

AMENDED IN ASSEMBLY AUGUST 25, 2015

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE APRIL 29, 2015

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, beginning on or after January 1, 2016, would 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~~ *parties*, *as described*, for each taxable year in which the credit is allowed for not less than 80% of the amount *of* the credit to be sold, *and would*

provide for the one-time resale of that credit, as provided. The bill would require the California Tax Credit Allocation Committee to enter into an agreement with the Franchise Tax Board to pay any costs incurred by the Franchise Tax Board in administering these provisions.

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

1 Safety Code, that are allocated credits solely under the set-aside
2 described in subdivision (c) of Section 50199.20 of the Health and
3 Safety Code, the low-income housing project shall be located in
4 California and shall meet either of the following requirements:

5 (i) The project's housing sponsor has been allocated by the
6 California Tax Credit Allocation Committee a credit for federal
7 income tax purposes under Section 42 of the Internal Revenue
8 Code, relating to low-income housing credit.

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

13 (B) The California Tax Credit Allocation Committee shall not
14 require fees for the credit under this section in addition to those
15 fees required for applications for the tax credit pursuant to Section
16 42 of the Internal Revenue Code, relating to low-income housing
17 credit. The committee may require a fee if the application for the
18 credit under this section is submitted in a calendar year after the
19 year the application is submitted for the federal tax credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (ii) The Below-Market-Interest-Rate Program pursuant to
36 Section 221(d)(3) of the National Housing Act, Sections
37 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

1 (iv) Programs for rent supplement assistance pursuant to Section
2 101 of the Housing and Urban Development Act of 1965, Section
3 1701s of Title 12 of the United States Code, as amended.

4 (v) Programs pursuant to Section 515 of the Housing Act of
5 1949, Section 1485 of Title 42 of the United States Code, as
6 amended.

7 (vi) The low-income housing credit program set forth in Section
8 42 of the Internal Revenue Code, relating to low-income housing
9 credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 If, as of the close of any taxable year in the compliance period,
31 after the first year of the credit period, the qualified basis of any
32 building exceeds the qualified basis of that building as of the close
33 of the first year of the credit period, the housing sponsor, to the
34 extent of its tax credit allocation, shall be eligible for a credit on
35 the excess in an amount equal to the applicable percentage
36 determined pursuant to subdivision (c) for the four-year period
37 beginning with the later of the taxable years in which the increase
38 in qualified 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 17058, 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) (1) Section 42(j) of the Internal Revenue Code, relating to
15 recapture of credit, shall not be applicable and the provisions in
16 paragraph (2) shall be substituted in its place.

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

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

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

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

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

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

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

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

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

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

36 (2) The committee shall adopt a qualified allocation plan, as
37 provided in Section 42(m)(1) of the Internal Revenue Code, relating
38 to plans for allocation of credit among projects. In adopting this
39 plan, the committee shall comply with the provisions of Sections
40 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 (3) 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 except to break a tie
28 when two or more of the projects have an equal rating.

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

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

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

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

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

3 (o) (1) For a project that receives a preliminary reservation
4 under this section beginning on or after January 1, 2016, a taxpayer
5 may make an irrevocable election in its application to the California
6 Tax Credit Allocation Committee to sell all or any portion of any
7 credit allowed under this section to one or more unrelated parties
8 for each taxable year in which the credit is allowed—~~for~~
9 ~~consideration that is not less than 80 percent of the amount of the~~
10 ~~credit.~~ *subject to both of the following conditions:*

11 (A) *The credit is sold for consideration that is not less than 80*
12 *percent of the amount of the credit.*

13 (B) *The unrelated party or parties purchasing any or all of the*
14 *credit pursuant to this subdivision is a taxpayer allowed the credit*
15 *under this section for the taxable year of the purchase or any prior*
16 *taxable year or is a taxpayer allowed the federal credit under*
17 *Section 42 of the Internal Revenue Code, relating to low-income*
18 *housing credit, for the taxable year of the purchase or any prior*
19 *taxable year in connection with any project located in this state.*
20 *For purposes of this subparagraph, “taxpayer allowed the credit*
21 *under this section” means a taxpayer that is allowed the credit*
22 *under this section without regard to the purchase of a credit*
23 *pursuant to this subdivision.*

24 (2) (A) The taxpayer that originally received the credit shall
25 report to the California Tax Credit Allocation Committee within
26 10 days of the sale of the credit, in the form and manner specified
27 by the California Tax Credit Allocation Committee, all required
28 information regarding the purchase and sale of the credit, including
29 the social security or other taxpayer identification number of the
30 unrelated party to whom the credit has been sold, the face amount
31 of the credit sold, and the amount of consideration received by the
32 taxpayer for the sale of the credit.

