

ANALYSIS OF AMENDED BILL

Author: Gomez Analyst: Davi Milam Bill Number: AB 1670
March 28, 2017, &
 Related Bills: See Legislative Telephone: 845-2551 Amended Dates: April 18, 2017
History Attorney: Bruce Langston Sponsor: _____

SUBJECT: Qualified Affordable Housing Developer Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create a credit for certain payments made to a qualified developer.

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

RECOMMENDATION – NO POSITION

Summary of Amendments

The March 28, 2017, amendments removed the intent language and added the provisions discussed in this analysis. The April 18, 2017, amendments added and modified definitions, and made other technical changes.

This is the department’s first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to incentivize the development of affordable housing.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment, and specifically operative for taxable years beginning on or after January 1, 2017, and before January 1, 2022.

FEDERAL/STATE LAW

Low-Income Housing Credit

Current federal tax law allows a Low-Income Housing Credit (LIHC) for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors including when the housing was placed in service and whether it was federally subsidized. The California Tax Credit Allocation Committee (Allocation Committee) allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms, with modifications, to federal law (Section 42 of the Internal Revenue Code (IRC)) with respect to the LIHC, and is allocated in amounts equal to the sum of all the following:

- \$100 million,¹
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

The Allocation Committee certifies the amount of tax credit amount allocated. In the case of a partnership or an S Corporation, a copy of the certificate is provided to each taxpayer. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board (FTB).

Requirement under Revenue and Taxation Code section 41

Under Revenue and Taxation Code section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

Charitable Contributions

Existing state and federal laws allow a deduction from income for charitable contributions made to a qualified organization, including nonprofits organized pursuant to IRC section 501(c) (3). Under certain circumstances an individual is allowed to deduct the fair market value of the property being contributed. An individual can deduct an amount not to exceed 50 percent of federal adjusted gross income, depending on the type of property given and the type of charitable organization. The charitable contribution deduction for a corporation is limited to the adjusted basis of the property being contributed. In addition, the amount a corporation can deduct for a charitable contribution in a given year is limited to 10 percent of the corporation's net income. A contribution made by either an individual or a business in excess of the percentage limitations may be carried over and deducted in future years. If a benefit results from making a contribution to a qualified organization, a deduction may only be claimed for the amount of the contribution that exceeds the value of the benefit received.

THIS BILL

For each taxable year beginning on or after January 1, 2017, and before January 1, 2022, this bill would, under the PITL and the CTL, allow a credit in an amount equal to 50 percent of the amount paid or incurred by a taxpayer to a qualified developer for the development of a qualified project, not to exceed \$250,000.

¹ The statutory \$70 million allocation amount adjusted by the Consumer Price Index (CPI) through 2015.

A qualified developer would be required to do both of the following:

- Apply to the Department of Housing and Community Development (DHCD), in the form and manner prescribed by DHCD, for approval of a qualified project.
- Provide documentation to the taxpayer, upon request, that the project has been approved as a qualified project.

The DHCD would be required to do both of the following:

- Determine whether a project is a qualified project. If a project is a qualified project, DHCD would be required to approve the project.
- Provide documentation to the qualified developer, upon request, that the project has been approved as a qualified project.

This bill would define the following terms and phrases:

- “Qualified developer” means a nonprofit organization organized pursuant to Section 501(c) (3) of the IRC that develops properties intended to be sold to persons and families of low income.
- “Qualified project” means a project that satisfies all of the following:
 - Has a specific site with a parcel identifier or address.
 - Is under the management of a qualified developer. “Under the management of a qualified developer” means that the qualified developer is providing project management and development.
 - Complies with all applicable local land use and zoning ordinances.
 - Will be sold to persons and families of low income at an affordable housing cost.
 - Is subject to equity sharing provisions as described under Section 65915 of the Government Code.²

This bill would also define “affordable housing cost” and “persons and families of low income.”

This bill would also provide the following:

- Any unused credit could be carried forward for three years, until exhausted.
- The credit would be repealed by its own terms on December 1, 2022.
- Section 41 would not apply to the credit as proposed by this bill.

