

AMENDED IN SENATE JANUARY 8, 2009

SENATE BILL

No. 16

Introduced by Senator Lowenthal

December 1, 2008

An act to amend Section 19611 of, and to add Sections ~~17058.6 and 23610.6~~ 12206.5, 17058.5, 17058.6, 23610.6, and 23610.8 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Lowenthal. Low-income housing tax credits.

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state tax credit amounts among low-income housing projects based on federal law.

This bill would, in the case of a project that has received or receives preliminary reservation of state low-income housing tax credit on or after July 1, 2008, and before January 1, ~~2010~~ 2011, allow the credit to be refundable *pursuant to specified laws*, and make an appropriation therefor, as provided.

Existing law, in the case of a partnership, requires the allocation of the state low-income housing tax credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

This bill would extend those requirements to a project that receives a preliminary reservation of the state low-income housing tax credit during calendar year 2008, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12206.5 is added to the Revenue and
2 Taxation Code, to read:

3 12206.5. (a) (1) Notwithstanding the dates specified in
4 subdivision (b) of Section 12206, for a project that receives a
5 preliminary reservation of the state low-income housing tax credit,
6 allowed pursuant to subdivision (a) of Section 12206, during
7 calendar year 2008, the credit shall be allocated to the partners
8 of a partnership owning the project in accordance with the
9 partnership agreement, regardless of how the federal low-income
10 housing tax credit with respect to the project is allocated to the
11 partners, or whether the allocation of the credit under the terms
12 of the agreement has substantial economic effect, within the
13 meaning of Section 704(b) of the Internal Revenue Code.

14 (2) To the extent the allocation of the credit to a partner under
15 this section lacks substantial economic effect, any loss or deduction
16 otherwise allowable under this part that is attributable to the sale
17 or other disposition of that partner's partnership interest made
18 prior to the expiration of the federal credit shall not be allowed
19 in the taxable year in which the sale or other disposition occurs,
20 but shall instead be deferred until and treated as if it occurred in
21 the first taxable year immediately following the taxable year in
22 which the federal credit period expires for the project described
23 in paragraph (1).

24 (b) This section shall not apply to any state low-income housing
25 credit reservation for which financial closing has occurred prior
26 to the effective date of the act adding this section. For purposes
27 of this section, "financial closing" shall mean the date on which
28 deeds of trust for all construction financing have been recorded
29 or, if no construction lender is involved, the equity partner has
30 been admitted to the ownership entity.

1 *SEC. 2. Section 17058.5 is added to the Revenue and Taxation*
2 *Code, to read:*

3 17058.5. (a) (1) *Notwithstanding the dates specified in*
4 *subdivision (b) of Section 17058, for a project that receives a*
5 *preliminary reservation of the state low-income housing tax credit,*
6 *allowed pursuant to subdivision (a) of Section 17058, during*
7 *calendar year 2008, the credit shall be allocated to the partners*
8 *of a partnership owning the project in accordance with the*
9 *partnership agreement, regardless of how the federal low-income*
10 *housing tax credit with respect to the project is allocated to the*
11 *partners, or whether the allocation of the credit under the terms*
12 *of the agreement has substantial economic effect, within the*
13 *meaning of Section 704(b) of the Internal Revenue Code.*

14 (2) *To the extent the allocation of the credit to a partner under*
15 *this section lacks substantial economic effect, any loss or deduction*
16 *otherwise allowable under this part that is attributable to the sale*
17 *or other disposition of that partner's partnership interest made*
18 *prior to the expiration of the federal credit shall not be allowed*
19 *in the taxable year in which the sale or other disposition occurs,*
20 *but shall instead be deferred until and treated as if it occurred in*
21 *the first taxable year immediately following the taxable year in*
22 *which the federal credit period expires for the project described*
23 *in paragraph (1).*

24 (b) *This section shall not apply to any state low-income housing*
25 *credit reservation for which financial closing has occurred prior*
26 *to the effective date of the act adding this section. For purposes*
27 *of this section, "financial closing" shall mean the date on which*
28 *deeds of trust for all construction financing have been recorded*
29 *or, if no construction lender is involved, the equity partner has*
30 *been admitted to the ownership entity.*

