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## A BILL FOR AN ACT

RELATING TO AN AFFORDABLE RENTAL HOUSING DONATION TAX CREDIT.

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

1           SECTION 1. The purpose of this Act is to establish an  
2 affordable rental housing donation tax credit. The credit may  
3 be claimed by a taxpayer under chapter 235 or chapter 241 that:  
4           (1) Had a net tax liability for the previous taxable year;  
5           and  
6           (2) Has made a cash donation to the rental housing trust  
7           fund or for the development of an affordable rental  
8           housing project.  
9 The tax credit amount claimable by the taxpayer is the dollar  
10 amount of the cash donation. A taxpayer may claim the credit to  
11 reduce the taxpayer's net tax liability for a taxable year equal  
12 to the taxpayer's tax liability for the previous taxable year  
13 plus a percentage increase commensurate with the council on  
14 revenues' general fund revenue projection. Any unused portion  
15 of the credit may be claimed in subsequent taxable years until  
16 exhausted. The tax credit also is transferable to another  
17 taxpayer. Compensation received by a taxpayer for transferring  
18 the credit is not included in the taxpayer's taxable income.



1 By this Act, the legislature intends to balance the need  
2 for more affordable rental housing with the need to maintain  
3 general fund revenue growth. The legislature intends that the  
4 tax credit serve as an incentive for persons to donate cash that  
5 may be applied as equity gap financing for affordable rental  
6 housing projects. Furthermore, the legislature intends that the  
7 transferability of the tax credit will provide value to a  
8 taxpayer who may not be able to claim the entire credit. The  
9 legislature also intends that the limit on the amount by which a  
10 taxpayer may reduce the taxpayer's net tax liability will serve  
11 to prevent excessive general fund revenue loss.

12 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
13 amended by adding a new section to be appropriately designated  
14 and to read as follows:

15 **"§235-A Affordable rental housing donation tax credit.**

16 (a) For the purposes of this section:

17 "Affordable rent" means the rent chargeable to a low- or  
18 moderate-income family for occupancy of an affordable dwelling  
19 unit in an affordable rental housing project as most recently  
20 established by the United States Department of Housing and Urban  
21 Development for the section 8 housing payment assistance program  
22 and adjusted for family size and unit type.



1 "Affordable dwelling unit in an affordable rental housing  
2 project" means a dwelling unit in a project that is reserved for  
3 rental to low- or moderate-income families.

4 "Affordable rental housing project" means a housing project  
5 subject to a regulatory agreement between its developer and a  
6 state or county agency that requires that for at least thirty  
7 years following completion of the project:

8 (1) At least twenty per cent of the dwelling units in the  
9 project are rented at affordable rents to families  
10 with not more than fifty per cent of the applicable  
11 county median income; or

12 (2) At least forty per cent of the dwelling units in the  
13 project are rented at affordable rents to families  
14 with not more than sixty per cent of the applicable  
15 county median income.

16 "Cash donation for the development of an affordable rental  
17 housing project" means a donation of cash for the development of  
18 a project that does not:

19 (1) Result in the acquisition by the donor of an ownership  
20 interest in the project or right to future revenues  
21 from the project; or



1           (2) Require the developer of the project or any other  
2                   person to repay the donor for any part of the  
3                   donation.

4           "County median income" means the median annual income,  
5 adjusted for family size, for households in a county as most  
6 recently established by the United States Department of Housing  
7 and Urban Development for the section 8 housing payment  
8 assistance program.

9           "Development of an affordable rental housing project" means  
10 the planning, design, or construction of or land acquisition for  
11 an affordable rental housing project. The term also means the  
12 purchase of furniture, fixtures, or equipment initially  
13 installed or placed in an affordable rental housing project.

14           "Net income tax liability" means income tax liability  
15 reduced by all credits and refunds allowed under this chapter.

16           "Rental housing trust fund" refers to the fund established  
17 under section 201H-202.

18           "Unused claimable portion of a tax credit" means the  
19 portion of an affordable rental housing tax credit that:

20           (1) Has not been used to reduce the net income tax  
21                   liability of any taxpayer; and

22           (2) Has not lapsed pursuant to subsection (f).



