

## ANALYSIS OF AMENDED BILL

Author:	<u>Mendoza</u>	Analyst:	<u>Funmi Obatolu</u>	Bill Number:	<u>SB 325</u>
Related Bills:	<u>See Legislative History</u>	Telephone:	<u>845-5845</u>	Introduced Date	<u>February 13, 2017, &amp; March 20, 2017</u>
		Attorney:	<u>Bruce Langston</u>	Sponsor:	<u></u>

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

### SUMMARY

This bill would, under the Insurance and the Revenue and Taxation Codes, 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.

### RECOMMENDATION – NO POSITION

#### Summary of Amendments

The March 20, 2017, amendments added an urgency clause, modified the sunset date, and made several non-substantive technical changes. This is the department's first analysis of the bill.

### REASON FOR THE BILL

The reason for the bill is to continue the administration of the California Organized Community Investment Network Program to ensure that allocated credits continue to meet statutory requirements after the repeal date.

### EFFECTIVE/OPERATIVE DATE

As an urgency measure, this bill would be effective and operative immediately upon enactment if enacted prior to December 1, 2017, this bill would extend the repeal date of the Community Development Financial Institution Deposits Credit from December 1, 2017, to December 1, 2022.

### 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.

## **THIS BILL**

This bill would, under the PITL and the CTL, extend the repeal date for the Community Development Financial Institution Deposits Credit from December 1, 2017, to January 1, 2022. However, the provisions of existing law that limit the operative period of the credit to taxable years beginning before January 1, 2017, are unchanged. Consequently, this bill makes no substantive changes to the credit under the PITL and CTL.

## **IMPLEMENTATION CONSIDERATIONS**

Implementing this bill would not impact the department's programs and operations.

## TECHNICAL CONSIDERATIONS

The language in the Revenue and Taxation Code extending the repeal date to preserve a taxpayer's rights and obligations with regard to an allocated Community Financial Institution Deposit Credit is unnecessary because existing state law provides this general rule.

## LEGISLATIVE HISTORY

AB 778 (Caballero, 2017/2018), similar to this bill, would extend the repeal date of the Community Financial Institution Deposit Credit. AB 778 would also extend the credit's operative date and eliminate the exception to the recapture rules. AB 778 is pending before the Assembly Insurance Committee.

AB 2728 (Atkins, 2015/2016) would have extended the operative period of the credit to taxable years beginning on or after January 1, 2017, and before January 1, 2018, and changed the repeal date from December 1, 2017, to December 1, 2018. AB 2728 was vetoed by the Governor because the bill would have resulted in revenue loss and was not considered with other spending proposals during budget deliberations.

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 Community Development Financial Institution Deposits credit.

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

## 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 impact the department's costs.

## **ECONOMIC IMPACT**

### **Revenue Estimate**

This bill as amended on March 20, 2017, would not impact the state's income or franchise tax revenue.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

## **SUPPORT/OPPOSITION**

Support: None provided.

Opposition: None provided.

## **ARGUMENTS**

Proponents: Some may say that this bill would continue to encourage private development in underserved communities by ensuring that already allocated credits continue to meet statutory requirements after the repeal date.

Opponents: Some could argue that extending the credit's repeal date is unnecessary to preserve a taxpayer's rights and obligations to a previously allocated credit because existing state law provides this preservation.

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