

# SUMMARY ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Villaraigosa Analyst: Jeani Brent Bill Number: AB 1080

Related Bills: None Telephone: 845-3410 Amended Date: 04/28/1999

Attorney: Pat Kusiak Sponsor:

**SUBJECT:** Community Development Corporation Contributions Credit

DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended \_\_\_\_\_.

AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced February 25, 1999.

FURTHER AMENDMENTS NECESSARY.

DEPARTMENT POSITION CHANGED TO \_\_\_\_\_.

REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED February 25, 1999, STILL APPLIES.

OTHER - See comments below.

### SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a credit for 50% of the amount contributed to an eligible community development corporation.

The Revenue and Taxation Code provisions relating to the insurance gross premium tax credit is not administered by the department and, therefore, is not discussed in this analysis.

### SUMMARY OF AMENDMENT

The April 28, 1999, amendments removed the provisions that would have allowed two tax credits: (1) for an unspecified amount to an owner of a community facility and (2) for 50% of the amount contributed by any taxpayer to an eligible community development corporation and inserted the credit provisions discussed in this analysis. The amendments resolved some of the concerns addressed in the department's analysis of the bill as introduced February 25, 1999; however, other concerns still apply along with concerns raised by the April 28, 1999, amendments. Except for the discussion of effective date, "this bill," policy and implementation considerations, and revenue estimate, the department's analysis of the bill as introduced February 25, 1999, still applies.

### EFFECTIVE DATE

This bill would apply to taxable or income years beginning on or after January 1, 2000, and before January 1, 2005.

### Board Position:

S                       NA                       NP  
 SA                       O                         NAR  
 N                         OUA                     PENDING

Department/Legislative Director      Date

**Johnnie Lou Rosas**                      **5/6/1999**

SPECIFIC FINDINGS

**This bill** would allow a credit for 50% of the amount contributed to an eligible community development corporation. The contribution must be approved by the California Tax Credit Allocation Committee (committee) and the contribution must be for any of the following:

1. Development, renovation, or expansion of a community facility (which is a facility that provides health care, child care, educational, cultural, or social services).
2. Operation of programs that primarily benefit low-income persons (defined as those whose annual household income does not exceed 80% of the median for all households in the metropolitan area in which they reside, or for all households in the state if the person lives outside a metropolitan area).

**This bill** would define "eligible community development corporation" in two ways:

1. For a corporation involved with facility support, a nonprofit corporation (as defined by Internal Revenue Code Section 501(c)(3)) that sponsors, develops, renovates, or expands a community facility that is located in a low-income geographic area (defined as an area in which more than 50% of the households earn less than 80% of the median for all households in the metropolitan area in which they reside, or for all households in the state for persons who live outside a metropolitan area) and that primarily benefits low-income persons.
2. For a corporation involved with program support, a nonprofit organization that operates programs that primarily benefit low-income persons, as designated by the U.S. Department of Housing and Urban Development as an eligible Community-Based Development Organization (CBDO), or that is substantially similar to a CBDO, as certified by the committee.

An eligible community development corporation would not include a nonprofit corporation established or controlled by a taxpayer seeking a tax credit under the bill.

**This bill** would require the committee to establish criteria and award credit certificates to eligible community development corporations. The applications submitted by eligible community development corporations must identify the taxpayer or taxpayers who will claim the credit. After being awarded the tax credit certificate, the eligible community development corporation must provide the certificate to the taxpayer or taxpayers who will claim the credit, but only if either of the following occur:

1. In the case of a contribution for facility support, the eligible community development corporation receives the contribution and construction is initiated.
2. In the case of a contribution for program support, the eligible community development corporation receives the contribution.

**This bill** also would require the committee to give preference to taxpayers who certify that their aggregate contributions under the bill in the current calendar year will exceed their average contributions in the prior three years as specified.

**Under this bill**, the minimum amount of contribution that would qualify for a credit would be \$25,000 and the annual aggregate credit that may be allocated to one taxpayer would not exceed \$250,000. The annual aggregate community investment tax credit allocated by the committee could not exceed \$50 million.

