



Summary Analysis of Amended Bill

Author: Gipson

Sponsor:

Bill Number: AB 832

Analyst: Elaine Warneke

Phone: (916) 845-7746

Amended: April 3, 2019

Attorney: Shane Hofeling

Related Bills: See Prior Analysis

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.

Summary of Amendments

The April 3, 2019, amendments removed language that would have excluded the credit from the requirement under Revenue and Taxation Code (R&TC) section 41, and added the specific purpose and goals of the credit.

Except for the “This Bill” section, the remainder of the department’s analysis of the bill as introduced February 20, 2019, still applies. The “Implementation Considerations,” “Fiscal Impact,” “Economic Impact,” and “Policy Concerns” sections have been restated for convenience.

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 Franchise Tax Board (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.¹
- “Qualified developer” means a nonprofit organization organized pursuant to Internal Revenue Code section 501(c)(3) that has received a welfare exemption pursuant to R&TC section 214.15.
- “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.²
 - 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.

¹ Published pursuant to Health and Safety Code (HSC) section 50093.

² HSC section 50052.5.

- 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.³

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 bill would specify the goals of this credit as required under section 41 of the R&TC as (1) creating an incentive for investment in affordable housing development, and (2) helping low-income families become homeowners by stimulating private investment in affordable housing development projects.

This bill would remain in effect until December 1, 2025, and be repealed as of that date.

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.

³ As described in paragraph (2) of subdivision (c) of section 65915 of the Government Code.

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”⁴ 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.

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.

⁴ R&TC section 19.

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.

Legislative Staff Contact

Elaine Segarra Warneke

Legislative Analyst, FTB

(916) 845-7746

elaine.warneke@ftb.ca.gov

Jame Eiserman

Revenue Manager, FTB

(916) 845-7484

jame.eiserman@ftb.ca.gov

Jahna Carlson

Acting Legislative Director, FTB

(916) 845-5683

jahna.carlson@ftb.ca.gov