STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Becker | Sponsor: | Bill Number: SB 935

Related Bills: See Legislative History | Amended: June 11, 2024

SUBJECT

Qualified School Staff Housing Project Tax Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), allow a credit to a qualified taxpayer in an amount equal to 20 percent of the costs of development of a qualified school staff housing project.

RECOMMENDATION

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

SUMMARY OF AMENDMENTS

The June 11, 2024, amendments removed provisions of the bill relating to the Penal Code and replaced them with the provisions discussed in this analysis.

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

REASON FOR THE BILL

The reason for this bill is to provide a tax credit to qualified taxpayers for costs of development of a qualified school staff housing project.

ANALYSIS

This bill would, under the PITL and CTL, for taxable years beginning on or after January 1, 2025, and before January 1, 2030, allow a tax credit to a qualified taxpayer in an amount equal to 20 percent of the costs of development of a qualified school staff housing project.

The bill defines the following terms:

"Qualified school staff housing project" means a housing project that satisfies all of the following:

- Is located on land owned by a school district or local government.
- Is developed by a qualified taxpayer.
- Occupancy of the completed housing project is restricted to qualifying tenants.

"Qualified taxpayer" means a developer that enters into an agreement with a school district or local government to develop a qualified school staff housing project.

"Qualifying tenant" means a full-time employee of a school district.

The bill states that the FTB may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of the credit.

Any unused credit could be carried over for five years until exhausted. This credit would be repealed on December 1, 2030.

For purposes of complying with Revenue and Taxation Code (RTC) section 41, this bill would require the FTB to report to the Legislature the number of taxpayers that claimed the credit and the average credit allowed. This report would be due no later than May 1, 2027, and annually thereafter.

The RTC section 41 reporting requirements would be treated as an exception to the general prohibition against disclosure of confidential taxpayer information.

Effective/Operative Date

This bill would be effective January 1, 2025, and specifically operative for taxable years beginning on or after January 1, 2025, and before January 1, 2030.

Federal/State Law

Federal and state laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits, hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise be undertaken.

Under RTC section 41, legislation that would create a new tax expenditure, which includes a credit, deduction, exclusion, exemption, or any other tax benefit as provided for by the state, is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the effectiveness of the tax benefit.

Implementation Considerations

The FTB has identified the following implementation considerations and is available to work with the author’s office to resolve these and other considerations that may be identified.

The term “costs of development” is undefined in the bill. Absent a definition, the term could be broadly interpreted and may lead to confusion for taxpayers, software providers, the FTB. In addition, it is not clear if the intent of the bill is for costs of development to be claimed each tax year of the project or when the project is completed.

Because the bill does not specify otherwise, two qualified taxpayers filing a joint return would each be eligible for the credit. If this is contrary to the author’s intent, the bill should be amended.

To provide clarity and prevent delays in the FTB from providing instructions and procedures related to this bill, it is recommended that the author add a provision exempting the FTB from the Administrative Procedures Act (APA) when the FTB is prescribing rules, guidelines, or procedures necessary to carry out the bill's purpose.

This bill requires the FTB to prepare a report on the performance of the credit allowed by this bill on or before May 1, 2027. If the author’s intent is to review a report that contains complete information for the 2025 taxable year, it is recommended that the reporting due date be extended to May of 2028. This date allows time for the FTB to complete processing of both personal income tax returns and corporation returns that file on a fiscal year basis. Corporate filers that file on extension may file as late as October 15, 2027. The FTB needs approximately six months to complete return processing and to compile the needed data to prepare a report. As a result, it is recommended that the reporting due date be no earlier than May of 2028 to provide information for the 2025 taxable year. If the reporting due date remains unchanged, the report would include the information available as of six months prior to the date the report is due.

Technical Considerations

In sections 17053.81(a) and 23631(a) insert “paid or incurred during the taxable year” after “costs of development”.

Remove section 17053.81 (d) as it is not needed since FTB already has the authority to prescribe rules, guidelines or procedures.

Policy Considerations

Because this bill would grant a credit for business decisions that have already been made, rather than for business decisions to be made in response to the credit, this bill would include future business decisions and activities for which a binding contract already exists. If this is contrary to the author's intent, the author may wish to amend the bill.

Conflicting tax policies may occur whenever a credit is provided for an item that is already deductible as a business expense or is otherwise reflected as an adjustment to the basis of property for tax purposes. Providing both a credit and allowing the full amount to be deducted (or added to basis) would have the effect of providing a double benefit for that item or cost. On the other hand, making an adjustment to deny the deduction or reduce basis to eliminate the double benefit creates a difference between state and federal taxable income, which may add to the complexity of tax filing due to the state's conformity to federal tax laws.

This bill does not restrict the credit to school districts within California (and are thus themselves subject to California tax on their earnings). If this is contrary to the author's intent, the author may wish to amend the bill.

This bill does not limit the amount of the credit that may be claimed. Credits that could potentially be costly are sometimes limited either on a per-project or per-taxpayer basis. If this is contrary to the author's intent, the author may wish to amend the bill.

LEGISLATIVE HISTORY

AB 832 (Gipson, 2019/2020) would have, under the PITL and the CTL, create an allocated tax credit for amounts paid or incurred by a taxpayer to a qualified developer for the development of a qualified low-income housing project.
AB 832 failed to pass out of the Assembly by the constitutional deadline.

AB 1670 (Gomez, 2017/2018) would have allowed a credit equal to 50 percent of the amount paid or incurred by a taxpayer to a qualified developer for the development of a qualified project, not to exceed $250,000. AB 1670 failed to pass out of the Assembly by the constitutional deadline.

PROGRAM BACKGROUND

None noted.

OTHER STATES' INFORMATION

None Noted.

FISCAL IMPACT

The FTB anticipates minimal costs to implement this bill.

ECONOMIC IMPACT

Revenue Estimate

To determine the magnitude of the potential impact to the General Fund, both the number of school staff housing projects and the amount of development costs must be known. Because it is difficult to determine the number of future projects and the amount of project development costs, the revenue impact to the General Fund is unknown.

However, it is estimated that for every $50 million of qualified development costs incurred by a qualified taxpayer approximately $10 million in credits would be generated.

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.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support:

None on file.

Opposition:

None on file.

ARGUMENTS

Proponents:

None on file.

Opponents:

None on file.

LEGISLATIVE CONTACT

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