BILL ANALYSIS

Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Atkins**	**AB 2728**

SUBJECT

Community Development Financial Institution Deposits Credit/Extend Sunset and Repeal Dates

SUMMARY

This bill would, under the Insurance Code and the Revenue and Taxation Code, modify provisions of the Community Development Financial Institution Deposits Credit.

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

REASON FOR THE BILL

The reason for this bill is to encourage investors to provide financial products and services to people and communities underserved by traditional financial markets.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2017, and would extend the operative period of the credit to taxable years beginning on or after January 1, 2017, and before January 1, 2018. In addition, the modified recapture rules would be operative for qualified investments reduced or withdrawn on or after January 1, 2017.

FEDERAL/STATE LAW

Federal Law

Existing federal law allows a New Markets Tax Credit (federal credit) for taxpayers who make an equity investment in specialized financial institutions referred to as a community development entity (Development Entity).

The federal credit totals 39 percent of the original investment amount and is claimed over a period of seven years (5 percent for each of the first three years and 6 percent for each of the remaining four years). The investment in the Development Entity may not be redeemed before the end of the seven-year period. The federal limit on the total qualified investments from all taxpayers to Development Entities for 2015 through 2019 is $3.5 billion.

State Law

For taxable years beginning on or after January 1, 1997, and before January 1, 2017, state law, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allows a credit equal to 20 percent of the amount of each qualified investment in a community development financial institution (Financial Institution) made by a taxpayer during the taxable year. A qualified investment is defined as a deposit or loan that does not earn interest, or an equity investment, as specified. The investment must be equal to or greater than $50,000 and invested for a minimum duration of 60 months.

State law limits the annual certification of total qualified investments made to Financial Institutions to $50 million for each calendar year. If the aggregate amount of qualified investments authorized in any calendar year is less than $50 million, the excess of $50 million over the actual aggregate qualified investment made in any year may be carried forward to the next year, and any succeeding calendar year up through and including 2016.

State law requires the California Organized Investment Network (Investment Network), or its successor, to certify and issue certificates for each Financial Institution, qualified investments, and for the total amount of credit allocated. The Investment Network provides the Franchise Tax Board (FTB) with an annual list of taxpayers, their identification numbers, the amount of their investments, and a cumulative amount of total qualified investments. In addition, the Investment Network provides an annual listing to the FTB of the names and taxpayer identification numbers of any taxpayer who makes any withdrawal or partial withdrawal of a qualified investment before the expiration of 60 months from the date of the qualified investment.

Recapture Rules

The credit is subject to recapture if a qualified investment is withdrawn before the end of the 60th month and not reinvested in another Financial Institution within 60 days. If a qualified investment is reduced before the end of the 60th month, but not below $50,000, an amount equal to 20 percent of the total investment reduction is recaptured and added to tax for the taxable year in which the reduction occurs.

THIS BILL

This bill would, under the PITL and the CTL, extend the operative period of the Community Development Financial Institution Deposits Credit to taxable years beginning on or after January 1, 2017, and before January 1, 2018. In addition, the repeal date would be changed from December 1, 2017, to December 1, 2018.

This bill also would eliminate the exception to the recapture rules where a qualified investment is reduced below $50,000, and instead would apply the recapture rules to all qualified investments that are reduced before the end of the 60th month and not reinvested in another Financial Institution.

LEGISLATIVE HISTORY

AB 2647 (Garcia & Medina, 2015/2016) would extend the sunset date of the Financial Institution Deposits credit from January 1, 2017, to January 1, 2022, and would increase from $50 million to $120 million per year the aggregate amount of qualified investments eligible for the credit. This bill was held in the Assembly Appropriations Committee.

AB 32 (Perez, Chapter 608, Statutes of 2013) increased from $10 million to $50 million per year, the aggregate amount of qualified investments eligible for the Financial Institution Deposits credit.

AB 624 (Perez, Chapter 436, Statutes of 2011) extended the sunset date of the Financial Institution Deposits credit from January 1, 2012, to January 1, 2017.

AB 2831 (Ridley-Thomas, Chapter 580, Statutes of 2006) extended the sunset date of the Financial Institution Deposits credit from January 1, 2007, to January 1, 2012.

SB 409 (Vincent, Chapter 535, Statutes of 2001) extended the sunset date of the Financial Institution deposits credit from January 1, 2002, to January 1, 2007.

AB 1520 (Vincent, Chapter 947, Statutes of 1997) enacted the Financial Institution Deposits credit.

