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

11 The purpose of this Act is to establish a transferable
12 affordable rental housing donation tax credit for taxpayers
13 that:

- 14 (1) Had a net tax liability for the previous taxable year;
15 and
16 (2) Made a cash donation to the rental housing trust fund
17 or for the development of an affordable rental housing
18 project.



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

4 "§235-A Affordable rental housing donation tax credit.

5 (a) There shall be allowed an affordable rental housing
6 donation tax credit to each taxpayer who is subject to the tax
7 imposed by this chapter, has a net income tax liability in the
8 previous taxable year, and in the current taxable year:

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

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



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

4 Except as otherwise provided in this section, the tax
5 credit amount shall be equal to the cash donation under
6 paragraph (1) or (2) or the transferred portion of the tax
7 credit received under paragraph (3).

8 (b) Except as provided by subsection (e), a taxpayer may
9 claim the credit as follows:

10 (1) If the taxpayer has made a cash donation to the rental
11 housing trust fund in accordance with subsection
12 (a)(1), the credit may be claimed against the income
13 tax imposed by this chapter for any taxable year
14 following the date of the contribution;

15 (2) If the taxpayer has made a cash donation for the
16 development of an affordable rental housing project in
17 accordance with subsection (a)(2), the credit may be
18 claimed against the tax imposed by this chapter for
19 any taxable year following the execution of the
20 regulatory agreement for the project, except as
21 provided in subsection (g); or

1 (3) If the taxpayer has received by transfer an unused
2 claimable portion of a tax credit pursuant to
3 subsection (a)(3), the credit may be claimed against
4 the tax imposed by this chapter for any taxable year
5 following the transfer, except as provided in
6 subsection (g).

7 (c) The taxpayer may claim the amount of credit in a
8 taxable year that would reduce the taxpayer's net income tax
9 liability for the taxable year equal to the previous year's
10 liability plus projected revenue growth, which shall be
11 calculated as follows:

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

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

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

19 (B) 0 per cent,

20 where, the "most recent council on revenues' projection" means
21 the projection of general fund revenues issued by the council on
22 revenues most recently before January 1 of the taxable year for

1 which the tax credit is claimed, "upcoming fiscal year" means
2 the fiscal year that will begin on July 1 of the taxable year
3 for which the tax credit is claimed, and "percentage change of
4 general fund revenues for the upcoming fiscal year" means the
5 percentage difference between the general fund revenues
6 projected for the upcoming fiscal year as compared to the
7 general fund revenues projected for the current fiscal year.

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

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

16 (d) If, after claiming the tax credit, a portion of the
17 taxpayer's entitled tax credit remains unused and claimable, the
18 taxpayer may:

19 (1) Claim the unused portion in subsequent taxable years
20 in accordance with and as limited by this section
21 until exhausted or lapsed; or



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

3 A taxpayer, before claiming any portion of the credit, may
4 transfer any unused claimable portion to another taxpayer.

5 A transfer of a portion of an unused tax credit may be
6 claimed by a person who had a net tax liability for the previous
7 taxable year under chapter 241.

8 The tax credit in this section is not refundable.

9 (e) Any unused portion of a taxpayer's entitled tax credit
10 shall lapse after the end of the eighth taxable year following
11 the taxable year in which the cash donation was made:

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

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

16 Any claim of a lapsed portion of a tax credit shall be
17 invalid.

18 (f) Every claim, including any amended claim, for a tax
19 credit shall be filed with the department of taxation by the end
20 of the twelfth month following the close of the taxable year for
21 which the credit may be claimed. Failure to comply with this



1 requirement shall constitute a waiver of the right to claim the
2 credit for that taxable year.

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

17 (h) The tax credit shall be in addition to the low-income
18 housing tax credit in section 235-110.8. A taxpayer may be
19 granted the tax credit in this section and section 235-110.8 for
20 the same housing project, if qualified for both.



1 (i) The director of taxation shall prepare necessary forms
2 to claim of a tax credit under this section and may require
3 evidence to prove entitlement to the credit.

4 The director may adopt rules in accordance with chapter 91
5 to effectuate this section.

6 (j) For the purposes of this section:

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

10 "Affordable rent" means the rent chargeable to a low- or
11 moderate-income family for occupancy of an affordable dwelling
12 unit in a rental housing project affordable to households with
13 incomes at or below eighty per cent of the area median income as
14 determined by the United States Department of Housing and Urban
15 Development for the section 8 housing payment assistance program
16 and adjusted for family size and unit type.

17 "Affordable rental housing project" means a housing project
18 subject to a federal regulatory agreement or a regulatory
19 agreement between its developer and a state or county agency
20 that requires that for at least thirty years following
21 completion of the project:



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

5 (2) At least forty per cent of the dwelling units in the
6 project are rented at affordable rents to families
7 with not more than sixty per cent of the applicable
8 county median income.

9 "Cash donation for the development of an affordable rental
10 housing project" means a donation of cash for the development of
11 a project that does not:

12 (1) Result in the acquisition by the donor of an ownership
13 interest in the project or right to future revenues
14 from the project; or

15 (2) Require the developer of the project or any other
16 person to repay the donor for any part of the
17 donation.

