HOUSE OF REPRESENTATIVES
THIRTIETH LEGISLATURE, 2020
STATE OF HAWAII

H.B. NO. 2381

A BILL FOR AN ACT

RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

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

SECTION 1. The legislature finds that Hawaii has a shortage of affordable housing units and that one of the most important tools for developing affordable housing is the State's low-income housing tax credit program. This program has enabled the building of thousands of low-income rentals in Hawaii since it began in 1988. The program works by attracting private investment into low-income housing projects through the selling of Hawaii state low-income housing tax credits alongside federal low-income housing tax credits. The Hawaii low-income housing tax credit program is modeled on the federal low-income housing tax credit program created by the federal Tax Reform Act of 1986. However, the Hawaii low-income housing tax credit program needs a number of reforms that would enable it to produce even more low-income rental units at little to no cost to the State of Hawaii.

The legislature further finds that the Hawaii low-income housing tax credit program allocates state tax credits, which currently only sell for approximately fifty-five cents of affordable housing investment for every dollar of future credit awarded. Other states with low-income housing tax credit programs attract between seventy to eighty cents of investment per dollar of tax credit.

The legislature further finds that one of the reasons for the low selling price is that only a limited number of Hawaii taxpayers can take advantage of the program. Currently, only a few dozen large financial institutions and insurance companies can purchase state low-income housing tax credits because state regulations do not specifically exempt Hawaii state low-income housing tax credit investors from rules imposed on federal low-income housing tax credit investors. These federal regulations, which relate to investors being "at-risk" and using "passive-activity losses" were intended to prevent federal tax abuse from real estate investment. They were never intended to be applied to state low-income housing tax credit programs. The unintended consequence of not exempting state low-income housing tax credit investors from these federal regulations is that there are few eligible state low-income housing tax credit buyers. The lack of competition for the credits results in the credits being sold for a lower price, which means less money for affordable housing.

The legislature further finds that exempting state low-income housing tax credit investors from the federal "at-risk" and "passive activity loss" rules would dramatically increase the pool of potential low-income housing tax credit buyers by allowing any Hawaii taxpayer to benefit from purchasing state low-income housing tax credits. As a result of more potential buyers, competition for state low-income housing tax credits would increase, thereby driving up the low-income housing tax credit sales price. Based on trends in other states, Hawaii could expect state low-income housing tax credit sales prices to increase about twenty per cent. This increase in sales price directly translates into millions of more dollars for affordable housing in Hawaii.

The legislature finds that at a time when Hawaii needs to use every tool available to build more affordable housing, changing the rules to encourage more Hawaii taxpayers to invest in state low-income housing tax credits is a simple and low-cost way to increase project funding and get more value from Hawaii state tax credits.

The purpose of this Act is to exempt state low-income housing tax credit investors from the federal "at-risk" and "passive activity loss" rules in order to increase the pool of potential low-income housing tax credit buyers.

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

"**§235-110.8 Low-income housing tax credit.** (a) As modified herein, section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. A taxpayer owning a qualified low-income building who has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, shall also be eligible for the credit provided in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed [~~a net~~] an income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer's net income tax liability. The amount of the credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be allocated among the partners or members of the taxpayer earning the credit in any manner agreed to by such parties regardless of whether any such partner or member is deemed a partner for federal income tax purposes as long as the partner or member would be considered a partner for Hawaii state law purposes in accordance with section 425E-301, and may be claimed whether or not the taxpayer [~~claims~~] is eligible to be allocated a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code. In addition, any allocation of a tax credit under this section may be made among the partners or members of a taxpayer in accordance with the immediately preceding sentence provided such partners or members have been admitted to the taxpayer in accordance with section 425E-301 on or prior to the date for filing the partner's or member's tax return (including any amendments thereto) with respect to the year of the tax credit.

