

## SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism  
No. 1 Capitol District Bldg., 250 South Hotel St. 5<sup>th</sup> Fl., Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

Tel 808 586-2594  
Fax 808586-2572

### AGENDA Wednesday, July 16, 2014 ★ 9:30 a.m. No. 1 Capitol District Building 250 South Hotel Street - Conference Room 436

Neil Abercrombie  
Governor

Richard C. Lim  
Director, DBEDT

Mary Alice Evans  
Deputy Director, DBEDT

#### Members

Anthony Borge  
Chairperson  
Oahu

Craig Takamine  
Vice Chair  
Hawaii

Barbara Bennett  
2<sup>nd</sup> Chairperson  
Kauai

Kyoko Y. Kimura  
Maui

Harris Nakamoto  
Oahu

Richard C. Lim  
Director, DBEDT  
Voting Ex Officio

- I. Call to Order
- II. Approval of June 18, 2014 Meeting Minutes
- III. New Business
  - A. Discussion and Action on Proposed Amendments promulgated by Department of Commerce and Consumer Affairs (DCCA) for Hawaii Administrative Rules (HAR) Title 16, Chapter 85, Medical Examiners, Section 8, Examination and Re-examination - see Exhibit 1
  - B. Discussion and Action on Proposed Amendments promulgated by DCCA for HAR Title 16, Chapter 110, Physical Therapy – see Exhibit 2
  - C. Discussion and Action on Proposed Amendments promulgated by Department of Business, Economic Development and Tourism for HAR Title 15 Chapter 6, Enterprise Zones – see Exhibit 3
- IV. Administrative Matters
  - A. Discussion of Board Member “Discussion Leader” assignments for the State Departments and Counties’ Administrative Rule Review
- V. **Next Meeting:** Scheduled for Wednesday, August 20, 2014, at 9:30 a.m., Conference Room 436, Capitol District Building, Honolulu, Hawaii
- VI. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process (i.e., sign language, interpreter, wheelchair accessibility, or parking designated for the disabled), please call (808) 586-2594 at least three (3) business days prior to the meeting so arrangements can be made.

# July 16, 2014 ~ SBRRB Meeting Checklist

Member Attendance				
	Airline Preference	From	Details	Attend
Anthony Borge, Chair <i>Env</i>	NA	Oahu	Parking Pass	X
Craig Takamine, Vice Chair <i>See attached Schedule</i> <i>Env</i>	HA	Hawaii	Parking Pass	X
Barbara Bennett <i>See attached Schedule</i>	HA	Kauai	Parking Pass	X
Kyoko Kimura <i>See attached Schedule</i> <i>Env</i>	HA	Maui	Parking Pass	X
Harris Nakamoto <i>Env</i>	NA	Oahu	Parking Pass	X
Mark Ritchie Director's ex officio <i>Env</i>	NA	Oahu	NA	X

Pre Meeting Checklist	
Conference Room #436 (Confirm each month)	X
Make 15 copies of rule packages for board packets - continuous <i>Tues</i>	X
Poll board attendance	X
Prepare TAF for Director's approval - ASAP (Linda)	X
Airline booking ASAP - Linda <i>7-3-14</i>	X
Draft Agenda to Chair <del>ASAP</del> <i>7-7-14</i>	X
Post approved agenda on SBRRB website & State Calendar & Lte. Governor's Office <i>X</i> <del>Harney</del>	✓ ✓
Send Agendas to those people who requested it	✓
Mail approved agenda to board members, M. Ahn	✓
Mail board packets <del>Tues</del> or <del>Wed</del> . July 8 or 9	✓
3-4 Days prior to meeting, send DAGS an email (or fax) re: Board members parking and attending SBRRB meeting - IMPORTANT	✓

STAFF				
Margaret Ahn <i>Env</i>				Yes
Dori Palcovich <i>Env</i>				Yes

Post Meeting Checklist	

Visitors Sign-in-Sheet - Small Business Regulatory Review Board - July 16, 2014

	Name	Title	Organization	Email	Phone
1	Constance Cabral	Exec Off	DCCA	ccabral@dcca.hawaii.gov	6-2708
2	Alan Toriguchi	"	"	alan.toriguchi@dcca.hawaii.gov	6-2701
3	TOM SWYTH	Principos	Intedgated Econ	tsmyth6@aol.com	371-7657
4	Wayne THOM	Manager	DBEDT	wthom@dbedt.hawaii.gov	587-2772
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# Exhibit 1

NEIL ABERCROMBIE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR

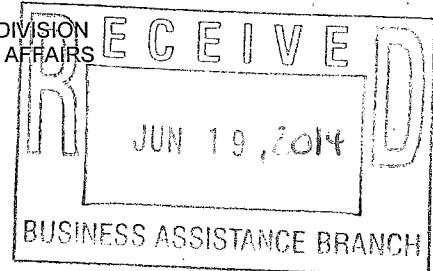


KEALI'I S. LOPEZ  
DIRECTOR

CELIA C. SUZUKI  
LICENSING ADMINISTRATOR

## HAWAII MEDICAL BOARD


PROFESSIONAL AND VOCATIONAL LICENSING DIVISION  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
P.O. BOX 3469  
HONOLULU, HAWAII 96801  
[www.hawaii.gov/dcca/pvl](http://www.hawaii.gov/dcca/pvl)



June 12, 2014

### MEMORANDUM

**TO:** Chu Lan Shubert-Kwock, Chairperson  
Small Business Regulatory Review Board  
Department of Business, Economic Development & Tourism

**FROM:** Keali'i S. Lopez, Director  
Department of Commerce and Consumer Affairs 

**SUBJECT:** Small Business Impact Review of the Proposed Amendments to Chapter 85, Title 16, Hawaii Administrative Rules ("HAR"), Relating to the Hawaii Medical Board

Attached for your review is the proposal to amend Chapter 16-85, HAR, relating to the Hawaii Medical Board.

I. Proposed Rule:

The proposed rule implement chapter 453, Hawaii Revised Statutes. The reasons for the changes are as follows:

Section 16-85-8 Examination and reexamination. Current rules require applicants to pass all three steps of the United States Medical Licensing Examination (USMLE) within seven years. The Board believes this to be excessively onerous as applicants not meeting this requirement must retake the step(s) to bring them in line with the 7-year rule in order to be licensed. Applicants are then faced with the cost of the examination and the time to prepare for it.

The Board also believes this rule to be restrictive as it bars physicians who would otherwise be qualified, from being licensed in Hawaii. Physicians who pursued a double degree (M.D. in medicine and PhD in research) are typical of those who are unable to

meet the 7-year rule. This is because steps 1 and 2 are taken in medical school and step 3 is taken after the 1<sup>st</sup> year of residency. Dual-degreed applicants complete medical school, enter a doctoral research program and after completion, enter a residency training. As such, it is almost impossible for them to meet the 7-year requirement.

Physicians licensed in other states have been denied licensure simply because of this rule. To encourage qualified physicians to practice in Hawaii and not exacerbate the shortage we face Hawaii, the Board is proposing to delete subsections (e) and (f).

II. Small Business Impact Statement pursuant to section 201M-2, HRS:

- A. The businesses that will be directly affected by, bear the cost of, or directly benefit from the proposed rules?

Any small business, health clinics, private practices, etc., wanting to hire physicians to provide medical services will be directly affected by and benefit by the proposed rules. We do not anticipate that they will need to bear any costs.

- B. Description of the small business that will be required to comply with the proposed rules and how they may be adversely affected?

We do not anticipate any adverse affects.

- C. In dollar amounts, the increase in the level of direct costs such as fees or fines, and indirect costs such as reporting, record keeping, equipment, construction, labor, professional services, revenue loss, or other costs associated with compliance?

It is difficult to determine a dollar amount as we do not have any estimates as to the number of physicians that would apply for licensure and become licensed.

- D. The probable monetary costs and benefits to the implementing agency and other agencies directly affected, including the estimated total amount the agency expects to collect from any additionally imposed fees and the manner in which the moneys will be used?

As a self-sufficient agency, there will not be monetary benefits to DCCA. Instead, costs of implementing the proposed rules will be used for operational purposes.

- E. The methods the agency considered or used to reduce the impact on small business such as consolidation, simplification, differing compliance or reporting requirements, less stringent deadlines, modification of the fines schedule, performance rather than design standards, exemption, or any other mitigating techniques?

The proposed rule amendments were discussed at public Board meetings. Prior to the meetings, agendas were available and distributed to notify interested parties of the Board's proposal. Subsequent to the meetings, minutes were available and distributed.

- F. How the agency involved small business in the development of the proposed rules?

The Board received requests from physicians and (although not a small business) Kaiser Permanente asking for relief from the 7-year time frame. In response, the Board decided to revise its rules using the process above to keep communication lines open.

- G. Whether the proposed rules include provisions that are more stringent than those mandated by any comparable related federal, state, or county standards, with an explanation of the reason for imposing the more stringent standard.

There are no mandated federal, state, or county standards applicable to this area.

III. Other Alternatives in Lieu of Proposed Rules:

There appears to be no other way to license physicians who exceeded the 7-year time frame.

The proposed amended rules has been reviewed by the Legislative Reference Bureau and the Department of the Attorney General.

The department submits the proposed rule and the Small Business Impact Statement contained herein, for consideration by the Small Business Regulatory Review Board.

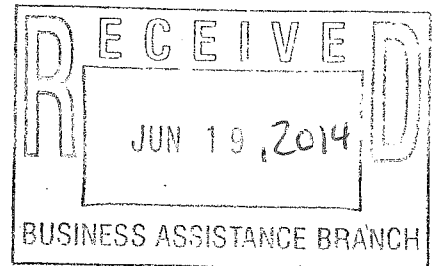
KSL:CIC/wb  
Attachment

cc: Constance I. Cabral, Executive Officer

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment to Chapter 16-85  
Hawaii Administrative Rules

1. Chapter 16-85-8, Hawaii Administrative Rules, entitled "Medical Examiners", is amended to read as follows: \_\_\_\_\_





Amendments to Chapter 16-85  
Hawaii Administrative Rules

1. Section 16-85-8, Hawaii Administrative Rules, is amended to read as follows:

"§16-85-8 Examination and reexamination. (a) An applicant for licensure shall take and pass the National Board of Medical Examiners (NBME), or the Federation Licensing Examination (FLEX), or the three steps of the United States Medical Licensing Examination (USMLE), or an approved combination of these examinations.

(b) Approved combinations prior to the year 2000 are as follows:

- (1) Each part of the NBME may be credited for the corresponding step of the USMLE;
- (2) FLEX component 1 may be credited for steps 1 and 2 of the USMLE; and
- (3) FLEX component 2 may be credited for step 3 of the USMLE.

(c) Applicants for the USMLE shall file the examination application, examination fees, and evidence of education and residency training directly with the testing agency contracted by the board to administer the examinations.

(d) The USMLE shall be administered at least two times per year and the passing grade for each step shall be a score of at least seventy-five.

