



Bill Analysis

Author: Gabriel, et al.

Sponsor:

Bill Number: AB 1911

Related Bills: See Legislative
History

Amended: April 19, 2022

SUBJECT

Credit for Sale of a Qualified Development

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

The April 19, 2022, amendments resolved several implementation, technical, and policy considerations discussed in the department's analysis of the bill as introduced February 9, 2022 and amended March 7, 2022.

In addition, the April 19, 2022 amendments modified definitions of "at-risk multifamily housing development", "qualified developer", "qualified development" and made several technical changes.

REASON FOR THE BILL

The reason for the bill is to create a reservable income tax credit to address the affordability of existing affordable housing.

ANALYSIS

This bill would, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, allow an income tax credit to a taxpayer that receives a transfer of the right to claim a credit from a qualified developer pursuant to the sale of a qualified development to a qualified developer, who had previously received a credit reservation from the Committee.

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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 a qualified development 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 a qualified development to the qualified developer.

Additionally, the credit would be limited to \$20,000 per housing unit or space on a qualified development.

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 a qualified development 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 maximum aggregate amount of credit the Committee could allocate would be \$500,000,000. However, the amount of the credit allowed would be \$0 for taxable years beginning January 1, 2023, and before January 1, 2028, unless a bill related to the Budget Act provides for an appropriation.

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

This bill would define the following terms and phrases:

"At-risk multifamily housing development" means a rental housing development in the state of five or more dwelling units in which at least 50 percent of the units are subject to a deed restriction with a public entity that restricts rent and income levels to lower income households and at least one of the following criteria is met:

- The restrictions on rent and income levels will terminate within five years.
- The federally insured mortgage or rent subsidy contract on the property is eligible for prepayment or termination anytime within five years.
- The restrictions on rent and income levels are recorded pursuant to certain terms and regulations specified in the Government Code or in connection with interim or acquisition financing.

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“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 commits, at application to the committee under penalty of perjury, to employing a tax credit reservation allowed by this section in the acquisition of a qualified development.

“Qualified development” means either of the following:

- An at-risk multifamily housing development for which the qualified developer agrees to enter into a regulatory agreement with the committee for a term of 55 years to do either of the following:
 - Maintain the existing affordability requirements as may be amended by the committee to ensure project feasibility.
 - In the case of a termination of a rent subsidy contract, restrict the assisted or previously assisted units to affordable rents established by the committee at 60 percent or less of the area median income and occupancy by households meeting the income limit at the respective area median income level for each unit.
- An unrestricted multifamily rental housing development of five or more dwelling units in the state for which the qualified developer agrees to enter into a regulatory agreement, with the committee for that development, that requires, for 55 years, that all vacant housing be both rented:

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- o 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
- o 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.

“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.

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 bill, under the CTL, would not allow this credit to reduce built-in gains tax for S corporations.

The credit would remain in effect until December 31, 2028, and be repealed as of that date.

Section 3 of this bill contains requirements for the Legislative Analyst's Office (LAO) and the Committee 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 at risk of converting to market-rate housing as subsidies are set to expire; preserving the affordability of unrestricted, naturally occurring affordable housing 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.
- 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 LAO to, on an annual basis beginning January 1, 2024, and each January 1 thereafter until January 1, 2029, 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.

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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, 2023, and before January 1, 2028.

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 qualified developer by the Committee, and the taxpayer claiming the credit is identified by the developer who receives the allocation, implementing this bill would not significantly impact the department's programs and operations.

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This bill would require an appropriation in the budget to allocate the aggregate amount of credits and to allow the credits. This requirement could cause potential uncertainty for taxpayers and developers for this credit that could affect their decision to participate in this credit.

Technical Considerations

For clarity, in Section 17057.7(h)(6) and 23610.6(h)(6), it is recommended that the phrase "at application to the committee" be replaced with "on its application to the committee."

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.

The bill states that the qualified developer will commit, under penalty of perjury, to employing a tax credit reservation in the acquisition of a qualified development. It is unclear when the commitment under penalty of perjury will occur. The author may want to amend the bill to specify that this will occur during the application for the reservation of the credit. The author also may want to clarify what is intended by "employing a tax credit reservation."

LEGISLATIVE HISTORY

AB 1516 (Gabriel & Friedman, et al., 2020/2021), 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. AB 1516 did not pass out of the Assembly Revenue and Taxation Committee by the Constitutional deadline.

AB 791 (Gabriel, et al., 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 Committee on Appropriations by the Constitutional deadline.

AB 2058 (Gabriel & Friedman, et al., 2019/2020), 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 Committee on Appropriations by the Constitutional deadline.

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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 1911 as Amended on April 19, 2022.
Assumed Enactment after June 30, 2021

(\$ in Millions)

Fiscal Year	Revenue
2022-2023	-\$5.8
2023-2024	-\$41.0
2024-2025	-\$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.

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SUPPORT/OPPOSITION

Support

According to the May 4, 2022, Assembly Revenue and Taxation Committee analysis, registered support for AB 1911 includes: Adobe Communities, Alliance of Californians for Community Empowerment, EAH Housing, Enterprise Community Partners, and Los Angeles Homeless Services Authority.

Opposition

None noted.

ARGUMENTS

Proponents

The Assembly Revenue and Taxation Committee analysis dated May 4, 2022, includes the following statement from supporters of this bill:

California needs to do all that it can to maintain and increase its existing stock of affordable units and work towards creating higher levels of affordability in units that are not currently under an affordability covenant. This is made clear by a few key indicators. A 2015 LAO report found that California's home prices and rents were higher than just about anywhere else in the country, showing no signs of abating. In May 2021, the median price for a single-family home in California is \$818,260. According to the California Housing Partnership, between 1997 and 2020, California lost 18,043 affordable rental homes as affordability restrictions expired. Another 30,102 affordable rental homes are at risk of converting to market-rate rentals in the next 10 years. Los Angeles County alone could lose over 10,171 income-restricted units to the market.

Opponents

None noted.

LEGISLATIVE CONTACT

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