HOUSE OF REPRESENTATIVES
TWENTY-NINTH LEGISLATURE, 2018
STATE OF HAWAII

H.B. NO. 2332
H.D. 1
S.D. 2

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 <u>regardless of</u> 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[,]; provided that[,] 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] the amount necessary to

5   bring the total of [such] the state credits (including

6   the current year state credits) to the full amount of

7   state credits allocated to the qualified low-income

8   building 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) [÷] of the Internal

11   Revenue Code;

12   (2)   Eligible basis shall be made under section 42(d) [÷] of

13   the Internal Revenue Code;

14   (3)   Qualified low-income housing project shall be made

15   under section 42(g) [÷] of the Internal Revenue Code;

16   and

17   (4)   Recapture of credit shall be made under section

18   42(j) [÷] of the Internal Revenue Code, except that the

19   tax for the taxable year shall be increased under

20   section 42(j)(1) of the Internal Revenue Code only

1   with respect to credits that were used to reduce state

2   income taxes[~~; and~~

3   ~~(5) Application of at-risk rules shall be made under~~

4   ~~section 42(k);~~

5 ~~of the Internal Revenue Code~~].

6   (g) As provided in section 42(e)[~~;~~] <u>of the Internal</u>

7 <u>Revenue Code,</u> rehabilitation expenditures shall be treated as a

8 separate new building and their treatment under this section

9 shall be the same as in section 42(e)[~~;~~] <u>of the Internal Revenue</u>

10 <u>Code.</u> The definitions and special rules relating to credit

11 period in section 42(f) and the definitions and special rules in

12 section 42(i) <u>of the Internal Revenue Code</u> shall be operative

13 for the purposes of this section.

14   (h) The state housing credit ceiling under section 42(h)

15 <u>of the Internal Revenue Code</u> shall be zero for the calendar year

16 immediately following the expiration of the federal low-income

17 housing tax credit program and for any calendar year thereafter,

18 except for the carryover of any credit ceiling amount for

19 certain projects in progress which, at the time of the federal

20 expiration, meet the requirements of section 42[~~;~~] <u>of the</u>

21 <u>Internal Revenue Code.</u>

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1   (i) The credit allowed under this section shall be claimed

2   against net income tax liability for the taxable year. For the

3   purpose of deducting this tax credit, net income tax liability

4   means net income tax liability reduced by all other credits

5   allowed the taxpayer under this chapter.

6   A tax credit under this section that exceeds the taxpayer's

7   income tax liability may be used as a credit against the

8   taxpayer's income tax liability in subsequent years until

9   exhausted. All claims for a tax credit under this section shall

10   be filed on or before the end of the twelfth month following the

11   close of the taxable year for which the credit may be claimed.

12   Failure to properly and timely claim the credit shall constitute

13   a waiver of the right to claim the credit. A taxpayer may claim

14   a credit under this section only if the building or project is a

15   qualified low-income housing building or a qualified low-income

16   housing project under section 42 of the Internal Revenue Code.

17   [~~Section 469 (with respect to passive activity losses and~~

18   ~~credits limited) of the Internal Revenue Code shall be applied~~

19   ~~in claiming the credit under this section.~~]

20   (j) For a qualified low-income building that receives an

21   allocation of credits after December 31, 2018:

1   (1)   Section 453 (with respect to the installment method),

2   section 465 (with respect to deductions limited to

3   amount at risk), and section 469 (with respect to

4   passive activity losses and credits limited) of the

5   Internal Revenue Code shall not be operative with

6   respect to investments made in buildings and projects

7   claiming the credit under this section;

8   (2)   All allocations to partners of their distributive

9   shares of income, loss, and deductions under this

10   chapter shall be made in proportion to the partner's

11   allocation of credits under this section; and

12   (3)   In no event shall the amount of state credits

13   allocated by the corporation for the qualified low-

14   income building exceed fifty per cent of the amount of

15   federal credits allocated to the building.

16   [(j)] (k)   In lieu of the credit awarded under this section

17   for a qualified low-income building that has been awarded

18   federal credits that are subject to the state housing credit

19   ceiling under section 42(h)(3)(C) of the Internal Revenue Code,

20   federal credits that are allocated pursuant to section 42(h)(4)

21   of the Internal Revenue Code, or a subaward under section 1602

1   of the American Recovery and Reinvestment Act of 2009, Public

2   Law 111-5, the taxpayer owning the qualified low-income building

3   may make a request to the corporation for a loan under section

4   201H-86. If the taxpayer elects to receive the loan pursuant to

5   section 201H-86, the taxpayer shall not be eligible for the

6   credit under this section.

7   [(k)] (l) The director of taxation may adopt any rules

8   [under] pursuant to chapter 91 and forms necessary to carry out

9   this section.

10   (m) For purposes of this section, "corporation" means the

11   Hawaii housing finance and development corporation."

12   SECTION 2. Statutory material to be repealed is bracketed

13   and stricken. New statutory material is underscored.

14   SECTION 3. This Act shall take effect on January 1, 2050,

15   and shall apply to taxable years beginning after December 31,

16   2018; provided that the amendments made to section 235-110.8,

17   Hawaii Revised Statutes, by section 1 of this Act shall not be

18   repealed when that section is reenacted on December 31, 2021,

19   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 50% of the federal low-income housing tax credit. Effective 1/1/2050. (SD2)

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

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