[(e) Applicants shall have passed all three steps of the USMLE within seven years. Failure to obtain passing scores for each step within seven years shall result in the forfeiture of the score of the step taken outside of the seven year period. The seven year period begins on the date of administration of the first examination which the applicant passed. The applicant shall be required to retake a failed step and obtain a passing score within the seven year period.]" [Eff 1/27/79; am and ren §16-85-8, 6/12/81; am and comp 7/27/87; comp 10/28/89; comp 8/25/90; am and comp 12/22/97; am ] (Auth: HRS §453-5.1) (Imp: HRS §453-4)

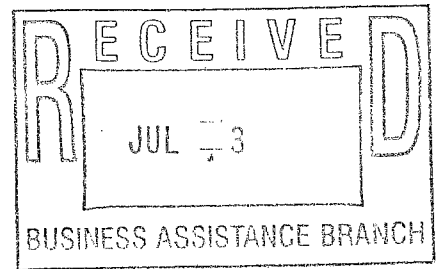
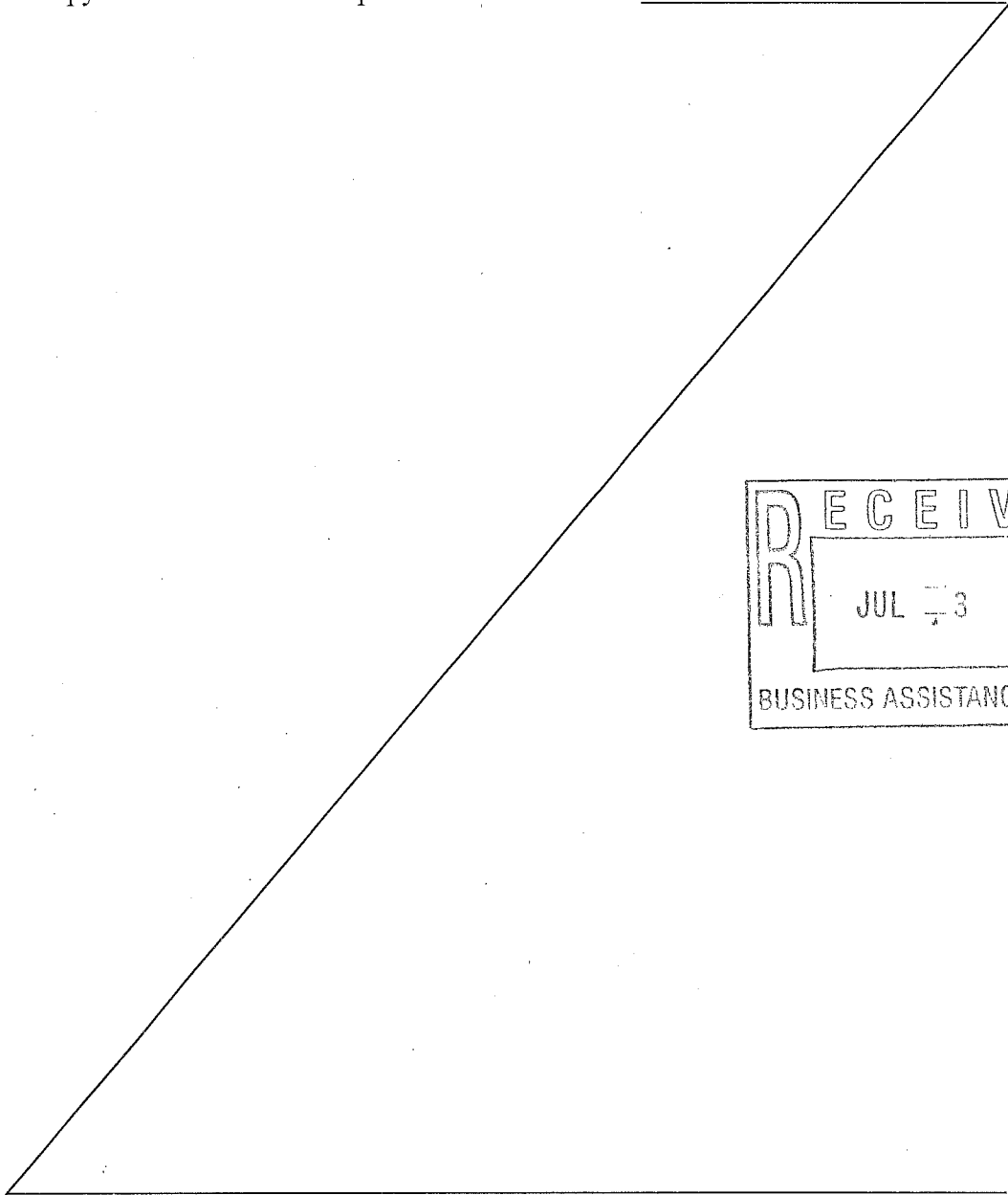
2. Material, except source notes, to be repealed is bracketed.

3. Additions to update source notes to reflect these amendments are not underscored.

## Exhibit 2

Amendment and Compilation of Chapter 16-110  
Hawaii Administrative Rules

1. Chapter 16-110, Hawaii Administrative Rules, entitled "Physical Therapy" is amended and compiled to read as follows: \_\_\_\_\_



HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 110

PHYSICAL THERAPY

Subchapter 1 General Provisions

- §16-110-1 Objective
- §16-110-2 Definitions
- §16-110-3 When referrals required
- §16-110-4 Duties and minimum standards of a supervising physical therapist
- §16-110-5 Duties of physical therapist assistants, and support or auxiliary personnel
- §16-110-6 Identification of personnel

Subchapter 2 Applications

- §16-110-10 Application for licensure

Subchapter 3 Permanent License

- §16-110-20 Requirements for a permanent physical therapist or physical therapist assistant license

Subchapter 4 Repealed

- §16-110-30 Repealed

Subchapter 5 Temporary License

- §16-110-40 Requirements for temporary physical therapist or physical therapist assistant license
- §16-110-41 Repealed
- §16-110-42 Repealed

Subchapter 6 Professional Misconduct

§16-110-50 Professional misconduct, gross carelessness, manifest incapacity defined

Subchapter 7 Practice and Procedure

§16-110-60 Administrative practice and procedure

Subchapter 8 Oral Testimony

§16-110-70 Oral testimony

Subchapter 9 Fees

§16-110-80 Fees

SUBCHAPTER 1

GENERAL PROVISIONS

§16-110-1 Objective. The objective of this chapter is to establish licensing requirements for physical therapists and physical therapist assistants in the interest of safeguarding life and health. [Eff 6/5/87; comp 12/4/92; comp 10/13/94; comp 12/9/10; am and comp ] (Auth: HRS §461J-5) (Imp: HRS §461J-5)

§16-110-2 Definitions. As used in this chapter:

"Accredited physical therapist assistant program" means a post-secondary physical therapist assistant program that is accredited by the Commission on Accreditation in Physical Therapy Education, its predecessor organization, or its successor organization.

"Accredited physical therapy program" means a post-secondary physical therapy program that is accredited by the Commission on Accreditation in Physical Therapy Education, its predecessor organization, or its successor organization.

"APTA" means the American Physical Therapy Association, which is the primary, voluntary, national professional organization of physical therapists and physical therapist assistants.

"Commission on Accreditation in Physical Therapy Education" or "CAPTE" means an independent accrediting body that is recognized by the United States Department of Education and by the Commission on Recognition of Postsecondary Accreditation, or their successor organizations as the entity in the United States that is responsible for accrediting education programs for the preparation of physical therapists and physical therapist assistants.

"Department" means the department of commerce and consumer affairs, unless otherwise identified.

"Director" means the director of the department of commerce and consumer affairs or the director's departmental representative.

"Encumbered" means a license issued by any state or territory of the United States for the practice of physical therapy that is revoked, suspended, [or] made probationary or conditional, or otherwise disciplined by the licensing or registering authority in that state or territory.

"Evaluation" means the [dynamic] process in which the physical therapist makes clinical judgments based on data gathered during the physical therapy examination. Findings from the physical therapy examination are integrated to establish a diagnostic classification, prognosis, and plan of care. This process may identify problems that require consultation with or referral to another provider.

"Federation of State Boards of Physical Therapy" or "FSBPT" means the not-for-profit organization established on February 12, 1987, under the laws of the State of Alabama. The FSBPT develops and administers the National Physical Therapy Examination and also works towards reasonable uniformity in regulation and standards through ongoing communications between it and the states and territories of the United States.

"Licensure examination" means a national physical therapy exam approved by the board for the licensure of a physical therapist or physical therapist assistant.

"Patient" means an individual who is the recipient of physical therapy examination, evaluation, diagnosis, prognosis, and intervention and who has a disease, disorder, condition, impairment, functional limitation, or disability and also includes a person who may engage the services of a physical therapist, who can benefit from the physical therapist's consultation, interventions, professional advice, prevention services, or services promoting health, wellness, and fitness.

["Physical therapist assistant" or "PTA" means an individual who has graduated from an accredited physical therapist assistant program or an accredited physical therapy program.]

"Physical therapy examination" means the process of obtaining a history, a systems review, and selecting and administering tests and measures to gather data about the patient. The initial physical therapy examination is a comprehensive screening and specific testing process. Tests and measurements may include, but are not limited to:

- (1) Muscle strength, force, endurance, and tone;
- (2) Joint motion, mobility, and stability;
- (3) Reflexes and automatic reaction;
- (4) Movement skill and accuracy;
- (5) Sensation and perception;
- (6) Peripheral nerve integrity;
- (7) Locomotor skill, stability, and endurance;
- (8) Activities of daily living;
- (9) Cardiac, pulmonary, and vascular functions;
- (10) [Fit] The fit, function, and comfort of prosthetic, orthotic, and other assistive devices;
- (11) Posture and body mechanics;
- (12) Limb length, circumference, and volume;
- (13) Thoracic excursion and breathing patterns;
- (14) Vital signs;
- (15) [Nature] The nature and locus of pain and conditions under which pain varies;
- (16) Photosensitivity; and
- (17) Home, community, and work physical environments.

"Student" means an individual who is currently enrolled in an accredited physical therapist assistant program or in an accredited physical therapy program.

"Support or auxiliary personnel" means a [physical therapist assistant, a] temporary physical therapist licensee[,] or a physical therapy student who [perform] performs duties delegated by [the] a supervising physical therapist.

"Temporary physical therapist licensee" means a person who meets the applicable requirements set forth in section 16-110-40.

