Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Atkins	Analyst:	Jessica Deitchman	Bill Number:	AB 1999
Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Date:	August 5, 2014
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Rehabilitation of Certified Historic Structure Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law and the Corporation Tax Law, allow a tax credit for a portion of the costs paid or incurred to rehabilitate certain historic structures.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The August 5, 2014, amendments would modify several definitions, allow "owner-occupied property" to qualify for the credit, add a recapture provision, and allow corporate taxpayers to use the credit to reduce the regular tax below tentative minimum tax.

As a result of the amendments, the "This Bill" and "Economic Impact" sections of the department's analysis of the bill as amended July 2, 2015, have been revised, and several new technical considerations and an implementation concern were identified. The "Federal Law," "Fiscal Impact," and "Policy Concern" sections have been restated below for convenience. The remainder of the July 2, 2015, analysis still applies.

FEDERAL/STATE LAW

Federal law, IRC section 47, allows a two-tiered credit for the rehabilitation expenses of older and historic buildings, as follows:

- A 10 percent credit is available for the rehabilitation expenses on non-historic buildings with an additional requirement that the building must have been originally constructed before 1936, and
- A 20 percent credit is available for the rehabilitation expenses of a certified historic structure, (one listed on the National Register of Historic Places or located in a Registered Historic District and determined to be of significance to the Historical District).

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Existing state law lacks a tax credit for the rehabilitation of property or historical buildings.

Board Position:			Asst. Legislative Director	Date
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THIS BILL

For taxable years beginning on and after January 1, 2015, and before January 1, 2023, this bill would create a tax credit for the rehabilitation expenses of older and historic buildings in accordance with federal law except as follows:

- A general 20 percent credit would be allowed for the qualified rehabilitation expenses of a certified historic structure (other than expenses that qualify for the 25-percent credit), and
- A 25 percent credit would be allowed for the qualified rehabilitation expenses of a certified historic structure if that structure meets any of the following conditions:
    - The rehabilitated structure is located on either federal surplus property, if obtained by a local agency under Section 54142 of the Government Code, on surplus state real property, as defined by Section 11011.1 of the Government Code, or on surplus land, as defined by subdivision (b) of Section 54221 of the Government Code.
    - The rehabilitated structure includes affordable housing for lower-income households.[1]
    - The structure is located in a designated census tract.[2]
    - The structure is part of a military base reuse authority.[3]
    - The structure is a transit-oriented development that is higher-density, mixed-use development within a walking distance of one-half mile of a transit station.
- Unlike the federal credit; no state credit would be allowed for expenditures with respect to a qualified building unless it is a certified historic structure, and
- The credit would be allowed for qualified rehabilitation expenditures for an owner-occupied residence if;
    - The expenses are determined to have a public benefit in the year of completion by the Governor's Office of Business and Economic Development (GO-BIZ) and the Office of Historic Preservation, and
    - The amounts are equal to or more than $5,000 but do not exceed $25,000.
- The following definitions would apply for state purposes:
    - "Certified historic structure" has the same meaning as defined in federal law except it would include a structure in the state that is listed below the California register of Historical Resources.
    - "Owner-occupied residence" means a building that will be owned and occupied by an individual tax payer, who has a household income $200,000 or less, as the taxpayer's principal residence.

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[1] As defined in Section 50079.5 of the Health and Safety Code.
[2] As defined in paragraph (7) of subdivision (b) of Section 17053.73.
[3] Established pursuant to Title 7.86 (commencing with Section 67800 of the Government Code).

- "Qualified rehabilitation expenditure" has the same meaning as defined federal law except that qualified rehabilitation expenditures may include expenditures in connection with the rehabilitation of a building without regard to whether any portion of the building is or is reasonably expected to be tax exempt use property.
- "Qualified rehabilitation expenditure" also means rehabilitation expenditures incurred by the taxpayer with respect to an owner-occupied principal residence for the rehabilitation of the exterior of the building or rehabilitation necessary for the functioning of the home, including, but not limited to, rehabilitation of the electrical, plumbing, or foundation of the principal residence.

