

# HB 2472, HD 1

Measure Title:	RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.
Report Title:	Tax Credits; 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. (HB2472 HD1)
Companion:	<a href="#">SB2402</a>
Package:	None
Current Referral:	HOU, WAM
Introducer(s):	BROWER, CREAGAN, GATES, ICHIYAMA, JOHANSON, KEOHOKALOLE, LEARMONT, LOPRESTI, MCKELVEY, MORIKAWA, NAKAMURA, NISHIMOTO, OHNO, ONISHI, QUINLAN, TAKAYAMA, TODD, Evans, San Buenaventura



**STATE OF HAWAII**

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
677 QUEEN STREET, SUITE 300  
Honolulu, Hawaii 96813  
FAX: (808) 587-0600

IN REPLY REFER TO:

Statement of  
**Craig K. Hirai**  
Hawaii Housing Finance and Development Corporation  
Before the

**SENATE COMMITTEE ON HOUSING**

March 13, 2018 at 2:45 p.m.  
State Capitol, Room 225

In consideration of  
**H.B. 2472, H.D. 1**  
**RELATING TO THE LOW-INCOME HOUSING TAX CREDIT.**

The HHFDC ***supports*** H.B. 2472, H.D. 1. This bill, which is similar to H.B. 2332, H.D. 1, proposes changes to the State Low-Income Housing Tax Credit (LIHTC) to increase the amount of equity generated by the sale of the LIHTC for affordable rental housing developments. We also support the Department of Taxation's proposed amendment, which would add the language from page 7, lines 5 through 8 of H.B. 2332, H.D. 1 to this bill, and reads as follows:

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

This bill expands the pool of Hawaii taxpayers that can invest in the State LIHTC to any Hawaii taxpayer with Hawaii income tax liability. To increase the production of LIHTC projects, the result will be an increase in the supply of federal and State LIHTC. A federal LIHTC can be sold nationally, but a State LIHTC can only be sold to investors who owe Hawaii taxes. If we do not increase the number of Hawaii taxpayers who can invest in State LIHTCs, there will be an oversupply which will lower the price the existing pool of Hawaii LIHTC investors are willing to pay for a State LIHTC. Any increased pricing for the State LIHTC under this bill will generate more equity that can be spent on affordable rental housing development.

Thank you for the opportunity to testify.



**STATE OF HAWAII**  
**DEPARTMENT OF TAXATION**  
830 PUNCHBOWL STREET, ROOM 221  
HONOLULU, HAWAII 96813  
<http://tax.hawaii.gov/>  
Phone: (808) 587-1540 / Fax: (808) 587-1560  
Email: Tax.Directors.Office@hawaii.gov

To: The Honorable Will Espero, Chair  
and Members of the Senate Committee on Housing

Date: Tuesday, March 13, 2018  
Time: 2:45 P.M.  
Place: Conference Room 225, State Capitol

From: Linda Chu Takayama, Director  
Department of Taxation

Re: H.B. 2472, H.D. 1, Relating to Low Income Housing Tax Credit

The Department supports the intent of this measure, defers to the Hawaii Housing Finance and Development Corporation (HHFDC) on the merits of this bill, and provides the following comments regarding H.B. 2472, H.D. 1, for your consideration. A summary of the key provisions of this measure are as follows:

- Eliminates conformity to the following Internal Revenue Code (IRC) sections such that these provisions do not apply to investments in buildings and projects claiming the credit:
  - Sections 42(k) and 465 - relating to the at-risk rules;
  - Section 469 – relating to the passive activity loss (PAL) limitations; and
  - Section 704-relating to partner’s distributive share as it relates to State allocations.
- Has a defective effective date of January 1, 2050, but otherwise and applies to qualified low-income buildings awarded credits after December 31, 2018.

First, the Department notes that it generally prefers conformity to the IRC where possible, as this provides clear guidance to both the Department and to taxpayers, since there is substantial guidance issued in the form of rules and regulations issued by the Internal Revenue Service (IRS), as well as court decisions regarding the various sections of the IRC. Conformity greatly minimizes the burden on the Department and taxpayers, thereby assisting compliance with Hawaii's tax law.

Second, there are two types of at-risk rules that this measure deletes: (1) IRC subsection 42(k), which relates to the credit basis of the building upon which the amount of the credit is calculated and (2) IRC section 465, which relates to the limit on deductions that can be taken based on an investment in an entity that owns a low income housing building.

Non-conformity to IRC section 42(k) may result in unintended consequences. Under current law, nonrecourse financing is added to the credit basis of the building only if the property was not acquired by the entity from a related person, and the financing is received from a lender in the business of lending (other than the seller of the property) or a government agency. The amount of the State credit is also set as 50% of the federal credits allocated. Nonconformity to IRC section 42(k) would allow a taxpayer to acquire the property from a related person at an inflated price using nonrecourse liability and increase the basis amount upon which the credit is calculated. To prevent this, the Department suggests that a new subsection (j)(3) be added as follows:

(3) In no event shall the amount of state credits allocated by the corporation for the qualified low income building exceed 50% of the amount of federal credits allocated to such building.

Finally, the Department is able to implement the measure with its current effective date. Thank you for the opportunity to comments.

Testimony by InState Partners

In Support of HB2472 HD1  
Relating to the Low-Income Housing Tax Credit  
Senate Committee on Housing  
Tuesday, March 13, 2018, 2:45PM; CR225

The Honorable Will Espero, Chair and Committee Members:

My name is Rachel Stern, with InState Partners, testifying in support of HB2472 HD1 Relating to the Low-Income Housing Tax Credit.

The purpose of this bill is to build on the incentives provided under Act 129 (2016) by decoupling from the at-risk and passive activity loss limitations under federal income tax law. These federal tax limitations only permit large corporations to benefit from the credit, excluding most Hawaii individual and small businesses from participating. This bill therefore expands the investor pool to be more inclusive of the typical Hawaii investor.

InState Partners strongly supports this measure, and urges this committee to pass this measure out of committee. We also defer to the Hawaii Housing Finance and Development Corporation on the technical issues.

Thank you for this opportunity to testify.

**HB-2472-HD-1**

Submitted on: 3/12/2018 2:33:16 PM

Testimony for HOU on 3/13/2018 2:45:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments: