

ACT 267

S.B. NO. 1394

A Bill for an Act Relating to Historic Preservation.

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- Historic preservation income tax credit. (a) Notwithstanding any law to the contrary, there shall be allowed to each taxpayer subject to the tax imposed by this chapter a historic preservation income tax credit for substantial rehabilitation of a certified historic structure that shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the tax credit is properly claimed.

(b) In the case of a partnership, S corporation, estate, trust, or any developer of a rehabilitated certified historic structure, the tax credit allowable shall be as provided under subsection (d) for the taxable year. The cost upon which the credit is computed shall be determined at the entity level and the distribution and share of the tax credit shall be determined pursuant to section 704(b) of the Internal Revenue Code.

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the qualified expense for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(c) The amount of a historic preservation income tax credit that is certified by qualified staff of the state historic preservation division of the department of land and natural resources shall be thirty per cent of the qualified rehabilitation expenditures.

(d) The tax credit allowed under this section shall be available in the taxable year in which the substantially rehabilitated certified historic structure is placed into service. In the case of projects completed in phases, the tax credit shall be prorated to the substantially rehabilitated identifiable portion of the certified historic structure placed into service during that taxable year.

(e) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of the credit over liability may be used as a credit against the taxpayer’s income tax liability in subsequent years until either the credit is exhausted, or for a period of ten years, whichever is earlier.

All claims for the tax credit under this section, including amended claims, shall 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 comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(f) The state historic preservation division shall adopt rules pursuant to chapter 91 establishing standards and criteria for the approval of rehabilita-

tion of certified historic structures for which the tax credit under this section is sought. These standards and criteria shall take into account whether the rehabilitation of a certified historic structure will preserve the historic character of the building.

(g) Following the completion of rehabilitation of a certified historic structure:

- (1) The taxpayer shall notify the state historic preservation division that the rehabilitation has been completed and shall provide the state historic preservation division with documentation and certification of the costs incurred in rehabilitating the historic structure;
- (2) Qualified staff of the state historic preservation division shall review the rehabilitation and verify the rehabilitation project's compliance with the rehabilitation plan;
- (3) Upon each determination made under this subsection, the state historic preservation division shall issue a certificate to the taxpayer verifying that the rehabilitation has been completed in accordance with the approved rehabilitation plan; and
- (4) The taxpayer shall file the certificate with the taxpayer's tax return with the department.

The department of land and natural resources may offset the costs of certifying tax credit claims under this section by assessing and collecting a fee, which shall be deposited into the Hawaii historic preservation special fund established under section 6E-16.

(h) The director of taxation shall prepare any forms that may be necessary to claim the tax credit under this section. The director may also require the taxpayer to furnish reasonable information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(i) The aggregate amount of the tax credits claimed for qualified rehabilitation projects shall not exceed:

- (1) \$1,000,000 for the 2020 taxable year;
- (2) \$1,000,000 for the 2021 taxable year;
- (3) \$1,000,000 for the 2022 taxable year;
- (4) \$1,000,000 for the 2023 taxable year; and
- (5) \$1,000,000 for the 2024 taxable year.

(j) Each taxpayer claiming a tax credit under this section, no later than the last day of the twelfth month following the close of the taxable year in which qualified costs were expended, shall submit a written, certified statement to the state historic preservation division containing the qualified rehabilitation expenditures incurred by the taxpayer and any other information the state historic preservation division or department of taxation may require.

Any taxpayer failing to submit information to the state historic preservation division in a manner prescribed by the state historic preservation division prior to the last day of the twelfth month following the close of the tax year in which qualified costs were expended shall not be eligible to receive the tax credit for those expenses, and any credit already claimed for that taxable year shall be recaptured in total. The amount of the recaptured tax credit shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

All information in the statement submitted under this section shall be a public document, except for information that is otherwise exempt from public disclosure in accordance with chapter 92F.

(k) Recapture of a previously claimed tax credit shall be required from any taxpayer who received a credit under this section if any of the following occur:

- (1) The projected qualified expenditures do not materialize; or
- (2) The rehabilitation of the certified historic structure does not proceed in a timely manner and in accordance with the approved rehabilitation plan.

Any credit under this section shall be recaptured following the close of the taxable year for which the credit is claimed if the department of land and natural resources notifies the department that the taxpayer has failed to comply with the requirements of this section or its related rules promulgated by the state historic preservation division.

(l) The state historic preservation division, in consultation with the department of taxation, shall determine the information necessary to enable a quantitative and qualitative assessment of the outcomes of the tax credit and submit a report to the legislature evaluating the effectiveness of the tax credit no later than twenty days prior to the convening of each regular legislative session. The report shall include findings and recommendations to improve the effectiveness of the tax credit in order to further encourage the rehabilitation of historic properties.

(m) For the purposes of this section:

“Certified historic structure” means any structure that is:

- (1) Individually listed in the Hawaii register of historic places or the national register of historic places;
- (2) Located in a historic district that is listed in the Hawaii register of historic places or the national register of historic places, and certified by the state historic preservation division as contributing to the significance of the historic district; or
- (3) A structure that the state historic preservation division has determined to be eligible for inclusion in the Hawaii register of historic places, and that is subsequently listed in the Hawaii register of historic places by the date of certification by the administrator of the state historic preservation division in accordance with subsection (g).

“Qualified rehabilitation expenditures” means any costs incurred for the physical rehabilitation, renovation, or construction of a certified historic structure pursuant to a rehabilitation plan; provided that the term shall not include the taxpayer’s personal labor.

“Qualified staff” means a staff person meeting the Secretary of the Interior’s Historic Preservation Professional Qualification Standards for an architectural historian or historic architect.

“Rehabilitation plan” means any construction plans and specifications for the proposed rehabilitation of a historic structure in sufficient detail for evaluation of compliance with the rules adopted by the state historic preservation division.

“Substantial rehabilitation” means that the qualified rehabilitation expenditures on a certified historic structure exceed twenty-five per cent of the assessed value of the structure.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2019, and shall be repealed on December 31, 2024.

(Approved July 8, 2019.)

Note

1. Edited pursuant to HRS §23G-16.5.