

JAN 24 2024

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# 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 \$1,500,000 in  
9 tax credits provided by this section per taxable year.

10 (d) Every qualified high technology business shall be  
11 registered to do business in the State.

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

20 (1) Qualified expenditures, if any, expended in the  
21 previous taxable year; [and]



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



1       (7) The number of new companies in the State that  
2       separated from, or were established by, the qualified  
3       high technology business to commercialize the  
4       intellectual property owned by the qualified high  
5       technology business; and

6       (8) A written declaration signed by an officer of the  
7       qualified high technology business certifying that the  
8       information that is submitted is true and correct as  
9       to every material matter; provided that the  
10      certification shall be subject to the penalties  
11      pursuant to section 231-26, including monetary fines  
12      and imprisonment.

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

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



1 that the department of business, economic development, and  
2 tourism deems necessary to measure the effectiveness of the tax  
3 credit, including additional information related to patents.

4 [~~e~~] (f) The department of business, economic  
5 development, and tourism shall:

- 6 (1) Maintain records of the names and addresses of the  
7 taxpayers claiming the credits under this section and  
8 the total amount of the qualified research and  
9 development activity costs upon which the tax credit  
10 is based;
- 11 (2) Verify the nature of the qualifying research activity  
12 and the amount of the qualifying costs or  
13 expenditures;
- 14 (3) Total all qualifying and cumulative costs or  
15 expenditures that the department certifies; and
- 16 (4) Certify the amount of the tax credit for each taxable  
17 year and cumulative amount of the tax credit.

18 Upon each determination made under this subsection, the  
19 department of business, economic development, and tourism shall  
20 issue a certificate to the taxpayer verifying information  
21 submitted to the department of business, economic development,



1 and tourism, including the qualifying costs or expenditure  
2 amounts, the credit amount certified for each taxable year, and  
3 the cumulative amount of the tax credit during the credit  
4 period. The taxpayer shall file the certificate with the  
5 taxpayer's tax return with the department of taxation.

6 Notwithstanding the authority of the department of business,  
7 economic development, and tourism under this section, the  
8 director of taxation may audit and adjust the tax credit amount  
9 to conform to the facts.

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

13 [~~f~~] (g) If in any [~~taxable~~] calendar year the annual  
14 amount of certified credits reaches [~~\$5,000,000~~] \$15,000,000 in  
15 the aggregate, the department of business, economic development,  
16 and tourism shall immediately discontinue certifying credits and  
17 notify the department of taxation. In no instance shall the  
18 department of business, economic development, and tourism  
19 certify a total amount of credits exceeding [~~\$5,000,000~~]  
20 \$15,000,000 per [~~taxable~~] calendar year. To comply with this  
21 restriction, the department of business, economic development,



1 and tourism shall certify credits on a first come, first served  
2 basis~~[-]~~, which shall be determined based on the date that a  
3 complete application is received by the department of business,  
4 economic development, and tourism. Complete applications  
5 received on the same date shall be certified on a pro rata  
6 basis.

7 The department of taxation shall not allow the aggregate  
8 amount of credits claimed to exceed that amount per taxable  
9 year.

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

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



1           ~~[(i) A qualified high technology business that claims the~~  
2 ~~credit under this section shall complete and file with the~~  
3 ~~department of business, economic development, and tourism,~~  
4 ~~through that department's website, an annual survey on~~  
5 ~~electronic forms prepared and prescribed by the department of~~  
6 ~~business, economic development, and tourism. The annual survey~~  
7 ~~shall be filed before June 30 of each calendar year following~~  
8 ~~the calendar year in which the credit may be claimed under this~~  
9 ~~section. The department of business, economic development, and~~  
10 ~~tourism may adjust the due date of the annual survey by rules~~  
11 ~~adopted pursuant to chapter 91.~~

12           ~~(j) The annual survey under subsection (i) shall include~~  
13 ~~the following information for the time period or periods~~  
14 ~~specified by the department of business, economic development,~~  
15 ~~and tourism:~~

