

AMENDED IN SENATE JUNE 26, 2013

AMENDED IN ASSEMBLY MAY 2, 2013

AMENDED IN ASSEMBLY MARCH 18, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 952

Introduced by Assembly Member Atkins

February 22, 2013

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 952, as amended, Atkins. 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, as modified. Existing law, among other things, allows the credit based on the applicable percentage, as defined.

Existing insurance taxation law prohibits a credit from being allocated under this law to buildings located in a difficult development area or a qualified census tract, as defined, for which the eligible basis of a new building or the rehabilitation expenditure of an existing building is 130% of a specified amount, unless the committee reduces the amount of federal credit, with the approval of the applicant, so that the combined amount of federal and state credit does not exceed the total credit allowable pursuant to this section and the Internal Revenue Code.

The Personal Income Tax Law and the Corporation Tax Law allow a credit for buildings located in designated difficult development areas or qualified census tracts, as defined, allocated in specified amounts, provided that the amount of credit allocated under the Section 42 of the Internal Revenue Code is computed on 100% of the qualified basis of the building.

This bill would, under the insurance taxation law, allow a credit for buildings located in designated difficult development areas or qualified census tracts allocated in the specified amounts, provided that the amount of credit allocated under Section 42 of the Internal Revenue Code is computed on 100% of the qualified basis of the building.

This bill would, under the insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, authorize the California Tax Credit Allocation Committee to allocate a credit for buildings located in designated difficult development areas or qualified census tracts that are restricted to having 50% of its occupants be special needs households, as defined, even if the taxpayer receives specified federal credits, if the credit allowed under this section does not exceed 30% of the eligible basis of that building. This bill would, for purposes of all 3 laws, allow the California Tax Credit Allocation Committee to exchange federal low-income housing credits for state low-income housing credits, as specified.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

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

- 1 SECTION 1. Section 12206 of the Revenue and Taxation Code
- 2 is amended to read:
- 3 12206. (a) (1) There shall be allowed as a credit against the
- 4 “tax” (as described by Section 12201) a state low-income housing
- 5 tax credit in an amount equal to the amount determined in
- 6 subdivision (c), computed in accordance with Section 42 of the
- 7 Internal Revenue Code, except as otherwise provided in this
- 8 section.
- 9 (2) “Taxpayer,” for purposes of this section, means the sole
- 10 owner in the case of a “C” corporation, the partners in the case of
- 11 a partnership, and the shareholders in the case of an “S”
- 12 corporation.

1 (3) “Housing sponsor,” for purposes of this section, means the
2 sole owner in the case of a “C” corporation, the partnership in the
3 case of a partnership, and the “S” corporation in the case of an “S”
4 corporation.

5 (b) (1) The amount of the credit allocated to any housing
6 sponsor shall be authorized by the California Tax Credit Allocation
7 Committee, or any successor thereof, based on a project’s need
8 for the credit for economic feasibility in accordance with the
9 requirements of this section.

10 (A) Except for projects to provide farmworker housing, as
11 defined in subdivision (h) of Section 50199.7 of the Health and
12 Safety Code, that are allocated credits solely under the set-aside
13 described in subdivision (c) of Section 50199.20 of the Health and
14 Safety Code, the low-income housing project shall be located in
15 California and shall meet either of the following requirements:

16 (i) The project’s housing sponsor shall have been allocated by
17 the California Tax Credit Allocation Committee a credit for federal
18 income tax purposes under Section 42 of the Internal Revenue
19 Code.

20 (ii) It shall qualify for a credit under Section 42(h)(4)(B) of the
21 Internal Revenue Code.

22 (B) The California Tax Credit Allocation Committee shall not
23 require fees for the credit under this section in addition to those
24 fees required for applications for the tax credit pursuant to Section
25 42 of the Internal Revenue Code. The committee may require a
26 fee if the application for the credit under this section is submitted
27 in a calendar year after the year the application is submitted for
28 the federal tax credit.

29 (C) (i) For a project that receives a preliminary reservation of
30 the state low-income housing tax credit, allowed pursuant to
31 subdivision (a), on or after January 1, 2009, and before January 1,
32 2016, the credit shall be allocated to the partners of a partnership
33 owning the project in accordance with the partnership agreement,
34 regardless of how the federal low-income housing tax credit with
35 respect to the project is allocated to the partners, or whether the
36 allocation of the credit under the terms of the agreement has
37 substantial economic effect, within the meaning of Section 704(b)
38 of the Internal Revenue Code.

39 (ii) This subparagraph shall not apply to a project that receives
40 a preliminary reservation of state low-income housing tax credits

1 under the set-aside described in subdivision (c) of Section 50199.20
 2 of the Health and Safety Code unless the project also receives a
 3 preliminary reservation of federal low-income housing tax credits.

4 (iii) This subparagraph shall cease to be operative with respect
 5 to any project that receives a preliminary reservation of a credit
 6 on or after January 1, 2016.

7 (2) (A) The California Tax Credit Allocation Committee shall
 8 certify to the housing sponsor the amount of tax credit under this
 9 section allocated to the housing sponsor for each credit period.

10 (B) In the case of a partnership or an “S” corporation, the
 11 housing sponsor shall provide a copy of the California Tax Credit
 12 Allocation Committee certification to the taxpayer.

13 (C) The taxpayer shall attach a copy of the certification to any
 14 return upon which a tax credit is claimed under this section.

15 (D) In the case of a failure to attach a copy of the certification
 16 for the year to the return in which a tax credit is claimed under this
 17 section, no credit under this section shall be allowed for that year
 18 until a copy of that certification is provided.

19 (E) All elections made by the taxpayer pursuant to Section 42
 20 of the Internal Revenue Code shall apply to this section.

21 (F) (i) Except as described in clause (ii), for buildings located
 22 in designated difficult development areas (DDAs) or qualified
 23 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
 24 Internal Revenue Code, credits may be allocated under this section
 25 in the amounts prescribed in subdivision (c), provided that the
 26 amount of credit allocated under Section 42 of the Internal Revenue
 27 Code is computed on 100 percent of the qualified basis of the
 28 building.

29 (ii) Notwithstanding clause (i), the California Tax Credit
 30 Allocation Committee may allocate the credit for buildings located
 31 in DDAs or QCTs that are restricted to having 50 percent of its
 32 occupants be special needs households, as defined in the California
 33 Code of Regulations by the California Tax Credit Allocation
 34 Committee, even if the taxpayer receives federal credits pursuant
 35 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
 36 that the credit allowed under this section shall not exceed 30
 37 percent of the eligible basis of the building.

38 ~~(iii) (F)~~

39 (G) (i) The California Tax Credit Allocation Committee may
 40 allocate a credit under this section in exchange for a credit allocated

1 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
2 amounts up to 30 percent of the eligible basis of a building if the
3 credits allowed under Section 42 of the Internal Revenue Code are
4 reduced by an equivalent amount.

5 (H)

6 (ii) An equivalent amount shall be determined by the California
7 Tax Credit Allocation Committee based upon the relative amount
8 required to produce an equivalent state tax credit to the taxpayer.

9 (c) Section 42(b) of the Internal Revenue Code shall be modified
10 as follows:

11 (1) In the case of any qualified low-income building that receives
12 an allocation after 1989 and is a new building not federally
13 subsidized, the term “applicable percentage” means the following:

14 (A) For each of the first three years, the percentage prescribed
15 by the Secretary of the Treasury for new buildings that are not
16 federally subsidized for the taxable year, determined in accordance
17 with the requirements of Section 42(b)(2) of the Internal Revenue
18 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
19 of the Internal Revenue Code.

20 (B) For the fourth year, the difference between 30 percent and
21 the sum of the applicable percentages for the first three years.

22 (2) In the case of any qualified low-income building that receives
23 an allocation after 1989 and that is a new building that is federally
24 subsidized or that is an existing building that is “at risk of
25 conversion,” the term “applicable percentage” means the following:

26 (A) For each of the first three years, the percentage prescribed
27 by the Secretary of the Treasury for new buildings that are federally
28 subsidized for the taxable year.

29 (B) For the fourth year, the difference between 13 percent and
30 the sum of the applicable percentages for the first three years.