"Treatment" or ["Intervention"] "intervention" means purposeful and skilled interaction between the physical therapist, PTA, temporary physical therapist licensee or student and the patient in the care of the patient using various physical therapy methods and techniques to produce changes in the patient's condition that are consistent with the diagnosis and treatment. A physical therapy treatment or intervention may consist of the following components:

- (1) Air;
- (2) Sound;
- (3) Compression;

- (4) Light;
- (5) Mechanical stimulation;
- (6) Biofeedback;
- (7) Positioning;
- (8) Therapeutic heat and cold;
- (9) Therapeutic exercise;
- (10) Gait training;
- (11) Activities of daily living and functional training;
- (12) Therapeutic electric current;
- (13) Therapeutic massage;
- (14) Ultrasound;
- (15) Behavior modification;
- (16) Traction;
- (17) Hydrotherapy;
- (18) Pulmonary therapy;
- (19) Wound care and external dressings;
- (20) Orthoses and external supports;
- (21) Assistive/adaptive devices;
- (22) Therapeutic equipment;
- (23) Neurodevelopmental activities;
- (24) Mobilization and manipulation;
- (25) Posture training;
- (26) Prosthetic management;
- (27) Cardiopulmonary rehabilitation;
- (28) Coordination, communication and documentation;
- (29) Patient-related instruction; and
- (30) Procedural interactions including but not limited to:
  - (A) Therapeutic exercise;
  - (B) Functional training in self-care and home management, including activities of daily living and instrumental activities of daily living;
  - (C) Functional training in work, including school and play, community and leisure integration or reintegration, including instrumental activities of daily living, work hardening, and work conditioning;
  - (D) Manual therapy techniques, including mobilization or manipulation;
  - (E) Prescription, application, and, as appropriate, fabrication of devices, and assistive, adaptive, orthotic, protective, supportive, and prosthetic equipment;



- (F) Airway clearance techniques;
- (G) Integumentary repair and protection techniques;
- (H) Electrotherapeutic modalities;
- (I) Physical agents; and
- (J) Mechanical modalities. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; am and comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-1, 461J-3, 461J-5, 461J-9)

§16-110-3 When referrals required. A licensed physical therapist may perform an evaluation of any person without a referral. A physical therapist may treat a patient with or without a referral unless the physical therapist has reasonable cause to believe that the patient has a symptom or condition that is either beyond the physical therapist's scope of practice, or for which physical therapy is contraindicated, in which case the physical therapist shall refer that patient to an appropriate healthcare provider. [Eff 6/5/87; comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-1, 461J-2, 461J-5)

§16-110-4 Duties and minimum standards of a supervising physical therapist. (a) A physical therapist shall supervise all physical therapy care provided by physical therapist assistants, and support or auxiliary personnel.

(b) A supervising physical therapist shall be responsible for managing all aspects of the physical therapy care of each patient. A licensed physical therapist shall utilize only the assistance of physical therapist assistants, or support or auxiliary personnel in the practice of physical therapy. A supervising physical therapist shall provide:

- (1) An interpretation of referrals when available;
- (2) An initial physical therapy examination, evaluation, diagnosis and prognosis of the patient;
- (3) The development or implementation of a plan of care based on the initial physical therapy examination or physical therapy [re-examination] reexamination, and which includes the physical therapy goals and anticipated outcomes;
- (4) A determination of the components and the intervention that shall be provided by a physical therapist and the components that may be delegated to physical therapist assistants, or support or auxiliary personnel;

- (5) Direct one-on-one [re-examination] reevaluation of the patient and revision of the plan of care when indicated;
- (6) The establishment of the discharge plan and documentation of the patient's discharge status;
- (7) Oversight of all services rendered to each patient, including the applicable documentation in accordance with APTA guidelines; and[;]
- (8) Telecommunications accessibility at all times when the supervising physical therapist is not on site and the ability to be on site within two hours if the supervising physical therapist's physical presence is needed.

(c) A supervising physical therapist shall assure that the physical therapist assistants, and support or auxiliary personnel under the physical therapist's supervision are competent and able to safely complete all delegated activities.

(d) A supervising physical therapist may supervise a maximum of three persons, which may include any combination of the following:

- (1) A temporary physical therapist licensee;
- (2) A student; or
- (3) A physical therapist assistant. [Eff and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp ]  
(Auth: HRS §461J-5) (Imp: HRS §§461J-3, 461J-5, 461J-9)

§16-110-5 Duties of physical therapist assistants, and support or auxiliary personnel. [Support] Physical therapist assistants, and support or auxiliary personnel may perform the following treatment or intervention components that they are qualified to perform and as delegated by the supervising physical therapist:

- (1) A physical therapist assistant, [a] temporary physical therapist licensee, and a physical therapy student may perform:
  - (A) Coordination, communication, and documentation;
  - (B) Patient-related instruction;
  - (C) Procedural interactions including but not limited to:
    - (i) Therapeutic exercise;
    - (ii) Functional training in self-care and home management, including activities of daily living and instrumental activities of daily living;
    - (iii) Functional training in work, including school and play, community and leisure integration or

- reintegration, including instrumental activities of daily living, work hardening, and work conditioning;
  - (iv) Prescription, application, and, as appropriate, fabrication of devices, and assistive, adaptive, orthotic, protective, supportive, and prosthetic equipment;
  - (v) Airway clearance techniques;
  - (vi) Integumentary repair and protection techniques;
  - (vii) Electrotherapeutic modalities;
  - (viii) Physical agents; and
  - (ix) Mechanical modalities;
- (2) A physical therapist assistant may perform manual therapy, excluding thrust joint mobilization and spinal and peripheral joint mobilization or manipulation; and
- (3) A temporary physical therapist licensee [and] or a physical therapy student may perform manual therapy techniques, including mobilization or manipulation.
- [Eff and comp 12/9/10; comp \_\_\_\_\_ ] (Auth: HRS §§461J-3, 461J-5) (Imp: HRS §§461J-3, 461J-5)

§16-110-6 Identification of personnel. (a) A licensed physical therapist shall wear a conspicuously placed name tag stating, at a minimum, the person's name and the title "physical therapist" or "PT".

(b) The supervising physical therapist shall ensure that all physical therapist assistants, and support or auxiliary personnel wear a conspicuously placed name tag identifying the individual's name and professional designation at the time of care. [Eff and comp 12/9/10; comp \_\_\_\_\_ ] (Auth: HRS §461J-5) (Imp: HRS §§461J-2, 461J-5)

## SUBCHAPTER 2

### APPLICATIONS

§16-110-10 Application for licensure. (a) All applicants for licensure shall apply on a form or forms prescribed by the board.

(b) The proper documentation and fee shall accompany the application forms.

(d) If a license is not issued within one year of the application date as a result of the applicant's failure to complete licensure requirements, take the required licensure examination, if required, or to submit the required documentation and evidence of qualifications, the applicant shall submit a new application form, documentation of qualifications, and applicable fees in addition to meeting licensure requirements that are in effect at the time of filing the new application. [Eff 6/5/87; am and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-5, 461J-6, 461J-7, 461J-9, 461J-10)

### SUBCHAPTER 3

#### PERMANENT LICENSE

§16-110-20 Requirements for a permanent physical therapist or physical therapist assistant license. (a) A person seeking a permanent license to practice as a physical therapist or physical therapist assistant in the State shall submit an application for the license on forms provided by the board.

(b) An applicant for as a physical therapist licensure shall provide the board with:

- (1) A certified transcript indicating graduation from a physical therapy education program from a school or college accredited by CAPTE; or
- (2) In the case of a person who is a graduate of a school or college of physical therapy located outside the United States that is not accredited by CAPTE, a certified credentials evaluation indicating successful completion of a program or programs, including education and training, equivalent to programs in the United States accredited pursuant to paragraph [(1)] (b)(1). That evaluation shall be prepared within one year from the date of the application's submission and shall be performed by a credentials evaluation agency approved by the board. Additionally the applicant shall take and pass one of the following English language proficiency tests if the school or college is in a country, state, or province where the official language is other than English:
  - (A) The Test of English as a Foreign Language (TOEFL) with [a score of not less than 560 for a paper-based examination, a score of 213 for a computer based examination, or] the passing score for each exam as

recommended by the FSBPT[; the Test of Written English with a score of not less than 4.5 or the passing score as recommended by the FSBPT; and the Test of Spoken English with a score of not less than 50 or the passing score as recommended by the FSBPT]; or.

(B) The TOEFL [ibt exam] internet based test with a passing score as recommended by the FSBPT.

(c) An applicant for licensure as a physical therapist assistant shall provide the board with:

(1) A certified transcript indicating graduation from a physical therapist assistant program or a physical therapy program accredited by CAPTE; or

(2) In the case of a person who is a graduate of a school or college of physical therapy or physical therapist assistant program located outside the United States that is not accredited by CAPTE, a certified credentials evaluation indicating successful completion of a program or programs, including education and training, equivalent to programs in the United States accredited pursuant to paragraph (c)(1). That evaluation shall be prepared within one year from the date of the application's submission and shall be performed by a credentials evaluation agency approved by the board. Additionally the applicant shall take and pass one of the following English language proficiency tests if the school or college is in a country, state, or province where the official language is other than English:

(A) The Test of English as a Foreign Language (TOEFL) with the passing score for each exam as recommended by the FSBPT; or

(B) The TOEFL internet based test with a passing score as recommended by the FSBPT.

[(c)](d) Each applicant for licensure shall be required to take the [standardized] physical therapist or physical therapist assistant licensure examination, as applicable, scheduled and administered by the board's designated licensing examination service;

[(d)](e) The passing score for the licensure examination shall be the criterion-referenced passing score recommended by the [Federation of State Boards of Physical Therapy] FSBPT.

[(e)](f) Each applicant shall ensure that after each administration of the licensure examination the licensing examination service reports the applicant's examination score directly to the board, [the applicant's score on the licensing

[(d)](e) The passing score for the licensure examination shall be the criterion-referenced passing score recommended by the [Federation of State Boards of Physical Therapy] FSBPT.

[(e)](f) Each applicant shall ensure that after each administration of the licensure examination the licensing examination service reports the applicant's examination score directly to the board. [the applicant's score on the licensing examination.] The [board] FSBPT shall notify the applicant directly of the applicant's licensure examination score.

[(f)](g) Any applicant who fails to achieve a passing score on the licensure examination may be entitled to re-take the examination;

[(g)] In the case of an applicant who was initially licensed by taking the standardized physical therapist licensure examination prior to November 1994, the passing score shall be that number of correctly answered questions on the licensure examination which statistically represents one standard deviation below the national mean at the time the applicant sat for the standardized physical therapist examination.]

(h) [For an applicant seeking an examination waiver, the Board may waive the licensure examination if] An applicant may apply for an examination waiver as follows:

(1) The board may waive the licensure examination for a physical therapist applicant if the applicant:

(A) Submits proof that [T]the applicant passed a licensure examination in another jurisdiction approved by the board, and received an examination score that meets or exceeds the [a] passing score as described in this chapter; and[pursuant to this section.]

(B) Submits [Additionally, the applicant shall provide the written] verification on the status of the applicant's license in the other jurisdiction[, from each physical therapy licensing authority that granted the applicant a physical therapist license, of the applicant's passing the required licensure examination the status of the license], including but not limited to whether [or not] the license is or has been encumbered, [and ]whether disciplinary action has been taken against the applicant or is currently pending, [or] and whether the applicant is being investigated for any licensing violations in that jurisdiction.

(2) The board may waive the licensure examination for a physical therapist assistant application if the applicant:

- (A) Graduated from an accredited physical therapist assistant program, or an accredited physical therapy program recognized by the United States Department of Education; and
- (B) Has five years of experience within the last eight years as a physical therapist assistant by December 31, 2014; provided that:
  - (i) The applicant shall provide written verification from each place of employment as a physical therapist assistant during the aforementioned five-year period; and
  - (ii) Employment verification shall include documentation of employment dates, job title, job description, employment status, name(s) of all supervisor(s), and any other documentation requested by the board to verify employment.

