

ASSEMBLY BILL

No. 1065

Introduced by Assembly Member Gilmore

February 27, 2009

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

AB 1065, as introduced, Gilmore. Taxation: low-income housing: farmworker housing.

Existing insurance tax law and the Personal Income Tax Law and the Bank and Corporation Tax Law authorize, for so long as corresponding provisions of federal law are in effect, a credit against the taxes imposed by those state laws for certain amounts with respect to the provision of specified low-income housing, including projects to provide farmworker housing. Those laws generally provide that the maximum aggregate dollar amount of the credits allowed in each calendar year may not exceed \$500,000.

This bill would, for purposes of existing farmworker housing tax credits, increase the maximum aggregate dollar amount of credits allowed in each calendar year to \$1,000,000.

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:

SECTION 1. Section 12206 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (F) No credit shall be allocated under this section to buildings
36 located in a difficult development area or a qualified census tract
37 as defined in Section 42 of the Internal Revenue Code for which
38 the eligible basis of a new building or the rehabilitation expenditure
39 of an existing building is 130 percent of that amount pursuant to
40 Section 42(d)(5)(C) of the Internal Revenue Code, unless the

1 committee reduces the amount of federal credit, with the approval
2 of the applicant, so that the combined amount of federal and state
3 credit shall not exceed the total credit allowable pursuant to this
4 section and Section 42(b) of the Internal Revenue Code, computed
5 without regard to Section 42(d)(5)(C) of the Internal Revenue
6 Code.

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

9 (1) In the case of any qualified low-income building that receives
10 an allocation after 1989 and is a new building not federally
11 subsidized, 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 not
14 federally subsidized for the taxable year, determined in accordance
15 with the requirements of Section 42(b)(2) of the Internal Revenue
16 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
17 of the Internal Revenue Code.

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

20 (2) In the case of any qualified low-income building that receives
21 an allocation after 1989 and that is a new building that is federally
22 subsidized or that is an existing building that is “at risk of
23 conversion,” 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 federally
26 subsidized for the taxable year.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) The amount of the cashflow from those units in the building that are not low-income units. For purposes of computing cashflow under this subparagraph, operating costs shall be allocated to the

1 low-income units using the “floor space fraction,” as defined in
2 Section 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

1 reduce the aggregate housing credit dollar amount of the California
2 Tax Credit Allocation Committee for the calendar year in which
3 the allocation is made.

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

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

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

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

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

29 (4) ~~Five hundred thousand dollars (\$500,000)~~ *One million*
30 *dollars (\$1,000,000)* per calendar year for projects to provide
31 farmworker housing, as defined in subdivision (h) of Section
32 50199.7 of the Health and Safety Code.

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

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

1 any building, the period of 30 consecutive taxable years beginning
2 with the first taxable year of the credit period with respect thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (ii) The project's proposed financing, including tax credit
2 proceeds, shall be sufficient to complete the project and that the
3 proposed operating income shall be adequate to operate the project
4 for the extended use period.

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

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

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

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

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

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

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

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

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

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

38 (ii) Projects providing single room occupancy units serving very
39 low income tenants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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. The committee may require a
26 fee if the application for the credit under this section is submitted
27 in a calendar year after the year the application is submitted for
28 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, and before January 1,
32 2016, the credit shall be allocated to the partners of a partnership
33 owning the project in accordance with the partnership agreement,
34 regardless of how the federal low-income housing tax credit with
35 respect to the project is allocated to the partners, or whether the
36 allocation of the credit under the terms of the agreement has
37 substantial economic effect, within the meaning of Section 704(b)
38 of the Internal Revenue Code.

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 shall 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 unless the project also receives a preliminary reservation of federal
12 low-income housing tax credits.

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

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

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

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

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

26 (E) For buildings located in designated difficult development
27 areas or qualified census tracts as defined in Section 42(d)(5)(C)
28 of the Internal Revenue Code, credits may be allocated under this
29 section in the amounts prescribed in subdivision (c), provided that
30 the amount of credit allocated under Section 42 of the Internal
31 Revenue Code is computed on 100 percent of the qualified basis
32 of the building.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I),
38 (7), and (8) of Section 42(h) of the Internal Revenue Code shall
39 not be applicable to this section.

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

(1) Seventy million dollars (\$70,000,000) for the 2001 calendar year, and, for the 2002 calendar year and each calendar year thereafter, seventy million dollars (\$70,000,000) increased by the percentage, if any, by which the Consumer Price Index for the preceding calendar year exceeds the Consumer Price Index for the 2001 calendar year. For the purposes of this paragraph, the term “Consumer Price Index” means the last Consumer Price Index for all urban consumers published by the federal Department of Labor.

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

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

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

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

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

(i) Section 42(j) of the Internal Revenue Code shall not be applicable and the following requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, which agreement shall be subordinated, when required, to any lien or

1 encumbrance of any banks or other institutional lenders to the
2 project. The regulatory agreement entered into pursuant to
3 subdivision (f) of Section 50199.14 of the Health and Safety Code
4 shall apply, providing the agreement includes all of the following
5 provisions:

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

7 (2) A requirement that the agreement be filed in the official
8 records of the county in which the qualified low-income housing
9 project is located.

