



## Summary Analysis of Amended Bill

Author: Chiu, et al.

Sponsor:

Bill Number: AB 10

Analyst: Jessica Deitchman

Phone: (916) 845-6310

Amended: April 30, 2019

Attorney: Shane Hofeling

Related Bills: See Prior Analysis

**Subject:** Low-Income Housing Credit/Farmworker Housing Credit

### Summary

This bill would, under the Personal Income Tax Law and the Corporation Tax Law, modify the Low-Income Housing Credit (LIHC).

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

**Recommendation – No position.**

### Summary of Amendments

The April 30, 2019, amendments modified the operative date of the bill, the amount of farmworker housing credit available and added reporting requirements to comply with the provisions of Revenue and Taxation Code (R&TC) section 41. As a result of the amendments, a new technical consideration has been identified. "The "Effective/Operative Date," "Federal/State Law," "This Bill," "Technical Considerations," "Implementation Considerations" and "Economic Impact" sections from the department's analysis of the bill as introduced December 3, 2019, have been revised. The remainder of that analysis still applies. The "Fiscal Impact" section has been restated for convenience.

### Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment.

The provisions increasing amounts available for allocation by the California Tax Credit Allocation Committee (Allocation Committee) would be specifically operative for allocations made during calendar years 2020 through 2024.

The provisions modifying definitions and the LIHC's applicable percentage would be operative as of January 1, 2019.

## **Federal/State Law**

Current federal tax law allows an LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The LIHC amount varies depending on several factors including when the housing was placed in service and whether it was federally subsidized; and varies between 30 and 70 percent of the present value of the qualified low-income housing. The LIHC is claimed over ten years.

The Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law with respect to the LIHC, except that the state LIHC is claimed over four taxable years (10 years for federal), is limited to projects located in California, must be allocated and authorized by the Allocation Committee, rents must be maintained at low-income levels for 30 years (15 years for federal), and the Allocation Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit. The LIHC is allocated in amounts equal to the sum of all the following:

- \$100 million,<sup>1</sup>
- The unused housing credit ceiling, if any, for the preceding calendar years,
- The amount of housing credit ceiling returned in the calendar year, and
- \$500,000 allocated to farmworker housing.

Current law requires allocation of the LIHC to partners based upon the partnership agreement, regardless of how the federal LIHC is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

The Allocation Committee certifies the amount of LIHC 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).

Any unused credit may continue to be carried forward until the credit is exhausted.

---

<sup>1</sup> The statutory \$70 million allocation amount adjusted by the Consumer Price Index through 2015.

Additionally, for a project that receives a preliminary reservation on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in its application to the Allocation Committee to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in provisions administered by the Allocation Committee.

The Allocation Committee is required to enter into an agreement with the FTB to pay any costs incurred by the FTB to administer this credit.

Under 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 effectiveness of the credit.

### **This Bill**

For taxable years beginning on or after January 1, 2020, for purposes of the LIHC, this bill would:

- Modify the definitions of:
  - “Taxpayer” to include members of a limited liability company.
  - “Housing sponsor” to include limited liability companies.
  - “Extremely low income households” and “Very low income households” to have the same meanings as in Section 50053 of the Health and Safety Code.
- Modify the Allocation Committee’s administration authority by recasting the applicable percentages.
- Increase the LIHC Allocation amount by an additional \$500 million, subject to indexing for inflation.
- Eliminate the rental passive activity loss limitation.<sup>2</sup>

Additionally, for taxable years beginning on or after January 1, 2020, and before January 1, 2024, this bill would:

- Specify that the limitations on rental real estate activities shall not apply
- Increase the annual amount available for allocation to farmworker housing projects from \$500,000 to \$25 million. Unallocated amounts for a calendar year would be added to the total LIHC allocation amount available for the following calendar year.

---

<sup>2</sup> Previously capped at \$75,000.

For taxable years beginning on or after January 1, 2025, this bill would:

- Specify that the limitations on real estate activities will be modified not to exceed \$75,000.
- Reduce the annual amount available for allocation to the farmworker housing projects to \$500,000. Unallocated amounts for a calendar year would be added to the total LIHC allocation amount available for the following calendar year.

In uncodified language this bill would require the Legislative Analyst's Office (LAO) to, on an annual basis beginning January 1, 2021, collaborate with the FTB and the Allocation Committee to review the effectiveness of the expanded LIHC program.

The review would include, but not be limited to:

- An analysis of the demand for the additional amount of tax credits allowed by this bill and the economic impact of the tax credit.
- The data collections requirements for determining whether the tax exemption is meeting, failing to meet, or exceeding those specific goals and purposes.

To assist the Legislature in determining whether the expanded credit meets the goals, purposes, and objectives specified and in carrying out their duties, the LAO may request information from the FTB and the Allocation Committee.

The FTB and the Allocation Committee would be required to provide data requested by the LAO.