(i) An applicant may submit a letter of completion by the licensure examination date from the appropriate college authority which states that the student is in the final year of that physical therapy program and has completed the physical therapy program which at the time of graduation was accredited by CAPTE to be accepted in lieu of the final transcript to sit for the licensure examination. However, the license shall not be issued, even if the applicant has passed the licensure examination for physical therapists, until the final transcript is submitted showing graduation from the physical therapy program. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; am and comp ]  
 (Auth: HRS §461J-5) (Imp: HRS §§461J-2, 461J-5, 461J-6, 461J-7)

#### SUBCHAPTER 4 - REPEALED

§16-110-30 Repealed. [R 12/9/10]

#### SUBCHAPTER 5

#### TEMPORARY LICENSE

§16-110-40 Requirements for temporary physical therapist or physical therapist assistant license. (a) An applicant for a temporary license who has applied for a permanent license, shall provide the board with:

(3) For examination waiver, evidence that the applicant has fulfilled the requirements of section 16-110-20(h).

(b) The applicant shall submit to the board a completed Statement of Supervising Licensed Physical Therapist, on a form prescribed by the board, from each proposed supervising physical therapist, to verify that each supervising physical therapist shall provide supervision to the applicant. The Statement of Supervising Licensed Physical Therapist shall indicate the name of the applicant, the name and license number of each supervising physical therapist, the date when the supervision shall commence, and shall be signed by each supervising physical therapist. The temporary licensee shall be supervised throughout the period of temporary licensure by a physical therapist holding a permanent active license.

(c) An applicant may submit a written request to the board for a change in supervising physical therapist. The request shall include the reason for the change, the date of change, and a Statement of Supervising Physical Therapist from the new proposed supervising physical therapist. The request shall be signed by the applicant, new proposed supervising physical therapist, and the immediate prior supervising physical therapist, unless the applicant can provide adequate documentation to establish that the immediate prior supervising physical therapist cannot be contacted.

(d) Except as provided herein, a temporary license shall expire within six months of its effective date or be terminated at an earlier date upon any of the following:

- (1) Termination of the supervisory relationship between the applicant and the supervising physical therapist verifying the supervision of the applicant;
- (2) The applicant's failure to pass the applicable physical therapy licensure examination identified in [paragraph] subsection (a)(2);
- (3) Determination by the board that the applicant's qualifications for licensure are not as represented by the applicant at the time of application;
- (4) If the board determines that there is cause for termination due to the temporary licensee committing any act specified in [HRS §§461J-12, 436B-19, or §16-110-50] section 461J-12 or 436B-19, HRS, or section 16-110-50; or
- (5) The person has received a permanent license.

(e) The six month period for a temporary license may be extended to one year by the board for good cause. Only one temporary license [will] shall be issued per applicant.

(f) A temporary license shall not be issued to a person who is not authorized to work in the United States. [Eff 6/5/87; am and comp 12/4/92; am and



comp 10/13/94; am and comp 12/9/10; am and comp  
HRS §461J-5) (Imp: HRS §§461J-5, 461J-6, 461J-7, 461J-9)

] (Auth:

§16-110-41 Repealed. [R 12/9/10]

§16-110-42 Repealed. [R 12/9/10]

## SUBCHAPTER 6

### PROFESSIONAL MISCONDUCT

§16-110-50 Professional misconduct, gross carelessness, manifest incapacity defined. For purposes of section 461J-12(8), HRS, "professional misconduct, gross carelessness, or manifest incapacity in the practice of physical therapy" includes, but shall not be limited to:

- (1) Administering treatments or evaluation in a negligent manner;
- (2) Falsifying or otherwise altering patient records;
- (3) Misappropriating drugs, money, supplies, or equipment;
- (4) Aiding or abetting, or both, the practice of physical therapy by any person not licensed to practice as defined by chapter 461J, HRS;
- (5) Accepting fees for services not provided;
- (6) Improper delegation or supervision of support or auxiliary personnel;
- (7) Practicing physical therapy outside the scope of this chapter;
- (8) Failure to abide by the APTA Guidelines for Physical Therapy Documentation, the APTA Code of Ethics, or the APTA Guide to Professional Conduct; and
- (9) Failing to immediately refer any patient to an appropriate healthcare provider if there is reasonable cause to believe that the patient's condition is beyond the physical therapist's scope of practice or is a condition for which physical therapy is contraindicated. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§461J-5, 461J-12)

## SUBCHAPTER 7

## PRACTICE AND PROCEDURE

§16-110-60 Administrative practice and procedure. The rules of practice and procedure for physical therapists shall be as provided in chapter 16-201, the rules of administrative practice and procedure of the department of commerce and consumer affairs, as adopted and as may subsequently be amended, which are incorporated by reference and made a part of this chapter. [Eff 6/5/87; comp 12/4/92; am and comp 10/13/94; am and comp 12/9/10; comp ]  
(Auth: HRS §§91-2, 461J-5) (Imp: HRS §§91-2, 461J-5)

### SUBCHAPTER 8

#### ORAL TESTIMONY

§16-110-70 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony is requested to notify the board not later than forty-eight hours before the meeting, and at that time, to state the item on which testimony is to be presented;
- (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
- (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
- (4) Persons presenting oral testimony at the beginning of the testimony shall identify themselves and the organization, if any, that they represent;
- (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed prior to the commencement of the testimony of the time constraints to be imposed; and

- (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.
- (b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the subject of another proceeding pending subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.
- (c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff 6/5/87; am and comp 12/4/92; am and comp 10/13/94; comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§92-3, 461J-5)

## SUBCHAPTER 9

### FEES

§16-110-80 Fees. (a) The fees for the board of physical therapy shall be as adopted by the director in chapter 16-53, after hearing, pursuant to chapter 91, HRS.

(b) The dishonoring of any check upon first deposit shall be considered a failure to meet the requirements of this chapter. [Eff and comp 12/4/92; comp 10/13/94; am and comp 12/9/10; comp ] (Auth: HRS §461J-5) (Imp: HRS §§436B-15, 461J-5)

2. Material, except source notes, to be repealed is bracketed. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 16-110, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on November 9, 2010, and filed with the Office of the Lieutenant Governor.

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H. CHRISTINA BAXENDALE, Chairperson  
Board of Physical Therapy

APPROVED AS TO FORM:

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Deputy Attorney General

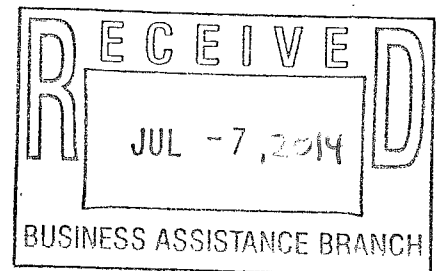
## Exhibit 3

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

Amendment and Compilation of Chapter 15-6  
Hawaii Administrative Rules  
<Date>

SUMMARY

1. §§15-6-2 to 15-6-3 are amended.
2. §§15-6-7 to 15-6-14 are amended.
3. §15-6-16 is amended.
4. A new §15-6-17 is added.
5. Chapter 6 is compiled.



Rules Amending Title 15  
Hawaii Administrative Rules

<Date>

1. Chapter 6 of Title 15, Hawaii Administrative Rules, entitled "Enterprise Zones" is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 15  
DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

CHAPTER 6  
ENTERPRISE ZONES

SUBCHAPTER I IN GENERAL

§15-6-1 Purpose  
§15-6-2 Definitions

SUBCHAPTER 2 APPLICATION FOR, SELECTION CRITERIA,  
AND TERMINATION OF ENTERPRISE ZONE  
STATUS

§15-6-3 Eligibility criteria for zone nomination  
§15-6-4 Procedure for zone nomination by counties  
§15-6-5 Procedure for state review of zone nominations  
§15-6-6 Zone selection criteria and other requirements  
§15-6-7 Procedure for amendment of zone status by  
counties  
§15-6-8 Procedure for termination of zone designation by  
State or counties

SUBCHAPTER 3 DESIGNATION OF A BUSINESS AS A  
QUALIFIED BUSINESS; CERTIFICATION BY  
THE DEPARTMENT

§15-6-9 State criteria used to determine business  
qualification  
§15-6-10 Business application procedure

§15-6-11

- §15-6-11 State income tax credits and general excise tax exemption available to a business that has been certified
- §15-6-12 Calculation of eligibility for tax credits and exemptions; apportionment
- §15-6-13 Wholesale sale of tangible personal property
- §15-6-14 Sale of services
- §15-6-15 Manufacturing
- §15-6-16 Terms and conditions under which the tax credits and the general excise exemption may be claimed by a certified business
  
- §15-6-17 Force majeure event

#### SUBCHAPTER 4 ADMINISTRATION

- §15-6-18 Administration
- §15-6-19 Waiver
- §15-6-20 Severability

§15-6-1 Purpose. The purpose of this chapter is to provide rules for administration of the state enterprise zones program authorized by chapter 209E, Hawaii Revised Statutes ("HRS"). [Eff \_\_\_\_\_ ] (Auth: HRS §209E-8) (Imp: HRS §209E-1)

§15-6-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

~~["Authorized to do business in the State" means a corporation incorporated under chapter 416, HRS, a foreign corporation admitted under chapter 418, HRS, a corporation incorporated under chapter 415, HRS, or a foreign corporation admitted under chapter 425D, HRS; a partnership registered under chapter 425, HRS, or 425D, HRS; or a sole proprietorship.]~~

"Average number of full-time employees" means the sum of the number of full-time employees employed at the end of each payroll period during a qualified business' taxable year divided by the number of payroll periods in the taxable year.

"Base taxable year" means the taxable year preceding the taxable year during which the business is first qualified under this program.



"County" or "counties" means the City and County of Honolulu and the counties of Hawaii, Kauai, and Maui.

"Department" means the department of business, economic development & tourism.

"Developed" means the improvements made to land through the construction, repair, or remodeling of structures to accommodate the principal use to which the land is or will be put. Improvements to land where parking is the principal use shall not constitute development except where the business purchasing or leasing the land can demonstrate to the satisfaction of the county and department that such use is necessary in order to further the purpose of the program and the local development objectives.

"Director" means the director of business, economic development & tourism.

"Enterprise zone" means an area selected by a county and approved by the governor to be eligible for this program.

"Establishment" means a single physical location where business is conducted. A qualified business may include one or more establishments, at least one of which must be in an enterprise zone.

"Extended three-year cycle" means the thirty-six consecutive months during which qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products may receive enterprise zone benefits in addition to the business' seven-year cycle.

"Full-time employee" means an [individual employed by a qualified business who works more than twenty hours a week during the business' payroll period] employee, including a leased employee and an employee under a joint employment arrangement as defined in section 209E-2, HRS, for whom the employer is legally required to provide employee fringe benefits.

"Governing body" means the mayor or county council, or both, as provided by county ordinance.

"Gross receipts" means gross income, wherever derived, as reported on a qualified business' general excise tax return or similar computation for those businesses exempt from chapter 237, HRS.

["Low-income person" means an individual whose income is less than eighty percent of the median individual income

~~of the last county in which the person lived during the twelve months immediately preceding the month in which the person was hired.]~~

"Person" means the same as defined in section 235-1, HRS."

"Program" means the state enterprise zones program authorized by chapter 209E, HRS.

"Qualification period" means the seven-year cycle, plus, if applicable, the extended three-year cycle.

"Qualified business" means

~~[any corporation, partnership, or sole proprietorship authorized to do business in the State which is:~~

- ~~(1) Subject to the state corporate or individual income tax under chapter 235, HRS, the public service company tax under chapter 239, HRS, or the bank and financial corporation tax under chapter 241, HRS;~~
- ~~(2) Engaged in manufacturing, the wholesale sale of tangible personal property, or a service business or calling; and~~
- ~~(3) Qualified under section 15-6-9. A qualified business may include one or more establishments, at least one of which must be in an enterprise zone.]~~

the same as defined in section 209E-2, HRS.

