

AMENDED IN SENATE APRIL 16, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 377

Introduced by Senator Beall

February 24, 2015

An act 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

SB 377, as amended, Beall. Income taxes: *insurance taxes*: credits: low-income housing: sale of credit.

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 credit amounts among low-income housing projects based on federal law.

This bill would, for taxable years beginning on or after January 1, 2016, allow a taxpayer that is allowed a low-income housing tax credit to *elect to sell* all or a portion of that credit to one or more unrelated parties for each taxable year in which the credit is allowed *for not less than 80% of the amount the credit to be sold, as provided*.

Existing law, in the case of a partnership, requires the allocation of the credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, as specified.

This bill would eliminate the January 1, 2016, date.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

1 SECTION 1. 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 with Section 42 of the
7 Internal Revenue Code, relating to low-income housing credit,
8 except as otherwise provided in this section.

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

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

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

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

28 (i) The project’s housing sponsor has been allocated by the
29 California Tax Credit Allocation Committee a credit for federal
30 income tax purposes under Section 42 of the Internal Revenue
31 Code, relating to low-income housing credit.

32 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
33 Internal Revenue Code, relating to special rule where 50 percent

1 or more of building is financed with tax-exempt bonds subject to
2 volume cap.

3 (B) The California Tax Credit Allocation Committee shall not
4 require fees for the credit under this section in addition to those
5 fees required for applications for the tax credit pursuant to Section
6 42 of the Internal Revenue Code, relating to low-income housing
7 credit. The committee may require a fee if the application for the
8 credit under this section is submitted in a calendar year after the
9 year the application is submitted for the federal tax credit.

10 (C) (i) For a project that receives a preliminary reservation of
11 the state low-income housing tax credit, allowed pursuant to
12 subdivision (a), on or after January 1, 2009, the credit shall be
13 allocated to the partners of a partnership owning the project in
14 accordance with the partnership agreement, regardless of how the
15 federal low-income housing tax credit with respect to the project
16 is allocated to the partners, or whether the allocation of the credit
17 under the terms of the agreement has substantial economic effect,
18 within the meaning of Section 704(b) of the Internal Revenue
19 Code, relating to determination of distributive share.

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

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

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

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

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

37 (E) All elections made by the taxpayer pursuant to Section 42
38 of the Internal Revenue Code, relating to low-income housing
39 credit, shall apply to this section.

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

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

20 (G) (i) The California Tax Credit Allocation Committee may
21 allocate a credit under this section in exchange for a credit allocated
22 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
23 relating to increase in credit for buildings in high-cost areas, in
24 amounts up to 30 percent of the eligible basis of a building if the
25 credits allowed under Section 42 of the Internal Revenue Code,
26 relating to low-income housing credit, are reduced by an equivalent
27 amount.

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

31 (c) Section 42(b) of the Internal Revenue Code, relating to
32 applicable percentage, shall be modified as follows:

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

36 (A) For each of the first three years, the percentage prescribed
37 by the Secretary of the Treasury for new buildings that are not
38 federally subsidized for the taxable year, determined in accordance
39 with the requirements of Section 42(b)(2) of the Internal Revenue
40 Code, relating to temporary minimum credit rate for non-federally

1 subsidized new buildings, in lieu of the percentage prescribed in
2 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

25 (ii) The Below-Market-Interest-Rate Program pursuant to
26 Section 221(d)(3) of the National Housing Act, Sections
27 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

30 (iv) Programs for rent supplement assistance pursuant to Section
31 101 of the Housing and Urban Development Act of 1965, Section
32 1701s of Title 12 of the United States Code, as amended.

33 (v) Programs pursuant to Section 515 of the Housing Act of
34 1949, Section 1485 of Title 42 of the United States Code, as
35 amended.

36 (vi) The low-income housing credit program set forth in Section
37 42 of the Internal Revenue Code, relating to low-income housing
38 credit.

39 (B) The restrictions on rent and income levels will terminate or
40 the federally insured mortgage on the property is eligible for

1 prepayment any time within five years before or after the date of
2 application to the California Tax Credit Allocation Committee.

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

7 (D) The property satisfies the requirements of Section 42(e) of
8 the Internal Revenue Code relating to rehabilitation expenditures
9 treated as a separate new building, except that the provisions of
10 Section 42(e)(3)(A)(ii)(I) shall not apply.

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

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

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

19 (i) The owner equity, which shall include the amount of the
20 capital contributions actually paid to the housing sponsor and shall
21 not include any amounts until they are paid on an investor note.

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

24 (B) The amount of the cashflow from those units in the building
25 that are not low-income units. For purposes of computing cashflow
26 under this subparagraph, operating costs shall be allocated to the
27 low-income units using the “floor space fraction,” as defined in
28 Section 42 of the Internal Revenue Code, relating to low-income
29 housing credit.

30 (C) Any amount allowed to be distributed under subparagraph
31 (A) that is not available for distribution during the first five years
32 of the compliance period may be accumulated and distributed any
33 time during the first 15 years of the compliance period but not
34 thereafter.

