
A BILL FOR AN ACT

RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

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

11 (b) Each taxpayer subject to the tax imposed by this
12 chapter, who has filed [~~a net~~] an income tax return for a
13 taxable year may claim a low-income housing tax credit against
14 the taxpayer's net income tax liability. The amount of the
15 credit shall be deductible from the taxpayer's net income tax
16 liability, if any, imposed by this chapter for the taxable year
17 in which the credit is properly claimed on a timely basis. A



1 credit under this section may be allocated among the partners or
2 members of the taxpayer earning the credit in any manner agreed
3 to by the parties regardless of whether any partner or member is
4 deemed a partner for federal income tax purposes if the partner
5 or member is a partner pursuant to section 425E-301, and may be
6 claimed whether or not the taxpayer [elaims] is eligible to be
7 allocated a federal low-income housing tax credit pursuant to
8 section 42 of the Internal Revenue Code. Any allocation of a
9 tax credit under this section may be made among the partners or
10 members of a taxpayer in accordance with this subsection;
11 provided that the partners or members have been admitted to the
12 taxpayer pursuant to section 425E-301 on or prior to the date of
13 filing the partner's or member's tax return, including any
14 amendments thereto, with respect to the year of the tax credit.

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



1 calculated as provided in section 42(b) of the Internal Revenue
2 Code.

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

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



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

9 (3) For any remaining years, zero.

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

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



- 1 (1) Qualified basis and qualified low-income building
2 shall be made under section 42(c);
- 3 (2) Eligible basis shall be made under section 42(d);
- 4 (3) Qualified low-income housing project shall be made
5 under section 42(g);
- 6 (4) Recapture of credit shall be made under section 42(j),
7 except that the tax for the taxable year shall be
8 increased under section 42(j)(1) only with respect to
9 credits that were used to reduce state income taxes;
10 and
- 11 (5) ~~[Application]~~ Except as provided under subsection
12 (j)(1), application of at-risk rules shall be made
13 under section 42(k);
14 of the Internal Revenue Code.
- 15 (g) As provided in section 42(e), rehabilitation
16 expenditures shall be treated as a separate new building and
17 their treatment under this section shall be the same as in
18 section 42(e). The definitions and special rules relating to
19 credit period in section 42(f) and the definitions and special
20 rules in section 42(i) shall be operative for the purposes of
21 this section.



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

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

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



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

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

14 (j) For a qualified low-income building placed in service
15 under this section after December 31, 2020:

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



1 respect to investments made in buildings and projects
2 claiming the credit under this section;

3 (2) All allocations to partners of their distributive
4 shares of income, loss, and deductions under chapter
5 235 shall be made in accordance with the written
6 agreement of the partners or members; and

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

12 [~~(j)~~] (k) In lieu of the credit awarded under this section
13 for a qualified low-income building that has been awarded
14 federal credits that are subject to the state housing credit
15 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,
16 federal credits that are allocated pursuant to section 42(h)(4)
17 of the Internal Revenue Code, or a subaward under section 1602
18 of the American Recovery and Reinvestment Act of 2009, Public
19 Law 111-5, the taxpayer owning the qualified low-income building
20 may make a request to the corporation for a loan under section
21 201H-86. If the taxpayer elects to receive the loan pursuant to



1 section 201H-86, the taxpayer shall not be eligible for the
2 credit under this section.

3 ~~[(4)]~~ (1) The director of taxation may adopt any rules
4 under chapter 91 and forms necessary to carry out this section."

5 SECTION 2. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 3. This Act shall take effect on July 1, 2025, and
8 shall apply to low-income buildings placed in service in taxable
9 years beginning after December 31, 2020; provided that:

10 (1) The amendments made to section 235-110.8, Hawaii
11 Revised Statutes, by section 1 of this Act shall
12 not be repealed when that section is reenacted on
13 December 31, 2021, pursuant to section 4 of Act
14 129, Session Laws of Hawaii 2016; and

15 (2) On July 1, , this Act shall be repealed and
16 section 235-110.8, Hawaii Revised Statutes, shall
17 be reenacted in the form in which it read on
18 December 31, 2016, which is the day prior to the
19 effective date of Act 129, Session Laws of Hawaii
20 2016.



Report Title:

Low-income Housing Tax Credit; Internal Revenue Code; Qualified Low-Income Buildings

Description:

Specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and passive activity loss do not apply to the state low-income housing tax credit allocations after 12/31/2020. Extends the time period in which to claim the low-income housing tax credit. Enables state partnerships to claim the tax credit even if the partnerships are not considered partners for federal tax purposes. Takes effect 7/1/2025. (HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

