

ACT 216

S.B. NO. 2478

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 Act 202, Session Laws of Hawaii 2016, established a renewable fuels production tax credit for the purpose of achieving greater energy security for Hawaii. However, the tax credit was repealed on December 31, 2021. Accordingly, the purpose of this Act is to reinstate a renewable fuels production 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) 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 ten-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 the State; provided that the taxpayer’s production of renewable fuels is not less than two billion five hundred million 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 \$3,500,000 per taxable year; provided further that the tax credit shall only be claimed for fuels with lifecycle emissions below that of fossil fuels. No other tax credit may be claimed under this chapter for the costs incurred to produce the renewable fuels that are used to properly claim a tax credit under this section for the taxable year.

Each taxpayer, together with all of its related entities as determined under section 267(b) of the Internal Revenue Code and all business entities under common control, as determined under sections 414(b), 414(c), and 1563(a) of the Internal Revenue Code, shall not be eligible for more than a single ten-year credit period.

(b) 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 the credit in the taxable year in which the calendar year end is included.

(c) No 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 and in the form prescribed by the Hawaii state energy office, 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;
- (5) The number and location of all renewable fuel production facilities within and outside of the State; and
- (6) The lifecycle greenhouse gas emissions per British thermal units for each type of qualified fuel produced.

(d) Within thirty calendar days after the due date of the statement required under subsection (c), the Hawaii state energy office shall:

- (1) Acknowledge, in writing, receipt of the statement;
- (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; and
- (3) Provide the taxpayer with a determination of whether the lifecycle greenhouse gas emissions for each type of qualified fuel produced is lower than that of fossil fuels.

(e) 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 total amount of tax credits allowed under this section shall not exceed \$20,000,000 for all eligible taxpayers in any calendar year. In the event that the credit claims under this section exceed \$20,000,000 for all eligible taxpayers in any given calendar year, the \$20,000,000 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 \$20,000,000 in the aggregate, the Hawaii state energy office shall immediately discontinue issuing certificates and notify the department of taxation. In no instance shall the total dollar amount of certificates issued exceed \$20,000,000 per calendar year.

(g) Notwithstanding any other law to the contrary, the information collected and compiled by the Hawaii state energy office 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) 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, unless otherwise elected by the taxpayer pursuant to subsections (i) or (j). 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) A taxpayer may elect to reduce the eligible credit amount by thirty per cent and if this reduced amount exceeds the amount of income tax payment due from the taxpayer, the excess of the credit amount over payments due shall be refunded to the taxpayer; provided that tax credit amounts properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; provided further that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

The election required by this subsection shall be made in a manner prescribed by the director on the taxpayer's return for the taxable year in which the credit is claimed. An election once made is irrevocable.

(j) Notwithstanding subsection (i), an individual taxpayer may elect to have any excess of the credit over payments due refunded to the taxpayer, if:

- (1) All of the taxpayer's income is exempt from taxation under section 235-7(a)(2) or (3); or
- (2) The taxpayer's adjusted gross income is \$20,000 or less (or \$40,000 or less if filing a tax return as married filing jointly);

provided that tax credits properly claimed by a taxpayer who has no income tax liability shall be paid to the taxpayer; provided further that no refund on account of the tax credit allowed by this section shall be made for amounts less than \$1.

A married couple who does not file a joint tax return shall only be entitled to make this election to the extent that they would have been entitled to make the election had they filed a joint tax return.

The election required by this subsection shall be made in a manner prescribed by the director on the taxpayer's return for the taxable year in which the credit is claimed. An election once made is irrevocable.

(k) Before the 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 Hawaii state energy office 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 in this subsection, including taxpayer and facility information, shall be available for public inspection and dissemination, subject to chapter 92F.

(l) The taxpayer shall provide written notice to the director of taxation and the chief energy officer of the Hawaii state energy office 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.

(m) Following each calendar year in which a credit under this section has been claimed, the chief energy officer of the Hawaii state energy office 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, itemized 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.
- (n) 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 pursuant to chapter 91 necessary to effectuate the purposes of this section.
- (o) As used in this section:

“Credit period” means a maximum period of ten consecutive years, beginning from the first taxable year in which a taxpayer begins renewable fuels production at a level of at least two billion five-hundred million 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 and other renewable organic material, including but not limited to logs, wood chips, wood pellets, and wood bark;
- (2) Agricultural residue;
- (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, including wastewater; 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) Is sold as a fuel in the State; and
- (2) Meets the relevant ASTM International specifications or other industry specifications for 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;
 - (F) Renewable jet fuel or renewable gasoline; or
 - (G) Logs, wood chips, wood pellets, or wood bark.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2021.

(Approved June 27, 2022.)

Note

1. Edited pursuant to HRS §23G-16.5.