

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:

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

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

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

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

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

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

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

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

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

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

11 (c) This section shall remain in effect only until January 1,
12 2025, and as of that date is repealed, unless a later enacted statute,
13 that is enacted before January 1, 2025, deletes or extends that date.

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

16 17053.91. For each taxable year beginning on or after January
17 1, 2016, and before January 1, 2024, there shall be allowed to a
18 taxpayer that receives a tax credit reservation a credit against the
19 “net tax,” as defined in Section 17039, an amount determined in
20 accordance with Section 47 of the Internal Revenue Code, except
21 as follows:

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

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

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

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

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

3 (D) The structure is a part of a military base reuse authority
 4 established pursuant to Title 7.86 (commencing with Section
 5 67800) of the Government Code.

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

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

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

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

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

27 (2) “Qualified residence” has the same meaning as that term is
 28 defined in Section 163(h)(4) of the Internal Revenue Code, that
 29 will be owned and occupied by an individual taxpayer who has a
 30 modified adjusted gross income, as defined by Section 86(b)(2)
 31 of the Internal Revenue Code, of two hundred thousand dollars
 32 (\$200,000) or less, as the taxpayer’s principal residence or what
 33 will be the taxpayer’s principal residence within two years after
 34 the rehabilitation of the residence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (7) Certify tax credits allocated to taxpayers.

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

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

4 (A) Fifty million dollars (\$50,000,000) in tax credits for the
5 2016 calendar year and each calendar year thereafter, through and
6 including the 2023 calendar year.

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

9 (2) Notwithstanding the foregoing, the California Tax Credit
10 Allocation Committee shall set aside ten million dollars
11 (\$10,000,000) of tax credits each calendar year for taxpayers with
12 qualified rehabilitation expenditures of less than one million dollars
13 (\$1,000,000). To the extent that this amount is not fully reserved
14 in any calendar year, the unused portion shall become available
15 for reservation to other taxpayers.

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

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

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

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

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

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

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

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

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

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

21 (o) This section shall remain in effect only until December 1,
22 2024, and as of that date is repealed.

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

25 23691. For each taxable year beginning on or after January 1,
26 2016, and before January 1, 2024, there shall be allowed to a
27 taxpayer that receives a tax credit reservation a credit against the
28 "tax," as defined in Section 23036, an amount determined in
29 accordance with Section 47 of the Internal Revenue Code, except
30 as follows:

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

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

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

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

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

12 (D) The structure is a part of a military base reuse authority
13 established pursuant to Title 7.86 (commencing with Section
14 67800) of the Government Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (7) Certify tax credits allocated to taxpayers.

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

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

24 (A) Fifty million dollars (\$50,000,000) in tax credits for the
25 2016 calendar year and each calendar year thereafter, through and
26 including the 2023 calendar year.

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

29 (2) Notwithstanding the foregoing, the California Tax Credit
30 Allocation Committee shall set aside ten million dollars
31 (\$10,000,000) of tax credits each calendar year for taxpayers with
32 qualified rehabilitation expenditures of less than one million dollars
33 (\$1,000,000). To the extent that this amount is not fully reserved
34 in any calendar year, the unused portion shall become available
35 for reservation to other taxpayers.

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

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

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

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

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

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

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

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

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

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

- 1 (o) This section shall remain in effect only until December 1,
- 2 2024, and as of that date is repealed.
- 3 SEC. 5. This act provides for a tax levy within the meaning
- 4 of Article IV of the Constitution and shall go into immediate effect.

O