STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Sponsor:

Bill Number: AB 2493

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Related Bills: See Legislative History

SUBJECT

Homelessness Prevention Pilot Credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create the Homelessness Prevention Pilot Act of 2021 that would allow a credit to taxpayers who own qualified property that is rented or leased at below market rates to an individual or family receiving specified housing assistance. The credit would be equal to $500 for each qualified property, not to exceed $2,000 per taxable year.

The Franchise Tax Board (FTB) would be required to report specified information in accordance with Section 41 of the Revenue and Taxation Code (R&TC).

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to provide a tax incentive for small unit owners to agree to lower rental rates to prevent individuals or families becoming homeless.

ANALYSIS

For each taxable year beginning on or after January 1, 2021, and before January 1, 2026, under the PITL and the CTL, this bill would allow a credit in an amount equal to $500 for each qualified property owned by the taxpayer, not to exceed $2,000 per taxable year.

This bill would define the following terms and phrases:

- "Below market rate" means at a rate that is equal to or less than 75 percent of the measured market rate in the area where the qualified property is located for a unit that is of a similarly-sized square footage space and similar property description to that qualified property.
- "Nonprofit organization" means an organization that is exempt from federal income tax as an organization described in Section 501(c)(3) of the Internal Revenue Code (IRC) that provides housing assistance in the form of subsidies.
- "Qualified person" means an individual or family receiving housing assistance from a nonprofit organization in the form of full or partial rental in order to rent housing.
- "Qualified property" means a unit located in this state that meets both of the following criteria:
    - Is rented to, or leased by, qualified persons at an amount that is below market rates for the entire taxable year.
    - A nonprofit organization subsidizes the rent or lease of the unit in whole or in part pursuant to an agreement with the taxpayer.

This bill would also provide the following:

- 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.
- The taxpayer would be required to maintain a record of any agreement between the taxpayer and the nonprofit organization that indicates the rental or lease of qualified property was below market rate and was subsidized in whole or in part by the nonprofit organization. The taxpayer would be required to provide that record to the FTB, upon request.
- Any unused credit could be carried over two years.

This bill would specify that the credit would be known and cited as the Homelessness Prevention Pilot Act of 2021.

The credit would be repealed by its own terms on December 1, 2026.

For purposes of complying with Section 41 of the R&TC, SEC. 3 of this bill would provide the following:

- The specific goal, purpose, and objective of the credits is to incentivize small unit owners to agree to lower rental rates in connection with an organization described in Section 501(c)(3) of the IRC to preempt the situation of an individual or families becoming homeless.

- The performance indicators for the Legislature to use when measuring whether the credits meets the goal, purpose, and objective would be measured by the allowance of the credits by taxpayers in the private sector.

Notwithstanding Section 19542 of the R&TC, the FTB would be required to prepare a report, in compliance with Section 9795 of the Government Code, on the allowance of the credits created by this bill, to the Legislature during the odd-numbered calendar years through 2027.

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

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).

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

Implementation Considerations

Implementing this bill would require changes to existing tax forms and instructions, robust education and outreach, and changes to information systems.

This bill would require the taxpayer and nonprofit organization to enter into an agreement that indicates the “rental or lease of qualified property was below market rate and was subsidized in whole or in part by the nonprofit organization.” However, the bill is silent on the specific information that must be included within the agreement. For clarity and to avoid disputes between the taxpayer and the department, the author may wish to amend the bill specifying the information to be included within the agreement, including all of the following:

- The name and taxpayer identification number of the taxpayer owning the “qualified property.”
- The address of the “qualified property.”
- The term of the rental or lease agreement.
- The name of the nonprofit organization and federal taxpayer identification number.
- The name and taxpayer identification of the qualified person who rents or leases the “qualified property.”

This bill uses terms and phrases that are undefined, i.e., “unit” and “area.” 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 taxpayer 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.

The “notwithstanding” language in subdivision (b) of bill SEC. 3 is vague. It is unclear the specific information that would be disclosed to the Legislature other than the “allowance of credits” under the sections that would be created by this bill. Additionally, it is unclear what is meant by the phrase “by taxpayers in the private sector.” For clarity and consistency with the author’s intent, it is recommended that the bill be amended.

Personal income tax returns may be filed, with extension, until October 15. If the author’s intent is to have each report contain complete information for the taxable year, the due date of the report should be changed. For instance, the FTB would complete processing of returns for tax year 2021, the first year of the credit, by December of 2022. Thus, the earliest that data from these returns could be included in a report would be approximately April 2023.

Technical Considerations

To remove an unnecessary term, it is recommended that the first usage of the term “that” within the definition of “below market rate,” be removed.

For internal consistency within the bill, it is recommended that the phrase “qualified persons” within the definition of “qualified property” be replaced with “a qualified person”.

For consistency with terminology within the R&TC, it is recommended that the term “record” within subdivision (d) be replaced with the term “copy”.

Policy Concerns

If this bill is intended to provide an incentive for future rental or lease agreements, the inclusion of a prospective operative date for the rental or lease agreements 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.

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.

LEGISLATIVE HISTORY

AB 1206 (Choi, 2019/2020), similar to this bill, would have created a credit for taxpayers whose tenants receive housing assistance, as specified. AB 1206 failed to pass by the constitutional deadline.

SB 521 (Portantino, 2019/2020) would have allowed a credit for landlords whose tenants receive Section 8 rental assistance. SB 521 is pending before the Assembly Appropriations 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

Revenue Estimate

This bill, as introduced on February 19, 2020, would result in a revenue loss to the General Fund, but the amount is unknown.

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

To determine the revenue impact of this bill, both the frequency which taxpayers would claim the credit and the amount of rental income no longer collected must be known. Because it is difficult to predict both of these factors, the revenue impact to the General Fund is unknown.

The revenue impact of this bill is the total of both the loss from the amount of credits allowed annually and the annual decrease in rental income reported as a result of taxpayers reducing their rental rates.

It is estimated that for every 500 qualified properties, applying a credit of $500 would result in a revenue loss of $250,000.

The bill provides that a qualified property is one that is rented to a qualified person at 75 percent or less of the measured market rate. Based on information available, the average monthly fair market rent in California is estimated to be $1,600 in 2021. For those taxpayers whose rents are at or below, $1,200 per month, or 75 percent of the measured market rate, would qualify for the credit. This would result in a reduction in rental income reported by the taxpayer of $400 monthly, or $4,800 annually, per property. For every 500 qualified properties the revenue loss from the decrease of annual rental income is approximately $125,000.

Thus, for every 500 qualified properties rented to a qualified person, the revenue loss is estimated to be $375,000. This loss would be dependent on measured market rates and the number of taxpayers who will claim the credit.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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