31 **SECTION 1.**

32 *SEC. 3. Section 17058.6 is added to the Revenue and Taxation*
33 *Code, to read:*

34 17058.6. (a) (1) *For purposes of Section 17058, in the case*
35 *of a project that has received or receives a preliminary reservation*
36 *of state low-income housing tax credit on or after July 1, 2008,*
37 *and before January 1, ~~2010~~ 2011, and the amount allowable as a*
38 *credit under Section 17058 exceeds the tax liability computed*
39 *under this part, the excess shall be credited against other amounts*

1 due, if any, and the balance, if any, shall be refunded to the
2 taxpayer.

3 (2) For purposes of applying paragraph (1), Section 17039 shall
4 be applied by first reducing the “net tax” to the extent allowed
5 under that section by any other credits, and then any remaining
6 “net tax” shall first be offset by the amount described in paragraph
7 (1) and any remaining amount described in paragraph (1) shall
8 then be refunded to the taxpayer.

9 (b) This section shall not apply to any state low-income housing
10 credit reservation for which financial closing ~~occurs on or after~~
11 ~~July 1, 2008, and before December 31, 2008~~ *has occurred prior*
12 *to the effective date of the act adding this section. For purposes*
13 *of this section, “financial closing” shall mean the date on which*
14 *deeds of trust for all construction financing have been recorded*
15 *or, if no construction lender is involved, the equity partner has*
16 *been admitted to the ownership entity.*

17 ~~SEC. 2.~~

18 *SEC. 4.* Section 19611 of the Revenue and Taxation Code is
19 amended to read:

20 19611. (a) The Tax Relief and Refund Account is hereby
21 created in the General Fund. Notwithstanding Section 13340 of
22 the Government Code, all moneys in the Tax Relief and Refund
23 Account are hereby continuously appropriated, without regard to
24 fiscal year, to the Franchise Tax Board for purposes of making all
25 payments as provided in this section.

26 (b) Notwithstanding any other law, all payments required to be
27 made to taxpayers or other persons from the Personal Income Tax
28 Fund shall be paid from the Tax Relief and Refund Account.

29 (c) The Controller shall transfer, as needed, to the Tax Relief
30 and Refund Account:

31 (1) From the unexpended balance of the annual Budget Act
32 appropriation for Item 9100-101-001, Schedule 80-Renter’s Tax
33 Relief, an amount determined by the Franchise Tax Board to be
34 equivalent to the total amount of renters’ assistance credits and
35 refunds allowed under Section 17053.5.

36 (A) If there is no unexpended balance of the appropriation, as
37 provided for in paragraph (1), the Controller shall transfer sufficient
38 moneys from the Personal Income Tax Fund to make the renters’
39 assistance credits and refunds until there is an unexpended balance.

1 (B) Subsequent to there being no unexpended balance of the
2 appropriation, as provided for in paragraph (1), and there being a
3 transfer of moneys from the Personal Income Tax Fund to make
4 the renters' assistance credits and refunds, reimbursement shall be
5 made from the unexpended balance of the appropriation as provided
6 for in paragraph (1) to the Personal Income Tax Fund. However,
7 if no such appropriation is subsequently made, reimbursement
8 shall be made from the General Fund.

9 (2) From the disability fund, the amount transferable to the
10 General Fund pursuant to subdivision (a) of Section 1176.5 of the
11 Unemployment Insurance Code.

12 (3) From the Personal Income Tax Fund, those additional
13 amounts as determined by the Franchise Tax Board to be necessary
14 to make the payments required under this section.

15 (4) From the Personal Income Tax Fund, those amounts as
16 determined by the Franchise Tax Board to be necessary to make
17 the refunds required under Section 17058.6.

18 (5) From the Corporation Income Tax Fund, those amounts as
19 determined by the Franchise Tax Board to be necessary to make
20 the refunds required under Section 23610.6.

