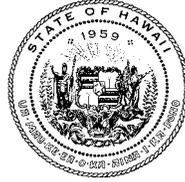


LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR



STATE OF HAWAII
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STANLEY SHIRAKI
DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

LETTER RULING NO. 2010-25

[REDACTED TEXT]

[REDACTED TEXT]

[REDACTED TEXT]

October 15, 2010

**RE: APPLICATION OF THE REFUNDABLE RENEWABLE ENERGY
TECHNOLOGIES INCOME TAX CREDIT TO A TAXPAYER WITH NO
HAWAII TAX LIABILITY**

Dear [REDACTED TEXT]:

This letter is in response to your September 22, 2010 request for a letter ruling on the issue of whether a nonresident of Hawaii, who has no Hawaii taxable income, may claim the refundable Renewable Energy Technologies Income Tax Credit available under Section 235-12.5, Hawaii Revised Statutes (HRS) (hereinafter "Energy Credit").

SHORT ANSWER

YES, a nonresident of Hawaii with no Hawaii income tax liability may claim the Energy Credit in refundable form; provided that all other requirements of HRS § 235-12.5 are met.

FACTS

You represent the following:

You are currently a resident alien of the United States, and a resident of the State of [REDACTED TEXT]. You are not a resident of Hawaii. Further, you have no Hawaii individual income tax liability under Chapter 235, HRS.

Your request relates to your interest in developing a commercial photovoltaic solar energy system on the Island of [REDACTED TEXT]. You intend to develop this commercial project for the sole purpose of generating solar electricity and selling the solar electricity to the local utility company. You anticipate the photovoltaic system will cost [REDACTED TEXT] to install and place in service.

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[REDACTED TEXT]

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You have had no prior Hawaii taxable income. Further, in the year the photovoltaic solar energy system is placed in service, you will likewise have no Hawaii taxable income. For the year the solar energy system is placed in service, you will be filing an individual tax return on Form N-15, *Individual Tax Return for Nonresidents and Part-Year Residents*.

ANALYSIS

Section 235-12.5, HRS, sets forth the requirements in order to claim the Energy Credit:

§235-12.5 Renewable energy technologies; income tax credit. (a) [E]ach individual or corporate taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service in the State by a taxpayer during the taxable year.

* * * * *

(h) [F]or any renewable energy technology system, an individual taxpayer may elect to have any excess of the credit over payments due refunded to the taxpayer if:

* * * * *

(2) The taxpayer's adjusted gross income is \$20,000 or less (\$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....

HRS § 235-12.5 (emphasis added). Based upon the express provision of the Energy Credit, an individual taxpayer who files an individual tax return may claim the Energy Credit. Hawaii law also allows an individual taxpayer to elect to have the tax credits in excess of the taxpayer's tax liability for the year the credit is claimed to be refunded to the taxpayer, rather than carried forward to be used against future tax liability. Any individual who has no Hawaii tax liability may elect to have the Energy Credit refunded to them by operation of HRS § 235-12.5(h)(2).

It has long been the practice with refundable tax credits to make certain Hawaii tax incentives available to out-of-state interests that see the benefit of investing in Hawaii. Without the tax incentive's refundable provision, a nonrefundable tax credit is of little use to an out-of-state taxpayer with no Hawaii tax liability to offset. For example, Hawaii's Motion Picture, Digital Media, and Film Production Tax Credit is a refundable tax credit that is often claimed by out-of-state motion picture studios with no Hawaii tax liability. The very essence of a refundable tax credit is to make the incentive available to those with little—or no—Hawaii income tax liability in order to encourage the public policy sought to be advanced via the incentive (*i.e.*, investment in Hawaii renewable energy projects).

As a nonresident of Hawaii with no Hawaii taxable income under Chapter 235, HRS, you

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[REDACTED TEXT]

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may claim the Energy Credit on an individual tax return and elect to have the Energy Credit refunded to you because your income is \$20,000 or less (\$40,000 or less if filing a tax return as married filing jointly). You must; however, file an individual income tax return (Form N-15 for nonresidents) and have the requisite income limits in order to make a refundable election as described in this letter. In your case, to have the Energy Credit refunded to you by operation of HRS § 235-12.5(h) (with no reduction as is required for corporate taxpayers) your Hawaii taxable income must be \$20,000 or less (\$40,000 or less if filing jointly). Your residency is not relevant to this analysis. The conclusion that a refundable tax credit may be claimed by a nonresident with no Hawaii income tax liability is consistent with the Department of Taxation's historical application of refundable tax incentives generally, which is to make such refundable incentives available to those with no income tax liability irrespective of domicile or residency.

CONCLUSION

Based upon the foregoing analysis, you are entitled to make a claim for the Energy Credit notwithstanding the facts that you are not a resident of Hawaii and also have no Hawaii income tax liability under Chapter 235, HRS. You are further entitled to elect to have the Energy Credit refunded to you because you have no Hawaii income tax liability. Please note that the conclusions reached in this letter assume that you are entitled to claim the Energy Credit in all other respects (*e.g.*, you are installing and placing in service the energy system and all credit caps, limits, and other Energy Credit requirements are met) and that you are filing an individual tax return (*i.e.*, you are making the claim individually and not as a corporate taxpayer). The conclusions further assume that you make a proper claim for the Energy Credit in refundable form (*i.e.*, you make a proper election on Form N-342, *Renewable Energy Technologies Income Tax Credit for Systems Placed in Service on or after July 1, 2009*, and file the proper nonresident individual income tax return, Form N-15, *Individual Income Tax Return for Nonresidents and Part-Year Residents*)

This ruling is applicable only to you and shall not be applied retroactively. It may not be used or cited as precedent by any other taxpayer.

The conclusions reached in this letter are based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly.

You have reviewed and agreed that the redacted version of this ruling attached as Exhibit A will be available for public inspection.

If you have any further questions regarding this matter, please call me (808) 587-1569.

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[REDACTED TEXT]

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Additional information on Hawaii's taxes is available at the Department's website at www.state.hi.us/tax.

Very truly yours,

JOSEPH B. TICHY
Administrative Rules Specialist

APPROVED:

JOHNNEL NAKAMURA
Rules Officer