
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 income tax return for a taxable
13 year may claim a low-income housing tax credit against the
14 taxpayer's net income tax liability. The amount of the credit
15 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.



1 A credit under this section may be ~~claimed~~:

2 (1) Allocated among the partners or members of the
3 taxpayer earning the credit in any manner agreed to by
4 the parties regardless of whether any partner or
5 member is deemed a partner for federal income tax
6 purposes; provided that the partner or member would be
7 considered a partner in accordance with section 425E-
8 301; and

9 (2) Claimed whether or not the taxpayer ~~claims~~ is
10 eligible to be allocated a federal low-income housing
11 tax credit pursuant to section 42 of the Internal
12 Revenue Code.

13 Any allocation of a tax credit under this subsection may be
14 made among the partners or members of a taxpayer under
15 paragraphs (1) and (2); provided that the partners or members
16 have met the requirements of section 425E-301 on or prior to the
17 date for filing the partner's or member's tax return and any
18 amendments to the return, with respect to the year of the tax
19 credit.

20 (c) For any qualified low-income building that receives an
21 allocation prior to January 1, 2017, the amount of the low-



1 income housing tax credit that may be claimed by a taxpayer as
2 provided in subsection (b) shall be fifty per cent of the
3 applicable percentage of the qualified basis of each building
4 located in Hawaii. The applicable percentage shall be
5 calculated as provided in section 42(b) of the Internal Revenue
6 Code.

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

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



1 year state credits) to the full amount of state
2 credits allocated to the qualified low-income building
3 by the corporation;

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

12 (3) For any remaining years, zero.

13 (e) If a subaward under section 1602 of the American
14 Recovery and Reinvestment Act of 2009, Public Law 111-5, has
15 been issued for a qualified low-income building, the amount of
16 the low-income housing tax credits that may be claimed by a
17 taxpayer as provided in subsection (b) shall be equal to fifty
18 per cent of the amount of the federal low-income housing tax
19 credits that would have been allocated to the qualified low-
20 income building pursuant to section 42(b) of the Internal



1 Revenue Code by the corporation had a subaward not been awarded
2 with respect to the qualified low-income building.

3 (f) 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 and

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

18 of the Internal Revenue Code.

19 (g) As provided in section 42(e), rehabilitation
20 expenditures shall be treated as a separate new building and
21 their treatment under this section shall be the same as in



1 section 42(e). The definitions and special rules relating to
2 credit period in section 42(f) and the definitions and special
3 rules in section 42(i) shall be operative for the purposes of
4 this section.

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

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

17 A tax credit under this section that exceeds the taxpayer's
18 income tax liability may be used as a credit against the
19 taxpayer's income tax liability in subsequent years until
20 exhausted. All claims for a tax credit under this section shall
21 be filed on or before the end of the ~~[twelfth]~~ twenty-fourth



1 month following the close of the taxable year for which the
2 credit may be claimed[-] and shall include a copy of the Form
3 8609 issued by the corporation with respect to the building;
4 provided that if a taxpayer has not yet received the Form 8609
5 from the corporation with respect to its qualified low-income
6 building at the time the taxpayer files its original tax return
7 claiming the credit under this section, the taxpayer may later
8 amend its tax return to include the Form 8609.

9 Failure to properly and timely claim the credit shall
10 constitute a waiver of the right to claim the credit. A
11 taxpayer may claim a credit under this section only if the
12 building or project is a qualified low-income housing building
13 or a qualified low-income housing project under section 42 of
14 the Internal Revenue Code.

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

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



1 (1) Section 453 (with respect to the installment method),
2 section 465 (with respect to deductions limited to
3 amount at risk), and section 469 (with respect to
4 passive activity losses and credits limited) of the
5 Internal Revenue Code shall not be operative with
6 respect to investments made in buildings and projects
7 claiming the credit under this section;

8 (2) All allocations to partners or members of their
9 distributive shares of income, loss, and deductions
10 under this chapter shall be made in accordance with
11 the written agreement of the partners or members; and

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

17 [~~(j)~~] (k) In lieu of the credit awarded under this section
18 for a qualified low-income building that has been awarded
19 federal credits that are subject to the state housing credit
20 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,
21 federal credits that are allocated pursuant to section 42(h)(4)



1 of the Internal Revenue Code, or a subaward under section 1602
 2 of the American Recovery and Reinvestment Act of 2009, Public
 3 Law 111-5, the taxpayer owning the qualified low-income building
 4 may make a request to the corporation for a loan under section
 5 201H-86. If the taxpayer elects to receive the loan pursuant to
 6 section 201H-86, the taxpayer shall not be eligible for the
 7 credit under this section.

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

10 SECTION 2. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect on July 1, 2020, and
 13 shall apply to qualified low-income buildings that receive an
 14 allocation of credits beginning after December 31, 2019;
 15 provided that amendments made to section 235-110.8, Hawaii
 16 Revised Statutes, by section 1 of this Act shall not be repealed
 17 when that section is repealed and reenacted pursuant to Act 129,
 18 Session Laws of Hawaii 2016.

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[Signature] INTRODUCED BY: *[Signature]*
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JAN 23 2020



H.B. NO. 2608

Report Title:

Low-Income Housing Tax Credit

Description:

Amends certain requirements for the state low-income housing tax credit by: changing the tax credit allocation for partnerships; amending filing requirements for tax credit claims; and specifying that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and passive activity loss do not apply with respect to claims for the credit.

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

