

ASSEMBLY BILL

No. 2140

**Introduced by Assembly Members Roger Hernández, Alejo, and
Eduardo Garcia**

February 17, 2016

An act to amend Section 50199.7 of the Health and Safety Code, and to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 2140, as introduced, Roger Hernández. Income taxes: insurance tax: credits: low-income housing: farmworker housing assistance.

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, personal income, and corporation tax credit amounts among qualified low-income housing projects in modified conformity to federal law that have been allocated, or qualify for, a federal low-income housing tax credit, and for farmworker housing. Existing law authorizes the California Tax Credit Allocation Committee to allocate the credit for buildings located in designated difficult development areas or qualified census tracts that are restricted to having 50% of its occupants be special needs households even if the taxpayer receives specified federal credits provided the credit does not exceed 30% of the eligible basis of the building. Existing law limits the total annual amount of the state low-income housing credit for which a federal low-income housing credit is required to the sum of \$70,000,000, as increased by any percentage increase in the Consumer Price Index for the preceding calendar year, any unused credit for the preceding calendar years, and

the amount of housing credit ceiling returned in the calendar year. Existing law additionally allows a state credit, which is not dependent on receiving a federal low-income housing credit, of \$500,000 per calendar year for projects to provide farmworker housing. Existing law defines “farmworker housing” to mean housing for agricultural workers that is available to, and occupied by, only farmworkers and their households.

This bill, under the insurance taxation law, the Personal Income Tax Law, and the Corporation Tax Law, would modify the definition of applicable percentage relating to qualified low-income buildings that are farmworker housing projects, as provided. The bill would authorize the California Tax Credit Allocation Committee to allocate the farmworker housing credit even if the taxpayer receives federal credits for buildings located in designated difficult development areas or qualified census tracts. The bill would also redefine farmworker housing to mean housing for agricultural workers that is available to, and occupied by, not less than 50% of farmworkers and their households.

This bill would include a change in state statute that would result in a taxpayer paying a higher tax within the meaning of Section 3 of Article XIII A of the California Constitution, and thus would require for passage the approval of $\frac{2}{3}$ of the membership of each house of the Legislature.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

- 1 SECTION 1. Section 50199.7 of the Health and Safety Code
- 2 is amended to read:
- 3 50199.7. As used in this chapter:
- 4 (a) “Committee” means the Mortgage Bond and Tax Credit
- 5 Allocation Committee, which is renamed the California Tax Credit
- 6 Allocation Committee. All references to “committee” shall mean
- 7 the California Tax Credit Allocation Committee.
- 8 (b) “Household” has the same meaning as defined in Section
- 9 7602 of Title 25 of the California Code of Regulations.
- 10 (c) “Housing credit” means the tax credit for low-income rental
- 11 housing provided under Section 42 of the federal Internal Revenue
- 12 Code (26 U.S.C. Sec. 42).

(d) “Housing credit applicant” means any owner, sponsor, or developer of a qualifying low-income building or project who applies to the committee for either of the following:

(1) An allocation of a portion of the current state housing credit ceiling.

(2) A reservation of a portion of the anticipated state housing credit ceiling of a subsequent year.

(e) “Housing credit ceiling” means the amount specified in Section 42(h)(3)(C) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(h)(3)(C)).

(f) “Qualified low-income building” or “project” has the meaning specified in Section 42(c)(2) of the federal Internal Revenue Code (26 U.S.C. Sec. 42(c)(2)).

(g) “Agricultural worker” or “farmworker” shall have the same meaning as specified in subdivision (b) of Section 1140.4 of the Labor Code.

(h) “Farmworker housing” means housing for agricultural workers that is available to, and occupied by, ~~only~~ *not less than* 50 percent of farmworkers and their households. The committee may permit an owner to temporarily house nonfarmworkers in vacant units in the event of a disaster or other critical occurrence. However, such emergency shelter shall only be permitted if there are no pending qualified farmworker household applications for residency.