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

38 (3) The housing sponsor shall apply any cash available for
39 distribution in excess of the amount eligible to be distributed under
40 paragraph (1) to reduce the rent on rent-restricted units or to

1 increase the number of rent-restricted units subject to the tests of
2 Section 42(g)(1) of the Internal Revenue Code, relating to in
3 general.

4 (e) The provisions of Section 42(f) of the Internal Revenue
5 Code, relating to definition and special rules relating to credit
6 period, shall be modified as follows:

7 (1) The term “credit period” as defined in Section 42(f)(1) of
8 the Internal Revenue Code, relating to credit period defined, is
9 modified by substituting “four taxable years” for “10 taxable
10 years.”

11 (2) The special rule for the first taxable year of the credit period
12 under Section 42(f)(2) of the Internal Revenue Code, relating to
13 special rule for 1st year of credit period, shall not apply to the tax
14 credit under this section.

15 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
16 determination of applicable percentage with respect to increases
17 in qualified basis after 1st year of credit period, is modified to
18 read:

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

28 (f) The provisions of Section 42(h) of the Internal Revenue
29 Code, relating to limitation on aggregate credit allowable with
30 respect to projects located in a state, shall be modified as follows:

31 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
32 allocated credit amount to apply to all taxable years ending during
33 or after credit allocation year, shall not be applicable and instead
34 the following provisions shall be applicable:

35 The total amount for the four-year credit period of the housing
36 credit dollars allocated in a calendar year to any building shall
37 reduce the aggregate housing credit dollar amount of the California
38 Tax Credit Allocation Committee for the calendar year in which
39 the allocation is made.

1 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
2 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
3 to limitation on aggregate credit allowable with respect to projects
4 located in a state, shall not be applicable.

5 (g) The aggregate housing credit dollar amount that may be
6 allocated annually by the California Tax Credit Allocation
7 Committee pursuant to this section, Section 17058, and Section
8 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

1 (i) (1) Section 42(j) of the Internal Revenue Code, relating to
2 recapture of credit, shall not be applicable and the provisions in
3 paragraph (2) shall be substituted in its place.

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

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

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

25 (E) A provision incorporating the requirements of Section 42
26 of the Internal Revenue Code, relating to low-income housing
27 credit, as modified by this section.

28 (F) A requirement that the housing sponsor notify the California
29 Tax Credit Allocation Committee or its designee and the local
30 agency that can enforce the regulatory agreement if there is a
31 determination by the Internal Revenue Service that the project is
32 not in compliance with Section 42(g) of the Internal Revenue Code,
33 relating to qualified low-income housing project.

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

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

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

24 (2) The committee shall adopt a qualified allocation plan, as
25 provided in Section 42(m)(1) of the Internal Revenue Code, relating
26 to plans for allocation of credit among projects. In adopting this
27 plan, the committee shall comply with the provisions of Sections
28 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
29 relating to qualified allocation plan and relating to certain selection
30 criteria must be used, respectively.

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

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

1 (i) The housing sponsor shall demonstrate that there is a need
2 and demand for low-income housing in the community or region
3 for 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 are low-income
40 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, relating to
17 certifications and other reports to secretary, shall be modified as
18 follows:

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

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

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

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

30 (o) (1) Notwithstanding any other law, for any credits awarded
31 under this section for taxable years beginning on or after January
32 1, 2016, a taxpayer may *make an irrevocable election in its*
33 *application to the California Tax Credit Allocation Committee to*
34 *sell all or any portion of any credit allowed under this section to*
35 *one or more unrelated parties for each taxable year in which the*
36 *credit is allowed for consideration that is not less than 80 percent*
37 *of the amount of the credit.*

38 (2) (A) The sale authorized by paragraph (1) may be
39 documented based on any method selected by the taxpayer that
40 originally receives the credit.

1 (B) The sale authorized by paragraph (1) may be changed for
2 any subsequent taxable year if the sale is expressly shown on each
3 of the returns of both the transferor and the transferee that sell and
4 receive the credit.

5 (C) (i) The taxpayer that originally received the credit shall
6 report to the ~~Franchise Tax Board~~ *California Tax Credit Allocation*
7 *Committee* prior to the sale of the credit, in the form and manner
8 specified by the ~~Franchise Tax Board~~, *California Tax Credit*
9 *Allocation Committee*, all required information regarding the
10 purchase and sale of the credit, including the social security or
11 other taxpayer identification number of the unrelated party to whom
12 the credit has been sold, the face amount of the credit sold, and
13 the amount of consideration received by the taxpayer for the sale
14 of the credit.

