

AMENDED IN SENATE FEBRUARY 11, 2009

AMENDED IN SENATE JANUARY 8, 2009

SENATE BILL

No. 16

Introduced by Senator Lowenthal
(Coauthor: Senator Alquist)

December 1, 2008

An act to amend Section 19611 of, and to add Sections 12206.5, 17058.5, 17058.6, 23610.6, and 23610.8 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 16, as amended, Lowenthal. Low-income housing tax credits.

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.

This bill would, in the case of a project that has received or receives preliminary reservation of state low-income housing tax credit on or after July 1, 2008, and before January 1, 2011, allow the credit to be refundable pursuant to specified laws, and make an appropriation therefor, as provided.

Existing law, in the case of a partnership, requires the allocation of the state low-income housing tax credits, on or after January 1, 2009, and before January 1, 2016, to partners based upon the partnership agreement, regardless of how the federal low-income housing tax credit, as provided, is allocated to the partners, or whether the allocation of

the credit under the terms of the agreement has substantial economic effect, as specified.

This bill would extend those requirements to a project that receives a preliminary reservation of the state low-income housing tax credit during calendar year 2008, as specified.

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

Vote: $\frac{2}{3}$. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 12206.5 is added to the Revenue and
2 Taxation Code, to read:

3 12206.5. (a) (1) Notwithstanding the dates specified in
4 subdivision (b) of Section 12206, for a project that receives a
5 preliminary reservation of the state low-income housing tax credit,
6 allowed pursuant to subdivision (a) of Section 12206, during
7 calendar year 2008, the credit shall be allocated to the partners of
8 a partnership owning the project in accordance with the partnership
9 agreement, regardless of how the federal low-income housing tax
10 credit with respect to the project is allocated to the partners, or
11 whether the allocation of the credit under the terms of the
12 agreement has substantial economic effect, within the meaning of
13 Section 704(b) of the Internal Revenue Code.

14 (2) To the extent the allocation of the credit to a partner under
15 this section lacks substantial economic effect, any loss or deduction
16 otherwise allowable under this part that is attributable to the sale
17 or other disposition of that partner's partnership interest made prior
18 to the expiration of the federal credit shall not be allowed in the
19 taxable year in which the sale or other disposition occurs, but shall
20 instead be deferred until and treated as if it occurred in the first
21 taxable year immediately following the taxable year in which the
22 federal credit period expires for the project described in paragraph
23 (1).

24 (b) This section shall not apply to any state low-income housing
25 credit reservation for which financial closing has occurred, *as*
26 *determined by the California Tax Credit Allocation Committee,*
27 *prior to the effective date of the act adding this section.* ~~For~~
28 ~~purposes of this section, "financial closing" shall mean the date~~

1 ~~on which deeds of trust for all construction financing have been~~
2 ~~recorded or, if no construction lender is involved, the equity partner~~
3 ~~has been admitted to the ownership entity.~~

4 SEC. 2. Section 17058.5 is added to the Revenue and Taxation
5 Code, to read:

6 17058.5. (a) (1) Notwithstanding the dates specified in
7 subdivision (b) of Section 17058, for a project that receives a
8 preliminary reservation of the state low-income housing tax credit,
9 allowed pursuant to subdivision (a) of Section 17058, during
10 calendar year 2008, the credit shall be allocated to the partners of
11 a partnership owning the project in accordance with the partnership
12 agreement, regardless of how the federal low-income housing tax
13 credit with respect to the project is allocated to the partners, or
14 whether the allocation of the credit under the terms of the
15 agreement has substantial economic effect, within the meaning of
16 Section 704(b) of the Internal Revenue Code.

17 (2) To the extent the allocation of the credit to a partner under
18 this section lacks substantial economic effect, any loss or deduction
19 otherwise allowable under this part that is attributable to the sale
20 or other disposition of that partner's partnership interest made prior
21 to the expiration of the federal credit shall not be allowed in the
22 taxable year in which the sale or other disposition occurs, but shall
23 instead be deferred until and treated as if it occurred in the first
24 taxable year immediately following the taxable year in which the
25 federal credit period expires for the project described in paragraph
26 (1).

