STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

Author: Bonta	Sponsor:	Bill Number: AB 2999
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Subject: Employer-Assisted Housing Program Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit for certain costs incurred by an employer related to the construction of affordable housing, or investment in an employer-assisted housing program.

Recommendation - No position.

Reason for the Bill

The reason for this bill is to incentivize employer investment in the construction of affordable housing and employer-assisted housing.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for each taxable year beginning on or after January 1, 2019.

Federal/State Law

Low-Income Housing Credit

Current federal tax law (Section 42 of the Internal Revenue Code (IRC)) 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 with respect to the LIHC. The Allocation Committee allocates amounts equal to the sum of all the following:

- $100 million,
- 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).

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 section501(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.

Requirement under Revenue and Taxation Code section 41

Under Revenue and Taxation Code (R&TC) 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.

This Bill

For each taxable year beginning on or after January 1, 2019, this bill would, under the PITL and CTL, allow a credit equal to 50 percent of the amount of the cash paid or incurred, or the equivalent value of land or property donated, by an employer during the taxable year for the construction of affordable housing for employees or the investment in an employer-assisted housing program.

This bill defines the following terms:

- "Affordable housing" means housing developments in which some of the dwelling units may, be purchased or rented with or without government assistance, on a basis that is affordable to persons or families of low or moderate income, as defined in Section 50093 of the Health and Safety Code.
- "Employer-assisted housing program" includes monetary assistance for, or the subsidizing of, an employee's rents or mortgage payments or employer-funded housing developments for employees.

Credits in excess of the tax liability could be carried forward to the following taxable year.

The bill specifies that is the Legislature's intent to comply with the requirements of R&TC section 41.

Implementation Considerations

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

This bill uses phrases that are undefined, i.e., "employer-funded housing developments for employees," "investment in an employer-assisted housing program," "monetary assistance," and "subsidizing of rent or mortgage payments." The absence of definitions to clarify these phrases could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define the phrases.

The bill uses the defined term "persons", which includes business entities as well as individuals, in reference to the purchase or rent of affordable housing. If "persons" is broader than the author intends, this bill should be amended.

This bill would allow a credit to an employer. The preferred usage is "taxpayer" or "qualified taxpayer." To avoid disputes between taxpayers and the department, and for internal harmony within the R&TC, this bill should be amended.

This bill lacks administrative details necessary to implement the pilot program for advance payments specified in the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent on the following issues:

- To whom would an employer donate land or property?
- Would all or a portion of wages paid to employees be considered "monetary assistance for or the subsidizing of, an employee's rent or mortgage payments" and thus eligible for the credit?
- Would the credit be subject to recapture and under what terms? For example, if no affordable housing is constructed on donated land, or if constructed and placed in service, no employees of the employer reside in the affordable housing.
- Would the credit be subject to a limit? If yes, under what terms?
- Would payments or donations for housing located outside of California be eligible for the credit?

The department lacks expertise on affordable and employer-assisted housing. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

Technical Considerations

The phrase "cash paid or incurred" is not technically correct since it implies cash is incurred. We recommend changing the phrase "the amount of cash paid or incurred" on page 2, line 1, to "the amounts paid or incurred."

Legislative History

AB 1670 (Gomez, 2017/2018) would 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, sold to persons and families of low income at an affordable housing cost. AB1670 failed to pass the Assembly by the constitutional deadline.

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.

The federal low income housing tax credit program, created to increase and preserve affordable housing, is administered locally in *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York*.

Florida, *Illinois*, and *New York*, also provide tax credits for investment in affordable housing within the state.

Florida provides a tax credit to private corporations that build low-income housing projects in certain urban areas of up to 9 percent for a period of 5 years beginning with the year the project is completed.

Illinois' affordable housing credit provides a one-time tax credit equal to 50 percent of the value of the donation, for investment in affordable housing. For employer-assisted housing developments, 100 percent of the units must serve employees with specified levels of income.

New York provides a New York State Low-Income Tax Credit Program (SLIHC), modeled after the federal low-income housing tax credit program, it provides a dollar-for-dollar reduction in state taxes to investors serving households whose incomes are 90 percent or lower than the area median income. At least 40 percent of the units must serve these income level and the investment must be used for new construction and rehabilitation and of existing housing.

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.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2999 as Introduced on February 16, 2018
For Taxable Years Beginning On or After January 1, 2019
Assumed Enactment after June 30, 2018

($ in Millions)

Fiscal Year	Revenue
2018-2019	- $5,500
2019-2020	- $16,000
2020-2021	- $21,000

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Based on United States Census Bureau data, there are an estimated 17.5 million employed individuals in 2016. It is assumed 75 percent, or 13.2 million, would work for a for-profit business. The number of employed individuals are adjusted to reflect increases in the labor force over time, resulting in an estimated 14 million employed individuals in 2019. It is assumed 70 percent, or 9.8 million employees, would receive monetary assistance in the form of an employer-funded housing subsidy. This estimate assumes that the average employer would pay a subsidy of $500 per month or $6,000 annually and it is assumed that all employees would incur housing expenses.

It is assumed that 50 percent of employers would take advantage of the credit in the first year, 75 percent in the next year, and 95 percent each year thereafter. For taxable year 2019, this results in approximately $30 billion in monetary assistance subsidies paid to the employee for their rent or mortgage. Multiplying by the 50 percent credit rate, results in $15 billion of credit generated. It is assumed that 25 percent of employers would offer a new monetary subsidies of $8 billion, and the remaining 75 percent of employers would re-characterize a portion of current wages, or $22 billion, as monetary subsidies. The cash payments made to the 25 percent of employees that receive a new subsidy would be income to the employee. Applying average tax rate of 6 percent results in an offsetting revenue gain of $480 million. The same cash payments would be a wage deduction for the employer. Applying an average tax rate of 5 percent results in an offsetting revenue loss of $390 million. It is estimated that 80 percent of taxpayers would have sufficient tax liability to claim the credit in the year generated. This results, in an estimate revenue loss of $12 billion in taxable year 2019, growing to $22 billion by taxable year 2022.

To estimate the revenue impact from donated land or property for the construction of affordable housing, the number of employers with property and the market value of said property would have to be known. Since it is difficult to predict the frequency and the value of future of property donations the revenue loss is unknown.

The tax-year estimates are converted to fiscal years and rounded to arrive at the amounts reflected in the above table.

Support/Opposition

Support: None provided.

Opposition: None provided.

Arguments

Proponents: Some could argue that this credit could incentivize employers to provide needed housing assistance for their low- to moderate-income employees.

Opponents: Some could argue that the credit is overly broad and would have little or no impact on the affordability of housing for low- to moderate-income Californians.

Policy Concerns

This bill allows the credit in the taxable year in which the cash is paid or incurred or land or property is donated, which may be earlier than the taxable year in which affordable housing is occupied. Most credits involving a specified use of an item of property allow the credit to be claimed in the taxable year in which the placed in service date occurs.

This bill would allow an employer a tax credit equal to 50 percent of cash paid or incurred, or the equivalent value of land or property donation without a maximum limit. Credits that could potentially be quite costly are sometimes limited on a per-taxpayer, per-project, or aggregate total amount basis.

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 cash paid or incurred or donations of land or property either inside or outside California.

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of a tax benefit by the Legislature.

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