ASSEMBLY BILL No. 771

Introduced by Assembly Member Atkins

February 25, 2015

An act to add and repeal Sections 38.10, 17053.91, and 23691 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

legislative counsel's digest

AB 771, as introduced, Atkins. Personal income and corporation taxes: credits: rehabilitation.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.

This bill would allow to a taxpayer that receives a tax credit reservation a credit against those taxes for each taxable year beginning on or after January 1, 2016, and before January 1, 2024, in an amount, determined in modified conformity with a specified section of the Internal Revenue Code, for rehabilitation of certified historic structures and, under the Personal Income Tax Law, for a qualified residence. This bill would provide for a 20% credit, or 25% credit, of qualified rehabilitation expenditures if the structure meets specified criteria, for rehabilitation of a certified historic structure or a qualified residence, as provided, within the state to be reserved and allocated by the California Tax Credit Allocation Committee, which shall consult with the Office of Historic Preservation, as provided and which may adopt a reasonable fee to cover specified expenses. The aggregate amount of credit would be $50,000,000 per calendar year, plus unused allocation tax credit for the preceding year, $10,000,000 of which would be set aside for rehabilitation projects with qualified rehabilitation expenditures of less than $1,000,000, as specified. This bill would require the Legislative Analyst to, on an annual basis, collaborate with the California Tax Credit Allocation Committee to review the tax credit, as provided.

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:

SECTION 1. (a) The Legislature finds and declares that California's historic buildings are an important asset to communities throughout the state, and that the preservation and restoration of these buildings is important to enhancing civic pride, increasing tourism, and maintaining vibrant neighborhoods.

(b) The Legislature further finds and declares all of the following:

(1) The federal Historic Preservation Tax Incentives program, currently available to California's income producing historic properties, has generated nearly $1.5 billion in investment during the last 10 years.

(2) While 35 states have similar state tax credits or incentives for historic preservation, no such incentive exists in California.

(3) States that have partnered a state incentive with the federal Historic Preservation Tax Incentive have reaped significant economic development benefits, including construction and building industry job creation, increased state tax revenues through increased employment and wages, increased local property tax revenues through increased property values, and increased local tax revenues through sales taxes and heritage tourism.

(4) Over the last 10 years, California has had 129 projects qualify for the federal Historic Preservation Tax Incentives program. These projects have been located in 20 different counties.

(5) As California communities continue to adjust and adapt to the dissolution of redevelopment agencies, proven tools are still needed to incentivize economic development and revitalize economically distressed areas.

SEC. 2. Section 38.10 is added to the Revenue and Taxation Code, to read:

38.10. (a) The Legislative Analyst shall, on an annual basis beginning January 1, 2017, collaborate with the California Tax Credit Allocation Committee to review the effectiveness of the tax credits allowed by Sections 17053.91 and 23691 The review shall include, but is not limited to, an analysis of the demand for the tax credit, the types and uses of projects receiving the tax credit, the jobs created by the use of the tax credits, and the economic impact of the tax credits.

(b) It the intent of the Legislature to enact legislation to comply with the requirements of Section 41.

(c) This section shall remain in effect only until January 1, 2025, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2025, deletes or extends that date.

SEC. 3. Section 17053.91 is added to the Revenue and Taxation Code, to read:

17053.91. For each taxable year beginning on or after January 1, 2016, and before January 1, 2024, there shall be allowed to a taxpayer that receives a tax credit reservation a credit against the "net tax," as defined in Section 17039, an amount determined in accordance with Section 47 of the Internal Revenue Code, except as follows:

(a) (1) In lieu of the percentages specified in Section 47(a) of the Internal Revenue Code, except as provided in paragraph (2), the applicable percentage shall be 20 percent of the qualified rehabilitation expenditures with respect to a certified historic structure.

(2) The applicable percentage shall be 25 percent of the qualified rehabilitation expenditures with respect to a certified historic structure if that certified historic structure meets one of the following criteria:

(A) The rehabilitated structure is located on federal surplus property, if obtained by a local agency under Section 54142 of the Government Code, on surplus state real property, as defined by Section 11011.1 of the Government Code, or on surplus land, as defined by subdivision (b) of Section 54221 of the Government Code.

