



Analysis of Original Bill

Author: Chiu, et al.

Sponsor:

Bill Number: AB 10

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Introduced: December 3, 2018

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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.

Reason for the Bill

The reason for the bill is to increase development of low-income housing in California by increasing the credit amounts available for farmworker housing projects.

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 or after calendar year 2020.

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,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.

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.

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.

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

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.
- 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.
- Eliminate the rental passive activity loss limitation.²

Implementation Considerations

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

Legislative History

SB 9 (Chiu, 2019/2020) would allow in perpetuity the sale of the LIHC and allocations of the LICH to partners without regard to the substantial economic effect rules by eliminating the sunset on those provisions. SB 9 is pending hearing before the Senate Governance and Finance Committee.

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.

² Previously capped at \$75,000.

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 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 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 would have modified the farmworker housing projects allocation amount. AB 2817 failed to pass by the constitutional deadline.

AB 952 (Atkins, Chapter 771, Statutes of 2013) made modifications to: 1) allow the Allocation Committee to award LIHC to developments in qualified census tracts or difficult areas; 2) allow the Allocation Committee to 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* LIHC transfers.

Massachusetts offers a state LIHC. 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 LIHC 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

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 Introduced December 3, 2018
Assumed Enactment after June 30, 2019

(\$ in Millions)

| Fiscal Year | Revenue |
|-------------|---------|
| 2019-2020 | - \$14 |
| 2020-2021 | - \$39 |
| 2021-2022 | - \$70 |

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. 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.

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 after 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 beginning on or after January 1, 2020, this estimate assumes taxpayers would offset income by additional passive activity losses attributed to rental real estate activities. Because FTB has limited data on total rental losses incurred annually, this results in an assumed additional revenue loss of \$35 million in the 2020 taxable year. The incentive for taxpayers with large losses to participate in qualified low income housing projects is not accounted for in the estimate.

The tax-year estimates are converted to fiscal-year estimates, and then rounded to arrive at the amounts reflected in the above table. The combined revenue impact from the credit usage and passive activity loss results in a revenue loss of \$14 million in fiscal year 2019-2020 increasing to \$350 million in fiscal year 2025-2026.

Since there is no sunset date, over time the net revenue loss from the additional low income housing credit and the removal of the passive loss limitation attributed to rental real estate activity could exceed the \$500 million allocation amount, but this depends on the inflation rate, changes in the economy, and future credit usage.

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