21 ~~SEC. 3.~~

22 *SEC. 5.* Section 23610.6 is added to the Revenue and Taxation
23 Code, to read:

24 23610.6. (a) (1) For purposes of Section 23610.5, in the case
25 of a project that has received or receives a preliminary reservation
26 of state low-income housing tax credit on or after July 1, 2008,
27 and before January 1, ~~2010~~ 2011, and the amount allowable as a
28 credit under Section 23610.5 exceeds the tax liability computed
29 under this part, the excess shall be credited against other amounts
30 due, if any, and the balance, if any, shall be refunded to the
31 taxpayer.

32 (2) For purposes of applying paragraph (1), Section 23036 shall
33 be applied by first reducing the "tax" to the extent allowed under
34 that section by any other credits, and then any remaining "tax"
35 shall first be offset by the amount described in paragraph (1) and
36 any remaining amount described in paragraph (1) shall then be
37 refunded to the taxpayer.

38 (b) This section shall not apply to any state low-income housing
39 credit reservation for which financial closing ~~occurs on or after~~
40 July 1, 2008, and before December 31, 2008 *has occurred prior*

1 to the effective date of the act adding this section. For purposes
2 of this section, “financial closing” shall mean the date on which
3 deeds of trust for all construction financing have been recorded
4 or, if no construction lender is involved, the equity partner has
5 been admitted to the ownership entity.

6 SEC. 6. Section 23610.8 is added to the Revenue and Taxation
7 Code, to read:

8 23610.8. (a) (1) Notwithstanding the dates specified in
9 subdivision (b) of Section 23610.5, for a project that receives a
10 preliminary reservation of the state low-income housing tax credit,
11 allowed pursuant to subdivision (a) of Section 23610.5, during
12 calendar year 2008, the credit shall be allocated to the partners
13 of a partnership owning the project in accordance with the
14 partnership agreement, regardless of how the federal low-income
15 housing tax credit with respect to the project is allocated to the
16 partners, or whether the allocation of the credit under the terms
17 of the agreement has substantial economic effect, within the
18 meaning of Section 704(b) of the Internal Revenue Code.

19 (2) To the extent the allocation of the credit to a partner under
20 this section lacks substantial economic effect, any loss or deduction
21 otherwise allowable under this part that is attributable to the sale
22 or other disposition of that partner’s partnership interest made
23 prior to the expiration of the federal credit shall not be allowed
24 in the taxable year in which the sale or other disposition occurs,
25 but shall instead be deferred until and treated as if it occurred in
26 the first taxable year immediately following the taxable year in
27 which the federal credit period expires for the project described
28 in paragraph (1).

29 (b) This section shall not apply to any state low-income housing
30 credit reservation for which financial closing has occurred prior
31 to the effective date of the act adding this section. For purposes
32 of this section, “financial closing” shall mean the date on which
33 deeds of trust for all construction financing have been recorded
34 or, if no construction lender is involved, the equity partner has
35 been admitted to the ownership entity.

36 ~~SEC. 4.~~

37 SEC. 7. This act is an urgency statute necessary for the
38 immediate preservation of the public peace, health, or safety within
39 the meaning of Article IV of the Constitution and shall go into
40 immediate effect. The facts constituting the necessity are:

1 The state low-income housing tax credit is a critical source of
2 funding for the development of affordable rental housing. Because
3 of the financial downturn and the disruption to global capital
4 markets, the ability of affordable housing developers, who have
5 been awarded credits to obtain private equity investment in return
6 for the credits, has decreased precipitously and, in some cases,
7 disappeared altogether. Some developers have been forced to return
8 tax credit awards unused, others are struggling to arrange investors,
9 and those projects that have found investors have had to seek
10 additional public funding to offset the decline in pricing and to
11 maintain the financial feasibility of projects, severely jeopardizing
12 the state's goal of providing decent, safe, and sanitary housing for
13 all Californians. An immediate and short-term change to make
14 state low-income housing tax credits refundable will entice
15 investors back into affordable housing until global financial
16 markets stabilize.

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