27 (b) This section shall not apply to any state low-income housing
28 credit reservation for which financial closing has occurred, *as*
29 *determined by the California Tax Credit Allocation Committee,*
30 *prior to the effective date of the act adding this section.* ~~For~~
31 ~~purposes of this section, "financial closing" shall mean the date~~
32 ~~on which deeds of trust for all construction financing have been~~
33 ~~recorded or, if no construction lender is involved, the equity partner~~
34 ~~has been admitted to the ownership entity.~~

35 SEC. 3. Section 17058.6 is added to the Revenue and Taxation
36 Code, to read:

37 17058.6. (a) (1) For purposes of Section 17058, in the case
38 of a project that has received or receives a preliminary reservation
39 of state low-income housing tax credit on or after July 1, 2008,
40 and before January 1, 2011, and the amount allowable as a credit

1 under Section 17058 exceeds the tax liability computed under this
2 part, the excess shall be credited against other amounts due, if any,
3 and the balance, if any, shall be refunded to the taxpayer.
4 *Notwithstanding any other law to the contrary, any amount*
5 *refundable under this section may not be carried over under*
6 *subdivision (l) of Section 17058.*

7 (2) For purposes of applying paragraph (1), Section 17039 shall
8 be applied by first reducing the “net tax” to the extent allowed
9 under that section by any other credits, and then any remaining
10 “net tax” shall first be offset by the amount described in paragraph
11 (1) and any remaining amount described in paragraph (1) shall
12 then be refunded to the taxpayer.

13 (b) This section shall not apply to any state low-income housing
14 credit reservation for which financial closing has occurred, *as*
15 *determined by the California Tax Credit Allocation Committee,*
16 *prior to the effective date of the act adding this section.* ~~For~~
17 ~~purposes of this section, “financial closing” shall mean the date~~
18 ~~on which deeds of trust for all construction financing have been~~
19 ~~recorded or, if no construction lender is involved, the equity partner~~
20 ~~has been admitted to the ownership entity.~~

21 (c) *Any credit refunded to a taxpayer pursuant to this section*
22 *shall not be included in income subject to tax under this part or*
23 *Part 11 (commencing with Section 23001).*

24 SEC. 4. Section 19611 of the Revenue and Taxation Code is
25 amended to read:

26 19611. (a) The Tax Relief and Refund Account is hereby
27 created in the General Fund. Notwithstanding Section 13340 of
28 the Government Code, all moneys in the Tax Relief and Refund
29 Account are hereby continuously appropriated, without regard to
30 fiscal year, to the Franchise Tax Board for purposes of making all
31 payments as provided in this section.

32 (b) Notwithstanding any other law, all payments required to be
33 made to taxpayers or other persons from the Personal Income Tax
34 Fund shall be paid from the Tax Relief and Refund Account.

35 (c) The Controller shall transfer, as needed, to the Tax Relief
36 and Refund Account:

37 (1) From the unexpended balance of the annual Budget Act
38 appropriation for Item 9100-101-001, Schedule 80-Renter’s Tax
39 Relief, an amount determined by the Franchise Tax Board to be

1 equivalent to the total amount of renters' assistance credits and
2 refunds allowed under Section 17053.5.

3 (A) If there is no unexpended balance of the appropriation, as
4 provided for in paragraph (1), the Controller shall transfer sufficient
5 moneys from the Personal Income Tax Fund to make the renters'
6 assistance credits and refunds until there is an unexpended balance.

7 (B) Subsequent to there being no unexpended balance of the
8 appropriation, as provided for in paragraph (1), and there being a
9 transfer of moneys from the Personal Income Tax Fund to make
10 the renters' assistance credits and refunds, reimbursement shall be
11 made from the unexpended balance of the appropriation as provided
12 for in paragraph (1) to the Personal Income Tax Fund. However,
13 if no such appropriation is subsequently made, reimbursement
14 shall be made from the General Fund.

15 (2) From the disability fund, the amount transferable to the
16 General Fund pursuant to subdivision (a) of Section 1176.5 of the
17 Unemployment Insurance Code.

18 (3) From the Personal Income Tax Fund, those additional
19 amounts as determined by the Franchise Tax Board to be necessary
20 to make the payments required under this section.

21 (4) From the Personal Income Tax Fund, those amounts as
22 determined by the Franchise Tax Board to be necessary to make
23 the refunds required under Section 17058.6.