31 (3) For purposes of this section, the term “at risk of conversion,”
32 with respect to an existing property means a property that satisfies
33 all of the following criteria:

34 (A) The property is a multifamily rental housing development
35 in which at least 50 percent of the units receive governmental
36 assistance pursuant to any of the following:

37 (i) New construction, substantial rehabilitation, moderate
38 rehabilitation, property disposition, and loan management set-aside
39 programs, or any other program providing project-based assistance

- 1 pursuant to Section 8 of the United States Housing Act of 1937,
2 Section 1437f of Title 42 of the United States Code, as amended.
- 3 (ii) The Below-Market-Interest-Rate Program pursuant to
4 Section 221(d)(3) of the National Housing Act, Sections
5 1715l(d)(3) and (5) of Title 12 of the United States Code.
- 6 (iii) Section 236 of the National Housing Act, Section 1715z-1
7 of Title 12 of the United States Code.
- 8 (iv) Programs for rent supplement assistance pursuant to Section
9 101 of the Housing and Urban Development Act of 1965, Section
10 1701s of Title 12 of the United States Code, as amended.
- 11 (v) Programs pursuant to Section 515 of the Housing Act of
12 1949, Section 1485 of Title 42 of the United States Code, as
13 amended.
- 14 (vi) The low-income housing credit program set forth in Section
15 42 of the Internal Revenue Code.
- 16 (B) The restrictions on rent and income levels will terminate or
17 the federal insured mortgage on the property is eligible for
18 prepayment any time within five years before or after the date of
19 application to the California Tax Credit Allocation Committee.
- 20 (C) The entity acquiring the property enters into a regulatory
21 agreement that requires the property to be operated in accordance
22 with the requirements of this section for a period equal to the
23 greater of 55 years or the life of the property.
- 24 (D) The property satisfies the requirements of Section 42(e) of
25 the Internal Revenue Code regarding rehabilitation expenditures,
26 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
27 apply.
- 28 (d) The term “qualified low-income housing project” as defined
29 in Section 42(c)(2) of the Internal Revenue Code is modified by
30 adding the following requirements:
- 31 (1) The taxpayer shall be entitled to receive a cash distribution
32 from the operations of the project, after funding required reserves,
33 which, at the election of the taxpayer, is equal to:
- 34 (A) An amount not to exceed 8 percent of the lesser of:
- 35 (i) The owner equity which shall include the amount of the
36 capital contributions actually paid to the housing sponsor and shall
37 not include any amounts until they are paid on an investor note.
- 38 (ii) Twenty percent of the adjusted basis of the building as of
39 the close of the first taxable year of the credit period.

1 (B) The amount of the cashflow from those units in the building
2 that are not low-income units. For purposes of computing cashflow
3 under this subparagraph, operating costs shall be allocated to the
4 low-income units using the “floor space fraction,” as defined in
5 Section 42 of the Internal Revenue Code.

6 (C) Any amount allowed to be distributed under subparagraph
7 (A) that is not available for distribution during the first five years
8 of the compliance period may accumulate and be distributed any
9 time during the first 15 years of the compliance period but not
10 thereafter.

11 (2) The limitation on return shall apply in the aggregate to the
12 partners if the housing sponsor is a partnership and in the aggregate
13 to the shareholders if the housing sponsor is an “S” corporation.

14 (3) The housing sponsor shall apply any cash available for
15 distribution in excess of the amount eligible to be distributed under
16 paragraph (1) to reduce the rent on rent-restricted units or to
17 increase the number of rent-restricted units subject to the tests of
18 Section 42(g)(1) of the Internal Revenue Code.

19 (e) The provisions of Section 42(f) of the Internal Revenue Code
20 shall be modified as follows:

21 (1) The term “credit period” as defined in Section 42(f)(1) of
22 the Internal Revenue Code is modified by substituting “four taxable
23 years” for “10 taxable years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code shall not apply
26 to the tax credit under this section.

27 (3) Section 42(f)(3) of the Internal Revenue Code is modified
28 to read:

29 If, as of the close of any taxable year in the compliance period,
30 after the first year of the credit period, the qualified basis of any
31 building exceeds the qualified basis of that building as of the close
32 of the first year of the credit period, the housing sponsor, to the
33 extent of its tax credit allocation, shall be eligible for a credit on
34 the excess in an amount equal to the applicable percentage
35 determined pursuant to subdivision (c) for the four-year period
36 beginning with the later of the taxable years in which the increase
37 in qualified basis occurs.

38 (f) The provisions of Section 42(h) of the Internal Revenue
39 Code shall be modified as follows:

1 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
2 applicable and instead the following provisions shall be applicable:

3 The total amount for the four-year credit period of the housing
4 credit dollars allocated in a calendar year to any building shall
5 reduce the aggregate housing credit dollar amount of the California
6 Tax Credit Allocation Committee for the calendar year in which
7 the allocation is made.

8 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
9 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
10 not be applicable.

11 (g) The aggregate housing credit dollar amount that may be
12 allocated annually by the California Tax Credit Allocation
13 Committee pursuant to this section, Section 17058, and Section
14 23610.5 shall be an amount equal to the sum of all the following:

15 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
16 year, and, for the 2002 calendar year and each calendar year
17 thereafter, seventy million dollars (\$70,000,000) increased by the
18 percentage, if any, by which the Consumer Price Index for the
19 preceding calendar year exceeds the Consumer Price Index for the
20 2001 calendar year. For the purposes of this paragraph, the term
21 “Consumer Price Index” means the last Consumer Price Index for
22 All Urban Consumers published by the federal Department of
23 Labor.

24 (2) The unused housing credit ceiling, if any, for the preceding
25 calendar years.

26 (3) The amount of housing credit ceiling returned in the calendar
27 year. For purposes of this paragraph, the amount of housing credit
28 dollar amount returned in the calendar year equals the housing
29 credit dollar amount previously allocated to any project that does
30 not become a qualified low-income housing project within the
31 period required by this section or to any project with respect to
32 which an allocation is canceled by mutual consent of the California
33 Tax Credit Allocation Committee and the allocation recipient.

34 (4) Five hundred thousand dollars (\$500,000) per calendar year
35 for projects to provide farmworker housing, as defined in
36 subdivision (h) of Section 50199.7 of the Health and Safety Code.

37 (5) The amount of any unallocated or returned credits under
38 former Sections 17053.14, 23608.2, and 23608.3, as those sections
39 read prior to January 1, 2009, until fully exhausted for projects to

1 provide farmworker housing, as defined in subdivision (h) of
2 Section 50199.7 of the Health and Safety Code.

3 (h) The term “compliance period” as defined in Section 42(i)(1)
4 of the Internal Revenue Code is modified to mean, with respect to
5 any building, the period of 30 consecutive taxable years beginning
6 with the first taxable year of the credit period with respect thereto.

7 (i) (1) Section 42(j) of the Internal Revenue Code shall not be
8 applicable and the provisions in paragraph (2) shall be substituted
9 in its place.

10 (2) The requirements of this section shall be set forth in a
11 regulatory agreement between the California Tax Credit Allocation
12 Committee and the housing sponsor, which agreement shall be
13 subordinated, when required, to any lien or encumbrance of any
14 banks or other institutional lenders to the project. The regulatory
15 agreement entered into pursuant to subdivision (f) of Section
16 50199.14 of the Health and Safety Code, shall apply, providing
17 the agreement includes all of the following provisions:

18 (A) A term not less than the compliance period.

19 (B) A requirement that the agreement be recorded in the official
20 records of the county in which the qualified low-income housing
21 project is located.

22 (C) A provision stating which state and local agencies can
23 enforce the regulatory agreement in the event the housing sponsor
24 fails to satisfy any of the requirements of this section.

25 (D) A provision that the regulatory agreement shall be deemed
26 a contract enforceable by tenants as third-party beneficiaries thereto
27 and which allows individuals, whether prospective, present, or
28 former occupants of the building, who meet the income limitation
29 applicable to the building, the right to enforce the regulatory
30 agreement in any state court.

31 (E) A provision incorporating the requirements of Section 42
32 of the Internal Revenue Code as modified by this section.

33 (F) A requirement that the housing sponsor notify the California
34 Tax Credit Allocation Committee or its designee and the local
35 agency that can enforce the regulatory agreement if there is a
36 determination by the Internal Revenue Service that the project is
37 not in compliance with Section 42(g) of the Internal Revenue Code.

