

**ASSEMBLY BILL**

**No. 35**

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**Introduced by Assembly Member Chiu**

December 1, 2014

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An act to add Sections 17059 and 23610.6 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 35, as introduced, Chiu. Taxation: income taxes: very-low and extremely low-income housing credit.

The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws, including a state low-income housing tax credit, 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, which requires a 30 % present value credit for existing buildings, with the credit claimed over a 10-year period, as modified. Existing law generally requires the project's housing sponsor to have been allocated a credit for federal income tax purposes, as specified.

This bill would allow a very low-income and extremely low-income housing credit against those taxes for each taxable year on or after January 1, 2015, in an amount computed and allowed in accordance with a specified section of the Internal Revenue Code, as provided. The bill would specify that a project is not required to have been previously or currently allocated a credit for federal or state income tax purposes, as specified. The bill would make the aggregate housing credit dollar amount \$40,000,000 to be allocated annually by the committee on a first-come-first-served basis subject to certain requirements being met,

including that the project will be used exclusively for the restructuring, including the acquisition and substantial rehabilitation, of buildings at least 20 years old that currently serve very low-income, extremely low-income, single room occupancy (SRO) or rural area residents. The bill would authorize the committee and the Franchise Tax Board to adopt regulations to carry out the purposes of this section. The bill would make findings and declarations in this regard.

This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The preservation and rehabilitation of existing affordable  
4 housing stock initially created through public investment is a  
5 critical strategy to address the affordable housing crisis in our state.

6 (2) It is particularly important that older single room occupancy  
7 (SRO), special needs, and other buildings with deeply  
8 income-targeted rents be preserved and refurbished for low-income  
9 tenants and the public investment protected.

10 (3) However, currently, most properties that are being  
11 recapitalized and resyndicated through the California Tax Credit  
12 Allocation Committee system for substantial rehabilitation tend  
13 to have higher rents and shallower income targeting because they  
14 appraise well and generate significant acquisition credits.

15 (4) Unfortunately, the deeply targeted mostly SRO, special  
16 needs, and rural projects that very much need to capitalize are  
17 largely shut out of this opportunity precisely because they have  
18 agreed to very deep income-targeting which excludes them from  
19 acquisition credits.

20 (b) Therefore, it is the intent of the Legislature to create a new  
21 source of investment and a pipeline for these older but very  
22 valuable public assets, which are often in the greatest need of  
23 rehabilitation.

24 SEC. 2. Section 17059 is added to the Revenue and Taxation  
25 Code, to read:

26 17059. (a) For each taxable year beginning on or after January  
27 1, 2015, there shall be allowed as a credit against the “net tax,” as

1 defined in Section 17039, a very low-income and extremely  
2 low-income housing credit in an amount computed in accordance  
3 with Section 42 of the Internal Revenue Code, except as otherwise  
4 provided in this section.

5 (b) For the purposes of this section, the following definitions  
6 shall apply:

7 (1) “Taxpayer” means the sole owner in the case of an  
8 individual, the partners in the case of a partnership, and the  
9 shareholders in the case of an “S” corporation.

10 (2) “Housing sponsor” means the sole owner in the case of an  
11 individual, the partnership in the case of a partnership, and the “S”  
12 corporation in the case of an “S” corporation.

13 (3) “Very low-income” has the same meaning as in Section  
14 50053 of the Health and Safety Code.

15 (4) “Extremely low-income” has the same meaning as in Section  
16 50053 of the Health and Safety Code.

17 (5) “SRO” means single room occupancy.

18 (6) “Rural area resident” means a resident of a rural area as  
19 defined in Section 50199.21 of the Health and Safety Code.

20 (7) “Committee” means the California Tax Credit Allocation  
21 Committee.

22 (c) (1) The amount of the credit allocated to any housing  
23 sponsor shall be authorized by the committee, or any successor  
24 thereof, based on a project’s need for the credit in accordance with  
25 paragraph (2) of subdivision (e).

26 (A) The very low-income or extremely low-income housing  
27 project shall be located in California.

28 (B) Nothing in this section shall be construed to require a  
29 housing sponsor to have been previously or currently allocated a  
30 credit for federal income tax purposes under Section 42 of the  
31 Internal Revenue Code or for state income tax purposes under  
32 Section 17058.

