STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Related Bills: See Legislative History

Bill Number: SB 1030
Amended: April 6, 2020

SUBJECT

Housing Omnibus - Low-income Housing Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), modify the Low-income Housing Credit (LIHC), and would also propose several housing-related changes under the Government Code (GC), Health and Safety Code, and the Welfare and Institutions Code.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The April 6, 2020, amendments made technical and conforming changes to the bill, and expanded the exception to the resubmission requirement for housing development project construction changes under the GC. These amendments would not impact the department's programs or operations.

REASON FOR THE BILL

The reason for the bill is to increase development of low-income housing in California by modifying the definition of certain qualifying existing property.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2020, with respect to an existing property, modify the definition of "at risk of conversion" by replacing "multifamily rental housing development" with "assisted housing development," as defined under the Section 65863.10 of the GC, in which at least 50 percent of the units received governmental assistance. This bill also replaces the requirement the entity acquiring the qualifying property operate it as low-income housing for 55 years or the life of the property with the requirement that the entity acquiring the qualifying property must enter into an agreement that the property be operated in accord with the federal LIHC provisions.

Under current law, the taxpayer obtains a certification from the California Tax Credit Allocation Committee (Allocation Committee) that provides the amount of allowed California LIHC. The taxpayer provides this certificate to the Franchise Tax Board (FTB). As such, changes to the definition of certain qualifying existing property would not impact current FTB procedures because the Allocation Committee verifies that the property qualifies.

Effective/Operative Date

If enacted by September 30, 2020, this bill would be become effective and operative January 1, 2021. If enacted after September 30, 2020, this bill would become effective and operative January 1, 2022.

Federal/State Law

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

Current state tax law generally conforms to federal law 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 (15 years for federal), and the Allocation Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit.

The Allocation Committee administers a compliance monitoring program involving all projects with an allocation of federal or state housing tax credits, including LIHC Programs.

For taxable years beginning on or after January 1, 2009, and before January 1, 2020, state law requires allocation of the LIHC to partners based upon the partnership agreement, regardless of how the federal LIHC is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect.

The Allocation Committee certifies the amount of LIHC 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 FTB.

For a project that receives a preliminary reservation on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an election in its application to the Allocation Committee to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in provisions administered by the Allocation Committee.

Additionally, for taxable years beginning on or after January 1, 2019, various changes were made, including changes to restrictions on the sale of the credit, the allocation of the credit among partners and eliminating the rental passive activity loss limitation.

For calendar years beginning in 2020, an additional $500,000,000 was allocated to specified low-income housing projects. For calendar years beginning in 2021 and thereafter, an annual amount up to $500,000,000 may be available for allocation pursuant to an authorization in the annual Budget Act or related legislation, and specified regulatory action by the Allocation Committee.

Any unused credit may continue to be carried forward until the credit is exhausted.

Implementation Considerations

Implementing this bill would not significantly impact the department's programs and operations.

Technical Considerations

None noted.

Policy Concerns

None Noted.

LEGISLATIVE HISTORY

AB 101 (Committee on Budget, Chapter 159, Statutes of 2019), among other things, under the PITL and the CTL, modified the LIHC.

AB 10 (Chiu, et al., 2019/2020) would have, among other things, increased the LIHC allocations for both the regular credit and the farmworker housing credit, and removed the rental passive activity loss limitation. AB 10 failed to pass out of the Senate Appropriations Committee.

SB 9 (Chiu, 2019/2020) would have allowed in perpetuity the sale of the LIHC and allocations of the LIHC to partners without regard to the substantial economic effect rules by eliminating the sunset date on those provisions. SB 9 failed to pass out of the Assembly Committee on Housing and Community Development and the Assembly Revenue and Taxation Committee.

AB 571 (Garcia, Chapter 372, Statutes of 2017) modified: 1) the definition of farmworker housing; and 2) the applicable percentage used by the Allocation Committee for purposes of allocating and determining the LIHC for federally subsidized farmworker housing.

AB 71 (Garcia, et al., 2017/2018) would have modified the allocation of the LIHC relating to the types of housing and methods that qualified, and would have disallowed the deduction of mortgage interest paid on a second home. AB 71 failed to pass out of the house of origin by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill, as amended April 6, 2020, would not impact state income or franchise tax revenue.

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

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