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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that Act 202, Session  
2 Laws of Hawaii 2016, established a renewable fuels production  
3 tax credit for the purpose of achieving greater energy security  
4 for Hawaii. However, the tax credit was repealed on  
5 December 31, 2021. Accordingly, the purpose of this Act is to  
6 reinstate a renewable fuels production tax credit.

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

10           "§235- Renewable fuels production tax credit. (a) Each  
11 year during the credit period, there shall be allowed to each  
12 taxpayer subject to the taxes imposed by this chapter a  
13 renewable fuels production tax credit that shall be applied to  
14 the taxpayer's net income tax liability, if any, imposed by this  
15 chapter for the taxable year in which the credit is properly  
16 claimed.

17           For each taxpayer producing renewable fuels, the annual  
18 dollar amount of the renewable fuels production tax credit



1 during the ten-year credit period shall be equal to 20 cents per  
2 seventy-six thousand British thermal units of renewable fuels  
3 using the lower heating value sold for distribution in the  
4 State; provided that the taxpayer's production of renewable  
5 fuels is not less than two billion five hundred million British  
6 thermal units of renewable fuels per calendar year; provided  
7 further that the amount of the tax credit claimed under this  
8 section by a taxpayer shall not exceed \$3,500,000 per taxable  
9 year; provided further that the tax credit shall only be claimed  
10 for fuels with lifecycle emissions below that of fossil fuels.  
11 No other tax credit may be claimed under this chapter for the  
12 costs incurred to produce the renewable fuels that are used to  
13 properly claim a tax credit under this section for the taxable  
14 year.

15 Each taxpayer, together with all of its related entities as  
16 determined under section 267(b) of the Internal Revenue Code and  
17 all business entities under common control, as determined under  
18 sections 414(b), 414(c), and 1563(a) of the Internal Revenue  
19 Code, shall not be eligible for more than a single ten-year  
20 credit period.



1        (b) In the case of a partnership, S corporation, estate,  
2 or trust, distribution and share of the renewable fuels  
3 production tax credit shall be determined pursuant to section  
4 704(b) (with respect to a partner's distributive share) of the  
5 Internal Revenue Code of 1986, as amended. For a fiscal year  
6 taxpayer, the taxpayer shall report the credit in the taxable  
7 year in which the calendar year end is included.

8        (c) No later than thirty days following the close of the  
9 calendar year, every taxpayer claiming a credit under this  
10 section shall complete and file an independent, third-party  
11 certified statement, at the taxpayer's sole expense, with and in  
12 the form prescribed by the Hawaii state energy office, providing  
13 the following information:

- 14        (1) The type, quantity, and British thermal unit value,  
15 using the lower heating value, of each qualified fuel,  
16 broken down by the type of fuel, produced and sold  
17 during the previous calendar year;
- 18        (2) The feedstock used for each type of qualified fuel;
- 19        (3) The proposed total amount of credit to which the  
20 taxpayer is entitled for each calendar year and the



1 cumulative amount of the tax credit the taxpayer  
2 received during the credit period;

3 (4) The number of full-time and number of part-time  
4 employees of the facility and those employees' states  
5 of residency, totaled per state;

6 (5) The number and location of all renewable fuel  
7 production facilities within and outside of the State;  
8 and

9 (6) The lifecycle greenhouse gas emissions per British  
10 thermal units for each type of qualified fuel  
11 produced.

12 (d) Within thirty calendar days after the due date of the  
13 statement required under subsection (c), the Hawaii state energy  
14 office shall:

15 (1) Acknowledge, in writing, receipt of the statement;

16 (2) Issue a certificate to the taxpayer reporting the  
17 amount of renewable fuels produced and sold, the  
18 amount of credit that the taxpayer is entitled to  
19 claim for the previous calendar year, and the  
20 cumulative amount of the tax credit during the credit  
21 period; and



1       (3) Provide the taxpayer with a determination of whether  
2       the lifecycle greenhouse gas emissions for each type  
3       of qualified fuel produced is lower than that of  
4       fossil fuels.