33 (2) (A) The committee shall certify to the housing sponsor the  
34 amount of tax credit under this section allocated to the housing  
35 sponsor for each credit period.

36 (B) In the case of a partnership or an “S” corporation, the  
37 housing sponsor shall provide a copy of the committee certification  
38 to the taxpayer.

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

1 (d) The aggregate housing credit dollar amount that may be  
2 allocated annually by the committee pursuant to this section and  
3 Section 23610.6 shall be an amount equal to the sum of all of the  
4 following:

5 (1) Forty million dollars (\$40,000,000).

6 (2) The unused allocation credit amount, if any, for the preceding  
7 fiscal year.

8 (3) The amount of housing credits returned in the calendar year.

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

21 (2) The committee shall, on a first-come-first-served basis,  
22 allocate the very low-income and extremely low-income housing  
23 credit in accordance with the following provisions:

24 (A) All housing sponsors shall demonstrate at the time the  
25 application is filed with the committee that the project meets the  
26 following threshold requirements:

27 (B) The housing sponsor shall demonstrate that the project will  
28 be used exclusively for the restructuring, including the acquisition  
29 and substantial rehabilitation, of buildings at least 20 years old  
30 and that currently serve very low-income, extremely low-income,  
31 SRO, or rural area residents. No new construction shall be eligible  
32 for a credit under this section.

33 (C) The housing sponsor shall demonstrate that acquisition  
34 credits that would be received as part of the restructuring through  
35 the existing state credit program described in Section 17058 would  
36 be insufficient to complete substantial rehabilitation due to a low  
37 appraised fair market value.

38 (D) The housing sponsor shall demonstrate that the project is  
39 currently subsidized, but may or may not currently be “at risk” for  
40 conversion to market rate.

1 (E) There is no requirement that the project previously received  
2 federal or state tax credits when originally constructed.

3 (f) In the case where the credit allowed under this section  
4 exceeds the “net tax,” the excess may be carried over to reduce  
5 the “net tax” in the following year, and succeeding taxable years,  
6 if necessary, until the credit is exhausted.

7 (g) A deduction otherwise allowed under this part for any  
8 amount paid or incurred by the qualified taxpayer upon which the  
9 credit is based shall be reduced by the amount of the credit allowed  
10 by this section.

11 (h) Credit under this section shall be allowed only for credits  
12 claimed on a timely filed original return of the qualified taxpayer.

13 (i) (1) The committee and the Franchise Tax Board may adopt  
14 regulations, rules, guidelines, or procedures necessary or  
15 appropriate to carry out the purposes of this section.

16 (2) The Administrative Procedure Act (Chapter 3.5  
17 (commencing with Section 11340) of Part 1 of Division 3 of Title  
18 2 of the Government Code) shall apply to any regulation, rule,  
19 guideline, or procedure adopted pursuant to this section.

20 SEC. 3. Section 23610.6 is added to the Revenue and Taxation  
21 Code, to read:

22 23610.6. (a) For each taxable year beginning on or after  
23 January 1, 2015, there shall be allowed as a credit against the “tax,”  
24 as defined in Section 23036, a very low-income and extremely  
25 low-income housing credit in an amount computed in accordance  
26 with Section 42 of the Internal Revenue Code, except as otherwise  
27 provided in this section.

28 (b) For the purposes of this section, the following definitions  
29 shall apply:

30 (1) “Taxpayer” means the sole owner in the case of a “C”  
31 corporation, the partners in the case of a partnership, and the  
32 shareholders in the case of an “S” corporation.

33 (2) “Housing sponsor” means the sole owner in the case of a  
34 “C” corporation, the partnership in the case of a partnership, and  
35 the “S” corporation in the case of an “S” corporation.

36 (3) “Very low-income” has the same meaning as in Section  
37 50053 of the Health and Safety Code.

38 (4) “Extremely low-income” has the same meaning as in Section  
39 50053 of the Health and Safety Code.

40 (5) “SRO” means single room occupancy.

