

AMENDED IN SENATE APRIL 5, 2016

SENATE BILL

No. 873

Introduced by Senator Beall

January 14, 2016

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 873, 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, 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,” described by Section 12201, a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code, relating to low-income housing credit,
8 except as otherwise provided in this section.

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

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

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

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

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

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

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

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

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

27 (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 attach a copy of the certification to any
34 return upon which a tax credit is claimed under this section.

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

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

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

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

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

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

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

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

39 (A) For each of the first three years, the percentage prescribed
40 by the Secretary of the Treasury for new buildings that are not

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

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

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

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

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

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

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

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

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

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

33 (iv) Programs for rent supplement assistance pursuant to Section
34 101 of the Housing and Urban Development Act of 1965, Section
35 1701s of Title 12 of the United States Code, as amended.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (g) The aggregate housing credit dollar amount that may be
11 allocated annually by the California Tax Credit Allocation
12 Committee pursuant to this section, Section 17058, and Section
13 23610.5 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (ii) The project's proposed financing, including tax credit
9 proceeds, shall be sufficient to complete the project and that the
10 proposed operating income shall be adequate to operate the project
11 for the extended use period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 The term “secretary” shall be replaced by the term “Franchise
26 Tax Board.”

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

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

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

36 (o) (1) For a project that receives a preliminary reservation
37 under this section beginning on or after January 1, 2016, a taxpayer
38 may make an irrevocable election in its application to the California
39 Tax Credit Allocation Committee to sell all or any portion of any
40 credit allowed under this section to one or more unrelated parties

1 for each taxable year in which the credit is allowed subject to both
2 of the following conditions:

3 (A) The credit is sold for consideration that is not less than 80
4 percent of the amount of the credit.

5 (B) The unrelated party or parties purchasing any or all of the
6 credit pursuant to this subdivision is a taxpayer allowed the credit
7 under this section for the taxable year of the purchase or any prior
8 taxable year or is a taxpayer allowed the federal credit under
9 Section 42 of the Internal Revenue Code, relating to low-income
10 housing credit, for the taxable year of the purchase or any prior
11 taxable year in connection with any project located in this state.
12 For purposes of this subparagraph, “taxpayer allowed the credit
13 under this section” means a taxpayer that is allowed the credit
14 under this section without regard to the purchase of a credit
15 pursuant to this subdivision.

16 (2) (A) The taxpayer that originally received the credit shall
17 report to the California Tax Credit Allocation Committee within
18 10 days of the sale of the credit, in the form and manner specified
19 by the California Tax Credit Allocation Committee, all required
20 information regarding the purchase and sale of the credit, including
21 the social security or other taxpayer identification number of the
22 unrelated party *or parties* to whom the credit has been sold, the
23 face amount of the credit sold, and the amount of consideration
24 received by the taxpayer for the sale of the credit.

25 (B) The California Tax Credit Allocation Committee shall
26 provide an annual listing to the Franchise Tax Board, in a form
27 and manner agreed upon by the California Tax Credit Allocation
28 Committee and the Franchise Tax Board, of the taxpayers that
29 have sold or purchased a credit pursuant to this subdivision.

30 (3) (A) A credit may be sold pursuant to this subdivision to
31 more than one unrelated party.

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

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

38 (4) Notwithstanding any other provision of law, the taxpayer
39 that originally received the credit that is sold pursuant to paragraph
40 (1) shall remain solely liable for all obligations and liabilities

1 imposed on the taxpayer by this section with respect to the credit,
2 none of which shall apply to any party to whom the credit has been
3 sold or subsequently transferred. Parties who purchase credits
4 pursuant to paragraph (1) shall be entitled to utilize the purchased
5 credits in the same manner in which the taxpayer that originally
6 received the credit could utilize them.

7 (5) A taxpayer shall not sell a credit allowed by this section if
8 the taxpayer was allowed the credit on any tax return of the
9 taxpayer.

