H.B. NO. 3125

A BILL FOR AN ACT

RELATING TO TAX CREDITS.

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

SECTION 1. The state finds that the leeward coast of Oahu has levels of poverty in excess of twenty per cent in each of the census tracts comprising this region. This condition has existed for over forty years despite the efforts of federal, state, and county programs to alleviate the suffering or reduce the numbers of individuals and families impacted. The purpose of this bill is to expand the activities that qualify for an existing leeward region tax credit; to increase the number of persons who qualify for the tax credit based on their efforts to revitalize the region through investment and job creation; and to extend the period of time when the credits can be earned. This bill also clarifies that a one hundred per cent recapture of credits claimed will occur if the world-class aquarium and marine science and mammal research facility; the commercial infrastructure or building improvements; or the affordable housing units, which qualify for the credit, are not placed in service within three years after the credit repeals.

SECTION 2. Section 235-110.46, Hawaii Revised Statutes, is amended to read as follows:

"[~~[~~]**§235-110.46**[~~]~~] **Attractions and educational facilities tax credit; Ko Olina Resort and Marina; Makaha Resort[~~.~~]; leeward coast revitalization incentive.** (a) There shall be allowed to each qualified taxpayer subject to the taxes imposed by this chapter or chapter 237, 237D, 238, 239, 241, or 431, a tax credit [~~[~~]that[~~]~~] may be claimed for taxable years beginning after December 31, 2004, for qualified costs in the development of facilities for attractions and educational purposes at Ko Olina Resort and Marina and at Makaha Resort[~~.~~], and for leeward coast revitalization efforts. The tax credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter and, for taxpayers qualified under subsection (c)(1), (2), (3), and (4) at the election of the taxpayer, from the tax liability imposed by chapters 237, 237D, 238, 239, 241, and 431.

(b) The tax credit earned shall be equal to the qualified costs incurred from June 1, 2003, through May 31, [~~2009,~~] 2010, up to a maximum of $75,000,000 of credits in the aggregate for all qualified taxpayers for all years; provided that notwithstanding the amount of tax credits earned in any year, a

maximum of $7,500,000 of tax credits in the aggregate for all qualified taxpayers may be used in any one taxable year. The credits over $7,500,000 shall be used as provided in subsection (d). In the case of a partnership, limited liability company, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for qualified costs incurred by the entity. The costs upon which the tax credit is computed shall be determined at the entity level.

(c) To qualify for the tax credit, a taxpayer shall:

(1) Have expended qualified costs on and be developing a world-class aquarium and marine science and mammal research facility at Ko Olina Resort and Marina; and

(2) Dedicate one-half of the net operating income of the world-class aquarium to the State, beginning on the first day of the seventeenth year following the year in which the attractions and educational facilities credit was first taken; [~~or~~]

(3) Acquire or own the Makaha Resort, and lease or sell a portion of the Makaha Resort for use as training and educational facilities for a period of not less than six years to a taxpayer meeting the requirements of subsection (c)(1)[~~.~~]<u>;</u>

(4) Have expended qualified costs for infrastructure or building improvements to commercial property utilized by a business within the geographic boundary of the leeward coast, for revitalization purposes. Infrastructure or building improvements to a business located within a residence are not qualified costs; or

(5) Have expended qualified costs to construct five or more units of affordable for rent or affordable for sale housing on the leeward coast.

(d) If the tax credit under this section exceeds $7,500,000 in the aggregate for all qualified taxpayers for any taxable year or exceeds the taxpayer's tax liability under this chapter or chapters 237, 237D, 238, 239, 241, and 431 for any year for which the credit is taken, the excess of the tax credit may be used as a credit against the taxpayer's tax liability for the taxes set forth in this section in subsequent years until exhausted; provided that the taxpayer may continue to claim the credit provided in this section if the qualified costs are incurred before June 1, [~~2009,~~] 2010, subject to the monetary ceilings in subsection (b).

(e) Every claim, including amended claims, for a tax credit under this section 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) [~~If, at any time during the seven-year period in which tax credits are earned under this section, the~~] If:

(1) At any time during the seven-year period in which tax credits are earned under this section, the costs incurred no longer meet the definition of qualified costs[~~,~~];

(2) The world-class aquarium and marine science and mammal research facility at Ko Olina Resort and Marina, as described in (c)(1), is not placed in service by December 31, 2013;

(3) The infrastructure or building improvements to commercial property utilized by a business within the geographic boundary of the leeward coast, as described in (c)(4), are not placed in service by December 31, 2013; or

(4) The affordable housing units, as described in (c)(5), are not placed in service by December 31, 2013;

the credits claimed under this section shall be recaptured. The recapture shall be equal to one hundred per cent of the total tax credits claimed under this section [~~for the preceding taxable year~~] for all taxable years in which a credit was claimed, in the aggregate; provided that, for purposes of paragraph (1), the amount of the credits recaptured shall apply only to those costs that no longer meet the definition of qualified costs[~~.~~] for the proceeding taxable year. The amount of the recaptured tax credits determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(g) If any credit is claimed under this section, then no taxpayer shall claim a credit under any chapter identified in this section for the same qualified costs for which a credit is claimed under this section.

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

Every qualified taxpayer, no later than March 31 of each year in which qualified costs were expended in the previous taxable year, shall submit a written, certified statement to the director of business, economic development, and tourism, in the form specified by the director of business, economic development, and tourism, identifying:

(1) Qualified costs, if any, expended in the previous taxable year;

(2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and

(3) The tax liability under this chapter and chapters 237, 237D, 238, 239, 241, and 431 against which the tax credits are claimed.