38 (G) A requirement that the housing sponsor, as security for the
39 performance of the housing sponsor’s obligations under the
40 regulatory agreement, assign the housing sponsor’s interest in rents

1 that it receives from the project, provided that until there is a
2 default under the regulatory agreement, the housing sponsor is
3 entitled to collect and retain the rents.

4 (H) The remedies available in the event of a default under the
5 regulatory agreement that is not cured within a reasonable cure
6 period, include, but are not limited to, allowing any of the parties
7 designated to enforce the regulatory agreement to collect all rents
8 with respect to the project; taking possession of the project and
9 operating the project in accordance with the regulatory agreement
10 until the enforcer determines the housing sponsor is in a position
11 to operate the project in accordance with the regulatory agreement;
12 applying to any court for specific performance; securing the
13 appointment of a receiver to operate the project; or any other relief
14 as may be appropriate.

15 (j) (1) The committee shall allocate the housing credit on a
16 regular basis consisting of two or more periods in each calendar
17 year during which applications may be filed and considered. The
18 committee shall establish application filing deadlines, the maximum
19 percentage of federal and state low-income housing tax credit
20 ceiling that may be allocated by the committee in that period, and
21 the approximate date on which allocations shall be made. If the
22 enactment of federal or state law, the adoption of rules or
23 regulations, or other similar events prevent the use of two allocation
24 periods, the committee may reduce the number of periods and
25 adjust the filing deadlines, maximum percentage of credit allocated,
26 and the allocation dates.

27 (2) The committee shall adopt a qualified allocation plan, as
28 provided in Section 42(m)(1) of the Internal Revenue Code. In
29 adopting this plan, the committee shall comply with the provisions
30 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
31 Code.

32 (3) Notwithstanding Section 42(m) of the Internal Revenue
33 Code, the California Tax Credit Allocation Committee shall
34 allocate housing credits in accordance with the qualified allocation
35 plan and regulations, which shall include the following provisions:

36 (A) All housing sponsors, as defined by paragraph (3) of
37 subdivision (a), shall demonstrate at the time the application is
38 filed with the committee that the project meets the following
39 threshold requirements:

1 (i) The housing sponsor shall demonstrate there is a need and
2 demand for low-income housing in the community or region for
3 which it is proposed.

4 (ii) The project's proposed financing, including tax credit
5 proceeds, shall be sufficient to complete the project and that the
6 proposed operating income shall be adequate to operate the project
7 for the extended use period.

8 (iii) The project shall have enforceable financing commitments,
9 either construction or permanent financing, for at least 50 percent
10 of the total estimated financing of the project.

11 (iv) The housing sponsor shall have and maintain control of the
12 site for the project.

13 (v) The housing sponsor shall demonstrate that the project
14 complies with all applicable local land use and zoning ordinances.

15 (vi) The housing sponsor shall demonstrate that the project
16 development team has the experience and the financial capacity
17 to ensure project completion and operation for the extended use
18 period.

19 (vii) The housing sponsor shall demonstrate the amount of tax
20 credit that is necessary for the financial feasibility of the project
21 and its viability as a qualified low-income housing project
22 throughout the extended use period, taking into account operating
23 expenses, a supportable debt service, reserves, funds set aside for
24 rental subsidies, and required equity, and a development fee that
25 does not exceed a specified percentage of the eligible basis of the
26 project prior to inclusion of the development fee in the eligible
27 basis, as determined by the committee.

28 (B) The committee shall give a preference to those projects
29 satisfying all of the threshold requirements of subparagraph (A)
30 if both of the following apply:

31 (i) The project serves the lowest income tenants at rents
32 affordable to those tenants.

33 (ii) The project is obligated to serve qualified tenants for the
34 longest period.

35 (C) In addition to the provisions of subparagraphs (A) and (B),
36 the committee shall use the following criteria in allocating housing
37 credits:

38 (i) Projects serving large families in which a substantial number,
39 as defined by the committee, of all residential units is comprised
40 of low-income units with three and more bedrooms.

1 (ii) Projects providing single-room occupancy units serving
2 very low income tenants.

3 (iii) Existing projects that are “at risk of conversion,” as defined
4 by paragraph (3) of subdivision (c).

5 (iv) Projects for which a public agency provides direct or indirect
6 long-term financial support for at least 15 percent of the total
7 project development costs or projects for which the owner’s equity
8 constitutes at least 30 percent of the total project development
9 costs.

10 (v) Projects that provide tenant amenities not generally available
11 to residents of low-income housing projects.

12 (4) For purposes of allocating credits pursuant to this section,
13 the committee shall not give preference to any project by virtue
14 of the date of submission of its application except to break a tie
15 when two or more of the projects have an equal rating.

16 (k) Section 42(l) of the Internal Revenue Code shall be modified
17 as follows:

18 The term “secretary” shall be replaced by the term “California
19 Franchise Tax Board.”

20 (l) In the case where the state credit allowed under this section
21 exceeds the “tax,” the excess may be carried over to reduce the
22 “tax” in the following year, and succeeding years if necessary,
23 until the credit has been exhausted.

24 (m) The provisions of Section 11407(a) of Public Law 101-508,
25 relating to the effective date of the extension of the low-income
26 housing credit, shall apply to calendar years after 1993.

27 (n) The provisions of Section 11407(c) of Public Law 101-508,
28 relating to election to accelerate credit, shall not apply.

29 (o) This section shall remain in effect for as long as Section 42
30 of the Internal Revenue Code, relating to low-income housing
31 credits, remains in effect.

32 SEC. 2. Section 17058 of the Revenue and Taxation Code is
33 amended to read:

34 17058. (a) (1) There shall be allowed as a credit against the
35 “net tax” (as defined in Section 17039) a state low-income housing
36 credit in an amount equal to the amount determined in subdivision
37 (c), computed in accordance with the provisions of Section 42 of
38 the Internal Revenue Code, except as otherwise provided in this
39 section.

1 (2) “Taxpayer” for purposes of this section means the sole owner
2 in the case of an individual, the partners in the case of a partnership,
3 and the shareholders in the case of an “S” corporation.

4 (3) “Housing sponsor” for purposes of this section means the
5 sole owner in the case of an individual, the partnership in the case
6 of a partnership, and the “S” corporation in the case of an “S”
7 corporation.

8 (b) (1) The amount of the credit allocated to any housing
9 sponsor shall be authorized by the California Tax Credit Allocation
10 Committee, or any successor thereof, based on a project’s need
11 for the credit for economic feasibility in accordance with the
12 requirements of this section.

13 (A) The low-income housing project shall be located in
14 California and shall meet either of the following requirements:

15 (i) Except for projects to provide farmworker housing, as defined
16 in subdivision (h) of Section 50199.7 of the Health and Safety
17 Code, that are allocated credits solely under the set-aside described
18 in subdivision (c) of Section 50199.20 of the Health and Safety
19 Code, the project’s housing sponsor has been allocated by the
20 California Tax Credit Allocation Committee a credit for federal
21 income tax purposes under Section 42 of the Internal Revenue
22 Code.

23 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
24 Internal Revenue Code.

25 (B) The California Tax Credit Allocation Committee shall not
26 require fees for the credit under this section in addition to those
27 fees required for applications for the tax credit pursuant to Section
28 42 of the Internal Revenue Code. The committee may require a
29 fee if the application for the credit under this section is submitted
30 in a calendar year after the year the application is submitted for
31 the federal tax credit.

32 (C) (i) For a project that receives a preliminary reservation of
33 the state low-income housing tax credit, allowed pursuant to
34 subdivision (a), on or after January 1, 2009, and before January 1,
35 2016, the credit shall be allocated to the partners of a partnership
36 owning the project in accordance with the partnership agreement,
37 regardless of how the federal low-income housing tax credit with
38 respect to the project is allocated to the partners, or whether the
39 allocation of the credit under the terms of the agreement has

1 substantial economic effect, within the meaning of Section 704(b)
 2 of the Internal Revenue Code.

3 (ii) To the extent the allocation of the credit to a partner under
 4 this section lacks substantial economic effect, any loss or deduction
 5 otherwise allowable under this part that is attributable to the sale
 6 or other disposition of that partner’s partnership interest made prior
 7 to the expiration of the federal credit shall not be allowed in the
 8 taxable year in which the sale or other disposition occurs, but shall
 9 instead be deferred until and treated as if it occurred in the first
 10 taxable year immediately following the taxable year in which the
 11 federal credit period expires for the project described in clause (i).