16           ~~(1) Identification of the industry sector or sectors in~~  
17           ~~which the qualified high technology business conducts~~  
18           ~~business, as set forth in paragraphs (2) to (8) of the~~  
19           ~~definition of "qualified research" in section 235-~~  
20           ~~7.3(c);~~



- 1       ~~(2) Total expenditures and the qualified expenditures, if~~  
2       ~~any, expended in the previous taxable year;~~
- 3       ~~(3) Revenue and expense data, including a breakdown of any~~  
4       ~~licensing royalty or other forms of income generated~~  
5       ~~from intellectual property;~~
- 6       ~~(4) Hawaii employment and wage data, including the numbers~~  
7       ~~of full-time and part-time employees retained, new~~  
8       ~~jobs, temporary positions, external services procured~~  
9       ~~by the business, and payroll taxes;~~
- 10       ~~(5) Filed intellectual property, including invention~~  
11       ~~disclosures, provisional patents, and patents issued~~  
12       ~~or granted; and~~
- 13       ~~(6) The number of new companies spun out or established to~~  
14       ~~commercialize the intellectual property owned by the~~  
15       ~~qualified high technology business.~~

16       ~~The department of business, economic development, and~~  
17       ~~tourism shall request information in each of these categories~~  
18       ~~sufficient to measure the effectiveness of the tax credit under~~  
19       ~~this section. The department of business, economic development,~~  
20       ~~and tourism may request any additional information necessary to~~  
21       ~~measure the effectiveness of the tax credit, such as information~~



1 ~~related to patents. In preparing the survey and requesting any~~  
2 ~~additional information, the department of business, economic~~  
3 ~~development, and tourism shall ensure that qualified high~~  
4 ~~technology businesses are not subject to duplicative reporting~~  
5 ~~requirements.~~

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

19 ~~[(l)]~~ (k) The department of business, economic  
20 development, and tourism, in collaboration with the department  
21 of taxation, shall use the information collected to study the



1 effectiveness of the tax credit under this section. The  
2 department of business, economic development, and tourism shall  
3 submit a report to the legislature on the following:

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

6 (2) The number of qualified high technology businesses in  
7 each industry sector;

8 (3) The numbers and types of jobs created by qualified  
9 high technology businesses;

10 (4) External services and materials procured by the  
11 businesses;

12 (5) The compensation levels of jobs provided by qualified  
13 high technology businesses;

14 (6) Qualified research activities; and

15 (7) Any other factors the department of business, economic  
16 development, and tourism deems relevant.

17 The department of business, economic development, and tourism  
18 shall submit the report to the legislature by September 1 of  
19 each year.

20 [~~m~~] (1) The director of taxation may adopt any rules  
21 under chapter 91 and forms necessary to carry out this section.



1        [~~(n)~~] (m) This section shall not apply to taxable years  
2 beginning after December 31, [~~2024.~~] 2029.

3        [~~(e)~~] (n) As used in this section:

4        "Qualified high technology business" shall have the same  
5 meaning as in section 235-7.3(c).

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

8        "Qualified research expenses" shall have the same meaning  
9 as in section 41(b) of the Internal Revenue Code; provided that  
10 it shall not include research expenses incurred outside of the  
11 State."

12        SECTION 2. Act 261, Session Laws of Hawaii 2019, is  
13 amended by amending section 5 to read as follows:

14        "SECTION 5. This Act shall take effect upon its approval;  
15 provided that:

16        (1) Section 2 shall apply to taxable years beginning after  
17 December 31, 2019; and

18        (2) Part II shall take effect on December 31, [~~2024.~~]  
19        2029."

20        SECTION 3. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act, upon its approval, shall apply to  
2 taxable years beginning after December 31, 2023.

3

INTRODUCED BY: Michelle N. Kidani



# S.B. NO. 3023

**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. Extends from 12/31/2024 to 12/31/2029, the sunset date for tax credits for research activities.

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