Any other law to the contrary notwithstanding, a statement submitted under this subsection shall be a public document.

(i) The department of business, economic development, and tourism shall maintain records of the names of taxpayers eligible for the credits and the total amount of qualified costs incurred from June 1, 2003, through May 31, [~~2009.~~] 2010. The department of business, economic development, and tourism shall verify all qualified costs and, upon each determination, shall issue a certificate to the taxpayer certifying:

(1) The amount of the qualified costs; and

(2) The amount of tax credit that the taxpayer is allowed to use for the taxable year.

The department of business, economic development, and tourism shall certify no more than $7,500,000 in credits in the aggregate for all taxpayers for each taxable year; provided that the department may verify qualified costs of no more than $75,000,000 from June 1, 2003, through May 31, [~~2009.~~] 2010. The taxpayer shall file the certificate with the taxpayer's return with the department of taxation. The department of business, economic development, and tourism shall certify credits in the order in which claims for the credit certification are received. Once the maximum aggregate amounts of credit have been certified, as provided in this section, the department of business, economic development, and tourism shall provide notice to the public that the maximum amounts of certifiable credits have been issued.

(j) As used in this section:

"Affordable for rent" means a dwelling that is rented to persons with income up to a maximum of one hundred forty per cent of the area median income.

"Affordable for sale" means a dwelling that is sold to persons with income up to a maximum of one hundred forty per cent of the area median income.

"Ko Olina Resort and Marina" means the six hundred forty-two acres reclassified to urban district by Decision and Order entered on September 12, 1985, in Docket A83-562, by the land use commission.

"Leeward coast" means the geographic area encompassed in the city and county of Honolulu's Waianae sustainable community plan.

"Makaha Resort" means the three hundred thirty-two acre property identified as tax map keys (1) 8-04-002 parcels 51, 52, 53, 54, 55, and 67 and (1) 8-04-029-142.

"Qualified costs" means any costs for plans, design, and construction, costs for equipment that is permanently affixed to a commercial building or structure, affordable for rent or for sale housing, and acquisition of facilities for educational purposes, up to a total of $75,000,000 in the aggregate, incurred after May 31, 2003, and before June 1, [~~2009,~~] 2010, at [~~either or both of~~]:

(1) Ko Olina Resort and Marina for the development of facilities for attractions and educational purposes,

and for infrastructure within the Ko Olina Resort and Marina that is directly related to those facilities, including a world-class aquarium, marine science and mammal research facilities, international sports training complex, a travel industry management intern campus, infrastructure for the transfer of ocean waters to the aquarium or marine mammal facilities, or both, seawater air conditioning, and other educational facilities developed or operated in cooperation with the University of Hawaii or other educational institutions; [~~or~~]

(2) Makaha Resort for the development of a training and educational facility within a working resort and hotel;

(3) A business located within the geographic boundary of the leeward coast, for revitalization purposes; or

(4) Affordable housing constructed within the geographic boundary of the leeward coast.

provided that "qualified costs" shall not include land acquisition costs [~~.~~] or any plans, design, construction, or equipment affixed to buildings that are located within a residence.

"Qualified taxpayer" means a person who fulfills the requirements of subsection (c). Notwithstanding any provision to the contrary in this chapter, taxpayers qualified under the requirements of subsection (c)(4) shall be eligible for a tax credit for qualified costs deductible from the taxpayers net income tax liability imposed by this chapter, and shall not be eligible to apply such credit to any tax liability imposed by chapters 237, 237D, 238, 239, 241, and 431."

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

SECTION 4. This Act shall take effect upon approval and apply to taxable years beginning after December 31, 2008.

INTRODUCED BY: Calvin K Y Say

BY REQUEST

JAN 22 2008

Report Title:
Ko Olina; Tax credits

Description:
Expands the current $7.5 million annual Ko Olina tax credit to allow the credits to be used for commercial activities and affordable housing built on the Leeward Coast. Clarifies recapture provisions to require recapture of credits certified where results of certain expenditures are not placed in service by December 31, 2013.

HB 3125

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO TAX CREDITS.

PURPOSE: Expands the activities that qualify for the tax credit in section 235-110.46, Hawaii Revised Statutes, extends the tax years for which the credit is available, and clarifies recapture provisions to require recapture of credits certified where results of certain expenditures are not placed in service by December 31, 2013.

MEANS: Amend section 235-110.46, Hawaii Revised Statutes.

JUSTIFICATION: The entire Leeward (Waianae) Coast has levels of poverty in excess of 20 percent in each of the census tracts comprising the Waianae community. This condition has existed for over 40 years despite the efforts of federal, state and City and County programs to alleviate the suffering or reduce the numbers of individuals and families impacted. To assist with community-based economic development and regional revitalization, the State is expanding the activities eligible to qualify for an existing Leeward region tax credit and extending the period of time when these credits may be claimed.

Impact on the public: Increases the number of activities in the Leeward Coast region that qualify for the tax credit, thereby stimulating regional investment which will revitalize the region, and extends the period of time the credit is available.

Impact on the department and other agencies: None.

GENERAL FUND: None.

HB 3125

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: BED-100.

OTHER AFFECTED AGENCIES: Department of Taxation.

EFFECTIVE DATE: Upon Approval.