Date of Hearing: March 26, 2025

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
Matt Haney, Chair
AB 480 (Quirk-Silva) – As Introduced February 10, 2025

SUBJECT: Personal Income Tax Law: Corporation Tax Law: insurance tax law: low-income housing tax credit:

SUMMARY: Deletes the requirement that a taxpayer elect to sell (also known as certificate) a low income housing tax credit (LIHTC) after receiving an award of credits and allows a taxpayer to choose to certificate the credit after credits are awarded.

EXISTING LAW:

1) Allocates $70 million on an ongoing basis to the Tax Credit Allocation Committee (TCAC) for the purposes of administering the LIHTC and adjusts this amount for inflation beginning in the 2002 calendar year, plus any unused amounts for the preceding calendar year and any amount returned in the calendar year. (Revenue and Taxation Code (RTC) Section 12206, RTC 17058, and RTC 23610.5)

2) Allocates an augmentation of $500 million to the LIHTC, as specified, beginning in the 2020 calendar year, and annually thereafter only if an appropriation is made in the Budget Act. Among other provisions, TCAC is required to develop a scoring system that maximizes the efficient use of public subsidy and benefit created through private activity bonds and LIHTC programs as part of an allocation methodology that emphasizes increased production and cost containment. The factors to consider in making this determination of efficient use include, but are not limited to, the following:

   a) The number and size of units developed including local incentives provided to increase density;
   b) The proximity to amenities, jobs, and public transportation;
   c) The location of the development; and,
   d) The delivery of housing affordable to very low- and extremely low-income households by the development. (RTC 12206, RTC 17058, RTC 23610.5)

3) Provides that for a project that receives a preliminary reservation of LIHTC, beginning January 1, 2016, a taxpayer may elect in its application to sell all or any portion of any LIHTC. Allows a taxpayer to revoke this election only once the election to sell before the final credit for the project has been awarded. (RTC 12206, RTC 17058, RTC 23610.5)

4) Requires a taxpayer to elect to certificate LIHTC at the time of applying for tax credits. (RTC 12206, RTC 17058, RTC 23610.5)

FISCAL EFFECT: Unknown.

COMMENTS:

Author's Statement: According to the author, "California's housing crisis forces too many families into impossible choices: between paying rent and buying groceries, between a long commute and overcrowded housing. We cannot let bureaucratic restrictions stand in the way of solutions. AB 480 removes unnecessary restrictions, enabling developers to fully leverage housing credits, attract more private investment, and accelerate the construction of affordable homes. Every dollar left on the table is a missed opportunity for a family in need. We have the tools, we just need the will to use them."

***Federal LIHTC Program*:** The LIHTC is an indirect federal subsidy developed in 1986 to incentivize the private development of affordable rental housing for low-income households. The federal LIHTC program enables affordable housing sponsors and developers to raise financing through the allocation of tax benefits to investors. TCAC administers the program and awards credits to qualified developers who can then sell those credits to private investors who use the credits to reduce their federal tax liability. The developer in turn invests the capital into the affordable housing project.

Two types of federal tax credits are available: the 9% and 4% credits. These terms refer to the approximate percentage of a project's "eligible basis" a taxpayer may deduct from their annual federal tax liability in each year for 10 years. "Eligible basis" means the cost of development excluding land, transaction costs, and costs incurred for work outside the property boundary. For projects that are not financed with a federal subsidy, the applicable rate is 9%. For projects that are federally subsidized (including projects financed more than 50% with tax-exempt bonds), the applicable rate is 4%. Generally, the 9% tax credit amounts to 70% of a taxpayer's eligible basis and the 4% credit amounts to 30% of a taxpayer's eligible basis, spread over a 10-year period.

Each year, the federal government allocates funding to each state for LIHTCs on the basis of a per-resident formula. Only rental housing buildings that are either undergoing rehabilitation or newly constructed are eligible for the LIHTC programs. The 9% credit is generally reserved for new construction, while the 4% credit can be claimed for rehabilitation or new construction. In addition, developments must comply with both rent and income restrictions.

Each state receives an annual ceiling of 9% federal tax credits. Currently, in California they are oversubscribed, meaning for every project that is awarded a LIHTC, there are multiple eligible projects waiting in the queue who did not receive an award. Unlike 9% LIHTC, federal 4 percent tax credits are not capped; however, they must be used in conjunction with tax-exempt private activity bonds (PABs), which are capped and are administered by the California Debt Limit Allocation Committee (CDLAC). PABs are issued by state and local government agencies and are purchased by the private sector, generally a bank (who can use the bond for purposes of federal Community Reinvestment Act compliance). The current state PAB ceiling is $4.8 billion. Therefore, the limiting factor for the 4% credit comes from this overall bond volume cap. As described above, the value of the 4% tax credits is less than half of the 9% tax credits and, as a result, 4% federal credits are generally used in conjunction with another funding source to fill out the developer's "capital stack," like state housing grant awards or local funding sources.

