

AMENDED IN ASSEMBLY JANUARY 4, 2010
AMENDED IN ASSEMBLY SEPTEMBER 8, 2009
CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1065

Introduced by Assembly Member Gilmore

February 27, 2009

An act to add Sections 17053.15 and 23608.4 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy. An act to amend Sections 12206, 17058, and 23610.5 of, and to add Sections 17053.15 and 23608.4 to, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1065, as amended, Gilmore. Low-income housing tax-credits-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 tax credit amounts among low-income housing projects based on federal law. Existing law, among other things, provides for the recapture for noncompliance, in a specified amount, of tax credits previously granted with respect to the costs of constructing or rehabilitating farmworker housing.

This bill would, in the case of the credit applicable to farmworker housing, modify the recapture amount, as provided. *This bill would also require recapture of credit for low-income housing in conformity with federal law, as provided.*

~~This bill would take effect immediately as a tax levy.~~

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

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

3 12206. (a) (1) There shall be allowed as a credit against the
4 “tax” (as defined by Section 12201) a state low-income housing
5 tax credit in an amount equal to the amount determined in
6 subdivision (c), computed in accordance with Section 42 of the
7 Internal Revenue Code, except as otherwise provided in this
8 section.

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

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

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

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

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

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

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

10 (C) (i) For a project that receives a preliminary reservation of
11 the state low-income housing tax credit, allowed pursuant to
12 subdivision (a), on or after January 1, 2009, and before January 1,
13 2016, the credit shall be allocated to the partners of a partnership
14 owning the project in accordance with the partnership agreement,
15 regardless of how the federal low-income housing tax credit with
16 respect to the project is allocated to the partners, or whether the
17 allocation of the credit under the terms of the agreement has
18 substantial economic effect, within the meaning of Section 704(b)
19 of the Internal Revenue Code.

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

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

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

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

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

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

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

3 (F) No credit shall be allocated under this section to buildings
4 located in a difficult development area or a qualified census tract
5 as defined in Section 42 of the Internal Revenue Code for which
6 the eligible basis of a new building or the rehabilitation expenditure
7 of an existing building is 130 percent of that amount pursuant to
8 Section 42(d)(5)(C) of the Internal Revenue Code, unless the
9 committee reduces the amount of federal credit, with the approval
10 of the applicant, so that the combined amount of federal and state
11 credit shall not exceed the total credit allowable pursuant to this
12 section and Section 42(b) of the Internal Revenue Code, computed
13 without regard to Section 42(d)(5)(C) of the Internal Revenue
14 Code.

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

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

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

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

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

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

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

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

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

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

9 (ii) The Below-Market-Interest-Rate Program pursuant to
10 Section 221(d)(3) of the National Housing Act, Sections
11 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

14 (iv) Programs for rent supplement assistance pursuant to Section
15 101 of the Housing and Urban Development Act of 1965, Section
16 1701s of Title 12 of the United States Code, as amended.

17 (v) Programs pursuant to Section 515 of the Housing Act of
18 1949, Section 1485 of Title 42 of the United States Code, as
19 amended.

20 (vi) The low-income housing credit program set forth in Section
21 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 If, as of the close of any taxable year in the compliance period,
35 after the first year of the credit period, the qualified basis of any
36 building exceeds the qualified basis of that building as of the close
37 of the first year of the credit period, the housing sponsor, to the
38 extent of its tax credit allocation, shall be eligible for a credit on
39 the excess in an amount equal to the applicable percentage
40 determined pursuant to subdivision (c) for the four-year period

1 beginning with the later of the taxable years in which the increase
2 in qualified basis occurs.

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

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

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

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

15 (g) The aggregate housing credit dollar amount that may be
16 allocated annually by the California Tax Credit Allocation
17 Committee pursuant to this section, Section 17058, and Section
18 23610.5 shall be an amount equal to the sum of all the following:

19 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
20 year, and, for the 2002 calendar year and each calendar year
21 thereafter, seventy million dollars (\$70,000,000) increased by the
22 percentage, if any, by which the Consumer Price Index for the
23 preceding calendar year exceeds the Consumer Price Index for the
24 2001 calendar year. For the purposes of this paragraph, the term
25 “Consumer Price Index” means the last Consumer Price Index for
26 all urban consumers published by the federal Department of Labor.

