

ACT 142

H.B. NO. 1044

A Bill for an Act Relating to Renewable Fuels Tax Credit.

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

SECTION 1. The legislature finds that section 235-110.31, Hawaii Revised Statutes, enacted by Act 202, Session Laws of Hawaii 2016, establishes a renewable fuels production tax credit with the intent to create a stronger market for renewable fuels and promote the production of locally grown feedstock. Under this process, the department of business, economic development, and tourism's requirements are as follows:

- (1) Certify the amount and type of renewable fuels produced and sold, including the purpose for which the fuel was produced;
- (2) 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;
- (3) Administer the \$3,000,000 a year aggregate cap;
- (4) Develop forms that renewable fuels taxpayers must submit to both the department of taxation and the department of business, economic development, and tourism prior to the production of any renewable fuels submitted for consideration under this bill and tax credit;

- (5) Collect data annually from the taxpayer of renewable fuels producers, including the number of British thermal units produced and sold; types of fuels; feedstock used for renewable fuels production; number of facility employees and each employee's state of residency; and projections for next year's British thermal units production; and
- (6) Submit written reports to the governor and state legislature inclusive of:
 - (A) The number, location, and production of renewable fuels production facilities in the State and outside the State that have claimed a credit under Act 202;
 - (B) The total number of British thermal units of renewable fuels, broken down by type of fuel, produced and sold during the previous year; and
 - (C) The projected number of British thermal units of renewable fuels production for the succeeding year.

However, the department of business, economic development, and tourism lacks expertise in tax accounting, specific knowledge of fuels production industries sufficient to verify the actual renewable fuels production, and the required resources, including management database and budget and human resource allocation, to administer the requirements. Such resources or expertise would be required to effectively conduct the department of business, economic development, and tourism's certification and administration requirements per Act 202, Session Laws of Hawaii 2016.

In order to address this discrepancy, this Act seeks to replace the department of business, economic development, and tourism's requirements associated with the certification, administration, and verification of the renewable fuels production tax credit with a survey of the renewable fuels production tax credit. The survey would still allow the department of business, economic development, and tourism to assess the effectiveness of the tax credit and report its findings to the governor and legislature.

SECTION 2. Section 235-110.31, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.31 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 calendar 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[;] the fuel:

- (1) ~~[The fuels shall be]~~ Is sold as a fuel[;] in Hawaii; and
- (2) ~~[The fuels meet]~~ Meets the relevant ASTM International specifications ~~[for the particular fuel]~~ or other industry specifications for ~~[liquid or gaseous fuels,]~~ the particular fuel, 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 calendar 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]~~ incurred in producing the 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 veri-~~

fication and certification information compiled by the department of business, economic development, and tourism shall be available for public inspection and dissemination under chapter 92F.] Not later than thirty days following the close of the calendar year, every taxpayer claiming a credit under this section shall complete and file an independent, third-party certified statement, at the taxpayer's sole expense, with the department of business, economic development, and tourism in the form prescribed by the department of business, economic development, and tourism providing the following information:

- (1) The type, quantity, and British thermal unit value, using the lower heating value, of each qualified fuel, broken down by the type of fuel, produced and sold during the previous calendar year;
- (2) The feedstock used for each type of qualified fuel;
- (3) The proposed total amount of credit to which the taxpayer is entitled for each calendar year and the cumulative amount of the tax credit the taxpayer received during the credit period;
- (4) The number of full-time and number of part-time employees of the facility and those employees' states of residency, totaled per state; and
- (5) The number and location of all renewable fuel production facilities within and outside of the State.

(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.]~~ Within thirty calendar days after the due date of the statement required under subsection (c), the department of business, economic development, and tourism shall:

- (1) Acknowledge receipt of the statement in writing; and
- (2) Issue a certificate to the taxpayer reporting the amount of renewable fuels produced and sold, the amount of credit that the taxpayer is entitled to claim for the previous calendar year, and the cumulative amount of the tax credit during the credit period.

(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.]~~ The taxpayer shall file the certificate issued under subsection (d) with the taxpayer's tax return with the department of taxation. The director of taxation may audit and adjust the certification to conform to the facts.

(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.]~~ The total amount of tax credits allowed under this section shall not exceed \$3,000,000 for all eligible taxpayers in any calendar year. In the event that the

credit claims under this section exceed \$3,000,000 for all eligible taxpayers in any given calendar year, the \$3,000,000 shall be divided between all eligible taxpayers for that year in proportion to the total amount of renewable fuels produced by all eligible taxpayers. Upon reaching \$3,000,000 in the aggregate, the department of business, economic development, and tourism shall immediately discontinue issuing certificates and notify the department of taxation. In no instance shall the total dollar amount of certificates issued exceed \$3,000,000 per year.

(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.]

Notwithstanding any other law to the contrary, the information collected and compiled by the department of business, economic development, and tourism under subsections (c) and (d) for the purposes of the renewable fuels production tax credit, shall be available for public inspection and dissemination subject to chapter 92F.

(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.] 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 or to provide the certified statement required under subsection (c) shall constitute a waiver of the right to claim the credit.

(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.]

Prior to production of any renewable fuels for the calendar year, the taxpayer shall provide written notice of the taxpayer's intention to begin production of renewable fuels. The written notice shall be provided to the department of taxation and 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 the taxpayer's contact information. Notwithstanding any other law to the contrary, the written notice described

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in this subsection, including taxpayer and facility information, shall be available for public inspection and dissemination subject to chapter 92F.

(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.] 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, the written notice described in this subsection shall be available for public inspection and dissemination subject to chapter 92F.

(k) 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 a partner's distributive share) of the Internal Revenue Code of 1986, as amended. For a fiscal year taxpayer, the taxpayer shall report such credit in the taxable year in which the calendar year end is included.

(l) Following each calendar 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 and location 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 calendar year; and
- (3) The projected number of British thermal units of renewable fuels production for the succeeding year.

(m) 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. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act, upon its approval shall apply to taxable years beginning after December 31, 2017.

(Approved July 10, 2017.)