

ACT 195

S.B. NO. 2781

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Hotel construction and remodeling tax credit. (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter and chapter 237D, an income tax credit, 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.

The amount of the credit shall be four per cent of the construction or renovation costs incurred during the taxable year for each qualified hotel facility located in Hawaii, and shall not include the construction or renovation costs for which another credit was claimed under this chapter for the taxable year.

In the case of a partnership, S corporation, estate, trust, association of apartment owners of a qualified hotel facility, time share owners association, or any developer of a time share project, the tax credit allowable is for construction or renovation costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the construction or renovation cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.

(c) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of credit over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1. All claims for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable

year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(e) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 1998, and shall not be available for taxable years beginning after December 31, 2002.

(f) To qualify for the income tax credit, the taxpayer shall be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

(g) As used in this section:

“Construction or renovation cost” means any costs incurred after December 31, 1998, for plans, design, construction, and equipment related to new construction, alterations, or modifications to a qualified hotel facility.

“Net income tax liability” means income tax liability reduced by all other credits allowed under this chapter.

“Qualified hotel facility” means a hotel/hotel-condo as defined in section 486K-1, and includes a time share facility or project.

“Taxpayer” means a taxpayer under this chapter, and includes:

(1) Association of apartment owners; or

(2) Time share owners association;

(h) No taxpayer that claims a credit under this section shall claim a credit under chapter 235D.”

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§237- Call centers; exemption; engaging in business; definitions. (a)

This chapter shall not apply to amounts received from a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications services, including toll-free telecommunications, telecommunications capabilities for electronic mail, voice, and data telecommunications, computerized telephone support, facsimile, wide area telecommunications services, or computer-to-computer communication.

(b) The establishment of a call center in this State by any person shall not be used by itself by the State to find that any other part of the person’s business is engaged in business in this State for the purposes of this chapter. Gross income or gross proceeds received by a call center for customer service and support shall be exempt from the measure of taxes imposed by this chapter.

(c) The department, by rule, may provide that the person providing the telecommunications service may take from the person operating a call center a certificate, in a form that the department shall prescribe, certifying that the amounts received for telecommunications services are for operating a call center. If the certificate is required by rule of the department, the absence of the certificate in itself shall give rise to the presumption that the amounts received from the sale of telecommunications services are not for operating a call center.

(d) As used in this section:

“Call center” means a physical or electronic operation that focuses on providing customer service and support for computer hardware and software companies, manufacturing companies, software service organizations, and telecommunications support services, within an organization in which a managed group of individuals spend most of their time engaging in business by telephone, usually working in a

computer-automated environment; provided that the operation shall not include telemarketing or sales.

“Customer service and support” means product support, technical assistance, sales support, phone or computer-based configuration assistance, software upgrade help lines, and traditional help desk services.

“Telecommunications common carrier” means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.

“Telecommunications service” or “telecommunications” means the offering of transmission between or among points specified by a user, of information of the user’s choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium.

(e) This section shall not apply to gross proceeds or gross income received after June 30, 2010.’’

SECTION 3. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§239- Call centers; exemption; engaging in business; definitions. (a) This chapter shall not apply to amounts received from a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications services, including toll-free telecommunications, telecommunications capabilities for electronic mail, voice and data telecommunications, computerized telephone support, facsimile, wide area telecommunications services, or computer to computer communication.

(b) The department, by rule, may provide that the person providing the telecommunications service may take from the person operating a call center a certificate, in a form that the department shall prescribe, certifying that the amounts received for telecommunications services are for operating a call center. If the certificate is required by rule of the department, the absence of the certificate in itself shall give rise to the presumption that the amounts received from the sale of telecommunications services are not for operating a call center.

(c) As used in this section:

“Call center” means a physical or electronic operation that focuses on providing customer service and support for computer hardware and software companies, manufacturing companies, software service organizations, and telecommunications support services, within an organization in which a managed group of individuals spend most of their time engaging in business by telephone, usually working in a computer-automated environment; provided that the operation shall not include telemarketing or sales.

“Customer service and support” means product support, technical assistance, sales support, phone or computer-based configuration assistance, software upgrade help lines, and traditional help desk services.

(d) This section shall not apply to income received after June 30, 2010.’’

SECTION 4. New statutory material is underscored.¹

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

- (1) Section 1 shall apply to taxable years beginning after December 31, 1998;
- (2) Section 2 shall apply to gross income or gross proceeds received after June 30, 2000; and
- (3) Section 3 shall apply to the entire gross income received by a public service company for the fiscal year preceding July 1, 2001; provided that in the case of a public service company operating on a calendar year, this Act shall apply to the entire gross income received for the calendar year in which July 1, 2001, occurs and for fiscal years thereafter.

(Approved June 8, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.