

JAN 21 2009

A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The purpose of this Act is to encourage the
2 conservation or preservation of significant or important lands
3 in the State by providing taxpayers with a land conservation
4 incentives tax credit.

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

8 "§235- Land conservation incentives tax credit;
9 definitions. (a) There shall be allowed to every eligible
10 taxpayer a land conservation incentives tax credit that shall be
11 deductible from the taxpayer's net income tax liability, in lieu
12 of any charitable tax deduction, imposed under this chapter for
13 taxable years after December 31, 2008; provided that a husband
14 and wife filing separate returns for a taxable year for which a
15 joint return could have been filed by them shall claim only the
16 tax credit to which they would have been entitled had a joint
17 return been filed.



1 (b) As used in this section:

2 "Bargain sale" means a sale where a taxpayer is paid less
3 than the fair market value for land or an interest in land.

4 "Conservation or preservation purpose" means:

5 (1) Protection of open space for scenic values;

6 (2) Protection of natural areas for wildlife habitat,
7 biological diversity, or native forest cover; or

8 (3) Preservation of forest land; agricultural land;
9 watersheds; streams; rainfall infiltration areas;
10 outdoor recreation, including hiking, biking, and
11 walking trails; and historic or cultural property;

12 provided that the resources or areas protected or preserved are
13 designated as significant or important by a relevant state
14 agency, and that the state agency work with the taxpayer to
15 identify opportunities for public access if appropriate and
16 reasonable, and that nothing herein shall prevent the exercise
17 of any rights of native Hawaiians for traditional and customary
18 practices as may be required by law.

19 "Cultural property" means a structure, place, site, or
20 object having historic, archaeological, scientific,
21 architectural, or cultural significance.

22 "Eligible taxpayer":



1 (1) Means a Hawaii taxpayer who is not claimed or is not
2 otherwise eligible to be claimed as a dependent by
3 another taxpayer for federal or Hawaii state
4 individual income tax purposes; and

5 (2) Includes individuals, corporations, or pass-through
6 tax entities such as trusts, estates, partnerships,
7 limited liability companies or partnerships,
8 S corporations, or other fiduciaries.

9 "Interest in land" means a right in real property,
10 including access, improvement, water right, fee simple interest,
11 easement, land use easement, partial interest in real property,
12 mineral right, remainder or future interest, or other interest
13 or right in real property that complies with the requirements of
14 Section 170(h)(2) (with respect to qualified real property
15 interest) of the Internal Revenue Code.

16 "Land" means real property, including rights of way,
17 easements, privileges, water rights, and all other rights or
18 interests related to real property.

19 "Public or private conservation agency" means a
20 governmental body or a private nonprofit charitable corporation
21 or trust authorized to do business in the State that is
22 organized and operated for natural resources, land, or historic



1 conservation purposes and that has tax-exempt status as a public
2 charity under Section 501(c)(3) (with respect to exemption from
3 tax on corporations, certain trusts, etc.) of the Internal
4 Revenue Code, and has the power to acquire, hold, or maintain
5 land or interests in land.

6 (c) The tax credit shall apply to an eligible taxpayer
7 who:

8 (1) Donates land in perpetuity or completes a bargain sale
9 in perpetuity to the State or public or private
10 conservation agency that fulfills a conservation or
11 preservation purpose; provided that any donation or
12 sale that represents a less-than-fee interest
13 qualifies as a charitable contribution deduction under
14 Section 170(h) (with respect to charitable, etc.,
15 contributions and gifts) of the Internal Revenue Code;

16 or

17 (2) Voluntarily invests in the management of land to
18 protect or enhance a conservation or preservation
19 purpose under a land protection agreement,
20 conservation management agreement, or other legal
21 instrument that is consistent with a conservation or
22 preservation purpose.



1 (d) Donations of land for open space for the purpose of
2 fulfilling density requirements to obtain subdivision or
3 building permits do not qualify for the land conservation
4 incentives tax credit.

