

---

# A BILL FOR AN ACT

RELATING TO 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. A



1 credit under this section may be allocated by the partnership or  
2 limited liability company in any manner agreed to by the  
3 partners or members regardless of whether the individual or  
4 entity to receive the credit is deemed to be a partner or member  
5 for federal income tax purposes, so long as the individual or  
6 entity is deemed to be a partner or member pursuant to  
7 applicable state law. The credit may be claimed whether or not  
8 the taxpayer [~~claims~~] is eligible to be allocated a federal low-  
9 income housing tax credit pursuant to section 42 of the Internal  
10 Revenue Code.

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

19 (d) For any qualified low-income building that receives an  
20 allocation after December 31, 2016, the amount of the low-income



1 housing tax credits that may be claimed by a taxpayer as  
2 provided in subsection (b) shall be:

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

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



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

4 (3) For any remaining years, zero.

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

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

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

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

20 (3) Qualified low-income housing project shall be made  
21 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) ~~[7]~~ of the Internal Revenue Code, 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) ~~[7]~~ of the Internal Revenue Code. The definitions and special rules relating to credit period in section 42(f) of the Internal Revenue Code and the definitions and special rules in section 42(i) of the Internal Revenue Code shall be operative for the purposes of this section.

(h) The state housing credit ceiling under section 42(h) of the Internal Revenue Code shall be zero for the calendar year immediately following the expiration of the federal low-income



1 housing tax credit program and for any calendar year thereafter,  
2 except for the carryover of any credit ceiling amount for  
3 certain projects in progress which, at the time of the federal  
4 expiration, meet the requirements of section 42[-] of the  
5 Internal Revenue Code.

6 (i) The credit allowed under this section shall be claimed  
7 against net income tax liability for the taxable year. For the  
8 purpose of deducting this tax credit, net income tax liability  
9 means net income tax liability reduced by all other credits  
10 allowed the taxpayer under this chapter.

11 A tax credit under this section that exceeds the taxpayer's  
12 income tax liability may be used as a credit against the  
13 taxpayer's income tax liability in subsequent years until  
14 exhausted. All claims for a tax credit under this section shall  
15 be filed on or before the end of the twelfth month following the  
16 close of the taxable year for which the credit may be claimed[-]  
17 and shall include a copy of Form 8609, or any successor form  
18 created by the Internal Revenue Service, and issued by the  
19 corporation with respect to the building; provided that with  
20 respect to the first year that the credit is claimed for a  
21 qualified low-income housing project, if the taxpayer has not



1 yet received the Form 8609 before the time the taxpayer files  
2 the original tax return claiming the credit under this section,  
3 the taxpayer may claim the credit based upon the amount of  
4 credit set forth in the carryover allocation or section 42(m)  
5 letter, as applicable, issued to the qualified low-income  
6 housing project; and upon receipt of the Form 8609 the taxpayer  
7 shall:

8 (1) Amend its tax return to include the Form 8609; and

9 (2) If the credit amount in the Form 8609 is different  
10 than the amount of credit previously claimed, adjust  
11 the credit amount claimed on the amended return.

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

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



1        (j) For any qualified low-income building placed in  
2 service after December 31, 2020:

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

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

14       (3) The total amount of state credits allocated by the  
15 corporation for the qualified low-income building  
16 shall not exceed fifty per cent of the total amount of  
17 federal credits allocated to the building for the ten-  
18 year federal credit period; and

19       (4) The deductions and expenses claimed by all Hawaii  
20 taxpayers on Hawaii income tax returns shall not



1           exceed the deductions and expenses claimed by all  
2           taxpayers on federal returns;  
3   provided that this subsection shall not apply to any building  
4   that ceases to be a qualified low-income building.

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

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

19           SECTION 2. Act 129, Session Laws of Hawaii 2016, is  
20 amended by amending section 4 to read as follows:



1 "SECTION 4. This Act, upon its approval, shall take effect  
2 on January 1, 2017, and shall apply to qualified low-income  
3 buildings awarded credits after December 31, 2016; provided that  
4 this Act shall be repealed on December 31, [~~2021~~,] \_\_\_\_\_, and  
5 section 235-110.8, Hawaii Revised Statutes, shall be reenacted  
6 in the form in which it read on the day prior to the effective  
7 date of this Act."

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

10 SECTION 4. This Act shall take effect on December 1, 2050;  
11 provided that section 1 of this Act shall apply to taxable years  
12 beginning after December 31, 2020; provided further that the  
13 amendments made to section 235-110.8, Hawaii Revised Statutes,  
14 by section 1 of this Act shall not be repealed when that section  
15 is reenacted on December 31, \_\_\_\_\_, pursuant to section 4 of  
16 Act 129, Session Laws of Hawaii 2016, as amended by section 2 of  
17 this Act.



**Report Title:**

Low-income Housing Tax Credit; Partners; Members

**Description:**

Allows the low-income housing tax credit to be allocated among the partners or members of the partnership or limited liability company earning the credit in any manner agreed to by the partners or members. Requires Form 8609 to be included for taxpayers claiming the low-income housing tax credit. Specifies other restrictions and clarifies the effect of other tax provisions for buildings placed in service after 12/31/2020. Extends the increases made to the low-income housing tax credit from 12/31/2021 to an unspecified date. Applies to taxable years beginning after 12/31/2020. Effective 12/1/2050. (HD2)

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

