

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1216

Introduced by Senator Cedillo

February 18, 2010

An act to amend ~~Section 12206~~ *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 1216, as amended, Cedillo. Taxation: low-income housing credit.

Existing law establishes a low-income housing tax credit program, administered by the California Tax Credit Allocation Committee, which provides procedures and requirements for the allocation of state *insurance, income, and corporation tax-credit amounts credits* among low-income housing projects based on federal law.

This bill would authorize the California Tax Credit Allocation Committee, in any year in which it has a surplus of state *insurance, income, and corporation tax credits* to be allocated pursuant to the above provisions, with the approval of the applicant, to allocate those credits in excess of 30% of the eligible basis of a new building or rehabilitation expenditure and reduce the amount of federal credits accordingly to ensure that the combined amount of state and federal ~~credit shall~~ *credits do* not exceed the total-~~credit credits~~ allowable, provided the state credits shall not exceed 80% of the eligible basis, as prescribed.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

3 12206. (a) (1) There shall be allowed as a credit against the
4 “tax” (as defined 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, except as otherwise provided in this
8 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 shall have been allocated by
29 the 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 shall qualify 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

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 of the Health and Safety Code unless the project also receives a
17 preliminary reservation of federal 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 (G) ~~(i)~~—The California Tax Credit Allocation Committee, in any
8 year in which it has a surplus of state credits to be allocated under
9 this section, may, with the approval of the applicant, allocate those
10 credits in excess of 30 percent of the eligible basis of a new
11 building or rehabilitation expenditure and reduce the amount of
12 federal credits accordingly to ensure that the combined amount of
13 state and federal credit shall not exceed the total credit allowable
14 pursuant to this section and Section 42(b) of the Internal Revenue
15 Code, provided the state credits do not exceed 80 percent of the
16 eligible basis.

17 ~~(ii) The California Tax Credit Allocation Committee shall award~~
18 ~~any state tax credits allowed under this section first to those~~
19 ~~projects that the committee determines need a basis boost prior to~~
20 ~~awarding any state credits that are in excess of the normal basis~~
21 ~~boost to a particular project.~~

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

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

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

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

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

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

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

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

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

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

17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.

25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.

28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.

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

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

38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

1 except that the provisions of Section 42(e)(3)(A)(ii)(I) shall not
2 apply.

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

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

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

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

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

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

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 accumulate and be distributed any
23 time during the first 15 years of the compliance period but not
24 thereafter.

25 (2) The limitation on return shall apply 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.

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

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

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

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

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

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

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

16 The total amount for the four-year credit period of the housing
17 credit dollars allocated in a calendar year to any building shall
18 reduce the aggregate housing credit dollar amount of the California
19 Tax Credit Allocation Committee for the calendar year in which
20 the allocation is made.

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

24 (g) The aggregate housing credit dollar amount that may be
25 allocated annually by the California Tax Credit Allocation
26 Committee pursuant to this section, Section 17058, and Section
27 23610.5 shall be an amount equal to the sum of all the following:

28 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
29 year, and, for the 2002 calendar year and each calendar year
30 thereafter, seventy million dollars (\$70,000,000) increased by the
31 percentage, if any, by which the Consumer Price Index for the
32 preceding calendar year exceeds the Consumer Price Index for the
33 2001 calendar year. For the purposes of this paragraph, the term
34 “Consumer Price Index” means the last Consumer Price Index for
35 all urban consumers published by the federal Department of Labor.

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

38 (3) The amount of housing credit ceiling returned in the calendar
39 year. For purposes of this paragraph, the amount of housing credit
40 dollar amount returned in the calendar year equals the housing

1 credit dollar amount previously allocated to any project that does
2 not become a qualified low-income housing project within the
3 period required by this section or to any project with respect to
4 which an allocation is canceled by mutual consent of the California
5 Tax Credit Allocation Committee and the allocation recipient.

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

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

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

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

21 (2) The requirements of this section shall be set forth in a
22 regulatory agreement between the California Tax Credit Allocation
23 Committee and the housing sponsor, which agreement shall be
24 subordinated, when required, to any lien or encumbrance of any
25 banks or other institutional lenders to the project. The regulatory
26 agreement entered into pursuant to subdivision (f) of Section
27 50199.14 of the Health and Safety Code, shall apply, providing
28 the agreement includes all of the following provisions:

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

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

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

36 (D) A provision that the regulatory agreement shall be deemed
37 a contract enforceable by tenants as third-party beneficiaries thereto
38 and which allows individuals, whether prospective, present, or
39 former occupants of the building, who meet the income limitation

1 applicable to the building, the right to enforce the regulatory
2 agreement in any state court.

