

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Aghazarian Analyst: Kristina E. North Bill Number: AB 339

Related Bills: See Previous Analysis Telephone: 845-6978 Amended Date: May 1, 2003

Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Low Income Housing Credit Includes Qualified Farmworker Housing Credit

SUMMARY

This bill would make the farmworker housing credit a part of the low-income housing credit.

SUMMARY OF AMENDMENTS

The May 1, 2003, amendments revised the aggregate amount of the housing credit to be allocated by the California Tax Credit Allocation Committee (Committee). The amendments also made several technical changes and other changes that did not impact the department.

The earlier April 21, 2003, amendments:

- ◆ specified the aggregate amount of the housing credit, however, this language was revised by the May 1, 2003, amendments,
- ◆ repealed the farmworker housing credit, and eliminated the credit for bank and financial corporations for foregone interest on farmworker housing loans;
- ◆ revised the low-income housing credit to include a farmworker housing credit; and
- ◆ made technical changes that would not impact the department.

This analysis does not address the bill's provisions regarding the Insurance Tax Law since those provisions would not impact the department's programs and operations.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to make the farmworkers' housing credit easier to use.

EFFECTIVE/OPERATIVE DATE

This bill would be effective immediately and apply to taxable years beginning on or after January 1, 2003.

POSITION

Pending.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
<input type="checkbox"/> SA	<input type="checkbox"/> O	<input type="checkbox"/> NAR
<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

5/20/03

ANALYSIS

FEDERAL/STATE LAW

Existing federal tax law allows a credit to an owner of a qualified low-income housing project that is constructed, rehabilitated, or acquired. The credit is claimed over a 10-year period that generally begins with the tax year the project is placed in service. The credit is claimed as part of the general business credit. The federal credit allows unused credits to be carried back one year and carried forward 20 years. The credit amount is based on the specified "applicable percentage" of the qualified basis of the qualified low-income building. A state authority created to oversee the process must allocate the credit. The property must continually comply with all requirements throughout a 15-year compliance period, or a portion of the credit must be recaptured.

Current state law conforms to the federal low-income housing credit with some modifications, as follows:

- ◆ The credit may be claimed over four years, rather than 10.
- ◆ The credit is limited to projects located in California.
- ◆ The credit specifies different "applicable percentages" upon which the amount of credit is computed.
- ◆ The Committee is allowed to allocate an annual maximum of \$70 million, plus unused or returned credit amounts from prior or current years. The Committee provides listings of qualified taxpayers to the Franchise Tax Board (FTB).
- ◆ The credit allows a corporation to assign any portion of the low-income housing credit to one or more affiliated corporations, provided the affiliation is 100% ownership.
- ◆ The credit may reduce the regular tax below the tentative minimum tax for purposes of the alternative minimum tax calculation.
- ◆ The state credit may be carried over until exhausted if the credit exceeds the tax.
- ◆ The state credit is not subject to recapture.

Current state tax law allows a farmworker housing credit. The amount of the credit must be allocated in an amount to make the project feasible. The credit amount may be up to 50% of the qualified amount of costs paid or incurred for construction or rehabilitation of qualified farmworker housing in California. The housing must satisfy the requirements of the Farmworker Housing Assistance Program for the costs to be eligible for the credit. This credit is subject to recapture.

If the credit certification is obtained by fraud or misrepresentation, the entire credit must be recaptured. For example, if a taxpayer fails to comply with the requirements of the Employee Housing Act, the Farmworker Housing Assistance Program or any other requirements contained within the tax credit section, a prorated amount of the credit previously allowed must be recaptured.

In addition, state tax law allows a separate credit to commercial lenders equal to 50% of the foregone interest income on loans used to finance eligible expenditures for rehabilitating or constructing qualified farmworker housing. A taxpayer claiming the farmworker housing credit or the credit for foregone interest is required to 1) obtain certification of the credit allocated from the Committee; 2) retain a copy of the certification; and 3) provide the certification to FTB upon request. A taxpayer claiming the farmworker housing credit must obtain certification prior to paying or incurring costs, while a taxpayer claiming the credit for foregone interest must obtain certification that the expenses financed qualify for the credit.

The aggregate amount of credits granted for both personal income and corporate taxpayers for building or rehabilitating farmworker housing and for banks and financial corporations for foregone interest on farmworker housing loans may not exceed \$500,000 for any calendar year. This \$500,000 limitation may be increased by an amount equal to any unallocated credits from preceding calendar years.

THIS BILL

This bill would repeal the farmworker housing credit and the credit for banks and financial corporations for foregone interest on farmworker housing loans.

This bill instead would attempt to add a farmworker housing credit to the current low-income housing credit.

This bill would define “qualified farmworker housing” to mean housing located in California that meets the Farmworker Housing Assistance Program requirements. The housing would not have to be occupied and would not need to be licensed by the Employee Housing Act.

The farmworker housing credit would only be allowed if the taxpayer constructs or rehabilitates the property as required by the covenants, conditions, and restrictions of this bill and the Farmworker Housing Assistance Program.

Requirements would include, but not be limited to, a construction cost audit and certification of eligible costs from a qualified accountant.

