

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1216

Introduced by Senator Cedillo

February 18, 2010

An act to amend Sections 12206, 17058, and 23610.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 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 credits among low-income housing projects based on federal law.

This bill would authorize the California Tax Credit Allocation Committee, in any year *beginning before January 1, 2016*, 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 credits do not exceed the total 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:

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 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) The California Tax Credit Allocation Committee, in any
8 year *beginning before January 1, 2016*, in which it has a surplus
9 of state credits to be allocated under this section, may, with the
10 approval of the applicant, allocate those credits in excess of 30
11 percent of the eligible basis of a new building or rehabilitation
12 expenditure and reduce the amount of federal credits accordingly
13 to ensure that the combined amount of state and federal credit shall
14 not exceed the total credit allowable pursuant to this section and
15 Section 42(b) of the Internal Revenue Code, provided the state
16 credits do not exceed 80 percent of the eligible basis.

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

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

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

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

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

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

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

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

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

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

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

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

17 (iv) Programs for rent supplement assistance pursuant to Section
18 101 of the Housing and Urban Development Act of 1965, Section
19 1701s of Title 12 of the United States Code, as amended.

20 (v) Programs pursuant to Section 515 of the Housing Act of
21 1949, Section 1485 of Title 42 of the United States Code, as
22 amended.

23 (vi) The low-income housing credit program set forth in Section
24 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38 If, as of the close of any taxable year in the compliance period,
39 after the first year of the credit period, the qualified basis of any
40 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) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

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

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

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 17058, 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.

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

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

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

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

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

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

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

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

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

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

39 (F) A requirement that the housing sponsor notify the California
40 Tax Credit Allocation Committee or its designee and the local

1 agency that can enforce the regulatory agreement if there is a
2 determination by the Internal Revenue Service that the project is
3 not in compliance with Section 42(g) of the Internal Revenue Code.

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

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

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

33 (2) The committee shall adopt a qualified allocation plan, as
34 provided in Section 42(m)(1) of the Internal Revenue Code. In
35 adopting this plan, the committee shall comply with the provisions
36 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
37 Code.

38 (3) Notwithstanding Section 42(m) of the Internal Revenue
39 Code, the California Tax Credit Allocation Committee shall

1 allocate housing credits in accordance with the qualified allocation
2 plan and regulations, which shall include the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (2) "Taxpayer" for purposes of this section means the sole owner
8 in the case of an individual, the partners in the case of a partnership,
9 and the shareholders in the case of an "S" corporation.

10 (3) "Housing sponsor" for purposes of this section means the
11 sole owner in the case of an individual, the partnership in the case
12 of a partnership, and the "S" corporation in the case of an "S"
13 corporation.

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

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

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

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

31 (B) (1) The California Tax Credit Allocation Committee shall
32 not require fees for the credit under this section in addition to those
33 fees required for applications for the tax credit pursuant to Section
34 42 of the Internal Revenue Code. The committee may require a
35 fee if the application for the credit under this section is submitted
36 in a calendar year after the year the application is submitted for
37 the federal tax credit.

38 (2) The California Tax Credit Allocation Committee, in any
39 year *beginning before January 1, 2016*, in which it has a surplus
40 of state credits to be allocated under this section, may, with the

approval of the applicant, allocate those credits in excess of 30 percent 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 credits shall not exceed the total credit allowable pursuant to this section and Section 42(b) of the Internal Revenue Code, provided the state credits do not exceed 80 percent of the eligible basis.

(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 of the Health and Safety Code 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.

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

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

5 (E) For buildings located in designated difficult development
6 areas or qualified census tracts as defined in Section 42(d)(5)(C)
7 of the Internal Revenue Code, credits may be allocated under this
8 section in the amounts prescribed in subdivision (c), provided that
9 the amount of credit allocated under Section 42 of the Internal
10 Revenue Code is computed on 100 percent of the qualified basis
11 of the building.

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

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

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

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

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

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

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

37 (B) For the fourth year, the difference between 13 percent and
38 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.

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

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

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

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

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

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

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

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

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

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

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

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

38 If, as of the close of any taxable year in the compliance period,
39 after the first year of the credit period, the qualified basis of any
40 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 taxable year 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) Section 42(h)(2) of the Internal Revenue Code shall not be applicable and instead the following provisions shall be applicable:

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

(2) Paragraphs (3), (4), (5), (6)(E)(i)(II), (6)(F), (6)(G), (6)(I), (7), and (8) of Section 42(h) of the Internal Revenue Code shall 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) 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 encumbrance of any banks or other institutional lenders to the project. The regulatory agreement entered into pursuant to subdivision (f) of Section 50199.14 of the Health and Safety Code shall apply, providing the agreement includes all of the following provisions:

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

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

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

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

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

(6) A requirement that the housing sponsor notify the California Tax Credit Allocation Committee or its designee if there is a

1 determination by the Internal Revenue Service that the project is
2 not in compliance with Section 42(g) of the Internal Revenue Code.