² Government Code section 65915(c) (2).

http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=65915.&lawCode=GOV

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department's systems, forms, and processes. For example:

- It is unclear whether the \$250,000 cap would apply to the maximum credit allowed for a taxable year or the maximum amount used to determine the allowable credit.
- It is unclear who could claim the credit - the taxpayer, "qualified developer", or the individual purchasing the affordable housing.

For clarity and ease of administration, the bill should be amended.

To ensure the credit requirements are met, the author may wish to amend the bill to require that the DHCD: 1) report certified projects to the FTB; and 2) certify the credit amount and include the following information on the certificate that could be provided, upon request, to the FTB:

- The name and taxpayer identification number of the "taxpayer" and the "qualified developer."
- The "qualified property" address or parcel number.
- The certified credit amount.
- The date of the certification.

LEGISLATIVE HISTORY

AB 201 (Steinorth, 2017/2018) would allow a credit on the sale of a qualified vacant lot and an additional credit if construction on the vacant lot begins within five years. AB 201 is pending before the Assembly Revenue and Taxation Committee.

AB 2842 (Thurmond, 2015/2016) would have created a new saleable tax credit similar to the existing LIHC. AB 2842 failed to pass out of the Assembly by the constitutional deadline.

OTHER STATES' INFORMATION

The states surveyed 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. None of these states provide a tax credit similar to that proposed by this bill. However, *Florida, Illinois, Massachusetts, and New York* offer an LIHC.

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 loss:

Estimated Revenue Impact of AB 1670 As Amended April 18, 2017 Assumed Enactment After June 30, 2017 (\$ in Millions)		
2017-18	2018-19	2019-20
- \$55	- \$130	- \$190

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 data from the California Association of Realtors and the FTB, as well as California construction trends, it is estimated that nonprofit developers (IRC section 501(c) (3)) would start approximately 300 qualified projects annually. It is further estimated that approximately 750 large investors and corporations would receive an average credit of \$250,000 per payment and an additional 750 smaller investors would receive an average credit of \$25,000 per payment. Due to the estimated enactment date and the assumed timing of initial project approvals by the DHCD, it is estimated that \$10 million in credit would be generated for taxable year 2017 and would grow to \$300 million in taxable year 2021. The estimate assumes that 70 percent of the credit would be used in the year generated and the remaining 30 percent would be used over the following three years. The resulting revenue loss is estimated to be \$7 million in 2017, \$80 million in 2018 and growing to \$275 million in taxable year 2021.

In addition to investors and corporate entities, qualified individuals who make a payment to a nonprofit developer (IRC section 501(c) (3)) as a deposit on a qualified home prior to the completion of construction would also receive the credit. Using census data and data from the California Association of Realtors, it is estimated 10 percent of affordable homes would be sold prior to completion and the average deposit would be \$19,000, resulting in an estimated credit generated of \$9,500 per home purchase, or \$320,000 in 2017 growing to \$9.1 million in taxable year 2021. The estimate assumes that 65 percent of taxpayers would have sufficient liability to claim the credit in the year generated. Of those, 30 percent, or \$60,000, would be used in 2017 growing to \$4.5 million in taxable year 2021. The remaining credit would be utilized over the next three years.

The tax year estimate is converted to fiscal years, rounded and is reflected in the above table.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some may say that this bill would incentivize the development of additional affordable housing.

Opponents: Some could argue that providing a second state credit for the development of affordable housing when state and federal law already provides an LIHC may unnecessarily divert limited state resources from other social programs that may lack federal funding.

POLICY CONCERNS

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

The credit would be allowed for qualified projects located either inside or outside California.

This bill would allow the credit to be claimed in the year of payment rather than in the year the affordable housing is placed in service and ready for occupancy. As a result, credits would be allowed for an approved project regardless of whether it is completed and occupied. To alleviate this concern, the credit could be allowed upon certification of occupancy.

LEGISLATIVE STAFF CONTACT

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