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

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

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

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

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

39 (2) The committee shall adopt a qualified allocation plan, as
40 provided in Section 42(m)(1) of the Internal Revenue Code. In

1 adopting this plan, the committee shall comply with the provisions
2 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
3 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 *SEC. 2. Section 17058 of the Revenue and Taxation Code is*
7 *amended to read:*

8 17058. (a) (1) There shall be allowed as a credit against the
9 amount of net tax (as defined in Section 17039) a state low-income
10 housing credit in an amount equal to the amount determined in
11 subdivision (c), computed in accordance with the provisions of
12 Section 42 of the Internal Revenue Code, except as otherwise
13 provided in this section.

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

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

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

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

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

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

38 (B) (1) The California Tax Credit Allocation Committee shall
39 not require fees for the credit under this section in addition to those
40 fees required for applications for the tax credit pursuant to Section

1 42 of the Internal Revenue Code. The committee may require a
2 fee if the application for the credit under this section is submitted
3 in a calendar year after the year the application is submitted for
4 the federal tax credit.

5 *(2) The California Tax Credit Allocation Committee, in any*
6 *year in which it has a surplus of state credits to be allocated under*
7 *this section, may, with the approval of the applicant, allocate those*
8 *credits in excess of 30 percent of the eligible basis of a new*
9 *building or rehabilitation expenditure and reduce the amount of*
10 *federal credits accordingly to ensure that the combined amount*
11 *of state and federal credits shall not exceed the total credit*
12 *allowable pursuant to this section and Section 42(b) of the Internal*
13 *Revenue Code, provided the state credits do not exceed 80 percent*
14 *of the eligible basis.*

15 (C) (i) For a project that receives a preliminary reservation of
16 the state low-income housing tax credit, allowed pursuant to
17 subdivision (a), on or after January 1, 2009, and before January 1,
18 2016, the credit shall be allocated to the partners of a partnership
19 owning the project in accordance with the partnership agreement,
20 regardless of how the federal low-income housing tax credit with
21 respect to the project is allocated to the partners, or whether the
22 allocation of the credit under the terms of the agreement has
23 substantial economic effect, within the meaning of Section 704(b)
24 of the Internal Revenue Code.

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

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

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

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

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

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

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

14 (E) For buildings located in designated difficult development
15 areas or qualified census tracts as defined in Section 42(d)(5)(C)
16 of the Internal Revenue Code, credits may be allocated under this
17 section in the amounts prescribed in subdivision (c), provided that
18 the amount of credit allocated under Section 42 of the Internal
19 Revenue Code is computed on 100 percent of the qualified basis
20 of the building.

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

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

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

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

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

39 (3) In the case of any qualified low-income building that receives
40 an allocation after 1989 and that is a new building that is federally

1 subsidized or that is an existing building that is “at risk of
2 conversion,” the term “applicable percentage” means the following:

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

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

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

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

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

19 (ii) The Below-Market-Interest-Rate Program pursuant to
20 Section 221(d)(3) of the National Housing Act, Sections
21 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

24 (iv) Programs for rent supplement assistance pursuant to Section
25 101 of the Housing and Urban Development Act of 1965, Section
26 1701s of Title 12 of the United States Code, as amended.

27 (v) Programs pursuant to Section 515 of the Housing Act of
28 1949, Section 1485 of Title 42 of the United States Code, as
29 amended.

30 (vi) The low-income housing credit program set forth in Section
31 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (1) The term “credit period” as defined in Section 42(f)(1) of
38 the Internal Revenue Code is modified by substituting “four taxable
39 years” for “10 taxable 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 shall not apply
3 to the tax credit under this section.

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

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

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

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

19 The total amount for the four-year period of the housing credit
20 dollars allocated in a calendar year to any building shall reduce
21 the aggregate housing credit dollar amount of the California Tax
22 Credit Allocation Committee for the calendar year in which the
23 allocation is made.

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

27 (g) The aggregate housing credit dollar amount which may be
28 allocated annually by the California Tax Credit Allocation
29 Committee pursuant to this section, Section 12206, and Section
30 23610.5 shall be an amount equal to the sum of all the following:

31 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
32 year, and, for the 2002 calendar year and each calendar year
33 thereafter, seventy million dollars (\$70,000,000) increased by the
34 percentage, if any, by which the Consumer Price Index for the
35 preceding calendar year exceeds the Consumer Price Index for the
36 2001 calendar year. For the purposes of this paragraph, the term
37 “Consumer Price Index” means the last Consumer Price Index for
38 all urban consumers published by the federal Department of Labor.

