STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Gabriel & Friedman, et al.	Sponsor:	Bill Number: AB 1516
	Related Bills: See Legislative History	Introduced: February 19, 2021

SUBJECT

Qualified Developer Credit on Sale of Multifamily Rental Housing or Mobilehome Park to Qualified Developer

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a tax credit to a taxpayer that sells property to a qualified developer that has received a credit reservation from the California Tax Allocation Committee (Committee), and as part of the sale, transfers the credit reservation to the taxpayer.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to create a first-come-first-served reservable income tax credit to address the affordability of existing affordable housing and mobilehome parks and prevent the displacement of low-income households that would otherwise be caused by the loss of affordability of housing and mobilehome parks.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, allow an income tax credit to a taxpayer that receives a credit transfer pursuant to the sale of a property to a qualified developer that has received a credit reservation from the Committee. The maximum aggregate amount of credit the Committee could allocate would be $500,000,000.

A taxpayer's credit would be limited to the lesser of one million dollars ($1,000,000) or the sum of both of the following:

- Fifty percent of the federal capital gains taxes to be paid by the taxpayer based on the gains recognized for the sale of property to the qualified developer, and
- Fifty percent of the state income taxes paid by the taxpayer derived from the capital gains recognized for the sale of the property to the qualified developer.

Additionally, the credit would be limited to $20,000 per housing unit or space on the property.

Fifty percent of the estimated credit amount would be allocated for the taxable year during which the sale occurs. The remainder of the estimated credit would be allocated for the immediately following taxable year, subject to reduction by the Committee to the actual federal and state income taxes paid by the taxpayer that were derived from the sale of the property to the qualified developer.

In order to qualify for the credit, the qualified developer would be required to apply for and receive a credit reservation up to a limit of $1,000,000 from the Committee and establish at the close of escrow and document in the closing or transaction documents, the estimated credit amount to be transferred to the taxpayer.

The amount of the credit allowed would be $0 for taxable years beginning January 1, 2022, and before January 1, 2027, unless a bill related to the budget provides for an appropriation.

Credits in excess of the tax due could be carried forward until exhausted.

This bill would define the following terms and phrases:

"Committee" means the California Tax Credit Allocation Committee.

"Department" means the Department of Housing and Community Development.

"Eligible nonprofit corporation" means a California nonprofit corporation whose primary activity is the development and preservation of affordable rental housing, as determined by the committee.

"Lower income household" has the same meaning as defined in Section 50079.5 of the Health and Safety Code (HSC) (generally meaning persons and families whose income does not exceed the qualifying limits for lower income families, including very low and extremely low income families, as established and amended from time to time pursuant to Section 8 of the United States Housing Act of 1937).

"Qualified developer" means a local public entity, as defined in Section 50079 of the HSC, (generally meaning any state or local entity that is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income), an eligible nonprofit corporation, a limited partnership in which the managing general partner is an eligible nonprofit corporation, a limited liability company in which the managing member is an eligible nonprofit corporation, or a resident organization, as defined in subdivision (l) of Section 50781 of the HSC, (generally meaning a group of mobilehome park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobilehome park in which they reside and converting the mobilehome park to resident ownership) that meets any of the following:

- Is acquiring a mobilehome park in the state and has secured a loan from the department pursuant to Section 50783 or 50784.5 of the HSC.
- Is acquiring a mobilehome park, in the state, in which at least 50 percent of the current residents are lower income households and for which the qualified developer agrees to enter into a regulatory agreement with the Committee for a minimum of 55 years that requires both of the following:
  - All vacant spaces shall be rented at a space rent that does not exceed 50 percent of maximum rent limits established by the Committee at 60 percent of the area median income.
  - The space rent for existing residents at the time of the qualified developer's acquisition of the property, both during the 12 months preceding the acquisition and during the term of the regulatory agreement, shall not increase more than 5 percent in any 12-month period.
- Is acquiring a multifamily rental housing development of five or more dwelling units in the state and entering into a regulatory agreement, with the committee for that development, that requires, for a minimum of 55 years, that all vacant housing be both rented:
  - to low-income households that earn no more than 80 percent of the area median income at initial occupancy and the average income limit is no more than 60 percent of the area median income, and
  - at affordable rents that are limited to the maximum rent limits established by the committee at 80 percent of the area median income. The average affordable rent would be limited to 60 percent of the area median income.

"Space rent" means the rent charged for occupancy of a space in a mobilehome park specifically excluding the rent charged for occupancy of a mobilehome or other structure on that space.

"Vacant housing" means dwelling units that are vacant at the time the property is sold to the qualified developer and dwelling units that become vacant after the property has been sold to the qualified developer.

"Vacant spaces" means spaces in a mobilehome park that are vacant at the time the property is sold to the qualified developer and spaces in a mobilehome park that become vacant after the property has been sold to the qualified developer.

The Committee would be responsible for developing the processes and procedures to administer the credit including establishing a procedure in consultation with the Franchise Tax Board (FTB) to confirm the credit amount allocated to the taxpayer.

