STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

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Sponsor:

Bill Number: AB 1288

Related Bills: See Legislative History

Amended: January 24, May 17, and June 21, 2022

SUBJECT

Low Income Housing Tax Credit

SUMMARY

This bill would, under the Low-Income Housing Credit (LIHC) provisions of the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), modify the credit allocation requirements for the existing allocation of up to $500 million in low-income housing tax credits for calendar years after 2021.

This bill would also allow a taxpayer who purchased a credit be eligible to claim any such credit in the taxable year the building is placed in service and would identify certain taxpayer certification requirements.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The January 24, 2022, amendments modified some LIHC provisions and made changes to how the California Tax Credit Allocation Committee (Allocation Committee) and the California Debt Limit Allocation Committee (CDLAC) may allocate LIHCs and would specify that certain regulations, rules, and guidelines apply to the extent they do not conflict with these changes.

The May 17, 2022, amendments revised the provision that would provide for an allocation of up to $500 million for calendar years 2022 and thereafter, as specified. The May 17, 2022, amendments changed how the Allocation Committee and the California Debt Limit Allocation Committee may allocate LIHCs.

The May 17, 2022, amendments also modified a provision of the bill under the Government Code authorizing the CDLAC to adopt, amend, or repeal certain rules and regulations.

The May 17, 2022, amendments also added provisions that would allow a taxpayer who has purchased a credit to be eligible to claim the credit in the year the building is placed in service and would allow the Franchise Tax Board (FTB) to require submission of a taxpayer's certification of the credit.

The June 21, 2022, amendments added a sunset date of January 1, 2028, to the provision exempting rules and regulations from the Administrative Procedures Act, and provides for rules and regulations to be adopted as emergency regulations under the Administrative Procedures Act after January 1, 2028.

This analysis only addresses the provisions of the bill that would impact the department.

REASON FOR THE BILL

The reason for the bill is to increase development of low-income housing in California.

ANALYSIS

This bill would limit the credit allocation requirements under the existing code relating to the allocation of up to $500 million through the 2021 calendar year, and would add new provisions for the allocation of up to $500 million for the 2021 calendar year and thereafter, if the annual budget or related legislation appropriates or specifies an amount available for allocation by the Allocation Committee.

This bill would allow a taxpayer who has purchased the credit to claim the credit in the taxable year the building is placed in service and the federal credit period commences. It would allow the purchasing taxpayer to claim the credit even though the certification from the Allocation Committee has not been issued if the taxpayer who originally received the credit filed a taxpayer certification with the Allocation Committee and delivered a copy to the purchasing taxpayer.

This bill would allow the FTB to require the purchasing taxpayer to submit the taxpayer's certification with their tax return in the first year the purchasing taxpayer claims the credit. The amount of credit claimed by the taxpayer could not exceed the lesser of either of the following:

- Nine percent of the qualified basis of the building set forth in the preliminary reservation for the first three years commencing in the year the federal credit period commences and 3 percent of the qualified basis of the building set forth in the preliminary reservation in the fourth year.
- The amount of credit the project is eligible for as stated in the taxpayer certification.

This bill would define “taxpayer certification” as a certified statement from the certified public accountant of the taxpayer that originally received the preliminary reservation of credits. The taxpayer certification would contain all of the following:

- The amount of the credit the project is eligible for,
- The taxable year the building is placed in service, and
- The taxable year in which the federal credit period for the building has commenced.

This bill would allow the Allocation Committee, for the purposes of certifying the credit amount, to elect to rely upon the taxpayer certification received by the taxpayer who originally received the preliminary reservation of the credit.

The Allocation Committee would be allowed, but not required, to review the taxpayer certification and other information provided by the taxpayer who originally received the preliminary reservation of credits to confirm both of the following:

- The calculations set forth in the taxpayer certification, and
- The amount of credits allocated to the project is consistent with applicable CTAC rules and regulations for the purposes of making the certification required.

This bill would require the taxpayer to file an amended state tax return with the FTB, to the extent allowed by the normal statute of limitations, if the amount on Allocation Committee certification is inconsistent with the amount upon which the credit has been claimed. The amount of credit claimed on the amended tax return would be required to match the credit amount certified by the Allocation Committee.