15 (ii) *The California Tax Credit Allocation Committee shall*
16 *provide an annual listing to the Franchise Tax Board, in a form*
17 *and manner agreed upon by the California Tax Credit Allocation*
18 *Committee and the Franchise Tax Board, of the taxpayers that*
19 *have sold or purchased a credit pursuant to this subdivision.*

20 ~~(D) A subsequent taxpayer that holds the credit shall report to~~
21 ~~the Franchise Tax Board prior to the sale of the credit, in the form~~
22 ~~and manner specified by the Franchise Tax Board, all required~~
23 ~~information regarding the purchase and sale of the credit, including~~
24 ~~the social security or other taxpayer identification number of the~~
25 ~~unrelated party to whom the credit has been sold and the face~~
26 ~~amount of the credit sold.~~

27 (3) A credit may be sold pursuant to this subdivision to more
28 than one unrelated party, and ~~may~~ *shall not* be resold by the
29 unrelated party to another taxpayer or other party.

30 (4) Notwithstanding any other provision of law, the taxpayer
31 that originally received the credit that is sold pursuant to paragraph
32 (1) shall remain solely liable for all obligations and liabilities
33 imposed on the taxpayer by this section with respect to the credit,
34 none of which shall apply to any party to whom the credit has been
35 sold or subsequently transferred. Parties who purchase credits
36 pursuant to paragraph (1) shall be entitled to utilize the purchased
37 credits in the same manner in which the taxpayer that originally
38 received the credit could utilize them.

1 (5) A taxpayer shall not sell a credit allowed by this section if
2 the taxpayer was allowed the credit on any tax return of the
3 taxpayer.

4 (6) *Notwithstanding paragraph (1), the taxpayer, with the*
5 *approval of the Executive Director of the California Tax Credit*
6 *Allocation Committee, may rescind the election to sell all or any*
7 *portion of the credit allowed under this section if the consideration*
8 *for the credit falls below 80% of the amount of the credit after the*
9 *California Tax Credit Allocation Committee reservation.*

10 (p) This section shall remain in effect for as long as Section 42
11 of the Internal Revenue Code, relating to low-income housing
12 credit, remains in effect.

13 SEC. 2. Section 17058 of the Revenue and Taxation Code is
14 amended to read:

15 17058. (a) (1) There shall be allowed as a credit against the
16 “net tax,” as defined in Section 17039, a state low-income housing
17 tax credit in an amount equal to the amount determined in
18 subdivision (c), computed in accordance with Section 42 of the
19 Internal Revenue Code, relating to low-income housing credit,
20 except as otherwise provided in this section.

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

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

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

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

35 (i) Except for projects to provide farmworker housing, as defined
36 in subdivision (h) of Section 50199.7 of the Health and Safety
37 Code, that are allocated credits solely under the set-aside described
38 in subdivision (c) of Section 50199.20 of the Health and Safety
39 Code, the project’s housing sponsor has been allocated by the
40 California Tax Credit Allocation Committee a credit for federal

1 income tax purposes under Section 42 of the Internal Revenue
2 Code, relating to low-income housing credit.

3 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
4 Internal Revenue Code, relating to special rule where 50 percent
5 or more of building is financed with tax-exempt bonds subject to
6 volume cap.

7 (B) The California Tax Credit Allocation Committee shall not
8 require fees for the credit under this section in addition to those
9 fees required for applications for the tax credit pursuant to Section
10 42 of the Internal Revenue Code, relating to low-income housing
11 credit. The committee may require a fee if the application for the
12 credit under this section is submitted in a calendar year after the
13 year the application is submitted for the federal tax credit.

14 (C) (i) For a project that receives a preliminary reservation of
15 the state low-income housing tax credit, allowed pursuant to
16 subdivision (a), on or after January 1, 2009, the credit shall be
17 allocated to the partners of a partnership owning the project in
18 accordance with the partnership agreement, regardless of how the
19 federal low-income housing tax credit with respect to the project
20 is allocated to the partners, or whether the allocation of the credit
21 under the terms of the agreement has substantial economic effect,
22 within the meaning of Section 704(b) of the Internal Revenue
23 Code, relating to determination of distributive share.

24 (ii) To the extent the allocation of the credit to a partner under
25 this section lacks substantial economic effect, any loss or deduction
26 otherwise allowable under this part that is attributable to the sale
27 or other disposition of that partner's partnership interest made prior
28 to the expiration of the federal credit shall not be allowed in the
29 taxable year in which the sale or other disposition occurs, but shall
30 instead be deferred until and treated as if it occurred in the first
31 taxable year immediately following the taxable year in which the
32 federal credit period expires for the project described in clause (i).

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

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

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

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

6 (D) All elections made by the taxpayer pursuant to Section 42
7 of the Internal Revenue Code, relating to low-income housing
8 credit, shall apply to this section.

9 (E) (i) Except as described in clause (ii), for buildings located
10 in designated difficult development areas (DDAs) or qualified
11 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
12 Internal Revenue Code, relating to increase in credit for buildings
13 in high-cost areas, credits may be allocated under this section in
14 the amounts prescribed in subdivision (c), provided that the amount
15 of credit allocated under Section 42 of the Internal Revenue Code,
16 relating to low-income housing credit, is computed on 100 percent
17 of the qualified basis of the building.