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

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

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

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

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

31 (8) The remedies available in the event of a default under the
32 regulatory agreement that is not cured within a reasonable cure
33 period, include, but are not limited to, allowing any of the parties
34 designated to enforce the regulatory agreement to collect all rents
35 with respect to the project; taking possession of the project and
36 operating the project in accordance with the regulatory agreement
37 until the enforcer determines the housing sponsor is in a position
38 to operate the project in accordance with the regulatory agreement;
39 applying to any court for specific performance; securing the

1 appointment of a receiver to operate the project; or any other relief
2 as may be appropriate.

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

15 (2) The committee shall adopt a qualified allocation plan, as
16 provided in Section 42(m)(1) of the Internal Revenue Code. In
17 adopting this plan, the committee shall comply with the provisions
18 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
19 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) Projects providing single room occupancy units serving very
30 low income tenants.

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

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

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

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

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

6 The term “secretary” shall be replaced by the term “California
7 Franchise Tax Board.”

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

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

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

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

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

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

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

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

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

34 This section shall remain in effect on and after December 1,
35 1990, for as long as Section 42 of the Internal Revenue Code,
36 relating to low-income housing credits, remains in effect.

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

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

3 23610.5. (a) (1) There shall be allowed as a credit against the
4 “tax” (as defined by Section 23036) a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code of 1986, except as otherwise provided in
8 this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) For buildings located in designated difficult development areas or qualified census tracts as defined in Section 42(d)(5)(C) of the Internal Revenue Code, credits may be allocated under this

1 section in the amounts prescribed in subdivision (c), provided that
2 the amount of credit allocated under Section 42 of the Internal
3 Revenue Code is computed on 100 percent of the qualified basis
4 of the building.

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

7 (1) In the case of any qualified low-income building placed in
8 service by the housing sponsor during 1987, the term “applicable
9 percentage” means 9 percent for each of the first three years and
10 3 percent for the fourth year for new buildings (whether or not the
11 building is federally subsidized) and for existing buildings.

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

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

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

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

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

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

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

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

37 (i) New construction, substantial rehabilitation, moderate
38 rehabilitation, property disposition, and loan management set-aside
39 programs, or any other program providing project-based assistance

1 pursuant to Section 8 of the United States Housing Act of 1937,
2 Section 1437f of Title 42 of the United States Code, as amended.

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

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

8 (iv) Programs for rent supplement assistance pursuant to Section
9 101 of the Housing and Urban Development Act of 1965, Section
10 1701s of Title 12 of the United States Code, as amended.

11 (v) Programs pursuant to Section 515 of the Housing Act of
12 1949, Section 1485 of Title 42 of the United States Code, as
13 amended.

14 (vi) The low-income housing credit program set forth in Section
15 42 of the Internal Revenue Code.

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

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

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

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

31 (1) The taxpayer shall be entitled to receive a cash distribution
32 from the operations of the project, after funding required reserves,
33 which, at the election of the taxpayer, shall be equal to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (g) The aggregate housing credit dollar amount that may be
12 allocated annually by the California Tax Credit Allocation
13 Committee pursuant to this section, Section 12206, and Section
14 17058 shall be an amount equal to the sum of all the following:

15 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
16 year, and, for the 2002 calendar year and each calendar year
17 thereafter, seventy million dollars (\$70,000,000) increased by the
18 percentage, if any, by which the Consumer Price Index for the
19 preceding calendar year exceeds the Consumer Price Index for the
20 2001 calendar year. For the purposes of this paragraph, the term
21 “Consumer Price Index” means the last Consumer Price Index for
22 all urban consumers published by the federal Department of 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)~~ *One million*
34 *dollars (\$1,000,000)* per calendar year for projects to provide
35 farmworker housing, as defined in subdivision (h) of Section
36 50199.7 of the Health and Safety Code.

37 (5) The amount of any unallocated or returned credits under
38 former Sections 17053.14, 23608.2, and 23608.3, as those sections
39 read prior to January 1, 2009, until fully exhausted for projects to

1 provide farmworker housing, as defined in subdivision (h) of
2 Section 50199.7 of the Health and Safety Code.

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

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

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

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

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

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

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

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

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

36 (7) A requirement that the housing sponsor, as security for the
37 performance of the housing sponsor’s obligations under the
38 regulatory agreement, assign the housing sponsor’s interest in rents
39 that it receives from the project, provided that until there is a

1 default under the regulatory agreement, the housing sponsor is
2 entitled to collect and retain the rents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (s) The amendments to this section made by the act adding this
2 subdivision shall apply only to taxable years beginning on or after
3 January 1, 1994, except that paragraph (1) of subdivision (q), as
4 amended, shall apply to taxable years beginning on or after January
5 1, 1993.

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

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