

JAN 23 2009

A BILL FOR AN ACT

RELATING TO LOW-INCOME HOUSING.

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

1 SECTION 1. Section 235-110.8, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§235-110.8 Low-income housing tax credit.** (a) Section
4 42 (with respect to low-income housing credit) of the Internal
5 Revenue Code shall be operative for the purposes of this chapter
6 as provided in this section.

7 (b) Each taxpayer subject to the tax imposed by this
8 chapter, who has filed [+]a[+] net income tax return for a
9 taxable year may claim a low-income housing tax credit against
10 the taxpayer's net income tax liability. The amount of the
11 credit shall be deductible from the taxpayer's net income tax
12 liability, if any, imposed by this chapter for the taxable year
13 in which the credit is properly claimed on a timely basis. A
14 credit under this section may be claimed whether or not the
15 taxpayer claims a federal low-income housing tax credit pursuant
16 to section 42 of the Internal Revenue Code.



1 (c) ~~[The low-income housing tax credit shall be fifty per~~
2 ~~cent of the applicable percentage of the qualified basis of each~~
3 ~~building located in Hawaii. The applicable percentage shall be~~
4 ~~calculated as provided in section 42(b) of the Internal Revenue~~
5 ~~Code.]~~ The tax credit shall be as follows:

6 (1) In the year the investment was made, thirty-five per
7 cent;

8 (2) In the first year following the year in which the
9 investment was made, twenty-five per cent;

10 (3) In the second year following the investment, twenty
11 per cent;

12 (4) In the third year following the investment, ten per
13 cent; and

14 (5) In the fourth year following the investment, ten per
15 cent;

16 of the investment made by the taxpayer in each low-income
17 housing project, up to a maximum allowed credit in the year the
18 investment was made, \$700,000; in the first year following the
19 year in which the investment was made, \$500,000; in the second
20 year following the year in which the investment was made,
21 \$400,000; in the third year following the year in which the



1 investment was made, \$200,000; and in the fourth year following
2 the year in which the investment was made, \$200,000.

3 (d) For the purposes of this section, the determination
4 of:

5 (1) Qualified basis and qualified low-income building
6 shall be made under section 42(c);

7 (2) Eligible basis shall be made under section 42(d);

8 (3) Qualified low-income housing project shall be made
9 under section 42(g);

10 (4) Recapture of credit shall be made under section 42(j),
11 except that the tax for the taxable year shall be
12 increased under section 42(j)(1) only with respect to
13 credits that were used to reduce state income taxes;

14 (5) Application of at-risk rules shall be made under
15 section 42(k);

16 of the Internal Revenue Code.

17 (e) As provided in section 42(e), rehabilitation
18 expenditures shall be treated as separate new building and their
19 treatment under this section shall be the same as in section
20 42(e). The definitions and special rules relating to credit
21 period in section 42(f) and the definitions and special rules in



1 section 42(i) shall be operative for the purposes of this
2 section.

3 (f) The state housing credit ceiling under section 42(h)
4 shall be zero for the calendar year immediately following the
5 expiration of the federal low-income housing tax credit program
6 and for any calendar year thereafter, except for the carryover
7 of any credit ceiling amount for certain projects in progress
8 which, at the time of the federal expiration, meet the
9 requirements of section 42.

10 (g) The credit allowed under this section shall be claimed
11 against net income tax liability for the taxable year. For the
12 purpose of deducting this tax credit, net income tax liability
13 means net income tax liability reduced by all other credits
14 allowed the taxpayer under this chapter.

15 A tax credit under this section which exceeds the
16 taxpayer's income tax liability may be used as a credit against
17 the taxpayer's income tax liability in subsequent years until
18 exhausted. All claims for a tax credit under this section must
19 be filed on or before the end of the twelfth month following the
20 close of the taxable year for which the credit may be claimed.
21 Failure to properly and timely claim the credit shall constitute
22 a waiver of the right to claim the credit. A taxpayer may claim



1 a credit under this section only if the building or project is a
2 qualified low-income housing building or a qualified low-income
3 housing project under section 42 of the Internal Revenue Code.

4 Section 469 (with respect to passive activity losses and
5 credits limited) of the Internal Revenue Code shall be applied
6 in claiming the credit under this section.

7 (h) Common law principles, including the doctrine of
8 economic substance and business purpose, shall apply to any
9 investment. There exists a presumption that a transaction
10 satisfies the doctrine of economic substance and business
11 purpose to the extent that the special allocation of the low-
12 income housing tax credit has an investment tax credit ratio of
13 1.5 or less of credit for every dollar invested.

14 Transactions for which an investment tax credit allocation
15 ratio greater than 1.5 but not more than 2.0 of credit for every
16 dollar invested and claimed may be reviewed by the department
17 for applicable doctrines of economic substance and business
18 purpose.

19 Businesses claiming a tax credit for transactions with
20 investment tax credit allocation ratios greater than 2.0 of
21 credit for every dollar invested shall substantiate economic
22 merit and business purpose consistent with this section.



1 [~~(h)~~] (i) The director of taxation may adopt any rules
2 under chapter 91 and forms necessary to carry out this section."

3 SECTION 2. This Act shall take effect upon its approval
4 and apply to taxable years beginning after December 31, 2008.

5

INTRODUCED BY: Clarena K. Mishler



Report Title:

Tax Credit; Low-income Housing

Description:

Enhances the low-income housing tax credit along the lines of the high technology business investment tax credit.