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

28 (G) (i) The California Tax Credit Allocation Committee may
29 allocate a credit under this section in exchange for a credit allocated
30 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
31 relating to increase in credit for buildings in high-cost areas, in
32 amounts up to 30 percent of the eligible basis of a building if the
33 credits allowed under Section 42 of the Internal Revenue Code,
34 relating to low-income housing credit, are reduced by an equivalent
35 amount.

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

39 (c) Section 42(b) of the Internal Revenue Code, relating to
40 applicable percentage, shall be modified as follows:

1 (1) In the case of any qualified low-income building placed in
2 service by the housing sponsor during 1987, the term “applicable
3 percentage” means 9 percent for each of the first three years and
4 3 percent for the fourth year for new buildings (whether or not the
5 building is federally subsidized) and for existing buildings.

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

9 (A) For each of the first three years, the percentage prescribed
10 by the Secretary of the Treasury for new buildings that are not
11 federally subsidized for the taxable year, determined in accordance
12 with the requirements of Section 42(b)(2) of the Internal Revenue
13 Code, relating to temporary minimum credit rate for non-federally
14 subsidized new buildings, in lieu of the percentage prescribed in
15 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

38 (ii) The Below-Market-Interest-Rate Program pursuant to
39 Section 221(d)(3) of the National Housing Act, Sections
40 1715l(d)(3) and (5) of Title 12 of the United States Code.

- 1 (iii) Section 236 of the National Housing Act, Section 1715z-1
2 of Title 12 of the United States Code.
- 3 (iv) Programs for rent supplement assistance pursuant to Section
4 101 of the Housing and Urban Development Act of 1965, Section
5 1701s of Title 12 of the United States Code, as amended.
- 6 (v) Programs pursuant to Section 515 of the Housing Act of
7 1949, Section 1485 of Title 42 of the United States Code, as
8 amended.
- 9 (vi) The low-income housing credit program set forth in Section
10 42 of the Internal Revenue Code, relating to low-income housing
11 credit.
- 12 (B) The restrictions on rent and income levels will terminate or
13 the federally insured mortgage on the property is eligible for
14 prepayment any time within five years before or after the date of
15 application to the California Tax Credit Allocation Committee.
- 16 (C) The entity acquiring the property enters into a regulatory
17 agreement that requires the property to be operated in accordance
18 with the requirements of this section for a period equal to the
19 greater of 55 years or the life of the property.
- 20 (D) The property satisfies the requirements of Section 42(e) of
21 the Internal Revenue Code relating to rehabilitation expenditures
22 treated as a separate new building, except that the provisions of
23 Section 42(e)(3)(A)(ii)(I) shall not apply.
- 24 (d) The term “qualified low-income housing project” as defined
25 in Section 42(c)(2) of the Internal Revenue Code, relating to
26 qualified low-income building, is modified by adding the following
27 requirements:
- 28 (1) The taxpayer shall be entitled to receive a cash distribution
29 from the operations of the project, after funding required reserves,
30 that, at the election of the taxpayer, is equal to:
- 31 (A) An amount not to exceed 8 percent of the lesser of:
- 32 (i) The owner equity, which shall include the amount of the
33 capital contributions actually paid to the housing sponsor and shall
34 not include any amounts until they are paid on an investor note.
- 35 (ii) Twenty percent of the adjusted basis of the building as of
36 the close of the first taxable year of the credit period.
- 37 (B) The amount of the cashflow from those units in the building
38 that are not low-income units. For purposes of computing cashflow
39 under this subparagraph, operating costs shall be allocated to the
40 low-income units using the “floor space fraction,” as defined in

1 Section 42 of the Internal Revenue Code, relating to low-income
2 housing credit.

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

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

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

17 (e) The provisions of Section 42(f) of the Internal Revenue
18 Code, relating to definition and special rules relating to credit
19 period, shall be modified as follows:

20 (1) The term “credit period” as defined in Section 42(f)(1) of
21 the Internal Revenue Code, relating to credit period defined, is
22 modified by substituting “four taxable years” for “10 taxable
23 years.”

24 (2) The special rule for the first taxable year of the credit period
25 under Section 42(f)(2) of the Internal Revenue Code, relating to
26 special rule for 1st year of credit period, shall not apply to the tax
27 credit under this section.

28 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
29 determination of applicable percentage with respect to increases
30 in qualified basis after 1st year of credit period, is modified to
31 read:

32 If, as of the close of any taxable year in the compliance period,
33 after the first year of the credit period, the qualified basis of any
34 building exceeds the qualified basis of that building as of the close
35 of the first year of the credit period, the housing sponsor, to the
36 extent of its tax credit allocation, shall be eligible for a credit on
37 the excess in an amount equal to the applicable percentage
38 determined pursuant to subdivision (c) for the four-year period
39 beginning with the taxable year in which the increase in qualified
40 basis occurs.

1 (f) The provisions of Section 42(h) of the Internal Revenue
2 Code, relating to limitation on aggregate credit allowable with
3 respect to projects located in a state, shall be modified as follows:

4 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
5 allocated credit amount to apply to all taxable years ending during
6 or after credit allocation year, shall not be applicable and instead
7 the following provisions shall be applicable:

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

13 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
14 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
15 to limitation on aggregate credit allowable with respect to projects
16 located in a state, shall not be applicable.

