

ACT 178

S.B. NO. 199

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-A Credits against income; claim limitation. (a) Notwithstanding any law to the contrary providing for a tax credit that may be claimed against a taxpayer’s tax liability under section 235-110.51, 235-110.9, 241-4.8, or 431:7-209 for taxable years beginning on or after January 1, 2009, and ending before January 1, 2011, no claim for these tax credits shall exceed eighty per cent of the taxpayer’s tax liability for the taxable year in which the credit is claimed, and any tax credits claimed shall not result in any credit carryovers.

(b) This section shall apply to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009.”

SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Section 704 of the Internal Revenue Code (with respect to a partner’s distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to:

- (1) Allocations of the high technology business investment tax credit allowed by section 235-110.9[s] for investments made before May 1, 2009;
- (2) Allocations of net operating loss pursuant to section 235-111.5;

- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.”

SECTION 3. Section 235-110.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be allowed to each taxpayer subject to the tax imposed by this chapter a capital goods excise 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 tax credit shall be determined by the application of the following rates against the cost of the eligible depreciable tangible personal property used by the taxpayer in a trade or business and placed in service within Hawaii after December 31, 1987. For calendar years beginning after:

- (1) December 31, 1987, the applicable rate shall be three per cent;
- (2) December 31, 1988, [~~and thereafter,~~] the applicable rate shall be four per cent[-];
- (3) December 31, 2008, the applicable rate shall be zero per cent; and
- (4) December 31, 2009, and thereafter, the applicable rate shall be four per cent.

For taxpayers with fiscal taxable years, the applicable rate shall be the rate for the calendar year in which the eligible depreciable tangible personal property used in the trade or business is placed in service within Hawaii.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for eligible depreciable tangible personal property which is placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rules.

In the case of eligible depreciable tangible personal property for which a credit for sales or use taxes paid to another state is allowable under section 238-3(i), the amount of the tax credit allowed under this section shall not exceed the amount of use tax actually paid under chapter 238 relating to such tangible personal property.

If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1954, as amended, no tax credit shall be allowed for that portion of the cost of property for which the deduction was taken.”

SECTION 4. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

“**§235-110.9 High technology business investment tax credit.** (a) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter a high technology business investment tax credit that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the investment was made and the following four years provided the credit is properly claimed. The tax credit shall be as follows:

- (1) In the year the investment was made, thirty-five per cent;
- (2) In the first year following the year in which the investment was made, twenty-five per cent;
- (3) In the second year following the investment, twenty per cent;
- (4) In the third year following the investment, ten per cent; and
- (5) In the fourth year following the investment, ten per cent;

of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit in the year the investment was made, \$700,000; in the first year following the year in which the investment was made, \$500,000; in the second year following the year in which the investment was made, \$400,000; in the third year following the year in which the investment was made, \$200,000; and in the fourth year following the year in which the investment was made, \$200,000.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the purpose of this section, "net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter. By accepting an investment for which the credit allowed under this section may be claimed, a qualified high technology business consents to the public disclosure of the qualified high technology business' name and status as a beneficiary of the credit under this section.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability for any of the five years that the credit is taken, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. Every claim, including amended 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) If at the close of any taxable year in the five-year period in subsection (a):

- (1) The business no longer qualifies as a qualified high technology business;
- (2) The business or an interest in the business has been sold by the taxpayer investing in the qualified high technology business; or
- (3) The taxpayer has withdrawn the taxpayer's investment wholly or partially from the qualified high technology business;

the credit claimed under this section shall be recaptured. The recapture shall be equal to ten per cent of the amount of the total tax credit claimed under this section in the preceding two taxable years. The amount of the credit recaptured shall apply only to the investment in the particular qualified high technology business that meets the requirements of paragraph (1), (2), or (3). The recapture provisions of this subsection shall not apply to a tax credit claimed for a qualified high technology business that does not fall within the provisions of paragraph (1), (2), or (3). The amount of the recaptured tax credit determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(e) Every taxpayer, before March 31 of each year in which an investment in a qualified high technology business was made in the previous taxable year, shall submit a written, certified statement to the director of taxation identifying:

- (1) Qualified investments, if any, expended in the previous taxable year; and
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year.

