

JAN 24 2019

A BILL FOR AN ACT

RELATING TO THE 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
18 credit under this section may be claimed whether or not the

S.B. NO. 1183

1 taxpayer claims a federal low-income housing tax credit pursuant
2 to section 42 of the Internal Revenue Code.

3 (c) For any qualified low-income building that receives an
4 allocation prior to January 1, 2017, the amount of the low-
5 income housing tax credit that may be claimed by a taxpayer as
6 provided in subsection (b) shall be fifty per cent of the
7 applicable percentage of the qualified basis of each building
8 located in Hawaii. The applicable percentage shall be
9 calculated as provided in section 42(b) of the Internal Revenue
10 Code.

11 (d) For any qualified low-income building that receives an
12 allocation after December 31, 2016, the amount of the low-income
13 housing tax credits that may be claimed by a taxpayer as
14 provided in subsection (b) shall be:

15 (1) For the first five years, equal to the amount of the
16 federal low-income housing tax credits that have been
17 allocated to the qualified low-income building
18 pursuant to section 42(b) of the Internal Revenue Code
19 by the corporation, provided that, if in any year the
20 aggregate amount of credits under this subsection
21 would be such that it would exceed the amount of state
22 credits allocated by the corporation for the qualified

S.B. NO. 1183

1 low-income building, the credits allowed for that year
2 shall be limited to such amount necessary to bring the
3 total of such state credits (including the current
4 year state credits) to the full amount of state
5 credits allocated to the qualified low-income building
6 by the corporation;

7 (2) For the sixth year, zero, except that, if, and only
8 if, the amount of credits allowed for the first five
9 years is less than the full amount of state credits
10 allocated by the corporation for the qualified low-
11 income building, an amount necessary to bring the
12 amount of the state credits to the full amount
13 allocated by the corporation for the qualified low-
14 income building; and

15 (3) For any remaining years, zero.

16 (e) If a subaward under section 1602 of the American
17 Recovery and Reinvestment Act of 2009, Public Law 111-5, has
18 been issued for a qualified low-income building, the amount of
19 the low-income housing tax credits that may be claimed by a
20 taxpayer as provided in subsection (b) shall be equal to fifty
21 per cent of the amount of the federal low-income housing tax
22 credits that would have been allocated to the qualified low-

S.B. NO. 1183

1 income building pursuant to section 42(b) of the Internal
2 Revenue Code by the corporation had a subaward not been awarded
3 with respect to the qualified low-income building.

4 (f) For the purposes of this section, the determination
5 of:

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

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

9 (3) Qualified low-income housing project shall be made
10 under section 42(g); and

11 (4) Recapture of credit shall be made under section 42(j),
12 except that the tax for the taxable year shall be
13 increased under section 42(j)(1) only with respect to
14 credits that were used to reduce state income taxes;
15 and

16 (5) [~~Application~~] Except as provided under subsection
17 (j)(1), application of at-risk rules shall be made
18 under section 42(k);

19 of the Internal Revenue Code.

20 (g) As provided in section 42(e), rehabilitation
21 expenditures shall be treated as a separate new building and
22 their treatment under this section shall be the same as in

S.B. NO. 1183

1 section 42(e). The definitions and special rules relating to
2 credit period in section 42(f) and the definitions and special
3 rules in section 42(i) shall be operative for the purposes of
4 this section.

5 (h) The state housing credit ceiling under section 42(h)
6 shall be zero for the calendar year immediately following the
7 expiration of the federal low-income housing tax credit program
8 and for any calendar year thereafter, except for the carryover
9 of any credit ceiling amount for certain projects in progress
10 which, at the time of the federal expiration, meet the
11 requirements of section 42.

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

17 A tax credit under this section that exceeds the taxpayer's
18 income tax liability may be used as a credit against the
19 taxpayer's income tax liability in subsequent years until
20 exhausted. All claims for a tax credit under this section shall
21 be filed on or before the end of the twelfth month following the
22 close of the taxable year for which the credit may be claimed.

