

ACT 137

H.B. NO. 813

A Bill for an Act Relating to Tax Credit for Employment of Vocational Rehabilitation Referrals.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-55.91, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§235-55.91]] Credit for employment of [certain new employees.] vocational rehabilitation referrals.~~ (a) [Section 51 (with respect to targeted jobs credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b) There shall be allowed to each taxpayer subject to the tax imposed by this chapter, a [targeted jobs] credit for employment of vocational rehabilitation referrals which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(c) (b) The amount of the credit determined under this section for the taxable year shall be equal to twenty per cent of the qualified first-year wages for

that year. The amount of the qualified first-year wages which may be taken into account with respect to any individual shall not exceed \$6,000 [per year].

[(d)] (c) For purposes of this section:

“Hiring date” means the day the vocational rehabilitation referral is hired by the employer.

“Qualified first-year wages” means, with respect to any [individual,] vocational rehabilitation referral, qualified wages attributable to service rendered during the [taxable year] one-year period beginning with the day the individual begins work for the employer [and ending on the last day of the taxable year].

“Qualified wages” means the wages paid or incurred by the employer during the taxable year to an individual who is a vocational rehabilitation referral[,] and more than one-half of the wages paid or incurred for such an individual is for services performed in a trade or business of the employer.

“Vocational rehabilitation referral” means any individual who is certified by the department of human services vocational [and] rehabilitation and services [to] for the blind division in consultation with the Hawaii state employment service of the department of labor and industrial relations as:

- (1) Having a physical or mental disability which, for such individual, constitutes or results in a substantial handicap to employment; and
- (2) Having been referred to the employer upon completion of (or while receiving) rehabilitative services [as specified in section 51(d) (2)(B).] pursuant to:
 - (A) An individualized written rehabilitation plan under the State’s plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973, as amended; or
 - (B) A program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.

“Wages” has the meaning given to such term by section 3306(b) of the Internal Revenue Code (determined without regard to any dollar limitation contained in the Internal Revenue Code section). “Wages” shall not include:

- (1) Amounts paid or incurred by an employer for any period to any vocational rehabilitation referral for whom the employer receives state or federally funded payments for on-the-job training of the individual for the period;
 - (2) Amounts paid to an employer (however utilized by the employer) for any vocational rehabilitation referral under a program established under section 414 of the Social Security Act; and
 - (3) If the principal place of employment is at a plant or facility, and there is a strike or lockout involving vocational rehabilitation referrals at the plant or facility, amounts paid or incurred by the employer to the vocational rehabilitation referral for services which are the same as, or substantially similar to, those services performed by employees participating in, or affected by, the strike or lockout during the period of strike or lockout.
- (d) The following shall apply to certifications of vocational rehabilitation referrals:
- (1) An individual shall not be treated as a vocational rehabilitation referral unless, on or before the day on which the individual begins work for the employer, the employer:
 - (A) Has received a certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral; or

(B) Has requested in writing the certification from the department of human services vocational rehabilitation and services for the blind division that the individual is a qualified vocational rehabilitation referral.

For purposes of the preceding sentence, if on or before the day on which the individual begins work for the employer, the individual has received from the department of human services vocational rehabilitation and services for the blind division a written preliminary determination that the individual is a vocational rehabilitation referral, then "the fifth day" shall be substituted for "the day" in the preceding sentence.

- (2) If an individual has been certified as a vocational rehabilitation referral and the certification is incorrect because it was based on false information provided by the individual, the certification shall be revoked and wages paid by the employer after the date on which notice of revocation is received by the employer shall not be treated as qualified wages.
- (3) In any request for a certification of an individual as vocational rehabilitation referral, the employer shall certify that a good faith effort was made to determine that such individual is a vocational rehabilitation referral.

(e) [The definitions and special rules in section 51(c), (d)(2), (13), (14), (15), and (16), (f), (h), (i), (j), and (k) of the Internal Revenue Code shall be operative for this section. Penalties and interest shall apply in accordance with section 235-104.] The following wages paid to vocational rehabilitation referrals are ineligible to be claimed by the employer for this credit:

- (1) No wages shall be taken into account under this section with respect to a vocational rehabilitation referral who:
 - (A) Bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to the taxpayer, or, if the taxpayer is a corporation, to an individual who owns, directly or indirectly, more than fifty per cent in value of the outstanding stock of the corporation (determined with the application of section 267(c) of the Internal Revenue Code);
 - (B) If the taxpayer is an estate or trust, is a grantor, beneficiary, or fiduciary of the estate or trust, or is an individual who bears any of the relationships described in section 152(a)(1) to (8) of the Internal Revenue Code to a grantor, beneficiary, or fiduciary of the estate or trust; or
 - (C) Is a dependent (described in section 152(a)(9) of the Internal Revenue Code) of the taxpayer, or, if the taxpayer is a corporation, of an individual described in subparagraph (A), or, if the taxpayer is an estate or trust, of a grantor, beneficiary, or fiduciary of the estate or trust.
- (2) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral if, prior to the hiring date of the individual, the individual had been employed by the employer at any time during which the individual was not a vocational rehabilitation referral.
- (3) No wages shall be taken into account under this section with respect to any vocational rehabilitation referral unless such individual either:

- (A) Is employed by the employer at least ninety days; or
- (B) Has completed at least one hundred-twenty hours of services performed for the employer.

(f) In the case of a successor employer referred to in section 3306(b)(1) of the Internal Revenue Code, the determination of the amount of the tax credit allowable under this section with respect to wages paid by the successor employer shall be made in the same manner as if the wages were paid by the predecessor employer referred to in the section.

(g) No credit shall be determined under this section with respect to wages paid by an employer to a vocational rehabilitation referral for services performed by the individual for another person unless the amount reasonably expected to be received by the employer for the services from the other person exceeds the wages paid by the employer to the individual for such services.

[(f)] (h) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.

[(g)] (i) All claims for tax credits under this section, including any amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credits may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

[(h)] (j) No deduction shall be allowed for that portion of the wages or salaries paid or incurred for the taxable year that is equal to the amount of the credit determined under this section.

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

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit)[,] and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property)[,] and except section 51 (with respect to the targeted jobs credit)]. For treatment, see sections 235-110.7[,], and 235-110.8[,], and 235-55.91].
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits).
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see sections 235-2.4 and 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).

- (7) Section 135 (with respect to income from United States saving bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1).
- (8) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- (9) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations), except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13) Section 280C (with respect to certain expenses for which credits are allowable).
- (14) Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).
- (15) Section 291 (with respect to special rules relating to corporate preference items).
- (16) Section 367 (with respect to foreign corporations).
- (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- (19) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- (20) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (21) Subchapter H (sections 581 to 597) (with respect to banking institutions). For treatment, see chapter 241.
- (22) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- (24) Subchapter L (sections 801 to 847) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204.
- (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- (26) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- (27) Section 1055 (with respect to redeemable ground rents).
- (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (29) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- (30) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act, upon its approval, shall take effect retroactive to October 1, 1990.

(Approved May 22, 1991.)