STATE OF CALIFORNIA
Franchise Tax Board

Analysis of Original Bill

Author: Gipson

Sponsor:

Bill Number: AB 832

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Introduced: February 20, 2019

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Related Bills: See Legislative History

Subject: Qualified Affordable Housing Developer Credit

Summary

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), create an allocated tax credit for amounts paid or incurred by a taxpayer to a qualified developer for the development of a qualified low-income housing project.

Recommendation – No position.

Reason for the Bill

The reason for this bill is to incentivize investment in affordable housing development projects.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment, and specifically operative for each taxable year beginning on or after January 1, 2020, and before January 1, 2025.

Federal/State Law

Low-Income Housing Credit

Current federal tax law allows a Low-Income Housing Credit (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. The California Tax Credit Allocation Committee (Allocation Committee) allocates and administers the federal and state LIHC Programs.

Current state tax law[1] generally conforms, with modifications, to federal law (Internal Revenue Code (IRC) section 42) with respect to the LIHC, and is allocated in amounts equal to the sum of all the following:

- $100 million,[2]
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

The Allocation Committee certifies the amount of tax credit amount allocated. In the case of a partnership or an S corporation, a copy of the certificate is provided to each taxpayer. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board (FTB).

Credit Assignment

Existing state law allows a credit earned by members of a combined reporting group to be assigned to an affiliated corporation that is a member of the same combined reporting group.

Sale of a Credit

For projects that receive a preliminary reservation of the LIHC beginning on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in its application to the Allocation Committee to sell all or any portion of the allowed LIHC to one or more unrelated parties for each taxable year in which the credit is allowed. An original purchaser is allowed a one-time resale of that credit to one or more unrelated parties.

The sale of a credit is a sale of property, therefore, the seller is required to report gain from the sale. The gain from the sale of the credit is the excess of the total consideration received over the basis. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. Because the seller's basis in the credit is $0 (zero), the seller will recognize and report gain on the full amount of consideration received.

[1] Revenue and Taxation Code (R&TC) sections 17057.5, 17058, and 23610.4 – 23610.5.
[2] The statutory $70 million allocation amount as adjusted by the Consumer Price Index through 2015.

This Bill

For each taxable year beginning on or after January 1, 2020, and before January 1, 2025, this bill would, under the PITL and the CTL, allow a tax credit, in an amount equal to 50 percent of the amount contributed by a taxpayer to a qualified developer during the taxable year for the development of a qualified project, that does not exceed $250,000 per taxpayer per qualified project.

To be eligible for the credit, a qualified taxpayer, prior to paying any funds to a qualified developer for a qualified project, must request a tentative credit reservation from the FTB in the form and manner prescribed by the FTB.

The taxpayer would be required to identify the qualified developer and qualified project in the request.

The amount of the tentative credit reservation for the taxable year would be equal to 50 percent of the amount paid or incurred by a taxpayer to a qualified developer during the taxable year for the development of a qualified project, not to exceed $250,000 for any qualified project.

The FTB would be required to approve a request for a tentative credit reservation and may verify that the developer is a qualified developer and the project is a qualified project. The FTB would be required to determine the aggregate amount of all tentative credit reservations and approve requests for tentative credit reservation within the limitations as specified in the bill.

The aggregate amount of credits that may be allocated for a fiscal year would be $10,000,000, plus the amount of any (1) unallocated credits from the preceding fiscal year and (2) previously reserved unclaimed credit amounts.

This bill would define the following terms:

- "Area median income" means the area median income as published by the Department of Housing and Community Development, as specified.[3]
- "Qualified developer" means a nonprofit organization organized pursuant to IRC section 501(c)(3) that has received a welfare exemption pursuant to R&TC section 214.15.

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[3] Published pursuant to Health and Safety Code (HSC) section 50093.

- "Qualified project" means a project that satisfies all of the following:
    - Has a specific site in this state with a parcel identifier or address.
    - Units will be sold to persons and families with income at 30 percent to 80 percent of the area median income and subject to a contract that meets all of the following:
        - The contract restricts the use of the land for at least 30 years to owner-occupied housing available at affordable housing cost, as specified.[4]
        - The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale.
        - The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.
        - The contract is recorded and provided to the assessor.
    - Is subject to equity sharing provisions, as specified.[5]

The credit would be allowed in lieu of any other income or franchise tax credit or deduction otherwise allowed with respect to the amount contributed by the taxpayer to a qualified developer for the qualified project.

The bill specifies that the corporate credit may be assigned among members of the same combined report pursuant to R&TC section 23663.

This bill would allow unused credits to be carried over for up to six years, if necessary, until exhausted.

This credit would be excluded from the requirement under R&TC section 41 that new tax credits include goals, performance measures, and data collection and reporting necessary to enable the Legislature to determine the effectiveness of the credit. This bill would remain in effect until December 1, 2025, and be repealed as of that date.

