

ASSEMBLY BILL

No. 35

Introduced by Assembly Member Chiu

December 1, 2014

An act to add Sections 17059 and 23610.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 35, as introduced, Chiu. Taxation: income taxes: very-low and extremely low-income housing credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a state low-income housing tax credit, 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, which requires a 30 % present value credit for existing buildings, with the credit claimed over a 10-year period, as modified. Existing law generally requires the project's housing sponsor to have been allocated a credit for federal income tax purposes, as specified.

This bill would allow a very low-income and extremely low-income housing credit against those taxes for each taxable year on or after January 1, 2015, in an amount computed and allowed in accordance with a specified section of the Internal Revenue Code, as provided. The bill would specify that a project is not required to have been previously or currently allocated a credit for federal or state income tax purposes, as specified. The bill would make the aggregate housing credit dollar amount \$40,000,000 to be allocated annually by the committee on a first-come-first-served basis subject to certain requirements being met,

including that the project will be used exclusively for the restructuring, including the acquisition and substantial rehabilitation, of buildings at least 20 years old that currently serve very low-income, extremely low-income, single room occupancy (SRO) or rural area residents. The bill would authorize the committee and the Franchise Tax Board to adopt regulations to carry out the purposes of this section. The bill would make findings and declarations in this regard.

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. (a) The Legislature finds and declares all of the
2 following:

3 (1) The preservation and rehabilitation of existing affordable
4 housing stock initially created through public investment is a
5 critical strategy to address the affordable housing crisis in our state.

6 (2) It is particularly important that older single room occupancy
7 (SRO), special needs, and other buildings with deeply
8 income-targeted rents be preserved and refurbished for low-income
9 tenants and the public investment protected.

10 (3) However, currently, most properties that are being
11 recapitalized and resyndicated through the California Tax Credit
12 Allocation Committee system for substantial rehabilitation tend
13 to have higher rents and shallower income targeting because they
14 appraise well and generate significant acquisition credits.

15 (4) Unfortunately, the deeply targeted mostly SRO, special
16 needs, and rural projects that very much need to capitalize are
17 largely shut out of this opportunity precisely because they have
18 agreed to very deep income-targeting which excludes them from
19 acquisition credits.

20 (b) Therefore, it is the intent of the Legislature to create a new
21 source of investment and a pipeline for these older but very
22 valuable public assets, which are often in the greatest need of
23 rehabilitation.

24 SEC. 2. Section 17059 is added to the Revenue and Taxation
25 Code, to read:

26 17059. (a) For each taxable year beginning on or after January
27 1, 2015, there shall be allowed as a credit against the “net tax,” as

1 defined in Section 17039, a very low-income and extremely
2 low-income housing credit in an amount computed in accordance
3 with Section 42 of the Internal Revenue Code, except as otherwise
4 provided in this section.

5 (b) For the purposes of this section, the following definitions
6 shall apply:

7 (1) “Taxpayer” means the sole owner in the case of an
8 individual, the partners in the case of a partnership, and the
9 shareholders in the case of an “S” corporation.

10 (2) “Housing sponsor” means the sole owner in the case of an
11 individual, the partnership in the case of a partnership, and the “S”
12 corporation in the case of an “S” corporation.

13 (3) “Very low-income” has the same meaning as in Section
14 50053 of the Health and Safety Code.

15 (4) “Extremely low-income” has the same meaning as in Section
16 50053 of the Health and Safety Code.

17 (5) “SRO” means single room occupancy.

18 (6) “Rural area resident” means a resident of a rural area as
19 defined in Section 50199.21 of the Health and Safety Code.

20 (7) “Committee” means the California Tax Credit Allocation
21 Committee.

22 (c) (1) The amount of the credit allocated to any housing
23 sponsor shall be authorized by the committee, or any successor
24 thereof, based on a project’s need for the credit in accordance with
25 paragraph (2) of subdivision (e).

26 (A) The very low-income or extremely low-income housing
27 project shall be located in California.

28 (B) Nothing in this section shall be construed to require a
29 housing sponsor to have been previously or currently allocated a
30 credit for federal income tax purposes under Section 42 of the
31 Internal Revenue Code or for state income tax purposes under
32 Section 17058.

33 (2) (A) The committee shall certify to the housing sponsor the
34 amount of tax credit under this section allocated to the housing
35 sponsor for each credit period.

36 (B) In the case of a partnership or an “S” corporation, the
37 housing sponsor shall provide a copy of the committee certification
38 to the taxpayer.

