STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Bill Number: AB 2922
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Related Bills: See Legislative History

SUBJECT

Community Development Tax Credit Program

SUMMARY

This bill, under the Revenue and Taxation (R&TC) would allow tax credits related to the Community Development Tax Credit Program that would be established by this bill under the Government Code (GC).

The credit amount, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would equal the applicable credit percentage of the amount of each qualified investment made by the taxpayer during the taxable year to an eligible community development corporation that is certified by the Treasurer to receive an allocation of tax credit.

The Treasurer in collaboration with the Department of Community Services and Development (DCSD) would administer the Community Development Tax Credit Program.

This analysis only addresses the provisions of this bill that would impact the department's programs and operations.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for this bill is to improve economic opportunities for low- and moderate-income households and other residents in urban, rural, and suburban communities across the state.

ANALYSIS

For each taxable year beginning on or after January 1, 2021, this bill, under the PITL and the CTL, would allow a credit, as specified, not to exceed $20,000,000 per taxable year. The credit amount would equal the applicable credit percentage of the amount of each qualified investment made by the taxpayer during the taxable year to an eligible community development corporation that is certified by the Treasurer to receive an allocation of tax credit pursuant to the Community Development Tax Credit Program that would be enacted by this bill under the GC. A credit would only be allowed if the aggregate amount of qualified investments made by the taxpayer in the taxable year is at least $100,000.

This bill would provide that the applicable percentage for each taxable year beginning on or after January 1, 2021, would be:

- Zero percent, unless the Legislature increases the aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee for the Low-Income Housing Credits (pursuant to Sections 12206, 17058, and 23610.5) by at least $50,000,000 for the calendar year by legislation enacted after January 1, 2020, and reserves that additional allocation amount for tax credits that would be allowed by this bill.
- Fifty percent, if the increased allocation amount as described above is enacted.

This bill would define the following terms and phrases:

- "CDC investor tax credit certificate" means the CDC investor tax credit certificate issued by the eligible community development corporation pursuant to the Community Development Tax Credit Program.
- "Certification of CDC tax credit allocation" means the certification of CDC tax credit allocation issued by the Treasurer pursuant to the Community Development Tax Credit Program.
- "Community Development Tax Credit Program" means the Community Development Tax Credit Program that would be established by this bill (in Article 2.5 (commencing with Section 12335) of Chapter 4 of Part 2 of Division 3 of Title 2 of the GC).
- "Eligible community development corporation" has the same meaning as defined in Section 12335.2 of the GC that has been issued a certification of CDC tax credit allocation. Section 12335.2 would provide that an "eligible community development corporation" means a nonprofit corporation in good standing, as determined by the Secretary of State that is created for the purpose of supporting and revitalizing communities and meets specified requirements.

- "Qualified investment" has the same meaning as that term would be defined in Section 12335.2 of the GC as enacted by this bill for which, in exchange, the taxpayer has received a CDC investor tax credit certificate. Pursuant to Section 12335.2 a "qualified investment" would include a grant, donation equity investment, or charitable contribution made by a taxpayer that does not require repayment, interest payment, or financial return back to the taxpayer. The term would not include loans or equity equivalent investments.

This bill would provide that:

- A credit would only be allowed if the eligible community development corporation and the taxpayer provide satisfactory substantiation to, and in the manner requested by, the Franchise Tax Board (FTB) that the eligible community development corporation has received an allocation of tax credit by the Treasurer pursuant to Community Development Tax Credit Program, and the taxpayer has made a qualified investment in that eligible community development corporation in exchange for a tax credit allowed under this section. Satisfactory substantiation would mean a certification of CDC tax credit allocation and a CDC investor tax credit certificate.
- Any unused credits could be carried over for three years, if necessary until the credit has been exhausted.

This bill would provide that the Treasurer in collaboration with the DCSD would administer the Community Development Tax Credit Program.

The DCSD would be required to do the following:

- On or before July 1, 2021, develop and provide forms for, and establish uniform procedures for the submission and review of, applications for an allocation of CDC tax credits.
- Certify that an applicant for an allocation of CDC tax credits is an eligible community development corporation before the applicant may be allocated a CDC tax credit by the Treasurer.