1 (6) “Rural area resident” means a resident of a rural area as  
2 defined in Section 50199.21 of the Health and Safety Code.  
3 (7) “Committee” means the California Tax Credit Allocation  
4 Committee.  
5 (c) (1) The amount of the credit allocated to any housing  
6 sponsor shall be authorized by the committee, or any successor  
7 thereof, based on a project’s need for the credit in accordance with  
8 paragraph (2) of subdivision (e).  
9 (A) The very low-income or extremely low-income housing  
10 project shall be located in California.  
11 (B) Nothing in this section shall be construed to require a  
12 housing sponsor to have been previously or currently allocated a  
13 credit for federal income tax purposes under Section 42 of the  
14 Internal Revenue Code or for state income tax purposes under  
15 Section 23610.5.  
16 (2) (A) The committee shall certify to the housing sponsor the  
17 amount of tax credit under this section allocated to the housing  
18 sponsor for each credit period.  
19 (B) In the case of a partnership or an “S” corporation, the  
20 housing sponsor shall provide a copy of the committee certification  
21 to the taxpayer.  
22 (C) The taxpayer shall, upon request, provide a copy of the  
23 certification to the Franchise Tax Board.  
24 (d) (1) The aggregate housing credit dollar amount that may  
25 be allocated annually by the committee pursuant to this section  
26 and Section 17059 shall be an amount equal to the sum of all of  
27 the following:  
28 (1) Forty million dollars (\$40,000,000).  
29 (2) The unused allocation credit amount, if any, for the preceding  
30 fiscal year.  
31 (3) The amount of housing credits returned in the calendar year.  
32 (e) (1) Subject to subdivision (c), the committee shall allocate  
33 the housing credit on a regular basis consisting of two or more  
34 periods in each calendar year during which applications may be  
35 filed and considered. The committee shall establish application  
36 filing deadlines, the maximum amounts of state very low-income  
37 and extremely low-income housing tax credits that may be  
38 allocated by the committee in that period, and the approximate  
39 date on which allocations shall be made. If the enactment of federal  
40 or state law, the adoption of rules or regulations, or other similar

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

4 (2) The committee shall, on a first-come-first-served basis,  
5 allocate the very low-income and extremely low-income housing  
6 credit in accordance with the following provisions:

7 (A) All housing sponsors shall demonstrate at the time the  
8 application is filed with the committee that the project meets the  
9 following threshold requirements:

10 (B) The housing sponsor shall demonstrate that the project will  
11 be used exclusively for the restructuring, including the acquisition  
12 and substantial rehabilitation, of buildings at least 20 years old  
13 and that currently serve very low-income, extremely low-income,  
14 SRO, or rural area residents. No new construction shall be eligible  
15 for a credit under this section.

16 (C) The housing sponsor shall demonstrate that acquisition  
17 credits that would be received as part of the restructuring through  
18 the existing state credit program described in Section 23610.5  
19 would be insufficient to complete substantial rehabilitation due to  
20 a low appraised fair market value.

21 (D) The housing sponsor shall demonstrate that the project is  
22 currently subsidized, but may or may not currently be “at risk” for  
23 conversion to market rate.

24 (E) There is no requirement that the project previously received  
25 federal or state tax credits when originally constructed.

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

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

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

38 (B) Shall be irrevocable for the taxable year the credit is allowed,  
39 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 (g) In the case where the credit allowed under this section  
6 exceeds the “tax,” the excess may be carried over to reduce the  
7 “tax” in the following year, and succeeding taxable years, if  
8 necessary, until the credit is exhausted.

9 (h) A deduction otherwise allowed under this part for any  
10 amount paid or incurred by the qualified taxpayer upon which the  
11 credit is based shall be reduced by the amount of the credit allowed  
12 by this section.

13 (i) Credit under this section shall be allowed only for credits  
14 claimed on a timely filed original return of the qualified taxpayer.

15 (j) (1) The committee and the Franchise Tax Board may adopt  
16 regulations, rules, guidelines, or procedures necessary or  
17 appropriate to carry out the purposes of this section.

18 (2) The Administrative Procedure Act (Chapter 3.5  
19 (commencing with Section 11340) of Part 1 of Division 3 of Title  
20 2 of the Government Code) shall apply to any regulation, rule,  
21 guideline, or procedure adopted pursuant to this section.

22 SEC. 4. In order to comply with the requirements of Section  
23 41 of the Revenue and Taxation Code, it is the intent of the  
24 Legislature that the California Tax Credit Allocation Committee  
25 provide the information required by that section to the Legislature.

26 SEC. 5. This act provides for a tax levy within the meaning of  
27 Article IV of the Constitution and shall go into immediate effect.