



## Bill Analysis

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Sponsor:

Bill Number: AB 2217

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Amended: February 27,  
2020

Attorney: Shane Hofeling

Related Bills: See Legislative  
History

## SUBJECT

Income Tax Credit for Tax Attributable to Capital Gain on Sale of Qualified Vacant Site

## SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL) allow a tax credit for tax attributable to the capital gain on the sale of a qualified vacant site.

This is the department's first analysis of the bill and only addresses the provisions that impact the department.

## RECOMMENDATION

No position

## SUMMARY OF AMENDMENTS

None noted.

## REASON FOR THE BILL

The reason for the bill is to encourage voluntary participation in the sale of vacant sites for the repurposing and construction of housing or mixed-use developments on the site.

## ANALYSIS

This bill would, under the PITL and CTL, allow a tax credit for taxable years beginning on or after January 1, 2021, and before January 1, 2033, to a taxpayer that sells a qualified vacant site in an amount equal to fifty percent of the tax attributable to the capital gain from the sale of a qualified vacant site in the taxable year that it is sold. The remaining fifty percent would be allowed in the taxable year that the construction process begins on a housing or mixed-use development on the qualified vacant site if construction begins no later than five years from the sale of the qualified vacant site.

If a qualified vacant site is owned by more than one taxpayer, the credit would be allocated based on the ownership percentage.

Credits in excess of the tax due could be carried over for up to eight years.

For purposes of this credit, "qualified vacant site" means an undeveloped site or a site with a building that has been abandoned for three or more years, that is surrounded by development on two or more sides, and that has any of the following densities approved for development:

- For a city located in a nonmetropolitan county or for a nonmetropolitan county that has a micropolitan area within it, sites that are approved for the development of at least 15 units per acre.
- For an unincorporated area in a nonmetropolitan county that has no micropolitan area within it, sites that are approved for the development of at least 10 units per acre.
- For a suburban jurisdiction, sites that are approved for the development of at least 20 units per acre.
- For a city located within a metropolitan county, or for a metropolitan county, sites that are approved for the development of at least 30 units per acre.

For purposes of the credit, this bill would define metropolitan county, micropolitan county, nonmetropolitan county, and suburban county by reference to Government Code section 65583.2 (Generally meaning those areas as determined by the United States Census Bureau).

A county assessor would be required to provide a report on the use of the qualified vacant site upon request by the taxpayer or the Franchise Tax Board (FTB).

The FTB would be allowed to issue regulations necessary or appropriate to implement this credit.

The credit would remain in effect until December 1, 2033, and be repealed as of that date.

Section 3 of this bill contains language that would not be included in the numbered sections of the Revenue and Taxation Code (R&TC) and for purposes of complying with Section 41 of the R&TC would:

- Define the goal, purpose, and objective of the credits is to encourage voluntary participation in the sale of vacant sites for the repurposing and construction of housing or mixed-use developments on the site.
- Specify that the effectiveness of the credits would be measured by the number of taxpayers claiming the credits.

- Require the Legislative Analyst's Office (LAO) to prepare and submit a report to the Legislature, on or before December 1, 2023, and every two years thereafter, until December 1, 2033, on the effectiveness of the credits. The report must include information on the number of taxpayers claiming the credits and the total amount of the credits provided. The Legislative Analyst would be allowed to request information from the FTB.
- Require the FTB to provide any data requested by the LAO as allowed pursuant to the R&TC, notwithstanding the general prohibition on disclosure under R&TC section 19542.

### *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, 2033.

### *Federal/State Law*

#### *Federal Law*

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.

#### *State Law*

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 Committee, rents must be maintained at low-income levels for 30 years (15 years for federal), and the Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit. The Committee that would allocate the credit established by this bill allocates and administers the federal and state LIHC Programs.

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

R&TC 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*

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

This bill uses the undefined phrase, "construction process begins." The absence of a definition to clarify this terms could lead to disputes with taxpayers and would complicate the administration of this bill. For example, would the construction process begin as of the sales date? The date project estimates are begun? The date all plans and permits are approved? For clarity and ease of administration, it is recommended that the bill be amended.