17 (g) The aggregate housing credit dollar amount that may be
18 allocated annually by the California Tax Credit Allocation
19 Committee pursuant to this section, Section 12206, and Section
20 23610.5 shall be an amount equal to the sum of all the following:

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

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

32 (3) The amount of housing credit ceiling returned in the calendar
33 year. For purposes of this paragraph, the amount of housing credit
34 dollar amount returned in the calendar year equals the housing
35 credit dollar amount previously allocated to any project that does
36 not become a qualified low-income housing project within the
37 period required by this section or to any project with respect to
38 which an allocation is canceled by mutual consent of the California
39 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

14 (i) Section 42(j) of the Internal Revenue Code, relating to
15 recapture of credit, shall not be applicable and the following
16 requirements of this section shall be set forth in a regulatory
17 agreement between the California Tax Credit Allocation Committee
18 and the housing sponsor, and this agreement shall be subordinated,
19 when required, to any lien or encumbrance of any banks or other
20 institutional lenders to the project. The regulatory agreement
21 entered into pursuant to subdivision (f) of Section 50199.14 of the
22 Health and Safety Code shall apply, provided that the agreement
23 includes all of the following provisions:

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

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

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

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

37 (5) A provision incorporating the requirements of Section 42
38 of the Internal Revenue Code, relating to low-income housing
39 credit, as modified by this section.

1 (6) A requirement that the housing sponsor notify the California
2 Tax Credit Allocation Committee or its designee if there is a
3 determination by the Internal Revenue Service that the project is
4 not in compliance with Section 42(g) of the Internal Revenue Code,
5 relating to qualified low-income housing project.

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

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

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

35 (2) The committee shall adopt a qualified allocation plan, as
36 provided in Section 42(m)(1) of the Internal Revenue Code, relating
37 to plans for allocation of credit among projects. In adopting this
38 plan, the committee shall comply with the provisions of Sections
39 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,

1 relating to qualified allocation plan and relating to certain selection
2 criteria must be used, respectively.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (k) Section 42(l) of the Internal Revenue Code, relating to
29 certifications and other reports to secretary, shall be modified as
30 follows:

31 The term “secretary” shall be replaced by the term “Franchise
32 Tax Board.”

33 (l) In the case where the credit allowed under this section
34 exceeds the net tax, the excess may be carried over to reduce the
35 net tax in the following year, and succeeding years if necessary,
36 until the credit has been exhausted.

37 (m) A project that received an allocation of a 1989 federal
38 housing credit dollar amount shall be eligible to receive an
39 allocation of a 1990 state housing credit dollar amount, subject to
40 all of the following conditions:

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

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

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

8 (n) The credit period with respect to an allocation of credit in
9 1989 by the California Tax Credit Allocation Committee of which
10 any amount is attributable to unallocated credit from 1987 or 1988
11 shall not begin until after December 31, 1989.

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

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

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

19 This section shall remain in effect on and after December 1,
20 1990, for as long as Section 42 of the Internal Revenue Code,
21 relating to low-income housing credit, remains in effect.

22 (r) (1) Notwithstanding any other law, for any credits awarded
23 under this section for taxable years beginning on or after January
24 1, 2016, a taxpayer may *make an irrevocable election in its*
25 *application to the California Tax Credit Allocation Committee to*
26 *sell all or any portion of any credit allowed under this section to*
27 *one or more unrelated parties for each taxable year in which the*
28 *credit is allowed for consideration that is not less than 80 percent*
29 *of the amount of the credit.*

30 (2) (A) The sale authorized by paragraph (1) may be
31 documented based on any method selected by the taxpayer that
32 originally receives the credit.

33 (B) The sale authorized by paragraph (1) may be changed for
34 any subsequent taxable year if the sale is expressly shown on each
35 of the returns of both the transferor and the transferee that sell and
36 receive the credit.

37 (C) (i) The taxpayer that originally received the credit shall
38 report to the ~~Franchise Tax Board~~ *California Tax Credit Allocation*
39 *Committee* prior to the sale of the credit, in the form and manner
40 specified by the ~~Franchise Tax Board~~, *California Tax Credit*

1 *Allocation Committee*, all required information regarding the
2 purchase and sale of the credit, including the social security or
3 other taxpayer identification number of the unrelated party to whom
4 the credit has been sold, the face amount of the credit sold, and
5 the amount of consideration received by the taxpayer for the sale
6 of the credit.