24 (5) From the Corporation Income Tax Fund, those amounts as
25 determined by the Franchise Tax Board to be necessary to make
26 the refunds required under Section 23610.6.

27 SEC. 5. Section 23610.6 is added to the Revenue and Taxation
28 Code, to read:

29 23610.6. (a) (1) For purposes of Section 23610.5, in the case
30 of a project that has received or receives a preliminary reservation
31 of state low-income housing tax credit on or after July 1, 2008,
32 and before January 1, 2011, and the amount allowable as a credit
33 under Section 23610.5 exceeds the tax liability computed under
34 this part, the excess shall be credited against other amounts due,
35 if any, and the balance, if any, shall be refunded to the taxpayer.
36 *Notwithstanding any other law to the contrary, any amount*
37 *refundable under this section may not be carried over under*
38 *subdivision (1) of Section 23610.5.*

39 (2) For purposes of applying paragraph (1), Section 23036 shall
40 be applied by first reducing the "tax" to the extent allowed under

1 that section by any other credits, and then any remaining “tax”
2 shall first be offset by the amount described in paragraph (1) and
3 any remaining amount described in paragraph (1) shall then be
4 refunded to the taxpayer.

5 (b) This section shall not apply to any state low-income housing
6 credit reservation for which financial closing has occurred, *as*
7 *determined by the California Tax Credit Allocation Committee,*
8 prior to the effective date of the act adding this section. ~~For~~
9 ~~purposes of this section, “financial closing” shall mean the date~~
10 ~~on which deeds of trust for all construction financing have been~~
11 ~~recorded or, if no construction lender is involved, the equity partner~~
12 ~~has been admitted to the ownership entity.~~

13 (c) *Notwithstanding any other law to the contrary, credits for*
14 *a project referred to in paragraph (1) of subdivision (a) may not*
15 *be assigned pursuant to Section 23633.*

16 (d) *Any credit refunded to a taxpayer pursuant to this section*
17 *shall not be included in income subject to tax under this part or*
18 *Part 10 (commencing with Section 17001).*

19 SEC. 6. Section 23610.8 is added to the Revenue and Taxation
20 Code, to read:

21 23610.8. (a) (1) Notwithstanding the dates specified in
22 subdivision (b) of Section 23610.5, for a project that receives a
23 preliminary reservation of the state low-income housing tax credit,
24 allowed pursuant to subdivision (a) of Section 23610.5, during
25 calendar year 2008, the credit shall be allocated to the partners of
26 a partnership owning the project in accordance with the partnership
27 agreement, regardless of how the federal low-income housing tax
28 credit with respect to the project is allocated to the partners, or
29 whether the allocation of the credit under the terms of the
30 agreement has substantial economic effect, within the meaning of
31 Section 704(b) of the Internal Revenue Code.

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

1 federal credit period expires for the project described in paragraph
2 (1).

3 (b) This section shall not apply to any state low-income housing
4 credit reservation for which financial closing has occurred, *as*
5 *determined by the California Tax Credit Allocation Committee,*
6 prior to the effective date of the act adding this section. ~~For~~
7 ~~purposes of this section, “financial closing” shall mean the date~~
8 ~~on which deeds of trust for all construction financing have been~~
9 ~~recorded or, if no construction lender is involved, the equity partner~~
10 ~~has been admitted to the ownership entity.~~

11 SEC. 7. This act is an urgency statute necessary for the
12 immediate preservation of the public peace, health, or safety within
13 the meaning of Article IV of the Constitution and shall go into
14 immediate effect. The facts constituting the necessity are:

15 The state low-income housing tax credit is a critical source of
16 funding for the development of affordable rental housing. Because
17 of the financial downturn and the disruption to global capital
18 markets, the ability of affordable housing developers, who have
19 been awarded credits to obtain private equity investment in return
20 for the credits, has decreased precipitously and, in some cases,
21 disappeared altogether. Some developers have been forced to return
22 tax credit awards unused, others are struggling to arrange investors,
23 and those projects that have found investors have had to seek
24 additional public funding to offset the decline in pricing and to
25 maintain the financial feasibility of projects, severely jeopardizing
26 the state’s goal of providing decent, safe, and sanitary housing for
27 all Californians. An immediate and short-term change to make
28 state low-income housing tax credits refundable will entice
29 investors back into affordable housing until global financial
30 markets stabilize.

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