
A BILL FOR AN ACT

RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT.

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

1 SECTION 1. Section 235-17.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 " ~~[+]§235-17.5[+]~~ Capital infrastructure tax credit. (a)

4 There shall be allowed to each taxpayer subject to the taxes
5 imposed by this chapter a capital infrastructure tax credit that
6 shall be deductible from the taxpayer's net income tax
7 liability, if any, imposed by this chapter for the taxable year
8 in which the capital infrastructure costs were paid or incurred.

9 (b) For the purpose of this section:

10 ~~["Base investment" means the amount of money invested by an~~
11 ~~investor.]~~

12 "Capital infrastructure costs" means capital expenditures,
13 as used in section 263 of the Internal Revenue Code and the
14 regulations promulgated thereunder ~~[, provided that the]~~, or
15 capital expenditures ~~[are]~~ for real property ~~[and]~~, fixtures,
16 structures, machinery, equipment, or capital assets that are
17 paid or incurred in connection with the displaced tenant's move



1 of the tenant's current active trade or business to the tenant's
2 new location[+] within Honolulu harbor; provided [~~further~~] that
3 the capital infrastructure costs shall not include amounts for
4 which another credit is claimed[-] or any amounts received in
5 any form from the State.

6 "Net income tax liability" means income tax liability
7 reduced by all other credits allowed under this chapter.

8 "Qualified infrastructure tenant" means a business:

9 (1) That currently owns capital or property or maintains
10 an office, operations, or facilities at the former
11 Kapalama military reservation site;

12 (2) Whose principal business is maritime, and waterfront
13 dependent, and is included under the State's plan to
14 relocate the business to piers twenty-four through
15 twenty-eight within Honolulu harbor; and

16 (3) [~~Will~~] That will be displaced and relocated by the
17 State pursuant to the Kapalama container terminal
18 project.

19 (c) The amount of the tax credit shall be equal to fifty
20 per cent of the capital infrastructure costs paid or incurred by
21 the qualified infrastructure tenant during the taxable year, up



1 to a maximum [~~of \$2,500,000 in capital infrastructure costs in~~
2 ~~any taxable year, provided that the qualified infrastructure~~
3 ~~tenant shall notify the taxpayer claiming the credit under~~
4 ~~subsection (a) of the amount of capital infrastructure costs~~
5 ~~which may be claimed.] credit of \$2,500,000 per qualified
6 infrastructure tenant per taxable year. If the capital
7 infrastructure costs paid or incurred by the qualified
8 infrastructure tenant result in a tax credit in excess of
9 \$2,500,000 in any taxable year, the excess capital
10 infrastructure costs may be carried over to a subsequent tax
11 year or years, until exhausted, for generation of the credit;
12 provided that:~~

- 13 (1) A qualified infrastructure tenant may form a special
14 purpose entity for the purposes of raising investor
15 capital and claiming the credit on behalf of the
16 qualified infrastructure tenant;
17 (2) The qualified infrastructure tenant, together with all
18 special purpose entities, shall not claim any credit
19 in any one year that exceeds \$2,500,000;
20 (3) In no event shall a qualified infrastructure tenant or
21 any of its special purpose entities or any other



1 taxpayer claim a credit under this section after
2 December 31, 2019.

3 (d) In the case of an entity taxed as a partnership,
4 credit shall be determined at the entity level, but distribution
5 and share of the credit may be determined notwithstanding
6 section 704 or section 706 of the Internal Revenue Code.

7 (e) The credit allowed under this section shall be claimed
8 against the net income tax liability for the taxable year. If
9 the tax credit under this section exceeds the taxpayer's income
10 tax liability, the excess of the tax credit over liability may
11 be used as a credit against the taxpayer's net income tax
12 liability in subsequent years until exhausted. All claims,
13 including amended claims, for a tax credit under this section
14 shall be filed on or before the end of the twelfth month
15 following the close of the taxable year for which the credit may
16 be claimed. Failure to comply with the foregoing provision
17 shall constitute a waiver of the right to claim the credit.

18 (f) This section shall not apply to taxable years
19 beginning after December 31, 2019.



1 (g) Any credit claimed under this section shall be
2 recaptured following the close of the taxable year for which the
3 credit is claimed if [~~within~~]:

4 (1) Within three years:

5 [~~(1)~~] (A) The qualified infrastructure tenant fails to
6 continue the line of business it conducted as of
7 July 1, 2014; or

8 [~~(2)~~] (B) The interest in the qualified infrastructure
9 tenant, whether in whole or in part, has been
10 sold, exchanged, withdrawn, or otherwise disposed
11 of by the taxpayer claiming a credit under this
12 section[~~-~~]; or

13 (2) The qualified infrastructure tenant fails to relocate
14 from the former Kapalama military reservation site to
15 another location, pursuant to a lease with the
16 department of transportation, within ninety days of
17 the execution of the lease.

18 The recapture shall be equal to one hundred per cent of the
19 amount of the total tax credit claimed under this section in the
20 preceding five taxable years, and shall be added to the



1 taxpayer's tax liability for the taxable year in which the
2 recapture occurs pursuant to this subsection.