***Background on the State LIHTC Program*:** In 1987, the Legislature authorized a state LIHTC program to augment the federal tax credit program. State tax credits can only be awarded to projects that have also received, or are concurrently receiving, an allocation of federal 4% LIHTC. The amount of state LIHTC that may be annually allocated by TCAC is limited to $70 million, adjusted for inflation. In 2020, the total credit amount available for allocation was about $100 million plus any unused or returned credit allocations from previous years.

While the state LIHTC program is patterned after the federal LIHTC program, there are several differences. First, investors may claim the state LIHTC over four years rather than the 10-year federal allocation period. Second, the rates used to determine the total amount of the state tax credit (representing all four years of allocation) are 30% of the eligible basis of a project that is not federally subsidized and 13% of the eligible basis of a project that is federally subsidized, in contrast to 70% and 30% (representing all 10 years of allocation on a present-value basis), respectively, for purposes of the federal LIHTC.

Combining federal 9% credits (which amounts to roughly 70%) with state credits (which amounts to 30%) generally equals 100% of a project's eligible basis. Combining federal 4% credits (which amounts to roughly 30%) with state credits (which amounts to 13%), only results in 43% of a project's eligible basis, again requiring developers to seek additional funding sources to make up the remaining gap.

Enhanced State LIHTCs: In 2019, AB 101 (Budget Committee, Chapter 159), was signed into law, providing an additional $500 million in "enhanced" state LIHTCs in 2020 and future years, subject to appropriation. When the additional $500 million was first made available, the federal tax-exempt bond ceiling of approximately $4 billion had not yet been reached. In 2014, for example, developers only used $80.5 million in annual federal 4% tax credits, significantly less than prior years. This is because there was little supplemental funding from housing bonds or local funding sources available to fill the remaining financing gap. The loss of redevelopment funding and state housing bond funds, which were used in combination with 4% federal credits to achieve higher affordability, had made the 4% federal credits less effective.

Thus, the additional $500 million was targeted to the 4% credit and coupled with PABs, in part, to encourage developers to fully utilize any remaining PABs that were being left on the table. When the $500 million was made available, there was also a significant uptick in state and local housing construction funding, so 4% credit applications increased rapidly and the bonds became oversubscribed. As a result, CDLAC instituted a competitive process for awarding PABs. The Governor included and Legislature approved one-time $500 million allocation in the 2021-22, 2022-23, 2023-24 budget, however the Governor did not propose $500 million in his 2025-26 January budget.

Certificated Credits: TCAC awards LIHTCs to qualified developers. Generally, developers do not have sufficient tax liability to use the credits themselves, so they sell those credits to private investors who use the credits to reduce their federal or state tax liability. The developer in turn invests the capital into the affordable housing project. In this case, the investor becomes a co-owner of the property to claim the credits. These credits are known as allocated credits.

In 2016, SB 837 (Committee on Budget), Chapter 32, created an alternative investment structure called "certificated credits." AB 101 (Committee on Budget), Chapter 159, Statutes of 2019 made this authority permanent. Under this model, developers can sell the credits to an investor without requiring the investor to be part of the ownership entity for the project. This model increased the value of the credits – because certificated credits do not trigger a federal tax impact, investors pay more for them, bringing in additional private investment for affordable housing projects. The key difference lies in how the IRS treats them. Certificated credits function like a gift card in that they directly pay state taxes and do not affect federal tax liability. Allocated credits, on the other hand, act like a store coupon, where they reduce state tax liability, which in turn increases the investor's federal tax burden since state taxes are deductible from federal taxes.

The law originally required developers to choose between allocated and certificated credits at the time of application, with no option to switch later. If a developer selected certificated credits but could not secure a minimum price, they could revert to allocated credits. Later amendments allowed developers to revoke the certification election after receiving an award from TCAC. In recent years, around half of the projects receiving state credits chose to certificate their credits.

Current law prevents developers from switching from allocated to certificated credits after the award, even if doing so would generate more funding for affordable housing. The concern was that developers might overestimate their credit needs by initially using allocated credits with a lower pricing assumption. However, TCAC discourages this practice through its tiebreaker process and conducts a final feasibility analysis after construction, reducing any excess credit awards. This bill would allow developers to switch from allocated to certificated credits after an award is made.

Arguments in Support*:* According to the California Housing Partnership, AB 480 increases the impact of state Housing Credits by allowing developers to opt in to certificated credits after the award from TCAC, making it possible to increase the amount of housing that can be built per dollar of state resources. Thank you for authoring this important legislation.

Arguments in Opposition*:* None on file.

Related Legislation**:**

AB 101 (Committee on Budget and Fiscal Review), Chapter 159, Statutes of 2019: Allowed for the certification of LIHTC with a sunset date.

SB 837 (Committee on Budget and Fiscal Review), Chapter 32, Statutes of 2016: Eliminated the sunset date on the authorization for developers to certificate LIHTC.

Double-referred*:* This bill was also referred to the Assembly Committee on Revenue and Taxation where it will be heard should it pass out of this committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium (Co-Sponsor)
California Housing Partnership Corporation (Co-Sponsor)
Housing California
Southern California Association of Nonprofit Housing

Opposition

None on file.

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