12 (iii) This subparagraph shall not apply to a project that receives
 13 a preliminary reservation of state low-income housing tax credits
 14 under the set-aside described in subdivision (c) of Section 50199.20
 15 of the Health and Safety Code unless the project also receives a
 16 preliminary reservation of federal low-income housing tax credits.

17 (iv) This subparagraph shall cease to be operative with respect
 18 to any project that receives a preliminary reservation of a credit
 19 on or after January 1, 2016.

20 (2) (A) The California Tax Credit Allocation Committee shall
 21 certify to the housing sponsor the amount of tax credit under this
 22 section allocated to the housing sponsor for each credit period.

23 (B) In the case of a partnership or an “S” corporation, the
 24 housing sponsor shall provide a copy of the California Tax Credit
 25 Allocation Committee certification to the taxpayer.

26 (C) The taxpayer shall, upon request, provide a copy of the
 27 certification to the Franchise Tax Board.

28 (D) All elections made by the taxpayer pursuant to Section 42
 29 of the Internal Revenue Code shall apply to this section.

30 (E) (i) Except as described in clause (ii), for buildings located
 31 in designated difficult development areas (DDAs) or qualified
 32 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
 33 Internal Revenue Code, credits may be allocated under this section
 34 in the amounts prescribed in subdivision (c), provided that the
 35 amount of credit allocated under Section 42 of the Internal Revenue
 36 Code is computed on 100 percent of the qualified basis of the
 37 building.

38 (ii) Notwithstanding clause (i), the California Tax Credit
 39 Allocation Committee may allocate the credit for buildings located
 40 in DDAs or QCTs that are restricted to having 50 percent of its

1 occupants be special needs households, as defined in the California
2 Code of Regulations by the California Tax Credit Allocation
3 Committee, even if the taxpayer receives federal credits pursuant
4 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
5 that the credit allowed under this section shall not exceed 30
6 percent of the eligible basis of the building.

7 ~~(iii)-(F)~~

8 (G) (i) The California Tax Credit Allocation Committee may
9 allocate a credit under this section in exchange for a credit allocated
10 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
11 amounts up to 30 percent of the eligible basis of a building if the
12 credits allowed under Section 42 of the Internal Revenue Code are
13 reduced by an equivalent amount.

14 ~~(H)~~

15 (ii) An equivalent amount shall be determined by the California
16 Tax Credit Allocation Committee based upon the relative amount
17 required to produce an equivalent state tax credit to the taxpayer.

18 (c) Section 42(b) of the Internal Revenue Code shall be modified
19 as follows:

20 (1) In the case of any qualified low-income building placed in
21 service by the housing sponsor during 1987, the term “applicable
22 percentage” means 9 percent for each of the first three years and
23 3 percent for the fourth year for new buildings (whether or not the
24 building is federally subsidized) and for existing buildings.

25 (2) In the case of any qualified low-income building that receives
26 an allocation after 1989 and is a new building not federally
27 subsidized, the term “applicable percentage” means the following:

28 (A) For each of the first three years, the percentage prescribed
29 by the Secretary of the Treasury for new buildings that are not
30 federally subsidized for the taxable year, determined in accordance
31 with the requirements of Section 42(b)(2) of the Internal Revenue
32 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
33 of the Internal Revenue Code.

34 (B) For the fourth year, the difference between 30 percent and
35 the sum of the applicable percentages for the first three years.

36 (3) In the case of any qualified low-income building that receives
37 an allocation after 1989 and that is a new building that is federally
38 subsidized or that is an existing building that is “at risk of
39 conversion,” the term “applicable percentage” means the following:

1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are federally
3 subsidized for the taxable year.

4 (B) For the fourth year, the difference between 13 percent and
5 the sum of the applicable percentages for the first three years.

6 (4) For purposes of this section, the term “at risk of conversion,”
7 with respect to an existing property means a property that satisfies
8 all of the following criteria:

9 (A) The property is a multifamily rental housing development
10 in which at least 50 percent of the units receive governmental
11 assistance pursuant to any of the following:

12 (i) New construction, substantial rehabilitation, moderate
13 rehabilitation, property disposition, and loan management set-aside
14 programs, or any other program providing project-based assistance
15 pursuant to Section 8 of the United States Housing Act of 1937,
16 Section 1437f of Title 42 of the United States Code, as amended.

17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.

20 (iii) Section 236 of the National Housing Act, Section 1715z-1
21 of Title 12 of the United States Code.

22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.

28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.

30 (B) The restrictions on rent and income levels will terminate or
31 the federal insured mortgage on the property is eligible for
32 prepayment any time within five years before or after the date of
33 application to the California Tax Credit Allocation Committee.

34 (C) The entity acquiring the property enters into a regulatory
35 agreement that requires the property to be operated in accordance
36 with the requirements of this section for a period equal to the
37 greater of 55 years or the life of the property.

38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
2 apply.

3 (d) The term “qualified low-income housing project” as defined
4 in Section 42(c)(2) of the Internal Revenue Code is modified by
5 adding the following requirements:

6 (1) The taxpayer shall be entitled to receive a cash distribution
7 from the operations of the project, after funding required reserves,
8 that, at the election of the taxpayer, is equal to:

9 (A) An amount not to exceed 8 percent of the lesser of:

10 (i) The owner equity that shall include the amount of the capital
11 contributions actually paid to the housing sponsor and shall not
12 include any amounts until they are paid on an investor note.

13 (ii) Twenty percent of the adjusted basis of the building as of
14 the close of the first taxable year of the credit period.

15 (B) The amount of the cashflow from those units in the building
16 that are not low-income units. For purposes of computing cashflow
17 under this subparagraph, operating costs shall be allocated to the
18 low-income units using the “floor space fraction,” as defined in
19 Section 42 of the Internal Revenue Code.

20 (C) Any amount allowed to be distributed under subparagraph
21 (A) that is not available for distribution during the first five years
22 of the compliance period may be accumulated and distributed any
23 time during the first 15 years of the compliance period but not
24 thereafter.

25 (2) The limitation on return shall apply in the aggregate to the
26 partners if the housing sponsor is a partnership and in the aggregate
27 to the shareholders if the housing sponsor is an “S” corporation.

28 (3) The housing sponsor shall apply any cash available for
29 distribution in excess of the amount eligible to be distributed under
30 paragraph (1) to reduce the rent on rent-restricted units or to
31 increase the number of rent-restricted units subject to the tests of
32 Section 42(g)(1) of the Internal Revenue Code.

33 (e) The provisions of Section 42(f) of the Internal Revenue Code
34 shall be modified as follows:

35 (1) The term “credit period” as defined in Section 42(f)(1) of
36 the Internal Revenue Code is modified by substituting “four taxable
37 years” for “10 taxable years.”

38 (2) The special rule for the first taxable year of the credit period
39 under Section 42(f)(2) of the Internal Revenue Code shall not apply
40 to the tax credit under this section.

1 (3) Section 42(f)(3) of the Internal Revenue Code is modified
 2 to read:

3 If, as of the close of any taxable year in the compliance period,
 4 after the first year of the credit period, the qualified basis of any
 5 building exceeds the qualified basis of that building as of the close
 6 of the first year of the credit period, the housing sponsor, to the
 7 extent of its tax credit allocation, shall be eligible for a credit on
 8 the excess in an amount equal to the applicable percentage
 9 determined pursuant to subdivision (c) for the four-year period
 10 beginning with the taxable year in which the increase in qualified
 11 basis occurs.

12 (f) The provisions of Section 42(h) of the Internal Revenue
 13 Code shall be modified as follows:

14 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
 15 applicable and instead the following provisions shall be applicable:

16 The total amount for the four-year period of the housing credit
 17 dollars allocated in a calendar year to any building shall reduce
 18 the aggregate housing credit dollar amount of the California Tax
 19 Credit Allocation Committee for the calendar year in which the
 20 allocation is made.

21 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
 22 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
 23 not be applicable to this section.

24 (g) The aggregate housing credit dollar amount that may be
 25 allocated annually by the California Tax Credit Allocation
 26 Committee pursuant to this section, Section 12206, and Section
 27 23610.5 shall be an amount equal to the sum of all the following:

28 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
 29 year, and, for the 2002 calendar year and each calendar year
 30 thereafter, seventy million dollars (\$70,000,000) increased by the
 31 percentage, if any, by which the Consumer Price Index for the
 32 preceding calendar year exceeds the Consumer Price Index for the
 33 2001 calendar year. For the purposes of this paragraph, the term
 34 “Consumer Price Index” means the last Consumer Price Index for
 35 All Urban Consumers published by the federal Department of
 36 Labor.