S.B. NO. 1183

1 Failure to properly and timely claim the credit shall constitute
2 a waiver of the right to claim the credit. A taxpayer may claim
3 a credit under this section only if the building or project is a
4 qualified low-income housing building or a qualified low-income
5 housing project under section 42 of the Internal Revenue Code.

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

10 (j) For a qualified low-income building that receives an
11 allocation of credits after December 31, 2019:

12 (1) Section 453 (with respect to the installment method,
13 section 465 (with respect to deductions limited to
14 amount at risk), and section 469 (with respect to
15 passive activity losses and credits limited) of the
16 Internal Revenue Code shall not be operative with
17 respect to investments made in buildings and projects
18 claiming the credit under this section; and

19 (2) All allocations to partners of their distributive
20 shares of income, loss, and deductions under chapter
21 235 shall be made in proportion to the partner's
22 allocation of credits under this section; and

S.B. NO. 1183

1 (3) The amount of state credits allocated by the
2 corporation for the qualified low-income building
3 shall not exceed fifty per cent of the amount of
4 federal credits allocated to the 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 section
14 201H-86. If the taxpayer elects to receive the loan pursuant to
15 section 201H-86, the taxpayer shall not be eligible for the
16 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. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

S.B. NO. 1183

1 SECTION 3. This Act, upon its approval, shall take effect
2 on January 1, 2020, and shall apply to qualified low-income
3 buildings that receive an allocation of credits beginning after
4 December 31, 2019.

5

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INTRODUCED BY: *Mun. Ct.*

7

BY REQUEST

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S.B. NO. 1183

Report Title:

Low-Income Housing Tax Credit

Description:

Specifies that certain provisions of the Internal Revenue Code related to at-risk rules and deductions and to passive activity loss do not apply with respect to claims for the state low-income housing tax credit.

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

JUSTIFICATION SHEET

DEPARTMENT: Business, Economic Development, and Tourism

TITLE: A BILL FOR AN ACT RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.

PURPOSE: To expand the pool of potential investors in the State Low-Income Housing Tax Credit (LIHTC) by repealing the application of the at-risk rule and passive activity loss rule to the State LIHTC.

MEANS: Amend section 235-110.8, Hawaii Revised Statutes.

JUSTIFICATION: Under existing law, the State LIHTC is difficult to use for Hawaii taxpayers other than large corporations or financial institutions. This lowers demand, and, therefore, the equity that can be generated, for each dollar of State LIHTC that is issued. Act 129, Session Laws of Hawaii 2016, addressed one aspect of this issue by accelerating the State LIHTC from 10 to 5 years. This makes the State LIHTC available to smaller taxpayers who are more able to forecast their income tax liability over a 5-year rather than a 10-year time span.

This measure is intended to further expand the pool of Hawaii taxpayers that find the State LIHTC to be an attractive investment by eliminating the applicability of the at-risk and passive activity loss rules to the State LIHTC. This allows affordable rental housing developers to de-couple the State LIHTC from an ownership share in affordable rental project being financed, thereby allowing any Hawaii taxpayer with income tax liability to use the State LIHTC. Doing so will drastically increase demand for the State LIHTC, and therefore, the dollar-per-dollar value of equity generated by the State LIHTC for the affordable rental housing project being developed.

Impact on the public: Will help reduce the shortage of affordable rental housing units by increasing the amount of equity generated by the State LIHTC.

Impact on the department and other agencies: The Department of Taxation may have additional enforcement duties to the extent that the proposed amendments take State income tax law out of conformity with the Federal Internal Revenue Code.

GENERAL FUND: Indeterminate.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: BED 160.

OTHER AFFECTED
AGENCIES: Department of Taxation.

EFFECTIVE DATE: January 1, 2020, and shall apply to qualified low-income buildings awarded credits beginning after December 31, 2019.