33 (B) The California Tax Credit Allocation Committee shall
34 provide an annual listing to the Franchise Tax Board, in a form
35 and manner agreed upon by the California Tax Credit Allocation
36 Committee and the Franchise Tax Board, of the taxpayers that
37 have sold or purchased a credit pursuant to this subdivision.

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

1 (B) (i) Except as provided in clause (ii), a credit shall not be
2 resold by the unrelated party to another taxpayer or other party.

3 (ii) All or any portion of any credit allowed under this section
4 may be resold once by an original purchaser to one or more
5 unrelated parties, subject to all of the requirements of this
6 subdivision.

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

16 (5) A taxpayer shall not sell a credit allowed by this section if
17 the taxpayer was allowed the credit on any tax return of the
18 taxpayer.

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

25 (p) ~~The Franchise Tax Board~~ *California Tax Credit Allocation*
26 *Committee* may prescribe rules, guidelines, or procedures necessary
27 or appropriate to carry out the purposes of this section, including
28 any guidelines regarding the allocation of the credit allowed under
29 this section. Chapter 3.5 (commencing with Section 11340) of Part
30 1 of Division 3 of Title 2 of the Government Code shall not apply
31 to any rule, guideline, or procedure prescribed by the ~~Franchise~~
32 ~~Tax Board~~ *California Tax Credit Allocation Committee* pursuant
33 to this section.

34 (q) This section shall remain in effect for as long as Section 42
35 of the Internal Revenue Code, relating to low-income housing
36 credit, remains in effect.

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

39 17058. (a) (1) There shall be allowed as a credit against the
40 “net tax,” as defined in Section 17039, a state low-income housing

1 tax credit in an amount equal to the amount determined in
2 subdivision (c), computed in accordance with Section 42 of the
3 Internal Revenue Code, relating to low-income housing credit,
4 except as otherwise provided in this section.

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

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

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

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

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

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

31 (B) The California Tax Credit Allocation Committee shall not
32 require fees for the credit under this section in addition to those
33 fees required for applications for the tax credit pursuant to Section
34 42 of the Internal Revenue Code, relating to low-income housing
35 credit. The committee may require a fee if the application for the
36 credit under this section is submitted in a calendar year after the
37 year the application is submitted for the federal tax credit.

38 (C) (i) For a project that receives a preliminary reservation of
39 the state low-income housing tax credit, allowed pursuant to
40 subdivision (a), on or after January 1, 2009, the credit shall be

1 allocated to the partners of a partnership owning the project in
2 accordance with the partnership agreement, regardless of how the
3 federal low-income housing tax credit with respect to the project
4 is allocated to the partners, or whether the allocation of the credit
5 under the terms of the agreement has substantial economic effect,
6 within the meaning of Section 704(b) of the Internal Revenue
7 Code, relating to determination of distributive share.

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

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

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

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

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

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

33 (E) (i) Except as described in clause (ii), for buildings located
34 in designated difficult development areas (DDAs) or qualified
35 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the
36 Internal Revenue Code, relating to increase in credit for buildings
37 in high-cost areas, credits may be allocated under this section in
38 the amounts prescribed in subdivision (c), provided that the amount
39 of credit allocated under Section 42 of the Internal Revenue Code,

1 relating to low-income housing credit, is computed on 100 percent
2 of the qualified basis of the building.

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

13 (F) (i) The California Tax Credit Allocation Committee may
14 allocate a credit under this section in exchange for a credit allocated
15 pursuant to Section 42(d)(5)(B) of the Internal Revenue Code,
16 relating to increase in credit for buildings in high-cost areas, in
17 amounts up to 30 percent of the eligible basis of a building if the
18 credits allowed under Section 42 of the Internal Revenue Code,
19 relating to low-income housing credit, are reduced by an equivalent
20 amount.

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

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

26 (1) In the case of any qualified low-income building placed in
27 service by the housing sponsor during 1987, the term “applicable
28 percentage” means 9 percent for each of the first three years and
29 3 percent for the fourth year for new buildings (whether or not the
30 building is federally subsidized) and for existing buildings.

