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# A BILL FOR AN ACT

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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

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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

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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-

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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 of at-risk rules shall be made under~~  
17 ~~section 42(k);]~~

18 of the Internal Revenue Code.

19 (g) As provided in section 42(e), rehabilitation  
20 expenditures shall be treated as a separate new building and  
21 their treatment under this section shall be the same as in  
22 section 42(e). The definitions and special rules relating to

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

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

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

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

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

5 ~~[Section 469 (with respect to passive activity losses and~~  
6 ~~credits limited) of the Internal Revenue Code shall be applied~~  
7 ~~in claiming the credit under this section.]~~

8 (j) For a qualified low-income building that receives an  
9 allocation of credits after December 31, 2018:

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

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

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1        [~~(j)~~] (k) In lieu of the credit awarded under this section  
2 for a qualified low-income building that has been awarded  
3 federal credits that are subject to the state housing credit  
4 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,  
5 federal credits that are allocated pursuant to section 42(h)(4)  
6 of the Internal Revenue Code, or a subaward under section 1602  
7 of the American Recovery and Reinvestment Act of 2009, Public  
8 Law 111-5, the taxpayer owning the qualified low-income building  
9 may make a request to the corporation for a loan under section  
10 201H-86. If the taxpayer elects to receive the loan pursuant to  
11 section 201H-86, the taxpayer shall not be eligible for the  
12 credit under this section.

13        [~~(k)~~] (l) The director of taxation may adopt any rules  
14 under chapter 91 and forms necessary to carry out this section."

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

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1       SECTION 3. This Act, upon its approval, shall take effect  
2 on January 1, 2019, and shall apply to qualified low-income  
3 buildings that receive an allocation of credits beginning after  
4 December 31, 2018.

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INTRODUCED BY: \_\_\_\_\_



7

BY REQUEST

JAN 22 2018



# H.B. NO. 2332

**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, 2019, and shall apply to qualified low-income buildings awarded credits beginning after December 31, 2018.