
A BILL FOR AN ACT

RELATING TO 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 December
11 31, 2011, irrespective of any subsequent changes to section 41
12 of the Internal Revenue Code, shall remain in effect for
13 purposes of determining the state income tax credit under this
14 section; provided further that the federal tax provisions in
15 section 41 of the Internal Revenue Code, as enacted on December
16 31, 2011, irrespective of any subsequent amendments to section
17 41 of the Internal Revenue Code, shall apply only to expenses



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

4 (d) Every qualified high technology business shall be a
5 small business and shall be registered in the State.

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

11 (1) Qualified expenditures, if any, expended in the
12 previous taxable year; and

13 (2) The amount of tax credits claimed pursuant to this
14 section, if any, in the previous taxable year.

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

17 (1) Maintain records of the names and addresses of the
18 taxpayers claiming the credits under this section and
19 the total amount of the qualified research and
20 development activity costs upon which the tax credit
21 is based;



1 (2) Verify the nature of the qualifying research activity
2 and the amount of the qualifying costs or
3 expenditures;

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

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

8 Upon each determination made under this subsection, the
9 department of business, economic development, and tourism shall
10 issue a certificate to the taxpayer verifying information
11 submitted to the department of business, economic development,
12 and tourism, including the qualifying costs or expenditure
13 amounts, the credit amount certified for each taxable year, and
14 the cumulative amount of the tax credit during the credit
15 period. The taxpayer shall file the certificate with the
16 taxpayer's tax return with the department of taxation.

17 Notwithstanding the authority of the department of business,
18 economic development, and tourism under this section, the
19 director of taxation may audit and adjust the tax credit amount
20 to conform to the facts.



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

4 [~~(f)~~] (g) If in any taxable year the annual amount of
5 certified credits reaches [~~\$5,000,000~~] \$15,000,000 in the
6 aggregate, the department of business, economic development, and
7 tourism shall immediately discontinue certifying credits and
8 notify the department of taxation. In no instance shall the
9 department of business, economic development, and tourism
10 certify a total amount of credits exceeding [~~\$5,000,000~~]
11 \$15,000,000 per taxable year. To comply with this restriction,
12 the department of business, economic development, and tourism
13 shall certify credits on a first come, first served basis.

14 The department of taxation shall not allow the aggregate
15 amount of credits claimed to exceed that amount per taxable
16 year.

17 [~~(g)~~] (h) If the tax credit for qualified research
18 activities claimed by a taxpayer exceeds the amount of income
19 tax payment due from the taxpayer, the excess of the tax credit
20 over payments due shall be refunded to the taxpayer; provided



1 that no refund on account of the tax credit allowed by this
2 section shall be made for amounts less than \$1.

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

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

19 ~~[(j)]~~ (k) The annual survey under subsection ~~[(i)]~~ (j)
20 shall include the following information for the time period or



1 periods specified by the department of business, economic
2 development, and tourism:

3 (1) Identification of the industry sector or sectors in
4 which the qualified high technology business conducts
5 business, as set forth in paragraphs (2) to (8) of the
6 definition of "qualified research" in section 235-
7 7.3(c);

8 (2) Total expenditures and the qualified expenditures, if
9 any, expended in the previous taxable year;

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

13 (4) Hawaii employment and wage data, including the numbers
14 of full-time and part-time employees retained, new
15 jobs, temporary positions, external services procured
16 by the business, and payroll taxes;

17 (5) Filed intellectual property, including invention
18 disclosures, provisional patents, and patents issued
19 or granted; and



1 (6) The number of new companies spun out or established to
2 commercialize the intellectual property owned by the
3 qualified high technology business.

4 The department of business, economic development, and
5 tourism shall request information in each of these categories
6 sufficient to measure the effectiveness of the tax credit under
7 this section. The department of business, economic development,
8 and tourism may request any additional information necessary to
9 measure the effectiveness of the tax credit, such as information
10 related to patents. In preparing the survey and requesting any
11 additional information, the department of business, economic
12 development, and tourism shall ensure that qualified high
13 technology businesses are not subject to duplicative reporting
14 requirements.

15 [~~(k)~~] (l) The department of business, economic
16 development, and tourism shall use information collected under
17 this section and through its other reporting requirements to
18 prepare summary descriptive statistics by category. The
19 information shall be reported at the aggregate level to prevent
20 compromising identities of qualified high technology business
21 investors or other confidential information. The department of



1 business, economic development, and tourism shall also identify
2 each qualified high technology business that applies for or is
3 the beneficiary of tax credits claimed under this section. The
4 department of business, economic development, and tourism shall
5 report the information required under this subsection to the
6 legislature by September 1 of each year.

7 ~~[(1)]~~ (m) The department of business, economic
8 development, and tourism, in collaboration with the department
9 of taxation, shall use the information collected to study the
10 effectiveness of the tax credit under this section. The
11 department of business, economic development, and tourism shall
12 submit a report to the legislature on the following:

- 13 (1) The amount of tax credits claimed and total taxes paid
14 by qualified high technology businesses;
- 15 (2) The number of qualified high technology businesses in
16 each industry sector;
- 17 (3) The numbers and types of jobs created by qualified
18 high technology businesses;
- 19 (4) External services and materials procured by the
20 businesses;



- 1 (5) The compensation levels of jobs provided by qualified
- 2 high technology businesses;
- 3 (6) Qualified research activities; and
- 4 (7) Any other factors the department of business, economic
- 5 development, and tourism deems relevant.

6 The department of business, economic development, and tourism
7 shall submit the report to the legislature by September 1 of
8 each year.

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

11 ~~(n)~~ (o) This section shall not apply to taxable years
12 beginning after December 31, ~~[2024.]~~ 2029.

13 ~~(o)~~ (p) As used in this section:

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

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

18 "Qualified research expenses" shall have the same meaning
19 as in section 41(b) of the Internal Revenue Code; provided that
20 it shall not include research expenses incurred outside of the
21 State.



1 "Small business" means a company with no more than five
2 hundred employees, including affiliates."

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

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

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

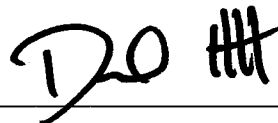
9 (2) Part II shall take effect on December 31, [~~2024-~~]
10 2029."

11 SECTION 3. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

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

15

INTRODUCED BY:



JAN 19 2024



H.B. NO. 1957

Report Title:

Tax Credit for Research Activities; Small Business

Description:

Narrows the qualifying criteria for research activities tax credits to applicants who are small businesses registered in the State. Increases the maximum amount of tax credits that can be certified per year. Extends the sunset date of the research activities tax credit by five years.

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