1        (b) There shall be allowed an affordable rental housing  
2 donation tax credit to each taxpayer who is subject to the tax  
3 imposed by this chapter if the taxpayer had a net income tax  
4 liability in the previous taxable year and:

5        (1) Has made a cash donation, without restriction, to the  
6 rental housing trust fund and has not otherwise  
7 claimed the donation as a deduction or credit against  
8 the tax imposed by this chapter;

9        (2) Has made a cash donation for the development of an  
10 affordable rental housing project and has not  
11 otherwise claimed the donation as a deduction or  
12 credit against the tax imposed by this chapter; except  
13 that the credit shall not be allowed to a taxpayer if  
14 the development of the affordable rental housing  
15 project is a condition of a government land  
16 development approval granted to the taxpayer or  
17 another person associated with the taxpayer; or

18        (3) Has received by transfer from another taxpayer an  
19 unused claimable portion of a tax credit provided  
20 under this section.

21        Except as otherwise provided in this section, the tax  
22 credit amount shall be equal to the cash donation under



1 paragraph (1) or (2) or the transferred portion received under  
2 paragraph (3).

3 (c) Except as provided by subsection (f), a taxpayer may  
4 claim the taxpayer's entitled credit as follows:

5 (1) If the taxpayer has made a cash donation to the rental  
6 housing trust fund in accordance with subsection  
7 (b) (1), the credit may be claimed against the income  
8 tax imposed by this chapter for any taxable year  
9 following the date of the contribution;

10 (2) If the taxpayer has made a cash donation for the  
11 development of an affordable rental housing project in  
12 accordance with subsection (b) (2), the credit may be  
13 claimed against the tax imposed by this chapter for  
14 any taxable year following the execution of the  
15 regulatory agreement for the project; or

16 (3) If the taxpayer has received by transfer an unused  
17 claimable portion of a tax credit pursuant to  
18 subsection (b) (3), the credit may be claimed against  
19 the tax imposed by this chapter for any taxable year  
20 following the transfer.

21 (d) For a taxable year, the taxpayer may claim the amount  
22 of the taxpayer's entitled tax credit that would reduce the



1 taxpayer's net income tax liability for the taxable year equal  
2 to the previous year's liability plus projected revenue growth.  
3 The "previous year's liability plus projected revenue growth"  
4 means the sum of the following:

5 (1) The amount of the taxpayer's net income tax liability  
6 for the previous taxable year; and

7 (2) The result derived by multiplying the amount under  
8 paragraph (1) by the lesser of the following:

9 (A) The percentage change of general fund revenues  
10 for the upcoming fiscal year under the most  
11 recent council on revenues' projection; or

12 (B) 0 per cent.

13 For the purpose of this paragraph, the "most recent  
14 council on revenues' projection" means the projection  
15 of general fund revenues issued by the council on  
16 revenues most recently before January 1 of the taxable  
17 year for which the tax credit is claimed. The  
18 "upcoming fiscal year" means the fiscal year that will  
19 begin on July 1 of the taxable year for which the tax  
20 credit is claimed. The "percentage change of general  
21 fund revenues for the upcoming fiscal year" means the  
22 percentage difference between the general fund



1 revenues projected for the upcoming fiscal year as  
2 compared to the general fund revenues projected for  
3 the current fiscal year.

4 In the case of spouses who file separate returns for a  
5 taxable year for which they could have filed a joint return,  
6 they may claim only the tax credit amount to which they would  
7 have been entitled had a joint return been filed.

8 In the case of a partnership, S corporation, estate, or  
9 trust, the distribution and share of the tax credit shall be  
10 subject to the same provisions as applicable to such entities  
11 for the capital goods excise tax credit of section 235-110.7.

12 (e) If, after claiming the tax credit, a portion of the  
13 taxpayer's entitled tax credit remains unused and claimable, the  
14 taxpayer may:

15 (1) Claim the unused portion in subsequent taxable years  
16 in accordance with this section until exhausted or  
17 lapsed; or

18 (2) Transfer the unused claimable portion to another  
19 taxpayer.

20 A taxpayer, before claiming any portion of the taxpayer's  
21 entitled tax credit, also may transfer any unused claimable  
22 portion to another taxpayer.





1 In addition, a transfer of a portion of an unused tax  
2 credit may be claimed by a person who had a net tax liability  
3 for the previous taxable year under chapter 241.

