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# 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  
18 of the tenant's current active trade or business to the tenant's



1 new location~~[,]~~ within Honolulu harbor; provided ~~[further]~~ that  
2 the capital infrastructure costs shall not include amounts for  
3 which another credit is claimed~~[,]~~ or any amounts received in  
4 any form from the State.

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

7 "Qualified infrastructure tenant" means ~~[a business]~~:

8 (1) A business:

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

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

17 ~~[(3)]~~ (C) ~~[Will]~~ That will be displaced and relocated by  
18 the State pursuant to the Kapalama container  
19 terminal project~~[,]~~; or

20 (2) A special purpose entity formed for purposes of  
21 raising investor capital pursuant to the claiming of



1           this credit; provided that a special purpose entity  
2           cannot generate any additional credits beyond the  
3           limits of the tax credit per qualified infrastructure  
4           tenant as provided in subsection (c).

5           (c) The amount of the tax credit shall be equal to fifty  
6 per cent of the capital infrastructure costs paid or incurred by  
7 the qualified infrastructure tenant during the taxable year up  
8 to a maximum of [~~\$2,500,000~~] \$5,000,000 in capital  
9 infrastructure costs per qualified infrastructure tenant in any  
10 taxable year, provided that the qualified infrastructure tenant  
11 shall notify the taxpayer claiming the credit under subsection  
12 (a) of the amount of capital infrastructure costs which may be  
13 claimed. If the capital infrastructure costs paid or incurred  
14 by the qualified infrastructure tenant result in a tax credit in  
15 excess of \$2,500,000 in any taxable year, the excess capital  
16 infrastructure costs shall be applied to a subsequent tax year  
17 or years, until exhausted, for computation of credit; provided  
18 that in no event shall a qualified infrastructure tenant or  
19 taxpayer generate a credit under this section after December 31,  
20 2019. The qualified infrastructure tenant, together with all



1 special purpose entities, shall not claim any credit in any one  
2 year that exceeds \$2,500,000.

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 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 \_\_\_\_\_ days of the  
17 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 the section  
10 within \_\_\_\_\_ days of submitting the claim for credit, shall  
11 submit the following information to the legislature:

12 (1) The amount of the tax credit claimed; and

13 (2) The qualified infrastructure tenant for which the tax  
14 credit is claimed;

15 provided that failure to timely submit the information required  
16 by this subsection shall result in a reduction of the credit  
17 amount otherwise allowable under this section. The penalty  
18 shall be \$5,000 per month or fraction thereof that the failure  
19 continues, not to exceed \$25,000."

20 SECTION 2. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



1 SECTION 3. This Act shall take effect on July 1, 2017, and  
2 shall apply to taxable years beginning after December 31, 2016.  
3



**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. Sets a new maximum amount of capital infrastructure tax credits that may be issued in any taxable year per qualified infrastructure tenant. Specifies that excess tax credits may be carried forward. Specifies that special purpose entities may qualify as a qualified infrastructure tenant. Prohibits the qualified infrastructure tenant, together with all special purpose entities, from claiming any credit in any one year that exceeds \$2,500,000. Provides penalty for failure to timely file required information. (SD1)

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