3 (h) The director of taxation shall prepare any forms that
4 may be necessary to claim a credit under this section. The
5 director may also require the taxpayer to furnish information to
6 ascertain the validity of the claim for credit made under this
7 section. The director of taxation may adopt rules to effectuate
8 the purposes of this section pursuant to chapter 91.

9 (i) Any taxpayer claiming a tax credit under this section
10 shall, within ninety days of the end of the calendar year in
11 which costs for which the credit is properly claimable, submit
12 the following information to the department of taxation:

13 (1) The amount of the eligible costs for that year for
14 which the tax credit may be claimed; and

15 (2) The qualified infrastructure tenant incurring the
16 costs.

17 Failure to timely submit the information shall result in a
18 reduction of the credit amount otherwise allowable under this
19 section. If the taxpayer continues to fail to provide the
20 information, the taxpayer shall be subject to a penalty of
21 \$5,000 per month or a fraction thereof, not to exceed \$25,000.



1 (j) At the end of each fiscal year, the director of
2 taxation shall calculate the aggregate value of all capital
3 infrastructure tax credits properly claimed and report the
4 amount to the director of transportation and the director of
5 finance for the purposes of section 266-19(c)."

6 SECTION 2. Section 266-19, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§266-19 Creation of harbor special fund; disposition of**
9 **harbor special fund.** (a) There is created in the treasury of
10 the State the harbor special fund. All moneys received by the
11 department of transportation from the rates, fees, fines, and
12 administrative penalties pursuant to sections 266-17(a)(1), 266-
13 25, 266-28, and 266-30 shall be paid into the harbor special
14 fund. The harbor special fund and the second separate harbor
15 special fund heretofore created shall be consolidated into the
16 harbor special fund at such time as there are no longer any
17 revenue bonds payable from the second separate harbor special
18 fund. The harbor reserve fund heretofore created is abolished.

19 (b) All moneys derived pursuant to this chapter from
20 harbor properties of the statewide system of harbors shall be
21 paid into the harbor special fund [~~and each~~].



1 (c) Within thirty days of the end of each fiscal year, the
2 director of transportation shall transfer from the harbor
3 special fund to the director of finance moneys equal to the
4 amount calculated and reported by the director of taxation
5 pursuant to section 235-17(j). Upon the receipt of the moneys
6 from the harbor special fund, the director of finance shall
7 deposit those moneys into the general fund.

8 (d) Each fiscal year, moneys in the harbor special fund,
9 other than the amount transferred pursuant to subsection (c),
10 shall be appropriated, applied, or expended by the department of
11 transportation for the statewide system of harbors for any
12 purpose within the jurisdiction, powers, duties, and functions
13 of the department of transportation related to the statewide
14 system of harbors, including, without limitation, the costs of
15 operation, maintenance, and repair of the statewide system of
16 harbors and reserves therefor, and acquisitions (including real
17 property and interests therein), constructions, additions,
18 expansions, improvements, renewals, replacements,
19 reconstruction, engineering, investigation, and planning, for
20 the statewide system of harbors, all or any of which in the



1 judgment of the department of transportation are necessary to
2 the performance of its duties or functions.

3 ~~[(b)]~~ (e) At any time the director of transportation may
4 transfer from the harbor special fund created by paragraph (a)
5 of this section, all or any portion of available moneys on
6 deposit in the harbor special fund determined by the director of
7 transportation to be in excess of one hundred fifty per cent of
8 the requirements for the ensuing twelve months for the harbor
9 special fund as permitted by and in accordance with section 37-
10 53. For purposes of such determination, the director of
11 transportation shall take into consideration the amount of
12 federal funds and bond funds on deposit in, and budgeted to be
13 expended from, the harbor special fund during such period,
14 amounts on deposit in the harbor special fund which are
15 encumbered or otherwise obligated, budgeted amounts payable from
16 the harbor special fund during such period, and revenues
17 anticipated to be received by and expenditures to be made from
18 the harbor special fund during such period based on existing
19 agreements and other information for the ensuing twelve months,
20 and such other factors as the director of transportation shall
21 deem appropriate.



1 [~~(e)~~] (f) All expenditures by the department shall be made
2 on vouchers duly approved by the director of transportation or
3 such other officer as may be designated by the director of
4 transportation."

5 SECTION 3. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 4. This Act shall take effect on July 1, 2038, and
8 shall apply to taxable years beginning after December 31, 2016.



Report Title:

Capital Infrastructure Tax Credit; Kapalama Container Terminal Project; Displaced Tenants

Description:

Includes structures, machinery, equipment, and capital assets in the definition of capital infrastructure costs for the Capital Infrastructure Tax Credit. Sets cap on credit per taxable year per qualified infrastructure tenant. Specifies that excess tax credits may be carried forward. Recaptures credit if qualified infrastructure tenant fails to relocate within a certain period of time after executing a lease with the Department of Transportation. Specifies taxpayer reporting requirements. Provides penalties for failure to report information. Authorizes transfers of moneys from the harbor special fund to reimburse the general fund in amounts equal to the tax credits properly claimed. Effective 7/1/2038. (SD2)

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