

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture

MORRIS M. ATTA
Deputy to the Chairperson

State of Hawai'i
DEPARTMENT OF AGRICULTURE
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December 2, 2022

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Thirty-second State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki,
Speaker and Members of the House
of the Representatives
Thirty-second State Legislature
State Capitol, Room 431
Honolulu, Hawaii 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the Report on the State's Progress Toward Meeting the Milestones and Objectives of the Important Agricultural Land Tax Credit Program, in response to Act 233, Session Laws of Hawaii 2008. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at <https://hdoa.hawaii.gov/meetings-reports/legislative-reports/>.

Sincerely,

A handwritten signature in cursive script that reads "Phyllis Shimabukuro-Geiser".

Phyllis Shimabukuro-Geiser
Chairperson, Board of Agriculture

Enclosures



IAL TAX CREDIT PROGRAM

Annual Report to the Legislature for Calendar Year 2022

Legislative Background

Section 235-110.93, Hawaii Revised Statutes (HRS), was enacted pursuant to Act 233, Session Laws of Hawaii (SLH) 2008.

This section was amended in 2014 pursuant to Act 101, SLH 2014, in 2018, pursuant to Act 87, SLH 2018, and again in 2022, pursuant to Act 139, SLH 2022.

The current HRS section of the tax credit is as follows:

§235-110.93 Important agricultural land qualified agricultural cost tax credit. (a) There shall be allowed to each taxpayer an important agricultural land qualified agricultural cost tax credit that may be claimed in taxable years beginning after the taxable year during which the tax credit under section 235-110.46 is repealed, exhausted, or expired. The credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The tax credit amount shall be determined as follows:

- (1) In the first year in which the credit is claimed, the lesser of the following:
 - (A) Twenty-five per cent of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$625,000;
- (2) In the second year in which the credit is claimed, the lesser of the following:
 - (A) Fifteen per cent of qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$250,000; and
- (3) In the third year in which the credit is claimed, the lesser of the following:
 - (A) Ten per cent of the qualified agricultural costs incurred by the taxpayer after July 1, 2008; or
 - (B) \$125,000.

The taxpayer may incur qualified agricultural costs during a taxable year in anticipation of claiming the credit in future taxable years during which the credit is available. The taxpayer may claim the credit in any taxable year after the taxable year during which the taxpayer incurred the qualified agricultural costs upon which the credit is claimed. The taxpayer also may claim the credit in consecutive or inconsecutive taxable years until exhausted.

(b) No other credit may be claimed under this chapter for qualified agricultural costs for which a credit is claimed under this section for the taxable year.

(c) The amount of the qualified agricultural costs eligible to be claimed under this section shall be reduced by the amount of funds received by the taxpayer during the taxable year from the irrigation repair and maintenance special fund under section 167-24.

(d) The cost upon which the tax credit is computed shall be determined at the entity level. In the case of a partnership, S corporation, estate, trust, or other pass through entity, distribution and share of the credit shall be determined pursuant to section 235-110.7(a).

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the qualified agricultural cost for which a deduction was taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. No deduction shall be allowed for that portion of otherwise deductible qualified agricultural costs on which a credit is claimed under this section.

(e) If the credit under this section exceeds the taxpayer's net income tax liability for the taxable year, the excess of the credit over liability shall be refunded to the taxpayer; provided that no refunds or payments on account of the credits allowed by this section shall be made for amounts less than \$1.

All claims for a tax credit under this section, including amended claims, shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit is claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) The director of taxation:

- (1) Shall prepare any forms that may be necessary to claim a credit under this section;
- (2) May require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section; and
- (3) May adopt rules pursuant to chapter 91 to effectuate this section.

(g) The department of agriculture shall:

- (1) Maintain records of the total amount of qualified agricultural costs for each taxpayer claiming a credit;
- (2) Verify the amount of the qualified agricultural costs claimed;
- (3) Total all qualified agricultural costs claimed; and
- (4) Certify the total amount of the tax credit for each taxable year.

Upon each determination, the department of agriculture shall issue a certificate to the taxpayer verifying the qualifying agricultural costs and the credit amount certified for each taxable year. For a taxable year, the department of agriculture may certify a credit for a taxpayer who could have claimed the credit in a previous taxable year, but chose not to because the maximum annual credit amount under subsection (h) was reached in that taxable year.

The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation. Notwithstanding the department of agriculture's certification authority under this section, the director of taxation may audit and adjust certification to conform to the facts.

Notwithstanding any other law to the contrary, the information required by this subsection shall be available for public inspection and dissemination under chapter 92F.

(h) If in any taxable year the annual amount of certified credits reaches \$7,500,000 in the aggregate, the department of agriculture shall immediately discontinue certifying credits and notify the department of taxation. In no instance shall the department of agriculture certify a total amount of credits exceeding \$7,500,000 per taxable year. To comply with this restriction, the department of agriculture shall certify credits on a first come, first served basis.

The department of taxation shall not allow the aggregate amount of credits claimed to exceed that amount per taxable year.

(i) The department of agriculture, in consultation with the department of taxation, shall annually determine the information necessary to provide a quantitative and qualitative assessment of the outcomes of the tax credit.

Every taxpayer, no later than the last day of the taxable year following the close of the taxpayer's taxable year in which the credit is claimed, shall submit a certified written statement to the department of agriculture. Failure to provide the information shall result in ineligibility and a recapture of any credit already claimed for that taxable year. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

Notwithstanding any law to the contrary, a statement submitted under this subsection shall be a public document.