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

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

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

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

6 (h) ~~The~~ *For purposes of paragraph (2) of subdivision (i), the*
 7 term “compliance period” as defined in Section 42(i)(1) of the
 8 Internal Revenue Code is modified to mean, with respect to any
 9 building, the period of 30 consecutive taxable years beginning
 10 with the first taxable year of the credit period with respect thereto.

11 (i) (1) Section 42(j) of the Internal Revenue Code shall ~~not be~~
 12 ~~applicable and the provisions in paragraph (2) shall be substituted~~
 13 ~~in its place~~ *be applicable. The requirements of paragraph (2) shall*
 14 *also apply.*

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

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

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

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

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

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

38 (F) A requirement that the housing sponsor notify the California
 39 Tax Credit Allocation Committee or its designee and the local
 40 agency that can enforce the regulatory agreement 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 (G) 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 (H) 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 which may be allocated by the committee in that period,
26 and the approximate date on which allocations shall be made. If
27 the 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 (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 (p) *The amendments made by the act adding this subdivision*
39 *shall apply to preliminary reservations made on or after the*
40 *effective date of that act.*

1 SEC. 2. Section 17053.15 is added to the Revenue and Taxation
 2 Code, to read:

3 17053.15. (a) The compliance period for any farmworker
 4 housing credit granted or allocated under former Section 10753.14
 5 shall be 30 years, as set forth in subdivision (h) of Section 17058.
 6 Notwithstanding the provisions of former Section 17053.14, any
 7 farmworker housing credit granted or allocated under former
 8 Section 17053.14 shall be subject to recapture during the recapture
 9 period. For purposes of this section, “recapture period” means
 10 the 15 consecutive taxable years beginning with the taxable year
 11 in which the credit is allowable.

12 (b) For purposes of calculating the recapture amount for any
 13 farmworker housing credit granted or allocated under former
 14 Section 17053.14, for a disqualifying event described in
 15 subparagraph (B) of paragraph (2) of subdivision (k) of former
 16 Section 17053.14, “recapture amount” means an amount
 17 determined by multiplying the entire amount of the credit
 18 previously allowed under former Section 17053.34 by a fraction,
 19 the numerator of which is the number of years remaining in the
 20 recapture period and the denominator of which is 15.

21 SEC. 3. Section 17058 of the Revenue and Taxation Code is
 22 amended to read:

23 17058. (a) (1) There shall be allowed as a credit against the
 24 amount of net tax (as defined in Section 17039) a state low-income
 25 housing credit in an amount equal to the amount determined in
 26 subdivision (c), computed in accordance with the provisions of
 27 Section 42 of the Internal Revenue Code, except as otherwise
 28 provided in this section.

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

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

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

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

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

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

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

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

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

39 (iii) This subparagraph shall not apply to a project that receives
40 a preliminary reservation of state low-income housing tax credits

1 under the set-aside described in subdivision (c) of Section 50199.20
2 of the Health and Safety Code unless the project also receives a
3 preliminary reservation of federal low-income housing tax credits.

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

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

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

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

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

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

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

26 (1) In the case of any qualified low-income building placed in
27 service by the housing sponsor during 1987, the term “applicable
28 percentage” means 9 percent for each of the first three years and
29 3 percent for the fourth year for new buildings (whether or not the
30 building is federally subsidized) and for existing buildings.

31 (2) In the case of any qualified low-income building that receives
32 an allocation after 1989 and is a new building not federally
33 subsidized, 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 not
36 federally subsidized for the taxable year, determined in accordance
37 with the requirements of Section 42(b)(2) of the Internal Revenue
38 Code, in lieu of the percentage prescribed in Section 42(b)(1)(A)
39 of the Internal Revenue Code.

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

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

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

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

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

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

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

23 (ii) The Below-Market-Interest-Rate Program pursuant to
24 Section 221(d)(3) of the National Housing Act, Sections
25 1715l(d)(3) and (5) of Title 12 of the United States Code.

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

28 (iv) Programs for rent supplement assistance pursuant to Section
29 101 of the Housing and Urban Development Act of 1965, Section
30 1701s of Title 12 of the United States Code, as amended.

31 (v) Programs pursuant to Section 515 of the Housing Act of
32 1949, Section 1485 of Title 42 of the United States Code, as
33 amended.