4 The tax credit in this section is not refundable.

5 (f) Any unused portion of a taxpayer's entitled tax credit  
6 shall lapse after the end of the fifth taxable year following  
7 the taxable year in which the cash donation was made:

8 (1) To the rental housing trust fund that entitled the  
9 taxpayer to the credit; or

10 (2) For the development of the affordable rental housing  
11 project that entitled the taxpayer to the credit.

12 Any claim of a lapsed portion of a tax credit shall be  
13 invalid.

14 (g) Every claim, including any amended claim, for a tax  
15 credit shall be filed with the department of taxation by the end  
16 of the twelfth month following the close of the taxable year for  
17 which the credit may be claimed. Failure to comply with this  
18 requirement shall constitute a waiver of the right to claim the  
19 credit for that taxable year.

20 (h) If a taxpayer has claimed a tax credit because of a  
21 cash donation for the development of an affordable rental  
22 housing project or receipt of a transferred credit for such a



1 donation, but no certificate of occupancy has been issued for  
2 the applicable project within five years from the execution of  
3 the regulatory agreement for the project, all portions of the  
4 credit claimed shall be recaptured. The department shall  
5 recapture the dollar amount of the claimed credit, with ten per  
6 cent interest from the first day of the taxable year for which  
7 the credit was claimed. The department may either add the  
8 recaptured amount to the taxpayer's net income tax liability for  
9 the next taxable year or collect the recaptured amount from the  
10 taxpayer.

11 (i) The tax credit shall be in addition to the low-income  
12 housing tax credit in section 235-110.8. A taxpayer may be  
13 granted the tax credit in this section and section 235-110.8 for  
14 the same housing project, if qualified for both.

15 (j) The director of taxation shall prepare necessary forms  
16 to claim of a tax credit under this section and may require  
17 evidence to prove entitlement to the credit.

18 The director may adopt rules in accordance with chapter 91  
19 to effectuate this section."

20 SECTION 3. Chapter 241, Hawaii Revised Statutes, is  
21 amended by adding a new section to be appropriately designated  
22 and to read as follows:



1           "§241-A Affordable rental housing project donation tax  
2 credit. (a) The affordable rental housing project donation tax  
3 credit provided under section 235-A shall be operative for this  
4 chapter. The provisions of section 235-A regarding the  
5 transferability of the tax credit between taxpayers under  
6 chapter 235 also shall apply to transfers of the credit to  
7 taxpayers under this chapter.

8           (b) Any portion of an unused claimable tax credit may be  
9 transferred to a person who had a net tax liability for the  
10 previous taxable year under chapter 235. The transferee may  
11 claim the transferred portion against the transferee's net tax  
12 liability under chapter 235.

13           (c) The tax credit under this section shall be in addition  
14 to the low-income housing tax credit under section 241-4.7. A  
15 taxpayer may be granted the tax credit in this section and  
16 section 241-4.7 for the same housing project, if qualified for  
17 both."

18           SECTION 4. Section 235-7, Hawaii Revised Statutes, is  
19 amended by amending subsection (a) to read as follows:

20           "(a) There shall be excluded from gross income, adjusted  
21 gross income, and taxable income:



- 1           (1) Income not subject to taxation by the State under the  
2           Constitution and laws of the United States;
- 3           (2) Rights, benefits, and other income exempted from  
4           taxation by section 88-91, having to do with the state  
5           retirement system, and the rights, benefits, and other  
6           income, comparable to the rights, benefits, and other  
7           income exempted by section 88-91, under any other  
8           public retirement system;
- 9           (3) Any compensation received in the form of a pension for  
10          past services;
- 11          (4) Compensation paid to a patient affected with Hansen's  
12          disease employed by the State or the United States in  
13          any hospital, settlement, or place for the treatment  
14          of Hansen's disease;
- 15          (5) Except as otherwise expressly provided, payments made  
16          by the United States or this State, under an act of  
17          Congress or a law of this State, which by express  
18          provision or administrative regulation or  
19          interpretation are exempt from both the normal and  
20          surtaxes of the United States, even though not so  
21          exempted by the Internal Revenue Code itself;



