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# A BILL FOR AN ACT

RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

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

1           SECTION 1. The legislature finds that research activities  
2 are an important component of a diversified economy. The  
3 legislature further finds that research activities have been  
4 effective in stimulating the economy and creating quality jobs  
5 in the State. For the past two years, the \$5,000,000 cap for  
6 the income tax credit for research activities was reached almost  
7 as soon as the online applications were opened.

8           The purpose of this Act is to:

- 9           (1) Extend the sunset date of the research activities  
10           income tax credit by three years, to December 31,  
11           2027;
- 12           (2) Consolidate the survey and the certification  
13           requirements for the research activities tax credit;
- 14           (3) Require the certification based on the date a complete  
15           application is received, subject to certain  
16           conditions; and

S.B. NO. 3044

1           (4) Add a cap to ensure that a single company and its  
2                   related entities do not claim the entire allotment for  
3                   the tax credit.

4           SECTION 2. Section 235-110.91, Hawaii Revised Statutes, is  
5 amended to read as follows:

6           "**§235-110.91 Tax credit for research activities.** (a)  
7 Section 41 (with respect to the credit for increasing research  
8 activities) and section 280C(c) (with respect to certain  
9 expenses for which the credit for increasing research activities  
10 are allowable) of the Internal Revenue Code shall be operative  
11 for the purposes of this chapter as provided in this section;  
12 provided that the federal tax provisions in section 41 of the  
13 Internal Revenue Code, as that section was enacted on  
14 December 31, 2011, irrespective of any subsequent changes to  
15 section 41 of the Internal Revenue Code, shall remain in effect  
16 for purposes of determining the state income tax credit under  
17 this section; provided further that the federal tax provisions  
18 in section 41 of the Internal Revenue Code, as enacted on  
19 December 31, 2011, irrespective of any subsequent amendments to  
20 section 41 of the Internal Revenue Code, shall apply only to  
21 expenses incurred for qualified research activities after  
22 December 31, 2012.

S.B. NO. 3044

1           (b) All references to Internal Revenue Code sections  
2 within sections 41 and 280C(c) of the Internal Revenue Code  
3 shall be operative for purposes of this section; provided that  
4 references to the base amount in section 41 of the Internal  
5 Revenue Code shall not apply, and credit for all qualified  
6 research expenses may be taken without regard to the amount of  
7 expenses for previous years. In determining the allowable  
8 credit, research expenses funded by any grant, forgivable loan,  
9 or other amounts not included in gross income for purposes of  
10 this chapter shall not be qualified research expenses.

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

S.B. NO. 3044

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 its related entities, shall not be eligible  
5 for any more than \$1,000,000 in tax credits provided by this  
6 section per calendar year.

7 (d) Every qualified high technology business, before March  
8 31 of each year in which qualified research and development  
9 activity was conducted in the previous taxable year, shall  
10 submit a written, certified statement to the department of  
11 business, economic development, and tourism, identifying[+] at a  
12 minimum:

- 13 (1) Qualified expenditures, if any, expended in the  
14 previous taxable year; [~~and~~]
- 15 (2) The amount of tax credits claimed pursuant to this  
16 section, if any, in the previous taxable year[+];
- 17 (3) The industry sector or sectors in which the qualified  
18 high technology business conducts business, as set  
19 forth in paragraphs (2) to (8) of the definition of  
20 "qualified research" in section 235-7.3(c);

S.B. NO. 3044

1       (4) Revenue and expense data, including a breakdown of any  
2           licensing royalty or other forms of income generated  
3           from intellectual property;

4       (5) Hawaii employment and wage data, including the numbers  
5           of full-time and part-time employees retained, new  
6           jobs, temporary positions, external services procured  
7           by the qualified high technology business, and payroll  
8           taxes;

9       (6) The number of filed intellectual property, including  
10           invention disclosures, provisional patents, and  
11           patents issued or granted; and

12       (7) The number of new companies spun out or established in  
13           Hawaii to commercialize the intellectual property  
14           owned by the qualified high technology business.

15 Failure to meet the requirements of this subsection shall  
16 constitute a waiver of the right to claim the credit.

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

S.B. NO. 3044

1 measure the effectiveness of the tax credit, such as additional  
2 information related to patents.