SEC. 2. Section 12206 of the Revenue and Taxation Code is amended to read:

12206. (a) (1) There shall be allowed as a credit against the ~~“tax” (as “tax,” as described by Section 12201)~~ *12201*, a state low-income housing tax credit in an amount equal to the amount determined in subdivision (c), computed in accordance with Section 42 of the Internal Revenue ~~Code; Code~~ except as otherwise provided in this section.

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

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

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

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

(i) The project's housing sponsor ~~shall have~~ *has* been allocated by the California Tax Credit Allocation Committee a credit for federal income tax purposes under Section 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

~~(D)~~

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

~~(E)~~

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

~~(F)~~

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

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

(iii) *Notwithstanding clause (i), the California Tax Credit Allocation Committee may allocate the credit pursuant to paragraph (4) of subdivision (c) even if the taxpayer receives*

1 *federal credits, pursuant to Section 42(d)(5)(B) of the Internal*
2 *Revenue Code.*

3 ~~(G)~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(D) The property satisfies the requirements of Section 42(e) of the Internal Revenue Code regarding rehabilitation expenditures, except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not apply.

(4) In the case of any qualified low-income building that is (A) farmworker housing, as defined by Section 50199.7 of the Health and Safety Code, and (B) is federally subsidized, the term “applicable percentage” means for each of the first three years, 20 percent of the qualified basis of the building, and for the fourth year, 15 percent of the qualified basis of the building.

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

1 (1) The taxpayer shall be entitled to receive a cash distribution
2 from the operations of the project, after funding required reserves,
3 ~~which,~~ *that*, at the election of the taxpayer, is equal to:

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

5 (i) The owner equity ~~which~~ *that* shall include the amount of the
6 capital contributions actually paid to the housing sponsor and shall
7 not include any amounts until they are paid on an investor note.

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

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

15 (C) Any amount allowed to be distributed under subparagraph
16 (A) that is not available for distribution during the first five years
17 of the compliance period may ~~accumulate and be~~ *be accumulated*
18 *and* distributed any time during the first 15 years of the compliance
19 period but not thereafter.

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

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

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

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

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

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

38 If, as of the close of any taxable year in the compliance period,
39 after the first year of the credit period, the qualified basis of any
40 building exceeds the qualified basis of that building as of the close

1 of the first year of the credit period, the housing sponsor, to the
2 extent of its tax credit allocation, shall be eligible for a credit on
3 the excess in an amount equal to the applicable percentage
4 determined pursuant to subdivision (c) for the four-year period
5 beginning with the ~~later of the taxable years~~ *year* in which the
6 increase in qualified basis occurs.

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

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

11 The total amount for the four-year credit period of the housing
12 credit dollars allocated in a calendar year to any building shall
13 reduce the aggregate housing credit dollar amount of the California
14 Tax Credit Allocation Committee for the calendar year in which
15 the allocation is made.

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

19 (g) The aggregate housing credit dollar amount that may be
20 allocated annually by the California Tax Credit Allocation
21 Committee pursuant to this section, Section 17058, and Section
22 23610.5 shall be an amount equal to the sum of all the following:

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

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

34 (3) The amount of housing credit ceiling returned in the calendar
35 year. For purposes of this paragraph, the amount of housing credit
36 dollar amount returned in the calendar year equals the housing
37 credit dollar amount previously allocated to any project that does
38 not become a qualified low-income housing project within the
39 period required by this section or to any project with respect to

1 which an allocation is canceled by mutual consent of the California
2 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

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

18 (2) The requirements of this section shall be set forth in a
19 regulatory agreement between the California Tax Credit Allocation
20 Committee and the housing sponsor, ~~which~~ *and the regulatory*
21 *agreement shall be subordinated, when required, to any lien or*
22 *encumbrance of any banks or other institutional lenders to the*
23 *project. The regulatory agreement entered into pursuant to*
24 *subdivision (f) of Section 50199.14 of the Health and Safety Code,*
25 *shall apply, providing provided that the agreement includes all of*
26 *the following provisions:*

