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# 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



1 credit under this section may be claimed regardless of whether  
2 [~~or not~~] the taxpayer claims a federal low-income housing tax  
3 credit pursuant to section 42 of the Internal Revenue Code.

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

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

16 (1) For the first five years, equal to the amount of the  
17 federal low-income housing tax credits that have been  
18 allocated to the qualified low-income building  
19 pursuant to section 42(b) of the Internal Revenue Code  
20 by the corporation[7]; provided that[7] if in any year  
21 the aggregate amount of credits under this subsection



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

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

17 (3) For any remaining years, zero.

18 (e) If a subaward under section 1602 of the American  
19 Recovery and Reinvestment Act of 2009, Public Law 111-5, has  
20 been issued for a qualified low-income building, the amount of  
21 the low-income housing tax credits that may be claimed by a



1 taxpayer as provided in subsection (b) shall be equal to fifty  
2 per cent of the amount of the federal low-income housing tax  
3 credits that would have been allocated to the qualified low-  
4 income building pursuant to section 42(b) of the Internal  
5 Revenue Code by the corporation had a subaward not been awarded  
6 with respect to the qualified low-income building.

7 (f) For the purposes of this section, the determination  
8 of:

- 9 (1) Qualified basis and qualified low-income building  
10 shall be made under section 42(c);
- 11 (2) Eligible basis shall be made under section 42(d);
- 12 (3) Qualified low-income housing project shall be made  
13 under section 42(g); and
- 14 (4) Recapture of credit shall be made under section 42(j),  
15 except that the tax for the taxable year shall be  
16 increased under section 42(j)(1) only with respect to  
17 credits that were used to reduce state income taxes;  
18 [and
- 19 ~~(5) Application of at risk rules shall be made under~~  
20 ~~section 42(k);]~~

21 of the Internal Revenue Code.



1 (g) As provided in section 42(e) [-] of the Internal  
2 Revenue Code, rehabilitation expenditures shall be treated as a  
3 separate new building and their treatment under this section  
4 shall be the same as in section 42(e) [-] of the Internal Revenue  
5 Code. The definitions and special rules relating to credit  
6 period in section 42(f) and the definitions and special rules in  
7 section 42(i) of the Internal Revenue Code shall be operative  
8 for the purposes of this section.

9 (h) The state housing credit ceiling under section 42(h)  
10 of the Internal Revenue Code shall be zero for the calendar year  
11 immediately following the expiration of the federal low-income  
12 housing tax credit program and for any calendar year thereafter,  
13 except for the carryover of any credit ceiling amount for  
14 certain projects in progress which, at the time of the federal  
15 expiration, meet the requirements of section 42[-] of the  
16 Internal Revenue Code.

17 (i) The credit allowed under this section shall be claimed  
18 against net income tax liability for the taxable year. For the  
19 purpose of deducting this tax credit, net income tax liability  
20 means net income tax liability reduced by all other credits  
21 allowed the taxpayer under this chapter.



1 A tax credit under this section that exceeds the taxpayer's  
2 income tax liability may be used as a credit against the  
3 taxpayer's income tax liability in subsequent years until  
4 exhausted. All claims for a tax credit under this section shall  
5 be filed on or before the end of the twelfth month following the  
6 close of the taxable year for which the credit may be claimed.  
7 Failure to properly and timely claim the credit shall constitute  
8 a waiver of the right to claim the credit. A taxpayer may claim  
9 a credit under this section only if the building or project is a  
10 qualified low-income housing building or a qualified low-income  
11 housing project under section 42 of the Internal Revenue Code.

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

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

17 (1) Section 453 (with respect to the installment method),  
18 section 465 (with respect to deductions limited to  
19 amount at risk), and section 469 (with respect to  
20 passive activity losses and credits limited) of the  
21 Internal Revenue Code shall not be operative with



1           respect to investments made in buildings and projects  
2           claiming the credit under this section;

3           (2) All allocations to partners of their distributive  
4           shares of income, loss, and deductions under this  
5           chapter shall be made in proportion to the partner's  
6           allocation of credits under this section; and

7           (3) In no event shall the amount of state credits  
8           allocated by the corporation for the qualified low-  
9           income building exceed fifty per cent of the amount of  
10          federal credits allocated to such building.

11          [~~(j)~~] (k) In lieu of the credit awarded under this section  
12 for a qualified low-income building that has been awarded  
13 federal credits that are subject to the state housing credit  
14 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,  
15 federal credits that are allocated pursuant to section 42(h)(4)  
16 of the Internal Revenue Code, or a subaward under section 1602  
17 of the American Recovery and Reinvestment Act of 2009, Public  
18 Law 111-5, the taxpayer owning the qualified low-income building  
19 may make a request to the corporation for a loan under section  
20 201H-86. If the taxpayer elects to receive the loan pursuant to



1 section 201H-86, the taxpayer shall not be eligible for the  
2 credit under this section.

3 [~~(k)~~] (l) The director of taxation may adopt any rules  
4 ~~[under]~~ pursuant to chapter 91 and forms necessary to carry out  
5 this section.

6 (m) For purposes of this section, "corporation" means the  
7 Hawaii housing finance and development corporation."

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

10 SECTION 3. This Act shall take effect on January 1, 2050,  
11 and shall apply to taxable years beginning after December 31,  
12 2018; provided that the amendments made to section 235-110.8,  
13 Hawaii Revised Statutes, by section 1 of this Act shall not be  
14 repealed when that section is reenacted on December 31, 2021,  
15 pursuant to section 4 of Act 129, Session Laws of Hawaii 2016.



**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. Caps the state low-income housing tax credit at fifty per cent of the federal low-income housing tax credit. Takes effect on 1/1/2050. (SD1)

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