The bill is silent on how the "tax attributable to a capital gain" would be determined for purposes of calculating the credit. For example, would the taxpayer's tax rate be applied to the capital gain exclusive of any offsetting losses? Would there be a "tax attributable to a capital gain" if a taxpayer had no tax liability for the taxable year? To ensure consistency with the author's intent and eliminate disputes between taxpayers and the department, this bill should be amended.

It is unclear whether the "qualified vacant site" must be located in California. To ensure consistency with the author's intent and eliminate disputes between taxpayers and the department, this bill should be amended.

The FTB lacks the expertise to determine that a site is a qualified vacant site and it is unclear how the FTB and the taxpayer would determine the date the construction process begins. 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.

It is unclear whether for purposes of eligibility for the second half of the credit a site must be a "qualified vacant site" as of the date the construction process begins. To ensure consistency with the author's intent and to avoid disputes between taxpayers and the department, this bill should be amended.

Because the bill fails to specify otherwise, the FTB would be subject to the rulemaking procedures required under the Administrative Procedures Act (APA), Government Code section 11340 et seq. Following these procedures may delay the immediate implementation of this bill. To prevent any delay, it is recommended that the author add a provision exempting the FTB from the APA when the FTB is prescribing rules, guidelines, or procedures to carry out the bill's purpose.

If requested, this bill could require the FTB to provide confidential taxpayer information to the LAO. However, the bill fails to prohibit the LAO from further disclosure of

confidential taxpayer information. It is recommended that the bill be amended to apply the appropriate disclosure restrictions to the LAO.

#### *Technical Considerations*

For consistent use of terminology the term "provided" should be amended to read "allowed" in paragraph (1) of subdivision (c) of Section 3.

#### *Policy Concerns*

The credit would be allowed for sales of qualified vacant sites located either inside or outside California.

One half of the credit would be allowed in the taxable year the qualified vacant site is sold regardless of any subsequent activity to build housing or a mixed-use development on the site. The second half of the credit would be allowed if the construction process is begun within five year of the sale, regardless of whether a housing or mixed use development on the qualified vacant site is completed and certified for occupancy. A recapture provision would resolve these issues.

Additionally, because the bill fails to specify otherwise any subsequent sale of the same property that remains a qualified vacant site would be eligible for the credit.

This bill fails to limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited to a specified aggregate amount per taxable year, or on a per-project or per-taxpayer basis.

#### **LEGISLATIVE HISTORY**

AB 2058 (Gabriel & Friedman, et al., 2019/2020) would under the PITL and CTL, allow a credit to a taxpayer that sells specified property to a qualified developer that has received a credit reservation from the Committee, and as part of the sale transfers the credit reservation to the taxpayer. Similar to AB 2058, this bill's tax credit would be based on the tax on the capital gain attributable to specified transactions. AB 2058 is scheduled to be heard on March 9, 2020, by the Assembly Revenue and Taxation Committee.

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. SB 315 is currently pending before the Assembly Revenue and Taxation Committee.

#### **PROGRAM BACKGROUND**

None noted.

## FISCAL IMPACT

Although the department's cost to implement this bill have yet to be determined, new forms and processes for identifying and tracking sales of qualified vacant lots would need to be created and deployed which could be quite costly. As the bill continues to move through the legislative process and implementation concerns are resolved, costs will be identified.

## ECONOMIC IMPACT

The bill states that for purposes of Section 41, the goal, purpose, and objective of the credits is to encourage voluntary participation in the sale of vacant sites for the repurposing and construction of housing or mixed-use developments on the site. The Legislature's evaluation of the credit's success would be based on the number of taxpayers who claim the credit.

### *Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2217 as Amended on February 27, 2020  
Assumed Enactment after June 30, 2020

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2020-2021	-\$31
2021-2022	-\$75
2022-2023	-\$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.

### *Revenue Discussion*

Based on available research, it is estimated that there would be approximately 27,000 qualified vacant sites in 2021. Sales of these sites are expected to generate an estimated \$2 billion in capital gains in taxable year 2021. Applying an average tax rate of 7 percent would result in a credit of approximately \$140 million. It is estimated that 70 percent, or \$100 million, would be generated by taxpayers with sufficient tax liability to offset with the credit. Of that amount, approximately \$65 million, would be claimed in the year generated and the remaining credit would be used over the subsequent 4 years.

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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