

## ACT 216

S.B. NO. 3080

A Bill for an Act Relating to the Income Tax Law.

*Be It Enacted by the Legislature of the State of Hawaii:*

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

**“§235- Low-income housing tax credit.** (a) Section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section.

(b) There shall be allowed to each resident taxpayer subject to the tax imposed by this chapter, a low-income housing tax credit which shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(c) The low-income housing tax credit shall be thirty per cent of the applicable percentage of the qualified basis of each building located in Hawaii. Applicable percentage shall be calculated as provided in section 42(b) of the Internal Revenue Code.

(d) For the purposes of this section, the determination of:

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

- (2) Eligible basis shall be made under section 42(d);
- (3) Qualified low-income housing project shall be made 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;
- (5) Application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

(e) As provided in section 42(e), rehabilitation expenditures shall be treated as separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

(f) The state housing credit ceiling under section 42(h) shall be zero for any calendar year after 1989, except for the carryover of the 1989 limit for certain projects in progress which meet the requirements of section 42(n).

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

A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section must be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to properly claim the credit shall constitute a waiver of the right to claim the credit. In order to claim a credit under this section, a taxpayer must claim a credit under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section.

(h) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section."

SECTION 2. Chapter 201E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§201E- Administration of low-income housing credit allowed under section 235-** . (a) The housing finance and development corporation is designated as the state housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to project located in a state) of the Internal Revenue Code of 1986. As the state housing credit agency, the corporation shall determine the eligibility basis for a qualified low-income building, make the allocation of housing credit dollar amounts within the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations. The corporation shall file any certifications and annual reports required by section 42 (with respect to low-income housing credit) of the Internal Revenue Code of 1986.

(b) The state aggregate housing credit dollar amount shall be allocated annually as required by section 42 of the Internal Revenue Code of 1986 by the corporation in an amount equal to \$1.25 multiplied by the state population in the calendar year as provided by section 42(h) of the Internal Revenue Code of 1986.

(c) The corporation shall adopt rules under chapter 91 necessary to comply with federal and state requirements for determining the amount of the tax credit allowed under section 42 of the Internal Revenue Code of 1986 and section 235-

The corporation may establish and collect reasonable fees for administrative expenses incurred in providing the services required by this section, including fees for processing developer applications for the credit. All fees collected for administering these provisions, including developer application fees, shall be deposited into the corporation's housing finance revolving fund to be used to cover the administrative expenses of the corporation.

(d) All claims for allocation of the low-income housing credit under section 235- shall be filed with the corporation. The corporation shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file the credit allocation with the taxpayer's tax return with the department of taxation."

SECTION 3. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59) (with respect to determination of tax liability), except section 42 (with respect to the low-income housing credit) and except<sup>1</sup> sections 47 and 48, as amended, as of December 31, 1984, (with respect to certain depreciable tangible personal property). For treatment, see [section] sections 235- and 235-110.7.
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit).
- (3) Section 86 (with respect to social security and tier I railroad retirement benefits).
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b).
- (5) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see sections 235-2.4 and 235-7(a)(9) to (11).
- (6) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3).
- (7) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds).
- (8) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54.
- (9) Section 169 (with respect to amortization of pollution control facilities). For treatment, see section 235-11.
- (10) Section 196 (with respect to deduction for certain unused investment credits).
- (11) Subchapter B, part VIII (sections 241 to 250) (with respect to special deductions for corporations), except sections 248 (with respect to organizational expenditures) and 249 (with respect to limitation on deduction of bond premium on repurchase). For treatment, see section 235-7(c).
- (12) Section 269A (with respect to personal service corporations formed or availed of to avoid or evade income tax).
- (13) Section 280C (with respect to certain expenses for which credits are allowable).
- (14) Section 280D (with respect to portion of chapter 45 taxes for which credit or refund is allowable under section 6429).

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- (15) Section 291 (with respect to special rules relating to corporate preference items).
- (16) Section 367 (with respect to foreign corporations).
- (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations).
- (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States).
- (19) Section 521 (with respect to exemption of farmers cooperatives from tax). For treatment, see section 421-23.
- (20) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders).
- (21) Subchapter H (sections 581 to 596) (with respect to banking institutions). For treatment, see chapter 241.
- (22) Section 642(a), (b), and (d) (with respect to special rules for credits and deductions).
- (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts).
- (24) Subchapter L (sections 801 to 846) (with respect to insurance companies). For treatment, see sections 431-318 and 431-320.
- (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55.
- (26) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except part IV (sections 991 to 997) (with respect to domestic international sales corporations). For treatment, see sections 235-4, 235-5, and 235-7(b).
- (27) Section 1055 (with respect to redeemable ground rents).
- (28) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange).
- (29) Section 1201 (with respect to alternative tax). For treatment, see section 235-71(a).
- (30) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations).
- (31) Subchapter T (sections 1381 to 1388) (with respect to cooperatives and their patrons). For treatment, see chapter 421.''

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>2</sup>

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1987.

(Approved June 7, 1988.)

### Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.