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DEPUTY DIRECTOR

May 3, 2010

Letter Ruling No. 2010-12

[redacted text]

Re: Allocation of high technology business investment tax credits generated from investments made before May 1, 2009

Dear [redacted text]:

This letter responds to your request of [redacted text] for a ruling on how [redacted text] (the "Company") may allocate qualified high technology business (QHTB) investment tax credits generated from investments made in the Company before May 1, 2009.

According to Act 178 (Session Laws of Hawaii, 2009), credits generated by investments received on or after May 1, 2009 and on or before December 31, 2010 are subject to additional restrictions that investments made before May 1, 2009 are not. Specifically of concern to this ruling, investment tax credit allocation ratios cannot exceed 1:1 for investments made after May 1, 2009.

However, according to Department of Taxation Announcement No. 2009-23, for QHTB investments made before May 1, 2009, these changes do not apply. Any credits from investments made before May 1, 2009 are not affected by the Act and may be taken as allowed under prior law.

Please also note the contents of Senate Bill 2401 SD 1, HD 1, recently passed by the State Legislature and enrolled to the Governor. Should this measure become law, it would prevent any taxpayer from using QHTB investment credits to reduce his or her tax liability in tax years 2010, 2011 and 2012. The taxpayer would be able to resume claiming the credits for tax year 2013.

For reference, below is a summary of the law with regard to credit allocation prior to the enactment of Act 178.

The Department may review any claim for the high technology business investment tax credit for economic substance and business purpose. If an investor is allocated tax credits that exceed twice the amount that that investor invested, indirectly or directly, the investor must substantiate the economic substance and business purpose of the investment and allocation. If an allocation of tax credits is no more than one-and-one-half times the amount invested, then economic merit and business purpose is presumed. These ratios presume that credits are taken ratably in accordance with § 235-110.9(a), HRS.

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[redacted text]

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For allocations of tax credits that do not exceed twice the amount of cash invested, the Department will not require an investor in the Company claiming the credit to substantiate the economic substance and business purpose of the investment provided that the conditions set forth in Tax Information Release 2007-04 are met, i.e., the investor must receive total investment credits ratably in accordance with the 5-year credit schedule (the "No Frontloading of Credits Test") and the investor must retain at least half (50%) of the pro-rata equity interest of the investment in the QHTB (the "Limited Equity Shifting Test").

If the requirements of the safe harbor in TIR 2007-04 are met, the Department will not require an investor in the Company to substantiate economic substance and business purpose with respect to this investment transaction. However, if these conditions are not met, then the Department will require an investor to substantiate economic substance and business purpose with respect to an investment in the Company.

This ruling is applicable only to the Company and only to investments made in the Company before May 1, 2009. 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 the Company has 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. This ruling also may be subject to change due to future amendments to laws, rules, or official Department positions.

If you have any further questions regarding this matter, please call me at 808-587-5334. Additional information on Hawaii's taxes is available at the Department's website at <http://www.hawaii.gov/tax>.

Sincerely,

/s/Jacob L. Herlitz

Jacob L. Herlitz
Administrative Rules Specialist