(j) The department of agriculture, in consultation with the department of taxation, shall annually submit a report evaluating the effectiveness of the tax credit. The report shall include but not be limited to findings and recommendations to improve the effectiveness of the tax credit to further encourage the development of agricultural businesses.

(k) As used in this section:

"Agricultural business" means any person with a commercial agricultural, silvicultural, or aquacultural facility or operation, including:

- (1) The care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses;
- (2) The planting, cultivating, harvesting, and processing of crops; and
- (3) The farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment;

provided that the principal place of the agricultural business is maintained in the State and more than fifty per cent of the land the agricultural business owns or leases, excluding land classified as conservation land, is important agricultural land.

"Important agricultural lands" means lands identified and designated as important agricultural lands pursuant to part III of chapter 205.

"Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

"Qualified agricultural costs" means expenditures for:

- (1) The plans, design, engineering, construction, renovation, repair, maintenance, and equipment for:
 - (A) Roads or utilities, primarily for agricultural purposes, where the majority of the lands serviced by the roads or utilities, excluding lands classified as conservation lands, are important agricultural lands;

(B) Agricultural processing facilities in the State, primarily for agricultural purposes, where the majority of the crops or livestock processed, harvested, treated, washed, handled, or packaged are from agricultural businesses;

(C) Water wells, reservoirs, dams, water storage facilities, water pipelines, ditches, or irrigation systems in the State, primarily for agricultural purposes, providing water for lands, the majority of which, excluding lands classified as conservation lands, are important agricultural lands; and

(D) Agricultural housing in the State, exclusively for agricultural purposes; provided that:

(i) The housing units are occupied solely by farmers or employees for agricultural businesses and their immediate family members;

(ii) The housing units are owned by the agricultural business;

(iii) The housing units are in the general vicinity, as determined by the department of agriculture, of agricultural lands owned or leased by the agricultural business; and

(iv) The housing units conform to any other conditions that may be required by the department of agriculture;

(2) Feasibility studies, regulatory processing, and legal and accounting services related to the items under paragraph (1);

(3) Equipment, primarily for agricultural purposes, used to cultivate, grow, harvest, or process agricultural products by an agricultural business; and

(4) Regulatory processing, studies, and legal and other consultant services related to obtaining or retaining sufficient water for agricultural activities and retaining the right to farm on lands identified as important agricultural lands.

(l) The department of agriculture shall cease certifying credits pursuant to this section for taxable years beginning after December 31, 2030; provided that a taxpayer with accumulated, but unclaimed, certified credits may continue claiming the credits in subsequent taxable years until exhausted.

[(m)] The department of taxation, in consultation with the department of agriculture, shall submit to the legislature an annual report, no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2010, regarding the quantitative and qualitative assessment of the impact of the important agricultural land qualified agricultural cost tax credit. [L 2008, c 233, §§4, 5; am L 2014, c 101, §1; am L 2018, c 87; am L 2022, c 139]

IAL Qualified Agricultural Cost Tax Credit Program Milestones and Objectives: Reportable Activities for the period of January 1, 2022-December 31, 2022.

Under Section 235-110.93, HRS, costs cannot be claimed on an IAL tax credit form until the State of Hawaii Department of Taxation (DoTAX) releases an IAL tax credit form for the year the costs were incurred. For example, an applicant would not be able to claim a cost incurred in 2022, until the 2022 IAL Tax credit form is released by DoTAX. DoTAX usually releases an updated tax credit application form shortly after a new calendar year, and DoTAX will most likely release the 2022 IAL Tax credit form sometime in early 2023. As such, the reportable

activities in this section of the report deal with costs/certification incurred for the 2021 tax year.

There were numerous inquiries about the IAL Qualified Agricultural Cost Tax Credit program by taxpayers who would likely have qualified as agricultural businesses and made expenditures that may be eligible as qualified agricultural costs, however none occurred on or were related to agricultural land designated as IAL by the Land Use Commission and did not qualify for the tax credit.

As in the 2020 tax year, the Department of Agriculture (the Department) did not receive any applications for the 2021 tax year. The Department did not issue any certified tax credits for the 2021 tax year.

The maximum amount of tax credits the Department can certify in a taxable year is \$7,500,000. As of December 2022, thirteen private landowners have applied for and received designation of their lands as IAL from the Land Use Commission. The total area designated as IAL as of December 2022 was 136,489 acres. One reason why there are numerically few applicants for this credit is because only one county (City and County of Honolulu) had submitted their approved plans and maps identifying about 41,407 acres of potential IAL to the Land Use Commission for IAL designation as required under Sections 205-47, HRS. In 2022, the Land Use Commission's action was to return the City's submittal "for further action consistent with HRS 205."

A petition for IAL designation filed in late 2021 involving 12,762 acres of State land in Kekaha, Kauai was withdrawn in June, 2022 by the petitioner Kekaha Agriculture Association, an agricultural cooperative.

Findings and Recommendations to improve the effectiveness of the tax credit to further encourage the development of agricultural businesses

Sunset Date

The 2022 Legislature passed Senate Bill 339, Conference Draft 1 and Governor David Ige signed into law Act 139, SLH 2022 that extends the period during which the IAL tax credit is available to December 31, 2030. This extension provides the counties of Kauai, Maui, and Hawaii more time to complete their identification of candidate lands as described in Section 205-47, HRS, and allow landowners/farmers to claim IAL tax credits for their agricultural lands that are designated by the Land Use Commission as IAL pursuant to Section 205-49.

Resources to administer the tax credit

The Department may require resources to administer the tax credit if any of the counties successfully complete their county IAL identification process, followed by IAL designation by the Land Use Commission.