(B) The rehabilitated structure includes affordable housing for lower-income households, as defined by Section 50079.5 of the Health and Safety Code.

(C) The structure is located in a designated census tract, as defined in paragraph (7) of subdivision (b) of Section 17053.73.

(D) The structure is a part of a military base reuse authority established pursuant to Title 7.86 (commencing with Section 67800) of the Government Code.

(E) The structure is a transit-oriented development that is a higher density, mixed-use development within a walking distance of one-half mile of a transit station.

(3) (A) The credit shall be allowed for qualified rehabilitation expenditures for a qualified residence determined by the California Tax Credit Allocation Committee and the Office of Historic Preservation to have a public benefit in the year of completion in the percentages specified in paragraphs (1) and (2), as applicable, except that the credit shall only be allowed in an amount equal to or more than five thousand dollars ($5,000) but not exceeding twenty-five thousand dollars ($25,000). A taxpayer shall only be allowed a credit pursuant to this paragraph once every 10 taxable years.

(B) Section 47(c)(1)(C)(ii) of the Internal Revenue Code, relating to special rule for phased rehabilitation, shall not apply.

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

(1) "Certified historic structure" has the same meaning as defined in Section 47(c)(3) of the Internal Revenue Code and additionally means a structure in this state that is listed on the California Register of Historical Resources.

(2) "Qualified residence" has the same meaning as that term is defined in Section 163(h)(4) of the Internal Revenue Code, that will be owned and occupied by an individual taxpayer who has a modified adjusted gross income, as defined by Section 86(b)(2) of the Internal Revenue Code, of two hundred thousand dollars ($200,000) or less, as the taxpayer's principal residence or what will be the taxpayer's principal residence within two years after the rehabilitation of the residence.

(3) (A) "Qualified rehabilitation expenditure" has the same meaning as that term is defined in Section 47(c) of the Internal Revenue Code, except that qualified rehabilitation expenditures may include expenditures in connection with the rehabilitation of a building without regard to whether any portion of the building is or is reasonably expected to be tax-exempt use property.

(B) "Qualified rehabilitation expenditure" also means rehabilitation expenditures incurred by the taxpayer with respect to a qualified residence for the rehabilitation of the exterior of the building or rehabilitation necessary for the functioning of the home, including, but not limited to, rehabilitation of the electrical, plumbing, or foundation of the qualified residence.

(c) (1) To be eligible for the credit allowed by this section, a taxpayer shall request a tax credit reservation from the California Tax Credit Allocation Committee, in the form and manner prescribed by the California Tax Credit Allocation Committee.

(2) To obtain a tax credit reservation, the taxpayer shall provide necessary information, as determined by the California Tax Credit Allocation Committee.

(3) A tax credit reservation provided to a taxpayer shall not constitute a determination by the California Tax Credit Allocation Committee with respect to any of the requirements of this section regarding a taxpayer's eligibility for the credit authorized by this section.

(4) If a taxpayer receives a tax credit reservation but rehabilitation has not commenced within 18 months of the issuance of the tax credit reservation, the tax credit reservation shall be forfeited and the credit amount associated with the tax credit reservation shall be treated as an unused allocation tax credit amount.

(d) A deduction shall not be allowed under this part for any expense for which a credit is allowed by this section.

(e) If a credit is allowed under this section with respect to any property, the basis of that property shall be reduced by the amount of the credit allowed.

(f) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" in the following year, and the seven succeeding years, if necessary, until the credit is exhausted.

(g) For purposes of this section, the California Tax Credit Allocation Committee shall do the following:

(1) On and after January 1, 2016, and before January 1, 2024, reserve and allocate tax credits to applicants.

(2) Establish a procedure for applicants to file with the California Tax Credit Allocation Committee a written application, on a form

jointly prescribed by that office and the Office of Historic Preservation for the reservation of the tax credit.

