

JAN 20 2023

A BILL FOR AN ACT

RELATING TO THE TAX CREDIT FOR RESEARCH ACTIVITIES.

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

1 SECTION 1. Section 235-110.91, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§235-110.91 Tax credit for research activities.** (a)
4 Section 41 (with respect to the credit for increasing research
5 activities) and section 280C(c) (with respect to certain
6 expenses for which the credit for increasing research activities
7 are allowable) of the Internal Revenue Code shall be operative
8 for the purposes of this chapter as provided in this section;
9 provided that the federal tax provisions in section 41 of the
10 Internal Revenue Code, as that section was enacted on
11 December 31, 2011, irrespective of any subsequent changes to
12 section 41 of the Internal Revenue Code, shall remain in effect
13 for purposes of determining the state income tax credit under
14 this section; provided further that the federal tax provisions
15 in section 41 of the Internal Revenue Code, as enacted on
16 December 31, 2011, irrespective of any subsequent amendments to
17 section 41 of the Internal Revenue Code, shall apply only to



1 expenses incurred for qualified research activities after
2 December 31, 2012.

3 (b) All references to Internal Revenue Code sections
4 within sections 41 and 280C(c) of the Internal Revenue Code
5 shall be operative for purposes of this section; provided that
6 references to the base amount in section 41 of the Internal
7 Revenue Code shall not apply, and credit for all qualified
8 research expenses may be taken without regard to the amount of
9 expenses for previous years.

10 (c) There shall be allowed to each qualified high
11 technology business subject to the tax imposed by this chapter
12 an income tax credit for qualified research activities equal to
13 the credit for research activities provided by section 41 of the
14 Internal Revenue Code and as modified by this section; provided
15 that, in addition to any other requirements established in this
16 section, in order to qualify for the tax credit established in
17 this section, the qualified high technology business shall also
18 claim a federal tax credit for the same qualified research
19 activities under section 41 of the Internal Revenue Code, as
20 enacted on December 31, 2011, irrespective of any subsequent
21 amendments to section 41 of the Internal Revenue Code. The



1 credit shall be deductible from the taxpayer's net income tax
2 liability, if any, imposed by this chapter for the taxable year
3 in which the credit is properly claimed. Each taxpayer,
4 together with all of the taxpayer's related entities, as
5 determined under section 267(b) of the Internal Revenue Code,
6 and all business entities under common control, as determined
7 under sections 414(b), 414(c), and 1563(a) of the Internal
8 Revenue Code, shall not be eligible for more than \$2,500,000 in
9 tax credits provided by this section per taxable year.

10 (d) ~~[Every]~~ To be eligible for the tax credit, every
11 qualified high technology business, [before March 31 of each
12 year] no later than the last day of the third month immediately
13 following the end of each taxable year in which qualified
14 research and development activity was conducted [in the previous
15 taxable year], shall submit [a written, certified statement]
16 each of the following, at a minimum, to the department of
17 business, economic development, and tourism [identifying]:

- 18 (1) Qualified expenditures, if any, expended in the
19 previous taxable year; ~~[and]~~
- 20 (2) The amount of tax credits claimed pursuant to this
21 section, if any, in the previous taxable year~~[-]~~;



- 1 (3) The industry sector or sectors in which the qualified
2 high technology business conducts business, as set
3 forth in paragraphs (2) to (8) of the definition of
4 "qualified research" in section 235-7.3;
- 5 (4) The qualified high technology business' revenue and
6 expense data, including a breakdown of any licensing
7 royalty or other forms of income generated from
8 intellectual property;
- 9 (5) Employment and wage data relating to the qualified
10 high technology business' operations in the State,
11 including the numbers of full-time and part-time
12 employees retained, new positions created, temporary
13 positions created, external services procured, and
14 payroll taxes incurred by the qualified high
15 technology business;
- 16 (6) The number of filed intellectual property, including
17 invention disclosures, provisional patents, and
18 patents issued or granted;
- 19 (7) The number of new companies in the State that
20 separated from, or were established by, the qualified
21 high technology business to commercialize the



1 intellectual property owned by the qualified high
2 technology business; and

3 (8) A written declaration signed by an officer of the
4 qualified high technology business certifying that the
5 information that is submitted is true and correct as
6 to every material matter; provided that the
7 certification shall be subject to the penalties
8 provided in section 231-36, including monetary fines
9 or imprisonment.