5       (e) The taxpayer shall file the certificate issued under  
6       subsection (d) with the taxpayer's tax return with the  
7       department of taxation. The director of taxation may audit and  
8       adjust the certification to conform to the facts.

9       (f) The total amount of tax credits allowed under this  
10       section shall not exceed \$20,000,000 for all eligible taxpayers  
11       in any calendar year. In the event that the credit claims under  
12       this section exceed \$20,000,000 for all eligible taxpayers in  
13       any given calendar year, the \$20,000,000 shall be divided  
14       between all eligible taxpayers for that year in proportion to  
15       the total amount of renewable fuels produced by all eligible  
16       taxpayers. Upon reaching \$20,000,000 in the aggregate, the  
17       Hawaii state energy office shall immediately discontinue issuing  
18       certificates and notify the department of taxation. In no  
19       instance shall the total dollar amount of certificates issued  
20       exceed \$20,000,000 per calendar year.



1        (g) Notwithstanding any other law to the contrary, the  
2 information collected and compiled by the Hawaii state energy  
3 office under subsections (c) and (d) for the purposes of the  
4 renewable fuels production tax credit shall be available for  
5 public inspection and dissemination, subject to chapter 92F.

6        (h) If the credit under this section exceeds the  
7 taxpayer's net income tax liability, the excess of the credit  
8 over liability may be used as a credit against the taxpayer's  
9 net income tax liability in subsequent years until exhausted,  
10 unless otherwise elected by the taxpayer pursuant to subsections  
11 (i) or (j). All claims for a credit under this section shall be  
12 properly filed on or before the end of the twelfth month  
13 following the close of the taxable year for which the credit may  
14 be claimed. Failure to comply with the foregoing provision or  
15 to provide the certified statement required under subsection (c)  
16 shall constitute a waiver of the right to claim the credit.

17        (i) A taxpayer may elect to reduce the eligible credit  
18 amount by thirty per cent and if this reduced amount exceeds the  
19 amount of income tax payment due from the taxpayer, the excess  
20 of the credit amount over payments due shall be refunded to the  
21 taxpayer; provided that tax credit amounts properly claimed by a



1 taxpayer who has no income tax liability shall be paid to the  
2 taxpayer; provided further that no refund on account of the tax  
3 credit allowed by this section shall be made for amounts less  
4 than \$1.

5 The election required by this subsection shall be made in a  
6 manner prescribed by the director on the taxpayer's return for  
7 the taxable year in which the credit is claimed. An election  
8 once made is irrevocable.

9 (j) Notwithstanding subsection (i), an individual taxpayer  
10 may elect to have any excess of the credit over payments due  
11 refunded to the taxpayer, if:

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

14 (2) The taxpayer's adjusted gross income is \$20,000 or  
15 less (or \$40,000 or less if filing a tax return as  
16 married filing jointly);

17 provided that tax credits properly claimed by a taxpayer who has  
18 no income tax liability shall be paid to the taxpayer; provided  
19 further that no refund on account of the tax credit allowed by  
20 this section shall be made for amounts less than \$1.



1        A married couple who does not file a joint tax return shall  
2 only be entitled to make this election to the extent that they  
3 would have been entitled to make the election had they filed a  
4 joint tax return.

5        The election required by this subsection shall be made in a  
6 manner prescribed by the director on the taxpayer's return for  
7 the taxable year in which the credit is claimed. An election  
8 once made is irrevocable.

9        (k) Before the production of any renewable fuels for the  
10 calendar year, the taxpayer shall provide written notice of the  
11 taxpayer's intention to begin production of renewable fuels.  
12 The written notice shall be provided to the department of  
13 taxation and the Hawaii state energy office and shall include  
14 information on the taxpayer, facility location, facility  
15 production capacity, anticipated production start date, and the  
16 taxpayer's contact information. Notwithstanding any other law  
17 to the contrary, the written notice described in this  
18 subsection, including taxpayer and facility information, shall  
19 be available for public inspection and dissemination, subject to  
20 chapter 92F.



