
A BILL FOR AN ACT

RELATING TO ATTRACTIONS AND EDUCATIONAL FACILITIES TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 235-110.46, Hawaii Revised Statutes, is
2 repealed.

3 ~~["**\$235-110.46** **Attractions and educational facilities tax**~~
4 ~~**credit; Ko Olina Resort and Marina; Makaha Resort.** (a) There~~
5 ~~shall be allowed to each qualified taxpayer subject to the taxes~~
6 ~~imposed by this chapter or chapter 237, 237D, 238, 239, 241, or~~
7 ~~431, a tax credit that may be claimed for taxable years~~
8 ~~beginning after December 31, 2004, for qualified costs in the~~
9 ~~development of facilities for attractions and educational~~
10 ~~purposes at Ko Olina Resort and Marina and at Makaha Resort.~~
11 ~~The tax credit shall be deductible from the taxpayer's net~~
12 ~~income tax liability, if any, imposed by this chapter and, at~~
13 ~~the election of the taxpayer, from the tax liability imposed by~~
14 ~~chapters 237, 237D, 238, 239, 241, and 431.~~

15 ~~(b) The tax credit earned shall be equal to the qualified~~
16 ~~costs incurred from June 1, 2003, through May 31, 2009, up to a~~
17 ~~maximum of \$75,000,000 of credits in the aggregate for all~~
18 ~~qualified taxpayers for all years; provided that notwithstanding~~



1 ~~the amount of tax credits earned in any year, a maximum of~~
2 ~~\$7,500,000 of tax credits in the aggregate for all qualified~~
3 ~~taxpayers may be used in any one taxable year. The credits over~~
4 ~~\$7,500,000 shall be used as provided in subsection (d). In the~~
5 ~~case of a partnership, limited liability company, S corporation,~~
6 ~~estate, trust, or association of apartment owners, the tax~~
7 ~~credit allowable is for qualified costs incurred by the entity.~~
8 ~~The costs upon which the tax credit is computed shall be~~
9 ~~determined at the entity level.~~

10 ~~(c) To qualify for the tax credit, a taxpayer shall:~~

11 ~~(1) Have expended qualified costs on and be developing a~~
12 ~~world-class aquarium and marine science and mammal~~
13 ~~research facility at Ko Olina Resort and Marina; and~~

14 ~~(2) Dedicate one-half of the net operating income of the~~
15 ~~world-class aquarium to the State, beginning on the~~
16 ~~first day of the seventeenth year following the year~~
17 ~~in which the attractions and educational facilities~~
18 ~~credit was first taken; or~~

19 ~~(3) Acquire or own the Makaha Resort, and lease or sell a~~
20 ~~portion of the Makaha Resort for use as training and~~
21 ~~educational facilities for a period of not less than~~

1 ~~six years to a taxpayer meeting the requirements of~~
2 ~~subsection (c)(1).~~

3 ~~(d) If the tax credit under this section exceeds~~
4 ~~\$7,500,000 in the aggregate for all qualified taxpayers for any~~
5 ~~taxable year or exceeds the taxpayer's tax liability under this~~
6 ~~chapter or chapters 237, 237D, 238, 239, 241, and 431 for any~~
7 ~~year for which the credit is taken, the excess of the tax credit~~
8 ~~may be used as a credit against the taxpayer's tax liability for~~
9 ~~the taxes set forth in this section in subsequent years until~~
10 ~~exhausted; provided that the taxpayer may continue to claim the~~
11 ~~credit provided in this section if the qualified costs are~~
12 ~~incurred before June 1, 2009, subject to the monetary ceilings~~
13 ~~in subsection (b).~~

14 ~~(e) Every claim, including amended claims, for a tax~~
15 ~~credit under this section shall be filed on or before the end of~~
16 ~~the twelfth month following the close of the taxable year for~~
17 ~~which the credit may be claimed. Failure to comply with the~~
18 ~~foregoing provision shall constitute a waiver of the right to~~
19 ~~claim the credit.~~

20 ~~(f) If, at any time during the six-year period in which~~
21 ~~tax credits are earned under this section, the costs incurred no~~
22 ~~longer meet the definition of qualified costs, the credits~~



1 ~~claimed under this section shall be recaptured. The recapture~~
2 ~~shall be equal to one hundred per cent of the total tax credits~~
3 ~~claimed under this section for the preceding taxable year;~~
4 ~~provided that the amount of the credits recaptured shall apply~~
5 ~~only to those costs that no longer meet the definition of~~
6 ~~qualified costs. The amount of the recaptured tax credits~~
7 ~~determined under this subsection shall be added to the~~
8 ~~taxpayer's tax liability for the taxable year in which the~~
9 ~~recapture occurs under this subsection.~~

10 ~~(g) If any credit is claimed under this section, then no~~
11 ~~taxpayer shall claim a credit under any chapter identified in~~
12 ~~this section for the same qualified costs for which a credit is~~
13 ~~claimed under this section.~~