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

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

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

34 (D) A provision that the regulatory agreement shall be deemed
35 a contract enforceable by tenants as third-party beneficiaries thereto
36 ~~and which~~ *that* allows individuals, whether prospective, present,
37 or former occupants of the building, who meet the income
38 limitation applicable to the building, the right to enforce the
39 regulatory agreement in any state court.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 3. Section 17058 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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

(B) The California Tax Credit Allocation Committee shall not require fees for the credit under this section in addition to those fees required for applications for the tax credit pursuant to Section 42 of the Internal Revenue Code. The committee may require a fee if the application for the credit under this section is submitted

1 in a calendar year after the year the application is submitted for
2 the federal tax credit.

3 (C) (i) For a project that receives a preliminary reservation of
4 the state low-income housing tax credit, allowed pursuant to
5 subdivision (a), on or after January 1, 2009, and before January 1,
6 2016, the credit shall be allocated to the partners of a partnership
7 owning the project in accordance with the partnership agreement,
8 regardless of how the federal low-income housing tax credit with
9 respect to the project is allocated to the partners, or whether the
10 allocation of the credit under the terms of the agreement has
11 substantial economic effect, within the meaning of Section 704(b)
12 of the Internal Revenue Code.

13 (ii) To the extent the allocation of the credit to a partner under
14 this section lacks substantial economic effect, any loss or deduction
15 otherwise allowable under this part that is attributable to the sale
16 or other disposition of that partner's partnership interest made prior
17 to the expiration of the federal credit shall not be allowed in the
18 taxable year in which the sale or other disposition occurs, but shall
19 instead be deferred until and treated as if it occurred in the first
20 taxable year immediately following the taxable year in which the
21 federal credit period expires for the project described in clause (i).

22 (iii) This subparagraph does not apply to a project that receives
23 a preliminary reservation of state low-income housing tax credits
24 under the set-aside described in subdivision (c) of Section 50199.20
25 of the Health and Safety Code unless the project also receives a
26 preliminary reservation of federal low-income housing tax credits.

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

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

33 (B) In the case of a partnership or an "S" corporation, the
34 housing sponsor shall provide a copy of the California Tax Credit
35 Allocation Committee certification to the taxpayer.

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

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

1 (E) (i) Except as described in clause—~~(ii)~~; *(ii) or (iii)*, for
2 buildings located in designated difficult development areas (DDAs)
3 or qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
4 of the Internal Revenue Code, credits may be allocated under this
5 section in the amounts prescribed in subdivision (c), provided that
6 the amount of credit allocated under Section 42 of the Internal
7 Revenue Code is computed on 100 percent of the qualified basis
8 of the building.

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

18 *(iii) Notwithstanding clause (i), the California Tax Credit*
19 *Allocation Committee may allocate the credit pursuant to*
20 *paragraph (4) of subdivision (c) even if the taxpayer receives*
21 *federal credits, pursuant to Section 42(d)(5)(B) of the Internal*
22 *Revenue Code.*

23 (F) (i) The California Tax Credit Allocation Committee may
24 allocate a credit under this section in exchange for a credit allocated
25 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
26 amounts up to 30 percent of the eligible basis of a building if the
27 credits allowed under Section 42 of the Internal Revenue Code are
28 reduced by an equivalent amount.

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

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

34 (1) In the case of any qualified low-income building placed in
35 service by the housing sponsor during 1987, the term “applicable
36 percentage” means 9 percent for each of the first three years and
37 3 percent for the fourth year for new buildings (whether or not the
38 building is federally subsidized) and for existing buildings.

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

4 (A) For each of the first three years, the percentage prescribed
5 by the Secretary of the Treasury for new buildings that are not
6 federally subsidized for the taxable year, determined in accordance
7 with the requirements of Section 42(b)(2) of the Internal Revenue
8 Code, in lieu of the percentage prescribed in Section 42(b)(1)(B)
9 of the Internal Revenue Code.