### **Implementation Considerations**

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

The bill language lacks an operative date that would specify the passive activity loss limitation applicable to rental real estate relating to low-income housing applicable to taxable year 2019, thus conforming to the federal limitation of \$25,000 for that year. If this is contrary to the author's intent, this bill should be amended.

For clarity and ease of administration, it is suggested that the bill be amended to specify the data that would be required to be provided by the department to the LAO, as well as the timing for the delivery of that data.

If requested, this bill could require the FTB to provide confidential taxpayer information to the LAO. However, the bill fails to allow the disclosure of such information or prohibit the LAO from further disclosure of confidential taxpayer information. An exception from the general disclosure provisions should be added to specifically allow the FTB to

comply with the bill's provision on disclosure of tax information and apply the appropriate disclosure restrictions to the LAO.

### Technical Considerations

The bill includes a reporting requirement for the FTB in uncodified law. For ease of reference, it is recommended the bill be amended to include these provisions in law.

The bill uses the word "inclusive" after listing the dates the increased allocation amount would be. This word is unnecessary and may cause confusion. For clarity, it is recommended the bill be amended to remove the word "inclusive" – on page 10, line 7; on page 10, line 31; on page 24, line 27; page 25, line 11; page 40, line 36 and on page 41, line 20.

To eliminate a duplicated year, on page 10, line 5 after "for the" strike out 2020.

### Fiscal Impact

The department's costs to implement the provisions of 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 10 as Amended April 30, 2019  
Assumed Enactment after June 30, 2019

(\$ in Millions)

| <b>Fiscal Year</b> | <b>Revenue</b> |
|--------------------|----------------|
| 2019-2020          | -\$9.2         |
| 2020-2021          | -\$37          |
| 2021-2022          | -\$75          |

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. In addition, this estimate only reflects the revenue impact to income and franchise taxes.

## Revenue Discussion

Using LIHC allocation data from the Allocation Committee, it is assumed that the maximum credit allocation threshold would be reached each year. This bill authorizes an additional \$500 million in LIHC allocations beginning for allocations made during calendar year 2020, through calendar year 2024. It is assumed that five percent, or \$25 million, of the allocation would ultimately be returned to the Allocation Committee due to unforeseen project issues. According to Farmworker Housing allocation data from the Allocation Committee, \$2.6 million in farmworker state tax credits were awarded as of June 13, 2018, leaving \$0.6 million awaiting allocation in 2019. Because prior allocations of the Farmworker Housing credit were infrequent, the \$25 million credit allocation is modeled as a one year allocation lag, this lag is applied to each year. For example, the \$25 million would be set aside in tax year 2020, and then added back in tax year 2021. This set aside is only applied through calendar year 2024, when the allocation amount returns to \$500,000 reserved per calendar year.

Based on total current LIHC awards and usage, it is estimated that 75 percent, or \$340 million, of the annual credits would be used to offset income and franchise taxes and the remainder would be used against insurance taxes, which is not included in the table above. Based on current LIHC usage, it is assumed that 70 percent, or \$235 million, of the credit would be used over the four year credit period and the remaining 30 percent would be carried forward to future years. Allocated credits cannot be used until the building has been put into service. As a result, credit usage would not begin until 2022. Current usage indicates that 98 percent would be claimed by corporations and the remaining 2 percent would be claimed by personal income taxpayers.

Because this provision removes the limitation for rental real estate offsets for tax years 2020 through tax year 2024, this estimate assumes taxpayers would offset income by additional passive activity losses attributable to rental real estate activities. Because the FTB has limited data on total rental losses incurred annually, this results in an assumed additional revenue loss of \$35 million in the 2022 taxable year. The incentive for taxpayers with large losses to participate in qualified low income housing projects is not accounted for in the estimate.

Because the amendments lack language specifying the passive activity loss limitation applicable to rental real estate losses relating to low-income housing applicable to tax year 2019, California would conform to the federal limitation of \$25,000 for 2019. This would result in an assumed revenue gain of \$1.7 million in 2019.

The tax year estimates are converted to fiscal year estimates, and then rounded and reflected in the above table.

The combined revenue impact from the credit usage and passive activity loss results in a revenue loss of \$9.2 million in the fiscal year 2019-2020 increasing to approximately \$37 million in fiscal year 2021-2022, and peaking at \$310 million in fiscal year 2025-2026.

### **Legislative Staff Contact**

Jessica Deitchman  
Legislative Analyst, FTB  
(916) 845-6310

[jessica.deitchman@ftb.ca.gov](mailto:jessica.deitchman@ftb.ca.gov)

Jame Eiserman  
Revenue Manager, FTB  
(916) 845-7484

[jame.eiserman@ftb.ca.gov](mailto:jame.eiserman@ftb.ca.gov)

Jahna Carlson  
Acting Legislative Director, FTB  
(916) 845-5683

[jahna.carlson@ftb.ca.gov](mailto:jahna.carlson@ftb.ca.gov)