34 (vi) The low-income housing credit program set forth in Section
35 42 of the Internal Revenue Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (g) The aggregate housing credit dollar amount which may be
31 allocated annually by the California Tax Credit Allocation
32 Committee pursuant to this section, Section 12206, and Section
33 23610.5 shall be an amount equal to the sum of all the following:

34 (1) Seventy million dollars (\$70,000,000) for the 2001 calendar
35 year, and, for the 2002 calendar year and each calendar year
36 thereafter, seventy million dollars (\$70,000,000) increased by the
37 percentage, if any, by which the Consumer Price Index for the
38 preceding calendar year exceeds the Consumer Price Index for the
39 2001 calendar year. For the purposes of this paragraph, the term

1 “Consumer Price Index” means the last Consumer Price Index for
 2 all urban consumers published by the federal Department of Labor.

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

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

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

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

21 (h) ~~The~~ *For purposes of this section other than the application*
 22 *of Section 42(j) of the Internal Revenue Code, the term “compliance*
 23 *period” as defined in Section 42(i)(1) of the Internal Revenue Code*
 24 *is modified to mean, with respect to any building, the period of 30*
 25 *consecutive taxable years beginning with the first taxable year of*
 26 *the credit period with respect thereto.*

27 (i) Section 42(j) of the Internal Revenue Code shall ~~not~~ be
 28 applicable ~~and the~~. *The following requirement shall also apply:*

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

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

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

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

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

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

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

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

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

33 (j) (1) The committee shall allocate the housing credit on a
34 regular basis consisting of two or more periods in each calendar
35 year during which applications may be filed and considered. The
36 committee shall establish application filing deadlines, the maximum
37 percentage of federal and state low-income housing tax credit
38 ceiling that may be allocated by the committee in that period, and
39 the approximate date on which allocations shall be made. If the
40 enactment of federal or state law, the adoption of rules or

1 regulations or other similar events prevent the use of two allocation
2 periods, the committee may reduce the number of periods and
3 adjust the filing deadlines, maximum percentage of credit allocated,
4 and the allocation dates.

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

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

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

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

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

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

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

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

32 (vi) The housing sponsor shall demonstrate that the project
33 development team has the experience and the financial capacity
34 to ensure project completion and operation for the extended use
35 period.

36 (vii) The housing sponsor shall demonstrate the amount of tax
37 credit that is necessary for the financial feasibility of the project
38 and its viability as a qualified low-income housing project
39 throughout the extended use period, taking into account operating
40 expenses, a supportable debt service, reserves, funds set aside for

1 rental subsidies, and required equity, and a development fee that
2 does not exceed a specified percentage of the eligible basis of the
3 project prior to inclusion of the development fee in the eligible
4 basis, as determined by the committee.

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

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

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

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

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

18 (ii) Projects providing single room occupancy units serving very
19 low income tenants.

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

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

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

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

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

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

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

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

- 5 (1) The project was not placed in service prior to 1990.
- 6 (2) To the extent the amendments made to this section by the
 7 Statutes of 1990 conflict with any provisions existing in this section
 8 prior to those amendments, the prior provisions of law shall prevail.
- 9 (3) Notwithstanding paragraph (2), a project applying for an
 10 allocation under this subdivision shall be subject to the
 11 requirements of paragraph (3) of subdivision (j).

12 (n) The credit period with respect to an allocation of credit in
 13 1989 by the California Tax Credit Allocation Committee of which
 14 any amount is attributable to unallocated credit from 1987 or 1988
 15 shall not begin until after December 31, 1989.

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

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

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

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

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

29 (s) *The amendments made by the act adding this subdivision*
 30 *shall apply to preliminary reservations made on or after the*
 31 *effective date of that act.*

32 *SEC. 4. Section 23608.4 is added to the Revenue and Taxation*
 33 *Code, to read:*

34 *23608.4. (a) The compliance period for any farmworker*
 35 *housing credit granted or allocated under former Section 23608.2*
 36 *shall be 30 years, as set forth in subdivision (h) of Section 23610.5.*
 37 *Notwithstanding the provisions of former Section 23608.2, any*
 38 *farmworker housing credit granted or allocated under former*
 39 *Section 23608.2 shall be subject to recapture during the recapture*
 40 *period. For purposes of this section, "recapture period" means*

1 *the 15 consecutive taxable years beginning with the taxable year*
2 *in which the credit is allowable.*