3 (e) The department of business, economic development, and  
4 tourism shall:

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

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

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

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

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

S.B. NO. 3044

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

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

11 (f) If in any [~~taxable~~] calendar year the annual amount of  
12 certified credits reaches \$5,000,000 in the aggregate, the  
13 department of business, economic development, and tourism shall  
14 immediately discontinue certifying credits and notify the  
15 department of taxation. In no instance shall the department of  
16 business, economic development, and tourism certify a total  
17 amount of credits exceeding \$5,000,000 per [~~taxable~~] calendar  
18 year. To comply with this restriction, the department of  
19 business, economic development, and tourism shall certify  
20 credits on a first-come, first-served basis[-] based on the date  
21 of submission of the written, certified statement; provided that  
22 if the total amount of credits properly claimed by two or more

S.B. NO. 3044

1 qualified high technology businesses on the same date would, if  
2 each certified, cause the aggregate amount of certified credits  
3 to exceed \$5,000,000, each qualified high technology business  
4 that submits a certified statement on that date shall receive a  
5 proportionate share of the remaining credit, calculated by  
6 multiplying the total amount of remaining credit by a fraction,  
7 the numerator of which is the amount of credit properly claimed  
8 by the qualified high technology business and the denominator of  
9 which is the sum of all credits properly claimed by all  
10 qualified high technology businesses on that date.

11       The department of taxation shall not allow the aggregate  
12 amount of credits claimed to exceed [~~that amount~~] \$5,000,000 per  
13 [~~taxable~~] calendar year.

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

20       (h) All claims for a tax credit under this section shall  
21 be filed on or before the end of the twelfth month following the  
22 close of the taxable year for which the credit may be claimed.

S.B. NO. 3044

1 Failure to properly claim the credit shall constitute a waiver  
2 of the right to claim the credit.

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

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

18 ~~(1) Identification of the industry sector or sectors in~~  
19 ~~which the qualified high technology business conducts~~  
20 ~~business, as set forth in paragraphs (2) to (8) of the~~  
21 ~~definition of "qualified research" in section~~  
22 ~~235-7.3(e);~~

S.B. NO. 3044

- 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~~  
22       ~~related to patents. In preparing the survey and requesting any~~

S.B. NO. 3044

1 ~~additional information, the department of business, economic~~  
2 ~~development, and tourism shall ensure that qualified high~~  
3 ~~technology businesses are not subject to duplicative reporting~~  
4 ~~requirements.~~

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

18       ~~(l)]~~ (j) The department of business, economic  
19 development, and tourism, in collaboration with the department  
20 of taxation, shall use the information collected to study the  
21 effectiveness of the tax credit under this section. The

S.B. NO. 3044

1 department of business,, economic development, and tourism shall  
2 submit a report to the legislature on the following:

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

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

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

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

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

13 (6) Qualified research activities; and

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

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

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

21 [~~n~~] (l) This section shall not apply to taxable years  
22 beginning after December 31, [~~2024.~~] 2027.

S.B. NO. 3044

1           ~~[(e)]~~ (m) As used in this section:

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

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

6           "Qualified research expenses" shall have the same meaning  
7 as in section 41(b) of the Internal Revenue Code; provided that  
8 it shall not include research expenses incurred outside of the  
9 State~~[-]~~ and research expenses funded by grant, forgivable loan,  
10 and other amounts not included in gross income."

11           SECTION 3. Act 261, Session Laws of Hawaii 2019, is  
12 amended by amending section 5 to read as follows:

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

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

17           (2) Part II shall take effect on December 31, ~~[2024-]~~  
18           2027."

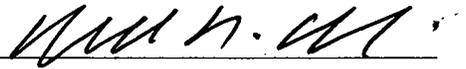
19           SECTION 4. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.

S.B. NO. 3044

1 SECTION 5. This Act shall take effect upon approval;  
2 provided that section 2 shall apply to taxable years beginning  
3 after December 31, 2024.

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5

INTRODUCED BY: 

6

BY REQUEST

# S.B. NO. 3044

**Report Title:**

Income Tax Credit; Research Activities

**Description:**

Extends the sunset date for the research activities income tax credit. Consolidates the survey and certification requirements. Requires the certification based on the date a complete application is received subject to certain conditions. Clarifies qualified research expenses. Adds a cap for an eligible taxpayer and the taxpayer's related entities.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDIT FOR RESEARCH ACTIVITIES.

PURPOSE: To extend the sunset date for the research activities income tax credit, consolidate the survey and the certification requirements, require the certification based on the date a complete application is received, subject to certain conditions, outline a process of distribution provided that numerous complete applications are received, clarify that research expenses funded by amounts not included in gross income shall not be eligible, and add a cap for an eligible taxpayer and the taxpayer's related entities.

MEANS: Amend section 235-110.91, Hawaii Revised Statutes and section 5 of Act 261, Session Laws of Hawaii 2019.

JUSTIFICATION: The amendments consolidate the survey and the certification to ease some of the administrative burden, require the certification based on the date a complete application is received, subject to certain conditions, and add a cap to ensure that a single company does not claim the entire allotment for the tax credit.

Impact on the public: Eases submission requirements and distributes tax credits to qualified companies.

Impact on the department and other agencies: Eases administrative burden.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-143.

OTHER AFFECTED

AGENCIES:

Department of Taxation.

EFFECTIVE DATE:

Upon its approval; provided that section 2 shall apply to taxable years beginning after December 31, 2024.