STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Quirk-Silva	Sponsor:	Bill Number: AB 346
	Related Bills: See Legislative History	Amended: July 3, and July 13, 2023

SUBJECT

Low-Income Housing Tax Credit

SUMMARY

This bill would, under the Low-Income Housing Credit (LIHC) provisions of the Insurance Tax Law, Personal Income Tax Law (PITL), and Corporation Tax Law (CTL), allow a taxpayer to be eligible to claim the 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, would identify certain taxpayer certification requirements, and would make some nonsubstantive technical changes.

This analysis only addresses the provisions that would impact the Franchise Tax Board (FTB).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The July 03, 2023, amendments changed the operative date, modified the ability to claim the credit in the first year the building is placed in service to apply to all taxpayers, allows taxpayers the ability to provide the FTB the taxpayer certification upon request, and added declaratory language related to a gift of public funds. These amendments resolved two policy considerations discussed in the FTB analysis of the bill as introduced on January 31, 2023.

The July 13, 2023, amendments changed the operative date, made a clarifying change regarding partnerships, added a provision allowing the FTB to disallow the credit if no Allocation Committee's certificate or taxpayer certification is provided to FTB upon request, and removed declaratory language related to a gift of public funds.

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 to claim the LIHC in the taxable year the building is placed in service and the federal credit period commences. It would allow the taxpayer to claim the credit even though the certification from the Allocation Committee has not been issued if the housing sponsor who originally received the credit filed a taxpayer certification with the Allocation Committee and delivered a copy to the taxpayer.

The amount of credit claimed by the taxpayer could not exceed the pro rata share of the amount of credit purchased by the taxpayer or is allocated per the partnership agreement. The amount of credit claimed by the taxpayer would be 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 housing sponsor. 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.

The Allocation Committee would be allowed, but not required, to review the taxpayer certification and other information provided by the housing sponsor 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 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 credit amount on the taxpayer certification 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.

In addition to the existing requirement to provide the Allocation Committee certification upon request, a taxpayer would be required to provide the FTB with the taxpayer certification upon request as well.

This bill requires that if the taxpayer does not provide the requested certification, no credit would be allowed to the taxpayer for that taxable year, until a copy of the certification is provided.

Provisions of this bill allowing the taxpayer to claim the credit commencing in the taxable year the building is placed in service and the federal credit period commences would apply for taxable years beginning on or after January 1, 2023.

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.

Effective/Operative Date

This bill would be effective January 1, 2024. The provisions of this bill allowing the taxpayer to claim the credit commencing in the taxable year the building is placed in service and the federal credit period commences would be specifically operative for taxable years beginning on or after January 1, 2023.

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 certain allocations, the term “applicable percentage” means different specified percentages depending on the building.

For 2020 and 2021 calendar years and thereafter $70 million 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 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 may continue to be carried forward until the credit is exhausted.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

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 LIHCs 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 83 (Committee on Budget, Chapter 15, Statutes of 2020) among other things, made some modifications to the statutes providing for low-income housing.

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 101 (Committee on Budget, Chapter 159, Statutes of 2019), among other things, under the PITL and the CTL, modified the LIHC.

AB 1288 (Quirk-Silva, 2021/2022), 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 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 FTB anticipates minimal costs to implement this bill.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue impact.

Estimated Revenue Impact of AB 346 as Amended July 13, 2023
Assumed Enactment after June 30, 2023

($ in Millions)

Fiscal Year	Revenue
2022-2023	-$1.2
2023-2024	-$46.0
2024-2025	-$130.0
2025-2026	-$210.0

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.

Using LIHC data from the Allocation Committee and the FTB, it is assumed that the maximum credit allocation threshold would be reached each year. Of this amount, it is estimated that 75%, or $460 million, of the annual credits awarded would be used to offset income and franchise taxes and the remainder would be used against insurance taxes, which is not included in this analysis. Based on current LIHC usage, it is assumed that 70%, or $320 million, of the credit would be used over the four-year credit period and the remaining 30% would be carried forward to future years. Under current law the taxpayer must wait for the Allocation Committee to issue the tax certificate, which can take up to three years after the building is placed in service. This bill would allow the taxpayer to claim the credit in the taxable year in which the building is placed in service, beginning in 2023, resulting in an acceleration of credit usage relative to current law. The change in the timing of the revenue impact for the bill is then compared to the revenue impact under current law. The net difference between the bill and current law results in a revenue loss of $90 million in taxable year 2023. However, the overall timing of revenue impact is expected to be zero, as the revenue loss in the early years would be offset by the revenue gain in the out years.

The tax year estimates are then converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

According to the July 7, 2023, the Senate Governance and Finance Committee analysis of AB 346, the following organizations support this bill:

> California Housing Partnership Corporation (Sponsor); California Apartment Association; California Housing Consortium; City and County of San Francisco; Community Corporation of Santa Monica; Community Housing Improvement Program (CHIP); Community Housingworks; Danco Communities; Eah Housing; East Bay Asian Local Development Corporation; East Bay Housing Organizations; Eden Housing; Housing Authority of The City of Santa Barbara; Many Mansions; Midpen Housing Corporation; Resources for Community Development; San Francisco Housing Accelerator Fund; San Joaquin Valley Housing Collaborative; Southern California Association of Non-profit Housing and Wakeland Housing and Development Corporation.

Opposition

Per the same analysis, there is no opposition noted.

ARGUMENTS

Per the same analysis, none noted.

LEGISLATIVE CONTACT

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