7 *(ii) The California Tax Credit Allocation Committee shall*
8 *provide an annual listing to the Franchise Tax Board, in a form*
9 *and manner agreed upon by the California Tax Credit Allocation*
10 *Committee and the Franchise Tax Board, of the taxpayers that*
11 *have sold or purchased a credit pursuant to this subdivision.*

12 ~~(D) A subsequent taxpayer that holds the credit shall report to~~
13 ~~the Franchise Tax Board prior to the sale of the credit, in the form~~
14 ~~and manner specified by the Franchise Tax Board, all required~~
15 ~~information regarding the purchase and sale of the credit, including~~
16 ~~the social security or other taxpayer identification number of the~~
17 ~~unrelated party to whom the credit has been sold and the face~~
18 ~~amount of the credit sold.~~

19 (3) A credit may be sold pursuant to this subdivision to more
20 than one unrelated party, and ~~may~~ *shall not* be resold by the
21 unrelated party to another taxpayer or other party.

22 (4) Notwithstanding any other provision of law, the taxpayer
23 that originally received the credit that is sold pursuant to paragraph
24 (1) shall remain solely liable for all obligations and liabilities
25 imposed on the taxpayer by this section with respect to the credit,
26 none of which shall apply to any party to whom the credit has been
27 sold or subsequently transferred. Parties who purchase credits
28 pursuant to paragraph (1) shall be entitled to utilize the purchased
29 credits in the same manner in which the taxpayer that originally
30 received the credit could utilize them.

31 (5) A taxpayer shall not sell a credit allowed by this section if
32 the taxpayer was allowed the credit on any tax return of the
33 taxpayer.

34 *(6) Notwithstanding paragraph (1), the taxpayer, with the*
35 *approval of the Executive Director of the California Tax Credit*
36 *Allocation Committee, may rescind the election to sell all or any*
37 *portion of the credit allowed under this section if the consideration*
38 *for the credit falls below 80% of the amount of the credit after the*
39 *California Tax Credit Allocation Committee reservation.*

1 (s) The amendments to this section made by Chapter 1222 of
2 the Statutes of 1993 shall apply only to taxable years beginning
3 on or after January 1, 1994.

4 SEC. 3. 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 defined by Section 23036, a state low-income housing
8 tax credit in an amount equal to the amount determined in
9 subdivision (c), computed in accordance with Section 42 of the
10 Internal Revenue Code, relating to low-income housing credit,
11 except as otherwise 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, relating to low-income housing credit.

35 (ii) It qualifies for a credit under Section 42(h)(4)(B) of the
36 Internal Revenue Code, relating to special rule where 50 percent
37 or more of building is financed with tax-exempt bonds subject to
38 volume cap.

39 (B) The California Tax Credit Allocation Committee shall not
40 require fees for the credit under this section in addition to those

1 fees required for applications for the tax credit pursuant to Section
2 42 of the Internal Revenue Code, relating to low-income housing
3 credit. The committee may require a fee if the application for the
4 credit under this section is submitted in a calendar year after the
5 year the application is submitted for the federal tax credit.

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

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

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

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, relating to low-income housing
40 credit, shall apply to this section.

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

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

20 (G) (i) The California Tax Credit Allocation Committee may
21 allocate a credit under this section in exchange for a credit allocated
22 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
23 relating to increase in credit for buildings in high-cost areas, in
24 amounts up to 30 percent of the eligible basis of a building if the
25 credits allowed under Section 42 of the Internal Revenue Code,
26 relating to low-income housing credit, are reduced by an equivalent
27 amount.

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

31 (c) Section 42(b) of the Internal Revenue Code, relating to
32 applicable percentage, shall be modified as follows:

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

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

1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are not
3 federally subsidized for the taxable year, determined in accordance
4 with the requirements of Section 42(b)(2) of the Internal Revenue
5 Code, relating to temporary minimum credit rate for non-federally
6 subsidized new buildings, in lieu of the percentage prescribed in
7 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

35 (iv) Programs for rent supplement assistance pursuant to Section
36 101 of the Housing and Urban Development Act of 1965, Section
37 1701s of Title 12 of the United States Code, as amended.

38 (v) Programs pursuant to Section 515 of the Housing Act of
39 1949, Section 1485 of Title 42 of the United States Code, as
40 amended.

1 (vi) The low-income housing credit program set forth in Section
2 42 of the Internal Revenue Code, relating to low-income housing
3 credit.

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

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

12 (D) The property satisfies the requirements of Section 42(e) of
13 the Internal Revenue Code relating to rehabilitation expenditures
14 treated as a separate new building, except that the provisions of
15 Section 42(e)(3)(A)(ii)(I) shall not apply.

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

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

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

24 (i) The owner equity, which shall include the amount of the
25 capital contributions actually paid to the housing sponsor and shall
26 not include any amounts until they are paid on an investor note.

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

29 (B) The amount of the cashflow from those units in the building
30 that are not low-income units. For purposes of computing cashflow
31 under this subparagraph, operating costs shall be allocated to the
32 low-income units using the “floor space fraction,” as defined in
33 Section 42 of the Internal Revenue Code, relating to low-income
34 housing credit.

35 (C) Any amount allowed to be distributed under subparagraph
36 (A) that is not available for distribution during the first five years
37 of the compliance period may be accumulated and distributed any
38 time during the first 15 years of the compliance period but not
39 thereafter.

