

STATE OF HAWAII - DEPARTMENT OF TAXATION
INSTRUCTIONS FOR FORM N-335
STATEMENT OF KO OLINA RESORT AND MARINA
ATTRactions AND EDUCATIONAL FACILITIES TAX CREDIT

GENERAL INSTRUCTIONS

Section 235-110.46, Hawaii Revised Statutes (HRS) provides a Ko Olina Resort and Marina attractions and educational facilities tax credit to each qualified taxpayer subject to the taxes imposed by chapter 235 or chapters 237, 237D, 238, 239, 241, or 431, HRS. The tax credit may be claimed for taxable years beginning after December 31, 2004, for qualified costs in the development of facilities for attractions and educational purposes at Ko Olina Resort and Marina.

"Qualified taxpayer" means a person who fulfills the requirements of section 235-110.46(c), HRS, which states that to qualify for the tax credit, a taxpayer shall:

- (1) Have expended qualified costs on and be developing a world-class aquarium and marine science and mammal research facility at Ko Olina Resort and Marina; and
- (2) Dedicate one-half of the net operating income of the world-class aquarium to the State, beginning on the first day of the seventeenth year following the year in which the attractions and educational facilities credit was first taken.

In the case of a partnership, limited liability company, S corporation, estate, trust, or association of apartment owners, the tax credit is allowable for qualified costs incurred by the entity. The costs upon which the tax credit is computed shall be determined at the entity level.

"Qualified costs" means any costs for plans, design, and construction, costs for equipment that is permanently affixed to a building or structure, and acquisition of facilities for educational purposes, up to a total of \$75,000,000 in the aggregate, incurred after May 31, 2003, and before June 1, 2009, at the Ko Olina Resort and Marina for the development of facilities for attractions and educational facilities, and for infrastructure within the Ko Olina Resort and Marina that is directly related to those facilities, including a world-class aquarium, marine science and mammal research facilities, international sports training complex, a travel industry management intern campus, infrastructure for the transfer of ocean waters to the aquarium or marine mammal facilities, or both, seawater air conditioning, and other educational facilities developed or operated in cooperation with the University of Hawaii or other educational institutions.

The tax credit authorized under section 235-110.46, HRS, shall be deductible from the taxpayer's net income tax liability, if any, and at the election of the taxpayer, from the tax liability imposed by chapters 237, 237D, 238, 239, 241, or 431. There is maximum tax credit of \$7,500,000 to be claimed and utilized in any one year, in the aggregate for all qualified taxpayers.

For more information, refer to Tax Information Release No. 2006 - 01, "The Attraction and Educational Facilities Tax Credit Established by Act 100, Session Laws of Hawaii 2003."

Purpose of Form

Every qualified taxpayer and every other person claiming the credit or allocating the credit authorized under section 235-110.46, HRS, to another person must file Form N-335 to notify the Department of Taxation of the amount of credit that will be applied to the qualified taxpayer's or person's net income tax liability, if any, and the amount of the credit elected to be applied to the tax liabilities imposed under chapters 237, 237D, 238, 239, 241, and 431. **The election, once made, is irrevocable; Form N-335 may not be amended.**

Note: Form N-335 includes the Department of Business, Economic Development, and Tourism (DBEDT) certification (Part I of Form N-335). DBEDT is the gatekeeper of ensuring the credits correspond to the qualified costs and the yearly and aggregate caps are not exceeded. This includes any carryover credits that are certified by DBEDT.

When to File

A person claiming or allocating the credit must file Form N-335 with the Department of Taxation by the last day of the third month following the close of the calendar year in which the eligible costs were incurred.

Note: Since Part I of Form N-335 (Credit Certificate) is to be completed by DBEDT, every qualified taxpayer claiming the credit, should provide the information needed for Part I and Form N-335 to DBEDT by the last day of the second month following the close of the calendar in which the eligible costs were incurred, so the Form N-335 can be completed in time for filing with the Department of Taxation. Parts II and III should be completed before submitting the form to DBEDT for certification. Send Form N-335 for completion of Part I to:

Hawaii Department of Business, Economic Development, & Tourism
Attention: Ko Olina Credit
250 S. Hotel St., Suite 500
Honolulu, HI 96813

Where to File

Send the completed and certified Form N-335 to:

Hawaii Department of Taxation
Attention: Ko Olina Credit
P.O. Box 259
Honolulu, Hawaii 96809-0259.

In addition, if applying the credit to Chapter 431, file a copy of the completed and certified Form N-335 with the Department of Commerce and Consumer Affairs, Insurance Division, Attn: Susan Hansen, P. O. Box 3614, Honolulu, HI 96811-3614. Failure to send Form N-335 to the correct address may result in a delay in processing the election form, and possibly, a denial of the election.

SPECIFIC INSTRUCTIONS

Complete Parts II and III before submitting the form to DBEDT for certification.

Part I Credit Certificate

DBEDT will complete Part I.

Part II Election To Apply The Credit Against Taxes Other Than Income Tax, Chapter 235, HRS

Line 13 – Enter the amount of tax credit for the calendar year specified.

Line 14 – Enter the amount of the tax credit you distributed to your shareholders, partners, members, or beneficiaries. This amount must equal the amount on line 25, Part III.