37 (2) The unused housing credit ceiling, if any, for the preceding
 38 calendar years.

39 (3) The amount of housing credit ceiling returned in the calendar
 40 year. For purposes of this paragraph, the amount of housing credit

1 dollar amount returned in the calendar year equals the housing
2 credit dollar amount previously allocated to any project that does
3 not become a qualified low-income housing project within the
4 period required by this section or to any project with respect to
5 which an allocation is canceled by mutual consent of the California
6 Tax Credit Allocation Committee and the allocation recipient.

7 (4) Five hundred thousand dollars (\$500,000) per calendar year
8 for projects to provide farmworker housing, as defined in
9 subdivision (h) of Section 50199.7 of the Health and Safety Code.

10 (5) The amount of any unallocated or returned credits under
11 former Sections 17053.14, 23608.2, and 23608.3, as those sections
12 read prior to January 1, 2009, until fully exhausted for projects to
13 provide farmworker housing, as defined in subdivision (h) of
14 Section 50199.7 of the Health and Safety Code.

15 (h) The term “compliance period” as defined in Section 42(i)(1)
16 of the Internal Revenue Code is modified to mean, with respect to
17 any building, the period of 30 consecutive taxable years beginning
18 with the first taxable year of the credit period with respect thereto.

19 (i) Section 42(j) of the Internal Revenue Code shall not be
20 applicable and the following requirements of this section shall be
21 set forth in a regulatory agreement between the California Tax
22 Credit Allocation Committee and the housing sponsor, which
23 agreement shall be subordinated, when required, to any lien or
24 encumbrance of any banks or other institutional lenders to the
25 project. The regulatory agreement entered into pursuant to
26 subdivision (f) of Section 50199.14 of the Health and Safety Code
27 shall apply, provided that the agreement includes all of the
28 following provisions:

29 (1) A term not less than the compliance period.

30 (2) A requirement that the agreement be recorded in the official
31 records of the county in which the qualified low-income housing
32 project is located.

33 (3) A provision stating which state and local agencies can
34 enforce the regulatory agreement in the event the housing sponsor
35 fails to satisfy any of the requirements of this section.

36 (4) A provision that the regulatory agreement shall be deemed
37 a contract enforceable by tenants as third-party beneficiaries thereto
38 and that allows individuals, whether prospective, present, or former
39 occupants of the building, who meet the income limitation

1 applicable to the building, the right to enforce the regulatory
2 agreement in any state court.

3 (5) A provision incorporating the requirements of Section 42
4 of the Internal Revenue Code as modified by this section.

5 (6) A requirement that the housing sponsor notify the California
6 Tax Credit Allocation Committee or its designee if there is a
7 determination by the Internal Revenue Service that the project is
8 not in compliance with Section 42(g) of the Internal Revenue Code.

9 (7) A requirement that the housing sponsor, as security for the
10 performance of the housing sponsor's obligations under the
11 regulatory agreement, assign the housing sponsor's interest in rents
12 that it receives from the project, provided that until there is a
13 default under the regulatory agreement, the housing sponsor is
14 entitled to collect and retain the rents.

15 (8) The remedies available in the event of a default under the
16 regulatory agreement that is not cured within a reasonable cure
17 period, include, but are not limited to, allowing any of the parties
18 designated to enforce the regulatory agreement to collect all rents
19 with respect to the project; taking possession of the project and
20 operating the project in accordance with the regulatory agreement
21 until the enforcer determines the housing sponsor is in a position
22 to operate the project in accordance with the regulatory agreement;
23 applying to any court for specific performance; securing the
24 appointment of a receiver to operate the project; or any other relief
25 as may be appropriate.

26 (j) (1) The committee shall allocate the housing credit on a
27 regular basis consisting of two or more periods in each calendar
28 year during which applications may be filed and considered. The
29 committee shall establish application filing deadlines, the maximum
30 percentage of federal and state low-income housing tax credit
31 ceiling that may be allocated by the committee in that period, and
32 the approximate date on which allocations shall be made. If the
33 enactment of federal or state law, the adoption of rules or
34 regulations, or other similar events prevent the use of two allocation
35 periods, the committee may reduce the number of periods and
36 adjust the filing deadlines, maximum percentage of credit allocated,
37 and the allocation dates.

38 (2) The committee shall adopt a qualified allocation plan, as
39 provided in Section 42(m)(1) of the Internal Revenue Code. In
40 adopting this plan, the committee shall comply with the provisions

1 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
2 Code.

3 (3) Notwithstanding Section 42(m) of the Internal Revenue
4 Code, the California Tax Credit Allocation Committee shall
5 allocate housing credits in accordance with the qualified allocation
6 plan and regulations, which shall include the following provisions:

7 (A) All housing sponsors, as defined by paragraph (3) of
8 subdivision (a), shall demonstrate at the time the application is
9 filed with the committee that the project meets the following
10 threshold requirements:

11 (i) The housing sponsor shall demonstrate there is a need and
12 demand for low-income housing in the community or region for
13 which it is proposed.

14 (ii) The project's proposed financing, including tax credit
15 proceeds, shall be sufficient to complete the project and that the
16 proposed operating income shall be adequate to operate the project
17 for the extended use period.

18 (iii) The project shall have enforceable financing commitments,
19 either construction or permanent financing, for at least 50 percent
20 of the total estimated financing of the project.

21 (iv) The housing sponsor shall have and maintain control of the
22 site for the project.

23 (v) The housing sponsor shall demonstrate that the project
24 complies with all applicable local land use and zoning ordinances.

25 (vi) The housing sponsor shall demonstrate that the project
26 development team has the experience and the financial capacity
27 to ensure project completion and operation for the extended use
28 period.

29 (vii) The housing sponsor shall demonstrate the amount of tax
30 credit that is necessary for the financial feasibility of the project
31 and its viability as a qualified low-income housing project
32 throughout the extended use period, taking into account operating
33 expenses, a supportable debt service, reserves, funds set aside for
34 rental subsidies and required equity, and a development fee that
35 does not exceed a specified percentage of the eligible basis of the
36 project prior to inclusion of the development fee in the eligible
37 basis, as determined by the committee.

38 (B) The committee shall give a preference to those projects
39 satisfying all of the threshold requirements of subparagraph (A)
40 if both of the following apply:

1 (i) The project serves the lowest income tenants at rents
2 affordable to those tenants.

3 (ii) The project is obligated to serve qualified tenants for the
4 longest period.

5 (C) In addition to the provisions of subparagraphs (A) and (B),
6 the committee shall use the following criteria in allocating housing
7 credits:

8 (i) Projects serving large families in which a substantial number,
9 as defined by the committee, of all residential units is comprised
10 of low-income units with three and more bedrooms.

11 (ii) Projects providing single-room occupancy units serving
12 very low income tenants.

13 (iii) Existing projects that are “at risk of conversion,” as defined
14 by paragraph (4) of subdivision (c).

15 (iv) Projects for which a public agency provides direct or indirect
16 long-term financial support for at least 15 percent of the total
17 project development costs or projects for which the owner’s equity
18 constitutes at least 30 percent of the total project development
19 costs.

20 (v) Projects that provide tenant amenities not generally available
21 to residents of low-income housing projects.

22 (4) For purposes of allocating credits pursuant to this section,
23 the committee shall not give preference to any project by virtue
24 of the date of submission of its application.

25 (k) Section 42(l) of the Internal Revenue Code shall be modified
26 as follows:

27 The term “secretary” shall be replaced by the term “California
28 Franchise Tax Board.”

29 (l) In the case where the credit allowed under this section
30 exceeds the net tax, the excess credit may be carried over to reduce
31 the net tax in the following year, and succeeding taxable years, if
32 necessary, until the credit has been exhausted.

33 (m) A project that received an allocation of a 1989 federal
34 housing credit dollar amount shall be eligible to receive an
35 allocation of a 1990 state housing credit dollar amount, subject to
36 all of the following conditions:

37 (1) The project was not placed in service prior to 1990.

