Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Beall	Analyst:	Jessica Deitchman	Bill Number:	SB 377
Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Dates:	April 29, 2015 & May 12, 2015
		Attorney:	Bruce Langston	Sponsor	

SUBJECT:	Low Income Housing Credit

SUMMARY

This bill would modify the existing Low-Income Housing Credit (LIHC) to remove the sunset, and to add provisions to allow the credit to be sold.

This analysis only addresses the provisions of this bill that impact the department's programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 29, 2015, and May 12, 2015, amendments removed and reinserted the provisions related to the sale of the credit, revised the operative date of the bill, and resolved an implementation concern.

As a result of these amendments, the "Effective/Operative Date," "This Bill," and "Economic Impact" sections of the department's analysis of the bill as amended April 6, and April 16, 2015, have been revised. For convenience, the "Fiscal Impact" and "Implementation Considerations" sections are restated below. The remainder of the department's analysis of the bill as amended April 6, and April 16, 2015, still applies.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for a project that receives a preliminary reservation under this section beginning on or after January 1, 2016.

THIS BILL

This bill would extend in perpetuity, the requirement that allocation of the LIHC to partners be based upon the partnership agreement, regardless of how the federal LIHC is allocated to the partners, or whether the allocation has substantial economic effect, as specified.

Board Position:						Legislative Director	Date
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Additionally, for a project that receives a preliminary reservation under this section beginning on or after January 1, 2016, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee (Allocation Committee) to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed for consideration that is not less than 80 percent of the amount of the credit. Sales of LIHC would be subject to the following:

- The taxpayer that originally received the credit would report to the Allocation Committee within 10 days of the sale, in the form and manner specified by the Allocation Committee, all required information regarding the purchase and sale of the credit, including:
  - The social security or other taxpayer identification number of the unrelated party to whom the credit has been sold,
  - The face amount of the credit sold, and
  - The amount of consideration received by the taxpayer for the sale of the credit.
- A credit could be sold to more than one unrelated party, and could not be resold by the unrelated party to another taxpayer or other party.
- The taxpayer that originally received the credit that is sold would remain solely liable for all obligations and liabilities imposed on the taxpayer with respect to the credit ; none of which would apply to any party to whom the credit has been sold or subsequently transferred.
- Parties who purchase credits would be entitled to utilize the purchased credits in the same manner the taxpayer that originally received the credit could utilize them.
- A taxpayer could not sell a credit if the taxpayer was allowed the credit on any tax return of the taxpayer.

The taxpayer, with the approval of the Executive Director of the Allocation Committee, may rescind the election to sell all or any portion of the credit allowed if the consideration for the credit falls below 80 percent of the amount of the credit after the Allocation Committee reservation.

The bill requires the Allocation Committee to provide an annual listing to the Franchise Tax Board (FTB), in a form agreed to by the FTB and the Allocation Committee, of the taxpayers that have sold or purchased a credit allowed by this bill.

IMPLEMENTATION CONSIDERATIONS

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

Because the bill fails to specify otherwise, the FTB would be subject to the rulemaking procedures required under the Administrative Procedures Act (APA).[1] Following these procedures may delay the immediate implementation of this bill. To prevent any delay, it is recommended that the author add a provision exempting the FTB from the APA when the FTB is prescribing rules, guideline, or procedures necessary or appropriate to carry out the purpose of this bill.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of SB 377 As Amended May 12, 2015 Assumed Enactment After June 30, 2015		
2015-16	2016-17	2017-18
+ $170,000	+ $450,000	- $250,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill. In addition, this estimate only reflects the revenue impact to income and franchise taxes.

Revenue Discussion

Using LIHC allocation data from the Allocation Committee, it is estimated that approximately $100 million, after inflation indexing, would be available for allocation in 2016. Based on current credit awards and usage, it is estimated that 10 percent, or $10 million, of the annual credits would be sold, with the remaining 90 percent used against income, franchise, and insurance taxes. It is assumed that the ability to sell the credit would result in a timing difference. However, because credits sold cannot be used until the building is put into service, the acceleration of credit use relative to current law will not begin until 2018, two years after the credit allocation. The revenue impact of the accelerated credit usage would not be fully phased in until taxable year

[1] Government Code section 11340 et seq.

2021 since credits must be taken over a four year period. For credits that are sold, it is assumed that the taxpayer would have additional capital gain income, in the amount of 80 percent of the value of the credits sold. This capital gain income must be claimed in the year the credits are purchased, which results in a positive revenue impact for the 2016 and 2017 taxable years.

Combining the accelerated credit usage (relative to current law) and the offsetting capital gains tax, it is estimated the average annual revenue loss for income and franchise tax would be approximately $1 million in 2018, increasing to $5.8 million in 2021. Current usage indicates that 98 percent would be claimed by corporations and the remaining 2 percent would be claimed by personal income taxpayers. The tax year estimates are converted to fiscal year estimates, and then rounded and reflected in the table above.

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