STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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SUBJECT

Section 8 Housing Tax Credit

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would create a credit for qualified taxpayers who receive federal housing vouchers in the form of rent or lease payments, as specified.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

The May 4, 2020, amendments removed provisions related to property tax assessments and replaced them with the provisions discussed in this analysis.

This is the department's first analysis of this bill.

REASON FOR THE BILL

The reason for this bill is to incentivize property owners to accept Section 8 Housing vouchers, thereby increasing the availability of affordable housing and reducing homelessness.

ANALYSIS

For each taxable year beginning on or after January 1, 2021, and before January 1, 2026, this bill, under the PITL and the CTL, would allow a qualified taxpayer a tax credit, equal to 3 percent of the qualified amount per qualified property, for up to a maximum of five qualified properties. The amount of credit allowed for those taxable years would be zero dollars ($0), unless otherwise specified in any bill providing for appropriations related to the Budget Act.

This bill would define the following terms and phrases:

- "Local housing authority" means a housing authority created pursuant to Chapter 1 (commencing with Section 34200) of Part 2 of Division 24 of the Health and Safety Code.
- "Qualified amount" means the total amount of rent or lease payments received by the qualified taxpayer during the taxable year in which the credit is claimed in the form of federal housing assistance vouchers issued under Section 1437f of Title 42 of the United States Code (USC), not including project-based vouchers as provided by Section 1437f(o)(13) of Title 42 of the USC.
- "Qualified property" means a dwelling or unit that is rented or leased to persons receiving assistance under Section 8 of the United States Housing Act of 1937 (42 USC sec. 1437f).
- "Qualified taxpayer" means a taxpayer that satisfies both of the following:
  - Owns qualified property.
  - Enters into a new contract or contracts to rent or lease qualified property on or after January 1, 2021.

To be eligible for the credit, the qualified taxpayer would be required to obtain verification from the appropriate local housing authority that the property is a qualified property under this statute. The qualified taxpayer would be required to provide a copy of the verification to the Franchise Tax Board (FTB).

Unused credits could be carried over for nine years or until exhausted.

This bill in Sec. 3., for purposes of complying with Section 41 of the Revenue and Taxation Code (R&TC), would specify the following:

- The goal of the credits is to reduce homelessness by providing a tax incentive to property owners that rent or lease property to persons receiving assistance under Section 8 of the United States Housing Act of 1937 (42 USC Sec. 1437f).
- The effectiveness of the credits shall be measured by the number of taxpayers claiming the credit.

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

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, 2021, and before January 1, 2026.

Federal/State Law

Existing state and federal 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.

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

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.

For ease of administration and to reduce taxpayer burden, it is recommended that the bill be amended to require that the "verification" from the local housing authority include the following information, and be provided to the FTB, upon request:

- The name and taxpayer identification number of the owner of the qualified property.
- The address of the qualified property.
- The rental or lease period.

The bill uses the undefined phrase "new contract or contracts". It is unclear whether this phrase would include contracts that are renewed with existing tenants on or after January 1, 2021. The absence of a definition to clarify this phrase 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.

For clarity, and consistency with common usage within the R&TC, it is recommended that the term "verification" be replaced with "certification," and the term "persons" be replaced with "individuals."

For clarity and ease of administration, it is recommended that the phrase "in any bill providing for appropriations related to the Budget Act" be replaced with the phrase "in the annual Budget Act".

The bill requires that the effectiveness of the credit would be measured by the number of taxpayers claiming the credit. However, the bill is silent as to who, when, how often, and by whom the number of taxpayers claiming the credit would be provided. To ensure consistency with the author's intent, this bill should be amended.

Technical Considerations

None noted.

Policy Concerns

The credit would be allowed for the rental 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.

The uncertainty regarding the credit's on-going availability resulting from the requirement for an annual appropriation in the Budget Act may reduce the incentive to rent to an individual receiving housing assistance.

LEGISLATIVE HISTORY

AB 1206 (Choi, 2019/2020), would have created a credit for taxpayers who rent or lease property at below market rates to persons receiving housing services or assistance from a nonprofit organization. AB 1206 failed to pass out of the Assembly by the constitutional deadline.

SB 521 (Portantino, et al., 2019/2020), substantially similar to this bill, would have created a credit for qualified taxpayers whose renters or lessees receive federal housing assistance, as specified. SB 521 failed to pass by the constitutional deadline.

PROGRAM BACKGROUND

The United States Housing Act of 1937 (in Section 8(b)) enacted what is commonly referred to as "Section 8 housing." The U.S. Department of Housing and Urban Development (HUD), among other programs, administers the "Section 8 Voucher Program" through local public housing agencies (housing agency). The voucher program allows low-income households to choose "privately owned" housing, rather than units in subsidized housing projects. The housing agencies inspect housing units to ensure compliance with HUD quality standards, and directly pay a subsidy to an approved landlord. The family pays the difference between the subsidy and the rent charged. A voucher-family's payment must be at least 30 percent of its adjusted income for rent and utilities, but may not exceed 40 percent of its adjusted monthly income for rent. For additional information see the *Housing Choice Voucher Fact Sheet* on the HUD website.

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 AB 2799 As Amended on May 4, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Revenue*
2020-2021	-$6.9
2021-2022	-$17
2022-2023	-$21

**This estimate assumes a specific appropriation of funds would be enacted beginning in fiscal years 2020-2021 through 2025-2026.*

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.

Because the impact of current economic circumstances is unknown, this estimate is subject to change.

Revenue Discussion

Based on data from the Center on Budget and Policy Priorities, it is estimated that in taxable year 2021, there would be approximately 110,000 qualified properties. Of those, it is assumed that approximately 50 percent, or 50,000, would meet the limitations specified in the bill. Based on rental housing data, it is estimated that the average amount of assistance received under Section 8 would be approximately

$14,500 annually. Multiplying by the credit rate of three percent results in an average credit of $440, per qualified property, for a total credit generated of $22 million in the 2021 taxable year.

It is estimated that 85 percent, including the S corporation adjustment, or $19 million, would be earned by taxpayers who have tax liability to offset with the credit. Of that amount, approximately 80 percent, or $15 million, for taxable year 2021, would be claimed in the year generated, and the remaining would be used over the subsequent two years.

The tax year estimates are converted to fiscal year revenue estimates, rounded and reflected in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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