38 (2) To the extent the amendments made to this section by the
39 Statutes of 1990 conflict with any provisions existing in this section
40 prior to those amendments, the prior provisions of law shall prevail.

1 (3) Notwithstanding paragraph (2), a project applying for an
2 allocation under this subdivision shall be subject to the
3 requirements of paragraph (3) of subdivision (j).

4 (n) The credit period with respect to an allocation of credit in
5 1989 by the California Tax Credit Allocation Committee of which
6 any amount is attributable to unallocated credit from 1987 or 1988
7 shall not begin until after December 31, 1989.

8 (o) The provisions of Section 11407(a) of Public Law 101-508,
9 relating to the effective date of the extension of the low-income
10 housing credit, shall apply to calendar years after 1989.

11 (p) The provisions of Section 11407(c) of Public Law 101-508,
12 relating to election to accelerate credit, shall not apply.

13 (q) Any unused credit may continue to be carried forward, as
14 provided in subdivision (l), until the credit has been exhausted.

15 This section shall remain in effect on and after December 1,
16 1990, for as long as Section 42 of the Internal Revenue Code,
17 relating to low-income housing credits, remains in effect.

18 (r) The amendments to this section made by the act adding this
19 subdivision shall apply only to taxable years beginning on or after
20 January 1, 1994.

21 SEC. 3. Section 23610.5 of the Revenue and Taxation Code
22 is amended to read:

23 23610.5. (a) (1) There shall be allowed as a credit against the
24 “tax” (as defined by Section 23036) a state low-income housing
25 tax credit in an amount equal to the amount determined in
26 subdivision (c), computed in accordance with Section 42 of the
27 Internal Revenue Code of 1986, except as otherwise provided in
28 this section.

29 (2) “Taxpayer,” for purposes of this section, means the sole
30 owner in the case of a “C” corporation, the partners in the case of
31 a partnership, and the shareholders in the case of an “S”
32 corporation.

33 (3) “Housing sponsor,” for purposes of this section, means the
34 sole owner in the case of a “C” corporation, the partnership in the
35 case of a partnership, and the “S” corporation in the case of an “S”
36 corporation.

37 (b) (1) The amount of the credit allocated to any housing
38 sponsor shall be authorized by the California Tax Credit Allocation
39 Committee, or any successor thereof, based on a project’s need

1 for the credit for economic feasibility in accordance with the
2 requirements of this section.

3 (A) The low-income housing project shall be located in
4 California and shall meet either of the following requirements:

5 (i) Except for projects to provide farmworker housing, as defined
6 in subdivision (h) of Section 50199.7 of the Health and Safety
7 Code, that are allocated credits solely under the set-aside described
8 in subdivision (c) of Section 50199.20 of the Health and Safety
9 Code, the project’s housing sponsor has been allocated by the
10 California Tax Credit Allocation Committee a credit for federal
11 income tax purposes under Section 42 of the Internal Revenue
12 Code.

13 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
14 Internal Revenue Code.

15 (B) The California Tax Credit Allocation Committee shall not
16 require fees for the credit under this section in addition to those
17 fees required for applications for the tax credit pursuant to Section
18 42 of the Internal Revenue Code. The committee may require a
19 fee if the application for the credit under this section is submitted
20 in a calendar year after the year the application is submitted for
21 the federal tax credit.

22 (C) (i) For a project that receives a preliminary reservation of
23 the state low-income housing tax credit, allowed pursuant to
24 subdivision (a), on or after January 1, 2009, and before January 1,
25 2016, the credit shall be allocated to the partners of a partnership
26 owning the project in accordance with the partnership agreement,
27 regardless of how the federal low-income housing tax credit with
28 respect to the project is allocated to the partners, or whether the
29 allocation of the credit under the terms of the agreement has
30 substantial economic effect, within the meaning of Section 704(b)
31 of the Internal Revenue Code.

32 (ii) To the extent the allocation of the credit to a partner under
33 this section lacks substantial economic effect, any loss or deduction
34 otherwise allowable under this part that is attributable to the sale
35 or other disposition of that partner’s partnership interest made prior
36 to the expiration of the federal credit shall not be allowed in the
37 taxable year in which the sale or other disposition occurs, but shall
38 instead be deferred until and treated as if it occurred in the first
39 taxable year immediately following the taxable year in which the
40 federal credit period expires for the project described in clause (i).

1 (iii) This subparagraph shall not apply to a project that receives
2 a preliminary reservation of state low-income housing tax credits
3 under the set-aside described in subdivision (c) of Section 50199.20
4 of the Health and Safety Code unless the project also receives a
5 preliminary reservation of federal low-income housing tax credits.

6 (iv) This subparagraph shall cease to be operative with respect
7 to any project that receives a preliminary reservation of a credit
8 on or after January 1, 2016.

9 (2) (A) The California Tax Credit Allocation Committee shall
10 certify to the housing sponsor the amount of tax credit under this
11 section allocated to the housing sponsor for each credit period.

12 (B) In the case of a partnership or an “S” corporation, the
13 housing sponsor shall provide a copy of the California Tax Credit
14 Allocation Committee certification to the taxpayer.

15 (C) The taxpayer shall, upon request, provide a copy of the
16 certification to the Franchise Tax Board.

17 (D) All elections made by the taxpayer pursuant to Section 42
18 of the Internal Revenue Code shall apply to this section.

19 (E) (i) Except as described in clause (ii), for buildings located
20 in designated difficult development areas (DDAs) or qualified
21 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
22 Internal Revenue Code, credits may be allocated under this section
23 in the amounts prescribed in subdivision (c), provided that the
24 amount of credit allocated under Section 42 of the Internal Revenue
25 Code is computed on 100 percent of the qualified basis of the
26 building.

27 (ii) Notwithstanding clause (i), the California Tax Credit
28 Allocation Committee may allocate the credit for buildings located
29 in DDAs or QCTs that are restricted to having 50 percent of its
30 occupants be special needs households, as defined in the California
31 Code of Regulations by the California Tax Credit Allocation
32 Committee, even if the taxpayer receives federal credits pursuant
33 to Section 42(d)(5)(B) of the Internal Revenue Code, provided
34 that the credit allowed under this section shall not exceed 30
35 percent of the eligible basis of the building.

36 ~~(iii)-(F)~~

37 (G) (i) The California Tax Credit Allocation Committee may
38 allocate a credit under this section in exchange for a credit allocated
39 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
40 amounts up to 30 percent of the eligible basis of a building if the

1 credits allowed under Section 42 of the Internal Revenue Code are
2 reduced by an equivalent amount.

3 (H)

4 (ii) An equivalent amount shall be determined by the California
5 Tax Credit Allocation Committee based upon the relative amount
6 required to produce an equivalent state tax credit to the taxpayer.

7 (c) Section 42(b) of the Internal Revenue Code shall be modified
8 as follows:

9 (1) In the case of any qualified low-income building placed in
10 service by the housing sponsor during 1987, the term “applicable
11 percentage” means 9 percent for each of the first three years and
12 3 percent for the fourth year for new buildings (whether or not the
13 building is federally subsidized) and for existing buildings.

14 (2) In the case of any qualified low-income building that receives
15 an allocation after 1989 and is a new building not federally
16 subsidized, the term “applicable percentage” means the following:

17 (A) For each of the first three years, the percentage prescribed
18 by the Secretary of the Treasury for new buildings that are not
19 federally subsidized for the taxable year, determined in accordance
20 with the requirements of Section 42(b)(2) of the Internal Revenue
21 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
22 of the Internal Revenue Code.

23 (B) For the fourth year, the difference between 30 percent and
24 the sum of the applicable percentages for the first three years.

25 (3) In the case of any qualified low-income building that receives
26 an allocation after 1989 and that is a new building that is federally
27 subsidized or that is an existing building that is “at risk of
28 conversion,” the term “applicable percentage” means the following:

29 (A) For each of the first three years, the percentage prescribed
30 by the Secretary of the Treasury for new buildings that are federally
31 subsidized for the taxable year.

32 (B) For the fourth year, the difference between 13 percent and
33 the sum of the applicable percentages for the first three years.