[4] HSC section 50052.5.
[5] As described in paragraph (2) of subdivision (c) of Section 65915 of the Government Code.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The FTB lacks the expertise to determine if a developer is a qualified developer, or a project is a qualified project. 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.

This bill uses the undefined term, "qualified taxpayer." The absence of a definition to clarify this term 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.

The definition of "qualified project" uses the defined term "persons"[6] that includes various entities in addition to natural persons (individuals). If this is broader than the author intends, this bill should be amended.

Because this bill fails to specify otherwise, it is possible that one taxpayer investing in multiple projects could get the entire benefit of the credit this bill would allow. If this contrary to the author's intent, this bill should be amended.

The bill lacks the administrative details necessary for the department to administer a cap. For example, it is unclear how a reservation would be treated when the cap is reached by two or more taxpayers requesting a reservation simultaneously. Evenly? First-come first-served? It is recommended that the bill be amended to provide the details necessary to administer a cap.

Legislative History

AB 201 (Steinorth, 2017/2018) would have allowed a credit on the sale of a qualified vacant lot and an additional credit if construction on the vacant lot began within five years. AB 201 failed to pass out of the Assembly by the constitutional deadline.

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[6] R&TC section 19.

AB 1670 (Gomez, 2017/2018) would have allowed a credit equal to 50 percent of the amount paid or incurred by a taxpayer to a qualified developer for the development of a qualified project, not to exceed $250,000. AB 1670 failed to pass out of the Assembly by the constitutional deadline.

AB 2922 (Gipson, 2017/2018), similar to this bill, would have created an allocated tax credit for amounts contributed by a taxpayer to a qualified developer of a qualified project. AB 2922 failed to pass out of the Assembly by the constitutional deadline.

AB 2842 (Thurmond, 2015/2016) would have created a new saleable tax credit similar to the existing LIHC. AB 2842 failed to pass out of the Assembly by the constitutional deadline.

Other States' Information

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota,* and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

Florida, Massachusetts, Michigan, and *New York* offer a state LIHC similar to the credit offered in California. The *Florida* corporate tax credit is 9 percent of the eligible basis of any designated project for each year of the credit period. The *Massachusetts* credit was capped at $20,000,000 per calendar year and the *New York* credit is not allocated on a calendar-year basis.

Illinois offers a state LIHC program that is funded on donations made to the program. A state tax credit is available at 50 cents for every dollar donated.

Minnesota lacks a state LIHC.

Fiscal Impact

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 832 as Introduced February 20, 2019
Assumed Enactment after June 30, 2019

($ in Millions)

Fiscal Year	**Revenue**
2019-2020	-$1.6
2020-2021	-$5.7
2021-2022	-$10

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

This estimate assumes the aggregate amount of credits to be allocated each fiscal year would be $10 million, plus any unallocated credit amount, if any, for the preceding fiscal year, and the amount of previously reserved credits not yet claimed on a tax return.

For taxable year 2020, it is assumed that the maximum aggregate credits to be allocated would be $10 million. Due to the timing of the enactment and assumed timing of the tentative credit reservations, it is estimated that 50 percent, or $5 million in credits would be allocated in 2020, and 100 percent would be allocated each year thereafter. This estimate assumes the remaining $5 million would be carried over and included in the aggregate amount to be allocated for the next fiscal year. The amount of credit awarded to a taxpayer by the FTB, is an amount equal to 50 percent of the amount contributed by the taxpayer to the qualified developer during the taxable year for the development of a qualified project, not to exceed $250,000 per taxpayer per qualified project.

It is estimated that 80 percent, including the S corporation adjustment, or $4 million, would have a tax liability to offset with the credit. Of those, 65 percent, or $2.6 million, would claim the credit in the year generated and the remaining credit would be used over the subsequent four years. The $2.4 million in credit reserved but unclaimed from taxable year 2020 would be added to the aggregate amount of allocation available for taxable year 2021, bringing the total allocation amount to $17 million.

To arrive at the offsetting tax effect of the expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be unable to deduct approximately $5.6 million in qualified expenses in taxable year 2020. Applying an average tax rate of 8 percent, results in an offsetting revenue gain of $400,000, resulting in an estimated net revenue loss of $2.2 million in taxable year 2020. The amount of the loss will grow as the unused amount is added to the allocation amount available in each subsequent year. It is estimated that the revenue loss would peak at $21 million in taxable year 2024.

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

Policy Concerns

This bill would allow the credit to be claimed in the year in which amounts are contributed to the qualified developer with respect to a qualified project rather than in the year the qualified project is placed in service and ready for occupancy. As a result, credits would be allowed regardless of whether or when the qualified property is completed and occupied. To alleviate the risk of abandonment, the credit could be allowed upon certification of occupancy.

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