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

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

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

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

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

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

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

32 (ii) The Below-Market-Interest-Rate Program pursuant to
33 Section 221(d)(3) of the National Housing Act, Sections
34 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

37 (iv) Programs for rent supplement assistance pursuant to Section
38 101 of the Housing and Urban Development Act of 1965, Section
39 1701s of Title 12 of the United States Code, as amended.

1 (v) Programs pursuant to Section 515 of the Housing Act of
2 1949, Section 1485 of Title 42 of the United States Code, as
3 amended.

4 (vi) The low-income housing credit program set forth in Section
5 42 of the Internal Revenue Code.

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

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

14 (D) The property satisfies the requirements of Section 42(e) of
15 the Internal Revenue Code regarding rehabilitation expenditures,
16 except that the provisions of Section 42(e)(3)(A)(ii)(I) do not apply.

17 (5) *In the case of any qualified low-income building that is (A)*
18 *farmworker housing, as defined by Section 50199.7 of the Health*
19 *and Safety Code, and (B) is federally subsidized, the term*
20 *“applicable percentage” means for each of the first three years,*
21 *20 percent of the qualified basis of the building, and for the fourth*
22 *year, 15 percent of the qualified basis of the building.*

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

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

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

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

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

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

1 (C) Any amount allowed to be distributed under subparagraph
2 (A) that is not available for distribution during the first five years
3 of the compliance period may be accumulated and distributed any
4 time during the first 15 years of the compliance period but not
5 thereafter.

6 (2) The limitation on return applies in the aggregate to the
7 partners if the housing sponsor is a partnership and in the aggregate
8 to the shareholders if the housing sponsor is an “S” corporation.

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

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

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

19 (2) The special rule for the first taxable year of the credit period
20 under Section 42(f)(2) of the Internal Revenue Code does not apply
21 to the tax credit under this section.

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

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

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

35 (1) Section 42(h)(2) of the Internal Revenue Code does not
36 apply and instead the following provisions apply:

37 The total amount for the four-year period of the housing credit
38 dollars allocated in a calendar year to any building shall reduce
39 the aggregate housing credit dollar amount of the California Tax

1 Credit Allocation Committee for the calendar year in which the
2 allocation is made.

3 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
4 (7), and (8) of Section 42(h) of the Internal Revenue Code do not
5 apply to this section.

6 (g) The aggregate housing credit dollar amount that may be
7 allocated annually by the California Tax Credit Allocation
8 Committee pursuant to this section, Section 12206, and Section
9 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

1 (i) Section 42(j) of the Internal Revenue Code does not apply
2 and the following requirements of this section shall be set forth in
3 a regulatory agreement between the California Tax Credit
4 Allocation Committee and the housing sponsor, ~~which~~ *and the*
5 *regulatory* agreement shall be subordinated, when required, to any
6 lien or encumbrance of any banks or other institutional lenders to
7 the project. The regulatory agreement entered into pursuant to
8 subdivision (f) of Section 50199.14 of the Health and Safety Code
9 shall apply, provided that the agreement includes all of the
10 following provisions:

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

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

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

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

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

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

30 (7) A requirement that the housing sponsor, as security for the
31 performance of the housing sponsor's obligations under the
32 regulatory agreement, assign the housing sponsor's interest in rents
33 that it receives from the project, provided that until there is a
34 default under the regulatory agreement, the housing sponsor is
35 entitled to collect and retain the rents.

36 (8) The remedies available in the event of a default under the
37 regulatory agreement that is not cured within a reasonable cure
38 period, include, but are not limited to, allowing any of the parties
39 designated to enforce the regulatory agreement to collect all rents
40 with respect to the project; taking possession of the project and

1 operating the project in accordance with the regulatory agreement
2 until the enforcer determines the housing sponsor is in a position
3 to operate the project in accordance with the regulatory agreement;
4 applying to any court for specific performance; securing the
5 appointment of a receiver to operate the project; or any other relief
6 as may be appropriate.