34 (4) For purposes of this section, the term “at risk of conversion,”
35 with respect to an existing property means a property that satisfies
36 all of the following criteria:

37 (A) The property is a multifamily rental housing development
38 in which at least 50 percent of the units receive governmental
39 assistance pursuant to any of the following:

- 1 (i) New construction, substantial rehabilitation, moderate
2 rehabilitation, property disposition, and loan management set-aside
3 programs, or any other program providing project-based assistance
4 pursuant to Section 8 of the United States Housing Act of 1937,
5 Section 1437f of Title 42 of the United States Code, as amended.
- 6 (ii) The Below-Market-Interest-Rate Program pursuant to
7 Section 221(d)(3) of the National Housing Act, Sections
8 1715l(d)(3) and (5) of Title 12 of the United States Code.
- 9 (iii) Section 236 of the National Housing Act, Section 1715z-1
10 of Title 12 of the United States Code.
- 11 (iv) Programs for rent supplement assistance pursuant to Section
12 101 of the Housing and Urban Development Act of 1965, Section
13 1701s of Title 12 of the United States Code, as amended.
- 14 (v) Programs pursuant to Section 515 of the Housing Act of
15 1949, Section 1485 of Title 42 of the United States Code, as
16 amended.
- 17 (vi) The low-income housing credit program set forth in Section
18 42 of the Internal Revenue Code.
- 19 (B) The restrictions on rent and income levels will terminate or
20 the federally insured mortgage on the property is eligible for
21 prepayment any time within five years before or after the date of
22 application to the California Tax Credit Allocation Committee.
- 23 (C) The entity acquiring the property enters into a regulatory
24 agreement that requires the property to be operated in accordance
25 with the requirements of this section for a period equal to the
26 greater of 55 years or the life of the property.
- 27 (D) The property satisfies the requirements of Section 42(e) of
28 the Internal Revenue Code regarding rehabilitation expenditures,
29 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
30 apply.
- 31 (d) The term “qualified low-income housing project” as defined
32 in Section 42(c)(2) of the Internal Revenue Code is modified by
33 adding the following requirements:
- 34 (1) The taxpayer shall be entitled to receive a cash distribution
35 from the operations of the project, after funding required reserves,
36 that at the election of the taxpayer, is equal to:
- 37 (A) An amount not to exceed 8 percent of the lesser of:
- 38 (i) The owner equity, that shall include the amount of the capital
39 contributions actually paid to the housing sponsor and shall not
40 include any amounts until they are paid on an investor note.

1 (ii) Twenty percent of the adjusted basis of the building as of
2 the close of the first taxable year of the credit period.

3 (B) The amount of the cashflow from those units in the building
4 that are not low-income units. For purposes of computing cashflow
5 under this subparagraph, operating costs shall be allocated to the
6 low-income units using the “floor space fraction,” as defined in
7 Section 42 of the Internal Revenue Code.

8 (C) Any amount allowed to be distributed under subparagraph
9 (A) that is not available for distribution during the first five years
10 of the compliance period may be accumulated and distributed any
11 time during the first 15 years of the compliance period but not
12 thereafter.

13 (2) The limitation on return shall apply in the aggregate to the
14 partners if the housing sponsor is a partnership and in the aggregate
15 to the shareholders if the housing sponsor is an “S” corporation.

16 (3) The housing sponsor shall apply any cash available for
17 distribution in excess of the amount eligible to be distributed under
18 paragraph (1) to reduce the rent on rent-restricted units or to
19 increase the number of rent-restricted units subject to the tests of
20 Section 42(g)(1) of the Internal Revenue Code.

21 (e) The provisions of Section 42(f) of the Internal Revenue Code
22 shall be modified as follows:

23 (1) The term “credit period” as defined in Section 42(f)(1) of
24 the Internal Revenue Code is modified by substituting “four taxable
25 years” for “10 taxable years.”

26 (2) The special rule for the first taxable year of the credit period
27 under Section 42(f)(2) of the Internal Revenue Code shall not apply
28 to the tax credit under this section.

29 (3) Section 42(f)(3) of the Internal Revenue Code is modified
30 to read:

31 If, as of the close of any taxable year in the compliance period,
32 after the first year of the credit period, the qualified basis of any
33 building exceeds the qualified basis of that building as of the close
34 of the first year of the credit period, the housing sponsor, to the
35 extent of its tax credit allocation, shall be eligible for a credit on
36 the excess in an amount equal to the applicable percentage
37 determined pursuant to subdivision (c) for the four-year period
38 beginning with the later of the taxable years in which the increase
39 in qualified basis occurs.

1 (f) The provisions of Section 42(h) of the Internal Revenue
2 Code shall be modified as follows:

3 (1) Section 42(h)(2) of the Internal Revenue Code shall not be
4 applicable and instead the following provisions shall be applicable:

5 The total amount for the four-year credit period of the housing
6 credit dollars allocated in a calendar year to any building shall
7 reduce the aggregate housing credit dollar amount of the California
8 Tax Credit Allocation Committee for the calendar year in which
9 the allocation is made.

10 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
11 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
12 not be applicable.

13 (g) The aggregate housing credit dollar amount that may be
14 allocated annually by the California Tax Credit Allocation
15 Committee pursuant to this section, Section 12206, and Section
16 17058 shall be an amount equal to the sum of all the following:

17 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
18 year, and, for the 2002 calendar year and each calendar year
19 thereafter, seventy million dollars (\$70,000,000) increased by the
20 percentage, if any, by which the Consumer Price Index for the
21 preceding calendar year exceeds the Consumer Price Index for the
22 2001 calendar year. For the purposes of this paragraph, the term
23 “Consumer Price Index” means the last Consumer Price Index for
24 All Urban Consumers published by the federal Department of
25 Labor.

26 (2) The unused housing credit ceiling, if any, for the preceding
27 calendar years.

28 (3) The amount of housing credit ceiling returned in the calendar
29 year. For purposes of this paragraph, the amount of housing credit
30 dollar amount returned in the calendar year equals the housing
31 credit dollar amount previously allocated to any project that does
32 not become a qualified low-income housing project within the
33 period required by this section or to any project with respect to
34 which an allocation is canceled by mutual consent of the California
35 Tax Credit Allocation Committee and the allocation recipient.

36 (4) Five hundred thousand dollars (\$500,000) per calendar year
37 for projects to provide farmworker housing, as defined in
38 subdivision (h) of Section 50199.7 of the Health and Safety Code.

39 (5) The amount of any unallocated or returned credits under
40 former Sections 17053.14, 23608.2, and 23608.3, as those sections

1 read prior to January 1, 2009, until fully exhausted for projects to
2 provide farmworker housing, as defined in subdivision (h) of
3 Section 50199.7 of the Health and Safety Code.

4 (h) The term “compliance period” as defined in Section 42(i)(1)
5 of the Internal Revenue Code is modified to mean, with respect to
6 any building, the period of 30 consecutive taxable years beginning
7 with the first taxable year of the credit period with respect thereto.

8 (i) Section 42(j) of the Internal Revenue Code shall not be
9 applicable and the following shall be substituted in its place:

10 The requirements of this section shall be set forth in a regulatory
11 agreement between the California Tax Credit Allocation Committee
12 and the housing sponsor, and this agreement shall be subordinated,
13 when required, to any lien or encumbrance of any banks or other
14 institutional lenders to the project. The regulatory agreement
15 entered into pursuant to subdivision (f) of Section 50199.14 of the
16 Health and Safety Code shall apply, provided that the agreement
17 includes all of the following provisions:

18 (1) A term not less than the compliance period.

19 (2) A requirement that the agreement be recorded in the official
20 records of the county in which the qualified low-income housing
21 project is located.

22 (3) A provision stating which state and local agencies can
23 enforce the regulatory agreement in the event the housing sponsor
24 fails to satisfy any of the requirements of this section.

25 (4) A provision that the regulatory agreement shall be deemed
26 a contract enforceable by tenants as third-party beneficiaries
27 thereto, and that allows individuals, whether prospective, present,
28 or former occupants of the building, who meet the income
29 limitation applicable to the building, the right to enforce the
30 regulatory agreement in any state court.

31 (5) A provision incorporating the requirements of Section 42
32 of the Internal Revenue Code as modified by this section.

33 (6) A requirement that the housing sponsor notify the California
34 Tax Credit Allocation Committee or its designee if there is a
35 determination by the Internal Revenue Service that the project is
36 not in compliance with Section 42(g) of the Internal Revenue Code.