"Service business [or calling]" means [any corporation, partnership, or sole proprietorship that acts upon or processes tangible personal property that is not owned by the service business or calling.] a qualified business that repairs ships, aircraft, or assisted technology equipment, provides telecommunication services, information technology design and production services, medical and health care services, or education and training services as defined in chapter 209E, HRS. [This includes cleaning, repair, and maintenance businesses. By way of example, this does not include businesses such as brokerage, legal, accounting, architectural, engineering, consulting, contracting, real estate firms, and travel agencies.] Where the service business [or calling], in the same transaction, engages in both the sale of tangible property and services, the service business [or calling] shall segregate the sale of services that are exempt under chapter 209E, HRS, from the sale of tangible personal property. The service business [or calling] shall sustain

the burden of proving the segregation was properly made. If the service business [~~or calling~~] fails to sustain the burden, the entire transaction shall be subject to the general excise tax.

"Seven-year cycle" means the eighty-four consecutive months during which a qualified business may receive enterprise zone benefits. The cycle begins on the first of the month following the date the department determines that a business is eligible to participate in the enterprise zones program. The cycle ends after eighty-four consecutive months or the end of the twenty-year designation for the zone in which the qualified business is located, whichever comes first.

"State" means the State of Hawaii.

"Taxable year" or "tax year" means the calendar year (or the fiscal year ending during such calendar year) on the basis of which taxes due the State are computed under the applicable tax law.

"Taxes due the State" means [~~±~~

- ~~(1) In the case of a corporation, partnership, or sole proprietorship, income tax due under chapter 235, HRS;~~
- ~~(2) In the case of a public service company, tax due under chapter 239, HRS; and~~
- ~~(3) In the case of a financial institution, tax due under chapter 241, HRS.]~~

income taxes due under chapter 235, HRS.

~~["Trade or business" means all business activity by a qualified business within an enterprise zone, whereby (1) tangible personal property is sold at wholesale and the sale takes place within the zone; (2) a qualified business engaged in a service business or calling within the zone; or (3) value is added to materials or products that are manufactured within the zone.]~~

"Wholesale" means those activities defined in section 237-4(8), HRS. [Eff \_\_\_\_\_ ] (Auth: HRS §209E-8)  
(Imp: HRS §209E-2)

## SUBCHAPTER 2

### APPLICATION FOR, SELECTION CRITERIA, AND TERMINATION OF ENTERPRISE ZONE STATUS

§15-6-3 Eligibility-criteria for zone nomination. (a) To be designated as an enterprise zone, a proposed area shall be located within one ~~[1980]~~ United States census tract or two or more contiguous ~~[1980]~~ United States census tracts in accordance with the most recent decennial United States Census. ~~[Any area designated as an enterprise zone after 1990 census data becomes available shall be located within one 1990 United States census tract or two or more contiguous 1990 United States census tracts.]~~ The census tract or tracts within which each enterprise zone is located also shall meet at least one of the following requirements ~~[, which are based upon the most current census data]:~~

- (1) At least twenty-five per cent of the population of each census tract shall have a median family income below eighty per cent of the median family income of the county in which the census tract is located; or
- (2) The unemployment rate in each census tract shall be at least 1.5 times the state average unemployment rate. ~~[Based on the 1980 state average unemployment rate, the unemployment rate in each census tract within a zone must be at least 7.05 per cent.]~~

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-4)

§15-6-4 Procedure for zone nomination by counties.

(a) Nominations for enterprise zone designation shall be made by the governing body of each county.

(b) For each proposed enterprise zone, the governing body of the county shall submit an application which includes:

- (1) A written description of the boundaries of the proposed zone;
- (2) A map identifying the proposed enterprise zone boundaries relative to the boundaries of the census tracts that will be fully or partially included in the zone; and relative to the state land use district classifications, publicly held lands, and county general plan and/or development plan classifications; and
- (3) A statement indicating the local incentives proposed by the county. Each county may propose incentives which it will make generally available

throughout the zone or available only to certain types of businesses for limited periods of time.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §§209E-4, 209E-12)

§15-6-5 Procedure for state review of zone nominations. (a) The application shall be reviewed by the department within sixty days of receipt of the completed application. Within ninety days of receipt, the director shall recommend for approval by the governor those applications which meet the requirements set forth by statute and these rules.

(b) The governor shall approve, upon recommendation of the director, enterprise zone status for a twenty-year period beginning on the date of approval. The amendment of the zone status under section 15-6-7 shall not extend the twenty-year period.

(c) A county whose application for zone designation is denied shall be notified and provided with the reasons for denial. [Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-5)

§15-6-6 Zone selection criteria and other requirements. (a) In its recommendations to the governor, the department shall consider the economic condition of the area, the potential benefits which may accrue to the State and counties from business and industrial development in the area, and the need and potential for job creation in the area.

(b) A maximum of six areas in each county may be designated as enterprise zones.

(c) If any portion of an area designated as a state enterprise zone is subsequently included in an area designated as an enterprise zone by an agency of the federal government, the state enterprise zone shall be enlarged to include the area designated by the federal government.

(d) Upon designation of an area as an enterprise zone, the State and any agency of a political subdivision that owns any land within the enterprise zone may make available for sale or lease, under appropriate law, all land within the zone not designated or targeted for public use with the condition that it be developed as defined in this chapter. No public land shall be sold or leased if the intended

§15-6-6

purpose of the sale or lease is real estate speculation.  
[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-4)

§15-6-7 Procedure for amendment of zone status by counties. (a) A county may request amendment (or termination--see following section) of ~~[approved]~~ zone applications by submitting a written notification in accordance with the procedures contained in sections 15-6-4, 15-6-5, and 15-6-6. Requests for amendments will be considered if the amendments relate to:

- (1) Changes in local program incentives;
- (2) Changes of zone boundaries; or
- (3) Termination of the zone.

(b) If the request is for expansion of a zone boundary, the expanded zone area shall meet the eligibility ~~[re-quirements]~~ requirements of section 15-6-3.

(c) The request for amendment shall be reviewed by the department and forwarded to the governor. If approved by the governor, the amendment shall take effect on the date of approval. A county whose application for amendment is denied by the governor shall be notified and provided with the reasons for denial. [Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-13)

§15-6-8 Procedure for termination of zone designation by state or counties. (a) A county shall notify the department of any inability or unwillingness to continue any approved local incentives for any zone or zones within the county's jurisdiction. This shall result in termination of any affected zone on the date notification is received by the department. The department shall advise the department of taxation that the zone has been terminated.

(b) If the department determines that a business is ~~[eligible]~~ qualified to participate in the program prior to the termination of the zone ~~[under this section]~~ by a county, the business may be eligible for ~~[business]~~ state tax credits and the state general excise tax exemption for the remainder of the business' [seven-year cycle] qualification period.

(c) In the case of a business that is located in a zone which is not terminated by the State or counties under this section, the business shall not be eligible for the ~~[business]~~ state tax credits and the state general excise tax exemption, regardless of the time remaining in the

business' [~~seven-year cycle~~] qualification period, from the date that a [~~zones~~] zone terminates at the end of its twenty-year life. [Eff \_\_\_\_\_ ] (Auth: HRS §209E-8) (Imp: HRS §209E-13)

SUBCHAPTER 3

DESIGNATION OF A BUSINESS AS A QUALIFIED BUSINESS;  
CERTIFICATION BY THE DEPARTMENT

§15-6-9 State criteria used to determine business qualification. (a) To qualify for enterprise zone benefits, a [~~corporation, partnership, or sole proprietorship~~] qualified business authorized to do business in the State shall satisfy the following requirements:

- (1) Be subject to [~~the state corporate or individual income tax under~~] chapter 235, HRS [~~, the public service company tax under chapter 239, HRS, or the bank and financial corporation tax under chapter 241, HRS~~];
- (2) Be engaged in [~~a trade or business~~] an eligible business activity, as defined in section [~~15-6-2~~] 209E-2, HRS; and
- (3) [~~Be qualified~~] Meet the requirements under either section 15-6-9(c) or (d).

(b) Where the department finds that a business becomes eligible to participate under the program during a business' taxable year, rather than at the start of the taxable year, the requirement that at least fifty per cent of the business' enterprise zone [~~establishment's~~] establishments' gross receipts be attributable to the active conduct of a trade or business within enterprise zones located within the same county, and the requirement that [~~a sufficient number of low income persons be hired~~] the business increase its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation, and the requirement that a business increase its gross sales of agricultural crops or agricultural products by two per cent annually, shall be determined by the actual number of months that it does business within [~~the zone~~] enterprise zones located within the same county during the taxable year.

(c) [~~A business is qualified under section 209E-9, HRS, if the business satisfies the criteria in either this~~]

~~subsection or subsection (d).~~ A business which begins operation of a trade or business in an eligible business activity within a zone after the date of zone designation shall meet the following requirements:

- (1) During each taxable year, at least fifty per cent of the business' enterprise zone ~~[establishment's]~~ establishments' gross receipts are attributable to the active conduct of a trade or business~~[, as defined in section 15-6-2;]~~ within enterprise zones located within the same county; and
- (2) ~~[At least forty per cent of the average number of full-time employees of its zone establishments shall be low-income persons; and]~~ Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of its first tax year of participation, and during each subsequent taxable year at least maintains that higher level of employment; or
- (3) Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.
- ~~[(3)]~~ (4) ~~[if]~~ If the calculation used to determine compliance with paragraph (2) results in a fractional percentage, the result should be rounded up or down to the next whole percentage.

(d) A business ~~[may also qualify under section 209E-9, HRS, if the business is]~~ which is actively engaged in the conduct of a trade or business in an eligible business activity in a zone prior to the time of zone designation ~~[and the business meets]~~ shall meet the following requirements:

- (1) During each taxable year, at least fifty per cent of the business' enterprise zone ~~[establishment's]~~ establishments' gross receipts are attributable to the active conduct of a trade or business~~[;]~~ within enterprise zones located within the same county; and
- (2) ~~[The average number of full-time employees of its zone establishment, during the taxable year the~~



~~zone establishment first qualifies, shall be at least five per cent greater than the average for the establishment's base taxable year;] Either:~~

i. Increases its average annual number of full-time employees employed at the business' establishment or establishments within enterprise zones located within the same county by at least ten per cent by the end of the first year of operation, and by at least fifteen per cent by the end of each of the fourth, fifth, sixth, and seventh years of operation, and for businesses eligible for tax credits extending past the seventh year, at least maintains that higher level of employment during each subsequent taxable year; or

ii. Increases its gross sales of agricultural crops produced, or agricultural products processed within enterprise zones located within the same county by two per cent annually.

(3) ~~[The average annual number of full-time employees of its zone establishment shall remain at or above the increased level required in paragraph (2) during the remainder of the cycle;] The percentage increase in paragraph (2) shall be based on the employee count at the beginning of the initial year of operation within the enterprise zone or zones.~~

~~[(4) At least forty per cent of the increase in full-time zone employees, as stipulated in paragraph (2), shall be attributable to low income persons;~~

~~(5) The number of low income persons employed by a zone establishment shall increase by five per cent annually until at least forty per cent of a zone establishment's full-time employees are low income persons; and]~~

~~[-(6)]~~ (4) If the calculations used to determine compliance with ~~[either]~~ paragraph (2) ~~[, (3), (4), or (5) result]~~ results in a fractional percentage, the result should be rounded up or down to the next whole percentage.

