BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Atkins**	**AB 1999**

SUBJECT

Rehabilitation of Certified Historic Structure Tax Credit

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.

REASON FOR THE BILL

The reason for the bill is to provide an incentive to taxpayers to rehabilitate historic structures by providing a tax credit to help offset some of the costs associated with the rehabilitation.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2015, and before January 1, 2023.

FEDERAL/STATE LAW

Federal law, section 47 of the Internal Revenue Code (IRC) , 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.

Gail Hall, FTB Contact Person (916) 845-6333 (Office)	Executive Officer Selvi Stanislaus	Date 09/03/14

THIS BILL

For taxable years beginning on or 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 determined in accordance with federal law (section 47 of the IRC) 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 certain federal surplus property, surplus state real property, or on surplus land.
    - 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.
- 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, and
    - The amounts are equal to or more than $5,000 but do not exceed $25,000.

The California Tax Credit Allocation Committee (Allocation Committee), with assistance from the Office of Historic Preservation, would be responsible for the following:

- Reserve, allocate, and certify tax credits.
- Establish application procedures.
- Establish criteria consistent with the requirements of this bill.
- Determine and designate applicants that meet the requirements of this bill.
- Process and approve, or reject, all applications.

---

[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).

- 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.
- 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 would become available for reservation to other taxpayers.
- Allocate credits awarded to a partnership to the partners of that partnership in accordance with the partnership agreement, and credits awarded to an "S" corporation would be allocated among the shareholders of that "S" corporation in accordance with their respective pro rata shares.
- 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.
- Adopt a reasonable fee in an amount sufficient to cover expenses.

In addition, this bill would provide the following:

- 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 plus the tax relating to the separate tax on lump-sum distributions, below tentative minimum tax for taxpayers subject to the CTL and the PITL.
- Section 183 of the IRC[4] would not apply with respect to the credit.
- Section 47(c)(1)(C)(ii) of the IRC, relating to special rules for rehabilitation that may be expected to be completed in phases would not apply.
- 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 within the recapture period[5].
- This bill would remain in effect regardless of the expiration or repeal of Section 47 of the IRC, relating to the federal rehabilitation credit.

---

[4] IRC section 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] The compliance and recapture period for the federal historic credits is five years from the date the property is placed in service. Twenty percent of the recapture risk decreases each year.

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

LEGISLATIVE HISTORY

AB 166 (Cedillo, 2001/2002) would have allowed a tax credit in an amount determined in accordance with provisions of the federal tax credit for historic rehabilitation. Additionally, the bill would have allowed a 25 percent credit for any certified rehabilitation of a certified historic structure within a redevelopment area. AB 166 failed to pass out of the Assembly Revenue and Taxation Committee.

SB 875 (Marks, 1995/1996) would have allowed a tax credit in an amount equal to 10 percent of the costs for rehabilitating a residential historic building, and 20 percent of the costs for rehabilitating a commercial historic building. SB 875 failed to pass out of the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York.* These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida and *Michigan* lack a credit comparable to the one created in this bill.

Illinois offers a 25 percent credit for eligible expenditures on the rehabilitation of properties in certain designated zones throughout the state. The minimum investment must be the greater of $5,000 or 50 percent of the purchase price.

Massachusetts provides a credit equal to 20 percent for income-producing properties and 25 percent credit for projects with affordable housing of the qualified rehabilitation costs. The program is limited to $50 million, statewide, per year. The minimum investment must be 25 percent of the adjusted basis of the property.

Minnesota allows a credit equal to 100 percent of the federal credit allowed for the rehabilitation of certified commercial property, or a grant equal to 90 percent of the federal credit allowed. The credit is fully refundable, but the applicant must register for the credit before beginning the rehabilitation. The credit sunsets in fiscal year 2015.

New York provides a credit for the rehabilitation of both commercial and residential properties of 20 percent of the costs. The commercial rehabilitation is limited to $5 million in credits per project. The residential credit is limited to $50,000 per project and may be refundable depending on the Adjusted Gross Income of the homeowner. This credit must be claimed in conjunction with the federal credit and will sunset on December 31, 2014.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate:

Estimated Revenue Impact of AB 1999 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.

Revenue Discussion

This bill would allow the Allocation Committee to allocate $50 million annually for the rehabilitation of certified historic structures in California. It is assumed that after a short phase-in period, the Allocation Committee would fully allocate the credit in each year. Any unallocated credit would be carried forward to be allocated in subsequent years. It is assumed that 80 percent of the credit would be used in the year generated and the remaining credit would be used in the subsequent four years. The tax year estimates were converted to fiscal year estimates and are reflected in the table above.

APPOINTMENTS

None.

SUPPORT/OPPOSITION[6]

Support: Support: American Institute of Architects California Council (co-sponsor), California Preservation Foundation (co-sponsor), 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, Capital City Preservation Trust, 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 Conservancy, Los Angeles Mayor, Eric Garcetti, Northern California Community Loan Fund, Palm Springs Modern Committee,

[6] As provided in the Senate Floor Analyses [sic] dated August 25, 2014.

Professional & Technical Engineers, IFPTE Local 21, Sacramento County Historical Society, Sacreamento Modern, Sacramento Old City Association, San Diego Council President, Todd Gloria, San Diego Regional Chamber of Commerce, San Francisco Heritage, 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.

VOTES

	Date	**Yes**	**No**
Concurrence	08/27/14	78	0
Assembly Floor	05/27/14	75	0
Senate Floor	08/26/14	36	0

LEGISLATIVE STAFF CONTACT

Contact	**Work**
Marybel Batjer, Agency Secretary, CalGovOps	916-651-9024
Nancy Farias, Deputy Secretary for Legislation, CalGovOps	916-651-9373
Selvi Stanislaus, Executive Officer, FTB	916-845-4543
Gail Hall, Legislative Director, FTB	916-845-6333