

ASSEMBLY BILL

No. 781

Introduced by Assembly Member Wilk

February 25, 2015

An act to amend Section 12206 of the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 781, as introduced, Wilk. Low-income housing tax credits.

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

This bill would make a nonsubstantive change to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
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 *conformity* with Section
7 42 of the Internal Revenue Code, except as otherwise provided in
8 this section.

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

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

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

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

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

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

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

33 (C) (i) For a project that receives a preliminary reservation of
34 the state low-income housing tax credit, allowed pursuant to
35 subdivision (a), on or after January 1, 2009, and before January 1,
36 2016, the credit shall be allocated to the partners of a partnership
37 owning the project in accordance with the partnership agreement,
38 regardless of how the federal low-income housing tax credit with
39 respect to the project is allocated to the partners, or whether the
40 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) This subparagraph shall not apply to a project that receives
4 a preliminary reservation of state low-income housing tax credits
5 under the set-aside described in subdivision (c) of Section 50199.20
6 of the Health and Safety Code unless the project also receives a
7 preliminary reservation of federal low-income housing tax credits.

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

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

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

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

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

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

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

33 (ii) Notwithstanding clause (i), the California Tax Credit
34 Allocation Committee may allocate the credit for buildings located
35 in DDAs or QCTs that are restricted to having 50 percent of its
36 occupants be special needs households, as defined in the California
37 Code of Regulations by the California Tax Credit Allocation
38 Committee, even if the taxpayer receives federal credits pursuant
39 to Section 42(d)(5)(B) of the Internal Revenue Code, provided

1 that the credit allowed under this section shall not exceed 30
2 percent of the eligible basis of the building.

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

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

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

14 (1) 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 (2) 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 (3) 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 federal 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 which, 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 which shall include the amount of the
39 capital contributions actually paid to the housing sponsor and shall
40 not 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 accumulate and be 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 17058, and Section
16 23610.5 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) (1) Section 42(j) of the Internal Revenue Code shall not be
9 applicable and the provisions in paragraph (2) shall be substituted
10 in its place.

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

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

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

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

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

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

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

39 (G) A requirement that the housing sponsor, as security for the
40 performance of the housing sponsor’s obligations under the

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

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

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

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

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

37 (A) All housing sponsors, as defined by paragraph (3) of
38 subdivision (a), shall demonstrate at the time the application is
39 filed with the committee that the project meets the following
40 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.

O