(e) Even after the certification of a business at the end of the initial year of ~~[the seven-year cycle]~~

qualification, a business must meet the requirements of this section in each year remaining in its [~~seven-year cycle~~] qualification period to receive certification for the tax credits or the exemption from the general excise tax for that year.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)

§15-6-10 Business application procedure. (a) A business interested in participating in[-]the enterprise zones program should obtain an application form from the department. The form should be completed by the business, reviewed by an independent accountant who shall be responsible for verifying the accuracy of the information in the application, and submitted to the department.

(b) The business shall submit separate applications for each zone in which it conducts trade or business.

(c) A business may participate in the program for a seven-year cycle. A business engaged in manufacturing tangible personal property or producing or processing of agricultural products may participate in the program for an additional three-year cycle. During the initial year of the seven-year cycle, the department shall determine if the applying business is eligible to participate in the enterprise zones program. The business shall be advised of the department's decision. The seven-year cycle will commence on the first of the month following the date that the department determines that the business is eligible to participate in the program. The business may claim the exemption from the general excise tax from the first of the month following the date the department determines that the business is eligible to participate in the program. If the business is not certified at the end of the year, however, the business shall pay all taxes, penalties, and interest normally levied by law to the department of taxation.

(d) A qualified business shall not be entitled to a credit against taxes due the State, until certified by the department. The department of taxation shall reject any claim for exemption in a return filed without the certification. At the end of each taxable year [~~of the seven-year cycle~~] of the business' qualification period, including the initial year, the department shall determine if the business should be certified to receive the state income tax credits and general excise tax exemption available under this program. For the department to make

this determination, the business must submit to the department a form designated by the department [~~together with the forms verifying the status of low income employees. The form from the department shall be reviewed by an independent accountant~~].

Following its review of the forms, the department shall return the certified form to the business and notify the department of taxation if the business is certified.

(e) A business that has been certified shall:

- (1) File the applicable state tax returns;
- (2) Attach copies of the appropriate department form and department of taxation enterprise zone tax credit form to the tax return; and
- (3) Forward a copy of the certified department form to the governing body of the county in which the qualified business is located.

(f) The business tax credits may be claimed at the [~~and~~] end of each tax year of the [~~seven-year cycle~~] business' qualification period, including the initial year, if the appropriate tax returns are filed and a credit is claimed against any taxes due the State on the tax returns. These returns need not be prepared by an accountant. The department of taxation enterprise zone tax credit form shall be attached to the tax returns filed with the department of taxation. All taxes, penalties, and interest normally levied by law shall be paid to the department of taxation for the period that the business is not certified to receive enterprise zone tax benefits. Additionally, the department of taxation, during the statutory limitations period, may audit a business to determine whether (1) the business is engaged in [~~a trade or business~~] an eligible business activity, as defined in [~~this~~] chapter 209E, HRS; (2) the business has properly allocated and apportioned income from trade or business in a zone, which is eligible for the income tax credits and the general excise tax exemption, from other income that is not eligible for the credits and exemption, including income from business activity within the zone which does not fall within the definition of [~~trade or business~~] an eligible business activity or income from business activity conducted outside the zone; and (3) the business has properly allocated the business tax credits based upon the number of months it is qualified during the taxable year.

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(g) The exemption from the general excise tax may be claimed at the time of the filing of the returns during the initial year, as provided in section 15-6-10(c), and in subsequent years of the [~~seven-year cycle~~] business' qualification period at the time of the filing of the returns if the tax returns are filed as required by law. A business shall submit standard periodic tax returns (monthly, quarterly, or semiannually) as required under chapter 237, HRS, and claim an exemption from the general excise tax for trade or business in the zone. The periodic returns and the annual return need not be prepared by an accountant. These returns shall be filed, claiming the exemption, even when no tax is due. The appropriate department form shall also be attached to the annual tax return. All taxes, penalties, and interest normally levied

by law shall be paid to the department of taxation for the period that the business is not certified to receive enterprise zone tax benefits. Additionally, the department of taxation, during the statutory limitations period, may audit a business to determine whether (1) the business is engaged in [~~a trade or business~~] an eligible business activity, as defined in [~~this~~] chapter 209E, HRS; (2) the business has properly allocated and apportioned income from trade or business in a zone which is eligible for the business tax credits and the general excise tax exemption, from other income that is not eligible for the credits and exemption, including income from business activity within the zone that does not fall within the definition of [~~trade or business~~] eligible business activity or income from business activity conducted outside the zone; and (3) the business has properly allocated the general excise exemption based upon the number of months it is qualified during the taxable year.

[Eff ] (Auth: §HRS 209E-8) (Imp: HRS §209E-9)

§15-6-11 State income tax credits and general excise tax exemption available to a business that has been certified. (a) A business that has been[-]certified is entitled, subject to the apportionment provisions discussed in these rules, to tax credits against any taxes due under chapter 235, HRS to the State according to the following formula:

First year of the seven-year cycle 80% of tax due  
Second year of the seven-year cycle 70% of tax due  
Third year of the seven-year cycle 60% of tax due  
Fourth year of the seven-year cycle 50% of tax due  
Fifth year of the seven-year cycle 40% of tax due  
Sixth year of the seven-year cycle 30% of tax due  
Seventh year of the seven-year cycle 20% of tax due  
Eighth, ninth, and tenth years (extended three-year cycle) 20% of tax due for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products.

The business shall be eligible for a credit against any taxes due the State under chapter 235, HRS when the tax return required [~~under chapters 235, 239, and 241~~] is filed with the department of taxation, together with the certification by the department. No unusable tax credit shall carry over or carry back or be refunded.

(b) A business that has been certified is entitled, subject to the apportionment provisions discussed in these rules, to tax credits against any taxes due to the State under chapter 235, HRS in an amount equal to a percentage of unemployment insurance premiums paid on the payroll of all the business' employees employed [in the enterprise zone, including employees who do not qualify under the definition of a low-income person,] within enterprise zones located within the same county, according to the following formula:

First year of the seven-year cycle 80% of premiums paid  
Second year of the seven-year cycle 70% of premiums paid  
Third year of the seven-year cycle 60% of premiums paid  
Fourth year of the seven-year cycle 50% of premiums paid  
Fifth year of the seven-year cycle 40% of premiums paid  
Sixth year of the seven-year cycle 30% of premiums paid  
Seventh year of the seven-year cycle 20% of premiums paid  
Eighth, ninth, and tenth years (extended three-year cycle) 20% of premiums paid for qualified businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products.

Tax credits provided for in this subsection apply only to the amount of unemployment insurance premiums paid.

Those premiums shall be paid by the business and the business shall be eligible for a credit against any taxes due to the State under chapter 235, HRS when the annual tax return required [~~under chapters 235, 239, and 241, HRS~~] is filed with the department of taxation, together with the certification by the department.

No unusable tax credit may be carried over or carried back to another tax period.

(c) The tax credits allowed under subsections (a) and (b) may be combined by the business. The department of taxation, however, shall not refund any unusable credit. The application of this provision is illustrated in the following example.

Example 1:

ABC Company's application to participate in the enterprise zones program is approved by the department shortly after ABC commences a trade or business in an eligible business activity in a zone. All of ABC's income is derived from trade or business in an eligible business activity within the zone. During the initial year of the seven-year cycle, ABC pays \$500 in unemployment insurance premiums for all employees [~~including employees who do not qualify under the definition of low income person~~]. ABC's seven-year cycle begins on January 1. After the initial year of the seven-year cycle, it is determined that ABC owes \$1,000 in net income taxes to the State under chapter 235, HRS. When ABC files its tax returns at the end of the initial year, it is eligible for a tax credit equaling 80 per cent of the income taxes due, or \$800. ABC is also eligible for a credit of [~~\$~~] 80 per cent of unemployment insurance premiums paid, or \$400. Thus, ABC's total credits under the program against income taxes are \$1,200. As ABC's income tax liability is \$1,000, ABC tax credit [~~of~~] is limited to \$1,000 at the end of the initial year if ABC is certified by the department even though the calculated maximum credit is \$1,200. The \$200 of unusable credit, however, shall not be refunded to ABC nor shall it be carried over or carried back to another tax period.

(d) A business may claim the exemption from the general excise tax on the gross receipts from all transactions eligible under this chapter from the first of the month following the date the department determines that the business is eligible to participate in the program. The business, however, shall file the tax returns required under chapter 237, HRS. The business shall submit standard periodic tax returns as required under chapter 237, HRS, report the gross income from the business, and[-] claim an exemption from the general excise tax for trade or business in the zone. These returns shall be filed even if no tax is due.

(e) Businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products are eligible to receive enterprise zone benefits for an extended three-year cycle in addition to their seven-year cycle.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §§209E-10, 209E-11)

§15-6-12 Calculation of eligibility for tax credits and exemption; apportionment. (a) This section sets forth the calculations that a business may have to complete to determine its eligibility for business tax credits and the general excise exemption and the apportionment of the credits and the exemption.

(b) During each taxable year, at least fifty per cent of the business' enterprise zone [~~establishment's~~ establishments' gross receipts must be attributable to the active conduct of a trade or business [~~within the zone~~] in an eligible business activity within enterprise zones located within the same county.

(c) A business which has income taxable both within and without the State shall apportion and allocate the business' net income under sections 235-21 to 235-38, HRS, prior to calculating the enterprise zone tax credits.

(d) The general excise tax exemption and the enterprise zone tax credits shall apply only to the extent that a qualified business conducts trade or business [~~within the zone~~] in an eligible business activity within enterprise zones located within the same county.

(1) The business may claim an exemption from the general excise tax at the time of the filing of the periodic returns required under chapter 237,

HRS, only for trade or business within ~~[the zone]~~  
enterprise zones located within the same county.

- (2) A business may claim an enterprise zone credit against any taxes due the State. Subject to the allocation and apportionment, if any, under subsection (c), a business with income from business activity which is taxable both within and without an enterprise zone, shall allocate and apportion the income, pursuant to this section, and apply for an enterprise zone tax credit at the end of each taxable year only for the income derived from the qualified business activities of the trade or business within ~~[the zone]~~ enterprise zones located within the same county. The business shall multiply the income by a fraction. The numerator of the fraction is the total gross receipts of [a] the qualified business ~~[within the zone]~~ activity conducted by the qualified business in an eligible business activity within enterprise zones located within the same county during the taxable year ~~[whereby tangible personal property is sold at wholesale to business firms, a qualified business engages in a service business or calling, or value is added to materials or products that are manufactured by a qualified business]~~. The denominator is the total gross receipts of the qualified business within the State during the taxable year, including sales within and without the enterprise zone.

(A) For purposes of allocation and apportionment of income under this section, a ~~[business is]~~ business' income is earned outside of an enterprise zone ~~[taxable without the enterprise zone]~~ if the ~~[business has]~~:

- (i) Income is from business activity within the zone which does not fall within the definition of ~~[trade or business]~~ eligible business activity; or
- (ii) Income is from business activity conducted outside the zone. This term includes work that a business located within a zone subcontracts to a



business located outside the zone and the work is delivered outside the zone.

