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

16           The legislature further finds that the Hawaii low-income  
17 housing tax credit program allocates state tax credits, which



1 currently only sell for approximately fifty-five cents of  
2 affordable housing investment for every dollar of future credit  
3 awarded. Other states with low-income housing tax credit  
4 programs attract between seventy to eighty cents of investment  
5 per dollar of tax credit.

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



1 for a lower price, which means less money for affordable  
2 housing.

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

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



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

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

7           "**§235-110.8 Low-income housing tax credit.** (a) As  
8 modified herein, section 42 (with respect to low-income housing  
9 credit) of the Internal Revenue Code shall be operative for the  
10 purposes of this chapter as provided in this section. A  
11 taxpayer owning a qualified low-income building who has been  
12 awarded a subaward under section 1602 of the American Recovery  
13 and Reinvestment Act of 2009, Public Law 111-5, shall also be  
14 eligible for the credit provided in this section.

15           (b) Each taxpayer subject to the tax imposed by this  
16 chapter, who has filed [~~a net~~] an income tax return for a  
17 taxable year may claim a low-income housing tax credit against  
18 the taxpayer's net income tax liability. The amount of the  
19 credit shall be deductible from the taxpayer's net income tax  
20 liability, if any, imposed by this chapter for the taxable year  
21 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  
4 is deemed a partner for federal income tax purposes as long as  
5 the partner or member would be considered a partner for Hawaii  
6 state law purposes in accordance with section 425E-301, and may  
7 be claimed whether or not the taxpayer [~~elaims~~] is eligible to  
8 be allocated a federal low-income housing tax credit pursuant to  
9 section 42 of the Internal Revenue Code. In addition, any  
10 allocation of a tax credit under this section may be made among  
11 the partners or members of a taxpayer in accordance with the  
12 immediately preceding sentence provided that the partners or  
13 members have been admitted to the taxpayer in accordance with  
14 section 425E-301 on or prior to the date for filing the  
15 partner's or member's tax return (including any amendments  
16 thereto) with respect to the year of the tax credit.

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



1 located in Hawaii. The applicable percentage shall be  
2 calculated as provided in section 42(b) of the Internal Revenue  
3 Code.

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

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

14 A tax credit under this section that exceeds the taxpayer's  
15 income tax liability may be used as a credit against the  
16 taxpayer's income tax liability in subsequent years until  
17 exhausted. All claims for a tax credit under this section shall  
18 be filed on or before the end of the ~~[twelfth]~~ twenty-fourth  
19 month following the close of the taxable year for which the  
20 credit may be claimed~~[.]~~ and shall include a copy of form 8609  
21 issued by the corporation with respect to the building; provided



1 that if a taxpayer has not yet received form 8609 from the  
2 corporation with respect to its qualified low-income building at  
3 the time the taxpayer files an original tax return claiming the  
4 credits under this section, the taxpayer may later amend that  
5 tax return to include form 8609. Failure to properly and timely  
6 claim the credit shall constitute a waiver of the right to claim  
7 the credit. A taxpayer may claim a credit under this section  
8 only if the building or project is a qualified low-income  
9 ~~[housing]~~ building or a qualified low-income housing project  
10 under section 42 of the Internal Revenue Code.

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

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

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



1 respect to investments made in buildings and projects  
2 claiming the credit under the section; provided that  
3 this paragraph shall not apply to investments made in  
4 a building if the building ceases to be a qualified  
5 low-income building as defined under section 42(c) of  
6 the Internal Revenue Code;

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

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

16 (4) In no event shall the state depreciation basis of the  
17 qualified low-income building exceed the federal  
18 depreciation basis of the building.

19 ~~(j)~~ (k) In lieu of the credit awarded under this section  
20 for a qualified low-income building that has been awarded  
21 federal credits that are subject to the state housing credit



1 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,  
 2 federal credits that are allocated pursuant to section 42(h)(4)  
 3 of the Internal Revenue Code, or a subaward under section 1602  
 4 of the American Recovery and Reinvestment Act of 2009, Public  
 5 Law 111-5, the taxpayer owning the qualified low-income building  
 6 may make a request to the corporation for a loan under section  
 7 201H-86. If the taxpayer elects to receive the loan pursuant to  
 8 section 201H-86, the taxpayer shall not be eligible for the  
 9 credit under this section.

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

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

14 SECTION 4. This Act, upon its approval on July 1, 2050,  
 15 shall apply to low-income buildings placed in service under this  
 16 section in taxable years beginning after December 31, 2019;  
 17 provided that amendments made to section 235-110.8, Hawaii  
 18 Revised Statutes, by section 2 of this Act shall not be repealed  
 19 when section 235-110.8, Hawaii Revised Statutes, is repealed and  
 20 reenacted on December 31, 2021, pursuant to Act 129, Session  
 21 Laws of Hawaii 2016.



**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 buildings. Effective 7/1/2050.  
(SD2)

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