10 (6) Notwithstanding paragraph (1), the taxpayer, with the
11 approval of the Executive Director of the California Tax Credit
12 Allocation Committee, may rescind the election to sell all or any
13 portion of the credit allowed under this section if the consideration
14 for the credit falls below 80 percent of the amount of the credit
15 after the California Tax Credit Allocation Committee reservation.

16 (p) The California Tax Credit Allocation Committee may
17 prescribe rules, guidelines, or procedures necessary or appropriate
18 to carry out the purposes of this section, including any guidelines
19 regarding the allocation of the credit allowed under this section.
20 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
21 3 of Title 2 of the Government Code shall not apply to any rule,
22 guideline, or procedure prescribed by the California Tax Credit
23 Allocation Committee pursuant to this section.

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

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

29 17058. (a) (1) There shall be allowed as a credit against the
30 “net “tax,” defined in Section 17039, a state low-income housing
31 tax credit in an amount equal to the amount determined in
32 subdivision (c), computed in accordance with Section 42 of the
33 Internal Revenue Code, relating to low-income housing credit,
34 except as otherwise provided in this section.

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

38 (3) “Housing sponsor,” for purposes of this section, means the
39 sole owner in the case of an individual, the partnership in the case

1 of a partnership, and the “S” corporation in the case of an “S”
2 corporation.

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

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

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

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

22 (B) The California Tax Credit Allocation Committee shall not
23 require fees for the credit under this section in addition to those
24 fees required for applications for the tax credit pursuant to Section
25 42 of the Internal Revenue Code, relating to low-income housing
26 credit. The committee may require a fee if the application for the
27 credit under this section is submitted in a calendar year after the
28 year the application is submitted for the federal tax credit.

29 (C) (i) For a project that receives a preliminary reservation of
30 the state low-income housing tax credit, allowed pursuant to
31 subdivision (a), on or after January 1, 2009, the credit shall be
32 allocated to the partners of a partnership owning the project in
33 accordance with the partnership agreement, regardless of how the
34 federal low-income housing tax credit with respect to the project
35 is allocated to the partners, or whether the allocation of the credit
36 under the terms of the agreement has substantial economic effect,
37 within the meaning of Section 704(b) of the Internal Revenue
38 Code, relating to determination of distributive share.

39 (ii) To the extent the allocation of the credit to a partner under
40 this section lacks substantial economic effect, any loss or deduction

1 otherwise allowable under this part that is attributable to the sale
2 or other disposition of that partner's partnership interest made prior
3 to the expiration of the federal credit shall not be allowed in the
4 taxable year in which the sale or other disposition occurs, but shall
5 instead be deferred until and treated as if it occurred in the first
6 taxable year immediately following the taxable year in which the
7 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

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

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

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

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

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

16 (1) In the case of any qualified low-income building placed in
17 service by the housing sponsor during 1987, the term “applicable
18 percentage” means 9 percent for each of the first three years and
19 3 percent for the fourth year for new buildings (whether or not the
20 building is federally subsidized) and for existing buildings.

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

24 (A) For each of the first three years, the percentage prescribed
25 by the Secretary of the Treasury for new buildings that are not
26 federally subsidized for the taxable year, determined in accordance
27 with the requirements of Section 42(b)(2) of the Internal Revenue
28 Code, relating to temporary minimum credit rate for nonfederally
29 subsidized new buildings, in lieu of the percentage prescribed in
30 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

14 (ii) The Below-Market-Interest-Rate Program pursuant to
15 Section 221(d)(3) of the National Housing Act, Sections
16 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

19 (iv) Programs for rent supplement assistance pursuant to Section
20 101 of the Housing and Urban Development Act of 1965, Section
21 1701s of Title 12 of the United States Code, as amended.

22 (v) Programs pursuant to Section 515 of the Housing Act of
23 1949, Section 1485 of Title 42 of the United States Code, as
24 amended.

25 (vi) The low-income housing credit program set forth in Section
26 42 of the Internal Revenue Code, relating to low-income housing
27 credit.

