

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO 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~~] an income tax return for a  
13 taxable year may claim a low-income housing tax credit against  
14 the taxpayer's net income tax liability. The amount of the  
15 credit 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 among the partners or  
2 members of the taxpayer earning the credit in any manner agreed  
3 to by the parties regardless of whether any partner or member is  
4 deemed a partner for federal income tax purposes, if the partner  
5 or member is a partner pursuant to applicable state law, and may  
6 be claimed whether or not the taxpayer [~~elaims~~] is eligible to  
7 be allocated a federal low-income housing tax credit pursuant to  
8 section 42 of the Internal Revenue Code. Any allocation of a  
9 tax credit under this section may be made among the partners or  
10 members of a taxpayer in accordance with this subsection;  
11 provided that the partners or members have been admitted to the  
12 taxpayer pursuant to applicable state law, on or prior to the  
13 date of filing the partner's or member's tax return, including  
14 any amendments thereto, with respect to the year of the tax  
15 credit.

16 (c) For any qualified low-income building that receives an  
17 allocation prior to January 1, 2017, the amount of the low-  
18 income housing tax credit that may be claimed by a taxpayer as  
19 provided in subsection (b) shall be fifty per cent of the  
20 applicable percentage of the qualified basis of each building  
21 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 the 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 section 42(m) letter, as applicable,  
6 issued to the qualified low-income housing project; provided  
7 further that upon receipt of the form 8609:

- 8       (1) The taxpayer shall amend the tax return to include the  
9           form 8609; and
- 10       (2) If the credit amount in the form 8609 is different  
11           than the amount of credit previously claimed, the  
12           taxpayer shall adjust the credit amount claimed on the  
13           amended return.

14 Failure to properly and timely claim the credit shall constitute  
15 a waiver of the right to claim the credit. A taxpayer may claim  
16 a credit under this section only if the building or project is a  
17 qualified low-income housing building or a qualified low-income  
18 housing project under section 42 of the Internal Revenue Code.

19       [Section] Except as provided under subsection (j)(1),  
20 section 469 (with respect to passive activity losses and credits



1 limited) of the Internal Revenue Code shall be applied in  
2 claiming the credit under this section.

3 (j) For any qualified low-income building placed in  
4 service under this section after December 31, 2020:

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

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

16 (3) The total amount of state credits allocated by the  
17 corporation for the qualified low-income building  
18 shall not exceed fifty per cent of the total amount of  
19 federal credits allocated to the building for the ten-  
20 year federal credit period; and



1        (4) The state depreciation basis of the qualified low-  
2                    income building shall not exceed the federal  
3                    depreciation basis of the building.

4        [~~(j)~~] (k) In lieu of the credit awarded under this section  
5 for a qualified low-income building that has been awarded  
6 federal credits that are subject to the state housing credit  
7 ceiling under section 42(h)(3)(C) of the Internal Revenue Code,  
8 federal credits that are allocated pursuant to section 42(h)(4)  
9 of the Internal Revenue Code, or a subaward under section 1602  
10 of the American Recovery and Reinvestment Act of 2009, Public  
11 Law 111-5, the taxpayer owning the qualified low-income building  
12 may make a request to the corporation for a loan under section  
13 201H-86. If the taxpayer elects to receive the loan pursuant to  
14 section 201H-86, the taxpayer shall not be eligible for the  
15 credit under this section.

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

18        SECTION 2. Act 129, Session Laws of Hawaii 2016, is  
19 amended by amending section 4 to read as follows:

20        "SECTION 4. This Act, upon its approval, shall take effect  
21 on January 1, 2017, and shall apply to qualified low-income



1 buildings awarded credits after December 31, 2016 [~~+~~], and placed  
2 in service on or before December 31, 2019; provided that this  
3 Act shall be repealed on December 31, [~~2021,~~] 2027, and section  
4 235-110.8, Hawaii Revised Statutes, shall be reenacted in the  
5 form in which it read on the day prior to the effective date of  
6 this Act [~~, and placed in service on or before December 31,~~  
7 ~~2019]~~."

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

10 SECTION 4. This Act shall take effect upon its approval,  
11 and shall apply to taxable years beginning after December 31,  
12 2020; 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, 2027,  
15 pursuant to section 4 of Act 129, Session Laws of Hawaii 2016,  
16 as amended by section 2 of this Act.

17

INTRODUCED BY:



# S.B. NO. 659

**Report Title:**

Low-income Housing Tax Credit

**Description:**

Allows the low-income housing tax credit to be allocated among the partners or members of the taxpayer earning the credit in any manner by the parties. Extends increases made to the low-income housing tax credit from 12/31/21 to 12/31/27.

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