- 1           (6) Any income expressly exempted or excluded from the  
2           measure of the tax imposed by this chapter by any  
3           other law of the State, it being the intent of this  
4           chapter not to repeal or supersede any express  
5           exemption or exclusion;
- 6           (7) Income received by each member of the reserve  
7           components of the Army, Navy, Air Force, Marine Corps,  
8           or Coast Guard of the United States of America, and  
9           the Hawaii national guard as compensation for  
10          performance of duty, equivalent to pay received for  
11          forty-eight drills (equivalent of twelve weekends) and  
12          fifteen days of annual duty, at an:
- 13          (A) E-1 pay grade after eight years of service;  
14             provided that this subparagraph shall apply to  
15             taxable years beginning after December 31, 2004;
- 16          (B) E-2 pay grade after eight years of service;  
17             provided that this subparagraph shall apply to  
18             taxable years beginning after December 31, 2005;
- 19          (C) E-3 pay grade after eight years of service;  
20             provided that this subparagraph shall apply to  
21             taxable years beginning after December 31, 2006;



- 1 (D) E-4 pay grade after eight years of service;
- 2 provided that this subparagraph shall apply to
- 3 taxable years beginning after December 31, 2007;
- 4 and
- 5 (E) E-5 pay grade after eight years of service;
- 6 provided that this subparagraph shall apply to
- 7 taxable years beginning after December 31, 2008;
- 8 (8) Income derived from the operation of ships or aircraft
- 9 if the income is exempt under the Internal Revenue
- 10 Code pursuant to the provisions of an income tax
- 11 treaty or agreement entered into by and between the
- 12 United States and a foreign country; provided that the
- 13 tax laws of the local governments of that country
- 14 reciprocally exempt from the application of all of
- 15 their net income taxes, the income derived from the
- 16 operation of ships or aircraft that are documented or
- 17 registered under the laws of the United States;
- 18 (9) The value of legal services provided by a prepaid
- 19 legal service plan to a taxpayer, the taxpayer's
- 20 spouse, and the taxpayer's dependents;
- 21 (10) Amounts paid, directly or indirectly, by a prepaid
- 22 legal service plan to a taxpayer as payment or



1 reimbursement for the provision of legal services to  
2 the taxpayer, the taxpayer's spouse, and the  
3 taxpayer's dependents;

4 (11) Contributions by an employer to a prepaid legal  
5 service plan for compensation (through insurance or  
6 otherwise) to the employer's employees for the costs  
7 of legal services incurred by the employer's  
8 employees, their spouses, and their dependents;

9 (12) Amounts received in the form of a monthly surcharge by  
10 a utility acting on behalf of an affected utility  
11 under section 269-16.3 shall not be gross income,  
12 adjusted gross income, or taxable income for the  
13 acting utility under this chapter. Any amounts  
14 retained by the acting utility for collection or other  
15 costs shall not be included in this exemption; ~~and~~

16 (13) One hundred per cent of the gain realized by a fee  
17 simple owner from the sale of a leased fee interest in  
18 units within a condominium project, cooperative  
19 project, or planned unit development to the  
20 association of apartment owners or the residential  
21 cooperative corporation of the leasehold units.

22 For purposes of this paragraph:



1 "Fee simple owner" shall have the same meaning as  
2 provided under section 516-1; provided that it shall  
3 include legal and equitable owners;

4 "Legal and equitable owner", and "leased fee  
5 interest" shall have the same meanings as provided  
6 under section 516-1; and

7 "Condominium project" and "cooperative project"  
8 shall have the same meanings as provided under section  
9 514C-1~~[+]~~; and

10 (14) Compensation received for the transfer to another  
11 taxpayer of an unused claimable portion of the  
12 affordable rental housing donation tax credit under  
13 section 235-A, but not more than the dollar amount of  
14 the unused claimable portion received."

15 SECTION 5. In codifying the new sections added by sections  
16 2 and 3 of this Act, the revisor of statutes shall substitute  
17 appropriate section numbers for the letters used in designating  
18 the new sections in this Act.

19 SECTION 6. Statutory material to be repealed is bracketed  
20 and stricken. New statutory material is underscored.





1 SECTION 7. This Act shall take effect upon its approval  
2 and shall apply to taxable years beginning after December 31,  
3 2007.

4

INTRODUCED BY:

*Edwin K. Bay*  
\_\_\_\_\_  
JAN 18 2008



Report Title:  
Affordable Rental Housing Donation Tax Credit.

**Description:**  
Establishes an affordable rental housing donation tax credit.

