liability, no
4 amount of tax credit shall be allowed to reduce the
5 shareholder's tax liability under this chapter.

6 (m) Notwithstanding any other law to the contrary, the
7 department of labor and industrial relations shall, upon
8 request, provide the department in the form and manner agreed
9 upon by the departments, any and all information deemed
10 necessary by the department to administer and enforce this
11 section.

12 (n) Notwithstanding any other law to the contrary, the
13 department shall keep a record of the following:

14 (1) All qualified small business employers that have been
15 allocated a tax credit pursuant to this section; and

16 (2) The amount of tax credit claimed by each qualified
17 small business employer.

18 (o) The department may adopt rules necessary to effectuate
19 the purposes of this section pursuant to chapter 91.

20 (p) As used in this section, unless the context clearly
21 requires otherwise:



1 "Converted entity" means a qualified small business
2 employer that changed its business form to a different entity
3 type and continues its operation.

4 "Monthly full-time equivalent" means either of the
5 following:

6 (1) For a qualified employee who is paid hourly qualified
7 wages, "monthly full-time equivalent" means the total
8 number of hours the qualified employee was employed by
9 the qualified small business employer per month, not
10 to exceed one hundred sixty-seven hours per month per
11 qualified employee, divided by one hundred sixty-
12 seven; or

13 (2) For a salaried qualified employee, "monthly full-time
14 equivalent" means the total number of weeks the
15 qualified employee was employed by the qualified small
16 business employer per month, divided by 4.33
17 multiplied by the time base the qualified employee was
18 employed.

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



1 "Qualified employee" means an employee who is paid
2 qualified wages by a qualified small business employer.
3 "Qualified employee" shall not include an employee whose
4 qualified wages are included in calculating any other credit
5 allowed under this chapter.

6 "Qualified small business employer" means a person who:

7 (1) Is domiciled and authorized to do business in Hawaii;

8 (2) Is subject to income taxes imposed by this chapter;

9 (3) Is independently owned and operated;

10 (4) As of December 31, 2021, employed a total of one
11 hundred or fewer qualified employees; and

12 (5) Meets the following requirements:

13 (A) Has a decrease of twenty per cent or more in
14 gross receipts determined by comparing gross
15 receipts for the period beginning on January 1,
16 2021, and ending on December 31, 2021, to the
17 gross receipts for the period beginning on
18 January 1, 2020, and ending on December 31, 2020;
19 or

20 (B) If the person is a fiscal year taxpayer, has a
21 decrease of twenty per cent or more in gross



1 receipts determined by comparing either of the
2 following:

3 (i) The gross receipts for fiscal year 2020-2021
4 to the gross receipts from fiscal year 2019-
5 2020; or

6 (ii) The average of gross receipts for fiscal
7 year 2020-2021 and fiscal year 2021-2022 to
8 the gross receipts from fiscal year 2019-
9 2020;

10 (C) If a person that first commences business after
11 January 1, 2020, but on or before January 1,
12 2021, has a decrease of twenty per cent or more
13 in gross receipts in the second quarter of 2021
14 determined by comparing gross receipts from
15 January 1, 2021, through March 31, 2021,
16 multiplied by 1.5, to the gross receipts for the
17 period beginning on April 1, 2021, and ending on
18 June 30, 2021.

19 "Qualified small business employer" does not include a person
20 required to be included in a combined return under part II of



1 this chapter or authorized to be included in a consolidated
2 income tax report under section 235-92(2).

3 "Qualified wages" has the same meaning as "wages" in the
4 Hawaii employment security law, as defined in section 383-10.

5 "Tax credit amount" means an amount equal to the tax credit
6 amount that would otherwise be allowed to a qualified small
7 business employer pursuant to this section.

8 "Time base" means the fraction of the full-time employment
9 that the qualified employee is employed.

10 "Weeks employed" means the total number of calendar days
11 that a qualified employee was employed by the qualified small
12 business employer during the month, divided by seven, not to
13 exceed 4.33."

14 SECTION 3. The department of taxation shall assess if the
15 small business hiring tax credit has achieved the intended
16 purpose of providing the necessary financial relief that would
17 incentivize Hawaii's small businesses to continue hiring
18 employees during the economic hardship caused by the pandemic by
19 using the following performance indicators:

20 (1) The number of applications received for tentative tax
21 credit reservation;



1 (2) The net increase in the number of qualified employees
2 represented on applications for tentative tax credit
3 reservation; and

4 (3) The average credit amount on tax returns claiming the
5 tax credit.

6 The department of taxation shall submit a report of its
7 findings on the performance indicators for tax credits claimed
8 under this Act and its recommendations including any proposed
9 legislation, to the legislature no later than twenty days prior
10 to the convening of the regular session of 2024.

11 SECTION 4. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 5. If any provision of this Act, or the
15 application thereof to any person or circumstance, is held
16 invalid, the invalidity does not affect other provisions or
17 applications of the Act that can be given effect without the
18 invalid provision or application, and to this end the provisions
19 of this Act are severable.

20 SECTION 6. New statutory material is underscored.



1 SECTION 7. This Act, upon its approval, shall apply to
2 taxable years beginning after December 31, 2021, and shall be
3 repealed on December 31, 2027.

4

INTRODUCED BY:

Bennette E. Mizulach



S.B. NO. 220b

Report Title:

Income Tax Credit; Small Business Employers; COVID-19; Financial Relief; Employment; Department of Taxation

Description:

Establishes a nonrefundable small business hiring tax credit for the taxable year beginning on or after 1/1/2022 and before 1/1/2023, that may be applied against the net income tax liability of qualified small business employers in an amount equal to \$1,000 for each net increase in the number of qualified employees not to exceed a total of \$25,000 for any qualified small business employer and a total of \$100,000,000 for the State. Requires the qualified small business employer to apply for a tentative credit tax reservation amount to receive the tax credit. Requires the Department of Taxation to allocate the tax credit on a first-come, first-served basis. Requires the Department of Taxation to report to the Legislature. Applies to taxable years beginning after 12/31/2021. Repeals 12/31/2027.

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