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

1 (d) The aggregate housing credit dollar amount that may be
2 allocated annually by the committee pursuant to this section and
3 Section 23610.6 shall be an amount equal to the sum of all of the
4 following:

5 (1) Forty million dollars (\$40,000,000).

6 (2) The unused allocation credit amount, if any, for the preceding
7 fiscal year.

8 (3) The amount of housing credits returned in the calendar year.

9 (e) (1) Subject to subdivision (c), the committee shall allocate
10 the housing credit on a regular basis consisting of two or more
11 periods in each calendar year during which applications may be
12 filed and considered. The committee shall establish application
13 filing deadlines, the maximum amounts of state very low-income
14 and extremely low-income housing tax credits that may be
15 allocated by the committee in that period, and the approximate
16 date on which allocations shall be made. If the enactment of federal
17 or state law, the adoption of rules or regulations, or other similar
18 events prevent the use of two allocation periods, the committee
19 may reduce the number of periods and adjust the filing deadlines,
20 maximum percentage of credit allocated, and the allocation dates.

21 (2) The committee shall, on a first-come-first-served basis,
22 allocate the very low-income and extremely low-income housing
23 credit in accordance with the following provisions:

24 (A) All housing sponsors shall demonstrate at the time the
25 application is filed with the committee that the project meets the
26 following threshold requirements:

27 (B) The housing sponsor shall demonstrate that the project will
28 be used exclusively for the restructuring, including the acquisition
29 and substantial rehabilitation, of buildings at least 20 years old
30 and that currently serve very low-income, extremely low-income,
31 SRO, or rural area residents. No new construction shall be eligible
32 for a credit under this section.

33 (C) The housing sponsor shall demonstrate that acquisition
34 credits that would be received as part of the restructuring through
35 the existing state credit program described in Section 17058 would
36 be insufficient to complete substantial rehabilitation due to a low
37 appraised fair market value.

38 (D) The housing sponsor shall demonstrate that the project is
39 currently subsidized, but may or may not currently be “at risk” for
40 conversion to market rate.

1 (E) There is no requirement that the project previously received
2 federal or state tax credits when originally constructed.

3 (f) In the case where the credit allowed under this section
4 exceeds the “net tax,” the excess may be carried over to reduce
5 the “net tax” in the following year, and succeeding taxable years,
6 if necessary, until the credit is exhausted.

7 (g) A deduction otherwise allowed under this part for any
8 amount paid or incurred by the qualified taxpayer upon which the
9 credit is based shall be reduced by the amount of the credit allowed
10 by this section.

11 (h) Credit under this section shall be allowed only for credits
12 claimed on a timely filed original return of the qualified taxpayer.

13 (i) (1) The committee and the Franchise Tax Board may adopt
14 regulations, rules, guidelines, or procedures necessary or
15 appropriate to carry out the purposes of this section.

16 (2) The Administrative Procedure Act (Chapter 3.5
17 commencing with Section 11340) of Part 1 of Division 3 of Title
18 2 of the Government Code) shall apply to any regulation, rule,
19 guideline, or procedure adopted pursuant to this section.

20 SEC. 3. Section 23610.6 is added to the Revenue and Taxation
21 Code, to read:

22 23610.6. (a) For each taxable year beginning on or after
23 January 1, 2015, there shall be allowed as a credit against the “tax,”
24 as defined in Section 23036, a very low-income and extremely
25 low-income housing credit in an amount computed in accordance
26 with Section 42 of the Internal Revenue Code, except as otherwise
27 provided in this section.

28 (b) For the purposes of this section, the following definitions
29 shall apply:

30 (1) “Taxpayer” means the sole owner in the case of a “C”
31 corporation, the partners in the case of a partnership, and the
32 shareholders in the case of an “S” corporation.

33 (2) “Housing sponsor” means the sole owner in the case of a
34 “C” corporation, the partnership in the case of a partnership, and
35 the “S” corporation in the case of an “S” corporation.

36 (3) “Very low-income” has the same meaning as in Section
37 50053 of the Health and Safety Code.

38 (4) “Extremely low-income” has the same meaning as in Section
39 50053 of the Health and Safety Code.

40 (5) “SRO” means single room occupancy.

