Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Cedillo	Analyst:	Angela Raygoza	Bill Number:	SB 1216
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	April 5, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Low-Income Housing Credit/Allocation Of Surplus Credits By The California Tax Credit Allocation Committee

SUMMARY

This bill would allow the Tax Credit Allocation Committee (TCAC) to allocate excess state Low Income Housing Credits (LIHCs) to investors, as specified.

SUMMARY OF AMENDMENTS

The bill as introduced February 18, 2010, made changes to the Insurance Tax Law as it relates to the LIHC.

The April 5, 2010, amendments would add language that would allow the TCAC to allocate excess state LIHCs to investors. The amendments would make this bill a tax levy.

This analysis will not address the bill's changes to the Insurance Tax Law, as they do not impact the department or state income tax revenue.

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

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to allow the TCAC the flexibility to allocate unused tax credits to investors to complete delayed affordable housing projects to stimulate the local economy, create jobs, and increase tax revenues.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective and operative immediately upon enactment.

POSITION

Pending.

Board Position:			Department Director	Date
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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, dependent 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 TCAC has the authority to oversee the process and allocate the federal and state credit.

Current state tax law generally conforms to federal law with respect to the LIHC, except that the state LIHC 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 calendar year 2010, the amount of LIHC available is $89.8 million.[1]
- The unused housing credit ceiling, if any, for the preceding calendar year.
- The amount of housing credit ceiling returned in the current calendar year.

Current federal and state income tax law requires a partner's distributive share of income, gain, loss, deduction, or credit to be determined in accordance with the partner's interest in the partnership by taking into account all facts and circumstances if one of the following occurs:

- The partnership agreement does not provide as to the partner's distributive share of income, gain, loss, deduction, or credit; or
- The allocation of income, gain, loss, deduction, or credit to a partner under the partnership agreement does not have substantial economic effect.

As an exception to the requirements above, under state tax law, for a project that receives a preliminary reservation of the LIHC on or after January 1, 2009, and before January 1, 2016, the LIHC may be allocated to the partners of a partnership owning a low-income housing project in accordance with the provisions of 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, within the meaning of Internal Revenue Code section 704(b).[2]

In addition, state tax law requires a deferral of any loss or deduction from the sale or disposition of a partnership interest where the LIHC was allocated without substantial economic effect to be deferred until the first taxable year immediately following the end of the ten-year credit period for which the federal credit is allowed.

THIS BILL

This bill would authorize the TCAC to award state LIHCs to a project in excess of the 30 percent of the eligible basis threshold and reduce the amount of federal LIHCs awarded to investors, while ensuring that the combined amount of state and federal credits do not exceed the total credits allowable under state and federal law.

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[1] This amount is adjusted annually based on the Consumer Price Index (CPI) for the preceding calendar year.
[2] Internal Revenue Code section 704 (b) defines a partner's distributive share with respect to substantial economic

To substitute state tax credits in this way would require the following:

- TCAC have an excess of state LIHCs to allocate in the calendar year,
- Investors agree to substitute the state LIHC for federal, and
- State LIHCs do not exceed 80 percent of the eligible basis.

IMPLEMENTATION CONSIDERATIONS

Because the TCAC allocates the LIHC, implementing this bill would not impact the department's programs and operations.

LEGISLATIVE HISTORY

SB 16 (Lowenthal, 2009/2010) would make the LIHC refundable and would extend the partnership allocation rules for the preliminary reservation of the state LIHC during tax year 2008. This bill failed passage out of the Senate by the constitutional deadline.

SB 622 (Lowenthal, 2009/2010) would have allowed projects that received a preliminary reservation of the state LIHC during calendar year 2008, for which financial closing has not occurred by the effective date of the bill, to be allocated to the partners of a partnership owning a low-income housing project. This bill failed passage out of the Senate by the constitutional deadline.

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). 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 LIHC. 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 Farmworkers Housing Credit (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

The change proposed by this bill would not alter the underlying tax aspects of the credit, so a comparison with other states' tax laws would be irrelevant.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SB1216 For Taxable Years Beginning On or After January 1, 2010 Enactment Assumed by September 30, 2010 ($ in Millions)					
2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
No Impact	No Impact	No Impact	-$0.5	-$0.5	-$0.5

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

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