(f) The department shall:

- (1) Maintain records of the names and addresses of the taxpayers claiming the credits under this section and the total amount of the qualified investment costs upon which the tax credit is based;
- (2) Verify the nature and amount of the qualifying investments;

- (3) Total all qualifying and cumulative investments that the department certifies; and
- (4) Certify the amount of the tax credit for each taxable year and cumulative amount of the tax credit.

Upon each determination made under this subsection, the department shall issue a certificate to the taxpayer verifying information submitted to the department, including qualifying investment amounts, the credit amount certified for each taxable year, and the cumulative amount of the tax credit during the credit period. The taxpayer shall file the certificate with the taxpayer's tax return with the department.

The director of taxation may assess and collect a fee to offset the costs of certifying tax credits claims under this section. All fees collected under this section shall be deposited into the tax administration special fund established under section 235-20.5.

(g) As used in this section:

"Investment tax credit allocation ratio" means, with respect to a taxpayer that has made an investment in a qualified high technology business, the ratio of:

- (1) The amount of the credit under this section that is, or is to be, received by or allocated to the taxpayer over the life of the investment, as a result of the investment; to
- (2) The amount of the investment in the qualified high technology business.

"Qualified high technology business" means a business, employing or owning capital or property, or maintaining an office, in this State; provided that:

- (1) More than fifty per cent of its total business activities are qualified research; and provided further that the business conducts more than seventy-five per cent of its qualified research in this State; or
- (2) More than seventy-five per cent of its gross income is derived from qualified research; and provided further that this income is received from:
 - (A) Products sold from, manufactured in, or produced in this State; or
 - (B) Services performed in this State.

"Qualified research" means the same as defined in section 235-7.3.

(h) Common law principles, including the doctrine of economic substance and business purpose, shall apply to any investment. There exists a presumption that a transaction satisfies the doctrine of economic substance and business purpose to the extent that the special allocation of the high technology business tax credit has an investment tax credit ratio of 1.5 or less of credit for every dollar invested.

Transactions for which an investment tax credit allocation ratio greater than 1.5 but not more than 2.0 of credit for every dollar invested and claimed may be reviewed by the department for applicable doctrines of economic substance and business purpose.

Businesses claiming a tax credit for transactions with investment tax credit allocation ratios greater than 2.0 of credit for every dollar invested shall substantiate economic merit and business purpose consistent with this section.

(i) For investments made on or after May 1, 2009, notwithstanding any other law to the contrary, no allocations, special or otherwise, of credits under this section may exceed the amount of the investment made by the taxpayer ultimately claiming this credit; and investment tax credit allocation ratios greater

than 1.0 of credit for every dollar invested shall not be allowed. In addition, the credit shall be allowed only in accordance with subsection (a).

(j) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.

[(+)] (k) This section shall not apply to taxable years beginning after December 31, 2010.”

SECTION 5. Section 241-4.5, Hawaii Revised Statutes, is amended to read as follows:

“[§241-4.5] Capital goods excise tax credit. The capital goods excise tax credit provided under section 235-110.7 shall be operative for this chapter after December 31, 1987[-]; provided that the capital goods excise tax credit shall be inoperative after December 31, 2008, and before January 1, 2010.”

SECTION 6. Section 241-4.8, Hawaii Revised Statutes, is amended to read as follows:

“[§241-4.8] High technology business investment tax credit. (a) The high technology business investment tax credit provided under section 235-110.9 shall be operative for this chapter on July 1, 1999.

(b) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.”

SECTION 7. Section 431:7-209, Hawaii Revised Statutes, is amended to read as follows:

“[§431:7-209] High technology business investment tax credit. (a) The high technology business investment tax credit provided under section 235-110.9 shall be operative for this chapter on July 1, 1999.

(b) For investments made on or after May 1, 2009, this section shall be subject to section 235-A.”

SECTION 8. In codifying the new section added by section 1 of this Act, the revisor of statutes shall substitute the appropriate section number for the letter used in designating the new section in this Act.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval, and shall apply to investments made, renovation costs incurred, or eligible depreciable tangible property placed in service on or after May 1, 2009.

(Became law on July 15, 2009, without the governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.