Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Lowenthal	Analyst:	Angela Raygoza	Bill Number:	SB 713
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	April 9, 2007
		Attorney:	Douglas Powers	Sponsor:	

SUBJECT: Farmworker Housing Credit/Partner's Distributive Share Of Credit Is Determined By Partnership Agreement

SUMMARY

This bill would consolidate the farmworker housing tax credit program into the state low-income housing tax credit.

SUMMARY OF AMENDMENTS

The April 9, 2007, amendments would repeal the farmworker housing assistance program from the Health and Safety Code and would add language that would require the farmworker housing credit to be allocated in the same manner as the state low-income housing tax credit.

In addition, this bill would require partnerships to allocate each partner's distributive share of the low income housing credit based on the partnership agreement.

This is the department's first analysis of this bill.

PURPOSE OF THE BILL

According to the author's office, this bill would streamline the process of allocating the farmworker housing credit while increasing the pool of affordable housing investors and the demand for state credits.

EFFECTIVE/OPERATIVE DATE

The bill would be effective and operative January 1, 2008.

POSITION

Pending.

Board Position:			Department Director	Date
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ANALYSIS

FEDERAL/STATE LAW

Current federal law allows a tax credit for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors, including when the housing was placed in service and whether it was federally subsidized. The credit is claimed over ten years. The California Tax Credit Allocation Committee (TCAC) has the authority to oversee the process and allocate the credit.

Current state law generally conforms to federal law with respect to the low-income housing credit, except that the state low-income housing tax credit is claimed over four taxable years, is limited to projects located in California, and is allocated in amounts equal to the sum of all the following:

- For taxable years ending 2002 and thereafter, $70 million increased by the percentage of the Consumer Price Index, for the preceding calendar year,
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Current state tax law allows a farmworker housing credit. 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.

Current 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 TCAC, (2) retain a copy of the certification, and (3) provide the certification to the Franchise Tax Board upon request.

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 do the following:

- Repeal the farmworker housing assistance program from the Health and Safety Code.
- Add new language to the Health and Safety Code requiring the farmworker housing credit to be allocated in the same manner as the state low-income housing tax credit.
- Specify a minimum amount of credit that should be set aside for projects housing farmworker households that is in addition to the low income housing credit.
- Require partnerships to allocate a partner's share of credits based on the partnership agreement.
- Define "agricultural worker" or "farmworker" as specified in the Labor Code.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would not significantly impact the department's programs and operations.

TECHNICAL CONSIDERATIONS

A provision of this bill makes reference to repealed language. The author may want to amend the provision that explains the minimum amount of costs that shall be set aside for projects housing farmworker households.

The changes made in this bill are inconsistent amongst the personal income tax and corporation tax laws. The author may wish to amend the bill to make the same changes to both the personal income tax and corporation tax laws.

LEGISLATIVE HISTORY

AB 339 (Aghazarian, 2003/2004) would decrease the period for which the farmworker housing credit is allowable; and allow any taxpayer to be eligible for the credit regardless of actual ownership. AB 339 failed to pass out of the Assembly Revenue and Taxation Committee.

AB 1811 (Stats. 2000, Ch. 311) made various changes to the Farmworker Housing Assistance Program.

AB 1903 (Lowenthal, 1999/2000) would have allowed the state low-income housing credit to be distributed among partners pursuant to a partnership agreement, even if the allocation of that credit did not have substantial economic effect. Governor Davis vetoed this bill on September 30, 2000, stating, "…I am concerned about the possible abuses that may arise. Specifically, since this bill would allow a credit to be severed from the economic interest each partner has in the profits and losses of the project, it could lead to allocations for tax shelter purposes."

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

Revenue Discussion

This bill would result in the following revenue losses:

Revenue Analysis for SB 713 – as amended 4/09/07 Effective and Operative January 1, 2008 Enactment assumed after June 30, 2007 ($ in Millions)			
Fiscal Year	2007-08	2008-09	2009-2010
Farmworker Housing	Loss < $250K	Loss < $250K	Loss < $250K
Low-Income Housing	-$3	-$11	-$12

This estimate does not consider any possible changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

This bill would consolidate the farmworker housing tax credit program into the state low-income housing tax credit program. In addition, this bill would require partnerships to allocate each partner's distributive share of the low income housing credit based on the partnership agreement.

A historical review of the farmworker housing tax credits claimed showed that a very small number of taxpayers actually claim the credit, less than ten per year. Assuming that this bill would have some positive incentive pertaining to a growth in farmworker housing, the additional revenue loss would be insignificant.

Because the farmworker housing credit would be allocated in the same manner as the low-income housing credit, the TCAC could issue the farmworker housing credit to any partnership, corporation, or business entity resulting in immediate use of tax credits by transferees, sellers, and assignors. For example, investors would be able to "buy" rights to farmworker housing credits through the purchase of a partnership share. The revenue effects could include both cash-flow acceleration of tax credit usage and absolute revenue losses. Absolute revenue losses would occur assuming some transferors, sellers, or assignors would have been unable to ever utilize all the potential tax benefits generated.

Based on data from the California Tax Allocation Committee's 2005 Annual Report and actual historical usage data, approximately $14 million in low-income housing tax credits are allocated but remain unapplied each year. Given the opportunities to sell unused credits, it is assumed that $12 million of any unused credits would be transferred ($14 million allocated low-income credit x 90% estimate unused credits = $12 million). Additionally, it is assumed that $10 million in transferred credits are applied in the year of transfer with unused amounts carried over and used in subsequent years. For 2008, the estimated amount of new credit usage is $10 million ($12 million unused credits x 80% estimate new credit usage = $10 million).

Amounts shown in the above table reflect fiscalized impacts.

POLICY CONCERN

This bill would disconnect ownership of the property from eligibility for the credit, thus severing the credit from a taxpayer's economic interest in the profits and losses of the project. Because the Committee could issue this credit to any partnership, corporation, or business entity, this action could lead to allocations for tax shelter purposes. For example, investors would be able to "buy" rights to farmworker housing credits through the purchase of a partnership share. When all of the credits, which could exceed the cost of investment, have been utilized, the investor could walk away from the partnership with a negative basis to apply against other partnership income. Thus, the investor would benefit twice from the arrangement: first by use of the credit and second by the negative basis. As discussed above under Legislative History, Governor Davis vetoed a similar proposed change to the low-income housing credit on September 30, 2000, citing concern with "abuses that may arise" from the severance of economic interest in the project and the potential for allocations being obtained for tax shelter purposes.

LEGISLATIVE STAFF CONTACT

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