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

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

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

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

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

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

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

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

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

20 (C) Any amount allowed to be distributed under subparagraph
21 (A) that is not available for distribution during the first five years
22 of the compliance period may be accumulated and distributed any
23 time during the first 15 years of the compliance period but not
24 thereafter.

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

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

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

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

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

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

9 If, as of the close of any taxable year in the compliance period,
10 after the first year of the credit period, the qualified basis of any
11 building exceeds the qualified basis of that building as of the close
12 of the first year of the credit period, the housing sponsor, to the
13 extent of its tax credit allocation, shall be eligible for a credit on
14 the excess in an amount equal to the applicable percentage
15 determined pursuant to subdivision (c) for the four-year period
16 beginning with the taxable year in which the increase in qualified
17 basis occurs.

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

21 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
22 allocated credit amount to apply to all taxable years ending during
23 or after credit allocation year, does not apply and instead the
24 following provisions apply:

25 The total amount for the four-year credit period of the housing
26 credit dollars allocated in a calendar year to any building shall
27 reduce the aggregate housing credit dollar amount of the California
28 Tax Credit Allocation Committee for the calendar year in which
29 the allocation is made.

30 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
31 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
32 to limitation on aggregate credit allowable with respect to projects
33 located in a state, do not apply to this section.

34 (g) The aggregate housing credit dollar amount that may be
35 allocated annually by the California Tax Credit Allocation
36 Committee pursuant to this section, Section 12206, and Section
37 23610.5 shall be an amount equal to the sum of all the following:

38 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
39 year, and, for the 2002 calendar year and each calendar year
40 thereafter, seventy million dollars (\$70,000,000) increased by the

1 percentage, if any, by which the Consumer Price Index for the
2 preceding calendar year exceeds the Consumer Price Index for the
3 2001 calendar year. For the purposes of this paragraph, the term
4 “Consumer Price Index” means the last Consumer Price Index for
5 All Urban Consumers published by the federal Department of
6 Labor.

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

9 (3) The amount of housing credit ceiling returned in the calendar
10 year. For purposes of this paragraph, the amount of housing credit
11 dollar amount returned in the calendar year equals the housing
12 credit dollar amount previously allocated to any project that does
13 not become a qualified low-income housing project within the
14 period required by this section or to any project with respect to
15 which an allocation is canceled by mutual consent of the California
16 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

30 (i) Section 42(j) of the Internal Revenue Code, relating to
31 recapture of credit, does not apply and the following requirements
32 of this section shall be set forth in a regulatory agreement between
33 the California Tax Credit Allocation Committee and the housing
34 sponsor, and this agreement shall be subordinated, when required,
35 to any lien or encumbrance of any banks or other institutional
36 lenders to the project. The regulatory agreement entered into
37 pursuant to subdivision (f) of Section 50199.14 of the Health and
38 Safety Code shall apply, provided that the agreement includes all
39 of the following provisions:

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

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

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

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

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

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

21 (7) A requirement that the housing sponsor, as security for the
22 performance of the housing sponsor's obligations under the
23 regulatory agreement, assign the housing sponsor's interest in rents
24 that it receives from the project, provided that until there is a
25 default under the regulatory agreement, the housing sponsor is
26 entitled to collect and retain the rents.

27 (8) A provision that the remedies available in the event of a
28 default under the regulatory agreement that is not cured within a
29 reasonable cure period include, but are not limited to, allowing
30 any of the parties designated to enforce the regulatory agreement
31 to collect all rents with respect to the project; taking possession of
32 the project and operating the project in accordance with the
33 regulatory agreement until the enforcer determines the housing
34 sponsor is in a position to operate the project in accordance with
35 the regulatory agreement; applying to any court for specific
36 performance; securing the appointment of a receiver to operate
37 the project; or any other relief as may be appropriate.