**This bill** would provide that the credit allowed would be in lieu of the portion of any deduction for the same expense that is equal to the credit amount. Any credit that exceeds tax liability could be carried forward for a period of 10 years, until exhausted.

**This bill** would require the Treasurer to report to the Legislature on the allocation of and demand for credits and the effectiveness of the projects and programs. The report would be required by December 31, 2002.

### Policy Considerations

This bill raises the following policy considerations:

1. This bill does not limit the amount of credit that may be awarded to each facility. Thus, it is possible that the entire \$50 million annual amount could be awarded to a relatively small number of facilities.
2. This bill states that, in establishing criteria for awarding tax credit certificates, the committee shall encourage multiyear contribution commitments, give preference to taxpayers who certify that their contributions will exceed their average contributions in prior years, and establish reporting requirements. These provisions raise concerns regarding the extent of burden that could be placed on taxpayers. For instance, the requirement for taxpayers to certify future contributions in the current year may or may not be binding. Further, the bill provides no specifics about the reporting requirements that might be imposed upon taxpayers or how multiyear contributions would be encouraged.

### Implementation Considerations

This bill raises the following implementation considerations:

1. In the case of a contribution for facility support, the fact that the committee awards a credit certification would not necessarily mean that the contributing taxpayer may claim that credit. The issue arises because the committee would not provide the contributing taxpayer with the certificate, but rather would provide the voucher to the eligible community development corporation, which then would provide the certificate to the taxpayer only upon the initiation of construction. Thus, the committee may award credit certificates and the taxpayer may make the contribution, but the corporation may choose not to initiate construction immediately or not at all. This also leaves unclear whether contributing taxpayers could claim the credit in the year other than in that in which the contribution was made since a certificate could not be provided in the year of contribution if construction has not begun. Moreover, since the provision of the bill that disallows a deduction for amounts contributed for which this credit is allowed applies only to "expenses paid or incurred for the taxable year," if the contribution

were delayed until a future year when construction is initiated, then the disallowance provision might not apply and taxpayers would be allowed a charitable contribution deduction in the year of contribution and a full 50% credit in a future year.

2. The bill leaves unclear what would happen to credit certificates awarded to eligible corporations in one year, but not provided to taxpayers in that year or future years. Further, this bill leaves unclear whether any unallocated amount of the \$50 million limit could be added to the \$50 million limit in the next year, or would be lost.
3. The definition of "low-income geographic area" refers to adjustment "from time to time" by the U.S. Census Bureau. It is unclear whether the reference regarding adjustment is to the geographic area or the median income.
4. This bill leaves unclear whether the \$50 million annual aggregate allocation limitation applies to all three credits (PITL, B&CTL, and gross premiums tax) collectively or individually, since the provision states "pursuant to this," thereby leaving unclear to what "this" refers. Further, this bill leaves unclear whether any unallocated credit from a prior year could be added to the total amount allocable for all projects in the next year.
5. Subdivision (k) appears to ensure that taxpayers who wish to contribute more than the \$250,000 annual maximum would not be precluded from so doing by the fact that no credit would be allowed for any excess credit. However, the subdivision is unclear and could be misinterpreted and should be clarified.
6. This bill would not require the taxpayer to retain the credit certificate to demonstrate the taxpayer's eligibility for the credit. Without this certification, it may be difficult for the department to verify whether the taxpayer is allowed the credit and the amount of the allowable credit.
7. Generally when credits are allocated by a government entity, the credit provisions require that government entity provide the department with an annual list of taxpayers to whom the credit was allocated. This bill would not require the committee to provide an annual list to the department. Since the credit would be allocated to corporations for ultimate distribution to taxpayers upon receipt of contributions, it is unclear whether the committee would ever have sufficient information to provide a listing to the department.
8. It is unclear how the phrase "controlled by" is intended to be interpreted in referring to the ineligibility of any community development corporation that is established or controlled by a taxpayer seeking a credit under this section. For this purpose, "control" could refer to either a tax law definition of control (sometimes more than 50% and other times more than 80%), or whether a lesser or non-tax law standard is intended (such as might exist where three unrelated corporations jointly establish a CDC to funnel contributions to).