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

34 (A) For each of the first three years, the percentage prescribed
35 by the Secretary of the Treasury for new buildings that are not
36 federally subsidized for the taxable year, determined in accordance
37 with the requirements of Section 42(b)(2) of the Internal Revenue
38 Code, relating to temporary minimum credit rate for nonfederally
39 subsidized new buildings, in lieu of the percentage prescribed in
40 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

28 (iv) Programs for rent supplement assistance pursuant to Section
29 101 of the Housing and Urban Development Act of 1965, Section
30 1701s of Title 12 of the United States Code, as amended.

31 (v) Programs pursuant to Section 515 of the Housing Act of
32 1949, Section 1485 of Title 42 of the United States Code, as
33 amended.

34 (vi) The low-income housing credit program set forth in Section
35 42 of the Internal Revenue Code, relating to low-income housing
36 credit.

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

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

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

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

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

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

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

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

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

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

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

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

1 Section 42(g)(1) of the Internal Revenue Code, relating to in
2 general.

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

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

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

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

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

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

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

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

39 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
40 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating

1 to limitation on aggregate credit allowable with respect to projects
2 located in a state, shall not be applicable.

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

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

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

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

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

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

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

39 (i) Section 42(j) of the Internal Revenue Code, relating to
40 recapture of credit, shall not be applicable and the following

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

- 9 (1) A term not less than the compliance period.
- 10 (2) A requirement that the agreement be recorded in the official
11 records of the county in which the qualified low-income housing
12 project is located.
- 13 (3) A provision stating which state and local agencies can
14 enforce the regulatory agreement in the event the housing sponsor
15 fails to satisfy any of the requirements of this section.
- 16 (4) A provision that the regulatory agreement shall be deemed
17 a contract enforceable by tenants as third-party beneficiaries thereto
18 and that allows individuals, whether prospective, present, or former
19 occupants of the building, who meet the income limitation
20 applicable to the building, the right to enforce the regulatory
21 agreement in any state court.
- 22 (5) A provision incorporating the requirements of Section 42
23 of the Internal Revenue Code, relating to low-income housing
24 credit, as modified by this section.
- 25 (6) A requirement that the housing sponsor notify the California
26 Tax Credit Allocation Committee or its designee if there is a
27 determination by the Internal Revenue Service that the project is
28 not in compliance with Section 42(g) of the Internal Revenue Code,
29 relating to qualified low-income housing project.
- 30 (7) A requirement that the housing sponsor, as security for the
31 performance of the housing sponsor's obligations under the
32 regulatory agreement, assign the housing sponsor's interest in rents
33 that it receives from the project, provided that until there is a
34 default under the regulatory agreement, the housing sponsor is
35 entitled to collect and retain the rents.
- 36 (8) A provision that the remedies available in the event of a
37 default under the regulatory agreement that is not cured within a
38 reasonable cure period include, but are not limited to, allowing
39 any of the parties designated to enforce the regulatory agreement
40 to collect all rents with respect to the project; taking possession of

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

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

19 (2) The committee shall adopt a qualified allocation plan, as
20 provided in Section 42(m)(1) of the Internal Revenue Code, relating
21 to plans for allocation of credit among projects. In adopting this
22 plan, the committee shall comply with the provisions of Sections
23 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
24 relating to qualified allocation plan and relating to certain selection
25 criteria must be used, respectively.

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

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

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

38 (ii) The project's proposed financing, including tax credit
39 proceeds, shall be sufficient to complete the project and that the

1 proposed operating income shall be adequate to operate the project
2 for the extended use period.

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

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

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

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

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

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

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

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

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

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

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

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

1 (iv) Projects for which a public agency provides direct or indirect
2 long-term financial support for at least 15 percent of the total
3 project development costs or projects for which the owner's equity
4 constitutes at least 30 percent of the total project development
5 costs.

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

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

11 (k) Section 42(l) of the Internal Revenue Code, relating to
12 certifications and other reports to ~~the~~ secretary, shall be modified
13 as follows:

14 The term "secretary" shall be replaced by the term "Franchise
15 Tax Board."

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

20 (m) A project that received an allocation of a 1989 federal
21 housing credit dollar amount shall be eligible to receive an
22 allocation of a 1990 state housing credit dollar amount, subject to
23 all of the following conditions:

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

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

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

31 (n) The credit period with respect to an allocation of credit in
32 1989 by the California Tax Credit Allocation Committee of which
33 any amount is attributable to unallocated credit from 1987 or 1988
34 shall not begin until after December 31, 1989.