The bill would also include provisions for the Allocation Committee and the CDLAC relating to the authorization and allocation of the credit among qualified low-income housing projects.

This bill would also eliminate the allocation requirement for certain qualified low-income buildings to utilize the applicable percentage definition that means 30 percent (30%) for the first three years and 5 percent (5%) for the fourth year.

Effective/Operative Date

This bill would take effect on January 1, 2023, and operative for taxable years beginning on or after January 1, 2023.

Federal/State Law

Federal 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.

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

State Law

Current state tax law generally conforms to federal law by reference with respect to the LIHC, except that the state LIHC is claimed over four taxable years (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.

For qualified low-income buildings that meet certain requirements and receive allocation, the applicable percentage is 30 percent (30%) for the first three years and five percent (5%) for the fourth year.

For 2020 and 2021calendar years and thereafter seventy million dollars ($70,000,000) and up to $500 million may be allocated to certain low-income housing projects pursuant to an authorization in the annual budget or related legislation, and specified regulatory action by the Allocation Committee. 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 partner or shareholder. The taxpayer is required, upon request, to provide a copy of the certificate to the FTB.

For taxable years beginning on or after January 1, 2022, the allocation of the LIHC by the Allocation Committee is expanded to include multifamily rental housing that are at risk of conversion. For taxable years beginning on or after January 1, 2022, projects eligible for the additional $500 million LIHC allocation include any retrofitting and repurposing of existing nonresidential structures, including, but not limited to, hotels and motels, that were converted to residential use within the previous five years from the date of the application.

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

Implementation Considerations

This bill would be limiting the amount of credit claimed by purchasing taxpayer to the lesser of nine percent of the qualified basis of the building set forth in the preliminary reservation for the first three years commencing in the year the federal credit period commences and 3 percent of the qualified basis of the building set forth in the preliminary reservation in the fourth year or the amount of credit the project is eligible for as stated in the taxpayer certification. This bill should clarify if this bill would create a new method of calculating the credit or changing what can be claimed in the first year only.

Technical Considerations

For clarity, in Sections 17058(q)(1)(A)(ii)(IV) and 23610.5(r)(1)(A)(ii)(IV), it is recommended that the phrase "the taxpayer shall, to the extent allowed by any applicable statute of limitations for said tax return, amend any previously filed tax returns to reflect the credit amount certified by the Allocation Committee pursuant to subparagraph (A) of paragraph (2) of subdivision (b)" be replaced with "the taxpayer shall amend any previously filed tax returns to reflect the credit amount certified by the Allocation Committee pursuant to subparagraph (A) of paragraph (2) of subdivision (b)."

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 447 (Committee on Housing, Chapter 344, Statutes of 2021) under the PITL and the CTL, expanded the eligibility criteria for buildings that are at risk of conversion for the allocation of LIHC by the Allocation Committee. This bill additionally expanded allocations for eligible projects of new buildings to include retrofitting and repurposing of existing nonresidential structures.

AB 83 (Committee on Budget, Chapter 15, Statutes of 2020) among other things, made some modifications to the statutes providing for low-income housing.

AB 89 (Ting, Chapter 7, Statutes of 2020), the Budget Act of 2020, among other things appropriated an additional $500 million for LIHC allocations.

SB 1030 (Committee on Housing, Chapter 165, Statutes of 2020) modified the LIHC, and enacted several housing-related changes under the Government Code, Health and Safety Code, and the Welfare and Institutions Code.

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), among other things, would have increased the LIHC allocations for both the regular credit and the farmworker housing credit, and would have removed the rental passive activity loss limitation. AB 10 did not pass the committee process.

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) among other things, would have modified the allocation of the LIHC relating to the types of housing and methods that qualified. AB 71 did not pass out of the house of origin by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

FISCAL IMPACT

The department anticipates minimal costs to implement this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended June 21, 2022, would not impact state income or franchise tax revenue. As a result, the amendments 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

The Senate Committee on Governance and Finance analysis dated June 13, 2022, lists the following support:

Support

Fiona Ma - California State Treasurer; California Housing Consortium; California Housing Partnership Corporation; East Bay Housing Organizations; Eden Housing and Midpen Housing Corporation.

Opposition

None noted.

ARGUMENTS

None noted.

LEGISLATIVE CONTACT

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