- (3) A business may claim an enterprise zone credit against any taxes due the State under chapter 235, HRS in an amount equal to a percentage of unemployment insurance premiums paid on the payroll of all the business' employees employed ~~[in the enterprise zone, including employees who do not qualify under the definition of a low-income person]~~ within enterprise zones located within the same county. Where the business has employees both within and without the enterprise zone, the business shall allocate and apportion the unemployment insurance premiums by multiplying the unemployment insurance premiums paid by a fraction. The numerator of the fraction is the payroll for employees employed within ~~[the zone]~~ enterprise zones located within the same county during the taxable year, and the denominator is the payroll for all employees within the State.

- (A) An employee is employed within the zone if:
- (i) The individual's service is performed entirely within the zone; or
  - (ii) The individual's service is performed both within and without the zone, but the service performed without the zone is incidental to the individual's service within the zone.

(e) The credits, which are reduced in every year of the seven-year cycle, are apportioned over a twelve-month period. Accordingly, the credits may have to be apportioned over two taxable years if the department finds that a business is eligible to participate under the program during a taxable year, rather than at the start of a taxable year.

(f) Each partner or S corporation shareholder of a business that has been certified shall separately determine for the partner's or shareholder's taxable year within which the business' taxable year ends, the partner's or shareholder's share of the credit. The partner's or shareholder's share of the entity's net income or loss and unemployment insurance credit shall be determined in accordance with the ratio in which the partners and

shareholders divide the profits and losses of the partnership or the S corporation, respectively.

(g) The application of this section is illustrated in the following examples:

Example 1:

ABC Corporation is located in an area designated as an enterprise zone. ABC submits an application to the department. The department determines that ABC is eligible to participate in the program commencing on December 27. Under section 15-6-10, ABC's seven-year cycle will commence on January 1. ABC claims the general excise tax exemption from January 1 for income from trade or business in the zone. ABC, however, pays the general excise tax for income from business activity without the zone. ABC's total income at the end of the taxable year is \$100,000. ABC pays \$500 in unemployment insurance premiums during the taxable year. ABC's net profit before taxes is \$10,000. ABC determines that seventy per cent of its income was attributable to the conduct of a trade or business in an eligible business activity in the zone. During the taxable year, ABC properly claimed the general excise exemption for \$70,000 of its income. ABC is also eligible for a tax credit against the \$440 in taxes ABC owes the State, calculated as follows: (1) 70 per cent of ABC's income is derived from sales within the zone (\$70,000 divided by \$100,000); and (2) 70 per cent multiplied by 80 per cent (the amount of the credit in the first year) multiplied by \$440 (ABC's tax liability for the taxable year before the application of the enterprise zone credit) is \$246.40. ABC is also eligible for a credit of \$400, which is 80 per cent of the \$500 unemployment insurance premiums paid. Thus, ABC's enterprise zone credits against taxes due the State are \$646.40. As ABC's tax liability is \$440, ABC may claim a tax credit of \$440. The \$206.40 of unusable credit, however, shall not be refunded to ABC nor shall it be carried over or carried back to another tax period.

Example 2:

Assume the same facts as in Example 1, except that ABC is a sole proprietorship owned by individual X who files a joint return with Y; Y has a salary of \$20,000; X and Y jointly receive dividends and interest of \$2,000; and X and Y claim personal exemptions of \$2,080 and itemized deductions of \$9,920. X and Y's adjusted gross income is \$32,000, which is calculated by adding the \$10,000 profit of ABC, Y's salary of \$20,000, and \$2,000 in dividends and interest. After subtracting the itemized deductions and personal exemptions, their taxable income is \$20,000. By applying the apportionment factor of 70 per cent to the \$10,000 of income earned by X through ABC, \$7,000 of ABC's net profit is apportioned to trade or business in an eligible business activity in the zone. X and Y are subject to a tax of \$2,000, which is calculated by multiplying X and Y's taxable income of \$20,000 by a tax rate of 10 per cent, before the application of the enterprise zone credit. The tax of \$2,000 is multiplied by 21.875 per cent (\$7,000 divided by \$32,000). This amount is \$437.50, which is then multiplied by 80 per cent to arrive at \$350, the enterprise zone income tax credit which X and Y may claim on their joint return. X and Y may also claim a credit of \$400, which is 80 per cent of the \$500 in unemployment insurance premiums paid. Thus, X and Y's credits from the program total \$750 against a tax liability of \$2,000. If no other credits are taken by X and Y, they will owe a balance of \$1,250 to the State.

Example 3:

ABC Corporation, which is engaged in business within the State but located outside an area designated as an enterprise zone, opens XYZ, an establishment, in an area designated as an enterprise zone. XYZ is a subsidiary of ABC. The department determines that XYZ is eligible to participate in the program commencing on December 27. Under section 15-6-2, XYZ's seven-year cycle commences on January 1. XYZ may claim the general excise tax exemption from January 1 for receipts that XYZ receives for trade or business in an eligible business activity in the zone. XYZ pays

\$2,000 in unemployment insurance premiums during the year for all employees employed in the enterprise zone. ABC's total receipts during the taxable year are \$100,000, including XYZ's receipts of \$10,000. \$5,000 of XYZ's receipts are derived from trade or business in an eligible business activity in the zone.

Accordingly, the requirement in section 209E-9(a)(2), HRS, that at least 50 per cent of the establishment's receipts, rather than the business' receipts, be attributable to the active conduct of a trade or business in an eligible business activity, is satisfied. ABC's net profit before taxes is \$10,000. During the taxable year, ABC incorrectly claimed the general excise tax exemption on all of XYZ's receipts. At the end of the year when XYZ is certified to receive tax benefits, ABC must file the annual general excise tax return and pay the taxes and interest on the \$5,000 that was erroneously exempted from the general excise tax. ABC is entitled to a tax credit of \$17.60 against the \$440 in taxes owed the State, calculated as follows: (1) 5 per cent of its income is derived from sales within the zone (\$5,000 divided by \$100,000); and (2) 5 per cent multiplied by 80 per cent multiplied by \$440 (which is the tax liability before the enterprise zone credit) is \$17.60. ABC is also eligible for a credit for unemployment insurance premiums paid of \$1,600, calculated by multiplying the \$2,000 in unemployment insurance premiums paid (for employees located in the zone) by 80 per cent. Thus, ABC's credits under the program are \$1,617.60. As ABC's tax liability is \$440, ABC may claim a tax credit of \$440. The \$1,177.60 of unusable credit, however, shall not be refunded to ABC nor shall it carry over or carry back.

Example 4:

ABC Corporation is located in an area designated as an enterprise zone. ABC is engaged in the conduct of a trade or business in an eligible business activity for several years before ABC submits an application to the department. Under section 15-6-2, ABC's seven-year cycle commences on May 1, 1993. ABC may claim the general excise tax exemption from May 1. ABC pays \$500

in unemployment insurance premiums during 1993. At the end of 1993, ABC is certified to receive tax benefits. ABC determines that it owes \$1,000 in net income taxes to the State under chapter 235, HRS. When ABC files its income tax returns for the taxable year ending December 31, 1993, it is eligible for a tax credit of \$533.60, calculated as follows: (1) ABC is eligible for the credit for 8 months of the year, from May to December. Eight months divided by 12 months is 66.7 per cent; (2) in the first year of the seven-year cycle, ABC is eligible for a credit of 50 per cent against any taxes due the State; (3) 67 per cent multiplied by 80 per cent is 53.36 per cent; and (4) 53.36 per cent of the \$1,000 tax liability is \$533.60. ABC is also eligible for a credit of \$266.80, which is 53.36 per cent of the \$500 unemployment insurance premiums paid. Thus ABC may claim total credits of \$800.40 after the first year of the seven-year cycle. ABC, however, will owe a balance of \$199.60 for state income taxes.

Example 5:

Assume the same facts as in Example 4, except that at the end of 1994, year 2 of the cycle, ABC determines that it owes \$1,000 in net income taxes. ABC pays \$1,000 in unemployment insurance premiums during 1994. ABC is certified to receive tax benefits. When ABC files its income tax returns for the taxable year ending December 31, 1994, ABC is eligible for a tax credit of \$266.40, calculated as follows: (1) ABC is eligible for four more months of credit for the first year of the seven-year cycle. Four months divided by 12 months is 33 per cent; (2) 33 per cent multiplied by 80 per cent is 26.64 per cent; and (3) 26.64 per cent of \$1,000 is \$266.40. The second portion of the tax credit amounts to \$466.90, calculated as follows: (1) ABC is eligible for 8 months of credit in the second year. Eight months divided by 12 months is 66.7 per cent; (2) ABC is eligible for a credit of 70 per cent against any taxes due the State in the second year of the cycle; (3) 66.7 per cent multiplied by 70 per cent is 46.69 per cent; and (4) 46.69 per cent of \$1,000 is \$466.90. Third, ABC is eligible for a credit

of \$266.40, which is 26.64 per cent of the unemployment insurance premiums paid. Fourth, ABC is eligible for a credit of \$466.90, which is 46.69 per cent of unemployment insurance premiums paid. Thus, ABC's total enterprise zone credits against income taxes are \$1,466.60 in year 2. AS ABC's income tax liability is \$1,000, ABC may claim a tax credit of \$1,000 at the end of the second year. The \$466.60 of unusable credit, however, shall not be refunded to ABC nor shall it carry over or carry back.

Example 6:

ABC Company is engaged in a trade or business in an eligible business activity in an enterprise zone. Due to the difficulty of a particular job, however, ABC subcontracts a portion of the job to XYZ, which is not located in the enterprise zone. XYZ's services are[-]not provided in the zone. ABC will have to apportion the income received from this job which is attributable to the services performed by XYZ and claim tax credits and the general excise tax exemption only for the services delivered in the zone.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)

S15-6-13 Wholesale sale of tangible personal property.

(a) Tangible personal property must be sold at wholesale by an establishment or qualified business located within an enterprise zone. [~~Both the~~] The transfer of title [and delivery] to the buyer of the tangible personal property must take place in [~~the same~~] an enterprise zone located within the same county in which the tangible personal property is sold.

(b) When title passes is dependent upon the factual circumstances of the transaction gathered from the contract of sale and invoice. Among the circumstances that are considered in making this determination are when the risk of loss transferred from the seller to the purchaser, where delivery occurs, and when title to the property sold passed from the seller to the purchaser under the provisions of the uniform commercial code, chapter 490, HRS. A statement in a contract that title passes at a certain time or event will not in itself create a presumption of passing of title

for purposes of this section, unless title has in fact passed considering all of the facts and circumstances.

(c) The application of this section is illustrated in the following examples:

Example 1:

ABC Company is located in an area designated as an enterprise zone. ABC is a wholesaler of electronic parts and equipment. The purchasers take title and receive delivery of the parts and equipment in the zone. Accordingly, ABC will qualify for tax credits against any taxes due the State and the general excise tax exemption.

Example 2:

ABC Seafood Company is located in an area designated as an enterprise zone. ABC sells the seafood at wholesale to purchasers who take title to the seafood within the zone and receive delivery of the seafood within the zone. ABC also sells the seafood at retail to customers who come to ABC's place of business. The wholesale sales will qualify for the income tax credits and general excise tax exemption. The retail sales to customers, however, will not qualify. Accordingly, ABC will have to allocate the income received from each type of sale and claim income tax credits and the general excise tax exemption only for wholesale sales.

