

JAN 18 2019

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# A BILL FOR AN ACT

RELATING TO THE LOW-INCOME HOUSING INVESTMENT TAX CREDIT.

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

1 SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§235- Low-income housing investment tax credit. (a)

5 There shall be allowed to each taxpayer subject to the taxes  
6 imposed by this chapter a low-income housing investment tax  
7 credit that shall be deductible from the taxpayer's net income  
8 tax liability, if any, imposed by this chapter for the taxable  
9 year in which the investment was made and the following four  
10 taxable years. The tax credit may be claimed as follows:

11 (1) In the taxable year the investment was made, thirty-  
12 five per cent of the investment made by the taxpayer  
13 in each project or \$700,000, whichever is less;

14 (2) In the first taxable year following the year in which  
15 the investment was made, twenty-five per cent of the  
16 investment made by the taxpayer in each project or  
17 \$500,000, whichever is less;



1       (3) In the second taxable year following the year in which  
2       the investment was made, twenty per cent of the  
3       investment made by the taxpayer in each project or  
4       \$400,000, whichever is less;

5       (4) In the third taxable year following the year in which  
6       the investment was made, ten per cent of the  
7       investment made by the taxpayer in each project or  
8       \$200,000, whichever is less; and

9       (5) In the fourth taxable year following the year in which  
10       the investment was made, ten per cent of the  
11       investment made by the taxpayer in each project or  
12       \$200,000, whichever is less.

13       (b) The tax credit allowed under this section shall be  
14       claimed against the taxpayer's net income tax liability for the  
15       taxable year.

16       (c) If the tax credit under this section exceeds the  
17       taxpayer's income tax liability for any of the five taxable  
18       years that the credit is taken, the excess of the tax credit  
19       over liability may be used as a credit against the taxpayer's  
20       income tax liability in subsequent years until exhausted. Every  
21       claim, including amended claims, for a tax credit under this



1 section shall be filed on or before the end of the twelfth month  
2 following the close of the taxable year for which the credit may  
3 be claimed. Failure to comply with the foregoing provision  
4 shall constitute a waiver of the right to claim the credit.

5 (d) Common law principles, including the doctrine of  
6 economic substance and business purpose, shall apply to any  
7 investment. There exists a presumption that a transaction  
8 satisfies the doctrine of economic substance and business  
9 purpose to the extent that the special allocation of the low-  
10 income housing investment tax credit has an investment tax  
11 credit ratio of 4.0 or less of credit for every dollar invested.

12 Transactions for which an investment tax credit allocation  
13 ratio greater than 4.0 and up to 6.0 of credit for every dollar  
14 invested and claimed may be reviewed by the department for  
15 applicable doctrines of economic substance and business purpose.

16 Taxpayers claiming a tax credit for transactions with  
17 investment tax credit allocation ratios greater than 6.0 of  
18 credit for every dollar invested shall substantiate economic  
19 merit and business purpose consistent with this section.

20 (e) The director of taxation:



1       (1) Shall prepare any forms that may be necessary to claim  
2       a tax credit under this section;

3       (2) May require the taxpayer to furnish reasonable  
4       information to ascertain the validity of the claim for  
5       the tax credit made under this section; and

6       (3) May adopt rules under chapter 91 necessary to  
7       effectuate the purposes of this section.

8       (f) If the tax credit under this section exceeds the  
9       taxpayer's income tax liability, the excess of the credit over  
10       liability may be used as a credit against the taxpayer's income  
11       tax liability in subsequent years until exhausted. All claims  
12       for the tax credit under this section, including amended claims,  
13       shall be filed on or before the end of the twelfth month  
14       following the close of the taxable year for which the credit may  
15       be claimed. Failure to comply with the foregoing provision  
16       shall constitute a waiver of the right to claim the credit.

17       (g) As used in this section:

18       "Investment tax credit allocation ratio" means, with  
19       respect to a taxpayer that has made an investment in a project,  
20       the ratio of:



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1        (1) The amount of the credit under this section that is,  
2                    or is to be, received by, or allocated to, the  
3                    taxpayer over the life of the investment, as a result  
4                    of the investment; to

5        (2) The amount of the investment in the project.

6        "Project" means a qualified low-income housing project or  
7 qualified low-income building as referenced under section 235-  
8 110.8.

9        (h) This section shall not apply to taxable years  
10 beginning after December 31, \_\_\_\_\_."

11        SECTION 2. Chapter 241, Hawaii Revised Statutes, is  
12 amended by adding a new section to be appropriately designated  
13 and to read as follows:

14        "§241- Low-income housing investment tax credit. The  
15 low-income housing investment tax credit provided under section  
16 235- shall be operative for this chapter after December 31,  
17 2018, and before January 1, \_\_\_\_\_."

18        SECTION 3. Chapter 431, Hawaii Revised Statutes, is  
19 amended by adding a new section to article 7 to be appropriately  
20 designated and to read as follows:



1           "§431:7-        Low-income housing investment tax credit. The  
2 low-income housing investment tax credit provided under section  
3 235-        shall be operative for this chapter after December 31,  
4 2018, and before January 1,        , and may be claimed against the  
5 tax imposed under section 431:7-202."

6           SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is  
7 amended by amending subsection (d) to read as follows:

8           "(d) Section 704 of the Internal Revenue Code (with  
9 respect to a partner's distributive share) shall be operative  
10 for purposes of this chapter; except that section 704(b)(2)  
11 shall not apply to:

12           (1) Allocations of the high technology business investment  
13 tax credit allowed by section 235-110.9 for  
14 investments made before May 1, 2009;

15           (2) Allocations of net operating loss pursuant to section  
16 235-111.5;

17           (3) Allocations of the attractions and educational  
18 facilities tax credit allowed by section 235-110.46;  
19 [~~or~~]

20           (4) Allocations of low-income housing tax credits among  
21 partners under section 235-110.8 [~~-~~]; or



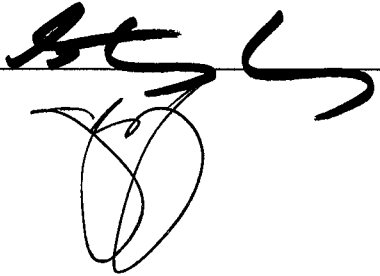
1        (5) Allocations of low-income housing investment tax  
2        credits among partners under section 235- ."

3        SECTION 5. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5        SECTION 6. This Act shall take effect upon its approval  
6 and shall apply to investments made in qualified low-income  
7 housing projects or qualified low-income buildings after  
8 December 31, 2018.

9

INTRODUCED BY:

A handwritten signature in black ink, appearing to be "ASL", is written over a horizontal line.

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**Report Title:**

Low-income Housing Projects; Low-income Buildings; Tax Credit

**Description:**

Establishes a temporary tax credit for investments made in qualified low-income housing projects or qualified low-income buildings.

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

