STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Gabriel & Friedman, et al.	Sponsor:	Bill Number: AB 2058
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SUBJECT

Income Tax Credit/Sale of Multifamily Rental Housing or Mobilehome Park to Qualified Developer

SUMMARY

This bill would, under the Personal Income Tax Law and Corporation Tax Law, allow a credit to a taxpayer that sells specified property to a qualified developer that has received a credit reservation from the California Tax Allocation Committee (Committee), and as part of the sale transfers the credit reservation to the taxpayer.

This analysis only addresses the provisions that would impact the department.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

None noted.

REASON FOR THE BILL

The reason for the bill is to create a first-come-first-served reservable income tax credit to preserve the affordability of existing affordable housing and mobilehome parks and prevent the displacement of low-income households that would otherwise be caused by the loss of affordability of housing and mobilehome parks.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, allow an income tax credit to a taxpayer that is transferred, and allocated, credits pursuant to the sale of a multifamily rental housing development or mobilehome park to a qualified developer that has received a credit reservation from the California Tax Credit Allocation Committee (Committee). The maximum aggregate amount of credit the committee could allocate would be $500,000,000.

A taxpayer's credit would be limited to the lesser of one million dollars ($1,000,000) or the sum of both of the following:

- Fifty percent of the federal capital gains taxes to be paid by the taxpayer based on the gains recognized for the sale of property to the qualified developer, and
- Fifty percent of the state income taxes paid by the taxpayer derived from the capital gains recognized for the sale of the property to the qualified developer.

Fifty percent of the estimated credit amount would be allocated for the taxable year during which the sale occurs. The remainder of the estimated credit would be allocated in the immediately following taxable year, subject to reduction by the Committee to the actual federal and state tax paid by the taxpayer.

In order to qualify for the credit, the qualified developer would be required to apply for and receive a credit reservation up to a limit of $1,000,000 from the committee and the estimated credit amount to be transferred to the taxpayer established at the close of escrow and documented.

Credits in excess of the tax due could be carried forward until exhausted.

This bill would define the following terms and phrases:

"Committee" means the California Tax Credit Allocation Committee.

"Eligible nonprofit corporation" means a California nonprofit corporation whose primary activity is the development and preservation of affordable rental housing, as determined by the committee.

"Qualified developer" means a local public entity, as defined in Section 50079 of the Health and Safety Code (Generally meaning any state or local entity that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income.), an eligible nonprofit corporation, a limited partnership in which the managing general partner is an eligible nonprofit corporation, or a limited liability company in which the managing member is an eligible nonprofit corporation, acquiring a mobilehome park or multifamily rental housing development of five or more dwelling units in the state and entering into a regulatory agreement, with the committee for that development or mobilehome park, that requires, for a minimum of 55 years, that all vacant housing be rented to low-income households and meet both of the following requirements:

- Each household earns no more than 80 percent of the area median income at initial occupancy and the average income limit is no more than 60 percent of the area median income.

- At affordable rents that are limited to the maximum rent limits established by the committee at 80 percent of the area median income. The average affordable rent would be limited to 60 percent of the area median income.

"Vacant housing" means dwelling units, mobilehomes, or mobilehome spaces that are vacant at the time the property is sold to the qualified developer and dwelling units, mobilehomes, or mobilehome spaces that become vacant after the property has been sold to the qualified developer.

The Committee would be responsible for developing the processes and procedures to administer the credit including establishing a procedure in consultation with the Franchise Tax Board to confirm the credit amount allocated to the taxpayer.

The credit would remain in effect until December 31, 2026, and be repealed as of that date.

In un-codified law, meaning language lacking a code section reference, this bill would, for purposes of complying with Section 41 of the Revenue and Taxation Code:

- Define the goals, purposes, and objectives of the tax credit as preserving the affordability of existing affordable housing and mobilehome parks at risk of converting to market-rate housing as subsidies are set to expire; preserving the affordability of unrestricted, naturally occurring affordable housing and mobilehome parks where market pressures threaten to make housing costs unaffordable to low-income households; and preventing the displacement of low-income households that would otherwise be caused by the loss of affordability in at-risk restricted or in unrestricted housing and mobilehome parks.
- Specify that the performance indicators measuring whether the tax credit meets the goals, purposes, and objectives would be the number of developers allowed a tax credit and the number of homes remaining affordable to low-income households as a result of a sales transaction involving a tax credit.
- Require the Legislative Analyst's Office (LAO) to, on an annual basis beginning January 1, 2022, and each January 1 thereafter until January 1, 2027, collaborate with the Committee to review the effectiveness of this income tax credit. The LAO would be allowed to request information from the Committee and the Committee would be required to provide the information requested.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2021, and before January 1, 2026.