- Coordinating provisions would provide that no deduction would be allowed for any expense for which a credit is allowed, and if a credit is allowed with respect to property, the basis of that property would be reduced by the amount of the credit.
- Any unused credits could be carried over for eight years or until exhausted.
- The credit could reduce tax below tentative minimum tax for corporations.
- Section 183 of the IRC[4] would not apply with respect to the credit.

This bill would provide that the recapture provisions described in subsection (a) of Section 50 of the IRC would apply when the property (or interest in the property) is sold.

In addition, this bill would modify federal law by adding that the GO-BIZ would do the following:

- Allocate this tax credit to applicants.
- Establish a procedure for applicants to file with the Governor's Office of Business and Economic Development a written application.
- Establish criteria consistent with the requirements of this bill.
- Determine and designate, in consultation with the Office of Historic Preservation, applicants that meet the requirements of this bill.
- Process and approve, or reject, all applications.
- Allocate an aggregate amount of credits, subject to the annual cap, equal to the sum of all of the following:
  - Eighty million dollars ($80,000,000) in tax credits for the 2015 calendar year and each calendar year thereafter, through and including the 2022 calendar year.
  - The unused allocation tax credit amount, if any, for the preceding calendar year.

[4] IRC 183 provides that in the case of an activity engaged in by an individual or an S corporation, if such activity is not engaged in for profit, no deduction attributable to such activity shall be allowed.

- To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until, and treated as if, it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project.
- Certify tax credits allocated to taxpayers.
- Provide the Franchise Tax Board an annual list of the taxpayers that were allocated a credit, including each taxpayer's taxpayer identification number, and the amount allocated to each taxpayer.

This bill would remain in effect until December 1, 2023, and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

This bill uses the undefined term "household income." The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this credit.

TECHNICAL CONSIDERATIONS

On page 4, line 25, after "listed" strike "below" and insert "on".

On page 4, line 28, strike "tax payer" and insert "taxpayer".

On page 4, line 17, after "those" insert "qualified rehabilitation expense". This amendment would clarify what is meant by the term "amounts".

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1999 As Amended August 5, 2014 Assumed Enactment After June 30, 2014 ($ in Millions)		
2014-15	2015-16	2016-17
- $25	- $60	- $75

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

SUPPORT/OPPOSITION

Support:[5] American Institute of Architects California Council; Applied Architecture Inc.; Architectural Resources Group, Inc.; Barstow Area Chamber of Commerce; Brunzell Historical; California Building Industry Association; California Conference of Machinists; California Conference of the Amalgamated Transit Union; California Historical Route 66 Association; California-Nevada Conference of Operating Engineers; California Preservation Foundation; California Teamsters Public Affairs Council; City and County of San Francisco; City of San Gabriel; City of Sonoma; City of Woodland; Daniel Malmuth, Fine Arts Commissioner and Historical Preservation Commissioner; Engineers & Scientists, IFPTE, Local 20; Eric Garcetti, Mayor of the City of Los Angeles; Hollywood Heritage Inc.; International Longshore and Warehouse Union, Coast Division; League of California Cities; Northern California Community

Opposition: None provided.

POLICY CONCERNS

This bill would provide a state credit in an amount greater than the federal credit for the rehabilitation expenses for a historic structure. In general, a taxpayer's federal income tax liability is significantly higher than his or her state income tax liability. As a result, a state tax credit equal to or exceeding the federal credit amount could be considered to provide a greater proportionate benefit for state tax purposes than for federal tax purposes.

This bill would allow taxpayers subject to the Corporation Tax Law to use this credit to reduce the regular tax below the tentative minimum tax. This tax benefit would be unavailable to individuals and business entities subject to the Personal Income Tax Law. Thus, this bill would provide differing treatment.

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[5] As included on the committee analysis found here: http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_1951-2000/ab_1999_cfa_20140620_155738_sen_comm.html