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

19 (2) The committee shall adopt a qualified allocation plan, as
20 provided in Section 42(m)(1) of the Internal Revenue Code. In
21 adopting this plan, the committee shall comply with the provisions
22 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
23 ~~Code~~. *Code, respectively.*

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

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

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

35 (ii) The project's proposed financing, including tax credit
36 proceeds, shall be sufficient to complete the project and that the
37 proposed operating income shall be adequate to operate the project
38 for the extended use period.

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

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

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

8 (vi) The housing sponsor shall demonstrate that the project
9 development team has the experience and the financial capacity
10 to ensure project completion and operation for the extended use
11 period.

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

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

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

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

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

31 (i) Projects serving large families in which a substantial number,
32 as defined by the committee, of all residential units ~~is comprised~~
33 ~~of~~ are low-income units with three ~~and~~ or more bedrooms.

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

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

38 (iv) Projects for which a public agency provides direct or indirect
39 long-term financial support for at least 15 percent of the total
40 project development costs or projects for which the owner’s equity

1 constitutes at least 30 percent of the total project development
2 costs.

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

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

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

10 The term “secretary” shall be replaced by the term “California
11 Franchise Tax Board.”

12 (l) In the case in which the credit allowed under this section
13 exceeds the net tax, the excess-credit may be carried over to reduce
14 the net tax in the following year, and succeeding taxable years, if
15 necessary, until the credit has been exhausted.

16 (m) A project that received an allocation of a 1989 federal
17 housing credit dollar amount shall be eligible to receive an
18 allocation of a 1990 state housing credit dollar amount, subject to
19 all of the following conditions:

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

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

24 (3) Notwithstanding paragraph (2), a project applying for an
25 allocation under this subdivision is subject to the requirements of
26 paragraph (3) of subdivision (j).

27 (n) The credit period with respect to an allocation of credit in
28 1989 by the California Tax Credit Allocation Committee of which
29 any amount is attributable to unallocated credit from 1987 or 1988
30 shall not begin until after December 31, 1989.

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

34 (p) The provisions of Section 11407(c) of Public Law 101-508,
35 relating to election to accelerate credit, do not apply.

36 (q) The amendments to this section made by the act adding this
37 subdivision apply only to taxable years beginning on or after
38 January 1, 1994.

39 (r) This section shall remain in effect on and after December 1,
40 1990, for as long as Section 42 of the Internal Revenue Code,

1 relating to low-income housing ~~credits~~, *credit*, remains in effect.
2 Any unused credit may continue to be carried forward, as provided
3 in subdivision (l), until the credit has been exhausted.

4 SEC. 4. Section 23610.5 of the Revenue and Taxation Code
5 is amended to read:

6 23610.5. (a) (1) There shall be allowed as a credit against the
7 ~~“tax”~~ (as ~~“tax,”~~ *as* defined by Section ~~23036~~) 23036, a state
8 low-income housing tax credit in an amount equal to the amount
9 determined in subdivision (c), computed in accordance with Section
10 42 of the Internal Revenue Code ~~of 1986~~, except as otherwise
11 provided in this section.

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

16 (3) “Housing sponsor,” for purposes of this section, means the
17 sole owner in the case of a “C” corporation, the partnership in the
18 case of a partnership, and the “S” corporation in the case of an “S”
19 corporation.

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

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

27 (i) Except for projects to provide farmworker housing, as defined
28 in subdivision (h) of Section 50199.7 of the Health and Safety
29 Code, that are allocated credits solely under the set-aside described
30 in subdivision (c) of Section 50199.20 of the Health and Safety
31 Code, the project’s housing sponsor has been allocated by the
32 California Tax Credit Allocation Committee a credit for federal
33 income tax purposes under Section 42 of the Internal Revenue
34 Code.

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

37 (B) The California Tax Credit Allocation Committee shall not
38 require fees for the credit under this section in addition to those
39 fees required for applications for the tax credit pursuant to Section
40 42 of the Internal Revenue Code. The committee may require a

1 fee if the application for the credit under this section is submitted
2 in a calendar year after the year the application is submitted for
3 the federal tax credit.