38 (j) (1) The committee shall allocate the housing credit on a
39 regular basis consisting of two or more periods in each calendar
40 year during which applications may be filed and considered. The

1 committee shall establish application filing deadlines, the maximum
2 percentage of federal and state low-income housing tax credit
3 ceiling that may be allocated by the committee in that period, and
4 the approximate date on which allocations shall be made. If the
5 enactment of federal or state law, the adoption of rules or
6 regulations, or other similar events prevent the use of two allocation
7 periods, the committee may reduce the number of periods and
8 adjust the filing deadlines, maximum percentage of credit allocated,
9 and the allocation dates.

10 (2) The committee shall adopt a qualified allocation plan, as
11 provided in Section 42(m)(1) of the Internal Revenue Code, relating
12 to plans for allocation of credit among projects. In adopting this
13 plan, the committee shall comply with the provisions of Sections
14 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
15 relating to qualified allocation plan and relating to certain selection
16 criteria must be used, respectively.

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

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

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

29 (ii) The project's proposed financing, including tax credit
30 proceeds, shall be sufficient to complete the project and that the
31 proposed operating income shall be adequate to operate the project
32 for the extended use period.

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

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

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

1 (vi) The housing sponsor shall demonstrate that the project
2 development team has the experience and the financial capacity
3 to ensure project completion and operation for the extended use
4 period.

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

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

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

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

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

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

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

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

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

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

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

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

4 The term “secretary” shall be replaced by the term “Franchise
5 Tax Board.”

6 (l) In the case in which the credit allowed under this section
7 exceeds the net tax, the excess may be carried over to reduce the
8 net tax in the following year, and succeeding years, if necessary,
9 until the credit has been exhausted.

10 (m) A project that received an allocation of a 1989 federal
11 housing credit dollar amount shall be eligible to receive an
12 allocation of a 1990 state housing credit dollar amount, subject to
13 all of the following conditions:

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

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

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

21 (n) The credit period with respect to an allocation of credit in
22 1989 by the California Tax Credit Allocation Committee of which
23 any amount is attributable to unallocated credit from 1987 or 1988
24 shall not begin until after December 31, 1989.

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

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

30 (q) (1) For a project that receives a preliminary reservation
31 under this section beginning on or after January 1, 2016, a taxpayer
32 may make an irrevocable election in its application to the California
33 Tax Credit Allocation Committee to sell all or any portion of any
34 credit allowed under this section to one or more unrelated parties
35 for each taxable year in which the credit is allowed subject to both
36 of the following conditions:

37 (A) The credit is sold for consideration that is not less than 80
38 percent of the amount of the credit.

39 (B) The unrelated party or parties purchasing any or all of the
40 credit pursuant to this subdivision is a taxpayer allowed the credit

1 under this section for the taxable year of the purchase or any prior
2 taxable year or is a taxpayer allowed the federal credit under
3 Section 42 of the Internal Revenue Code, relating to low-income
4 housing credit, for the taxable year of the purchase or any prior
5 taxable year in connection with any project located in this state.
6 For purposes of this subparagraph, “taxpayer allowed the credit
7 under this section” means a taxpayer that is allowed the credit
8 under this section without regard to the purchase of a credit
9 pursuant to this subdivision.

10 (2) (A) The taxpayer that originally received the credit shall
11 report to the California Tax Credit Allocation Committee within
12 10 days of the sale of the credit, in the form and manner specified
13 by the California Tax Credit Allocation Committee, all required
14 information regarding the purchase and sale of the credit, including
15 the social security or other taxpayer identification number of the
16 unrelated party *or parties* to whom the credit has been sold, the
17 face amount of the credit sold, and the amount of consideration
18 received by the taxpayer for the sale of the credit.

19 (B) The California Tax Credit Allocation Committee shall
20 provide an annual listing to the Franchise Tax Board, in a form
21 and manner agreed upon by the California Tax Credit Allocation
22 Committee and the Franchise Tax Board, of the taxpayers that
23 have sold or purchased a credit pursuant to this subdivision.

24 (3) (A) A credit may be sold pursuant to this subdivision to
25 more than one unrelated party.