10 Failure to meet the requirements of this subsection shall
11 constitute a waiver of the right to claim the tax credit.

12 The department of business, economic development, and
13 tourism shall request any specific information relating to the
14 categories identified in paragraphs (1) through (8) that the
15 department of business, economic development, and tourism deems
16 sufficient to measure the effectiveness of the tax credit under
17 this section. The department of business, economic development,
18 and tourism may request any additional information that the
19 department of business, economic development, and tourism deems
20 necessary to measure the effectiveness of the tax credit,
21 including additional information related to patents.



1 (e) The department of business, economic development, and
2 tourism shall:

3 (1) Maintain records of the names and addresses of the
4 taxpayers claiming the credits under this section and
5 the total amount of the qualified research and
6 development activity costs upon which the tax credit
7 is based;

8 (2) Verify the nature of the qualifying research activity
9 and the amount of the qualifying costs or
10 expenditures;

11 (3) Total all qualifying and cumulative costs or
12 expenditures that the department certifies; and

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

15 Upon each determination made under this subsection, the
16 department of business, economic development, and tourism shall
17 issue a certificate to the taxpayer verifying information
18 submitted to the department of business, economic development,
19 and tourism, including the qualifying costs or expenditure
20 amounts, the credit amount certified for each taxable year, and
21 the cumulative amount of the tax credit during the credit



1 period. The taxpayer shall file the certificate with the
2 taxpayer's tax return with the department of taxation.
3 Notwithstanding the authority of the department of business,
4 economic development, and tourism under this section, the
5 director of taxation may audit and adjust the tax credit amount
6 to conform to the facts.

7 The department of business, economic development, and
8 tourism may assess and collect a fee to offset the costs of
9 certifying tax credit claims under this section.

10 (f) If in any [~~taxable~~] calendar year the annual amount of
11 certified credits reaches [~~\$5,000,000~~] \$15,000,000 in the
12 aggregate, the department of business, economic development, and
13 tourism shall immediately discontinue certifying credits and
14 notify the department of taxation. In no instance shall the
15 department of business, economic development, and tourism
16 certify a total amount of credits exceeding [~~\$5,000,000~~]
17 \$15,000,000 per [~~taxable~~] calendar year. To comply with this
18 restriction, the department of business, economic development,
19 and tourism shall certify credits on a [~~first-come, first~~
20 ~~served~~] first-come, first-served basis[-], which shall be
21 determined based on the date that a complete application is



1 received by the department of business, economic development,
2 and tourism. Complete applications received on the same date
3 shall be certified on a pro rata basis.

4 The department of taxation shall not allow the aggregate
5 amount of credits claimed to exceed that amount per taxable
6 year.

7 (g) If the tax credit for qualified research activities
8 claimed by a taxpayer exceeds the amount of income tax payment
9 due from the taxpayer, the excess of the tax credit over
10 payments due shall be refunded to the taxpayer; provided that no
11 refund on account of the tax credit allowed by this section
12 shall be made for amounts less than \$1.

13 (h) All claims for a tax credit under this section shall
14 be filed on or before the end of the twelfth month following the
15 close of the taxable year for which the credit may be claimed.
16 Failure to properly claim the credit shall constitute a waiver
17 of the right to claim the credit.

18 ~~[(i) A qualified high technology business that claims the~~
19 ~~credit under this section shall complete and file with the~~
20 ~~department of business, economic development, and tourism,~~
21 ~~through that department's website, an annual survey on~~



1 ~~electronic forms prepared and prescribed by the department of~~
2 ~~business, economic development, and tourism. The annual survey~~
3 ~~shall be filed before June 30 of each calendar year following~~
4 ~~the calendar year in which the credit may be claimed under this~~
5 ~~section. The department of business, economic development, and~~
6 ~~tourism may adjust the due date of the annual survey by rules~~
7 ~~adopted pursuant to chapter 91.~~

8 ~~(j) The annual survey under subsection (i) shall include~~
9 ~~the following information for the time period or periods~~
10 ~~specified by the department of business, economic development,~~
11 ~~and tourism:~~

12 ~~(1) Identification of the industry sector or sectors in~~
13 ~~which the qualified high technology business conducts~~
14 ~~business, as set forth in paragraphs (2) to (8) of the~~
15 ~~definition of "qualified research" in section~~
16 ~~235-7.3(c);~~

17 ~~(2) Total expenditures and the qualified expenditures, if~~
18 ~~any, expended in the previous taxable year;~~

