HOUSE OF REPRESENTATIVES
TWENTY-FIFTH LEGISLATURE, 2009
STATE OF HAWAII

H.B. NO. 1668

A BILL FOR AN ACT

RELATING TO ATTRACTIONS AND EDUCATIONAL FACILITIES TAX CREDIT.

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

SECTION 1. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that section 704(b)(2) shall not apply to:

(1) Allocations of the high technology business investment tax credit allowed by section 235-110.9;

(2) Allocations of net operating loss pursuant to section 235-111.5; or

[~~(3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or~~

~~(4)~~] (3) Allocations of low-income housing tax credits among partners under section 235-110.8."

SECTION 2. Section 235-110.46, Hawaii Revised Statutes, is repealed.

["~~[§235-110.46] **Attractions and educational facilities tax credit; Ko Olina Resort and Marina; Makaha Resort.** (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. The tax credit shall be deductible from the taxpayer's net income tax liability, if any, imposed by this chapter and, 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, 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).~~

~~(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, 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 six-year period in which tax credits are earned under this section, the costs incurred no longer meet the definition of qualified costs, 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; provided that the amount of the credits recaptured shall apply only to those costs that no longer meet the definition of qualified costs. 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. 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. The taxpayer shall file the certificate with the taxpayer's return with the department of taxation.~~

~~(j) As used in this section:~~

~~"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.~~

~~"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 building or structure, 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, 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;~~

~~provided that "qualified costs" shall not include land acquisition costs.~~

~~"Qualified taxpayer" means a person who fulfills the requirements of subsection (c).~~"]

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

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: ______________________

JAN 28 2009

H.B. NO. 1668

Report Title:
Tax Credit; Attractions and Educational Facilities; Ko Olina Resort; Makaha Resort

Description:
Repeals the attractions and educational facilities tax credit for Ko Olina Resort and Marina and Makaha Resort. Effective upon approval.