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



1 "Development of an affordable rental housing project" means
2 the planning, design, or construction of or land acquisition for
3 an affordable rental housing project, the acquisition and
4 rehabilitation of existing affordable rental housing projects,
5 or the purchase of furniture, fixtures, or equipment that is to
6 be initially installed or placed in an affordable rental housing
7 project.

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

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

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

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

16 (2) Has not lapsed pursuant to subsection (e)."

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

20 **"§241-A Affordable rental housing project donation tax**
21 **credit.** (a) The affordable rental housing project donation tax
22 credit provided under section 235-A shall be operative for this



1 chapter. The provisions of section 235-A regarding the
2 transferability of the tax credit between taxpayers under
3 chapter 235 also shall apply to transfers of the credit to
4 taxpayers under this chapter.

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

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

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

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

19 (1) Income not subject to taxation by the State under the
20 Constitution and laws of the United States;

21 (2) Rights, benefits, and other income exempted from
22 taxation by section 88-91, having to do with the state



1 retirement system, and the rights, benefits, and other
2 income, comparable to the rights, benefits, and other
3 income exempted by section 88-91, under any other
4 public retirement system;

5 (3) Any compensation received in the form of a pension for
6 past services;

7 (4) Compensation paid to a patient affected with Hansen's
8 disease employed by the State or the United States in
9 any hospital, settlement, or place for the treatment
10 of Hansen's disease;

11 (5) Except as otherwise expressly provided, payments made
12 by the United States or this State, under an act of
13 Congress or a law of this State, which by express
14 provision or administrative regulation or
15 interpretation are exempt from both the normal and
16 surtaxes of the United States, even though not so
17 exempted by the Internal Revenue Code itself;

18 (6) Any income expressly exempted or excluded from the
19 measure of the tax imposed by this chapter by any
20 other law of the State, it being the intent of this
21 chapter not to repeal or supersede any express
22 exemption or exclusion;



- 1 (7) Income received by each member of the reserve
2 components of the Army, Navy, Air Force, Marine Corps,
3 or Coast Guard of the United States of America, and
4 the Hawaii national guard as compensation for
5 performance of duty, equivalent to pay received for
6 forty-eight drills (equivalent of twelve weekends) and
7 fifteen days of annual duty, at an:
- 8 (A) E-1 pay grade after eight years of service;
9 provided that this subparagraph shall apply to
10 taxable years beginning after December 31, 2004;
- 11 (B) E-2 pay grade after eight years of service;
12 provided that this subparagraph shall apply to
13 taxable years beginning after December 31, 2005;
- 14 (C) E-3 pay grade after eight years of service;
15 provided that this subparagraph shall apply to
16 taxable years beginning after December 31, 2006;
- 17 (D) E-4 pay grade after eight years of service;
18 provided that this subparagraph shall apply to
19 taxable years beginning after December 31, 2007;
20 and



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



- 1 (11) Contributions by an employer to a prepaid legal
2 service plan for compensation (through insurance or
3 otherwise) to the employer's employees for the costs
4 of legal services incurred by the employer's
5 employees, their spouses, and their dependents;
- 6 (12) Amounts received in the form of a monthly surcharge by
7 a utility acting on behalf of an affected utility
8 under section 269-16.3 shall not be gross income,
9 adjusted gross income, or taxable income for the
10 acting utility under this chapter. Any amounts
11 retained by the acting utility for collection or other
12 costs shall not be included in this exemption; ~~and~~
- 13 (13) Compensation received for the transfer to another
14 taxpayer of an unused claimable portion of the
15 affordable rental housing donation tax credit under
16 section 235-A, but not more than the dollar amount of
17 the unused claimable portion received; and
- 18 ~~(13)~~ (14) One hundred per cent of the gain realized by a
19 fee simple owner from the sale of a leased fee
20 interest in units within a condominium project,
21 cooperative project, or planned unit development to



1 the association of apartment owners or the residential
2 cooperative corporation of the leasehold units.

3 For purposes of this paragraph:

4 ~~["Fee simple owner" shall have the same meaning~~
5 ~~as provided under section 516-1; provided that it~~
6 ~~shall include legal and equitable owners;~~

7 ~~"Legal and equitable owner", and "leased fee~~
8 ~~interest" shall have the same meanings as provided~~
9 ~~under section 516-1; and~~

10 ~~"Condominium project" and "cooperative project"~~
11 ~~shall have the same meanings as provided under section~~
12 ~~514C-1.]~~

13 "Condominium project" and "cooperative project"
14 shall have the same meanings as provided under section
15 514C-1.

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

19 "Legal and equitable owner", and "leased fee
20 interest" shall have the same meanings as provided
21 under section 516-1."



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

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

7 SECTION 7. This Act shall take effect upon its approval
8 and shall apply to taxable years beginning after December 31,
9 2007.



Report Title:
Affordable Rental Housing Donation Tax Credit

Description:

Establishes an affordable rental housing donation tax credit.
(HB2666 HD1)

