



Summary Analysis of Amended Bill

Author: Bonta Sponsor: Bill Number: AB 2999
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Attorney: Bruce Langston Related Bills: See Prior Analysis

Subject: Donated Qualified Land or Property for Affordable Housing Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit for donated qualified land or property for the construction of affordable housing.

Recommendation – No position.

Summary of Amendments

The May 10, 2018, amendments added a sunset date and recast the credit. As a result of the amendments, several of the implementation considerations, the technical consideration, and one of the policy concerns provided in the department's analysis of the bill as introduced February 16, 2018, were resolved and several new concerns were identified.

Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Technical Considerations," "Fiscal Impact," "Economic Impact," and "Policy Concerns" sections, the remainder of the department's analysis of the bill as introduced February 16, 2018, still applies.

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, and before January 1, 2024.

This Bill

For each taxable year beginning on or after January 1, 2019, and before January 1, 2024, this bill would, under the PITL and CTL, allow a credit equal to 25 percent of the value of qualified land or property donated to a nonprofit organization by a taxpayer during the taxable year for the construction of affordable housing.

This bill would define the following terms:

- “Affordable housing” means housing developments in which 25 percent or more of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to individuals and families of low income, and to which employees of the taxpayer who are individuals of low income have first priority to purchase or rent.
- “Individuals and families of low income” or “individuals of low income” means individuals or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing financed pursuant to Division 31 (commencing with Section 50000) of the Health and Safety Code.
- “Nonprofit organization” means a nonprofit charitable organization exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code that constructs affordable housing.
- “Qualified land or property” means land or property that is deed restricted to ensure that the affordable housing units, if rented, shall be made available to individuals and families of low income for a period of 55 years or more.

The aggregate amount of credits that may be allocated in any fiscal year would be limited to \$10,000,000 and allocated on a first-come-first-served basis.

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

An unspecified entity would be required to track the number of affordable housing units that are constructed by a nonprofit organization as a result of this credit.

This bill would remain in effect until December 1, 2024, and be repealed as of that date.

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 lacks administrative details necessary to implement the allocated credit this bill would create and determine its impacts to the department’s systems, forms, and processes. The bill is silent on the following issues:

- When and by whom would the value of donated land or property be determined?
- How, when, and by whom would the credit be allocated each fiscal year?
- How, when, and by whom would the deed restriction requirement and first priority for purchase or rent requirement be verified?
- How would the department know who had been allocated a credit and the amount of the allocation?

- How, when, and by whom would the tracking the number of affordable housing units constructed be done?
- When and to whom would the tracked information be reported?

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.

Because this bill fails to specify otherwise, any adjustment to a reported credit, for example, reducing a credit claimed in excess of the amount allocated, would be treated as a deficiency assessment subject to protest and appeal. Generally, adjustments to allocated credits are treated as math errors.

This bill lacks recapture provisions. For example, a taxpayer that receives a credit allocation could revoke or otherwise cancel their donation and remain eligible for the credit. If this is contrary to the author's intent, this bill should be amended.

Fiscal Impact

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2999 as Amended on May 10, 2018
Assumed Enactment after June 30, 2018

(\$ in Millions)

Fiscal Year	Revenue
2018-2019	- \$4.4
2019-2020	- \$12.0
2020-2021	- \$15.0

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

To estimate the revenue impact from donated land or property for the construction of affordable housing, the number of taxpayers donating property and the market value of said property would have to be known. For purposes of this estimate, it is assumed that the maximum aggregate amount of credit would be allocated each fiscal year. Due to the timing of the enactment, it is assumed \$8 million of the credit would be generated in 2019 and \$10 million each year thereafter.

It is further assumed that this credit would incentivize taxpayers to contribute property they would have not otherwise donated to a qualified charity. As a result, these taxpayers would also claim a charitable contribution deduction for the property donated. For taxable year 2019, it is assumed \$32 million in qualified land or property would be contributed and \$40 million each year thereafter. Applying an average tax rate of 7 percent results in an additional revenue loss of \$2.3 million in 2019 for the contribution deduction that would not otherwise be claimed.

After adjusting for an S corporation's ability to use one-third of the credit at the entity level as well as the 100 percent pass-through to the shareholders, this results in a net revenue loss of \$11.7 million in 2019. It is assumed 80 percent, or \$9.4 million, of the credit and deduction would be used in the year generated and the remaining 20 percent, or \$2.3 million, the following year.

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

Policy Concerns

This bill allows the credit in the taxable year in which qualified land or property is donated, which may be earlier than the taxable year in which affordable housing is constructed and 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 taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

The credit would be allowed for donations of qualified land or property located either inside or outside of California.

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