3 *(b) For purposes of calculating the recapture amount for any*
4 *farmworker housing credit granted or allocated under former*
5 *Section 23608.2, for a disqualifying event described in*
6 *subparagraph (B) of paragraph (2) of subdivision (k) of former*
7 *Section 23608.2, “recapture amount” means an amount determined*
8 *by multiplying the entire amount of the credit previously allowed*
9 *under former Section 23608.2 by a fraction, the numerator of*
10 *which is the number of years remaining in the recapture period*
11 *and the denominator of which is 15.*

12 *SEC. 5. Section 23610.5 of the Revenue and Taxation Code is*
13 *amended to read:*

14 23610.5. (a) (1) There shall be allowed as a credit against the
15 “tax” (as defined by Section 23036) a state low-income housing
16 tax credit in an amount equal to the amount determined in
17 subdivision (c), computed in accordance with Section 42 of the
18 Internal Revenue Code of 1986, except as otherwise provided in
19 this section.

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

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

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

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

35 (i) Except for projects to provide farmworker housing, as defined
36 in subdivision (h) of Section 50199.7 of the Health and Safety
37 Code, that are allocated credits solely under the set-aside described
38 in subdivision (c) of Section 50199.20 of the Health and Safety
39 Code, the project’s housing sponsor has been allocated by the
40 California Tax Credit Allocation Committee a credit for federal

1 income tax purposes under Section 42 of the Internal Revenue
2 Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (A) For each of the first three years, the percentage prescribed
2 by the Secretary of the Treasury for new buildings that are federally
3 subsidized for the taxable year.
- 4 (B) For the fourth year, the difference between 13 percent and
5 the sum of the applicable percentages for the first three years.
- 6 (4) For purposes of this section, the term “at risk of conversion,”
7 with respect to an existing property means a property that satisfies
8 all of the following criteria:
- 9 (A) The property is a multifamily rental housing development
10 in which at least 50 percent of the units receive governmental
11 assistance pursuant to any of the following:
- 12 (i) New construction, substantial rehabilitation, moderate
13 rehabilitation, property disposition, and loan management set-aside
14 programs, or any other program providing project-based assistance
15 pursuant to Section 8 of the United States Housing Act of 1937,
16 Section 1437f of Title 42 of the United States Code, as amended.
- 17 (ii) The Below-Market-Interest-Rate Program pursuant to
18 Section 221(d)(3) of the National Housing Act, Sections
19 1715l(d)(3) and (5) of Title 12 of the United States Code.
- 20 (iii) Section 236 of the National Housing Act, Section 1715z-1
21 of Title 12 of the United States Code.
- 22 (iv) Programs for rent supplement assistance pursuant to Section
23 101 of the Housing and Urban Development Act of 1965, Section
24 1701s of Title 12 of the United States Code, as amended.
- 25 (v) Programs pursuant to Section 515 of the Housing Act of
26 1949, Section 1485 of Title 42 of the United States Code, as
27 amended.
- 28 (vi) The low-income housing credit program set forth in Section
29 42 of the Internal Revenue Code.
- 30 (B) The restrictions on rent and income levels will terminate or
31 the federally insured mortgage on the property is eligible for
32 prepayment any time within five years before or after the date of
33 application to the California Tax Credit Allocation Committee.
- 34 (C) The entity acquiring the property enters into a regulatory
35 agreement that requires the property to be operated in accordance
36 with the requirements of this section for a period equal to the
37 greater of 55 years or the life of the property.
- 38 (D) The property satisfies the requirements of Section 42(e) of
39 the Internal Revenue Code regarding rehabilitation expenditures,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (g) The aggregate housing credit dollar amount that may be
25 allocated annually by the California Tax Credit Allocation
26 Committee pursuant to this section, Section 12206, and Section
27 17058 shall be an amount equal to the sum of all the following:

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

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

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

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

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

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

14 (h) ~~The~~ *For purposes of this section other than the application*
15 *of Section 42(j) of the Internal Revenue Code, the term “compliance*
16 *period” as defined in Section 42(i)(1) of the Internal Revenue Code*
17 *is modified to mean, with respect to any building, the period of 30*
18 *consecutive taxable years beginning with the first taxable year of*
19 *the credit period with respect thereto.*

20 (i) Section 42(j) of the Internal Revenue Code shall ~~not~~ be
21 applicable ~~and the~~. *The following requirement shall be substituted*
22 *in its place also apply:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (l) In the case where the state credit allowed under this section
40 exceeds the “tax,” the excess may be carried over to reduce the

1 “tax” in the following year, and succeeding years if necessary,
2 until the credit has been exhausted.