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

4 (3) The housing sponsor shall apply any cash available for
5 distribution in excess of the amount eligible to be distributed under
6 paragraph (1) to reduce the rent on rent-restricted units or to
7 increase the number of rent-restricted units subject to the tests of
8 Section 42(g)(1) of the Internal Revenue Code, relating to in
9 general.

10 (e) The provisions of Section 42(f) of the Internal Revenue
11 Code, relating to definition and special rules relating to credit
12 period, shall be modified as follows:

13 (1) The term “credit period” as defined in Section 42(f)(1) of
14 the Internal Revenue Code, relating to credit period defined, is
15 modified by substituting “four taxable years” for “10 taxable
16 years.”

17 (2) The special rule for the first taxable year of the credit period
18 under Section 42(f)(2) of the Internal Revenue Code, relating to
19 special rule for 1st year of credit period, shall not apply to the tax
20 credit under this section.

21 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
22 determination of applicable percentage with respect to increases
23 in qualified basis after 1st year of credit period, is modified to
24 read:

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

34 (f) The provisions of Section 42(h) of the Internal Revenue
35 Code, relating to limitation on aggregate credit allowable with
36 respect to projects located in a state, shall be modified as follows:

37 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
38 allocated credit amount to apply to all taxable years ending during
39 or after credit allocation year, shall not be applicable and instead
40 the following provisions shall be applicable:

1 The total amount for the four-year credit period of the housing
2 credit dollars allocated in a calendar year to any building shall
3 reduce the aggregate housing credit dollar amount of the California
4 Tax Credit Allocation Committee for the calendar year in which
5 the allocation is made.

6 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
7 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
8 to limitation on aggregate credit allowable with respect to projects
9 located in a state, shall not be applicable.

10 (g) The aggregate housing credit dollar amount that may be
11 allocated annually by the California Tax Credit Allocation
12 Committee pursuant to this section, Section 12206, and Section
13 17058 shall be an amount equal to the sum of all the following:

14 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
15 year, and, for the 2002 calendar year and each calendar year
16 thereafter, seventy million dollars (\$70,000,000) increased by the
17 percentage, if any, by which the Consumer Price Index for the
18 preceding calendar year exceeds the Consumer Price Index for the
19 2001 calendar year. For the purposes of this paragraph, the term
20 “Consumer Price Index” means the last Consumer Price Index for
21 All Urban Consumers published by the federal Department of
22 Labor.

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

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

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

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

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

6 (i) Section 42(j) of the Internal Revenue Code, relating to
7 recapture of credit, shall not be applicable and the following shall
8 be substituted in its place:

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

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

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

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

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

30 (5) A provision incorporating the requirements of Section 42
31 of the Internal Revenue Code, relating to low-income housing
32 credit, as modified by this section.

33 (6) A requirement that the housing sponsor notify the California
34 Tax Credit Allocation Committee or its designee if there is a
35 determination by the Internal Revenue Service that the project is
36 not in compliance with Section 42(g) of the Internal Revenue Code,
37 relating to qualified low-income housing project.

38 (7) A requirement that the housing sponsor, as security for the
39 performance of the housing sponsor’s obligations under the
40 regulatory agreement, assign the housing sponsor’s interest in rents

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

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

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

27 (2) The committee shall adopt a qualified allocation plan, as
28 provided in Section 42(m)(1) of the Internal Revenue Code, relating
29 to plans for allocation of credit among projects. In adopting this
30 plan, the committee shall comply with the provisions of Sections
31 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
32 relating to qualified allocation plan and relating to certain selection
33 criteria must be used, respectively.

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

39 (A) All housing sponsors, as defined by paragraph (3) of
40 subdivision (a), shall demonstrate at the time the application is

1 filed with the committee that the project meets the following
2 threshold requirements:

3 (i) The housing sponsor shall demonstrate that there is a need
4 for low-income housing in the community or region for which it
5 is proposed.

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

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

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

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

16 (vi) The housing sponsor shall demonstrate that the project
17 development team has the experience and the financial capacity
18 to ensure project completion and operation for the extended use
19 period.

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

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

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

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

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

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

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

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

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

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

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

19 (5) Not less than 20 percent of the low-income housing tax
20 credits available annually under this section, Section 12206, and
21 Section 17058 shall be set aside for allocation to rural areas as
22 defined in Section 50199.21 of the Health and Safety Code. Any
23 amount of credit set aside for rural areas remaining on or after
24 October 31 of any calendar year shall be available for allocation
25 to any eligible project. No amount of credit set aside for rural areas
26 shall be considered available for any eligible project so long as
27 there are eligible rural applications pending on October 31.

28 (k) Section 42(l) of the Internal Revenue Code, relating to
29 certifications and other reports to secretary, shall be modified as
30 follows:

31 The term “secretary” shall be replaced by the term “Franchise
32 Tax Board.”

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

37 (m) A project that received an allocation of a 1989 federal
38 housing credit dollar amount shall be eligible to receive an
39 allocation of a 1990 state housing credit dollar amount, subject to
40 all of the following conditions:

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

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

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

8 (n) The credit period with respect to an allocation of credit in
9 1989 by the California Tax Credit Allocation Committee of which
10 any amount is attributable to unallocated credit from 1987 or 1988
11 shall not begin until after December 31, 1989.