Technical Considerations

This bill raises the following technical considerations:

1. This bill provides that the credit would be in lieu of any other deduction for which the expenses would be allowed. The reference to "expenses" should be changed to "contribution" since the bill contains no provisions regarding expenses incurred by taxpayers. Amendments 3, 4, 8, and 10 would correct this reference.
2. This bill defines "low-income persons or families." However, the bill uses the term "low-income persons." Amendment 2 and 7 would remove "or families."
3. Amendments 1 and 6 would include the words "an amount" where needed in the PITL credit and delete the words "amount of" where unnecessary in the PITL and B&CTL.
4. This bill would be repealed on January 1, 2005, eliminating the credit for the 2004 year for fiscal year taxpayers. However, taxpayers who file on a calendar basis could claim the credit for that year. Amendments 5 and 11 would change the repeal date to allow the credit to all taxpayers equally and delete non-standard language.
5. Amendment 9 makes a grammatical correction, changing "years" to "year."

FISCAL IMPACT

Departmental Costs

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

Tax Revenue Estimate

This bill would provide that up to \$50 million of community development corporation contribution credits could be allocated each year. Based on limited data and assumptions discussed below, this bill would result in the following order of magnitude revenue losses under the PITL and the B&CTL. Estimates below do not include any losses attributable to insurance tax law.

Estimated Revenue Impact of AB 1080 As Amended 4/28/99 [\$ In <b>Millions</b> ]			
1999-00	2000-01	2001-02	2002-03
minor loss	-\$3	-\$8	-\$13

Minor loss is less than \$500,000. The bill would be effective with income/taxable years beginning on or after January 1, 2000.

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

Revenue Estimate Discussion

Credits allocated each year and amounts applied to reduce tax liabilities would determine the revenue impact of this bill. Based on prior experience for the low-income housing credit, revenue losses from applied tax credits for initial years would be significantly less than authorized allocations.

By projecting annually increasing contributions to eligible community development corporations, a rate of credit allocation was established for the initial years of 5%, 15%, and 25%. It is assumed that any credits allocated to taxpayers would be applied to reduce tax liabilities in the year allocated.

These projections assume that tax credits can be allocated to taxpayers before actual completion of projects. As broadly defined in the bill, more than 200 community development corporations exist in the state. These corporations are tax-exempt, non-profit corporations, which typically invest in community revitalization to improve the quality of life for the communities served. Community development corporations often partner with a mix of for-profit companies and government agencies.

The revenue estimate for this version of the bill differs significantly from the prior version since one credit was eliminated; the 50% credit for contributions to an eligible community development corporation was extensively rewritten; and the allocation cap was increased from \$15 million to \$50 million.

BOARD POSITION

Pending.

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FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO AB 1080  
As Amended April 28, 1999

AMENDMENT 1

On page 5, amend line 12 as follows:

the ~~amount of~~ "net tax," as defined in Section 17039, an amount equal

AMENDMENT 2

On page 6, line 3, strikeout "or families"

AMENDMENT 3

On page 7, line 22, strikeout "expenses" and insert:

any contribution

AMENDMENT 4

On page 7, line 24, strikeout "those expenses" and insert:

that contribution

AMENDMENT 5

On page 7, strikeout lines 36 to 38 and insert:

December 1, 2005, and as of that date is repealed.

AMENDMENT 6

On page 8, line 3, strikeout "amount of".

AMENDMENT 7

On page 8, line 34, strikeout "or families"

AMENDMENT 8

On page 10, line 13, ~~strikeout "expenses"~~ and insert:  
any contribution

AMENDMENT 9

On page 10, line 14, ~~strikeout "years"~~ and insert:  
year

AMENDMENT 10

On page 10, line 15, ~~strikeout "those expenses"~~ and insert:  
that contribution

AMENDMENT 11

On page 10, ~~strikeout lines 27 to 29~~ and insert:  
December 1, 2005, and as of that date is repealed.