Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Atkins	Analyst:	Jessica Deitchman	Bill Number:	AB 771
Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Date:	May 12, 2015
		Attorney:	Bruce Langston	Sponsor	

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.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The May 12, 2015 amendments made technical changes, clarified definitions, and modified the sunset and the repeal dates. As a result of these amendments, the implementation and technical considerations discussed in the department's analysis of the bill as introduced February 25, 2015, were resolved, and additional technical considerations have been identified. Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," and "Technical Considerations" sections, the remainder of the department's analysis of the bill as introduced February 25, 2015, still applies. The "Fiscal Impact," "Economic Impact," and "Policy Concerns" sections have been restated for convenience.

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, 2016, and before January 1, 2021.

THIS BILL

For taxable years beginning on or after January 1, 2016, and before January 1, 2021, this bill would create a tax credit for the rehabilitation expenses of certain homes and historic buildings determined in accordance with federal law (section 47 of the Internal Revenue Code (IRC)) except as follows:

- A general 20 percent credit would be allowed for the qualified rehabilitation expenditures of a certified historic structure (other than expenses that qualify for the 25 percent credit), and

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- A 25 percent credit would be allowed for the qualified rehabilitation expenditures 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 a higher-density, mixed-use development within a walking distance of one-half mile of a transit station.

Unlike the federal credit;

- A state credit would be unavailable for expenditures with respect to a qualified building unless it is a certified historic structure, and
- A state 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.
- “Certified historic structure" has the same meaning as defined in Section 47(c)(3) of the IRC, that is a structure in this state and is listed on the California Register of Historical Resources.
- “Qualified rehabilitation expenditure” has the same meaning as that term is defined in Section 47(c)(2) of the IRC, except that qualified rehabilitation expenditures may include expenditures in connection with the rehabilitation of a building without regard to whether any portion of that building is or reasonably expected to be tax-exempt use property.
- “Qualified rehabilitation expenditure” has the same meaning as that term is defined in Section 47(c)(2) of the IRC and also means rehabilitation expenditures incurred by the taxpayer with respect to a qualified residence for the rehabilitation of the exterior of the building or rehabilitation necessary for the function of that home, including, but not limited to, rehabilitation of electrical, plumbing, or foundation of the qualified residence.

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[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 of the Revenue and Taxation Code (R&TC).
[3] Established pursuant to Title 7.86 (commencing with Section 67800 of the Government Code).

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

- 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.
- 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 2016 calendar year and each calendar year thereafter, through and including the 2020 calendar year.
    - The unused allocation tax credit amount, if any, for the preceding calendar year.
- Set aside $10,000,000 of tax credits that may be allocated each calendar year for taxpayers in the aggregate, with qualified rehabilitation expenditures of less than $1,000,000. To the extent that this amount is not fully allocated in any calendar year, the unused portion would become available for allocation to other taxpayers.
- Allocate credits awarded to a partnership to the partners of that partnership in accordance with the partnership agreement, independent of how the allocation was done for federal purposes and without regard to the federal rule requiring substantial economic effect for partnership allocations under section 704(b) of the IRC.
- 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.
- Establish procedures for the recapture of amounts allocated for a tax credit allowed to a taxpayer for the rehabilitation of a qualified residence if the taxpayer does not use the qualified residence as his or her principal residence within two years after the rehabilitation of the residence.
- Adopt a reasonable fee in an amount sufficient to cover expenses.

In addition, this bill would specify 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 up to eight years.
- 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 PITL and the CTL.

- 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.[4]
- The credit provisions would remain in effect regardless of the expiration or repeal of Section 47 of the IRC, relating to the federal rehabilitation credit.

The tax credit provisions[5] would remain in effect until December 1, 2021, and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

To correct two errors, the following amendments are recommended:

On page 3, line 12, strike “Incentive” and insert “Incentives”

On page 9, line 40 after “23691” insert “.”

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.

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[4] 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.

[5] R&TC sections 17053.91 and 23691.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 771 As Amended May 12, 2015 Assumed Enactment After June 30, 2015 ($ in Millions)		
2015-16	2016-17	2017-18
- $19	- $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 authorize the Allocation Committee to allocate $50 million annually for the rehabilitation of certified historic structures in California through calendar year 2020. Based on the federal historic tax credit usage, it is assumed that after a short phase-in period, the annual amount would be fully allocated each year by the Allocation Committee. 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 estimates are converted to the fiscal year estimates, and then rounded, to arrive at the amounts reflected in the table above.

POLICY CONCERNS

This bill would provide a state credit in an amount greater than the federal credit for the rehabilitation expenses for a historic structure. In general, a taxpayer's federal income tax liability is significantly higher than the taxpayer's state income tax liability. As a result, a state tax credit equal in amount or exceeding the federal credit could be considered to provide a greater proportionate benefit for state tax purposes than for federal tax purposes.

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