
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 allocated by the entity in any
2 manner agreed to by the parties regardless of whether individual
3 or entity to receive the credit is deemed to be a partner for
4 federal income tax purposes, so long as the individual or entity
5 is deemed to be a partner pursuant to section 425E-301. The
6 credit may be claimed whether or not the taxpayer [~~claims~~] is
7 eligible to be allocated a federal low-income housing tax credit
8 pursuant to section 42 of the Internal Revenue Code. For
9 individuals or entities that are deemed to be a partner of the
10 taxpayer pursuant to section 425E-301, those individuals or
11 entities shall have been admitted to the taxpayer pursuant to
12 section 425E-301 on or prior to the date of filing their
13 respective tax return, including any amendments thereto, with
14 respect to the year of the tax credit.

15 (c) For any qualified low-income building that receives an
16 allocation prior to January 1, 2017, the amount of the low-
17 income housing tax credit that may be claimed by a taxpayer as
18 provided in subsection (b) shall be fifty per cent of the
19 applicable percentage of the qualified basis of each building
20 located in Hawaii. The applicable percentage shall be



1 calculated as provided in section 42(b) of the Internal Revenue
2 Code.

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

7 (1) For the first five years, equal to the amount of the
8 federal low-income housing tax credits that have been
9 allocated to the qualified low-income building
10 pursuant to section 42(b) of the Internal Revenue Code
11 by the corporation, provided that, if in any year the
12 aggregate amount of credits under this subsection
13 would be such that it would exceed the amount of state
14 credits allocated by the corporation for the qualified
15 low-income building, the credits allowed for that year
16 shall be limited to such amount necessary to bring the
17 total of such state credits (including the current
18 year state credits) to the full amount of state
19 credits allocated to the qualified low-income building
20 by the corporation;



1 (2) For the sixth year, zero, except that, if, and only
2 if, the amount of credits allowed for the first five
3 years is less than the full amount of state credits
4 allocated by the corporation for the qualified low-
5 income building, an amount necessary to bring the
6 amount of the state credits to the full amount
7 allocated by the corporation for the qualified low-
8 income building; and

9 (3) For any remaining years, zero.

10 (e) If a subaward under section 1602 of the American
11 Recovery and Reinvestment Act of 2009, Public Law 111-5, has
12 been issued for a qualified low-income building, the amount of
13 the low-income housing tax credits that may be claimed by a
14 taxpayer as provided in subsection (b) shall be equal to fifty
15 per cent of the amount of the federal low-income housing tax
16 credits that would have been allocated to the qualified low-
17 income building pursuant to section 42(b) of the Internal
18 Revenue Code by the corporation had a subaward not been awarded
19 with respect to the qualified low-income building.

20 (f) For the purposes of this section, the determination
21 of:



- 1 (1) Qualified basis and qualified low-income building
2 shall be made under section 42(c);
- 3 (2) Eligible basis shall be made under section 42(d);
- 4 (3) Qualified low-income housing project shall be made
5 under section 42(g);
- 6 (4) Recapture of credit shall be made under section 42(j),
7 except that the tax for the taxable year shall be
8 increased under section 42(j)(1) only with respect to
9 credits that were used to reduce state income taxes;
10 and
- 11 (5) ~~[Application]~~ Except as provided under subsection
12 (j)(1), application of at-risk rules shall be made
13 under section 42(k);
- 14 of the Internal Revenue Code.
- 15 (g) As provided in section 42(e), rehabilitation
16 expenditures shall be treated as a separate new building and
17 their treatment under this section shall be the same as in
18 section 42(e). The definitions and special rules relating to
19 credit period in section 42(f) and the definitions and special
20 rules in section 42(i) shall be operative for the purposes of
21 this section.



