

**ACT 258**

H.B. NO. 1689

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that providing additional support to Hawaii's agriculture industry could help to reduce reliance on agricultural imports and to foster job growth in the State. The legislature believes that reducing the burden on the emerging number of small farmers seeking costly, but

necessary, certifications and inspections will help to promote the production of locally-grown food.

The purpose of this Act is to establish a tax credit for farmers, ranchers, and producers seeking to obtain organic certification.

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

**“§235- Organic foods production tax credit.** (a) There shall be allowed to each qualified taxpayer subject to the tax imposed under this chapter, an income 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 credit is properly claimed.

(b) The amount of the tax credit shall be equal to the qualified expenses of the qualified taxpayer, up to a maximum of \$50,000.

(c) In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified expenses incurred by the entity for the taxable year. The expenses upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

(d) The total amount of tax credits allowed under this section shall not exceed \$2,000,000 for all qualified taxpayers in any taxable year; provided that any taxpayer who is not eligible to claim the credit in a taxable year due to the \$2,000,000 cap having been exceeded for that taxable year shall be eligible to claim the credit in the subsequent taxable year.

(e) Every qualified taxpayer, before March 31 of each year in which qualified expenses were incurred by the taxpayer in the previous taxable year, shall submit a written, certified statement to the chairperson of the board of agriculture identifying:

- (1) Qualified expenses incurred in the previous taxable year; and
  - (2) The amount of the tax credit claimed by the taxpayer pursuant to this section, if any, in the previous taxable year.
- (f) The department of agriculture shall:
- (1) Maintain records of the names and addresses of the qualified taxpayers claiming the credits under this section and the total amount of the qualified expenses upon which the tax credits are based;
  - (2) Verify the nature and amount of the qualified expenses;
  - (3) Total all qualified and cumulative expenses that the department certifies; and
  - (4) Certify the amount of the tax credit for each taxpayer for each taxable year and the cumulative amount of the tax credit.

Upon each determination made under this subsection, the department of agriculture shall issue a certificate to the taxpayer verifying information submitted to the department of agriculture, including amounts of qualified expenses, the credit amount certified for the taxpayer for each taxable year, and the cumulative amount of tax credits certified. The taxpayer shall file the certificate with the taxpayer’s tax return with the department of taxation.

The board of agriculture may assess and collect a fee to offset the costs of certifying tax credit claims under this section.

- (g) The director of taxation:
- (1) Shall prepare any forms that may be necessary to claim a tax credit under this section;
  - (2) May require the taxpayer to furnish reasonable information to ascertain the validity of the claim for the tax credit made under this section; and

(3) May adopt rules under chapter 91 necessary to effectuate the purposes of this section.

(h) If the tax 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 the tax credit under this section, including amended claims, 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.

(i) As used in this section:

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

"Organic Foods Production Act" means the federal Organic Foods Production Act of 1990, as amended (7 United States Code section 6501 et seq.).

"Organic system plan" has the same meaning as provided in 7 Code of Federal Regulations section 205.2.

"Qualified expenses" means expenses incurred by a qualified taxpayer to produce organically produced agricultural products, including expenses incurred to obtain organic certification from the United States Department of Agriculture, pursuant to the Organic Foods Production Act. "Qualified expenses" include:

- (1) Application fees;
- (2) Inspection costs;
- (3) Fees related to equivalency agreement/arrangement requirements, travel/per diem for inspectors, user fees, sales assessments, and postage; and
- (4) Costs for any equipment, materials, or supplies necessary for organic certification or production of agricultural products, in accordance with the qualified taxpayer's organic system plan and the organic production and handling requirements of the National Organic Program, codified at 7 Code of Federal Regulations part 205, subpart C, including but not limited to certified organic seed, cover crops, or animal feed.

"Qualified expenses" shall not include any amount refunded or to be refunded to the taxpayer by the United States Department of Agriculture's organic certification cost-share program or any other similar financial assistance program.

"Qualified taxpayer" means a producer, handler, or handling operation, as those terms are defined in title 7 United States Code section 6502:

- (1) That sells agricultural products in adherence to the standards and requirements of the Organic Foods Production Act;
- (2) That has applied for organic certification, in accordance with the requirements of the Organic Foods Production Act; and
- (3) Whose gross income from the sale of organically produced agricultural products for the most recently reported fiscal year totals no more than \$500,000."

SECTION 3. 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 4. New statutory material is underscored.<sup>1</sup>

**SECTION 5.** This Act, upon its approval, shall apply to taxable years beginning after December 31, 2016; provided that this Act shall be repealed on December 31, 2021.

(Approved July 12, 2016.)

**Note**

1. Edited pursuant to HRS §23G-16.5.