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# A BILL FOR AN ACT

RELATING TO THE CAPITAL INFRASTRUCTURE TAX CREDIT.

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

1           SECTION 1. Section 235-17.5, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "~~+~~§235-17.5~~+~~ Capital infrastructure tax credit. (a)  
4 There shall be allowed to each taxpayer subject to the taxes  
5 imposed by this chapter a capital infrastructure tax credit that  
6 shall be deductible from the taxpayer's net income tax  
7 liability, if any, imposed by this chapter for the taxable year  
8 in which the capital infrastructure costs were paid or incurred.

9           (b) For the purpose of this section:

10           ~~["Base investment" means the amount of money invested by an~~  
11 ~~investor.]~~

12           "Capital infrastructure costs" means capital expenditures,  
13 as used in section 263 of the Internal Revenue Code and the  
14 regulations promulgated thereunder~~[; provided that the]~~, or  
15 capital expenditures ~~[are]~~ for real property ~~[and]~~, fixtures,  
16 structures, machinery, equipment, or capital assets that are  
17 paid or incurred in connection with the displaced tenant's move  
18 of the tenant's current active trade or business to the tenant's



1 new location[+] within Honolulu harbor; provided [~~further~~] that  
2 the capital infrastructure costs shall not include amounts for  
3 which another credit is claimed[-] or any amounts received in  
4 any form from the State.

5 "Net income tax liability" means income tax liability  
6 reduced by all other credits allowed under this chapter.

7 "Qualified infrastructure tenant" means a business:

8 (1) That currently owns capital or property or maintains  
9 an office, operations, or facilities at the former  
10 Kapalama military reservation site;

11 (2) Whose principal business is maritime, and waterfront  
12 dependent, and is included under the State's plan to  
13 relocate the business to piers twenty-four through  
14 twenty-eight within Honolulu harbor; and

15 (3) [~~Will~~] That will be displaced and relocated by the  
16 State pursuant to the Kapalama container terminal  
17 project.

18 (c) The amount of the tax credit shall be equal to fifty  
19 per cent of the capital infrastructure costs paid or incurred by  
20 the qualified infrastructure tenant during the taxable year, up  
21 to a maximum [~~of \$2,500,000 in capital infrastructure costs in~~



1 ~~any taxable year, provided that the qualified infrastructure~~  
2 ~~tenant shall notify the taxpayer claiming the credit under~~  
3 ~~subsection (a) of the amount of capital infrastructure costs~~  
4 ~~which may be claimed.] credit of \$2,500,000 per qualified~~  
5 ~~infrastructure tenant per taxable year. If the capital~~  
6 ~~infrastructure costs paid or incurred by the qualified~~  
7 ~~infrastructure tenant business result in a tax credit in excess~~  
8 ~~of \$2,500,000 in any taxable year, the excess capital~~  
9 ~~infrastructure costs may be carried over to a subsequent tax~~  
10 ~~year or years, until exhausted, for generation of the credit;~~  
11 provided that:

- 12 (1) A qualified infrastructure tenant may form a special  
13 purpose entity for the purposes of raising investor  
14 capital and claiming the credit on behalf of the  
15 qualified infrastructure tenant;
- 16 (2) The qualified infrastructure tenant, together with all  
17 of its special purpose entities, including all  
18 partners and members of the qualified infrastructure  
19 tenant and its special purpose entities, shall not  
20 claim any credit in any one taxable year that exceeds  
21 \$2,500,000; and



1       (3) In no event shall a qualified infrastructure tenant or  
2       any of its special purpose entities or any other  
3       taxpayer claim a credit under this section after  
4       December 31, 2019.

5       (d) In the case of an entity taxed as a partnership,  
6 credit shall be determined at the entity level, but distribution  
7 and share of the credit may be determined notwithstanding  
8 section 704 or section 706 of the Internal Revenue Code.

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

20       (f) This section shall not apply to taxable years  
21 beginning after December 31, 2019.



1 (g) Any credit claimed under this section shall be  
2 recaptured following the close of the taxable year for which the  
3 credit is claimed if ~~within~~   :

4 (1) Within three years:

5 ~~[(1)]~~ (A) The qualified infrastructure tenant fails to  
6 continue the line of business it conducted as of  
7 July 1, 2014; or

8 ~~[(2)]~~ (B) The interest in the qualified infrastructure  
9 tenant, whether in whole or in part, has been  
10 sold, exchanged, withdrawn, or otherwise disposed  
11 of by the taxpayer claiming a credit under this  
12 section~~[-]~~; or

13 (2) The qualified infrastructure tenant fails to relocate  
14 from the former Kapalama military reservation site to  
15 another location, pursuant to a lease with the  
16 department of transportation, within ninety days of  
17 the execution of the lease.

18 The recapture shall be equal to one hundred per cent of the  
19 amount of the total tax credit claimed under this section in the  
20 preceding five taxable years, and shall be added to the



1 taxpayer's tax liability for the taxable year in which the  
2 recapture occurs pursuant to this subsection.

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

9 (i) Any taxpayer claiming a tax credit under this section  
10 shall, within ninety days of the end of the calendar year in  
11 which costs for which the credit is properly claimable, submit  
12 the following information to the department of taxation:

13 (1) The amount of the eligible costs for that year for  
14 which the tax credit may be claimed; and

15 (2) The qualified infrastructure tenant incurring the  
16 costs.

17 Failure to timely submit the information shall be subject to a  
18 penalty of \$5,000 per month or a fraction thereof, not to exceed  
19 \$25,000."



1 SECTION 2. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 3. This Act shall take effect upon its approval.



**Report Title:**

Capital Infrastructure Tax Credit; Kapalama Container Terminal Project; Displaced Tenants

**Description:**

Includes structures, machinery, equipment, and capital assets in the definition of capital infrastructure costs for the Capital Infrastructure Tax Credit. Sets cap on credit per taxable year per qualified infrastructure tenant including all partners and members of the qualified infrastructure tenant and its special purpose entities. Specifies that excess tax credits may be carried forward. Recaptures credit if qualified infrastructure tenant fails to relocate within a certain period of time after executing a lease with the Department of Transportation. Specifies taxpayer reporting requirements. Provides penalties for failure to report information. (HB591 CD1)

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