

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Gilmore Analyst: Angela Raygoza Bill Number: AB 1065
Related Bills: See Legislative History Telephone: 845-7814 Amended Date: September 8, 2009
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Farmworker Housing Credit/Modify Recapture Amount

SUMMARY

This bill would modify the recapture period for the farmworker housing credit (FWHC), as specified.

SUMMARY OF AMENDMENTS

The September 8, 2009, amendments would remove language that would increase the maximum aggregate amount of the FWHC and would add language to modify the recapture period for credits under the former FWHC law.

The department's analysis of the bill as introduced on February 27, 2009, no longer applies.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill would be to increase compliance for affordable housing projects.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective and specifically operative for FWHC granted or allocated under former FWHC law.

POSITION

Pending.

Board Position:

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Department Director

Date

Selvi Stanislaus

9/16/09

ANALYSIS

STATE LAW

Current federal law does not provide a FWHC.

Recently enacted state law (SB 1247, Stats. 2008, Ch. 521) repealed the FWHC from the Revenue and Taxation Code and requires the FWHC to be allocated in the same manner as the state Low Income Housing Credit (LIHC). Former FWHC provisions provides for the recapture for noncompliance, within a 30 year compliance period, of tax credits previously granted with respect to the costs of constructing or rehabilitating farmworker housing. The recapture amount is based on a disqualifying event where the committee determines that the project is out of compliance. The amount is determined by taking a fraction of numerator which is the number of years remaining in compliance and the denominator which is 30 years. FWHCs that were allocated under the former FWHC provision would have a recapture period of 30 years and all FWHCs allocated after January 1, 2009, would have the same compliance requirements as the LIHC, but no recapture of the credit.

There is no recapture of the state LIHC. However, the compliance period for state LIHC is 30 years. The compliance period begins at the beginning of the credit period, meaning when the building is placed in service or the next year, if the taxpayer so elects.

THIS BILL

This bill would modify the recapture provisions for the FWHC under former California Revenue and Taxation Code section 17053.14 and 23608.2 from 30 consecutive taxable years to 15 consecutive taxable years.

LEGISLATIVE HISTORY

AB 1554 (Com. on Jobs, 2009/10) would provide a recapture period for the LIHC and modify the recapture period for the FWHC, as specified. This bill failed passage out the Senate Policy Committee.

SB 16 (Lowenthal, 2009/10) would make the LIHC refundable for projects that have received a preliminary reservation for a state low-income housing tax credit on or after July 1, 2008, and before January 1, 2010. This bill failed passage out of the Senate Appropriations Committee.

SB 585 (Stats. 2008, Ch. 385) allows a project that receives a preliminary reservation of the LIHC on or after January 1, 2009, and before January 1, 2016, to have the LIHC be allocated to the partners of a partnership owning a low-income housing project, in accordance with a partnership agreement, regardless of how the federal LIHC is allocated to the partners or whether the allocation of the credit under the terms of the agreement has substantial economic effect under Internal Revenue Code section 704(b). In addition, SB 585 requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest where the credit was allocated without substantial economic effect. The loss would be deferred until the first taxable year immediately following the end of the ten-year credit period for which the federal credit is allowed.

SB 1247 (Stats. 2008, Ch. 521) repealed the FWHC from the Revenue and Taxation Code and requires the FWHC to be allocated in the same manner as the state low-income housing tax credit. This act specifies that the \$500,000 annual cap plus any unallocated credit under current law is exclusively for farmworker housing. SB 1247 allows any FWHC that is unallocated or returned to be added to the annual credit allocation cap until exhausted. This act also allows the FWHC to be awarded independently of the federal LIHC.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York laws do not provide a FWHC. 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 significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Discussion

According to the California Tax Credit Allocation Committee (CTAC) data, approximately \$4,000,000 in state farmworker housing credits have been awarded to a small number of projects prior to January 1, 2009.

Under current law, the recapture period for the FWHC is 30 years and taxpayers associated with a project would be subject to recapture of as much as 100 percent of the credit. This bill reduces the recapture period from 30 to 15 years. This estimate assumes all projects become disqualified after 15 years. This would result in a total revenue loss of \$2 million (\$4 million x 50%) because there would be no recapture of 50 percent of the credits claimed ($15/30 = 50\%$) after 15 years, as would occur under current law. This loss would occur over several years, starting in 2014-15.

Taxpayer confidentiality protections prohibit further disclosure due to the small number of projects involved.

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