14 ~~(h) The director of taxation shall prepare any forms that~~
15 ~~may be necessary to claim a credit under this section. The~~
16 ~~director may also require the taxpayer to furnish information to~~
17 ~~ascertain the validity of the claims for credits made under this~~
18 ~~section and may adopt rules necessary to effectuate the purposes~~
19 ~~of this section pursuant to chapter 91.~~

20 ~~Every qualified taxpayer, no later than March 31 of each~~
21 ~~year in which qualified costs were expended in the previous~~
22 ~~taxable year, shall submit a written, certified statement to the~~



1 ~~director of business, economic development, and tourism, in the~~
2 ~~form specified by the director of business, economic~~
3 ~~development, and tourism, identifying:~~

4 (1) ~~Qualified costs, if any, expended in the previous~~
5 ~~taxable year;~~

6 (2) ~~The amount of tax credits claimed pursuant to this~~
7 ~~section, if any, in the previous taxable year; and~~

8 (3) ~~The tax liability under this chapter and chapters 237,~~
9 ~~237D, 238, 239, 241, and 431 against which the tax~~
10 ~~credits are claimed.~~

11 ~~Any other law to the contrary notwithstanding, a statement~~
12 ~~submitted under this subsection shall be a public document.~~

13 (i) ~~The department of business, economic development, and~~
14 ~~tourism shall maintain records of the names of taxpayers~~
15 ~~eligible for the credits and the total amount of qualified costs~~
16 ~~incurred from June 1, 2003, through May 31, 2009. The~~
17 ~~department of business, economic development, and tourism shall~~
18 ~~verify all qualified costs and, upon each determination, shall~~
19 ~~issue a certificate to the taxpayer certifying:~~

20 (1) ~~The amount of the qualified costs; and~~

21 (2) ~~The amount of tax credit that the taxpayer is allowed~~
22 ~~to use for the taxable year.~~

1 ~~The department of business, economic development, and~~
2 ~~tourism shall certify no more than \$7,500,000 in credits in the~~
3 ~~aggregate for all taxpayers for each taxable year; provided that~~
4 ~~the department may verify qualified costs of no more than~~
5 ~~\$75,000,000 from June 1, 2003, through May 31, 2009. The~~
6 ~~taxpayer shall file the certificate with the taxpayer's return~~
7 ~~with the department of taxation.~~

8 ~~(j) As used in this section:~~

9 ~~"Ko Olina Resort and Marina" means the six hundred forty-~~
10 ~~two acres reclassified to urban district by Decision and Order~~
11 ~~entered on September 12, 1985, in Docket A83-562, by the land~~
12 ~~use commission.~~

13 ~~"Makaha Resort" means the three hundred thirty-two acre~~
14 ~~property identified as tax map keys (1) 8-04-002 parcels 51, 52,~~
15 ~~53, 54, 55, and 67 and (1) 8-04-029-142.~~

16 ~~"Qualified costs" means any costs for plans, design, and~~
17 ~~construction, costs for equipment that is permanently affixed to~~
18 ~~a building or structure, and acquisition of facilities for~~
19 ~~educational purposes, up to a total of \$75,000,000 in the~~
20 ~~aggregate, incurred after May 31, 2003, and before June 1, 2009,~~
21 ~~at either or both of:~~



1 ~~(1) Ko Olina Resort and Marina for the development of~~
2 ~~facilities for attractions and educational purposes,~~
3 ~~and for infrastructure within the Ko Olina Resort and~~
4 ~~Marina that is directly related to those facilities,~~
5 ~~including a world-class aquarium, marine science and~~
6 ~~mammal research facilities, international sports~~
7 ~~training complex, a travel industry management intern~~
8 ~~campus, infrastructure for the transfer of ocean~~
9 ~~waters to the aquarium or marine mammal facilities, or~~
10 ~~both, seawater air conditioning, and other educational~~
11 ~~facilities developed or operated in cooperation with~~
12 ~~the University of Hawaii or other educational~~
13 ~~institutions; or~~

14 ~~(2) Makaha Resort for the development of a training and~~
15 ~~educational facility within a working resort and~~
16 ~~hotel;~~

17 ~~provided that "qualified costs" shall not include land~~
18 ~~acquisition costs.~~

19 ~~"Qualified taxpayer" means a person who fulfills the~~
20 ~~requirements of subsection (c)."]~~

21 SECTION 2. Statutory material to be repealed is bracketed
22 and stricken.



1 SECTION 3. This Act shall take effect upon its approval.

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HB2799

Report Title:

Tax Credit; Attractions and Educational Facilities; Ko Olina Resort; Makaha Resort

Description:

Repeals the Attractions and Educational Facilities Tax Credit for Ko Olina Resort and Marina and Makaha Resort.

