AMENDED IN SENATE AUGUST 18, 2000

AMENDED IN ASSEMBLY MAY 30, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL No. 1811

Introduced by Assembly Member Reyes
(Coauthors: Assembly Members Keeley and Wiggins)
(Principal coauthor: Senator Costa)
(Coauthor: Senator McPherson)

February 3, 2000

An act to amend Section 50199.17 of the Health and Safety Code, and to amend Sections 17053.14 and 23608.2 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1811, as amended, Reyes. Taxation: credit: qualified farmworker housing.

The Personal Income Tax Law and the Bank and Corporation Tax Law allow a credit against the taxes imposed by those laws in an amount equal to 50% of the eligible costs of constructing or rehabilitating farmworker housing. The credit is allocated pursuant to the Farmworker Housing Assistance Program by the California Tax Credit Allocation Committee in an amount not to exceed $500,000 per calendar year.

This bill would apply limitations and allocation ~~requirements~~ *provisions* set forth in specified provisions of federal law to the amount of the farmworker housing credit allowed to a taxpayer. This bill would make conforming changes to existing authority and exemptions with respect to the adoption of regulations for the implementation of these credits.

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 50199.17 of the Health and Safety Code is amended to read:

50199.17. (a) The committee may adopt, amend, or repeal rules and regulations for the allocation of housing credits pursuant to this chapter and Sections 12206, 17053.14, 17058, 23608.2, 23608.3, and 23610.5 of the Revenue and Taxation Code without complying with the procedural requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, except as described in subdivision (b).

(b) The committee shall provide a notice of proposed action as described in Section 11346.5 of the Government Code. The notice of proposed action shall be provided to the public at least 21 days before the close of the public comment period, and the committee shall schedule at least one public hearing as described in Section 11346.8 of the Government Code before the close of the public comment period. The committee shall maintain a rulemaking file as described in Section 11347.3 of the Government Code. The final version of the regulations shall be accompanied by a final statement of reasons as described in subdivision (a) of Section 11346.9 of the Government Code.

(c) These rules and regulations shall be effective immediately upon adoption by the committee.

(d) The committee may also adopt, amend, or repeal emergency rules and regulations pursuant to this chapter and pursuant to Sections 12206, 17053.14, 17058, 23608.2, 23608.3, and 23610.5 of the Revenue and Taxation Code. The adoption, amendment, or repeal of these regulations shall be conclusively presumed to be necessary for the immediate preservation of the public peace, health, safety, or general welfare within the meaning or purposes of Section 11346.1 of the Government Code.

SEC. 2. Section 17053.14 of the Revenue and Taxation Code is amended to read:

17053.14. (a) For taxable years beginning on or after January 1, 1997, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount, subject to ~~the limitation set forth in~~ Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(b) (1) For purposes of this section, the "eligible costs" shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. "Eligible costs" include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any other provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) *Apply to the committee for the credit certification.*

(2) Retain a copy of the certification.

~~(2)~~

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the eligible costs described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the taxable year. Credit in excess of the amount necessary to make the project feasible shall not be allocated. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, and each partner's taxpayer identification number in the case of a partnership, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), eligible costs, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) ''Compliance period'' means, with respect to any farmworker housing, the period of 30 consecutive taxable years, beginning with the taxable year in which the credit is allowable.

(2) ''Construct or rehabilitate'' includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) ''Farmworker Housing Assistance Program'' means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(4) ‘‘Qualified farmworker housing’’ means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied.

(5) ‘‘Committee’’ means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(6) ‘‘Qualified accountant’’ means an accountant licensed or certified in this state who is neither an employee of the taxpayer nor related to the taxpayer, within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 11 (commencing with Section 23001) to the extent of any eligible costs, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of eligible costs from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by this section exceeds the ‘‘net tax,’’ the excess may be carried over to reduce the ‘‘net tax’’ in the following year, and succeeding years if necessary, until the credit has been exhausted.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the ‘‘net tax,’’ as defined in Section 17039, for the taxable year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, ‘‘disqualifying event’’ shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, ‘‘recapture amount’’ means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, ‘‘interest amount’’ means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each taxable year in which the credit was claimed to the date of the payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 23608.2 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 23608.2 and 23608.3 for the 1998 calendar year and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 23608.2 and 23608.3 for the preceding calendar year or years.

SEC. 3. Section 23608.2 of the Revenue and Taxation Code is amended to read:

23608.2. (a) For income years beginning on or after January 1, 1997, there shall be allowed as a credit against the "tax," as defined by Section 23036, an amount, subject to ~~the limitation set forth in~~ Section 42(h)(1) of the Internal Revenue Code, that is otherwise equal to the lesser of 50 percent of the eligible costs, as determined under subdivision (b), or the amount allocated under paragraph (2) of subdivision (e).

(b) (1) For purposes of this section, the "eligible costs" shall be equal to the total finance costs, construction costs, excavation costs, installation costs, and permit costs paid or incurred to construct or rehabilitate farmworker housing. "Eligible costs" include, but are not limited to, improvements to ensure compliance with laws governing access for persons with disabilities and costs related to reducing utility expenses. Noneligible costs include land and those costs financed by grants and below-market financing.

(2) For purposes of paragraph (1), construction or rehabilitation of the farmworker housing shall have commenced on or after January 1, 1997.