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

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

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

3 This section shall remain in effect on and after December 1,
4 1990, for as long as Section 42 of the Internal Revenue Code,
5 relating to low-income housing credit, remains in effect.

6 (r) (1) For a project that receives a preliminary reservation
7 under this section beginning on or after January 1, 2016, a taxpayer
8 may make an irrevocable election in its application to the California
9 Tax Credit Allocation Committee to sell all or any portion of any
10 credit allowed under this section to one or more unrelated parties
11 for each taxable year in which the credit is allowed ~~for~~
12 ~~consideration that is not less than 80 percent of the amount of the~~
13 ~~credit.~~ *subject to both of the following conditions:*

14 (A) *The credit is sold for consideration that is not less than 80*
15 *percent of the amount of the credit.*

16 (B) *The unrelated party or parties purchasing any or all of the*
17 *credit pursuant to this subdivision is a taxpayer allowed the credit*
18 *under this section for the taxable year of the purchase or any prior*
19 *taxable year or is a taxpayer allowed the federal credit under*
20 *Section 42 of the Internal Revenue Code, relating to low-income*
21 *housing credit, for the taxable year of the purchase or any prior*
22 *taxable year in connection with any project located in this state.*
23 *For purposes of this subparagraph, “taxpayer allowed the credit*
24 *under this section” means a taxpayer that is allowed the credit*
25 *under this section without regard to the purchase of a credit*
26 *pursuant to this subdivision.*

27 (2) (A) The taxpayer that originally received the credit shall
28 report to the California Tax Credit Allocation Committee within
29 10 days of the sale of the credit, in the form and manner specified
30 by the California Tax Credit Allocation Committee, all required
31 information regarding the purchase and sale of the credit, including
32 the social security or other taxpayer identification number of the
33 unrelated party to whom the credit has been sold, the face amount
34 of the credit sold, and the amount of consideration received by the
35 taxpayer for the sale of the credit.

36 (B) The California Tax Credit Allocation Committee shall
37 provide an annual listing to the Franchise Tax Board, in a form
38 and manner agreed upon by the California Tax Credit Allocation
39 Committee and the Franchise Tax Board, of the taxpayers that
40 have sold or purchased a credit pursuant to this subdivision.

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

4 (B) (i) *Except as provided in clause (ii), a credit shall not be*
5 *resold by the unrelated party to another taxpayer or other party.*

6 (ii) *All or any portion of any credit allowed under this section*
7 *may be resold once by an original purchaser to one or more*
8 *unrelated parties, subject to all of the requirements of this*
9 *subdivision.*

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

19 (5) A taxpayer shall not sell a credit allowed by this section if
20 the taxpayer was allowed the credit on any tax return of the
21 taxpayer.

22 (6) Notwithstanding paragraph (1), the taxpayer, with the
23 approval of the Executive Director of the California Tax Credit
24 Allocation Committee, may rescind the election to sell all or any
25 portion of the credit allowed under this section if the consideration
26 for the credit falls below 80 percent of the amount of the credit
27 after the California Tax Credit Allocation Committee reservation.

28 (s) ~~The Franchise Tax Board~~ *California Tax Credit Allocation*
29 *Committee* may prescribe rules, guidelines, or procedures necessary
30 or appropriate to carry out the purposes of this section, including
31 any guidelines regarding the allocation of the credit allowed under
32 this section. Chapter 3.5 (commencing with Section 11340) of Part
33 1 of Division 3 of Title 2 of the Government Code shall not apply
34 to any rule, guideline, or procedure prescribed by the ~~Franchise~~
35 ~~Tax Board~~ *California Tax Credit Allocation Committee* pursuant
36 to this section.

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

1 SEC. 3. Section 23610.5 of the Revenue and Taxation Code
2 is amended to read:

3 23610.5. (a) (1) There shall be allowed as a credit against the
4 “tax,” as defined by Section 23036, 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) The low-income housing project shall be located in
23 California and shall meet either of the following requirements:

24 (i) Except for projects to provide farmworker housing, as defined
25 in subdivision (h) of Section 50199.7 of the Health and Safety
26 Code, that are allocated credits solely under the set-aside described
27 in subdivision (c) of Section 50199.20 of the Health and Safety
28 Code, 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
34 or more of building is financed with tax-exempt bonds subject to
35 volume cap.

