

**ACT 202**

S.B. NO. 2652

A Bill for an Act Relating to Taxation.

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

SECTION 1. Hawaii is vulnerable to soaring prices or disruptions of its energy imports, which can hinder, cripple, or even devastate the State's economy and the well-being of its inhabitants. As the most isolated land mass on Earth, Hawaii imports nearly ninety per cent of its energy and almost one hundred per cent of its transportation resources. The legislature finds that it is critical for Hawaii to ensure greater energy security by becoming more self-sufficient in its energy and food supply.

The legislature also finds that providing additional support to Hawaii's agriculture industry could help to reduce reliance on imports and to foster job

growth in the State. The legislature believes that creating a stronger market for renewable fuels will promote the production of locally-grown feedstock.

The purpose of this Act is to:

- (1) Establish a renewable fuels production tax credit to achieve greater energy security for Hawaii; and
- (2) Repeal the ethanol facility tax credit.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§235- Renewable fuels production tax credit.** (a) As used in this section:

“Credit period” means a maximum period of five consecutive years, beginning from the first taxable year in which a taxpayer begins renewable fuels production at a level of at least fifteen billion British thermal units of renewable fuels per year.

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

“Renewable feedstocks” means:

- (1) Biomass crops;
- (2) Agricultural residues;
- (3) Oil crops, including but not limited to algae, canola, jatropha, palm, soybean, and sunflower;
- (4) Sugar and starch crops, including but not limited to sugar cane and cassava;
- (5) Other agricultural crops;
- (6) Grease and waste cooking oil;
- (7) Food wastes;
- (8) Municipal solid wastes and industrial wastes;
- (9) Water; and
- (10) Animal residues and wastes,

that can be used to generate energy.

“Renewable fuels” means fuels produced from renewable feedstocks; provided that:

- (1) The fuels shall be sold as a fuel; and
- (2) The fuels meet the relevant ASTM International specifications for the particular fuel or other industry specifications for liquid or gaseous fuels, including but not limited to:
  - (A) Methanol, ethanol, or other alcohols;
  - (B) Hydrogen;
  - (C) Biodiesel or renewable diesel;
  - (D) Biogas;
  - (E) Other biofuels; or
  - (F) Renewable jet fuel or renewable gasoline.

(b) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, a renewable fuels production tax credit that shall be applied to the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

For each taxpayer producing renewable fuels, the annual dollar amount of the renewable fuels production tax credit during the five-year credit period shall be equal to 20 cents per seventy-six thousand British thermal units of renewable fuels using the lower heating value sold for distribution in Hawaii; provided that the taxpayer’s production of renewable fuels is not less than fifteen

billion British thermal units of renewable fuels per year; provided further that the amount of the tax credit claimed under this section by a taxpayer shall not exceed \$3,000,000 per taxable year. No other tax credit may be claimed under this chapter for the costs related to renewable fuels production that are used to properly claim a tax credit under this section for the taxable year.

(c) The department of business, economic development, and tourism shall:

- (1) Verify the amount and type of renewable fuels produced and sold, including the purpose for which the fuel was produced;
- (2) Total all renewable fuels production that the department of business, economic development, and tourism certifies for purposes of paragraph (3); and
- (3) Certify the total amount of the tax credit for each taxable year and the cumulative amount of the tax credit during the credit period.

Upon each determination, the department of business, economic development, and tourism shall issue a certificate to the taxpayer verifying the amount of renewable fuels produced and sold, 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 of taxation. Notwithstanding the department of business, economic development, and tourism's certification authority under this section, the director of taxation may audit and adjust the certification to conform to the facts.

If in any year, the annual amount of certified credits reaches \$3,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the total amount of certified credits exceed \$3,000,000 per year. Notwithstanding any other law to the contrary, the verification and certification information compiled by the department of business, economic development, and tourism shall be available for public inspection and dissemination under chapter 92F.

(d) If the credit under this section exceeds the taxpayer's net income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer's net income tax liability in subsequent years until exhausted. All claims for a credit under this section shall be properly 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.

(e) Prior to production of any renewable fuels for the year, the taxpayer shall provide written notice of the taxpayer's intention to begin production of renewable fuels. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the taxpayer, facility location, facility production capacity, anticipated production start date, and taxpayer's contact information. Notwithstanding any other law to the contrary, this taxpayer and facility information shall be available for public inspection and dissemination under chapter 92F.

(f) The taxpayer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days following the start of production. The notice shall include the production start date and expected renewable fuels production for the next twelve months. Notwithstanding any other law to the contrary, this production information shall be available for public inspection and dissemination under chapter 92F.

(g) Each calendar year during the credit period, the taxpayer shall provide information to the director of business, economic development, and tourism on:

- (1) The number of British thermal units of renewable fuels produced and sold during the previous calendar year;
- (2) The type of fuels;
- (3) Feedstocks used for renewable fuels production;
- (4) The number of employees of the facility and each employee's state of residency; and
- (5) The projected number of British thermal units of renewable fuels production for the succeeding year.

(h) In the case of a partnership, S corporation, estate, or trust, distribution and share of the renewable fuels production tax credit shall be determined pursuant to section 704(b) (with respect to partner's distributive share) of the Internal Revenue Code.

(i) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the governor and legislature regarding the production and sale of renewable fuels. The report shall include:

- (1) The number, location, and production of renewable fuels production facilities in the State and outside the State that have claimed a credit under this section;
- (2) The total number of British thermal units of renewable fuels, broken down by type of fuel, produced and sold during the previous year; and
- (3) The projected number of British thermal units of renewable fuels production for the succeeding year.

(j) The director of taxation shall prepare forms that may be necessary to claim a credit under this section. The director of taxation may 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."

SECTION 3. Section 235-110.3, Hawaii Revised Statutes, is repealed.

SECTION 4. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.<sup>1</sup>

SECTION 6. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2016; provided that section 2 shall be repealed on December 31, 2021.

(Approved July 5, 2016.)

**Note**

1. Edited pursuant to HRS §23G-16.5.