



## **Summary Analysis of Amended Bill**

Author: Portantino, et al.

Sponsor:

Bill Number: SB 521

Analyst: Davi Milam

Phone: (916) 845-2551

Introduced February 21, 2019,  
and Amended April 25, 2019, &  
May 7, 2019

Attorney: Shane Hofeling

Related Bills: See Prior Analysis

**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 whose renters or lessees receive federal housing assistance, as specified.

**Recommendation – No position.**

### **Summary of Amendments**

The April 25, 2019, amendments recast the provisions that would allow a credit in an unspecified amount to owners of residential property that rent or lease such property to an individual that receives federal housing assistance.

The May 7, 2019, amendments added coauthors and a defined term, recast the calculation of the credit, removed the minimum rental or lease period, and made other clarifying and technical changes.

This is the department's first analysis of the 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.

### **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, 2020, and before January 1, 2025.

## Program Background

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).<sup>1</sup> 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.<sup>2</sup>

## 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.

Under California law, the CTL allows the assignment of certain eligible credits to taxpayers that are members of a combined reporting group. “Assignment” refers to the ability of a taxpayer that is a member of a combined reporting group to elect to transfer certain unused credits to a related corporation, as specified. The election to transfer any credit is irrevocable once made and is required to be made on the taxpayer’s original return for the taxable year in which the assignment is made.

---

<sup>1</sup> Section 8(b) of the United States Housing Act of 1937 originally enacted what is commonly referred to as “Section 8 housing.”

<sup>2</sup> [Housing Choice Voucher Fact Sheet](https://www.hud.gov/topics/housing_choice_voucher_program_section_8).

[https://www.hud.gov/topics/housing\\_choice\\_voucher\\_program\\_section\\_8](https://www.hud.gov/topics/housing_choice_voucher_program_section_8)

Under current state law, Revenue and Taxation Code (R&TC) section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the credit.

### **This Bill**

For each taxable year beginning on or after January 1, 2020, and before January 1, 2025, 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.

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 4 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, not including project-based vouchers as provided by Section 1437f(o)(13) of Title 42 of the United States Code (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.<sup>3</sup>
- “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, 2020.

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. The qualified taxpayer would be required to provide a copy of the verification to the Franchise Tax Board (FTB).

A maximum of five qualified properties would be allowed in the determination of a qualified taxpayer’s credit for each taxable year.

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

---

<sup>3</sup> (42 USC sec.1437f).

Introduced February 21, 2019, and Amended April 25, 2019, & May 7, 2019

The credit would be excluded from the goals and evaluation requirements of R&TC section 41.

The credit would be repealed by its own terms December 1, 2025.

### **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 phrase "new contract" is undefined in the bill. It is unclear whether this would include contracts that are renewed with existing tenants on or after January 1, 2020. The absence of definitions 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."

### **Legislative History**

AB 1206 (Choi, 2019/2020), would create 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 is pending before the Assembly Revenue and Taxation Committee.

### **Other States' Information**

Review of *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

## 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 SB521 as Amended May 7, 2019  
Assumed Enactment after June 30, 2019

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$7.5
2020-2021	-\$19.0
2021-2022	-\$22.0

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

Based on data from California Residential Rent and Rental Statistics and the Center on Budget and Policy Priorities, it is estimated that in taxable year 2020, there would be approximately 110,000 qualified properties. Of those, it is assumed that 50 percent, or 55,000, would meet the limitations specified in this bill. It is estimated that the average amount of assistance received under Section 8 would be \$14,500 annually. Multiplying by the credit rate of three results in an average credit of \$440, per qualified property, for a total credit generated of \$24 million in the 2020 taxable year.

It is estimated that 90 percent, or \$21 million, would be earned by taxpayers who have tax liability to offset with the credit. Of that amount, it is estimated that 75 percent, or \$16 million, would be claimed in the year generated and the remaining 35 percent would be used over the subsequent three years.

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

## Policy Concerns

The credit would be allowed for the rental of property 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.

## Legislative Staff Contact

Davi Milam  
Legislative Analyst, FTB  
(916) 845-2551  
[davi.milam@ftb.ca.gov](mailto:davi.milam@ftb.ca.gov)

Jame Eiserman  
Revenue Manager, FTB  
(916) 845-7484  
[jame.eiserman@ftb.ca.gov](mailto:jame.eiserman@ftb.ca.gov)

Jahna Carlson  
Acting Legislative Director, FTB  
(916) 845-5683  
[jahna.carlson@ftb.ca.gov](mailto:jahna.carlson@ftb.ca.gov)