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

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

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

32 (2) The committee shall adopt a qualified allocation plan, as
33 provided in Section 42(m)(1) of the Internal Revenue Code. In
34 adopting this plan, the committee shall comply with the provisions
35 of Sections 42(m)(1)(B) and 42(m)(1)(C) of the Internal Revenue
36 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 The term “secretary” shall be replaced by the term “California
24 Franchise Tax Board.”

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

29 (m) A project that received an allocation of a 1989 federal
30 housing credit dollar amount shall be eligible to receive an
31 allocation of a 1990 state housing credit dollar amount, subject to
32 all of the following conditions:

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

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

37 (3) Notwithstanding paragraph (2), a project applying for an
38 allocation under this subdivision shall be subject to the
39 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) Any unused credit may continue to be carried forward, as provided in subdivision (l), until the credit has been exhausted.

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

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

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

23610.5. (a) (1) There shall be allowed as a credit against the “tax” (as defined by Section 23036) 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 of 1986, 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) The low-income housing project shall be located in California and shall meet either of the following requirements:

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

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

11 (B) (1) The California Tax Credit Allocation Committee shall
12 not require fees for the credit under this section in addition to those
13 fees required for applications for the tax credit pursuant to Section
14 42 of the Internal Revenue Code. The committee may require a
15 fee if the application for the credit under this section is submitted
16 in a calendar year after the year the application is submitted for
17 the federal tax credit.

18 (2) The California Tax Credit Allocation Committee, in any
19 year *beginning before January 1, 2016*, in which it has a surplus
20 of state credits to be allocated under this section, may, with the
21 approval of the applicant, allocate those credits in excess of 30
22 percent of the eligible basis of a new building or rehabilitation
23 expenditure and reduce the amount of federal credits accordingly
24 to ensure that the combined amount of state and federal credits
25 shall not exceed the total credit allowable pursuant to this section
26 and Section 42(b) of the Internal Revenue Code, provided the state
27 credits do not exceed 80 percent of the eligible basis.

28 (C) (i) For a project that receives a preliminary reservation of
29 the state low-income housing tax credit, allowed pursuant to
30 subdivision (a), on or after January 1, 2009, and before January 1,
31 2016, the credit shall be allocated to the partners of a partnership
32 owning the project in accordance with the partnership agreement,
33 regardless of how the federal low-income housing tax credit with
34 respect to the project is allocated to the partners, or whether the
35 allocation of the credit under the terms of the agreement has
36 substantial economic effect, within the meaning of Section 704(b)
37 of the Internal Revenue Code.

38 (ii) To the extent the allocation of the credit to a partner under
39 this section lacks substantial economic effect, any loss or deduction
40 otherwise allowable under this part that is attributable to the sale

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (3) In the case of any qualified low-income building that receives
12 an allocation after 1989 and that is a new building that is federally
13 subsidized or that is an existing building that is “at risk of
14 conversion,” 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 federally
17 subsidized for the taxable year.

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

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

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

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

31 (ii) The Below-Market-Interest-Rate Program pursuant to
32 Section 221(d)(3) of the National Housing Act, Sections
33 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

36 (iv) Programs for rent supplement assistance pursuant to Section
37 101 of the Housing and Urban Development Act of 1965, Section
38 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 federally 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 which, at the election of the taxpayer, shall be equal to:

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

25 (i) The owner equity, which shall include the amount of the
26 capital contributions actually paid to the housing sponsor and shall
27 not 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 accumulate and be distributed at
38 any 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 later of the taxable years in which the increase
27 in qualified basis occurs.

28 (f) The provisions of Section 42(h) of the Internal Revenue
29 Code 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 credit period of the housing
33 credit dollars allocated in a calendar year to any building shall
34 reduce the aggregate housing credit dollar amount of the California
35 Tax Credit Allocation Committee for the calendar year in which
36 the 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.

(g) The aggregate housing credit dollar amount that may be allocated annually by the California Tax Credit Allocation Committee pursuant to this section, Section 12206, and Section 17058 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) 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 shall be substituted in its place:

The requirements of this section shall be set forth in a regulatory agreement between the California Tax Credit Allocation Committee and the housing sponsor, and this agreement shall be subordinated, when required, to any lien or encumbrance of any banks or other

1 institutional lenders to the project. The regulatory agreement
2 entered into pursuant to subdivision (f) of Section 50199.14 of the
3 Health and Safety Code shall apply, provided that the agreement
4 includes all of the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) The housing sponsor shall demonstrate that the project development team has the experience and the financial capacity

1 to ensure project completion and operation for the extended use
2 period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) To the extent the amendments made to this section by the Statutes of 1990 conflict with any provisions existing in this section 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.

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

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

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

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

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

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

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

25 (s) The amendments to this section made by the act adding this
26 subdivision shall apply only to taxable years beginning on or after
27 January 1, 1994, except that paragraph (1) of subdivision (q), as
28 amended, shall apply to taxable years beginning on or after January
29 1, 1993.

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