4 (C) (i) For a project that receives a preliminary reservation of
5 the state low-income housing tax credit, allowed pursuant to
6 subdivision (a), on or after January 1, 2009, and before January 1,
7 2016, the credit shall be allocated to the partners of a partnership
8 owning the project in accordance with the partnership agreement,
9 regardless of how the federal low-income housing tax credit with
10 respect to the project is allocated to the partners, or whether the
11 allocation of the credit under the terms of the agreement has
12 substantial economic effect, within the meaning of Section 704(b)
13 of the Internal Revenue Code.

14 (ii) To the extent the allocation of the credit to a partner under
15 this section lacks substantial economic effect, any loss or deduction
16 otherwise allowable under this part that is attributable to the sale
17 or other disposition of that partner's partnership interest made prior
18 to the expiration of the federal credit shall not be allowed in the
19 taxable year in which the sale or other disposition occurs, but shall
20 instead be deferred until and treated as if it occurred in the first
21 taxable year immediately following the taxable year in which the
22 federal credit period expires for the project described in clause (i).

23 (iii) This subparagraph does not apply to a project that receives
24 a preliminary reservation of state low-income housing tax credits
25 under the set-aside described in subdivision (c) of Section 50199.20
26 of the Health and Safety Code unless the project also receives a
27 preliminary reservation of federal low-income housing tax credits.

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

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

34 (B) In the case of a partnership or an "S" corporation, the
35 housing sponsor shall provide a copy of the California Tax Credit
36 Allocation Committee certification to the taxpayer.

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

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

1 (E) (i) Except as described in clause—~~(ii)~~, (ii) or (iii), for
2 buildings located in designated difficult development areas (DDAs)
3 or qualified census tracts (QCTs), as defined in Section 42(d)(5)(B)
4 of the Internal Revenue Code, credits may be allocated under this
5 section in the amounts prescribed in subdivision (c), provided that
6 the amount of credit allocated under Section 42 of the Internal
7 Revenue Code is computed on 100 percent of the qualified basis
8 of the building.

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

18 *(iii) Notwithstanding clause (i), the California Tax Credit*
19 *Allocation Committee may allocate the credit pursuant to*
20 *paragraph (4) of subdivision (c) even if the taxpayer receives*
21 *federal credits, pursuant to Section 42(d)(5)(B) of the Internal*
22 *Revenue Code.*

23 (F) (i) The California Tax Credit Allocation Committee may
24 allocate a credit under this section in exchange for a credit allocated
25 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code in
26 amounts up to 30 percent of the eligible basis of a building if the
27 credits allowed under Section 42 of the Internal Revenue Code are
28 reduced by an equivalent amount.

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

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

34 (1) In the case of any qualified low-income building placed in
35 service by the housing sponsor during 1987, the term “applicable
36 percentage” means 9 percent for each of the first three years and
37 3 percent for the fourth year for new buildings (whether or not the
38 building is federally subsidized) and for existing buildings.

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

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

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

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

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

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

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

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

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

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

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

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

1 (v) Programs pursuant to Section 515 of the Housing Act of
2 1949, Section 1485 of Title 42 of the United States Code, as
3 amended.

4 (vi) The low-income housing credit program set forth in Section
5 42 of the Internal Revenue Code.

6 (B) The restrictions on rent and income levels will terminate or
7 the federally insured mortgage on the property is eligible for
8 prepayment any time within five years before or after the date of
9 application to the California Tax Credit Allocation Committee.

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

14 (D) The property satisfies the requirements of Section 42(e) of
15 the Internal Revenue Code regarding rehabilitation expenditures,
16 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
17 apply.

18 (5) *In the case of any qualified low-income building that is (A)*
19 *farmworker housing, as defined by Section 50199.7 of the Health*
20 *and Safety Code, and (B) is federally subsidized, the term*
21 *“applicable percentage” means for each of the first three years,*
22 *20 percent of the qualified basis of the building, and for the fourth*
23 *year, 15 percent of the qualified basis of the building.*

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

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

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

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

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

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

1 (C) Any amount allowed to be distributed under subparagraph
2 (A) that is not available for distribution during the first five years
3 of the compliance period may be accumulated and distributed any
4 time during the first 15 years of the compliance period but not
5 thereafter.