This bill would revise the aggregate low-income housing credit dollar amount to be the sum of:

1. \$70 million, beginning with calendar year 2001, and every calendar year thereafter, including an annual increase for Consumer Price Indexing;
2. Any unallocated low-income housing credit from prior calendar years;
3. Any allocated low-income housing credit amounts canceled by the committee;
4. \$500,000 specifically designated for the farmworker housing credit, including an annual increase for Consumer Price Indexing;
5. Any unallocated farmworker housing credit from prior calendar years; and
6. Any allocated farmworker housing credit amounts canceled by the committee.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

- ◆ Pursuant to author’s staff, the author intended to provide a farmworker housing credit within the existing low-income housing credit structure. However, the bill does not provide a farmworker housing credit. The bill fails to be specific to the credit and only adds the aggregate amount of the farmworker housing credit to the total aggregate amount that may be allocated by the committee as a low-income housing credit.

- ◆ As written, this bill's credit language does not provide authorization to issue a low-income housing credit to "qualified farmworker housing" nor does it authorize a "qualified farmworker housing credit."
- ◆ This bill does not specify how the farmworker housing credit is to be determined.
- ◆ The federal credit on which the state low-income housing credit is based does not authorize a federal low-income housing credit for the construction or rehabilitation of "qualified farmworker housing." As a result, a taxpayer would not be able to claim the state low-income housing credit for the construction and rehabilitation of "qualified farmworker housing" unless the taxpayer qualified for the low-income housing credit.
- ◆ Within the definition of "qualified farmworker housing," this bill specifies that subsequent to the construction or rehabilitation of farmworker housing, the taxpayer "owns or operates" the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section. However, no requirements are provided.
- ◆ Definitions are needed for "ensures the ownership and operation of the farmworker housing," "construction," "rehabilitation," "Farmworker Housing Assistance Program," and "Employee Housing Act."
- ◆ This bill specifies that the farmworker housing need not be licensed at the initiation of construction or rehabilitation. However, it does not indicate whether the farmworker housing needs to be licensed at the conclusion of construction or rehabilitation to qualify for the credit.
- ◆ The eligibility requirements for the federal and state low-income housing credits are more rigorous than the state farmworker housing credit. As a result, even if the above concerns are addressed, it is unclear if a low-income housing credit could be issued for farmworker housing. For example, to qualify for the low-income housing credit, low-income housing must be used other than on a transient basis, and the project must be rent-restricted.
- ◆ "Qualified farmworker housing" is defined as housing located in this state that meets the requirements of the Farmworker Housing Assistance Program. The Farmworker Housing Assistance Program defines "farmworker housing" as "housing for agricultural workers." However, low-income housing must be available to the public to qualify for the credit.

TECHNICAL CONSIDERATIONS

This bill is identified in the title and the legislative digest as a tax levy. Generally, the law sections of the bill must contain a section identifying the bill as a tax levy. This bill contains no such language. As a result, it is unclear if the bill would be a tax levy. Legislative Counsel has indicated that a tax levy provision would be added if the bill were amended.

On page 18, line 20, the word "not" is missing after "is" and before "applicable." As written, this bill could not be implemented since the section provides conflicting instruction for applicable provisions.

LEGISLATIVE HISTORY

SB 73 (Dunn, Stats. 2001, Ch. 668) increased the aggregate credit cap from \$50 million to \$70 million and required the cap to be annually adjusted for inflation beginning in 2002.

AB 1811 (Reyes, Stats. 2000, Ch. 311) made the state farmworker housing credit subject to the allocation limitations under the federal low-income housing credit; allowed the housing credit to be claimed when the building is placed in service; allowed the taxpayer to request certification after paying or incurring costs; and clarified that the taxpayer shall apply to the California Tax Credit Allocation Committee for the credit certification.

AB 1903 (Lowenthal, 2000) specified that a partner's distributive share of the state low-income housing tax credit would be determined by the partnership agreement. Since this bill would have allowed a credit to be severed from the economic interest each partner has in the profits and losses of the project, Governor Davis vetoed it stating his concern with potential abuses.

AB 1626 (Migden/Torklasen, Stats. 2000, Ch. 3) increased the aggregate allocation amount for the low-income housing credit to \$50 million for each calendar year after 1999.

SB 38 (Lockyer/Pringle, Stats. 1996, Ch. 954) created the farmworker housing credit.

PROGRAM BACKGROUND

To date, only one farmworker housing credit has been allocated under current law. The unallocated amounts for the 1998, 1999, 2000, 2001, and 2002 calendar years total approximately \$2.5 million dollars. This amount would be added to the subsequent years' aggregate maximum credit amount available for allocation.

Within the Farmworker Housing Assistance Program, current state law provides the Legislature's declaratory language that it is too speculative to determine the income levels of the agricultural employees residing in farmworker housing. When fully employed, many agricultural workers earn sufficient income to qualify as persons and families of moderate income. Additionally, the Legislature declared that the farmworker housing assisted pursuant to this program is not a low-rent housing project as defined in the California Constitution. The California Constitution defines the term "low-rent housing project" as any development composed of urban or rural dwellings, apartments or other living accommodations for low-income persons. The Constitution defines "persons of low income" as persons or families who lack the amount of income necessary to enable them to live in safe and sanitary dwellings without overcrowding and without financial assistance.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states do not provide a farmworkers' housing credit comparable to the credit allowed by this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until the implementation concerns have been resolved.

ECONOMIC IMPACT

Revenue Estimate

This bill would not impact the state's income tax revenue.

LEGISLATIVE STAFF CONTACT

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