(3) Establish criteria consistent with the requirements of this section, for reserving tax credits. A taxpayer shall not receive a tax credit reservation unless the following criteria are met. Criteria shall include, but are not limited to, the following:

(A) The number of jobs created by the rehabilitation project, both during and after the rehabilitation of the structure.

(B) The expected increase in state and local tax revenues derived from the rehabilitation project, including those from increased wages and property taxes.

(C) Any additional incentives or contributions included in the rehabilitation project from federal, state, or local governments.

(D) For the qualified rehabilitation expenditures with respect to a qualified residence, the rehabilitation has a public benefit, as determined jointly with the Office of Historic Preservation.

(4) Determine and designate, in consultation with the Office of Historic Preservation, applicants that meet the requirements of this section to ensure that the rehabilitation project meets the Secretary of the Interior's Standards for Rehabilitation, as found in Part 67 of Title 36 of the Code of Federal Regulations.

(5) Process and approve, or reject, all tax credit reservation applications.

(6) (A) Subject to the annual cap established as provided in subdivision (h), allocate an aggregate amount of credits under this section and Section 23691, and allocate any carryover of unallocated credits from prior years.

(B) A taxpayer shall be allocated a tax credit pursuant to the taxpayer's tax credit reservation upon receipt by the California Tax Credit Allocation Committee of a cost certification for the qualified rehabilitation expenditures. For projects with qualified rehabilitation expenditures in excess of two hundred fifty thousand dollars ($250,000), the cost certification shall be issued by a licensed certified public accountant.

(7) Certify tax credits allocated to taxpayers.

(8) Provide the Franchise Tax Board an annual list of the taxpayers that were allocated a credit pursuant to this section and Section 23691, including each taxpayer's taxpayer identification number, and the amount allocated to each taxpayer.

(h) (1) The aggregate amount of credits that may be allocated in any calendar year pursuant to this section and Section 23691 shall be an amount equal to the sum of all of the following:

(A) Fifty million dollars ($50,000,000) in tax credits for the 2016 calendar year and each calendar year thereafter, through and including the 2023 calendar year.

(B) The unused allocation tax credit amount, if any, for the preceding calendar year.

(2) Notwithstanding the foregoing, the California Tax Credit Allocation Committee shall set aside ten million dollars ($10,000,000) of tax credits each calendar year for taxpayers with qualified rehabilitation expenditures of less than one million dollars ($1,000,000). To the extent that this amount is not fully reserved in any calendar year, the unused portion shall become available for reservation to other taxpayers.

(i) In the case of any application for tax credits by an entity treated as a partnership or "S" corporation for income tax purposes:

(1) (A) Credits awarded to a partnership shall be allocated to the partners of that partnership in accordance with the partnership agreement, regardless of how the federal historic rehabilitation tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the partnership agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(B) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the tax credit recapture period for the project described in subparagraph (A) shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until, and treated as if, it occurred in the first taxable year immediately following the taxable year in which the tax credit recapture period expires for the project described in subparagraph (A). The credits awarded to a partnership shall be allocated to the partners of that partnership in accordance with the partnership agreement.

(2) Credits awarded to an "S" corporation shall be allocated among the shareholders of that "S" corporation pro rata in accordance with their respective pro rata shares, determined in

accordance with Subchapter S of Chapter 1 of the Internal Revenue Code and the regulations promulgated thereunder.

(j) Section 183 of the Internal Revenue Code shall not apply with respect to the credit allowed by this section.

(k) For purposes of this section, the provisions of subsection (a) of Section 50 of the Internal Revenue Code shall apply.

(*l*) Notwithstanding any other provision of this part, a credit allowed pursuant to this section may reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504, relating to the separate tax on lump-sum distributions, below the tentative minimum tax.

(m) This section shall remain in effect regardless of the expiration or repeal of Section 47 of the Internal Revenue Code, relating to rehabilitation credit.

