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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2009-23

RE: Act 178, Session Laws of Hawaii 2009, Relating to Taxation.

On July 15, 2009, Senate Bill 199, SD 1, HD 1, CD 2 became law without Governor Linda Lingle's signature, pursuant to Section 16 of Article III of the State Constitution.

The Act amends section 235-110.9, Hawaii Revised Statutes (HRS), also known as the High Technology Business Investment Tax Credit. For investments made on or after May 1, 2009 and on or before December 31, 2010, the Act limits claims of the high technology business investment tax credit to 80 percent of tax liability, allows only a one-to-one credit allocation ratio, and eliminates carryovers. The amendments also apply to claims for this credit under Chapters 241 and 431:7, HRS.

For renovation costs incurred on or after May 1, 2009 and on or before December 31, 2010, the Act also limits claims for the Technology Infrastructure Renovation Tax Credit under section 235-110.51, HRS, to 80 percent of tax liability.

The Act also amends section 235-2.45(d), HRS by making section 704(b)(2) of the Internal Revenue Code operative with regard to investments made on or after May 1, 2009.

For eligible depreciable tangible property placed in service on or after May 1, 2009 and on or before December 31, 2009, the Act also suspends the Capital Goods Excise Tax Credit under section 235-110.7, HRS.

For Qualified High Technology Business (QHTB) Investments Made Before May 1, 2009

No changes apply to investments made before May 1, 2009. Any credits from investments made before May 1, 2009 are not affected by this Act and may be taken as allowed under prior law, including any allocations of credits in excess of the amount of the investment or carryovers.

For QHTB Investments Made On or After May 1, 2009

1. 80% Limitation. Credits are limited to 80% of a taxpayer's tax liability (income, franchise or gross premiums) for tax years 2009 and 2010 and no credit carryovers are allowed. The following examples illustrate this concept.

EXAMPLE 1: If an investor invests $100 in a QHTB on December 1, 2009, generating a $35 credit ($100 times 35%) for 2009 and investor's tax liability for tax year 2009 is $20, the investor can only claim $16 of the credit (80% of $20). The remainder of the credit (credit carryover) of $19 ($35-$16) is lost forever.

For the 2010 tax year, investor's credit would be $25 ($100 times 25%). If the investor's tax liability for tax year 2010 is $20, the investor again can only claim $16 of the credit (80% of $20). The remainder of the credit (credit carryover) of $9 ($25-$16) is lost forever.

For the 2011 tax year, the 80% limitation no longer applies and the investor can claim a credit of $20 ($100 times 20%). If the investor's tax liability for 2011 is $20, the investor can claim the full $20 of credit against his or her tax liability.

EXAMPLE 2: Using the same example as above, if the investor's tax liability for tax year 2009 was $50, the investor could claim the full $35 credit against his or her tax liability because $35 is less than 80% of the investor's tax liability (80% of $50 = $40.) Therefore, in some circumstances, this limitation will have no affect on the credit claimed.

EXAMPLE 3: An investor invested $100 in a QHTB on December 1, 2008 and another $100 on December 1, 2009. As in Example 1, the $100 invested on December 1, 2009 generates a $35 credit ($100 times 35%) for 2009. If the investor's tax liability for tax year 2009 is $20, the investor can only claim $16 of the credit from the 2009 investment (80% of $20). The remainder of the credit generated from the 2009 investment (credit carryover) of $19 ($35-$16) is lost forever.

The 2008 investment is unaffected by this Act because it was made prior to May 1, 2009. The $100 invested on December 1, 2008 generates a $25 credit ($100 times 25%) for 2009. This credit may be claimed against the remaining $4 of tax liability after the 2009 investment credit is taken into account, leaving a $21 credit carryover, which is not lost and can be claimed in future tax years.

2. No multiples. For investments made on or after May 1, 2009, an investor may not receive a credit in excess of the amount that the investor invested. If the investor makes an investment of $1, then the investor can only receive $1 in credits to be paid out over a 5-year period beginning with the year of the investment. Investors may no longer make an investment of $1 and receive more than $1 in credits through special allocations from entities taxed as a partnership.

Temporary Suspension of Capital Goods Excise Tax Credit for Part of 2009

In general, a credit of 4% of the cost of eligible depreciable tangible property used in a trade or business in Hawaii is allowed. However, this Act provides that property placed in service on or after May 1, 2009 and on or before December 31, 2009 is not eligible for a credit.

Eligible property placed in service prior to May 1, 2009 will still be eligible for the 4% credit, as will eligible property placed in service after December 31, 2009.

For more information on this Act, please contact the Rules Office at 808-587-1577.

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