

**SUMMARY ANALYSIS OF AMENDED BILL**

Author: Perez, et al. Analyst: David Scott Bill Number: AB 305  
 Related Bills: See Prior Analysis Telephone: 845-5806 Amended Date: May 21, 2013  
 Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** California New Markets Tax Credit

**SUMMARY**

This bill would do the following:

- Reduce the total amount of the New Jobs Tax Credit that may be claimed for all taxable years; and
- Create a new tax credit for investments in businesses that provide capital or loans to low-income communities (California New Markets Tax Credit Program).

**RECOMMENDATION**

No position.

**SUMMARY OF AMENDMENTS**

The May 21, 2013, amendments added co-authors and resolved the department's technical considerations. Except for the technical considerations, the department's analysis of the bill as introduced February 12, 2013, and amended April 16, 2013, still applies. For convenience, existing implementation concerns are provided below.

**ANALYSIS**THIS BILL

This bill would reduce the cumulative total amount of credit that can be claimed for the New Jobs Tax Credit from \$400 million to \$200 million.

For a total of seven taxable years, beginning on or after January 1, 2013, and before January 1, 2020, this bill would, under both the Personal Income Tax Law and Corporation Tax Law, allow a California Qualified Equity Investment Credit equal to 39 percent of a taxpayer's "qualified equity investment."

The credit would be allowed only if the taxpayer holds the qualified equity investment on the credit allowance date and the six subsequent anniversaries of the credit allowance date.

Board Position:

\_\_\_\_\_ S                      \_\_\_\_\_ NA                      \_\_\_\_\_ NP  
 \_\_\_\_\_ SA                      \_\_\_\_\_ O                      \_\_\_\_\_ NAR  
 \_\_\_\_\_ N                      \_\_\_\_\_ OUA

Legislative Director

Date

Jahna Carlson

5/31/13

The credit amount would be computed in accordance with the Federal New Markets Tax Credit provisions, with the following modifications:

- The credits would be allocated by the California Tax Credit Allocation Committee (Credit Allocation Committee).
- Allows the 39 percent credit to be claimed in the following manner:
  - Zero percent for the first two credit allowance dates;
  - Seven percent on the third credit allowance date; and
  - Eight percent on each of the remaining credit allowance dates (four through seven).
- Reduces the period for using the credit before the credit could be reallocated by the Credit Allocation Committee, from five years (for the federal credit) to one year (for the California credit).
- Requires the qualified low-income community to be in California.
- Low-income community investment would include any capital or equity investment in, or loan to, any real estate project in a low-income community or an operating business that, at the time the initial investment is made, has 250 or less employees and is located in a low-income community.
- Any corporation or partnership, where a substantial portion of the services performed by the employees of the corporation or partnership in any low-income community, is specifically excluded from being a qualified active low-income community business.
- Allows startup businesses as a qualified active low-income community business for California purposes.
- Allows an exception to the requirement that 85 percent of gross assets must be invested in a qualified low-income community investment for the duration of the seven-year credit period: if the investment meets the 85 percent test, even if sold, for a six-year period, it would be deemed to meet the test for the seventh year. The Qualified Development Entity would not be required to reinvest any capital returned after the sixth year.

The aggregate annual amount of California Qualified Equity Investment Credits allowed for each calendar year from 2013 to 2020, inclusive, would be capped at \$40 million, in addition to any unused credits allocated from the prior year. The maximum credits allowed over the life of this credit would be capped at \$200 million.

Credits in excess of a taxpayer's current year tax liability would be ineligible for carry forward to subsequent years.

## IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- This bill uses terms that are undefined, e.g., "real estate project" and "time the initial investment is made." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit. The author may wish to amend this bill for clarity.
- The bill requires that if an investment is made in an operating business, the business must have 250 or less employees. The language is silent as to the method of determining the number of employees, (e.g., Head count at year end? Full-time equivalents?). The author may wish to amend the bill to clarify this issue.
- The California New Markets Tax Credit section would be in effect only until December 1, 2020, and would be repealed as of that date. The result would be that the credit could not be taken after that date. Investors making an investment might be barred from utilizing the full amount of their credit. For example, an investor making a qualified investment in 2018 would have zero credit allowable for the first two years because the allowed percentage is zero for the first two years. The credit would repeal as of December 1, 2020, and with the investor filing their return in 2021 for the 2020 taxable year no credit would be allowed because of the repeal of this section. If this is contrary to the author's intent, the author may wish to amend the bill.

## **SUPPORT/OPPOSITION**

Support: The East Los Angeles Community Union (TELACU) (Sponsor)  
California League of Cities

Opposition: None provided.

## **LEGISLATIVE STAFF CONTACT**

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