The Treasurer would be required to do the following:

- Accept and evaluate applications in order to certify an allocation of CDC tax credits to an eligible community development corporation.
- Beginning with the 2021 calendar year, allocate the CDC tax credits for a current calendar year, in an amount not to exceed $50,000,000 per calendar year, among eligible community development corporations pursuant to specified criteria. If an eligible community development corporation is allocated a CDC tax credit, the amount would be at least $100,000, but could not exceed $500,000 in any one fiscal year. An allocation would be valid for a period of three years from the date of allocation, subject to revocation or extension.

- Issue the certification of CDC tax credit allocation that must include the name of the eligible community development corporation, the amount of CDC tax credit allocated, the date of allocation, and any other necessary information as may be determined by the Treasurer. The allocation of CDC tax credits, or a portion thereof, would be transferable to taxpayers who make qualified investments to that eligible community development corporation.
- Create a CDC investor tax credit certificate that shall be given by an eligible community development corporation to a person who makes a qualified investment in the eligible community development corporation upon receipt of that qualified investment. The CDC investor tax credit certificate would include the identification of the name of the person who made the qualified investment, the amount of the qualified investment, the date the qualified investment was made, and any other necessary information as may be determined by the Treasurer. The CDC investor tax credit certificate would be acceptable as proof that the person has made qualified investments in an eligible community development corporation, the amount of which could be taken into account in calculating the tax credits.
- Maintain a list on its internet website of all eligible community development corporations as certified by the DCSD.
- Authorized to revoke a certification of allocation of CDC tax credits to an eligible community development corporation after two years from the date of the allocation, after affording the corporation notice and the opportunity to be heard, for specified reasons.
- Authorized to prescribe rules and regulations to carry out the purposes of this article, including any rules and regulations necessary to establish procedures, processes, and requirements that are necessary to implement Community Development Tax Credit Program.

An eligible community development corporation that receives a certification of an allocation of CDC tax credits would be required to do the following:

- Receive qualified investments directly from one or more taxpayers and, in exchange, transfer a portion of its allocation of CDC tax credits equivalent to the amount of the qualified investment and issue a CDC tax credit certificate in that amount to that taxpayer.
- Commencing with the calendar year after an allocation has been made, submit an annual report to the Treasurer regarding outcomes achieved during the prior calendar year that would be made available to the public by the Treasurer.

This bill in SEC. 5 expresses Legislative intent to comply with the requirements of Section 41 of the R&TC.

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.

Federal/State Law

New Markets Tax Credit

Existing federal law allows a New Markets Tax Credit for taxpayers who make an equity investment in specialized financial institutions referred to as a community development entity.

The federal credit is up to 39 percent of the original investment amount and is claimed over a period of seven years (5 percent for each of the first three years and 6 percent for each of the remaining four years). The investment in the Development Entity may not be redeemed before the end of the seven-year period. The federal limit on the total qualified investments from all taxpayers to Development Entities for 2015 through 2019 is $3.5 billion as extended by the Protecting American from Tax Hikes Act of 2015 (by Public Law (P.L.) 114-113). Any unallocated amount may be carried forward, but not beyond calendar year 2024.

State law does not conform to the New Markets Tax Credit.

Low-Income Housing Credit (LIHC)

Current federal tax law allows an LIHC for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit 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 credit is claimed over ten years.

The Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law (Internal Revenue Code (IRC) section 42)) with respect to the LIHC, except that the state LIHC is claimed over four taxable years (rather than 10 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 (rather than 15 years for federal), and the taxpayer must have either received a federal credit from the Allocation

Committee or qualify for the federal credit. The LIHC is allocated in amounts equal to the sum of all the following:

- $100 million.
- The unused housing credit ceiling, if any, for the preceding calendar years.
- The amount of housing credit ceiling returned in the calendar year.
- $500,000 per calendar year for projects to provide farmworker housing.

Under R&TC section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit.

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 lacks administrative details necessary to implement the proposed credit and determine its impacts to the department's systems, forms, and processes as discussed below.

The tax credit allowed under both the PITL and the CTL would be capped at $20,000,000 per taxable year. It is unclear whether this cap would apply on a per-taxpayer basis or for the credit itself. For clarity and ease of administration, it is recommended that the bill be amended.