1           (1) The taxpayer shall provide written notice to the  
2 director of taxation and the chief energy officer of the Hawaii  
3 state energy office within thirty days following the start of  
4 production. The notice shall include the production start date  
5 and expected renewable fuels production for the next twelve  
6 months. Notwithstanding any other law to the contrary, the  
7 written notice described in this subsection shall be available  
8 for public inspection and dissemination, subject to chapter 92F.

9           (m) Following each calendar year in which a credit under  
10 this section has been claimed, the chief energy officer of the  
11 Hawaii state energy office shall submit a written report to the  
12 governor and legislature regarding the production and sale of  
13 renewable fuels. The report shall include:

14           (1) The number and location of renewable fuels production  
15 facilities in the State and outside the State that  
16 have claimed a credit under this section;

17           (2) The total number of British thermal units of renewable  
18 fuels, itemized by type of fuel produced and sold  
19 during the previous calendar year; and

20           (3) The projected number of British thermal units of  
21 renewable fuels production for the succeeding year.



- 1        (n) The director of taxation:
- 2        (1) Shall prepare any forms that may be necessary to claim
- 3        a tax credit under this section;
- 4        (2) May require the taxpayer to furnish reasonable
- 5        information to ascertain the validity of the claim for
- 6        the tax credit made under this section; and
- 7        (3) May adopt rules pursuant to chapter 91 necessary to
- 8        effectuate the purposes of this section.
- 9        (o) As used in this section:
- 10       "Credit period" means a maximum period of ten consecutive
- 11 years, beginning from the first taxable year in which a taxpayer
- 12 begins renewable fuels production at a level of at least two
- 13 billion five-hundred million British thermal units of renewable
- 14 fuels per calendar year.
- 15       "Net income tax liability" means income tax liability
- 16 reduced by all other credits allowed under this chapter.
- 17       "Renewable feedstocks" means:
- 18       (1) Biomass crops and other renewable organic material,
- 19       including but not limited to logs, wood chips, wood
- 20       pellets, and wood bark;
- 21       (2) Agricultural residue;



- 1        (3) Oil crops, including but not limited to algae, canola,
- 2        jatropha, palm, soybean, and sunflower;
- 3        (4) Sugar and starch crops, including but not limited to
- 4        sugar cane and cassava;
- 5        (5) Other agricultural crops;
- 6        (6) Grease and waste cooking oil;
- 7        (7) Food wastes;
- 8        (8) Municipal solid wastes and industrial wastes;
- 9        (9) Water, including wastewater; and
- 10       (10) Animal residues and wastes,
- 11 that can be used to generate energy.

12        "Renewable fuels" means fuels produced from renewable  
13 feedstocks; provided that the fuel:

- 14        (1) Is sold as a fuel in the State; and
- 15        (2) Meets the relevant ASTM International specifications
- 16        or other industry specifications for the particular
- 17        fuel, including but not limited to:
- 18        (A) Methanol, ethanol, or other alcohols;
- 19        (B) Hydrogen;
- 20        (C) Biodiesel or renewable diesel;
- 21        (D) Biogas;



- 1            (E) Other biofuels;
- 2            (F) Renewable jet fuel or renewable gasoline; or
- 3            (G) Logs, wood chips, wood pellets, or wood bark."

4            SECTION 3. New statutory material is underscored.

5            SECTION 4. This Act shall take effect upon its approval  
6 and shall apply to taxable years beginning after December 31,  
7 2021.



**Report Title:**

Income Tax; Renewable Fuels Production Tax Credit

**Description:**

Reinstates a renewable fuels production tax credit. Applies to taxable years beginning after 12/31/2021. (CD1)

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