(n) The California Tax Credit Allocation Committee may adopt a reasonable fee in an amount sufficient to cover the expenses incurred by the California Tax Credit Allocation Committee and the Office of Historic Preservation in fulfilling the responsibilities described in paragraphs (4) and (5) of subdivision (g) and paragraphs (4) and (5) of subdivision (g) of Section 23691

(o) This section shall remain in effect only until December 1, 2024, and as of that date is repealed.

SEC. 4. Section 23691 is added to the Revenue and Taxation Code, to read:

23691. For each taxable year beginning on or after January 1, 2016, and before January 1, 2024, there shall be allowed to a taxpayer that receives a tax credit reservation a credit against the "tax," as defined in Section 23036, an amount determined in accordance with Section 47 of the Internal Revenue Code, except as follows:

(a) (1) In lieu of the percentages specified in Section 47(a) of the Internal Revenue Code, except as provided in paragraph (2), the applicable percentage shall be 20 percent of the qualified rehabilitation expenditures with respect to a certified historic structure.

(2) The applicable percentage shall be 25 percent of the qualified rehabilitation expenditures with respect to a certified historic structure if that certified historic structure meets one of the following criteria:

(A) The rehabilitated structure is located on federal surplus property, if obtained by a local agency under Section 54142 of the Government Code, on surplus state real property, as defined by Section 11011.1 of the Government Code, or on surplus land, as defined by subdivision (b) of Section 54221 of the Government Code.

(B) The rehabilitated structure includes affordable housing for lower-income households, as defined by Section 50079.5 of the Health and Safety Code.

(C) The structure is located in a designated census tract, as defined in paragraph (7) of subdivision (b) of Section 17053.73.

(D) The structure is a part of a military base reuse authority established pursuant to Title 7.86 (commencing with Section 67800) of the Government Code.

(E) The structure is a transit-oriented development that is a higher density, mixed-use development within a walking distance of one-half mile of a transit station.

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

(1) "Certified historic structure" has the same meaning as defined in Section 47(c)(3) of the Internal Revenue Code and additionally means a structure in this state that is listed on the California Register of Historical Resources.

(2) "Qualified rehabilitation expenditure" has the same meaning as that term is defined in Section 47(c) of the Internal Revenue Code, except that qualified rehabilitation expenditures may include expenditures in connection with the rehabilitation of a building without regard to whether any portion of the building is or is reasonably expected to be tax exempt use property.

(c) (1) To be eligible for the credit allowed by this section, a taxpayer shall request a tax credit reservation from the California Tax Credit Allocation Committee, in the form and manner prescribed by the California Tax Credit Allocation Committee.

(2) To obtain a tax credit reservation, the taxpayer shall provide necessary information, as determined by the California Tax Credit Allocation Committee.

(3) A tax credit reservation provided to a taxpayer shall not constitute a determination by the California Tax Credit Allocation Committee with respect to any of the requirements of this section

regarding a taxpayer's eligibility for the credit authorized by this section.

(4) If a taxpayer receives a tax credit reservation but rehabilitation has not commenced within 18 months of the issuance of the tax credit reservation, the tax credit reservation shall be forfeited and the credit amount associated with the tax credit reservation shall be treated as an unused allocation tax credit amount.

(d) A deduction shall not be allowed under this part for any expense for which a credit is allowed by this section.

(e) If a credit is allowed under this section with respect to any property, the basis of that property shall be reduced by the amount of the credit allowed.

(f) In the case where the credit allowed by this section exceeds the "tax," the excess may be carried over to reduce the "tax" in the following year, and the seven succeeding years, if necessary, until the credit is exhausted.

(g) For purposes of this section, the California Tax Credit Allocation Committee shall do the following:

(1) On and after January 1, 2016, and before January 1, 2024, reserve and allocate tax credits to applicants.

(2) Establish a procedure for applicants to file with the California Tax Credit Allocation Committee a written application, on a form jointly prescribed by that office and the Office of Historic Preservation for the reservation of the tax credit.

(3) Establish criteria consistent with the requirements of this section, for reserving tax credits. A taxpayer shall not receive a tax credit reservation unless the following criteria are met. Criteria shall include, but are not limited to, the following:

(A) The number of jobs created by the rehabilitation project, both during and after the rehabilitation of the structure.