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

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

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

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

14 (n) The credit period with respect to an allocation of credit in
15 1989 by the California Tax Credit Allocation Committee of which
16 any amount is attributable to unallocated credit from 1987 or 1988
17 shall not begin until after December 31, 1989.

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

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

23 (q) (1) A corporation may elect to assign any portion of any
24 credit allowed under this section to one or more affiliated
25 corporations for each taxable year in which the credit is allowed.
26 For purposes of this subdivision, “affiliated corporation” has the
27 meaning provided in subdivision (b) of Section 25110, as that
28 section was amended by Chapter 881 of the Statutes of 1993, as
29 of the last day of the taxable year in which the credit is allowed,
30 except that “100 percent” is substituted for “more than 50 percent”
31 wherever it appears in the section, as that section was amended by
32 Chapter 881 of the Statutes of 1993, and “voting common stock”
33 is substituted for “voting stock” wherever it appears in the section,
34 as that section was amended by Chapter 881 of the Statutes of
35 1993.

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

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

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

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

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

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

10 (s) The amendments to this section made by the act adding this
 11 subdivision shall apply only to taxable years beginning on or after
 12 January 1, 1994, except that paragraph (1) of subdivision (q), as
 13 amended, shall apply to taxable years beginning on or after January
 14 1, 1993.

15 (t) *The amendments made by the act adding this subdivision*
 16 *shall apply to preliminary reservations made on or after the*
 17 *effective date of that act.*

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

20 *In order to meet critical deadlines relating to the provision of*
 21 *low-income housing, it is necessary that this act go into immediate*
 22 *effect.*

23 ~~SECTION 1. Section 17053.15 is added to the Revenue and~~
 24 ~~Taxation Code, to read:~~

25 ~~17053.15. (a) The compliance period for any farmworker~~
 26 ~~housing credit granted or allocated under former Section 10753.14~~
 27 ~~shall be 30 years, as set forth in subdivision (h) of Section 17058.~~
 28 ~~Notwithstanding the provisions of former Section 17053.14, any~~
 29 ~~farmworker housing credit granted or allocated under former~~
 30 ~~Section 17053.14 shall be subject to recapture during the recapture~~
 31 ~~period. For purposes of this section, "recapture period" means the~~
 32 ~~15 consecutive taxable years beginning with the taxable year in~~
 33 ~~which the credit is allowable.~~

34 ~~(b) For purposes of calculating the recapture amount for any~~
 35 ~~farmworker housing credit granted or allocated under former~~
 36 ~~Section 17053.14, for a disqualifying event described in~~
 37 ~~subparagraph (B) of paragraph (2) of subdivision (k) of former~~
 38 ~~Section 17053.14, "recapture amount" means an amount~~
 39 ~~determined by multiplying the entire amount of the credit~~
 40 ~~previously allowed under former Section 17053.34 by a fraction,~~

1 the numerator of which is the number of years remaining in the
2 recapture period and the denominator of which is 15.

3 ~~SEC. 2. Section 23608.4 is added to the Revenue and Taxation~~
4 ~~Code, to read:~~

5 ~~23608.4. (a) The compliance period for any farmworker~~
6 ~~housing credit granted or allocated under former Section 23608.2~~
7 ~~shall be 30 years, as set forth in subdivision (h) of Section 17058.~~
8 ~~Notwithstanding the provisions of former Section 23608.2, any~~
9 ~~farmworker housing credit granted or allocated under former~~
10 ~~Section 23608.2 shall be subject to recapture during the recapture~~
11 ~~period. For purposes of this section, "recapture period" means the~~
12 ~~15 consecutive taxable years beginning with the taxable year in~~
13 ~~which the credit is allowable.~~

14 ~~(b) For purposes of calculating the recapture amount for any~~
15 ~~farmworker housing credit granted or allocated under former~~
16 ~~Section 23608.2, for a disqualifying event described in~~
17 ~~subparagraph (B) of paragraph (2) of subdivision (k) of former~~
18 ~~Section 23608.2, "recapture amount" means an amount determined~~
19 ~~by multiplying the entire amount of the credit previously allowed~~
20 ~~under former Section 23608.2 by a fraction, the numerator of which~~
21 ~~is the number of years remaining in the recapture period and the~~
22 ~~denominator of which is 15.~~

23 ~~SEC. 3. This act provides for a tax levy within the meaning of~~
24 ~~Article IV of the Constitution and shall go into immediate effect.~~