OTHER STATES' INFORMATION

The states reviewed 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 allows a new markets tax credit against the corporate income tax and insurance taxes. A person or entity that makes a qualified investment earns a vested tax credit equal to 39 percent of the purchase price of the qualified investment. For the first and second years, the credit amount is zero. For the third year, the credit is equal to 7 percent of the purchase price and for the fourth through seventh, the credit is equal to 8 percent. Any credit not fully used due to insufficient tax liability may be carried forward five years. The program encourages capital investment in low-income communities by allowing taxpayers to earn credits by investing in qualified Development Entities. The aggregate amount of credits available under the program is $163.8 million, subject to an annual cap of $33.6 million.

Illinois allows an income tax credit for investing capital in Development Entities. Similar to California, *Illinois* provides this credit to encourage investment in low-income areas within the state. The credit is equal to 39 percent of the initial qualified investment and the credit is taken over a seven-year period, for which the initial investment remains with the Development Entity - zero percent for years one and two, 7 percent for year three, and 8 percent for years four through seven, with an annual cap of $20 million.

Massachusetts allows a credit for investing in certified community development companies. *Massachusetts* provides the credit to encourage investment and improve economic opportunities for low- to moderate-income areas within the state. The maximum aggregate amount of credit available for calendar years 2015 through 2019 is $6 million. The credit is equal to 50 percent of the initial qualified investment, subject to a maximum credit of $1 million for any taxpayer. Any excess credit is refundable, or at the taxpayer's election may be carried forward for a period of one to five years.

Review of *Michigan and Minnesota* laws found no comparable tax credits.

New York allows a credit against the insurance franchise tax for investing in certified capital companies. Similar to California, *New York* provides this credit to encourage investment in the state. The maximum aggregate amount of credit available for calendar years 2007 and forward is $60 million. The credit is equal to 100 percent of the initial qualified investment, taken in 10 percent increments beginning with the third year for which the initial investment remains with the certified capital company.

FISCAL IMPACT

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

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2728 Assumed Enactment After June 30, 2016 ($ in Millions)		
2016-17	2017-18	2018-19
- $0.6	- $1.3	- $1.3

This estimate does not include the revenue impact of the tax credits allowed against insurance tax. This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Based on investment data reported by the Investment Network, the average annual certified community development investment eligible for the Community Development Financial Institution Deposits Credit is estimated to be $50 million per year beginning in tax year 2017, resulting in a credit generated of $10 million per year. Based on the same investment data, it is estimated that 47 percent, or $4.7 million, of the credit generated would be used to offset income tax and the remaining credit would be used by insurance taxpayers (not included in this estimate). Based on FTB credit usage data, it is estimated that 25 percent, or $1.2 million, of the credit would be used in the year generated and the remaining 75 percent would be used in the subsequent four years. In addition, the split between corporate taxpayers and personal income taxpayer's usage is 90 percent and 10 percent, respectively.

The tax year estimates are converted to the fiscal year estimates, and then rounded to arrive at the estimates shown in the above table.

APPOINTMENTS

None.

SUPPORT/OPPOSITION[1]

Support: Insurance Commissioner Dave Jones; 3 Core; Advocation, Inc.; Burbank Housing Development Corporation; Cal Coastal: A Small Business Leader; California Apartment Association; California Department of Insurance; Century Housing; Clearing House Community Development Financial Institution; DCA Capitol Partners; Enterprise Community Investment; First General Bank; Fresno Community Development Financial Institution; Fresno Economic Opportunities Commission; Genesis LA Economic Growth Corporation; Housing Trust Silicon Valley; LISC; Mercy Housing; Neighbor Works Home Ownership Center; Neighbor Works Home Ownership Center Sacramento Region; Neighbor Works Orange County; Neighborhood Housing Services of the Inland Empire; Pacific Community Ventures; Personal Insurance Federation of California; Redwood Valley Little River Band of Promo Indians; Roxborugh Pomerance Nye and Adreani; Rural Community Assistance Corporation; San Luis Obispo County Housing Trust Fund; Small Business Finance-CDC; Star Mountain Capita, LLC; Tri Counties Bank; United Native Housing Development Corporation; VEDC; Ventura County Community Development Corporation; WNC and Associates.

Opposition: None noted.

VOTES

	Date	Yes	No
Concurrence	08/30/16	80	0
Senate Floor	08/25/16	39	0
Assembly Floor	05/31/16	80	0

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[1] As noted in the Senate Governance and Finance Committee analysis dated June 24, 2016.