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DEPARTMENT OF TAXATION ANNOUNCEMENT NO. 2004-15

RE: Act 215, Session Laws of Hawaii 2004, Relating to Capital Investments (Act 215)

On July 13, 2004, the Governor signed H.B. No. 2396, H.D. 2, S.D. 2, C.D. 1 into law as Act 215. Act 215 amends various provisions of Act 221, Session Laws of Hawaii 2001, relating to high technology investment tax credits, extends the sunset date for certain tax incentives to December 31, 2010, and establishes a State Private Investment Fund.

Section 1 of Act 215 establishes the State Private Investment Fund (Fund), providing a new mechanism to fund capital investments, which can be accomplished at little cost to the State through the authorization of contingent tax credits. Under this program, the legislature authorizes a fixed amount of investment tax credits to be used on a standby basis. The Fund will be administered by the Hawaii Strategic Development Corporation (Corporation). The Corporation will have various powers to pursue its mission of mobilizing equity and near-equity capital for investments that will result in significant potential to diversify and stabilize the state economy.

Section 2 of Act 215 states that the purpose of Part II is to improve the currently available tax incentives developed for the high technology industry.

Section 3 of Act 215 establishes a new "Tax Administration Special Fund" and authorizes the Department of Taxation (Department) to charge fees for providing comfort letters and certifying credit amounts for the high technology business investment tax credit and research activities tax credit.

Sections 4 and 5 of Act 215 amend Hawaii Revised Statutes (HRS) sections 211F-3 and 211F-4, respectively, concerning the Hawaii Strategic Development Corporation.

Section 6 of Act 215 amends HRS section 235-7.3 to change the definition of software development to read as follows: "The development and design of computer software for ultimate sale, lease, license or to be otherwise marketed, for economic consideration. With respect to the software's development and design, the business shall have substantial control and retain substantial rights to the resulting intellectual property."

Section 7 of Act 215 amends HRS section 235-110.51 to extend the sunset date of the technology infrastructure renovation tax credit to December 31, 2010, while making no other changes to that credit provisions.

Section 8 of Act 215 amends HRS section 235-110.9, by requiring taxpayers to submit certain information to the Department for purposes of certifying claimed tax credit amounts. Presumptions that apply to a multiple[1] partnership allocation of the high technology business investment tax credit are also established. The sunset date of this credit is also extended to December 31, 2010.

Section 9 of Act 215 amends HRS section 235-110.91, by limiting credit eligibility to qualified high technology businesses, as defined in HRS section 235-110.9, requiring the Department to maintain certain records concerning the credit and certify the amounts claimed, and extending the sunset date to December 31, 2010.

Sections 10 and 11of Act 215 amend section 10, Act 197, Session Laws of Hawaii 2000, and section 13, Act 221, Session Laws of Hawaii 2001, respectively, by deleting language that requires the Department to liberally construe the high technology tax incentives contained in these Acts.

Section 12 of Act 215 amends section 66, Act 178, Session Laws of Hawaii 2003, by deleting the provision stating that balances in the Hawaii strategic development corporation revolving fund shall lapse to the general fund. This section takes effect on June 30, 2004.

All other provisions of Act 215 take effect on July 1, 2004, provided that any high technology comfort rulings issued prior to the effective date of this Act will not be subject to additional restrictions imposed by this Act.

Current forms and other tax information are available at the Department's website at: www.state.hi.us/tax. If you know which tax form or publication you need, please call the Department's request line at 808-587-7572, or toll-free from the neighbor islands and continental U.S. at 1-800-222-7572. This service is available 24 hours a day, 7 days a week.



KURT KAWAFUCHI
Director of Taxation

HRS Sections Explained: HRS sections 211F-3, 211F-4, 235-A, 235-B, 235-7.3, 235-110.51, 235-110.9, and 235-110.91.

[1] "Multiple" refers to the ratio of credit dollars allocated to a particular taxpayer to the cash investment actually made by the same taxpayer.