Example 3:

ABC Ranch is located in an area designated as an enterprise zone. ABC raises cattle and various food crops. ABC sells the cattle and crops at wholesale to purchasers who receive title and delivery within the zone. ABC will qualify for the tax credits and general excise exemption.

Example 4:

Assume the same facts as in Example 3, except that ABC also sells cattle and crops to purchasers who receive ~~[title and delivery]~~ possession of the cattle and

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crops in an enterprise zone ~~[other than the enterprise zone]~~ outside of the county that ABC is located in. The contract provides that title passes to the purchaser upon execution of the contract but also provides that ABC must bear the cost of delivery and any risk of loss. Under applicable law, title is deemed not to pass to the purchaser and ABC will have to apportion the income received from the sales outside the [zone] county that ABC is located in and claim income tax credits and the general excise tax exemption only for sales where the purchasers receive title [and delivery] within [the same zone] an enterprise zone located within the same county in which the cattle and crops are sold.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)

§15-6-14 Sale of services. (a) Services must be sold ~~[by]~~ and delivered at an establishment [or] of a qualified business engaged in a service business [or calling], as defined in this chapter, within an enterprise zone within the same county ~~[and the services must be delivered in the same enterprise zone in which the services are sold. The business must act upon or process tangible personal property].~~ Where the service business ~~[or calling],~~ in the same transaction, engages in both the sale of tangible property and services, the service business ~~[or calling]~~ shall segregate the sale of services that are exempt under chapter 209E, HRS, from all non-exempt transactions, including the sale of services or of tangible personal property. The service business ~~[or calling]~~ shall sustain the burden of proving the segregation was properly made. If the service business ~~[or calling]~~ fails to sustain the burden, the entire transaction shall be subject to the general excise tax.

(b) The application of this section is illustrated in the following examples:

Example 1:

ABC ~~[Auto Dealer]~~ Ship Repair is located in an area designated as an enterprise zone. ABC provides servicing and repair work on ~~[automobiles]~~ ships. ABC provides these services for customers who bring their ~~[automobiles]~~ ships to ABC's place of business. All of



ABC's gross receipts are derived from services that are sold and delivered within the zone. Accordingly, ABC will qualify for the income tax credits and general excise tax exemption.

Example 2:

~~[ABC Company is located in an area designated as an enterprise zone. ABC provides laundry services to the following persons: individual customers who bring their laundry to ABC's place of business and individual customers and hotels who offer laundry services to hotel guests where ABC collects the laundry outside the zone, cleans the laundry within the zone, and returns the laundry to the individual customers and hotels outside the zone. ABC will qualify for the income tax credits and general excise tax exemption for sales to customers who bring their laundry to ABC's business. ABC will also qualify for the income tax credits and general excise tax exemption for sales to both the individuals and the hotels where laundry is picked up.]~~

Example 3:]

Assume the same facts as in Example [2] 1, except that ABC ~~[imposes a separate charge for goods that are picked up and delivered. As the pick up and delivery charges are not trade or business within the zone,]~~ Ship Repair also repairs ships in an area that is not in an enterprise zone in the county in which ABC is registered in. ABC will have to apportion income received from each type of sale and claim income tax credits and the general excise tax exemption only for services performed within ~~[the zone]~~ the zones within the same county it is registered in.

Example [4] 3:

Assume the same facts as in Example 2, except that ABC Ship Repair also rents [personal property] tools that it owns, [including table cloths, towels, and other linen,] or alternatively sells specialized tools at retail ~~to customers [located outside the zone. ABC~~

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~~Periodically collects soiled items from the customers, launders the items, and provides clean table cloths, towels, and linen to the customers]. ABC Ship Repair will not qualify for the income tax credits and general excise exemption on these sales as the [cleaning of property owned by the laundry] rental of tools or the sale of tools at retail is not an eligible activity of ABC Ship Repair.~~

~~[Example 5:~~

~~ABC Company is located in an area designated as an enterprise zone. ABC leases automobiles and other equipment to customers who come to ABC's place of business. These services are sold and delivered within the zone. ABC, however, will not qualify for the income tax credits and general excise tax exemption as the lease of property is not an eligible activity. ABC does not act upon or process tangible personal property.~~

~~Example 6:~~

~~ABC is located in an area designated as an enterprise zone. ABC provides architectural and engineering advice to its customers who are located both within and outside the zone. ABC will not qualify for the income tax credits and general excise tax exemption as architectural and engineering activities are among the activities specifically excluded from the definition of a service business or calling.]~~

~~[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-9)~~

§15-6-15 Manufacturing. To be eligible for enterprise zone benefits, value must be added to materials or products that are manufactured within the enterprise zone.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §209E-8)

§15-6-16 Terms and conditions under which the tax credits and the general excise exemption may be claimed by a certified business. (a) A qualified business which has received certification from the department may receive state tax credits and the general excise tax exemption for

seven consecutive taxable years. A qualified business engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products may receive state tax credits and the general excise tax exemption for an additional three consecutive taxable years.

~~[(f)]~~ Except as provided in the force majeure provisions in this chapter, if a business fails to be certified for any taxable year during [this seven-year period] these qualification periods, the business shall not be entitled to the income tax credits or general excise tax exemption offered by this program. The business, however, is eligible to qualify and be certified for any remaining taxable years of its [seven-year cycle] qualification period.

(b) ~~[Any]~~ Except as provided in the force majeure provisions in this chapter, any business which fails to be certified for one or more taxable years during the cycle shall not be allowed to compensate by requesting certification after completion of the original seven consecutive year cycle or the additional three consecutive year cycle for businesses engaged in the manufacturing of tangible personal property or the producing or processing of agricultural products. The application of this provision is illustrated in the following example:

Example 1:

ABC Company is certified to receive enterprise zone tax benefits by the department in the initial year of the seven-year cycle. ABC applies for and receives certification from the department in the next two years. The department, however, denies ABC certification in year four. ABC applies for and receives certification in years five, six, and seven. ABC applies for certification in year eight. ABC will not receive certification from the department in year eight as the term of the seven-year cycle has expired.

(c) When a taxpayer conducts business within two or more zones, only one return shall be filed by the taxpayer with attached schedules supporting the amount of the business tax credit or the exemption from the general excise tax.

(d) The department shall not provide certification to a business which enters into a transaction where the principal purpose of the transaction is evasion or avoidance of any taxes or unemployment insurance premiums owed the State by securing the benefit of a credit or exemption which the business would not otherwise enjoy.

- (1) Where a business sells or delivers any tangible personal property or ~~[acts upon or processes tangible personal property]~~ service to or for an affiliated business or person and the consideration paid by the affiliate to the business is not indicative of economic substance or the true value of the property or services delivered, this shall be prima facie evidence ~~[of]~~ that the transaction was for the principal purpose of evasion or avoidance of any taxes or unemployment insurance premiums owed the State.

(e) Where a business commences and completes its ~~[seven-year-cycle]~~ qualification period, such business or any successor business shall not be eligible to participate in the enterprise zones program. Where a business commences and does not complete its ~~[seven-year-cycle]~~ qualification period, the successor business, if any, shall continue the ~~[seven-year-cycle]~~ qualification period of the predecessor business. "Successor business" means a business which either continues the historic business of the predecessor business or uses significant portion of the predecessor business' assets.

- (1) The continuity of business requirement is satisfied if the successor business continues the predecessor business' historic business. The historic business is the business it has conducted most recently. The fact that the successor business is in the same line of business as the predecessor business may establish the requisite continuity, but is not alone sufficient. If the predecessor business has more than one line of business, the successor business must only continue a significant line of business.
- (2) The continuity of business requirement is also satisfied if the successor business uses a significant portion of the predecessor business' historic business assets, including stock and

securities and intangible operating assets such as good will, patents, and trademarks, whether or not they have a tax basis, in a business. The determination of the portion of a business' assets considered "significant" is based, generally, on the relative importance of the assets to the operation of the business. All facts and circumstances, including the net fair market value of those assets will be considered.

[Eff ] (Auth: HRS §209E-8) (Imp: HRS §§209E-10, 209E-11)

§15-6-17 Force majeure event. (a) A force majeure event may be accepted by the department by:

- (1) An official announcement or declaration by a federal official or agency; or
- (2) An official announcement or declaration by a state official or agency.

(b) A business engaged in agricultural production or processing may apply annually to the department for allowable benefits under chapter 209E, HRS, during a force majeure event by completing and submitting the application form authorized by the department. The business shall also complete and submit annually to the department a department approved end-of-the-year report.

(c) If the department approves a business' annual force majeure application, the business is eligible to receive annual certification for allowable benefits under chapter 209E, HRS, without meeting the eligibility requirements under section 209E-9, HRS, for the period during which the business is prevented from maintaining these requirements or the business is interrupted by reason of the force majeure event. For the purposes of this section, a business' gross receipts, and either number of employees or gross sales, as applicable under section 209E-9, HRS, shall be compared against that which the business reported in the year prior to the first year the business' force majeure application was approved.

#### SUBCHAPTER 4

#### ADMINISTRATION

§15-6-18

§15-6-18 Administration. (a) The department is authorized to implement and enforce the rules of this chapter.

(b) The department shall conduct a continuing evaluation of the enterprise zones program and submit an annual report to the governor and each county within the first quarter of each subsequent year.

(c) The department shall advise each county in regard to accumulation of data, the zone nomination process, business eligibility criteria, and possible local incentives.

(d) The department shall monitor the program to assure adherence to these rules, the effectiveness of local incentives, and that the purpose of the program is upheld.  
[Eff \_\_\_\_\_ ] (Auth: HRS §209E-8) (Imp: HRS §209E-3)

§15-6-19 Waiver. The director may waive particular provisions of this chapter to conform to applicable federal requirements. [Eff \_\_\_\_\_ ] (Auth: HRS §209E-8)  
(Imp: HRS §209-3)

§15-6-20 Severability. If any part, section, sentence, clause, or phrase of this chapter, or its application to any person, transaction, or other circumstance, is for any reason held to be unconstitutional or invalid, the remaining parts, sections, sentences, clauses, and phrases of this chapter, or its application to other persons, transactions, or circumstances shall not be affected."  
[Eff \_\_\_\_\_ ] (Auth: HRS §209E-8) (Imp: HRS §209E-8)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 15-6, Hawaii Administrative Rules shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on Month XX, XXXX, and filed with the Office of the Lieutenant Governor.

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Richard C. Lim  
Director  
Department of Business,  
Economic Development & Tourism

APPROVED AS TO FORM:

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Deputy Attorney General

Amendments to and compilation of chapter 6, title 15, Hawaii Administrative Rules, on the Summary Page dated Month XX, XXXX were adopted on Month XX, XXXX following a public hearing held on Month XX, XXXX, after public notice was given in the \_\_\_\_\_, \_\_\_\_\_, and the \_\_\_\_\_ on Month XX, XXXX.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

\_\_\_\_\_  
Richard C. Lim  
Director  
Department of Business,  
Economic Development & Tourism

\_\_\_\_\_  
NEIL ABERCROMBIE  
Governor  
State of Hawaii

Dated: \_\_\_\_\_

\_\_\_\_\_  
Filed

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General