

SUMMARY ANALYSIS OF AMENDED BILL

Author: Lowenthal/Alquist Analyst: Angela Raygoza Bill Number: SB 16
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: December 16, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Low Income Housing Refundable Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended _____.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO _____.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED

February 11, 2009, STILL APPLIES.

OTHER – See comments below.

SUMMARY

This bill would make the Low Income Housing Credit (LIHC) refundable, as specified.

SUMMARY OF AMENDMENTS

The December 16, 2009, amendments would do the following:

- Allow the Tax Credit Allocation Committee (TCAC) to impose a fee for applications submitted in calendar years 2010 through 2012;
- Specify the aggregate housing credit ceiling for calendar years 2010 to 2013;
- Allow the LIHC to be refundable for projects that have received a preliminary reservation for a state low-income housing tax credit, as specified;
- Disallow the refundable credit from being carried over to future years;
- Exclude the refundable credit from state taxation;
- Require the Franchise Tax Board (FTB) to pay refunds after January 1, 2011;
- Allow the refunds as determined by the FTB to be paid out of the Personal Income Tax Fund or Corporation Income Tax Fund;
- Exclude the credit that may be refunded from assignment under Revenue and Taxation Code (R&TC) section 23663.

Board Position:

_____ S _____ NA _____ NP
 _____ SA _____ O _____ NAR
 _____ N _____ OUA PENDING

Asst. Legislative Director

Date

Patrice Gau-Johnson

01/21/10

As a result of the amendments, “Effective/Operative Date,” “This Bill,” “Technical Considerations,” and “Revenue Impact” discussions, as provided in the department’s analysis of the bill as amended February 11, 2009, have been revised. The amendments resolve the technical considerations that were identified in the department’s analysis dated February 11, 2009. The “Fiscal Impact” and “Policy Concerns” remain and have been included below for convenience.

This analysis replaces the department’s analysis dated February 11, 2009.

EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective immediately upon enactment. The provisions that would make the LIHC refundable are specifically operative for projects that receive a preliminary reservation on or after January 1, 2010, and before January 1, 2013.

ANALYSIS

THIS BILL

This bill would allow the TCAC to impose a fee on LIHC applications submitted in calendar years 2010 through 2012 to cover the costs incurred by the TCAC and the FTB.

This bill would specify that the aggregate housing credit ceiling for calendar years 2010 to 2013 are as follows:

- For calendar year 2010, \$92.9 million
- For calendar year 2011, \$100.8 million
- For calendar year 2012, \$92.2 million
- For calendar year 2013 the sum of all of the following:
 - \$70 million increased by the Consumer Price Index (CPI) beginning after 2002.
 - The difference between the amounts awarded under current law for 2010, 2011, and 2012, and the amounts prescribed above.
 - The amount of the unused housing credit ceiling for calendar years 2010 to 2012 returned from the preceding calendar years.

This bill would allow the LIHC to be refundable for projects that have received a preliminary reservation for a state low-income housing tax credit on or after January 1, 2010, and before January 1, 2013.

Currently, the TCAC allocates the LIHC to the taxpayer; the credit is applied to reduce taxes owed, and any remaining amount is carried over to reduce taxes in future years. Under this bill, after applying the credit to reduce taxes owed, the excess amount would be refundable. The refunds would be made after all tax liabilities, including, tax, penalties, interest, and fees, have been paid. The refundable amounts determined by the FTB would be transferred from the Personal Income Tax Fund or Corporation Income Tax Fund to the Tax Relief and Refund Account. These funds are General Fund accounts.

This bill would disallow any refundable credits from being carried over into future years. In addition, any credit refunded to a taxpayer would be excluded from taxation under Part 10 (commencing with section 17001) or Part 11 (commencing with section 23001).

This bill would authorize the FTB to pay refunds after December 31, 2010, only when both of the following have occurred:

- An agreement has been executed between the TCAC and the FTB for the amount of the FTB's first years costs associated with refunding the LIHC. First year costs include, but are not limited to, costs associated with the development of the process or system change and labor.
- FTB has received an amount equal to the first year costs specified above.

This bill would exclude refundable Low Income Housing Credits from assignment pursuant to section 23663¹.

FISCAL IMPACT

This would be the first time the department has administered a refundable tax credit under the Corporation Tax Law (CTL). Staff estimates a combined one-time cost of approximately \$521,000 (4.3 PYs) to develop, program, and test the refundable credit processes in existing systems for both personal income tax and corporation tax. In addition, staff estimates ongoing costs that are absorbable to validate the credits reported on the tax return against pre-approved information from the TCAC.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impacts:

SB 16 (Lowenthal/Alquist) – As Amended December 16, 2009 Effective For Preliminary Reservations of State Low-Income Housing Tax Credits On or After January 1, 2010, and before January 1, 2013 Enactment assumed after June 30, 2010 (\$ in Millions)							
2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
\$0.6	-\$2.1	-\$3.4	-\$2.3	-\$1.4	\$1.5	\$2.6	\$1.8
2022-23	2023-24	2024-25	2025-26	2026-27	2027-28	2028-29	2029-30
\$1.8	\$1.8	\$1.2	\$0.6	\$0.0	\$0.0	\$0.0	\$0.0

¹ Revenue and Taxation Code section 23663 allows the assignment of certain credits to taxpayers under the Corporation Tax Law when both the assignor and assignee are members of the same combined reporting group.

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

The net annual impact is the result of netting losses and gains from the use of refundable credits. Each component of the revenue estimate has a potential error associated with it relative to the estimate for that component. This error becomes significant compared to the net revenue impact of the bill. Therefore, the potential error of this estimate is significantly greater than the estimate itself. The actual impact of this bill could result in a revenue loss or gain in the millions of dollars. Nonetheless, over the next twenty years the net revenue impact of this bill is estimated to be a gain of \$2.6 million.

POLICY CONCERNS

The department is concerned with the possibility of fraud. Historically, refundable credits (such as the state renter's credit, the federal Earned Income Credit, and the federal credit for gasoline used for farming) have had significant problems with invalid and fraudulent returns. Although the refundable LIHC would be verified by a third party, the TCAC, at the partnership entity level, the possibility of fraud remains at the partner level when a personal income tax return is filed by a partner.

In addition, this bill would set a precedent for business tax credits by allowing the LIHC to be refundable under the CTL.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Angela Raygoza

(916) 845-7814

angela.raygoza@ftb.ca.gov

Revenue Director

Jay Chamberlain

(916) 845-3375

jay_chamberlain@ftb.ca.gov

Asst. Legislative Director

Patrice Gau-Johnson

(916) 845-5521

patrice.gau-johnson@ftb.ca.gov