

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 19, 2014
 Attorney: Bruce Langston Sponsor _____

SUBJECT:	Rehabilitation of Certified Historic Structure Tax Credit
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SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), 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 19, 2014, amendments would do the following:

- Reduce the allowable allocated amount of the credit and include a “reservation” component,
- Modify the definition of owner occupied,
- Limit the credit for an owner occupied property to once every ten taxable years,
- Add a cost certification requirement, and
- Allow the credit to reduce the regular tax below tentative minimum tax for taxpayers subject to the PITL

As a result of the amendments, the “Technical Considerations,” “Implementation Consideration,” and one of the “Policy Concerns” provided in the department’s analysis of the bill as amended May 15, 2014, have been resolved. The “This Bill” and “Economic Impact,” sections of that analysis have been revised, a new “Technical Consideration” has been identified, and the remaining “Policy Concern” and “Federal/State Law” sections have been restated below for convenience. The remainder of the analysis of the bill as amended May 15, 2014, still applies.

Summary of Suggested Amendments

Technical considerations have been noted to clarify terms used in the bill.

FEDERAL/STATE LAW

Federal law, Internal Revenue Code (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

Board Position:	Asst. Legislative Director	Date
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- 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.

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 those qualified rehabilitation expenditure amounts 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

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).

- 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 on the California register of Historical Resources.
 - “Owner-occupied residence” has the same meaning as that term is defined in Section 163(h)(4) of the IRC, that will be owned and occupied by an individual taxpayer who has modified adjusted gross income, as defined by Section 62 of the IRC, of \$200,000 or less, as the taxpayer’s principal residence or will be the principal residence after the rehabilitation of the residence.
 - A taxpayer shall be allowed an “owner-occupied residence” credit once every ten taxable years.
 - “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.
- To be eligible for the credit, the taxpayer shall request a tax credit reservation from GO-Biz in a form and manner prescribed by GO-Biz:
 - To obtain a tax credit reservation, the taxpayer shall provide all necessary information to GO-Biz.
 - A tax credit reservation provided to a taxpayer shall not constitute a determination by GO-Biz of a taxpayer’s eligibility for the credit.
 - If a taxpayer receives a tax credit reservation, but rehabilitation has not commenced within 18 months of the issuance of the tax credit reservation, the tax credit reservation shall be forfeited and the credit amount associated with the tax credit shall be treated as an unused allocation tax credit amount.
- 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 the regular tax below tentative minimum tax for taxpayers subject to the CTL and the PITL.

- Section 183 of the IRC⁴ 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.

- A taxpayer shall be allocated a tax credit pursuant to the taxpayer's tax credit reservation upon receipt by Go-Biz of a cost certification for the qualified rehabilitation expenditures. For projects with qualified rehabilitation expenditures in excess of \$250,000, the cost certification shall be issued by a licensed certified public accountant.
- This section shall remain in effect regardless of the expiration or repeal of Section 47 of the IRC, relating to the federal rehabilitation credit.

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 GO-Biz 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.
- Determine and designate, in consultation with the Office of Historic Preservation, applicants that meet the requirements of this section to ensure that the rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation.⁵
- 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:
 - \$50,000,000 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.
- GO-Biz shall set aside \$10,000,000 of tax credits each calendar year for taxpayers with qualified rehabilitation expenditures of less than \$1,000,000. To the extent that this amount is not fully reserved in any calendar year, the unused portion shall become available for reservation to other taxpayers.

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.

⁵ As found in part 67 of title 36 of the code of federal regulations.

- 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 would establish a tax credit that would be allocated and certified by another state agency and could be implemented during the department's normal annual update.

TECHNICAL CONSIDERATIONS

The bill states that "owner occupied residence" shall have the same meaning as that term is defined in Section 163(h)(4) of the IRC and is owned and occupied by an individual who has modified adjusted gross income of \$200,000 or less, as defined by Section 62 of the IRC. However, these terms are not defined in the code sections that are referenced. For clarity, it is recommended that the bill be amended to use terms that are defined in the code sections specified.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1999 As Amended August 19, 2014 Assumed Enactment After June 30, 2014 (\$ in Millions)		
2014-15	2015-16	2016-17
- \$18	- \$41	- \$48

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

SUPPORT/OPPOSITION⁶

Support: American Institute of Architects California Council (co-source); California Preservation Foundation (co-source); 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 Teamsters Public Affairs Council; California-Nevada Conference of Operating Engineers; Cities of Orange, Richmond, Sacramento, San Diego, San Gabriel, Sonoma, Novato, and Woodland; City and County of San Francisco; City of Santa Ana, Councilmember Vincent F. Sarmiento; Downtown Sacramento Partnership; Engineers & Scientists, IFPTE, Local 20; Fine Arts Commissioner and Historical Preservation Commissioner, Daniel Malmuth; Hollywood Heritage Inc.; International Longshore and Warehouse Union, Coast Division; League of California Cities; Los Angeles Mayor, Eric Garcetti; Northern California Community Loan Fund; Palm Springs Modern Committee; Professional & Technical Engineers, IFPTE, Local 21; San Diego Council President , Todd Gloria; San Diego Regional Chamber of Commerce; Save Our Heritage Organization; Structural Engineers Association of California; The Glendale Historical Society; Tuolumne County Visitors Bureau; UNITE HERE; Utility Workers Union of America, Local 132

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 in amount or exceeding the federal credit could be considered to provide a greater proportionate benefit for state tax purposes than for federal tax purposes.

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⁶ As reported in the Senate Floor Analyses [sic] dated August 19, 2014, located on the Legislative Counsel's website at <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml>.