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

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

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

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

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

21 (i) Section 42(j) of the Internal Revenue Code shall not be
22 applicable and the following requirements of this section shall be
23 set forth in a regulatory agreement between the California Tax
24 Credit Allocation Committee and the housing sponsor, which
25 agreement shall be subordinated, when required, to any lien or
26 encumbrance of any banks or other institutional lenders to the
27 project. The regulatory agreement entered into pursuant to
28 subdivision (f) of Section 50199.14 of the Health and Safety Code
29 shall apply, providing the agreement includes all of the following
30 provisions:

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

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

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

38 (4) A provision that the regulatory agreement shall be deemed
39 a contract enforceable by tenants as third-party beneficiaries thereto
40 and which allows individuals, whether prospective, present, or

1 former occupants of the building, who meet the income limitation
2 applicable to the building, the right to enforce the regulatory
3 agreement in any state court.

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

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

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

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

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

39 (2) The committee shall adopt a qualified allocation plan, as
40 provided in Section 42(m)(1) of the Internal Revenue Code. In

1 adopting this plan, the committee shall comply with the provisions
2 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
3 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 *SEC. 3. Section 23610.5 of the Revenue and Taxation Code is*
25 *amended to read:*

26 23610.5. (a) (1) There shall be allowed as a credit against the
27 “tax” (as defined by Section 23036) a state low-income housing
28 tax credit in an amount equal to the amount determined in
29 subdivision (c), computed in accordance with Section 42 of the
30 Internal Revenue Code of 1986, except as otherwise provided in
31 this section.

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

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

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

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

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

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

18 (B) (1) The California Tax Credit Allocation Committee shall
19 not require fees for the credit under this section in addition to those
20 fees required for applications for the tax credit pursuant to Section
21 42 of the Internal Revenue Code. The committee may require a
22 fee if the application for the credit under this section is submitted
23 in a calendar year after the year the application is submitted for
24 the federal tax credit.

25 (2) *The California Tax Credit Allocation Committee, in any*
26 *year in which it has a surplus of state credits to be allocated under*
27 *this section, may, with the approval of the applicant, allocate those*
28 *credits in excess of 30 percent of the eligible basis of a new*
29 *building or rehabilitation expenditure and reduce the amount of*
30 *federal credits accordingly to ensure that the combined amount*
31 *of state and federal credits shall not exceed the total credit*
32 *allowable pursuant to this section and Section 42(b) of the Internal*
33 *Revenue Code, provided the state credits do not exceed 80 percent*
34 *of the eligible basis.*

35 (C) (i) For a project that receives a preliminary reservation of
36 the state low-income housing tax credit, allowed pursuant to
37 subdivision (a), on or after January 1, 2009, and before January 1,
38 2016, the credit shall be allocated to the partners of a partnership
39 owning the project in accordance with the partnership agreement,
40 regardless of how the federal low-income housing tax credit with

1 respect to the project is allocated to the partners, or whether the
2 allocation of the credit under the terms of the agreement has
3 substantial economic effect, within the meaning of Section 704(b)
4 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 (C) Any amount allowed to be distributed under subparagraph
39 (A) that is not available for distribution during the first five years
40 of the compliance period may accumulate and be distributed at

1 any time during the first 15 years of the compliance period but not
2 thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (iv) The housing sponsor shall have and maintain control of the
40 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 are low-income
28 units with three and more bedrooms.

29 (ii) Projects providing single-room occupancy units serving
30 very 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 except to break a tie
4 when two or more of the projects have an equal rating.

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

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

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

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

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

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

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

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

3 (q) (1) A corporation may elect to assign any portion of any
4 credit allowed under this section to one or more affiliated
5 corporations for each taxable year in which the credit is allowed.
6 For purposes of this subdivision, “affiliated corporation” has the
7 meaning provided in subdivision (b) of Section 25110, as that
8 section was amended by Chapter 881 of the Statutes of 1993, as
9 of the last day of the taxable year in which the credit is allowed,
10 except that “100 percent” is substituted for “more than 50 percent”
11 wherever it appears in the section, as that section was amended by
12 Chapter 881 of the Statutes of 1993, and “voting common stock”
13 is substituted for “voting stock” wherever it appears in the section,
14 as that section was amended by Chapter 881 of the Statutes of
15 1993.

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

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

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

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

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

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

30 (s) The amendments to this section made by the act adding this
31 subdivision shall apply only to taxable years beginning on or after
32 January 1, 1994, except that paragraph (1) of subdivision (q), as
33 amended, shall apply to taxable years beginning on or after January
34 1, 1993.

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

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