(c) For any qualified low-income building that receives an allocation prior to January 1, 2017, the amount of the low-income housing tax credit that may be claimed by a taxpayer as provided in subsection (b) shall be fifty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. The applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

(d) For any qualified low-income building that receives an allocation after December 31, 2016, the amount of the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be:

(1) For the first five years, equal to the amount of the federal low-income housing tax credits that have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation, provided that, if in any year the aggregate amount of credits under this subsection would be such that it would exceed the amount of state credits allocated by the corporation for the qualified low-income building, the credits allowed for that year shall be limited to such amount necessary to bring the total of such state credits (including the current year state credits) to the full amount of state credits allocated to the qualified low-income building by the corporation;

(2) For the sixth year, zero, except that, if, and only if, the amount of credits allowed for the first five years is less than the full amount of state credits allocated by the corporation for the qualified low-income building, an amount necessary to bring the amount of the state credits to the full amount allocated by the corporation for the qualified low-income building; and

(3) For any remaining years, zero.

(e) If a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, has been issued for a qualified low-income building, the amount of the low-income housing tax credits that may be claimed by a taxpayer as provided in subsection (b) shall be equal to fifty per cent of the amount of the federal low-income housing tax credits that would have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation had a subaward not been awarded with respect to the qualified low-income building.

(f) For the purposes of this section, the determination of:

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

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

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

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

(5) [~~Application~~] Except as provided under subsection (j)(1), application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

(g) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

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

(i) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means [~~net~~] income tax liability [~~reduced~~] prior to reduction by [~~all~~] any other credits allowed the taxpayer under this chapter.

A tax credit under this section that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section shall be filed on or before the end of the [~~twelfth~~] twenty-fourth month following the close of the taxable year for which the credit may be claimed[~~.~~] and shall include a copy of form 8609 issued by the corporation with respect to the building; provided, however, that if a taxpayer has not yet received form

8609 from the corporation with respect to its qualified low-income building at the time the taxpayer files its original tax return claiming the credits under this section, the taxpayer may later amend its tax return to include form 8609. Failure to properly and timely claim the credit shall constitute a waiver of the right to claim the credit. A taxpayer may claim a credit under this section only if the building or project is a qualified low-income [~~housing~~] building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

[~~Section~~] Except as provided under subsection (j)(1), section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(j) For a low-income building placed in service under this section after December 31, 2019:

(1) Section 453 (with respect to the installment method), section 465 (with respect to deductions limited to amount at risk, and section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall not be operative with

respect investments made in buildings and projects claiming the credit under the section;

(2) All allocations to partners or members of the distributive shares of income, lost, and deductions under chapter 235 shall be made in accordance with the written agreement of the partners or members; and

(3) In no event shall the total amount of state credits allocated by the corporation for the qualified low-income building exceed fifty per cent of the total amount of federal credits allocated to the building for the ten year federal credit period.

[~~(j)~~] (k) In lieu of the credit awarded under this section for a qualified low-income building that has been awarded federal credits that are subject to the state housing credit ceiling under section 42(h)(3)(C) of the Internal Revenue Code, federal credits that are allocated pursuant to section 42(h)(4) of the Internal Revenue Code, or a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, the taxpayer owning the qualified low-income building may make a request to the corporation for a loan under section 201H-86. If the taxpayer elects to receive the loan pursuant to section 201H-86, the taxpayer shall not be eligible for the credit under this section.

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

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

SECTION 4. This Act, upon its approval, shall apply to low-income buildings placed in service under this section in taxable years beginning after December 31, 2019; provided that amendments made to section 235-110.8, Hawaii Revised Statutes, by section 1 of this Act shall not be repealed when that section is repealed and reenacted pursuant to Act 129, Session Laws of Hawaii 2016.

INTRODUCED BY: ______________________

JAN 2 2 2020

H.B. NO. 2387

Report Title:
Low-income Housing Tax Credit; Tax; Partnerships; Corporations

Description:
Changes tax credit allocation for partnerships and corporations. Makes inoperative at risk and passive activity loss rules with respect to certain low-income building.

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