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

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

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

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

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

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

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

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

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

38 (E) (i) Except as described in clause (ii), for buildings located
39 in designated difficult development areas (DDAs) or qualified
40 census tracts (QCTs), as defined in Section 42(d)(5)(B) of the

1 Internal Revenue Code, relating to increase in credit for buildings
2 in high-cost areas, credits may be allocated under this section in
3 the amounts prescribed in subdivision (c), provided that the amount
4 of credit allocated under Section 42 of the Internal Revenue Code,
5 relating to low-income housing credit, is computed on 100 percent
6 of the qualified basis of the building.

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

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

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

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

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

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

38 (A) For each of the first three years, the percentage prescribed
39 by the Secretary of the Treasury for new buildings that are not
40 federally subsidized for the taxable year, determined in accordance

1 with the requirements of Section 42(b)(2) of the Internal Revenue
2 Code, relating to temporary minimum credit rate for nonfederally
3 subsidized new buildings, in lieu of the percentage prescribed in
4 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

27 (ii) The Below-Market-Interest-Rate Program pursuant to
28 Section 221(d)(3) of the National Housing Act, Sections
29 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

32 (iv) Programs for rent supplement assistance pursuant to Section
33 101 of the Housing and Urban Development Act of 1965, Section
34 1701s of Title 12 of the United States Code, as amended.

35 (v) Programs pursuant to Section 515 of the Housing Act of
36 1949, Section 1485 of Title 42 of the United States Code, as
37 amended.

38 (vi) The low-income housing credit program set forth in Section
39 42 of the Internal Revenue Code, relating to low-income housing
40 credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (3) Section 42(f)(3) of the Internal Revenue Code, relating to
19 determination of applicable percentage with respect to increases
20 in qualified basis after first year of credit period, is modified to
21 read:

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

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

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

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

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

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

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

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

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

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

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

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

38 (h) The term “compliance period” as defined in Section 42(i)(1)
39 of the Internal Revenue Code, relating to compliance period, is
40 modified to mean, with respect to any building, the period of 30

1 consecutive taxable years beginning with the first taxable year of
2 the credit period with respect thereto.

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

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

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

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

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

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

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

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

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

1 (8) 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 for low-income housing in the community or region for which it
3 is proposed.
- 4 (ii) The project’s proposed financing, including tax credit
5 proceeds, shall be sufficient to complete the project and shall be
6 adequate to operate the project for the extended use period.
- 7 (iii) The project shall have enforceable financing commitments,
8 either construction or permanent financing, for at least 50 percent
9 of the total estimated financing of the project.
- 10 (iv) The housing sponsor shall have and maintain control of the
11 site for the project.
- 12 (v) The housing sponsor shall demonstrate that the project
13 complies with all applicable local land use and zoning ordinances.
- 14 (vi) The housing sponsor shall demonstrate that the project
15 development team has the experience and the financial capacity
16 to ensure project completion and operation for the extended use
17 period.
- 18 (vii) The housing sponsor shall demonstrate the amount of tax
19 credit that is necessary for the financial feasibility of the project
20 and its viability as a qualified low-income housing project
21 throughout the extended use period, taking into account operating
22 expenses, a supportable debt service, reserves, funds set aside for
23 rental subsidies and required equity, and a development fee that
24 does not exceed a specified percentage of the eligible basis of the
25 project prior to inclusion of the development fee in the eligible
26 basis, as determined by the committee.
- 27 (B) The committee shall give a preference to those projects
28 satisfying all of the threshold requirements of subparagraph (A)
29 if both of the following apply:
 - 30 (i) The project serves the lowest income tenants at rents
31 affordable to those tenants.
 - 32 (ii) The project is obligated to serve qualified tenants for the
33 longest period.
- 34 (C) In addition to the provisions of subparagraphs (A) and (B),
35 the committee shall use the following criteria in allocating housing
36 credits:
 - 37 (i) Projects serving large families in which a substantial number,
38 as defined by the committee, of all residential units are low-income
39 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 (4) 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 (5) Not less than 20 percent of the low-income housing tax
17 credits available annually under this section, Section 12206, and
18 Section 17058 shall be set aside for allocation to rural areas as
19 defined in Section 50199.21 of the Health and Safety Code. Any
20 amount of credit set aside for rural areas remaining on or after
21 October 31 of any calendar year shall be available for allocation
22 to any eligible project. No amount of credit set aside for rural areas
23 shall be considered available for any eligible project so long as
24 there are eligible rural applications pending on October 31.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (r) Any unused credit may continue to be carried forward, as
39 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) For a project that receives a preliminary reservation
5 under this section beginning on or after January 1, 2016, a taxpayer
6 may make an irrevocable election in its application to the California
7 Tax Credit Allocation Committee to sell all or any portion of any
8 credit allowed under this section to one or more unrelated parties
9 for each taxable year in which the credit is allowed—~~for~~
10 ~~consideration that is not less than 80 percent of the amount of the~~
11 ~~credit.~~ *subject to both of the following conditions:*

