

INSTRUCTIONS FOR FORM N-586 TAX CREDIT FOR LOW-INCOME HOUSING

Changes to Note

Act 226, Session Laws of Hawaii (SLH) 2021, clarifies when and how members or partners may claim the low-income housing tax credit. The Act also requires taxpayers to file federal Form 8609 with their Hawaii income tax return to claim the credit, but if the taxpayer has not yet received the Form 8609, the credit amount set forth in the carryover allocation or 42(m) letter issued to the qualified low-income housing project can be used until Form 8609 is received, in which case the taxpayer must amend the tax return to include the Form 8609, and if necessary, adjust the credit amount claimed on an amended return. The Act also provides additional provisions with respect to buildings and projects placed in service after December 31, 2020 and extends the sunset date to December 31, 2027.

General Instructions

(Section references are to the Internal Revenue Code (IRC) unless otherwise noted.)

The Hawaii low-income housing tax credit allowed under section 235-110.8, Hawaii Revised Statutes (HRS), is based upon the tax credit allowed for federal income tax purposes under section 42. For property placed in service on or after July 1, 2005, the Hawaii low-income tax credit is 50% of the allowable federal low-income housing tax credit (30% for property placed in service before July 1, 2005). A taxpayer may claim this credit whether or not the taxpayer claims a federal low-income housing tax credit.

Act 129, SLH 2016, amended the low-income housing tax credit by shortening the time over which the State tax credit is taken from ten years to five years. This additional incentive is effective January 1, 2017 and applies to buildings that are awarded low-income housing tax credits after December 31, 2016.

Note: A taxpayer does not have to claim the federal low-income housing tax credit to claim the State tax credit, but federal Form 8586 must be completed and attached to your Hawaii return to claim the State tax credit, even if you are not required to attach it to your federal return.

Purpose of Form. Owners of residential rental buildings providing low-income housing must use Form N-586 to claim the low-income housing credit.

The tax credit does not apply to occupants of low-income housing units.

For more information, contact the Department of Taxation, Taxpayer Services Branch at (808) 587-4242, or toll-free at 1-800-222-3229.

Banks and other financial institutions. — Complete Parts I and II. Attach a copy of federal Form 8586 to Form F-1.

Partnerships, S Corporations, Estates and Trusts.—Complete Part I to figure the credit to pass through to the partners, shareholders, or beneficiaries. Attach a copy of federal Form 8586 to the entity's income tax return.

Partnership investors now have the flexibility of allocating the State low-income housing tax credit among its partners without regard to the partners' proportionate interests in the partnership for taxable years beginning after December 31, 1999.

Insurers.—Complete Part I to figure the credit to carry to Form 314, Annual Premium Tax Return. Attach a copy of federal Form 8586 to Form 314.

Caution: No credit may be claimed on any building for which there has been allowed any relief from the passive loss rules under section 502 of the Tax Reform Act of 1986.

Low-Income Housing Tax Credit

Each taxpayer subject to the tax imposed by chapter 235, HRS, who files 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 chapter 235, HRS, for the taxable year in which the credit is properly claimed on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42.

Effective July 1, 2005, the low-income housing tax credit shall be fifty percent of the applicable percentage of the qualified basis of each building located in Hawaii. Applicable percentage shall be calculated as provided in section 42(b).

The credit allowed 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 chapter 235, HRS.

A tax credit which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax li-

ability in subsequent years until exhausted. The deadline to claim the credit, including amended claims, is 12 months after the close of your taxable year. You cannot claim the credit after the deadline. 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 only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42.

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 placed in service after December 31, 2011, the amount of the low-income housing tax credit that may be claimed by a taxpayer shall be equal to fifty percent of the amount of the federal low-income housing tax credit that would have been allocated to the qualified low-income building pursuant to section 42(b) had a subaward not been awarded with respect to the qualified low-income building.

The Hawaii Housing Finance and Development Corporation (HHFDC), under the Department of Business, Economic Development and Tourism, is designated as the State housing credit agency to carry out section 42(h) (with respect to limitation on aggregate credit allowable with respect to projects located in the State). As the State housing credit agency, the corporation shall determine the eligible basis for a qualified low-income building, make the allocation of housing credit dollar amounts with the State, and determine the portion of the State's housing credit ceiling set aside for projects involving qualified nonprofit organizations.

All claims for allocation of the low-income housing credit under section 235-110.8, HRS, shall be filed with the HHFDC at 677 Queen St., Suite 300, Honolulu, HI 96813. The HHFDC shall determine the amount of the credit allocation, if necessary, and return the claim to the taxpayer. The taxpayer shall file a credit allocation form issued by the HHFDC with the taxpayer's tax return with the Department of Taxation.