The bill is silent as to the number of months the qualified investment must be held by the taxpayer, or whether the investment may be partially withdrawn. To ensure consistency with the author's intent, it is recommended that the bill be amended.

For ease of administration, it is recommended that any certificates issued by the Treasurer, DCSD, and the eligible community development corporation also include a certificate number and taxpayer identification numbers for the eligible community development corporation, investors, and any transferees. Additionally, the author may wish to require the taxpayer to include the certificate number and credit amount with their income tax return, and, upon request of the FTB, provide a copy of the certificate.

It is unclear how the FTB would learn that an allocation had been revoked or otherwise modified by the Treasurer. For clarity and ease of administration it is recommended that the bill be amended.

To avoid delayed implementation, it is recommended that the bill be amended to grant the FTB regulatory authority and a waiver from rulemaking procedures required under the Administrative Procedures Act (APA).

Technical Considerations

For consistency with terminology within the R&TC, on page 11, line 8, insert “form and” before “manner.”

Policy Concerns

The credit lacks a recapture provision if the qualified investment is withdrawn before a specified time period. For example, the expired community development financial institution deposits credit included a recapture provision at the end of the 60th month and if not reinvested in another financial institution within 60 days.

Under this bill a taxpayer could receive a credit certificate for a contribution made to an eligible community development corporation. If the organization is also a IRC section 501(c)(3) organization, the taxpayer could also claim a charitable deduction for the same amount that qualifies for the credit.

The credit would be allowed for investments made in an eligible community development corporation outside California.

Under this bill, the eligible community development corporation would issue a CDC investor tax credit certificate. If the author’s intent is for the FTB to validate whether the taxpayer met the requirements for the certificate to have been issued pursuant to the statute, the bill would need to be amended.

This bill lacks a date by which the credit would become inoperative, informally referred to as a “sunset date.” Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

LEGISLATIVE HISTORY

AB 566 (Ridley-Thomas, 2017/2018) would have extended the operative period of the Community Development Financial Institution Deposits Credit to taxable years beginning on or after January 1, 2017, and before January 1, 2019, and would have specified a repeal date of December 1, 2019. AB 566 failed to pass by the constitutional deadline.

AB 778 (Caballero, et al., 2017/2018) would have reenacted the community development financial institution deposits credit for taxable years beginning on or after January 1, 2017, and before January 1, 2022. AB 778 was vetoed by the Governor because the credit was not considered during the budget process.

PROGRAM BACKGROUND

State law, for taxable years beginning on or after January 1, 1997, and before January 1, 2017, under the PITL and the CTL, allowed a credit equal to 20 percent of the amount of each qualified investment into a community development financial institution made by a taxpayer during the taxable year. A qualified investment was defined as a deposit that did not earn interest or an equity investment that was equal to or greater than $50,000 and invested for a minimum duration of 60 months.

State law limited the annual certification of total qualified investments made to Financial Institutions to $50 million for each calendar year. If the aggregate amount of qualified investments authorized in any calendar year was less than $50 million, the excess of $50 million over the actual aggregate qualified investment made in any year could be carried forward to the next year, and any succeeding calendar year up through and including 2017.

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 2922 as Introduced February 21, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	Revenue
2020-2021	-$5.4
2021-2022	-$15
2022-2023	-$20

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

The estimate assumes that the Legislature would increase the aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee by $50 million for taxable years beginning on or after January 1, 2021, and that the applicable credit percentage would be 50 percent.

It is estimated that 60 percent, or $30 million, of the annual credits would be used to offset income and franchise taxes and the remainder would be used against insurance taxes, which is not included in the above table. These assumptions are based on the provisions of the bill that the amounts of the credits would be 50 percent of the qualifying investment funds, where the minimum credit amount would be $100,000, or a minimum investment of $200,000, and the maximum credit would be $500,000, or an investment of $1,000,000.

It is assumed that 80 percent, or $24 million, in credit would be certified in the same year the credit is allocated. It is further assumed that 80 percent, including the S corporation adjustment, or $20 million, would be earned by taxpayers with sufficient tax liability to offset with the credit. Of that amount 65 percent, or $12 million, would be claimed in the year generated and the remaining credit would be used over the subsequent three 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.

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