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

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

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

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

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

10 (r) The California Tax Credit Allocation Committee may
11 prescribe rules, guidelines, or procedures necessary or appropriate
12 to carry out the purposes of this section, including any guidelines
13 regarding the allocation of the credit allowed under this section.
14 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
15 3 of Title 2 of the Government Code shall not apply to any rule,
16 guideline, or procedure prescribed by the California Tax Credit
17 Allocation Committee pursuant to this section.

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

21 (t) This section shall remain in effect on and after December 1,
22 1990, for as long as Section 42 of the Internal Revenue Code,
23 relating to low-income housing credit, remains in effect. Any
24 unused credit may continue to be carried forward, as provided in
25 subdivision (l), until the credit has been exhausted.

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

28 23610.5. (a) (1) There shall be allowed as a credit against the
29 “tax,” defined by Section 23036, a state low-income housing tax
30 credit in an amount equal to the amount determined in subdivision
31 (c), computed in accordance with Section 42 of the Internal
32 Revenue Code, relating to low-income housing credit, except as
33 otherwise provided in this section.

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

38 (3) “Housing sponsor,” for purposes of this section, means the
39 sole owner in the case of a “C” corporation, the partnership in the

1 case of a partnership, and the “S” corporation in the case of an “S”
2 corporation.

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

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

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

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

22 (B) The California Tax Credit Allocation Committee shall not
23 require fees for the credit under this section in addition to those
24 fees required for applications for the tax credit pursuant to Section
25 42 of the Internal Revenue Code, relating to low-income housing
26 credit. The committee may require a fee if the application for the
27 credit under this section is submitted in a calendar year after the
28 year the application is submitted for the federal tax credit.

29 (C) (i) For a project that receives a preliminary reservation of
30 the state low-income housing tax credit, allowed pursuant to
31 subdivision (a), on or after January 1, 2009, the credit shall be
32 allocated to the partners of a partnership owning the project in
33 accordance with the partnership agreement, regardless of how the
34 federal low-income housing tax credit with respect to the project
35 is allocated to the partners, or whether the allocation of the credit
36 under the terms of the agreement has substantial economic effect,
37 within the meaning of Section 704(b) of the Internal Revenue
38 Code, relating to determination of distributive share.

39 (ii) To the extent the allocation of the credit to a partner under
40 this section lacks substantial economic effect, any loss or deduction

1 otherwise allowable under this part that is attributable to the sale
2 or other disposition of that partner’s partnership interest made prior
3 to the expiration of the federal credit shall not be allowed in the
4 taxable year in which the sale or other disposition occurs, but shall
5 instead be deferred until and treated as if it occurred in the first
6 taxable year immediately following the taxable year in which the
7 federal credit period expires for the project described in clause (i).

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

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

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

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

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

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

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

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

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

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

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

16 (1) In the case of any qualified low-income building placed in
17 service by the housing sponsor during 1987, the term “applicable
18 percentage” means 9 percent for each of the first three years and
19 3 percent for the fourth year for new buildings (whether or not the
20 building is federally subsidized) and for existing buildings.

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

24 (A) For each of the first three years, the percentage prescribed
25 by the Secretary of the Treasury for new buildings that are not
26 federally subsidized for the taxable year, determined in accordance
27 with the requirements of Section 42(b)(2) of the Internal Revenue
28 Code, relating to temporary minimum credit rate for nonfederally
29 subsidized new buildings, in lieu of the percentage prescribed in
30 Section 42(b)(1)(A) of the Internal Revenue Code.

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

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

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

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

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

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

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

14 (ii) The Below-Market-Interest-Rate Program pursuant to
15 Section 221(d)(3) of the National Housing Act, Sections
16 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

19 (iv) Programs for rent supplement assistance pursuant to Section
20 101 of the Housing and Urban Development Act of 1965, Section
21 1701s of Title 12 of the United States Code, as amended.

22 (v) Programs pursuant to Section 515 of the Housing Act of
23 1949, Section 1485 of Title 42 of the United States Code, as
24 amended.

25 (vi) The low-income housing credit program set forth in Section
26 42 of the Internal Revenue Code, relating to low-income housing
27 credit.