Federal/State Law

Current federal tax law provides for the temporary deferral of gross income for capital gains reinvested in a qualified opportunity fund (QOF), and the permanent exclusion of certain capital gains from the sale or exchange of an investment in a QOF. The Qualified Opportunity Zone (QOZ) program, created by the TCJA, was enacted to spur investment in economically distressed communities.

California does not conform to either the deferral or the exclusion of capital gains reinvested or invested in QOF, and current state law lacks similar provisions.

Current federal tax law allows a Low-Income Housing Credit (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 Committee that would allocate the credit established by this bill 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 (ten 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.

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

Revenue and Taxation Code section 41 requires legislation that would create a new tax expenditure, including a credit, deduction, exclusion, exemption, or any other tax benefit to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax expenditure.

Implementation Considerations

Assuming the FTB's responsibility under this bill would be limited to verifying the accuracy of the credit amount claimed by a taxpayer, implementing this bill would not significantly impact the department's programs and operations.

Technical Considerations

For consistency of terminology, the term "developer" should be replaced with "qualified developer" throughout the analysis.

Policy Concerns

Because the bill fails to specify otherwise, a taxpayer would remain eligible for any credit or deduction otherwise allowed.

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 generated.

LEGISLATIVE HISTORY

SB 315 (Hertzberg & Gabriel, 2019/2020) would in modified conformity to federal law, create a temporary deferral of gross income for capital gains reinvested in a qualified opportunity fund (QOF), and the permanent exclusion of certain capital gains from the sale or exchange of an investment in a QOF. Similar to SB 315, this bill's tax credit would be based on the capital gain attributable to specified transactions. SB 315 is currently pending before the Assembly Revenue and Taxation Committee.

PROGRAM BACKGROUND

None noted.

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

The bill states that for purposes of Section 41, the goal, purpose, or objective this credit is to preserve the affordability of existing affordable housing and mobilehome parks at risk of converting to market-rate housing as subsidies are set to expire, preserve the affordability of unrestricted, naturally occurring affordable housing and mobilehome parks where market pressures threaten to make housing costs unaffordable to low-income households, and prevent the displacement of low-income households that would otherwise be caused by the loss of affordability in at-risk restricted or in unrestricted housing and mobilehome parks. The Legislature's evaluation of the credit's success would be based on the number of developers allowed this tax credit and the number of homes remaining affordable to low-income households as a result of a sales transaction involving this tax credit.

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2058 as Introduced February 4, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Revenue
2020-2021	-$5.6
2021-2022	-$40.0
2022-2023	-$95.0

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

For taxable year 2021, it is assumed that the maximum aggregate credit amount of $500 million would be reserved. Due to the timing of the enactment and the completion of sales it is assumed that 10 percent, or $50 million in credits would be allocated in 2021, and the remaining $450 million would be allocated over the next three years. Per the provisions of the bill, 50 percent of the allocation, or $25 million, would be transferred to the taxpayers in 2021 and the remaining $25 million would be transferred in 2022.

Additionally, this estimate assumes an annual 14 percent credit recapture for projects that never complete or when the estimated federal and state income taxes paid on the capital gains of the sale were higher than actual taxes paid. This recapture, approximately $3.5 million for 2021, is added to the allocation amount available in the following tax year. This results in $22 million of credits generated in tax year 2021.

It is estimated that 60 percent, or $13 million, would be generated by corporate taxpayers and 40 percent, or $9 million, would be generated by personal income taxpayers. It is estimated that 85 percent, or $19 million, would be generated by taxpayers that have sufficient tax liability to offset with the credit. Of that amount, approximately 65 percent, or $12 million, would claim the credit in the year generated and the remaining credit would be used over the subsequent four years. The estimated revenue loss would peak at $120 million in tax year 2023.

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

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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