

ACT 226

H.B. NO. 80

A Bill for an Act Relating to the Low-Income Housing Tax Credit.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 235-110.8, Hawaii Revised Statutes, is amended to read as follows:

“§235-110.8 Low-income housing tax credit. (a) As modified herein, section 42 (with respect to low-income housing credit) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. A taxpayer owning a qualified low-income building who has been awarded a subaward under section 1602 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, shall also be eligible for the credit provided in this section.

(b) Each taxpayer subject to the tax imposed by this chapter, who has filed a net income tax return for a taxable year may claim a low-income housing tax credit against the taxpayer’s net income tax liability. The amount of the credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be allocated by a partnership or limited liability company in any manner agreed to by the partners or members regardless of whether the individual or entity to receive the credit is deemed to be a partner or member for federal income tax purposes, so long as the individual or entity is deemed to be a partner or member pursuant to applicable state law. The credit may be claimed whether or not the taxpayer [claims] is eligible to be allocated a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code.

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

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

- (1) For the first five years, equal to the amount of the federal low-income housing tax credits that have been allocated to the qualified low-income building pursuant to section 42(b) of the Internal Revenue Code by the corporation, provided that, if in any year the

aggregate amount of credits under this subsection would be such that it would exceed the amount of state credits allocated by the corporation for the qualified low-income building, the credits allowed for that year shall be limited to such amount necessary to bring the total of such state credits (including the current year state credits) to the full amount of state credits allocated to the qualified low-income building by the corporation;

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

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

- (f) For the purposes of this section, the determination of:
 - (1) Qualified basis and qualified low-income building shall be made under section 42(c);
 - (2) Eligible basis shall be made under section 42(d);
 - (3) Qualified low-income housing project shall be made under section 42(g);
 - (4) Recapture of credit shall be made under section 42(j), except that the tax for the taxable year shall be increased under section 42(j)(1) only with respect to credits that were used to reduce state income taxes; and
 - (5) [Application] Except as provided under subsection (j)(1), application of at-risk rules shall be made under section 42(k);

of the Internal Revenue Code.

(g) As provided in section 42(e), rehabilitation expenditures shall be treated as a separate new building and their treatment under this section shall be the same as in section 42(e). The definitions and special rules relating to credit period in section 42(f) and the definitions and special rules in section 42(i) shall be operative for the purposes of this section.

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

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

A tax credit under this section that exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. All claims for a tax credit under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed[-] and shall include a copy of Form

8609 issued by the corporation with respect to the building; provided that with respect to the first year that the credit is claimed for a qualified low-income housing project, if the taxpayer has not yet received the Form 8609 prior to the time the taxpayer files its original tax return claiming the credit under this section, the taxpayer may claim the credit based upon the amount of credit set forth in the carryover allocation or 42(m) letter, as applicable, issued to the qualified low-income housing project, and upon receipt of the Form 8609, the taxpayer shall:

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

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

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

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

- (1) Section 453 (with respect to the installment method), section 465 (with respect to deductions limited to amount at risk), and section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall not be operative with respect to investments made in buildings and projects claiming the credit under this section;
- (2) All allocations to partners or members of their distributive shares of income, loss, and deductions under chapter 235 shall be made in accordance with the written agreement of the partners or members;
- (3) The total amount of state credits allocated by the corporation for the qualified low-income building shall not exceed fifty per cent of the total amount of federal credits allocated to the building for the ten-year federal credit period; and
- (4) The deductions and expenses claimed by all Hawaii taxpayers on Hawaii income tax returns shall not exceed the deductions and expenses claimed by all taxpayers on federal returns;

provided that this subsection shall not apply to any building that ceases to serve low-income households in accordance with federal and state low-income housing tax credit programs.

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

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

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

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“SECTION 4. This Act, upon its approval, shall take effect on January 1, 2017, and shall apply to qualified low-income buildings awarded credits after December 31, 2016; provided that this Act shall be repealed on December 31, ~~[2021,]~~ 2027, and section 235-110.8, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.”

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

SECTION 4. This Act shall take effect on July 1, 2021, and shall apply to taxable years beginning after December 31, 2020; provided that the amendments made to section 235-110.8, Hawaii Revised Statutes, by section 1 of this Act shall not be repealed when that section is reenacted on December 31, 2027, pursuant to section 4 of Act 129, Session Laws of Hawaii 2016, and section 2 of this Act.

(Approved July 6, 2021.)