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

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

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

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

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

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

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

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

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

20 (C) Any amount allowed to be distributed under subparagraph
21 (A) that is not available for distribution during the first five years
22 of the compliance period may be accumulated and distributed any
23 time during the first 15 years of the compliance period but not
24 thereafter.

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

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

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

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

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

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

9 If, as of the close of any taxable year in the compliance period,
10 after the first year of the credit period, the qualified basis of any
11 building exceeds the qualified basis of that building as of the close
12 of the first year of the credit period, the housing sponsor, to the
13 extent of its tax credit allocation, shall be eligible for a credit on
14 the excess in an amount equal to the applicable percentage
15 determined pursuant to subdivision (c) for the four-year period
16 beginning with the later of the taxable years in which the increase
17 in qualified basis occurs.

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

21 (1) Section 42(h)(2) of the Internal Revenue Code, relating to
22 allocated credit amount to apply to all taxable years ending during
23 or after credit allocation year, does not apply and instead the
24 following provisions apply:

25 The total amount for the four-year credit period of the housing
26 credit dollars allocated in a calendar year to any building shall
27 reduce the aggregate housing credit dollar amount of the California
28 Tax Credit Allocation Committee for the calendar year in which
29 the allocation is made.

30 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
31 (7), and (8) of Section 42(h) of the Internal Revenue Code, relating
32 to limitation on aggregate credit allowable with respect to projects
33 located in a state, do not apply to this section.

34 (g) The aggregate housing credit dollar amount that may be
35 allocated annually by the California Tax Credit Allocation
36 Committee pursuant to this section, Section 12206, and Section
37 17058 shall be an amount equal to the sum of all the following:

38 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
39 year, and, for the 2002 calendar year and each calendar year
40 thereafter, seventy million dollars (\$70,000,000) increased by the

1 percentage, if any, by which the Consumer Price Index for the
2 preceding calendar year exceeds the Consumer Price Index for the
3 2001 calendar year. For the purposes of this paragraph, the term
4 “Consumer Price Index” means the last Consumer Price Index for
5 All Urban Consumers published by the federal Department of
6 Labor.

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

9 (3) The amount of housing credit ceiling returned in the calendar
10 year. For purposes of this paragraph, the amount of housing credit
11 dollar amount returned in the calendar year equals the housing
12 credit dollar amount previously allocated to any project that does
13 not become a qualified low-income housing project within the
14 period required by this section or to any project with respect to
15 which an allocation is canceled by mutual consent of the California
16 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

30 (i) Section 42(j) of the Internal Revenue Code, relating to
31 recapture of credit, does not apply and the following shall be
32 substituted in its place:

33 The requirements of this section shall be set forth in a regulatory
34 agreement between the California Tax Credit Allocation Committee
35 and the housing sponsor, and this agreement shall be subordinated,
36 when required, to any lien or encumbrance of any banks or other
37 institutional lenders to the project. The regulatory agreement
38 entered into pursuant to subdivision (f) of Section 50199.14 of the
39 Health and Safety Code shall apply, provided that the agreement
40 includes all of the following provisions:

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

1 year during which applications may be filed and considered. The
2 committee shall establish application filing deadlines, the maximum
3 percentage of federal and state low-income housing tax credit
4 ceiling that may be allocated by the committee in that period, and
5 the approximate date on which allocations shall be made. If the
6 enactment of federal or state law, the adoption of rules or
7 regulations, or other similar events prevent the use of two allocation
8 periods, the committee may reduce the number of periods and
9 adjust the filing deadlines, maximum percentage of credit allocated,
10 and the allocation dates.

11 (2) The committee shall adopt a qualified allocation plan, as
12 provided in Section 42(m)(1) of the Internal Revenue Code, relating
13 to plans for allocation of credit among projects. In adopting this
14 plan, the committee shall comply with the provisions of Sections
15 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue Code,
16 relating to qualified allocation plan and relating to certain selection
17 criteria must be used, respectively.

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

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

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

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

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

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

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

1 (vi) The housing sponsor shall demonstrate that the project
2 development team has the experience and the financial capacity
3 to ensure project completion and operation for the extended use
4 period.