Line 16 – Enter the name, federal employer identification number, and indicate the ownership of any flow-through entity who has passed the Ko Olina Resort and Marina attractions and educational tax credit through to you. If additional space is needed, include the information on an attached schedule and check the box.

Enter the total credit received from any flow-through entity(ies) on Line 16.

Line 17 – Add lines 15 and 16. Enter the result here. This is the amount of the tax credit available for the calendar year.

Note: If your tax year is a fiscal year, the credits can be used only against taxes that are accrued within the affected calendar months of your fiscal year.

Line 18 – Enter the amount of the credit that will be applied to your net income tax liability.

If your tax year is a fiscal year, the credits can be used only against taxes that are accrued within the affected calendar months of your fiscal year.

Line 20 – By checking any of the boxes on lines 20a through 20f, you are electing to apply the excess tax credit to your tax liability imposed by chapters 237, General Excise Tax Law; 237D, Transient Accommodations Tax Law; 238, Use Tax Law; 239, Public Service Company Tax Law; 241, Taxation of Banks and Other Financial Corporations; and 431, Insurance.

For lines 20a, 20b, and 20c, indicate the Hawaii Tax Identification Number the tax credit will be applied to. If you are applying the tax credit to more than one general excise, transient accommodations and use tax account, you must attach a separate schedule listing the Hawaii Tax Identification Numbers for the separate tax accounts and the amount of the credit applied to each tax account.

If you do not complete line 20a through 20f, the tax credit cannot be used to offset the tax liability imposed by chapters 237, 237D, 238, 239, 241, and 431.

Line 21 – Add lines 20a through 20f. Enter the total on line 21. The amount on line 21 cannot be greater than the amount on line 19.

Part III Flow-Through Entities Allocating The Credit To Its Shareholders, Partners, Members, Or Beneficiaries

Line 22 – Enter the amount from line 14, Part II, to be distributed to shareholders, partners, members, or beneficiaries.

Line 23 – Column (b) – Shareholder, partner, member, or beneficiary's name and address. Group the shareholders, partners, members, or beneficiaries to whom you are allocating the Ko Olina Resort and Marina attractions and educational facilities tax credit into two categories. First, list all the individual shareholders, partners, members, or beneficiaries (those who have social security numbers (SSNs)). Then, list all the other shareholders, partners, members, or beneficiaries.

Column (c) – Shareholder, Partner, Member, or Beneficiary's identifying number. For each shareholder, partner, member, or beneficiary, enter the SSN (for individuals) or federal employer identification number (FEIN) (for all other entities). For those shareholders, partners, members, or beneficiaries who file a joint return, enter the spouse's SSN.

Column (d) – Amount of the Ko Olina Resort and Marina attractions and educational facilities tax credit allocated to shareholder, partner, member, or beneficiary.

Line 24 – If you are allocating the Ko Olina Resort and Marina attractions and educational facilities tax credit to more than 20 shareholders, partners, members, or beneficiaries, list the additional shareholder, partners, members, or beneficiaries on an attached sheet that follows the format of line 23. Enter on line 24 the total from the attached sheet(s).

Line 25 – Total the amounts in line 23, column (d), and line 24. This amount must equal line 22, Part III.

Declaration

Form N-335 must be signed by the taxpayer or duly authorized agent. In the case of a corporation or partnership, Form N-335 must be signed by an officer, partner or member, or duly authorized agent of such entity, otherwise the election is invalid.

APPLYING THE CREDIT

Each investor is required to submit to the Department of Taxation on a quarterly basis, Form N-337, Schedule of Certified Ko Olina Tax Credits, the amount of certified credits and the annual cap amount issued by DBEDT and the monthly usage of the certified credits, including information on the investor's year-to-date use of the credits. The schedule is based on a calendar year and is submitted independently of any tax returns filed. Form N-337 should be filed with the Department of Taxation no later than the close of the month following the close of each quarterly period for which the schedule is submitted. See Tax Information Release No. 2006-1 for more information.

Claims for the credit shall be filed on the appropriate tax return accompanied with Form N-336, Ko Olina Resort and Marina Attractions and Educational Facilities Tax Credit and the applicable copy of certified Form N-335.

All claims for the Ko Olina credit must be submitted to:

Hawaii Department of Taxation
Attention: KO OLINA CREDIT
P. O. Box 259
Honolulu, Hawaii 96809-0259

Failure to submit the forms to the above address, may result in a delay of the credit being applied to your tax liability.

If you elected to apply the balance of the certified credit to tax liabilities imposed by chapter 431, submit your insurance tax form, Form N-336, and a copy of certified Form N-335 to: Department of Commerce and Consumer Affairs, Insurance Division, Attn: Susan Hansen, P. O. Box 3614, Honolulu, HI 96811-3614.

Also, at the same time Forms N-336 and N-335 are submitted with the appropriate filing with the Department of Taxation or with the Department of Commerce and Consumer Affairs, Insurance Division, send a copy of Form N-336 and a copy of certified Form N-335 to DBEDT. Mail the forms to:

Hawaii Department of Business, Economic Development, & Tourism
Attention: Ko Olina Credit
250 S. Hotel St., Suite 500
Honolulu, HI 96813