1 (6) “Rural area resident” means a resident of a rural area as
2 defined in Section 50199.21 of the Health and Safety Code.
3 (7) “Committee” means the California Tax Credit Allocation
4 Committee.
5 (c) (1) The amount of the credit allocated to any housing
6 sponsor shall be authorized by the committee, or any successor
7 thereof, based on a project’s need for the credit in accordance with
8 paragraph (2) of subdivision (e).
9 (A) The very low-income or extremely low-income housing
10 project shall be located in California.
11 (B) Nothing in this section shall be construed to require a
12 housing sponsor to have been previously or currently allocated a
13 credit for federal income tax purposes under Section 42 of the
14 Internal Revenue Code or for state income tax purposes under
15 Section 23610.5.
16 (2) (A) The committee shall certify to the housing sponsor the
17 amount of tax credit under this section allocated to the housing
18 sponsor for each credit period.
19 (B) In the case of a partnership or an “S” corporation, the
20 housing sponsor shall provide a copy of the committee certification
21 to the taxpayer.
22 (C) The taxpayer shall, upon request, provide a copy of the
23 certification to the Franchise Tax Board.
24 (d) (1) The aggregate housing credit dollar amount that may
25 be allocated annually by the committee pursuant to this section
26 and Section 17059 shall be an amount equal to the sum of all of
27 the following:
28 (1) Forty million dollars (\$40,000,000).
29 (2) The unused allocation credit amount, if any, for the preceding
30 fiscal year.
31 (3) The amount of housing credits returned in the calendar year.
32 (e) (1) Subject to subdivision (c), the committee shall allocate
33 the housing credit on a regular basis consisting of two or more
34 periods in each calendar year during which applications may be
35 filed and considered. The committee shall establish application
36 filing deadlines, the maximum amounts of state very low-income
37 and extremely low-income housing tax credits that may be
38 allocated by the committee in that period, and the approximate
39 date on which allocations shall be made. If the enactment of federal
40 or state law, the adoption of rules or regulations, or other similar

1 events prevent the use of two allocation periods, the committee
2 may reduce the number of periods and adjust the filing deadlines,
3 maximum percentage of credit allocated, and the allocation dates.

4 (2) The committee shall, on a first-come-first-served basis,
5 allocate the very low-income and extremely low-income housing
6 credit in accordance with the following provisions:

7 (A) All housing sponsors shall demonstrate at the time the
8 application is filed with the committee that the project meets the
9 following threshold requirements:

10 (B) The housing sponsor shall demonstrate that the project will
11 be used exclusively for the restructuring, including the acquisition
12 and substantial rehabilitation, of buildings at least 20 years old
13 and that currently serve very low-income, extremely low-income,
14 SRO, or rural area residents. No new construction shall be eligible
15 for a credit under this section.

16 (C) The housing sponsor shall demonstrate that acquisition
17 credits that would be received as part of the restructuring through
18 the existing state credit program described in Section 23610.5
19 would be insufficient to complete substantial rehabilitation due to
20 a low appraised fair market value.

21 (D) The housing sponsor shall demonstrate that the project is
22 currently subsidized, but may or may not currently be “at risk” for
23 conversion to market rate.

24 (E) There is no requirement that the project previously received
25 federal or state tax credits when originally constructed.

26 (f) (1) A corporation may elect to assign any portion of any
27 credit allowed under this section to one or more affiliated
28 corporations for each taxable year in which the credit is allowed.
29 For purposes of this subdivision, “affiliated corporation” has the
30 meaning provided in subdivision (b) of Section 25110, as of the
31 last day of the taxable year in which the credit is allowed, except
32 that “100 percent” is substituted for “more than 50 percent”
33 wherever it appears in the section, and “voting common stock” is
34 substituted for “voting stock” wherever it appears in the section.

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

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

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

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

5 (g) In the case where the credit allowed under this section
6 exceeds the “tax,” the excess may be carried over to reduce the
7 “tax” in the following year, and succeeding taxable years, if
8 necessary, until the credit is exhausted.

9 (h) A deduction otherwise allowed under this part for any
10 amount paid or incurred by the qualified taxpayer upon which the
11 credit is based shall be reduced by the amount of the credit allowed
12 by this section.

13 (i) Credit under this section shall be allowed only for credits
14 claimed on a timely filed original return of the qualified taxpayer.

15 (j) (1) The committee and the Franchise Tax Board may adopt
16 regulations, rules, guidelines, or procedures necessary or
17 appropriate to carry out the purposes of this section.

18 (2) The Administrative Procedure Act (Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title
20 2 of the Government Code) shall apply to any regulation, rule,
21 guideline, or procedure adopted pursuant to this section.

22 SEC. 4. In order to comply with the requirements of Section
23 41 of the Revenue and Taxation Code, it is the intent of the
24 Legislature that the California Tax Credit Allocation Committee
25 provide the information required by that section to the Legislature.

26 SEC. 5. This act provides for a tax levy within the meaning of
27 Article IV of the Constitution and shall go into immediate effect.