



Analysis of Amended Bill

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Sponsor:

Bill Number: AB 10

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Amended: August 12, 2019

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Related Bills: See Legislative
History

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 August 12, 2019, amendments removed the requirement that the additional allocation would only be allowed if provided for in the annual budget. As a result of the amendments and the recent enactment of AB 101 (Chapter 159, Statutes of 2019), the department's analysis of the bill as amended April 30, 2019, no longer applies.

This analysis replaces the department's analysis of the bill as amended on April 30, 2019.

Reason for the Bill

The reason for the bill is to increase development of low-income housing in California by removing the requirement that, beginning in the 2021 calendar year, the additional \$500,000,000 allocation only be available pursuant to an authorization in the annual Budget Act or related legislation.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative for allocations for taxable years beginning on or after January 1, 2020.

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, 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, 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,¹
- 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.

As recently enacted in AB 101, for calendar years beginning in 2020, an additional \$500,000,000 may be allocated to specified low-income housing projects. For calendar years beginning in 2021 and thereafter, an annual amount up to \$500,000,000 may be available for allocation pursuant to an authorization in the annual Budget Act or related legislation, and specified regulatory action by the Allocation Committee.

For taxable years beginning on or after January 1, 2020, there is no limitation on passive activity losses.

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). The allocation of the LIHC to partners must be based upon the partnership agreement, regardless of how the federal LIHC is allocated to

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

the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

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

Additionally, for a project that receives a preliminary reservation on or after January 1, 2016, and before January 1, 2019, 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.

For taxable years beginning on or after January 1, 2019, a taxpayer may elect in its application to the Allocation Committee to sell all or a portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in the 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.

This Bill

This bill would for purposes of the additional \$500,000,000 LIHC allocation for calendar year 2021 and thereafter, modify recently enacted law by removing the requirement for authorization of the additional allocation amount in the annual Budget Act or related legislation.

Implementation Considerations

Implementing this bill would occur during the department's normal annual update.

Legislative History

AB 101 (Committee on the Budget, Chapter 159, Statutes of 2019) among other things, increased the available LIHC annual allocation amount by \$500,000,000, and for calendar years beginning in 2021 and thereafter an additional allocation of up to \$500,000,000, subject to an authorization in the annual Budget Act, or related legislation. This bill also, for taxable years beginning on or after January 1, 2019, made various changes to allow the credit to be claimed more easily, including changes to restrictions on the sale of the credit, the allocation of the credit among partners and eliminating the rental passive activity loss limitation.

SB 9 (Chiu, 2019/2020) would allow in perpetuity the sale of the LIHC and allocations of the LIHC to partners without regard to the substantial economic effect rules by eliminating the sunset on those provisions. SB 9 failed to pass out of the house of origin by the constitutional deadline.

AB 71 (Garcia, et al., 2017/2018) would have modified the allocation of the LIHC relating to the types of housing and methods that qualified, and would have disallowed the deduction of mortgage interest paid on a second home. AB 71 failed to pass out of the house of origin by the constitutional deadline.

AB 571 (Garcia, Chapter 372, Statutes of 2017) modified: 1) the definition of farmworker housing; and 2) the applicable percentage used by the Allocation Committee for purposes of allocating and determining the LIHC for federally subsidized farmworker housing.

AB 3072 (Chiu, 2017/2018), similar to this bill, would have increased the LIHC allocation by \$300 million and allocate \$25 million per year of that amount to farmworker housing projects. AB 3072 failed to pass out of the house of origin by the constitutional deadline.

SB 1253 (Jackson, 2017/2018) would increase the annual allocation amount, and allow a project located in the "qualified opportunity zone," as a qualifying low-income housing project. SB 1253 failed to pass out of the house of origin by the constitutional deadline.

AB 35 (Chiu and Atkins, 2015/2016) would have increased the LIHC allocation amount by an additional \$100 million. AB 35 and eight other bills were vetoed by Governor Brown on October 15, 2015, because he could not support additional tax credits that were not considered comprehensively as part of the budget deliberations.

AB 2817 (Chiu, 2015/2016) would have increased the LIHC allocation amount by an additional \$300 million and modified the farmworker housing projects allocation amount. AB 2817 failed to pass by the constitutional deadline.

AB 952 (Atkins, Chapter 771, Statutes of 2013) allowed the Allocation Committee to award LIHC to developments in qualified census tracts or difficult areas and replace the federal LIHC with a state LIHC up to 30 percent of a project's eligible basis, if the federal LIHC is reduced in an equivalent amount.

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.

Florida, Michigan, and Minnesota, lack a state LIHC.

Illinois currently offers a state LIHC program that is funded on donations made to the program. A state tax credit is available at 50 cents for every dollar donated. Donors may transfer some or all of their *Illinois* LIHC to another individual or entity. The individual or entity receiving the credit must make a donation to the affordable

housing project at the time of transfer. If the amount transferred is less than \$100,000, the donation must be 10 percent of the amount transferred. The donation must be \$10,000 for transfers of amounts equal to or exceeding \$100,000. The administering agency must be informed in writing of all *Illinois* LHC transfers.

Massachusetts offers a state LHC. Developers of affordable rental housing developments apply to the Department of Housing and Community Development for tax credits. If they are awarded the credit, the developers (either for-profit or nonprofit) seek investors to help pay for the development of the housing. Intermediaries (known as syndicators) act as a bridge between investors and projects and often pool investors' money into equity funds. In exchange for providing development funds, the investors receive a stream of tax credits.

New York provides an LHC for developers who acquire, build, or rehabilitate low-income rental housing. Developers sell these 10-year tax credits to investors for capital to fund additional construction.

Fiscal Impact

This bill would not significantly impact the department's costs.

Economic Impact

Revenue Estimate

This bill as amended August 12, 2019, makes technical changes to the law that do not change the computation of tax.

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

The low income housing credit was modified by Chapter 159, Statutes of 2019 (AB 101). The amendments proposed by this bill make technical changes that do not impact revenue.

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