Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Com. On Jobs, Economic Dev., & The Economy	Analyst:	Angela Raygoza	Bill Number:	AB 1554
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	September 4, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Farmworker Housing Credit/Modify Recapture Amount/Low-Income Housing Credit Recapture Provision

SUMMARY

This bill would provide a recapture period for the low-income housing credit (LIHC) and modify the recapture period for the farm worker housing credit (FWHC), as specified.

SUMMARY OF AMENDMENTS

The September 4, 2009, amendments would provide a recapture period for the LIHC and would modify the recapture period for the FWHC.

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

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 an urgency measure, this bill would be effective immediately upon enactment and operative as specified. The provisions relating to the recapture of the low income housing credit apply to preliminary reservations of low income housing credit on or after the effective date.

POSITION

Pending.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
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_______ N	_______ OUA	___X___ PENDING		

ANALYSIS

FEDERAL/STATE LAW

Current federal tax law allows a LIHC 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 compliance period is 15 years during which there is a ratable recapture period of the LIHC. 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. Failure to comply with the requirements of IRC section 42 during the 15-year compliance period generally causes immediate recapture. The California Tax Credit Allocation Committee (TCAC) has the authority to oversee the process and allocate the federal credit.

Current state law establishes a LIHC program, administered by TCAC, which provides procedures and requirements for the allocation of the state LIHC amounts among low-income housing projects based on federal law. The compliance period is 30 years; however, there is no recapture of the state LIHC. If a project fails to meet the compliance requirements of state LIHC, compliance is restored through judicial action.

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 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. FWHC that were allocated under the former FWHC provision would have a recapture period of 30 years and all FWHC allocated after January 1, 2009, would have the same compliance requirements as the LIHC, but no recapture.

THIS BILL

This bill would conform to the federal recapture provisions with a recapture period of 15 years for preliminary reservations of the LIHC on or after the effective date, while retaining the 30-year regulatory compliance period under existing law.

In addition, 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.

TECHNICAL CONSIDERATIONS

Amendments 1 and 2 have been provided below to correct technical errors.

LEGISLATIVE HISTORY

SB 16 (Lowenthal, 2009/2010) 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) requires 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) of the. 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 farmworker housing credit 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.

SB 713 (Lowenthal, 2007/2008) is similar to this bill except it 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. This bill also would have consolidated the farmworker housing tax credit program into the state low-income housing tax credit. SB 713 failed to pass out of the Assembly Appropriations Committee.

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

Florida, *Illinois*, *Michigan*, and *Minnesota* laws do not provide a LIHC.

Massachusetts has a LIHC available to individual taxpayers and partnerships. A taxpayer that has been allocated a federal LIHC may be allowed a state tax credit for the same qualified *Massachusetts* project provided the Department of Revenue issues an eligibility statement for the project. If a portion of the federal credit on a project is required to be recaptured, the *Massachusetts* LIHC with respect to the same project must also be recaptured.

New York allows a credit against the personal income tax for the construction or rehabilitation of low-income housing. The taxpayer is entitled to take the credit for a 10-year period; however, if the project fails to qualify as low-income housing for the duration of a 15-year compliance period, the credit is subject to partial recapture.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact for this bill would be as follows:

Estimated Revenue Impact of AB 1554 As Amended September 4, 2009 Applicable to Preliminary LIHC Reservations Made After January 11, 2011 Applicable to FWC Issued Prior to January 1, 2009 Enactment Assumed After June 30, 2010			
Farmworker Housing **(Loss)**	Approximately $2,000,000 loss starting in 2014-15		
Low Income Housing **(Gain)**	2026/2027	2027/2028	2028/2029
	+$1,800,000	+$1,700,000	+$1,800,000

This analysis does not consider the possible changes in investment activity, employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Farmworker Housing Tax Credit

According to TCAC data, approximately $4 million 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; 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 2014/2015.

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

Low-Income Housing Tax Credit

Absent data regarding the long-term status of low-income housing projects, this analysis assumes, for illustration purposes, that one in every twenty projects receiving a preliminary reservation of the state low-income housing credit on or after January 1, 2011, would be subject to recapture. It is further assumed that such projects would fall out of compliance after 10 years and be subject to recapture of one-third of the amount of credits received (5 years remaining/15 year recapture period).

Based on recent projections regarding the amount of low-income housing credits that are expected to be awarded, the corresponding revenue gain is computed as follows:

Example:

2011 projected awards	$105 million
Year credit applied on tax return	2015
Year of recapture due to non-compliance	2025
Taxable year taxpayer must report the recapture	2026
Amount of recapture ($105M x 5% non-comply x 33% recapture)	≈ $1.8 million gain
Corresponding fiscal year impacted	2026-2027

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Director	Asst. Legislative Director
Angela Raygoza	Jay Chamberlain	Patrice Gau-Johnson
(916) 845-7814	(916) 845-3375	(916) 845-5521
angela.raygoza@ftb.ca.gov	jay.chamberlain@ftb.ca.gov	patrice.gau-johnson@ftb.ca.gov

Analyst Angela Raygoza
Telephone # 845-7814
Attorney Patrick Kusiak

FRANCHISE TAX BOARD’S
PROPOSED AMENDMENTS TO AB 1554
As Amended September 4, 2009

AMENDMENT 1

On page 8, line 22, strikeout “(j)” and insert:
(i)

AMENDMENT 2

On page 23, line 14, strikeout “17058” and insert:

23610.5