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

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

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

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

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

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

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

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

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

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

38 (4) For purposes of allocating credits pursuant to this section,
39 the committee shall not give preference to any project by virtue

1 of the date of submission of its application except to break a tie
2 when two or more of the projects have an equal rating.

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

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

15 The term “secretary” shall be replaced by the term “Franchise
16 Tax Board.”

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

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

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

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

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

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

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

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

1 (q) (1) A corporation may elect to assign any portion of any
2 credit allowed under this section to one or more affiliated
3 corporations for each taxable year in which the credit is allowed.
4 For purposes of this subdivision, “affiliated corporation” has the
5 meaning provided in subdivision (b) of Section 25110, as that
6 section was amended by Chapter 881 of the Statutes of 1993, as
7 of the last day of the taxable year in which the credit is allowed,
8 except that “100 percent” is substituted for “more than 50 percent”
9 wherever it appears in the section, as that section was amended by
10 Chapter 881 of the Statutes of 1993, and “voting common stock”
11 is substituted for “voting stock” wherever it appears in the section,
12 as that section was amended by Chapter 881 of the Statutes of
13 1993.

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

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

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

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

23 (r) (1) For a project that receives a preliminary reservation
24 under this section beginning on or after January 1, 2016, a taxpayer
25 may make an irrevocable election in its application to the California
26 Tax Credit Allocation Committee to sell all or any portion of any
27 credit allowed under this section to one or more unrelated parties
28 for each taxable year in which the credit is allowed subject to both
29 of the following conditions:

30 (A) The credit is sold for consideration that is not less than 80
31 percent of the amount of the credit.

32 (B) (i) The unrelated party or parties purchasing any or all of
33 the credit pursuant to this subdivision is a taxpayer allowed the
34 credit under this section for the taxable year of the purchase or any
35 prior taxable year or is a taxpayer allowed the federal credit under
36 Section 42 of the Internal Revenue Code, relating to low-income
37 housing credit, for the taxable year of the purchase or any prior
38 taxable year in connection with any project located in this state.

39 (ii) For purposes of this subparagraph, “taxpayer allowed the
40 credit under this section” means a taxpayer that is allowed the

1 credit under this section without regard to the purchase of a credit
2 pursuant to this subdivision without regard to any of the following:

3 (I) The purchase of a credit under this section pursuant to this
4 subdivision.

5 (II) The assignment of a credit under this section pursuant to
6 subdivision (q).

7 (III) The assignment of a credit under this section pursuant to
8 Section 23363.

9 (2) (A) The taxpayer that originally received the credit shall
10 report to the California Tax Credit Allocation Committee within
11 10 days of the sale of the credit, in the form and manner specified
12 by the California Tax Credit Allocation Committee, all required
13 information regarding the purchase and sale of the credit, including
14 the social security or other taxpayer identification number of the
15 unrelated party *or parties* to whom the credit has been sold, the
16 face amount of the credit sold, and the amount of consideration
17 received by the taxpayer for the sale of the credit.

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

23 (3) (A) A credit may be sold pursuant to this subdivision to
24 more than one unrelated party.

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

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

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

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

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

10 (s) The California Tax Credit Allocation Committee may
11 prescribe rules, guidelines, or procedures necessary or appropriate
12 to carry out the purposes of this section, including any guidelines
13 regarding the allocation of the credit allowed under this section.
14 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division
15 3 of Title 2 of the Government Code shall not apply to any rule,
16 guideline, or procedure prescribed by the California Tax Credit
17 Allocation Committee pursuant to this section.

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

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

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

28 SEC. 4. The California Tax Credit Allocation Committee shall
29 enter into an agreement with the Franchise Tax Board to pay any
30 costs incurred by the Franchise Tax Board in the administration
31 of subdivision (o) of Section 12206, subdivision (q) of Section
32 17058, and subdivision (r) of Section 23610.5 of the Revenue and
33 Taxation Code.

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

O