(B) The expected increase in state and local tax revenues derived from the rehabilitation project, including those from increased wages and property taxes.

(C) Any additional incentives or contributions included in the rehabilitation project from federal, state, or local governments.

(4) Determine and designate, in consultation with the Office of Historic Preservation, applicants that meet the requirements of this section to ensure that the rehabilitation project meets the Secretary

of the Interior's Standards for Rehabilitation, as found in Part 67 of Title 36 of the Code of Federal Regulations.

(5) Process and approve, or reject, all tax credit reservation applications.

(6) (A) Subject to the annual cap established as provided in subdivision (h), allocate an aggregate amount of credits under this section and Section 17053.91, and allocate any carryover of unallocated credits from prior years.

(B) A taxpayer shall be allocated a tax credit pursuant to the taxpayer's tax credit reservation upon receipt by the California Tax Credit Allocation Committee of a cost certification for the qualified rehabilitation expenditures. For projects with qualified rehabilitation expenditures in excess of two hundred fifty thousand dollars ($250,000), the cost certification shall be issued by a licensed certified public accountant.

(7) Certify tax credits allocated to taxpayers.

(8) Provide the Franchise Tax Board an annual list of the taxpayers that were allocated a credit pursuant to this section and Section 17053.91 including each taxpayer's taxpayer identification number, and the amount allocated to each taxpayer.

(h) (1) The aggregate amount of credits that may be allocated in any calendar year pursuant to this section and Section 17053.91 shall be an amount equal to the sum of all of the following:

(A) Fifty million dollars ($50,000,000) in tax credits for the 2016 calendar year and each calendar year thereafter, through and including the 2023 calendar year.

(B) The unused allocation tax credit amount, if any, for the preceding calendar year.

(2) Notwithstanding the foregoing, the California Tax Credit Allocation Committee shall set aside ten million dollars ($10,000,000) of tax credits each calendar year for taxpayers with qualified rehabilitation expenditures of less than one million dollars ($1,000,000). To the extent that this amount is not fully reserved in any calendar year, the unused portion shall become available for reservation to other taxpayers.

(i) In the case of any application for tax credits by an entity treated as a partnership or "S" corporation for income tax purposes:

(1) (A) Credits awarded to a partnership shall be allocated to the partners of that partnership in accordance with the partnership agreement, regardless of how the federal historic rehabilitation tax

credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the partnership agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code.

(B) To the extent the allocation of the credit to a partner under this section lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the tax credit recapture period for the project described in subparagraph (A) shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until, and treated as if, it occurred in the first taxable year immediately following the taxable year in which the tax credit recapture period expires for the project described in subparagraph (A). The credits awarded to a partnership shall be allocated to the partners of that partnership in accordance with the partnership agreement.

(2) Credits awarded to an "S" corporation shall be allocated among the shareholders of that "S" corporation pro rata in accordance with their respective pro rata shares, determined in accordance with Subchapter S of Chapter 1 of the Internal Revenue Code and the regulations promulgated thereunder.

(j) Section 183 of the Internal Revenue Code shall not apply with respect to the credit allowed by this section.

(k) For purposes of this section, the provisions of subsection (a) of Section 50 of the Internal Revenue Code shall apply.

(*l*) Notwithstanding any other provision of this part, a credit allowed pursuant to this section may reduce the "tax" below the tentative minimum tax, as defined by paragraph (1) of subdivision (a) of Section 23455.

(m) This section shall remain in effect regardless of the expiration or repeal of Section 47 of the Internal Revenue Code, relating to rehabilitation credit.

(n) The California Tax Credit Allocation Committee may adopt a reasonable fee in an amount sufficient to cover the expenses incurred by the California Tax Credit Allocation Committee and the Office of Historic Preservation in fulfilling the responsibilities described in paragraphs (4) and (5) of subdivision (g) and paragraphs (4) and (5) of subdivision (g) of Section 17053.91.

(o) This section shall remain in effect only until December 1, 2024, and as of that date is repealed.

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

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