Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

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Related Bills:	See Prior Analysis	Telephone:	845-6310	Amended Date	August 1, 2016
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SUBJECT: Low-Income Housing Credit/Farmworker Housing

SUMMARY

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The August 1, 2016, amendments modified provisions of the Revenue and Taxation Code regarding the LIHC administered by the California Tax Credit Allocation Committee. Except for the "Federal/State Law", "This Bill," and "Legislative History" sections that have been updated to reflect the recent enactment of SB 837 (Chapter 32, Statutes of 2016), the remainder of the department's analysis of the bill as introduced February 17, 2016 still applies. The "Effective/Operative Date", "Economic Impact" and "Fiscal Impact" sections have been restated for convenience.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative as of that date.

FEDERAL/STATE 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 percent of the present value of the qualified low-income housing. The LIHC is claimed over ten years.

The[1]Allocation Committee allocates and administers the federal and state LIHC Programs.

Current state tax law generally conforms to federal law (Section 42 of the Internal Revenue Code) with respect to the LIHC, except that the state LIHC is claimed over four taxable years

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[1] Voting members of this committee are the State Controller, the State Treasurer, and the Director of Finance.

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

- $100 million,[2]
- The unused housing credit ceiling, if any, for the preceding calendar years, and
- The amount of housing credit ceiling returned in the calendar year.

Current law requires allocation of the LIHC to partners 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.

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 taxpayer. The taxpayer is required, upon request, to provide a copy of the certificate to the Franchise Tax Board (FTB).

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

Additionally, for a project that receives a preliminary reservation on or after January 1, 2016, and before January 1, 2020, a taxpayer may make an irrevocable election in its application to the Allocation Committee to sell all or any portion of any LIHC allowed to one or more unrelated parties for each taxable year in which the LIHC is allowed subject to the following conditions:

- An LIHC is sold for consideration that is not less than 80 percent of the amount of the credit.
- The unrelated party or parties purchasing any or all of the LIHC, is a taxpayer allowed the state or federal[3] LIHC for the taxable year of the purchase or any prior taxable year in connection with a project located in this state. “Taxpayer allowed the credit” would mean a taxpayer that is allowed the credit without regard to the purchase of a credit.

The taxpayer that originally receives the LIHC would report to the Allocation Committee within 10 days of the sale, in the form and manner specified by the Allocation Committee, all required information regarding the purchase and sale of the LIHC, including:

- o The social security or other taxpayer identification number of the unrelated party to whom the LIHC has been sold,
- o The face amount of the LIHC sold, and
- o The amount of consideration received by the taxpayer for the sale of the LIHC.

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[2] The statutory $70 million allocation amount adjusted by the Consumer Price Index (CPI) through 2015.
[3] Allowed under section 42 of the Internal Revenue Code.

The Allocation Committee would provide an annual listing to the FTB, in a form and manner agreed upon by the Allocation Committee and the FTB, of the taxpayers that have sold or purchased an LIHC.

An LIHC can be sold to more than one unrelated party, but cannot be resold by the unrelated party to another taxpayer or other party. All or any portion of any LIHC allowed may be resold once by an original purchaser to one or more unrelated parties, subject to all the requirements of the LIHC.

The taxpayer that originally receives the LIHC that is sold remains solely liable for all obligations and liabilities imposed on the taxpayer with respect to the LIHC, none of which apply to any party to whom the LIHC has been sold or subsequently transferred. Parties purchasing an LIHC are entitled to utilize the purchased LIHC in the same manner as the taxpayer that originally received the LIHC.

A taxpayer cannot sell an LIHC if the taxpayer was allowed the credit on any tax return of the taxpayer.

The taxpayer, with the approval of the Executive Director of the Allocation Committee, may rescind the election to sell all or any portion of the LIHC allowed if the consideration falls below 80 percent of the amount of the LIHC after the Allocation Committee reservation.

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

Existing federal and state laws provide that gross income includes all income from whatever source derived, including gains from property unless specifically excluded.

