



Analysis of Original Bill

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Sponsor:

Bill Number: AB 1206

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Introduced: February 21, 2019

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Related Bills: See Legislative
History

Subject: Affordable Housing Tax Credit

Summary

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create a credit for taxpayers whose tenants receive housing assistance, as specified.

Recommendation – No position.

Reason for the Bill

The reason for this bill is to provide a tax incentive for property owners to offer below market leases and rentals to persons receiving housing services or assistance.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment, and would be specifically operative for taxable years beginning on or after January 1, 2019, and before January 1, 2030.

Federal/State Law

Existing federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Certain business related tax credits are limited to the tax attributable to the taxpayer's passive activities.

Under California law, the CTL allows the assignment of certain eligible credits to taxpayers that are members of a combined reporting group. "Assignment" refers to the ability of a taxpayer that is a member of a combined reporting group to elect to transfer certain unused credits to a related corporation, as specified. The election to transfer any credit is irrevocable once made and is required to be made on the taxpayer's original return for the taxable year in which the assignment is made.

A credit earned by members of a combined reporting group may be assigned to an affiliated corporation that is a member of the same combined reporting group.

There are currently no federal or state credits comparable to the credit this bill would create.

This Bill

For each taxable year beginning on or after January 1, 2019, and before January 1, 2030, this bill, under the PITL and the CTL, would allow a tax credit to a taxpayer who owns qualified property, in an amount equal to five hundred dollars (\$500) per qualified property, limited to five thousand dollars (\$5,000) per taxable year.

This bill would define the following terms and phrases:

- "Qualified property" means a unit rented to, or leased by, qualified persons at below market rates.
- "Qualified persons" means persons receiving housing services or assistance from a nonprofit organization.

A taxpayer who owns a proportional share of the qualified property may claim the credit allowed based upon the taxpayer's ownership share of the property.

This bill would provide an unlimited carryover period for excess credit amounts.

This credit would be excluded from the requirements under Revenue and Taxation Code section 41 that each new credit include goals, performance measures, and data collection and reporting necessary to enable the Legislature to determine the effectiveness of the credit.

The credit would be repealed by its own terms on December 1, 2030.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

It is unclear how the department would determine that a taxpayer rents or leases property “at below market rates” to tenants who receive “housing services or assistance from a nonprofit organization.” 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.

This bill uses terms and phrases that are undefined, i.e., “unit,” “below market rates,” “housing services or assistance,” “nonprofit organization,” and “ownership share.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

On a jointly filed return both spouses could be considered a “qualified person” effectively making the credit cap \$1,000 for each “qualified property,” rather than \$500. If this is inconsistent with the author’s intent, it is recommended that the bill be amended.

This bill lacks recapture provisions. For example, because the bill fails to specify otherwise, a qualified taxpayer could immediately upon qualifying for the credit, increase the rent to market rate or more and remain eligible for the credit. If this is contrary to the author’s intent, the bill should be amended.

Legislative History

SB 521 (Portantino, 2019/2020) would allow a credit for landlords whose tenants receive Section 8 rental assistance. SB 521 is pending before the Senate Governance and Finance Committee.

Other States’ Information

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

The department’s costs to implement 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 AB1206 as Introduced February 21, 2019
Assumed Enactment after June 30, 2019

(\$ in Millions)

| Fiscal Year | Revenue |
|--------------------|----------------|
| 2019-2020 | -\$290 |
| 2020-2021 | -\$300 |
| 2021-2022 | -\$310 |

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

Based on data from the U.S. Census Bureau, The California Association of Housing Authorities, and the Center on Budget and Policy Priorities, it is estimated that in taxable year 2019, qualified properties would have 500,000 units with renters who receive housing services or assistance from a nonprofit organization and be rented below market rate. Due to the number of undefined terms and phrases outlined in the "Implementation Considerations" section, the number of units is doubled, resulting in an estimated one million units of qualified properties. This amount is then increased to 1.5 million units to account for resident taxpayers with qualified properties outside of California.

Accounting for the credit limitation of \$5,000 for each taxable year and adjusting for non-residents claiming the credit, it is estimated that the total credit generated in taxable year 2019 would be \$360 million. It is assumed that 60 percent, or \$220 million, would be generated by corporate taxpayers and 40 percent, or \$140 million, would be generated by personal income taxpayers. In addition, it is estimated that 55 percent, or \$200 million, would be claimed in the year generated and the remaining would be claimed over the next several years.

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

Policy Concerns

If this bill is intended to provide an incentive for future rental or lease agreements, the inclusion of either a binding contract date or a prospective operative date may be appropriate to more fully act as an inducement for future action or behavior, rather than providing a benefit for action taken without regard to this credit.

The credit would be allowed for the rental or lease of property located either inside or outside California.

Certain business-related tax credits (e.g., low-income housing credit and research credit) are limited to the tax attributable to the taxpayer's passive activities. These credits are known as passive activity credits. The purpose of this limitation is to prevent taxpayers from using a credit from a passive activity to offset tax attributable to other income. Since this credit is not included in the list of passive activity credits, taxpayers who generate this credit from a passive activity would be able to use the credit to offset tax attributable to any income.

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Credits are generally enacted with a limited carryover period because experience shows credits typically are exhausted within eight years of being earned.

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