The credit would remain in effect until December 31, 2027, and be repealed as of that date.

Section 3 of this bill contains language that would not be included in the numbered sections of the Revenue and Taxation Code (RTC) and for purposes of complying with Section 41 of the RTC would:

- Define the goals, purposes, and objectives of the tax credit as preserving the affordability of existing affordable housing and mobilehome parks at risk of converting to market-rate housing as subsidies are set to expire; preserving the affordability of unrestricted, naturally occurring affordable housing and mobilehome parks where market pressures threaten to make housing costs unaffordable to low-income households; and preventing the displacement of low-income households that would otherwise be caused by the loss of affordability in at-risk restricted or in unrestricted housing and mobilehome parks.
- Specify that the performance indicators measuring whether the tax credit meets the goals, purposes, and objectives would be the number of developers allowed a tax credit and the number of homes remaining affordable to low-income households as a result of a sales transaction involving a tax credit.
- Require the Legislative Analyst's Office (LAO) to, on an annual basis beginning January 1, 2023, and each January 1 thereafter until January 1, 2028, collaborate with the Committee to review the effectiveness of this income tax credit. The LAO would be allowed to request information from the Committee and the Committee would be required to provide the information requested.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2022, and before January 1, 2027.

Federal/State Law

Federal Law

Current federal tax law allows a Low-Income Housing Credit (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 Committee that would allocate the credit established by this bill allocates and administers the federal and state LIHC Programs.

State Law

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 (ten years for federal), is limited to projects located in California, must be allocated and authorized by the Committee, rents must be maintained at low-income levels for 30 years (15 years for federal), and the Committee must have authorized a federal credit to the taxpayer or the taxpayer must qualify for the federal credit.

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

RTC section 41 requires legislation that would create a new tax expenditure, including a credit, deduction, exclusion, exemption, or any other tax benefit to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax expenditure.

Implementation Considerations

Assuming the FTB's responsibility under this bill would be limited to verifying during the audit process that the credit amount claimed by a taxpayer is equal to the amount allocated to the taxpayer by the Committee, implementing this bill would not significantly impact the department's programs and operations.

It is unclear whether the property sold by a taxpayer to a qualified developer must be the type of property listed under the definition of "qualified developer" to be eligible for the credit this bill would allow. To ensure consistency with the author's intent, the author may wish to amend the bill to specifically identify the types of property that when sold to a qualified developer would trigger eligibility for the tax credit.

The bill does not specify if the credit would be allowed to reduce Alternative Minimum Tax (AMT) or built-in gains tax for S corporations. The lack of guidance could cause disputes between taxpayers and the department. To resolve these concerns, this bill should be amended.

Technical Considerations

For consistency with the language that follows, "to be paid" should be replaced with "paid" in clause (i) of paragraph 2 of subdivision (a) of Sections 17057.7 and 23610.6.

For consistency of referencing within the franchise and income tax provisions, on page 3, lines 11 and 12 and on page 7, lines 27 and 28, strike out "subparagraph (A) of paragraph (2) of subdivision (a)" and insert "(a)."

For consistency of terminology, the term "developer" in paragraph (1) of subdivision (b) of Section 3 of this bill should be replaced with "qualified developer."

Policy Considerations

Because the bill fails to specify otherwise, a taxpayer would remain eligible for any credit or deduction otherwise allowable with respect to the same property.

This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely. Credits are generally enacted with a limited carryover period because experience shows credits typically are exhausted within eight years of being generated.

LEGISLATIVE HISTORY

AB 2058 (Gabriel & Friedman, 2019/2020), similar to this bill, would have allowed an income tax credit to a taxpayer that receives a credit transfer pursuant to the sale of a property to a qualified developer that has received a credit reservation from the Committee. The maximum aggregate amount of credit the Committee could allocate would be $500,000,000. The credit would be limited to $20,000 per housing unit or space on the property. AB 2058 did not pass out of the Assembly Revenue and Taxation Committee by the Constitutional deadline.

AB 791 (Gabriel. 2019/2020) would have: 1) expanded the LIHC to allow beneficial tax treatment for the sale of property to a qualified developer in a qualified opportunity zone, and 2) expanded the LIHC for investment in qualified opportunity zones. AB 791 did not pass out of the Assembly Revenue and Taxation Committee by the Constitutional deadline.

AB 2217 (Mathis, 2019/2020) would have allowed a tax credit for tax attributable to the capital gain on the sale of a qualified vacant site. AB 2217 did not pass out of the Assembly Revenue and Taxation Committee by the Constitutional deadline.

PROGRAM BACKGROUND

None noted.

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 AB 1516 as Introduced on February 19, 2021.
Assumed Enactment after June 30, 2021

($ in Millions)

Fiscal Year	Revenue
2021-2022	-$5.7
2022-2023	-$41.0
2023-2024	-$95.0

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.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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