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

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

13 A tax credit under this section that exceeds the taxpayer's
14 income tax liability may be used as a credit against the
15 taxpayer's income tax liability in subsequent years until
16 exhausted. All claims for a tax credit under this section shall
17 be filed on or before the end of the twelfth month following the
18 close of the taxable year for which the credit may be claimed[-]
19 and shall include a copy of Form 8609 issued by the corporation
20 with respect to the building; provided that with respect to the
21 first year that the credit is claimed for a qualified low-income



1 housing project, if the taxpayer has not yet received the Form
2 8609 prior to the time the taxpayer files its original tax
3 return claiming the credit under this section, the taxpayer may
4 claim the credit based upon the amount of credit set forth in
5 the carryover allocation or 42(m) letter, as applicable, issued
6 to the qualified low-income housing project, and upon receipt of
7 the Form 8609, the taxpayer shall:

- 8 (1) Amend its tax return to include the Form 8609; and
9 (2) If the credit amount in the Form 8609 is different
10 than the amount of credit previously claimed, adjust
11 the credit amount claimed on its amended return.

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]~~ Except as provided under subsection (j)(1),
18 section 469 (with respect to passive activity losses and credits
19 limited) of the Internal Revenue Code shall be applied in
20 claiming the credit under this section.



1 (j) For a low-income building placed in service under this
2 section after December 31, 2019, the following shall apply:

3 (1) Section 453 (with respect to the installment method),
4 section 465 (with respect to deductions limited to
5 amount of risk), and section 469 (with respect to
6 passive activity losses and credits limited) of the
7 Internal Revenue Code shall not be operative with
8 respect to investments made in buildings and projects
9 claiming the credit under this section;

10 (2) All allocations to partners or members of their
11 distributive shares of income, loss, and deductions
12 under chapter 235 shall be made in accordance with the
13 written agreement of the partners or members;

14 (3) In no event shall the total amount of state credits
15 allocated by the corporation for the qualified low-
16 income building exceed fifty per cent of the total
17 amount of federal credits allocated to the building
18 for the ten-year federal credit period; and

19 (4) The state depreciation basis of the qualified low-
20 income building shall not exceed the federal
21 depreciation basis of the building.



1 ~~(j)~~ (k) In lieu of the credit awarded under this
2 section for a qualified low-income building that has been
3 awarded federal credits that are subject to the state housing
4 credit ceiling under section 42(h)(3)(C) of the Internal Revenue
5 Code, federal credits that are allocated pursuant to section
6 42(h)(4) of the Internal Revenue Code, or a subaward under
7 section 1602 of the American Recovery and Reinvestment Act of
8 2009, Public Law 111-5, the taxpayer owning the qualified low-
9 income building may make a request to the corporation for a loan
10 under section 201H-86. If the taxpayer elects to receive the
11 loan pursuant to section 201H-86, the taxpayer shall not be
12 eligible for the 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. Act 129, Session Laws of Hawaii 2016, is
16 amended by amending section 4 to read as follows:

17 "SECTION 4. This Act, upon its approval, shall take effect
18 on January 1, 2017, and shall apply to qualified low-income
19 buildings awarded credits after December 31, 2016; provided that
20 this Act shall be repealed on December 31, ~~[2021,]~~ 2027, and
21 section 235-110.8, Hawaii Revised Statutes, shall be reenacted



1 in the form in which it read on the day prior to the effective
2 date of this Act."

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

5 SECTION 4. This Act shall take effect upon its approval,
6 and shall apply to qualified low-income buildings placed in
7 service in taxable years beginning after December 31, 2019;
8 provided that the amendments made to section 235-110.8, Hawaii
9 Revised Statutes, by section 1 of this Act shall not be repealed
10 when that section is reenacted on December 31, 2027, pursuant to
11 section 4 of Act 129, Session Laws of Hawaii 2016, and section 2
12 of this Act.

13

INTRODUCED BY: *Nadine K. Nakamura*

JAN 20 2021



H.B. NO. 80

Report Title:

Low-Income Housing Tax Credit; Partners; Members

Description:

Clarifies when and how members or partners of a taxpayer may claim the low-income housing tax credit. Requires a Form 8609 for purposes of claiming the tax credit. Specifies the application of tax provisions with respect to buildings or projects in service in 2020 and later. Extends the sunset date of Act 129, Session Laws of Hawaii 2016, to 12/31/2027.

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