12 (A) *The credit is sold for consideration that is not less than 80*
13 *percent of the amount of the credit.*

14 (B) (i) *The unrelated party or parties purchasing any or all of*
15 *the credit pursuant to this subdivision is a taxpayer allowed the*
16 *credit under this section for the taxable year of the purchase or*
17 *any prior taxable year or is a taxpayer allowed the federal credit*
18 *under Section 42 of the Internal Revenue Code, relating to*
19 *low-income housing credit, for the taxable year of the purchase*
20 *or any prior taxable year in connection with any project located*
21 *in this state.*

22 (ii) *For purposes of this subparagraph, “taxpayer allowed the*
23 *credit under this section” means a taxpayer that is allowed the*
24 *credit under this section without regard to the purchase of a credit*
25 *pursuant to this subdivision without regard to any of the following:*

26 (I) *The purchase of a credit under this section pursuant to this*
27 *subdivision.*

28 (II) *The assignment of a credit under this section pursuant to*
29 *subdivision (q).*

30 (III) *The assignment of a credit under this section pursuant to*
31 *Section 23363.*

32 (2) (A) The taxpayer that originally received the credit shall
33 report to the California Tax Credit Allocation Committee within
34 10 days of the sale of the credit, in the form and manner specified
35 by the California Tax Credit Allocation Committee, all required
36 information regarding the purchase and sale of the credit, including
37 the social security or other taxpayer identification number of the
38 unrelated party to whom the credit has been sold, the face amount
39 of the credit sold, and the amount of consideration received by the
40 taxpayer for the sale of the credit.

1 (B) The California Tax Credit Allocation Committee shall
2 provide an annual listing to the Franchise Tax Board, in a form
3 and manner agreed upon by the California Tax Credit Allocation
4 Committee and the Franchise Tax Board, of the taxpayers that
5 have sold or purchased a credit pursuant to this subdivision.

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

9 (B) (i) *Except as provided in clause (ii), a credit shall not be*
10 *resold by the unrelated party to another taxpayer or other party.*

11 (ii) *All or any portion of any credit allowed under this section*
12 *may be resold once by an original purchaser to one or more*
13 *unrelated parties, subject to all of the requirements of this*
14 *subdivision.*

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

24 (5) A taxpayer shall not sell a credit allowed by this section if
25 the taxpayer was allowed the credit on any tax return of the
26 taxpayer.

27 (6) Notwithstanding paragraph (1), the taxpayer, with the
28 approval of the Executive Director of the California Tax Credit
29 Allocation Committee, may rescind the election to sell all or any
30 portion of the credit allowed under this section if the consideration
31 for the credit falls below 80 percent of the amount of the credit
32 after the California Tax Credit Allocation Committee reservation.

33 (t) ~~The Franchise Tax Board~~ *California Tax Credit Allocation*
34 *Committee* may prescribe rules, guidelines, or procedures necessary
35 or appropriate to carry out the purposes of this section, including
36 any guidelines regarding the allocation of the credit allowed under
37 this section. Chapter 3.5 (commencing with Section 11340) of Part
38 1 of Division 3 of Title 2 of the Government Code shall not apply
39 to any rule, guideline, or procedure prescribed by the ~~Franchise~~

1 ~~Tax Board~~ *California Tax Credit Allocation Committee* pursuant
2 to this section.

3 (u) The amendments to this section made by Chapter 1222 of
4 the Statutes of 1993 shall apply only to taxable years beginning
5 on or after January 1, 1994, except that paragraph (1) of subdivision
6 (q), as amended, shall apply to taxable years beginning on or after
7 January 1, 1993.

8 SEC. 4. The *California Tax Credit Allocation Committee* shall
9 enter into an agreement with the Franchise Tax Board to pay any
10 costs incurred by the Franchise Tax ~~board~~ *Board* in the
11 administration of subdivision (o) of Section 12206, subdivision
12 (r) of Section 17058, and subdivision (s) of Section 23610.5 of the
13 Revenue and Taxation Code.

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