STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Gabriel, et al.

Sponsor:

Bill Number: AB 3160

Related Bills: See Legislative History

Amended: March 21, 2024, April 18, 2024, and May 20, 2024

SUBJECT

Low Income Housing Credit

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.

RECOMMENDATION

No position—The Franchise Tax Board (FTB) has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

The March 21, 2024, amendments removed the language concerning local requirements for the selling of tangible personal property and replaced it with provisions modifying the allocation amount and removing the appropriation requirement for the LIHC.

The April 18, 2024, amendments removed the requirement that the additional allocation amount be allocated in the Budget Act for the 2025 through 2030 calendar years and added Revenue and Taxation Code (RTC) section 41 reporting requirements for the LIHC for the Legislative Analyst's Office.

The May 20, 2024, amendments added a coauthor and language that this bill will only be operative if AB 3190 becomes enacted and effective on or before January 1, 2025. AB 3190 would expand the definition of "paid for in whole or in part out of public funds" to include projects paid using credits as defined by the code section being amended in this bill. AB 3190 would also be contingent on AB 3160.

This analysis only addresses the provisions that would impact the FTB.

REASON FOR THE BILL

The reason for this bill is to provide a consistent amount of tax credits to encourage affordable housing and increase the opportunity for federal assistance.

ANALYSIS

This bill specifies the additional allocation amount of LIHC would be $500 million for the 2020 calendar year through the 2030 calendar year, and up to $500 million for the 2031 calendar year and every year thereafter. This bill would remove the requirement that the allocation of $500 million for LIHC provided by the California Tax Credit Allocation Committee (Allocation Committee) be authorized in the annual Budget Act or legislation related to the Budget Act for calendar years 2025 through 2030.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and operative only if AB 3190 is enacted and becomes effective on or before January 1, 2025.

The provisions prescribing the additional allocation by the Allocation Committee at $500 million would be specifically operative for allocations made during calendar years 2021 through 2030. The provisions prescribing the additional allocation by the Allocation Committee to be up to $500 million would be specifically operative for allocations made during calendar years 2031and every calendar year thereafter.

The provisions would remove the requirement that the additional allocation be authorized in the annual Budget Act or related legislation for calendar years 2025 through 2030.

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.

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

For qualified low-income buildings that meet certain requirements and receive certain allocations, the term “applicable percentage” means different specified percentages depending on the building.

Current state tax law allows an annual allocation of $70 million, as indexed for inflation, and an additional $500 million for the 2020 calendar year, and up to $500 million for each calendar year thereafter to be allocated by the Allocation Committee to certain low-income housing projects. The additional allocation is subject to an authorization in the annual Budget Act or related legislation. The additional amount is only available after the Allocation Committee has adopted specified regulations, rules, or guidelines. 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.

For calendar years 2024 through 2034, current law requires that the lesser of $25 million or 5% of the amount available per calendar year as allocated by the Allocation Committee is to be set aside for projects to provide farmworker housing, as defined under the Health and Safety Code.

Any unused credit has an unlimited carryover period.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

AB 346 (Quirk-Silva, Chapter 739, Statutes of 2023), under the PITL and CTL, allows a taxpayer to be eligible to claim the LIHC in the taxable year the building is placed in service, even if the Allocation Committee has not issued the certification.

AB 1439 (Garcia, Chapter 369, Statutes of 2023), under the PITL and the CTL, allows the Allocation Committee to consider modifying the scoring system to provide a score benefit to farmworker housing.

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 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, for tax years beginning in 2020 provided for an additional $500 million that may be allocated to specified low-income housing projects and, for calendar years beginning in 2021, provided that this amount is only available for allocation pursuant to an authorization in the annual Budget Act or related legislation, and specified regulatory action by the Allocation Committee.

AB 1288 (Quirk-Silva, 2021/2022) would have, under the 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 have identified certain taxpayer certification requirements. AB 1288 was vetoed by the Governor.

AB 10 (Chiu, et al., 2019/2020) would have, for purposes of the additional $500 million 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.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None noted.

FISCAL IMPACT

The FTB'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

This bill as amended on May 20, 2024, would not change the calculation of income or franchise tax.

Revenue Discussion

It is assumed that the aggregate housing credit dollar amount that may be allocated each year, would include the $500 million approved under AB 83 (Chapter 15, Statues of 2020). Therefore, this bill as amended would not change the amount of credit claimed each year.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None note.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

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Support:
- Abode Communities
- Affordable Housing Management Association-Pacific Southwest
- Alliant Strategic Development
- California Association of Local Housing Finance Agencies
- California Community Builders
- California Housing Consortium
- California Housing Partnership Corporation
- Corporation for Supportive Housing
- CTY Housing, INC.
- East Bay Housing Organizations
- Homes & Hope
- Housing Authority of The City of Alameda
- Inner City Law Center
- Kingdom Development
- Linc Housing
- Midpen Housing Corporation
- Murow Development Consultants
- Nonprofit Housing Association of Northern California
- Resources for Community Development
- San Francisco Housing Accelerator Fund
- San Joaquin Valley Housing Collaborative
- Satellite Affordable Housing Associates
- Self Help Enterprises
- Sisters of St. Joseph of Orange Healthcare Foundation
- Southern California Association of Nonprofit Housing
- St. Mary's Center
- Supportive Housing Alliance
- The John Stewart Company
- Thomas Safran & Associates
- Ventura Social Services Task Force
- Wakeland Housing and Development Corporation
- Weingart Center Association
- YM Architects

Opposition: None on file.

ARGUMENTS

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Proponents:

This bill is sponsored by the California Housing Partnership, which notes, in part:

> "Not only is California failing to meet its affordable housing need, but it is also leaving billions of dollars in available federal Housing Credits on the table. The root cause for both is the lack of state subsidy for affordable housing development. Without state resources to fill financing gaps, such as the state Housing Credit, a developer cannot use the federal Housing Credits or proceed to construction. Moreover, because it takes years to bring an affordable housing development to fruition, developers need certainty that funding will remain available."

Opponents: None on file.

LEGISLATIVE CONTACT

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