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

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

17 (q) (1) A corporation may elect to assign any portion of any
18 credit allowed under this section to one or more affiliated
19 corporations for each taxable year in which the credit is allowed.
20 For purposes of this subdivision, “affiliated corporation” has the
21 meaning provided in subdivision (b) of Section 25110, as that
22 section was amended by Chapter 881 of the Statutes of 1993, as
23 of the last day of the taxable year in which the credit is allowed,
24 except that “100 percent” is substituted for “more than 50 percent”
25 wherever it appears in the section, as that section was amended by
26 Chapter 881 of the Statutes of 1993, and “voting common stock”
27 is substituted for “voting stock” wherever it appears in the section,
28 as that section was amended by Chapter 881 of the Statutes of
29 1993.

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

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

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

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

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

1 This section shall remain in effect on and after December 1,
2 1990, for as long as Section 42 of the Internal Revenue Code,
3 relating to low-income housing credit, remains in effect.

4 (s) (1) Notwithstanding any other law, for any credits awarded
5 under this section for taxable ~~year~~ *years* beginning on or after
6 January 1, 2016, a taxpayer may *make an irrevocable election in*
7 *its application to the California Tax Credit Allocation Committee*
8 *to sell all or any portion of any credit allowed under this section*
9 *to one or more unrelated parties for each taxable year in which the*
10 *credit is allowed for consideration that is not less than 80 percent*
11 *of the amount of the credit.*

12 (2) (A) The sale authorized by paragraph (1) may be
13 documented based on any method selected by the taxpayer that
14 originally receives the credit.

15 (B) The sale authorized by paragraph (1) may be changed for
16 any subsequent taxable year if the sale is expressly shown on each
17 of the returns of both the transferor and the transferee that sell and
18 receive the credit.

19 (C) (i) The taxpayer that originally received the credit shall
20 report to the ~~Franchise Tax Board~~ *California Tax Credit Allocation*
21 *Committee* prior to the sale of the credit, in the form and manner
22 specified by the ~~Franchise Tax Board~~, *California Tax Credit*
23 *Allocation Committee*, all required information regarding the
24 purchase and sale of the credit, including the social security or
25 other taxpayer identification number of the unrelated party to whom
26 the credit has been sold, the face amount of the credit sold, and
27 the amount of consideration received by the taxpayer for the sale
28 of the credit.

29 (ii) *The California Tax Credit Allocation Committee shall*
30 *provide an annual listing to the Franchise Tax Board, in a form*
31 *and manner agreed upon by the California Tax Credit Allocation*
32 *Committee and the Franchise Tax Board, of the taxpayers that*
33 *have sold or purchased a credit pursuant to this subdivision.*

34 ~~(D) A subsequent taxpayer that holds the credit shall report to~~
35 ~~the Franchise Tax Board prior to the sale of the credit, in the form~~
36 ~~and manner specified by the Franchise Tax Board, all required~~
37 ~~information regarding the purchase and sale of the credit, including~~
38 ~~the social security or other taxpayer identification number of the~~
39 ~~unrelated party to whom the credit has been sold and the face~~
40 ~~amount of the credit sold.~~

1 (3) A credit may be sold pursuant to this subdivision to more
2 than one unrelated party, and ~~may~~ *shall not* be resold by the
3 unrelated party to another taxpayer or other party.

4 (4) Notwithstanding any other provision of law, the taxpayer
5 that originally received the credit that is sold pursuant to paragraph
6 (1) shall remain solely liable for all obligations and liabilities
7 imposed on the taxpayer by this section with respect to the credit,
8 none of which shall apply to any party to whom the credit has been
9 sold or subsequently transferred. Parties who purchase credits
10 pursuant to paragraph (1) shall be entitled to utilize the purchased
11 credits in the same manner in which the taxpayer that originally
12 received the credit could utilize them.

13 (5) A taxpayer shall not sell a credit allowed by this section if
14 the taxpayer was allowed the credit on any tax return of the
15 taxpayer.

16 (6) *Notwithstanding paragraph (1), the taxpayer, with the*
17 *approval of the Executive Director of the California Tax Credit*
18 *Allocation Committee, may rescind the election to sell all or any*
19 *portion of the credit allowed under this section if the consideration*
20 *for the credit falls below 80% of the amount of the credit after*
21 *the California Tax Credit Allocation Committee reservation.*

22 (t) The amendments to this section made by Chapter 1222 of
23 the Statutes of 1993 shall apply only to taxable years beginning
24 on or after January 1, 1994, except that paragraph (1) of subdivision
25 (q), as amended, shall apply to taxable years beginning on or after
26 January 1, 1993.

27 SEC. 4. This act provides for a tax levy within the meaning of
28 Article IV of the Constitution and shall go into immediate effect.