19 ~~(3) Revenue and expense data, including a breakdown of any~~
20 ~~licensing royalty or other forms of income generated~~
21 ~~from intellectual property;~~



1 ~~(4) Hawaii employment and wage data, including the numbers~~
2 ~~of full-time and part-time employees retained, new~~
3 ~~jobs, temporary positions, external services procured~~
4 ~~by the business, and payroll taxes;~~

5 ~~(5) Filed intellectual property, including invention~~
6 ~~disclosures, provisional patents, and patents issued~~
7 ~~or granted; and~~

8 ~~(6) The number of new companies spun out or established to~~
9 ~~commercialize the intellectual property owned by the~~
10 ~~qualified high technology business.~~

11 ~~The department of business, economic development, and~~
12 ~~tourism shall request information in each of these categories~~
13 ~~sufficient to measure the effectiveness of the tax credit under~~
14 ~~this section. The department of business, economic development,~~
15 ~~and tourism may request any additional information necessary to~~
16 ~~measure the effectiveness of the tax credit, such as information~~
17 ~~related to patents. In preparing the survey and requesting any~~
18 ~~additional information, the department of business, economic~~
19 ~~development, and tourism shall ensure that qualified high~~
20 ~~technology businesses are not subject to duplicative reporting~~
21 ~~requirements.~~



1 ~~(k)~~] (i) The department of business, economic development,
2 and tourism shall use information collected under this section
3 and through its other reporting requirements to prepare summary
4 descriptive statistics by category. The information shall be
5 reported at the aggregate level to prevent compromising
6 identities of qualified high technology business investors or
7 other confidential information. The department of business,
8 economic development, and tourism shall also identify each
9 qualified high technology business that applies for or is the
10 beneficiary of tax credits claimed under this section. The
11 department of business, economic development, and tourism shall
12 report the information required under this subsection to the
13 legislature by September 1 of each year.

14 ~~(l)~~] (j) The department of business, economic
15 development, and tourism, in collaboration with the department
16 of taxation, shall use the information collected to study the
17 effectiveness of the tax credit under this section. The
18 department of business, economic development, and tourism shall
19 submit a report to the legislature on the following:

20 (1) The amount of tax credits claimed and total taxes paid
21 by qualified high technology businesses;



- 1 (2) The number of qualified high technology businesses in
- 2 each industry sector;
- 3 (3) The numbers and types of jobs created by qualified
- 4 high technology businesses;
- 5 (4) External services and materials procured by the
- 6 businesses;
- 7 (5) The compensation levels of jobs provided by qualified
- 8 high technology businesses;
- 9 (6) Qualified research activities; and
- 10 (7) Any other factors the department of business, economic
- 11 development, and tourism deems relevant.

12 The department of business, economic development, and tourism
13 shall submit the report to the legislature by September 1 of
14 each year.

15 ~~(m)~~ (k) The director of taxation may adopt any rules
16 under chapter 91 and forms necessary to carry out this section.

17 ~~(n)~~ (l) This section shall not apply to taxable years
18 beginning after December 31, 2024.

19 ~~(e)~~ (m) As used in this section:

20 "Qualified high technology business" shall have the same
21 meaning as in section 235-7.3~~(e)~~.



1 "Qualified research" shall have the same meaning as in
2 section 41(d) of the Internal Revenue Code.

3 "Qualified research expenses" shall have the same meaning
4 as in section 41(b) of the Internal Revenue Code; provided that
5 it shall not include research expenses incurred outside of the
6 State."

7 SECTION 2. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 3. This Act shall take effect on July 1, 2023, and
10 shall apply to taxable years beginning after December 31, 2022.

11

INTRODUCED BY: _____

A handwritten signature in black ink, appearing to be 'J. P. ...', is written over a horizontal line that serves as a signature line.

S.B. NO. 951

Report Title:

DBEDT; Tax Credit for Research Activities; Requirements; Survey; Certification; Caps

Description:

Adds a cap for the amount of tax credits for research activities that an eligible taxpayer and the taxpayer's related entities may receive per taxable year. Consolidates the survey and certification requirements for tax credits for research activities. Amends the annual aggregate cap on tax credits for research activities that the Department of Business, Economic Development, and Tourism may certify. Requires certification of the tax credits for research activities on a first-come, first-served basis to be based on the date that a complete application is received, subject to certain conditions. Takes effect on 7/1/2023 and applies to taxable years beginning after 12/31/2022.

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