The sale of a credit is a sale of property, therefore, the seller is required to report gain from the sale. The gain from the sale of the credit is the excess of the total consideration received over the seller's basis in the credit. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. Since the seller’s basis in the credit is $0 (zero), the seller will recognize and report gain on the full amount of consideration received.

THIS BILL

This bill would make modifications to the allocation of LIHC relating to farmworker housing, which is administered by the Allocation Committee.

LEGISLATIVE HISTORY

SB 873 (Beall, 2015/2016) would modify the operative date to January 1, 2017 (versus January 1, 2016), for the LIHC provision that allows the credit to be sold. It also would allow allocations of the credit by partnerships that receive preliminary reservations of credits occurring between January 1, 2016, and before June 27, 2016, to disregard the substantial economic effect rules of IRC sec. 704(b). SB 873 is currently in the Senate Appropriations Committee.

AB 2817 (Chiu, 2015/2016) would, for allocations made during calendar year 2017and thereafter, increase the LIHC allocation amount by an additional $300 million and would modify the farmworker housing projects allocation amount. AB 2817 is currently in the Senate Appropriations Committee.

SB 837 (Committee on Budget and Fiscal review, Chapter 32, Statutes of 2016), effective June 27, 2016, added provisions to the existing LIHC allowing the sale of LIHCs to unrelated parties and re-enacted the prior-law exception allowing an LIHC to be allocated among partners based upon the partnership agreement for taxable years beginning on or after January 1, 2016 and before January 1, 2020.

SB 377 (Beall, 2015/2016), would have modified the existing LIHC to allow the sale of the credit to unrelated parties. SB 377 was vetoed by Governor Brown on October 10, 2015, because "despite strong revenue performance over the past few years, the states' budget has remained precariously balanced due to unexpected costs and the provision of new services. Now, without the extension of the managed care organization tax that I called for in special session, the next year's budget faces the prospect of over $1 billion in cuts. Given these financial uncertainties, I cannot support providing additional tax credits that will make balancing the state's budget even more difficult. Tax credits, like new spending on programs, need to be considered comprehensively as part of the budget deliberations."

SB 16 (Lowenthal, 2009/2010), would have made the LIHC refundable and extended the partnership allocation rules for the preliminary reservation of the state LIHC during tax year 2008. SB 16 failed passage out of the Senate by the constitutional deadline.

SB 622 (Lowenthal, 2009/2010), would have allowed projects that received a preliminary reservation of the state LIHC during calendar year 2008, for which financial closing had not occurred by the effective date of the bill, to be allocated to the partners of a partnership owning a low-income housing project. SB 622 failed passage out of the Senate by the constitutional deadline.

SB 585 (Lowenthal, Chapter 382, Statutes of 2008), requires a project that is owned by a partnership that receives a preliminary LIHC reservation on or after January 1, 2009, and before January 1, 2016, to allocate the LIHC to the partners of a partnership owning a low-income housing project, in accordance with a 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 under IRC section 704(b). In addition, SB 585 requires a deferral of any loss or deduction attributable to the sale, transfer, exchange, abandonment, or any other disposition of a partnership interest where the credit was allocated without substantial economic effect. The loss would be deferred until the first taxable year immediately following the end of the ten-year credit period for which the federal credit is allowed.

FISCAL IMPACT

This bill would not impact the department's costs.

ECONOMIC IMPACT

There would be a revenue impact to the general fund, however, as discussed below, the amount is unknown.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Current law allows a $500,000 allocation per year for farmworker housing under the LIHC. According to information provided by the Allocation Committee, the credit allocated to farmworker housing is largely under allocated and to date there is over $5 million awaiting allocation. Historical data indicates that the average per project allocation of the existing credit to farmworker housing is $1.5 million with a total of $3 million allocated over the last 10 years. However, due to the infrequent allocation of this credit, the department is unable to provide an estimate of the annual credit usage.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

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