Low-Income Housing Tax Credit Loan

In lieu of the low-income housing tax credit, the taxpayer owning the qualified low-income building placed in service after December 31, 2011, may make a request to the HHFDC for a loan. If the taxpayer elects to receive the loan, the taxpayer shall

not be eligible for the low-income housing tax credit.

Recapture of Credit

There is a 15-year compliance period during which the residential rental building must meet certain requirements.

Note: *If the decrease in qualified basis is because of a change in the amount for which you are financially at risk on the building, then you must first recalculate the amount of credit taken in prior years pursuant to section 42(k) before you calculate the recapture amount on this form.*

Generally, recapture applies if:

- You dispose of a building or an ownership interest in it;
- There is a decrease in the qualified basis of the building from one year to the next; or
- The building no longer meets the minimum set-aside requirements of section 42(g)(1), the gross rent requirements of section 42(g)(2), or the other requirements for the units which are set-aside.

Recapture does **not** apply if:

- You disposed of the building or an ownership interest in it after July 30, 2008, and it is reasonably expected that the building will continue to be operated as a qualified low-income building for the remainder of the building's compliance period;
- You disposed of an ownership interest in a building that you held through an electing large partnership;
- The decrease in qualified basis does not exceed the additions to qualified basis for which credits were allowable in years after the year the building was placed in service;
- You correct a noncompliance within a reasonable period after it is discovered or should have been discovered. (However, recapture applies if any vacant unit of comparable or smaller size to the low-income units is rented to other than a low-income tenant (on other than a temporary basis) during any period when the project does not comply with the set-aside requirement or has experienced a reduction in qualified basis for which credits were allowable.);
- The credit did not reduce your tax liability; or
- The qualified basis is reduced because of a casualty loss, provided the property is restored or replaced within a reasonable period.

Specific Instructions Part I

Line 5 — Enter the amount of tax credit allocated by the HHFDC after December 31, 2016 to Hawaii property placed in service on or after January 1, 2017.

For any qualified low-income building that receives an allocation after December 31, 2016, the amount of low-income housing tax credits that may be claimed shall be:

- 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) by the HHFDC 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 HHFDC 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 HHFDC;
- 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 HHFDC 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
- For any remaining years, zero.

Line 7. Total New Credit Claimed — This is the amount of the credit being claimed in the current year. Enter this amount on Schedule CR in line 18, **Column (a)**.

Part II

Tax Liability Limitations

Line 10 — Enter your adjusted tax liability (the tax liability after refundable credits) from the appropriate line of your tax return.

Line 11 — The law requires that all other credits offset a taxpayer's tax liability before allowing a credit for low-income housing. Complete the *Credit Worksheet* on page 2 of Form N-586 and enter the result on line 11.

Line 13. Total Credit Applied — Enter the smaller of line 9 or line 12 here and in **Column (b)** on Schedule CR, line 18. This is your maximum credit allowed for this taxable year.

Line 14. Unused Credit to Carryover — This is the amount of the tax credit that you

are allowed to carryover and apply against your tax liability in a future year. If this amount is more than zero, also enter it on Schedule CR in **Column (c)**, line 18.

Part III

To complete Part III of Form N-586 you will need copies of all the following federal forms that you have filed: **Form 8586**, Low-Income Housing Credit, **Form 8609**, Low-Income Housing Credit Allocation Certification, **Form 8609-A** Annual Statement for Low-Income Housing Credit, and **Form 8611**, Recapture of Low-Income Housing Credit.

Lines 1 through 7 — If the tax credit is recaptured from more than two buildings, attach a schedule and enter the totals in the third column.

If the tax credit recapture is only from a flow-through entity (partnership, S corporation, estate, or trust) skip lines 1-3 and go to line 4.

Line 1 — Tax credit recapture.— Section 42(j)(5) partnerships fill in line 7 also. All other flow-through entities (partnerships, S corporations, estates, or trusts) enter the result here and on the appropriate line of Schedule K of your respective return. Enter each recipient's share on the appropriate line of Schedule K-1.

Line 2 — Appropriate credit percentage.— Enter 30% if the property was placed in service before July 1, 2005. Enter 50% if the property was placed in service on or after July 1, 2005.

Lines 5 and 6 — Interest.— Compute the interest separately for each prior tax year using a rate of 8% (.00667 monthly) for the period beginning on the due date for filing the original return for each prior year involved. Add the interest amounts for each prior year until the earlier of:

- The due date (not including extensions) of the return for the recapture year, or
- The date the return for the recapture year is filed and any income tax due for that year has been fully paid.

Enter the total on line 5 or 6. (This interest is not deductible on your income tax return.)

Line 7 — Include the total credit recaptured on the appropriate line representing your tax liability.

For flow-through entities that file Form N-20 or Form N-35, identify amounts as "Recapture of low-income housing tax credit":

N-20, Schedule K-1, line 31.
N-35, Schedule K-1, line 24.