37 (7) A requirement that the housing sponsor, as security for the
38 performance of the housing sponsor’s obligations under the
39 regulatory agreement, assign the housing sponsor’s interest in rents
40 that it receives from the project, provided that until there is a

1 default under the regulatory agreement, the housing sponsor is
2 entitled to collect and retain the rents.

3 (8) A provision that the remedies available in the event of a
4 default under the regulatory agreement that is not cured within a
5 reasonable cure period include, but are not limited to, allowing
6 any of the parties designated to enforce the regulatory agreement
7 to collect all rents with respect to the project; taking possession of
8 the project and operating the project in accordance with the
9 regulatory agreement until the enforcer determines the housing
10 sponsor is in a position to operate the project in accordance with
11 the regulatory agreement; applying to any court for specific
12 performance; securing the appointment of a receiver to operate
13 the project; or any other relief as may be appropriate.

14 (j) (1) The committee shall allocate the housing credit on a
15 regular basis consisting of two or more periods in each calendar
16 year during which applications may be filed and considered. The
17 committee shall establish application filing deadlines, the maximum
18 percentage of federal and state low-income housing tax credit
19 ceiling that may be allocated by the committee in that period, and
20 the approximate date on which allocations shall be made. If the
21 enactment of federal or state law, the adoption of rules or
22 regulations, or other similar events prevent the use of two allocation
23 periods, the committee may reduce the number of periods and
24 adjust the filing deadlines, maximum percentage of credit allocated,
25 and allocation dates.

26 (2) The committee shall adopt a qualified allocation plan, as
27 provided in Section 42(m)(1) of the Internal Revenue Code. In
28 adopting this plan, the committee shall comply with the provisions
29 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
30 Code.

31 (3) Notwithstanding Section 42(m) of the Internal Revenue
32 Code, the California Tax Credit Allocation Committee shall
33 allocate housing credits in accordance with the qualified allocation
34 plan and regulations, which shall include the following provisions:

35 (A) All housing sponsors, as defined by paragraph (3) of
36 subdivision (a), shall demonstrate at the time the application is
37 filed with the committee that the project meets the following
38 threshold requirements:

- 1 (i) The housing sponsor shall demonstrate that there is a need
2 for low-income housing in the community or region for which it
3 is proposed.
- 4 (ii) The project's proposed financing, including tax credit
5 proceeds, shall be sufficient to complete the project and shall be
6 adequate to operate the project for the extended use period.
- 7 (iii) The project shall have enforceable financing commitments,
8 either construction or permanent financing, for at least 50 percent
9 of the total estimated financing of the project.
- 10 (iv) The housing sponsor shall have and maintain control of the
11 site for the project.
- 12 (v) The housing sponsor shall demonstrate that the project
13 complies with all applicable local land use and zoning ordinances.
- 14 (vi) The housing sponsor shall demonstrate that the project
15 development team has the experience and the financial capacity
16 to ensure project completion and operation for the extended use
17 period.
- 18 (vii) The housing sponsor shall demonstrate the amount of tax
19 credit that is necessary for the financial feasibility of the project
20 and its viability as a qualified low-income housing project
21 throughout the extended use period, taking into account operating
22 expenses, a supportable debt service, reserves, funds set aside for
23 rental subsidies and required equity, and a development fee that
24 does not exceed a specified percentage of the eligible basis of the
25 project prior to inclusion of the development fee in the eligible
26 basis, as determined by the committee.
- 27 (B) The committee shall give a preference to those projects
28 satisfying all of the threshold requirements of subparagraph (A)
29 if both of the following apply:
- 30 (i) The project serves the lowest income tenants at rents
31 affordable to those tenants.
- 32 (ii) The project is obligated to serve qualified tenants for the
33 longest period.
- 34 (C) In addition to the provisions of subparagraphs (A) and (B),
35 the committee shall use the following criteria in allocating housing
36 credits:
- 37 (i) Projects serving large families in which a substantial number,
38 as defined by the committee, of all residential units are low-income
39 units with three and more bedrooms.

1 (ii) Projects providing single-room occupancy units serving
2 very low income tenants.

3 (iii) Existing projects that are “at risk of conversion,” as defined
4 by paragraph (4) of subdivision (c).

5 (iv) Projects for which a public agency provides direct or indirect
6 long-term financial support for at least 15 percent of the total
7 project development costs or projects for which the owner’s equity
8 constitutes at least 30 percent of the total project development
9 costs.

10 (v) Projects that provide tenant amenities not generally available
11 to residents of low-income housing projects.

12 (4) For purposes of allocating credits pursuant to this section,
13 the committee shall not give preference to any project by virtue
14 of the date of submission of its application except to break a tie
15 when two or more of the projects have an equal rating.

16 (5) Not less than 20 percent of the low-income housing tax
17 credits available annually under this section, Section 12206, and
18 Section 17058 shall be set aside for allocation to rural areas as
19 defined in Section 50199.21 of the Health and Safety Code. Any
20 amount of credit set aside for rural areas remaining on or after
21 October 31 of any calendar year shall be available for allocation
22 to any eligible project. No amount of credit set aside for rural areas
23 shall be considered available for any eligible project so long as
24 there are eligible rural applications pending on October 31.

25 (k) Section 42(l) of the Internal Revenue Code shall be modified
26 as follows:

27 The term “secretary” shall be replaced by the term “California
28 Franchise Tax Board.”

29 (l) In the case where the state credit allowed under this section
30 exceeds the “tax,” the excess may be carried over to reduce the
31 “tax” in the following year, and succeeding years if necessary,
32 until the credit has been exhausted.

33 (m) A project that received an allocation of a 1989 federal
34 housing credit dollar amount shall be eligible to receive an
35 allocation of a 1990 state housing credit dollar amount, subject to
36 all of the following conditions:

37 (1) The project was not placed in service prior to 1990.

38 (2) To the extent the amendments made to this section by the
39 Statutes of 1990 conflict with any provisions existing in this section
40 prior to those amendments, the prior provisions of law shall prevail.

1 (3) Notwithstanding paragraph (2), a project applying for an
2 allocation under this subdivision shall be subject to the
3 requirements of paragraph (3) of subdivision (j).

4 (n) The credit period with respect to an allocation of credit in
5 1989 by the California Tax Credit Allocation Committee of which
6 any amount is attributable to unallocated credit from 1987 or 1988
7 shall not begin until after December 31, 1989.

8 (o) The provisions of Section 11407(a) of Public Law 101-508,
9 relating to the effective date of the extension of the low-income
10 housing credit, shall apply to calendar years after 1989.

11 (p) The provisions of Section 11407(c) of Public Law 101-508,
12 relating to election to accelerate credit, shall not apply.

13 (q) (1) A corporation may elect to assign any portion of any
14 credit allowed under this section to one or more affiliated
15 corporations for each taxable year in which the credit is allowed.
16 For purposes of this subdivision, “affiliated corporation” has the
17 meaning provided in subdivision (b) of Section 25110, as that
18 section was amended by Chapter 881 of the Statutes of 1993, as
19 of the last day of the taxable year in which the credit is allowed,
20 except that “100 percent” is substituted for “more than 50 percent”
21 wherever it appears in the section, as that section was amended by
22 Chapter 881 of the Statutes of 1993, and “voting common stock”
23 is substituted for “voting stock” wherever it appears in the section,
24 as that section was amended by Chapter 881 of the Statutes of
25 1993.

26 (2) The election provided in paragraph (1):

27 (A) May be based on any method selected by the corporation
28 that originally receives the credit.

29 (B) Shall be irrevocable for the taxable year the credit is allowed,
30 once made.

31 (C) May be changed for any subsequent taxable year if the
32 election to make the assignment is expressly shown on each of the
33 returns of the affiliated corporations that assign and receive the
34 credits.

35 (r) Any unused credit may continue to be carried forward, as
36 provided in subdivision (l), until the credit has been exhausted.

37 This section shall remain in effect on and after December 1,
38 1990, for as long as Section 42 of the Internal Revenue Code,
39 relating to low-income housing credits, remains in effect.

1 (s) The amendments to this section made by the act adding this
2 subdivision shall apply only to taxable years beginning on or after
3 January 1, 1994, except that paragraph (1) of subdivision (q), as
4 amended, shall apply to taxable years beginning on or after January
5 1, 1993.

6 SEC. 4. This act provides for a tax levy within the meaning of
7 Article IV of the Constitution and shall go into immediate effect.

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