(3) Notwithstanding any provision of this part, eligible costs shall not include any costs paid or incurred prior to January 1, 1997.

(c) Notwithstanding any other provision of this part, no credit shall be allowed under this section unless the taxpayer first obtains a certification from the committee that the amounts described in subdivision (b) qualify for the credit under this section and the total amount of the credit allocated to the taxpayer pursuant to the Farmworker Housing Assistance Program.

(d) The taxpayer shall do all of the following:

(1) *Apply to the committee for credit certification.*

(2) Retain a copy of the certification.

~~(2)~~

(3) Make the certification available to the Franchise Tax Board upon request.

(e) The committee shall do all of the following:

(1) Provide forms and instructions for applications for credit certification, as specified pursuant to the Farmworker Housing Assistance Program.

(2) Accept applications and issue a certificate to the taxpayer that includes a certification as to the eligible costs described in subdivision (b) that qualify for the credit and the total amount of the credit to which the taxpayer is entitled for the income year. Credit in excess of the amount necessary to make the project feasible shall not be allocated. Credits shall be allocated through a minimum of one competitive funding round per year.

(3) Obtain the taxpayer's taxpayer identification number, or each shareholder's taxpayer identification number in the case of an S corporation, for tax administration purposes.

(4) Provide an annual listing to the Franchise Tax Board, in the form and manner agreed upon by the Franchise Tax Board and the committee, containing the names, taxpayer identification numbers pursuant to paragraph (3), eligible costs, and total amount of credit certified to each taxpayer.

(f) For purposes of this section:

(1) "Compliance period" means, with respect to any farmworker housing, the period of 30 consecutive income years, beginning with the income year in which the credit is allowable.

(2) "Construct or rehabilitate" includes reconstruction, but does not include any costs related to acquisition or refinancing of property or structures thereon.

(3) ‘‘Farmworker Housing Assistance Program’’ means Chapter 3.7 (commencing with Section 50199.50) of Part 1 of Division 31 of the Health and Safety Code.

(4) ‘‘Qualified farmworker housing’’ means housing located within this state which satisfies the requirements of the Farmworker Housing Assistance Program. The housing may be vacant or occupied, and it need not be licensed pursuant to the Employee Housing Act at the time of the initiation of construction or rehabilitation.

(5) ‘‘Committee’’ means the California Tax Credit Allocation Committee as defined in Section 50199.7 of the Health and Safety Code.

(6) ‘‘Qualified accountant’’ means an accountant licensed or certified in this state who is neither an employee of the taxpayer, nor related to the taxpayer within the meaning of Section 267 of the Internal Revenue Code.

(g) No deduction or other credit shall be allowed under this part or Part 10 (commencing with Section 17001) to the extent of any eligible costs, as defined in subdivision (b), that are taken into account in computing the credit allowed under this section.

(h) The farmworker housing tax credit shall not be allowed unless the taxpayer:

(1) Constructs or rehabilitates the property subject to the covenants, conditions, and restrictions imposed by this section and pursuant to the Farmworker Housing Assistance Program, which shall include, but not necessarily be limited to, a requirement that the taxpayer obtain, for approval by the committee, a construction cost audit and certification of eligible costs from a qualified accountant.

(2) Subsequent to construction or rehabilitation of the farmworker housing, owns or operates the farmworker housing pursuant to the requirements of this section, or ensures the ownership and operation of the farmworker housing pursuant to the requirements of this section.

(i) The requirements of this section shall be set forth in a written agreement between the committee and the taxpayer. The agreement shall include, but not necessarily be limited to, the requirements set forth in the Farmworker Housing Assistance Program.

(j) In the case where the credit allowed by 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.

(k) (1) In the case of any disqualifying event, as defined in paragraph (2), there shall be added to the ‘‘tax,’’ as defined in Section 23036, for the income year in which the disqualifying event occurs, the recapture amount computed under paragraph (3) and the interest amount computed under paragraph (4).

(2) For purposes of this subdivision, ‘‘disqualifying event’’ shall mean:

(A) The committee determines that the certification provided under subdivision (e) was obtained by fraud or misrepresentation.

(B) The taxpayer fails to comply with the requirements of the Farmworker Housing Assistance Program, or any other requirement imposed under this section.

(3) For purposes of this subdivision, ‘‘recapture amount’’ means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the entire amount of any credit previously allowed under this section.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), an amount determined by multiplying the entire amount of the credit previously allowed under this section by a fraction, the numerator of which is the number of years remaining in the compliance period and the denominator of which is 30.

(4) For purposes of this subdivision, ‘‘interest amount’’ means:

(A) In the case of any disqualifying event described in subparagraph (A) of paragraph (2), the amount of interest computed using the adjusted annual rate established in Section 19521 from the due date of the return for each income year in which the credit was claimed to the date of payment of the additional tax resulting from the application of this subdivision.

(B) In the case of any disqualifying event described in subparagraph (B) of paragraph (2), zero.

(*l*) The annual amount of credit granted pursuant to this section and Sections 17053.14 and 23608.3 shall not exceed five hundred thousand dollars ($500,000), provided that the aggregate amount of the credit granted pursuant to this section and Sections 17053.14 and 23608.3 for the calendar year 1998 and thereafter may exceed five hundred thousand dollars ($500,000) per calendar year by an amount equal to any unallocated credits under this section and Sections 17053.14 and 23608.3 for the preceding calendar year or years.

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

O