STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Garcia and Dodd

Sponsor:

Bill Number: AB 1439

Related Bills: See Legislative History

Amended: March 23, 2023

SUBJECT

Low-Income Housing Credit/Farmworker Housing

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would modify the Low-Income Housing Credit (LIHC).

This bill would also modify the LIHC under the Insurance Tax Law.

This analysis only addresses the provisions of the bill that impact the Franchise Tax Board's (FTB) programs and operations.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 23, 2023, amendments removed intent language relating to housing and replaced it with the provisions discussed in this analysis.

This is the department's first analysis of the bill.

REASON FOR THE BILL

The reason for this bill is to amend the California Tax Credit Allocation Committee (CTCAC) scoring system to provide a score benefit to farmworker housing.

ANALYSIS

This bill, under the PITL and the CTL, would, for calendar years 2024 and thereafter, require the CTCAC to modify the scoring system regulations to require:

- 10 points be awarded for farmworker housing projects that meet the housing needs category, as defined, and
- An additional 5 points in the category for amenities beyond those required as additional thresholds.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for the 2024 calendar year and thereafter.

Federal/State Law

Federal Law

Current federal tax law allows a 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% of the present value of the qualified low-income housing. The LIHC is claimed over ten years.

The CTCAC allocates and administers both the federal and state Programs.

State Law

Current state tax law generally conforms to federal law except that the state LIHC is claimed over four taxable years, is limited to projects located in California, must be allocated and authorized by the CTCAC, rents must be maintained at low-income levels for 30 years, and the CTCAC must have authorized a federal credit to the taxpayer, or the taxpayer must qualify for the federal credit.

The LIHC is allocated in amounts equal to the sum of all the following:

1) $100 million.
2) The unused housing credit ceiling, if any, for the preceding calendar years.
3) The amount of housing credit ceiling returned in the calendar year.
4) $500,000 allocated to farmworker housing.

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

For calendar years 2024 through 2034, the lesser of $25,000,000 or 5% of the amount available per calendar year as allocated by the CTCAC is to be set aside for projects to provide farmworker housing.

The CTCAC certifies the amount of LIHC allocated. For 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. The allocation of the LIHC to partners must be 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, as specified.

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

For a preliminary reservation beginning on or after January 1, 2016, a taxpayer may elect in its application to the CTCAC to sell all or a portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed, as specified in the provisions administered by the CTCAC.

The CTCAC is required to enter into an agreement with the FTB to pay any costs incurred by the FTB to administer this credit.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 1654 (Robert Rivas, Chapter 638, Statutes of 2022) under PITL and the CTL, modified the criteria for the return of unallocated credits related to farmworker housing projects, and modified provisions applicable to the farmworker housing study of the LIHC.

AB 1288 (Quirk-Silva, 2021/2022) would have, LIHC provisions of the PITL and CTL, allowed a taxpayer who purchased a credit to be eligible to claim any such credit in the taxable year the building is placed in service and would identify certain taxpayer certification requirements. AB 1288 was vetoed by the Governor.

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

AB 101 (Committee on the 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, for purposes of the additional $500,000,000 LIHC allocation for calendar year 2021 and thereafter, modified recently enacted law by removing the requirement for authorization of the additional allocation amount in the annual Budget Act or related legislation. AB 10 did not pass out of the Senate Committee on Appropriations by the constitutional deadline.

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 on those provisions. SB 9 did not pass out of the Assembly Committee on Appropriations by the constitutional deadline.t

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 determined.

ECONOMIC IMPACT

Revenue Estimate

The amendment dated March 23, 2023, would not impact state income or franchise tax revenue.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

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