STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Quirk-Silva	Sponsor:	Bill Number: AB 346
	Related Bills: See Legislative History	Introduced: January 31, 2023

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), allow a taxpayer who purchased a credit to be eligible to claim any such credit in the taxable year the building is placed in service even if the California Tax Credit Allocation Committee (Allocation Committee) has not issued a certification and would identify certain taxpayer certification requirements.

This bill would also make some nonsubstantive technical changes.

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

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

ANALYSIS

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 Franchise Tax Board (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:

- The applicable percentages for each of the four credit years, as specified, multiplied by the qualified basis of the building set forth in the preliminary reservation.
- 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 the Allocation Committee 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 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 California Debt Limit Allocation Committee relating to the authorization and allocation of the credit among qualified residential rental projects.

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

Effective/Operative Date

This bill would be effective January 1, 2024, and operative for taxable years beginning on or after January 1, 2024.

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% 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% for the first three years and 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.

For calendar years 2024 through 2034, current law requires that the lesser of $25,000,000 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 may continue to be carried forward until the credit is exhausted.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

This bill does not specify that the purchasing taxpayer is only eligible for the pro rata share of the credit they purchased. For clarity, the author may wish to amend the bill.

This bill would allow the purchasing taxpayer to claim the credit without waiting for taxpayer certification issued by the CTCAC. However, the taxpayer who originally received the credit is permitted to claim the credit when the taxpayer certification is issued by the CTCAC. Thus, this bill would provide different timing for claiming the credit for taxpayers who originally received the credit and purchasing taxpayers.

LEGISLATIVE HISTORY

AB 1288 (Quirk-Silva, 2021/2022), substantially similar to this bill, would have 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 passed both chambers, was enrolled and presented to the governor. AB 1288 was vetoed by the governor whose veto message stated in part, "AB 1288 would authorize the California Tax Credit Allocation Committee (TCAC) to allocate state tax credits to either the nine- or four-percent federal low-income housing tax credits and would allow investors to begin claiming these credits in the year the development's construction is completed in advance of compliance verification. My administration, in partnership with the State Treasurer's Office, recently adopted new state tax credit regulations in July of this year. These regulations are meant to create administrative efficiencies, reduce costs, and increase housing production within the state tax credit system. Changes to this program and the use of state funding for low-income housing tax credits should be considered within the context of state regulatory changes, to ensure we maintain the necessary policy flexibility and predictability needed to improve our state housing finance system. For these reasons, I cannot sign this bill."

AB 1654 (Rivas, Chapter 638, Statutes of 2022) under the PITL and the CTL, specified the limitation amount available for allocation by the Allocation Committee for farmworker housing projects. The new law also established credit allocation rules relating to low-income housing credits depending on whether the Allocation Committee declared a competition for the award of tax-exempt bond authority for qualified residential rental projects.

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

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 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.

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.

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

This bill would result in the following revenue impact.

Estimated Revenue Impact of AB 346 as Introduced January 31, 2023
Assumed Enactment after June 30, 2023

($ in Millions)

Fiscal Year	Revenue
2023-2024	-$5.0
2024-2025	-$14
2025-2026	-$20

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

FTBLegislativeServices@ftb.ca.gov