6 (2) The limitation on return applies in the aggregate to the
7 partners if the housing sponsor is a partnership and in the aggregate
8 to the shareholders if the housing sponsor is an “S” corporation.

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

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

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

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

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

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

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

35 (1) Section 42(h)(2) of the Internal Revenue Code does not
36 apply and instead the following provisions apply:

37 The total amount for the four-year credit period of the housing
38 credit dollars allocated in a calendar year to any building shall
39 reduce the aggregate housing credit dollar amount of the California

1 Tax Credit Allocation Committee for the calendar year in which
2 the allocation is made.

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

6 (g) The aggregate housing credit dollar amount that may be
7 allocated annually by the California Tax Credit Allocation
8 Committee pursuant to this section, Section 12206, and Section
9 17058 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

1 (i) Section 42(j) of the Internal Revenue Code does not apply
2 and the following shall be substituted in its place:

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

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

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

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

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

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

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

31 (7) A requirement that the housing sponsor, as security for the
32 performance of the housing sponsor's obligations under the
33 regulatory agreement, assign the housing sponsor's interest in rents
34 that it receives from the project, provided that until there is a
35 default under the regulatory agreement, the housing sponsor is
36 entitled to collect and retain the rents.

37 (8) ~~A provision that the~~ *The* remedies available in the event of
38 a default under the regulatory agreement that is not cured within
39 a reasonable cure period include, but are not limited to, allowing
40 any of the parties designated to enforce the regulatory agreement

1 to collect all rents with respect to the project; taking possession of
2 the project and operating the project in accordance with the
3 regulatory agreement until the enforcer determines the housing
4 sponsor is in a position to operate the project in accordance with
5 the regulatory agreement; applying to any court for specific
6 performance; securing the appointment of a receiver to operate
7 the project; or any other relief as may be appropriate.

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

20 (2) The committee shall adopt a qualified allocation plan, as
21 provided in Section 42(m)(1) of the Internal Revenue Code. In
22 adopting this plan, the committee shall comply with the provisions
23 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
24 ~~Code~~. *Code, respectively.*

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

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

33 (i) The housing sponsor shall demonstrate ~~that~~ there is a need
34 for low-income housing in the community or region for which it
35 is proposed.

36 (ii) The project's proposed financing, including tax credit
37 proceeds, shall be sufficient to complete the project and shall be
38 adequate to operate the project for the extended use period.

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

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

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

8 (vi) The housing sponsor shall demonstrate that the project
9 development team has the experience and the financial capacity
10 to ensure project completion and operation for the extended use
11 period.

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

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

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

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

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

31 (i) Projects serving large families in which a substantial number,
32 as defined by the committee, of all residential units are low-income
33 units with three and more bedrooms.

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

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

38 (iv) Projects for which a public agency provides direct or indirect
39 long-term financial support for at least 15 percent of the total
40 project development costs or projects for which the owner’s equity

1 constitutes at least 30 percent of the total project development
2 costs.

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

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

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

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

20 The term “secretary” shall be replaced by the term “California
21 Franchise Tax Board.”

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

26 (m) A project that received an allocation of a 1989 federal
27 housing credit dollar amount shall be eligible to receive an
28 allocation of a 1990 state housing credit dollar amount, subject to
29 all of the following conditions:

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

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

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

37 (n) The credit period with respect to an allocation of credit in
38 1989 by the California Tax Credit Allocation Committee of which
39 any amount is attributable to unallocated credit from 1987 or 1988
40 shall not begin until after December 31, 1989.

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

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

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

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

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

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

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

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

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

(s) The amendments to this section made by *Chapter 1222 of the act adding this subdivision Statutes of 1993* shall apply only to taxable years beginning on or after January 1, 1994, except that paragraph (1) of subdivision (q), as amended, shall apply to taxable years beginning on or after January 1, 1993.

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

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