5 (e) The amount of the tax credit shall be:

6 (1) Fifty per cent of the fair market value of the land or
7 interest in land that an eligible taxpayer donates in
8 perpetuity after December 31, 2008, for a conservation
9 or preservation purpose to the State, or public or
10 private conservation agency; provided that the tax
11 credit is limited to the amount set forth in
12 subsection (f). The fair market value of donations
13 made under this section shall be substantiated by a
14 qualified appraisal that is prepared by a qualified
15 appraiser, as those terms are defined under applicable
16 federal law and regulations governing charitable
17 contributions; or

18 (2) Fifty per cent of the amount invested in the
19 management of land pursuant to subsection (c)(2), up
20 to a maximum of \$2,500,000 in the aggregate for all
21 qualified taxpayers for all years.



1 (f) The amount of the tax credit shall not exceed
2 \$2,500,000 per donation regardless of the value of the land or
3 interest in land; provided that if the tax credit under this
4 section exceeds the taxpayer's net income tax liability under
5 this chapter, any excess of the tax credit over liability may be
6 used as a credit against the taxpayer's income tax liability in
7 subsequent taxable years until exhausted. An eligible taxpayer
8 may claim the land conservation incentives tax credit only once
9 per taxable year.

10 (g) In the case of a partnership, S corporation, estate,
11 or trust, the tax credit allowable shall be determined at the
12 entity level. Distribution and share of credit shall be
13 determined in accordance with section 235-2.45(d).

14 (h) Every claim, including amended claims, for the 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 tax credit may be claimed. Failure to comply the
18 filing requirements of this subsection shall constitute a waiver
19 of the right to claim the tax credit.

20 (i) The director of taxation:

21 (1) Shall prepare forms necessary to claim a tax credit
22 under this section;



1 (2) May require the taxpayer to furnish information to
2 ascertain the validity of the claim for the tax
3 credit; and

4 (3) May adopt rules necessary to effectuate the purposes
5 of this section pursuant to chapter 91.

6 (j) The chairperson of the board of land and natural
7 resources and the chairperson of the board of agriculture shall
8 adopt and publish guidelines and procedures to effectuate the
9 purposes of this section and to certify that a donation or
10 investment claimed for a tax credit under this section fulfills
11 a conservation or preservation purpose pursuant to subsection
12 (b), including criteria for reviewing and evaluating whether a
13 proposed donation or investment meets the purposes of this
14 section.

15 (k) Any appraisals prepared pursuant to subsection (e)(1)
16 shall be subject to all requirements, including penalties for
17 valuation misstatements, for appraisals and appraisers under
18 applicable federal law and regulations governing charitable
19 contributions."

20 SECTION 3. Section 205-45, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



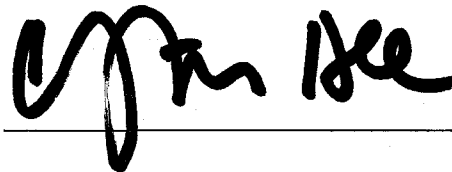
1 "(a) A farmer or landowner with lands qualifying under
2 section 205-44 may file with the commission a petition for
3 declaratory order to designate the lands as important
4 agricultural lands. The petition may be filed at any time in
5 the designation process. The holder of an interest in
6 agricultural lands that qualifies for the land conservation
7 incentives tax credit under section 235- may petition the
8 commission for designation of the agricultural lands as
9 important agricultural lands, and enjoy the incentives for
10 important agricultural lands provided under section 205-46."

11 SECTION 4. New statutory material is underscored.

12 SECTION 5. This Act shall take effect on July 1, 2009;
13 provided that on December 31, 2018, this Act shall be repealed
14 and section 205-45(a), Hawaii Revised Statutes, shall be
15 reenacted in the form in which it read on June 30, 2009;
16 provided further that this Act shall apply to taxable years
17 beginning after December 31, 2008.

18

INTRODUCED BY:



Report Title:

Tax Credit; Land Conservation or Preservation; Significant or Important Lands

Description:

Provides a tax credit to encourage the conservation or preservation of significant or important lands in the State.

