Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT
David Chiu, Chair
AB 2922 (Gipson) – As Amended May 2, 2018

SUBJECT: Income taxes: credits: qualified developer: affordable housing

SUMMARY: Provides a credit, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, equal to 50% of funds contributed by a taxpayer to a "qualified developer" for the development of a "qualified project," not to exceed $250,000. Specifically, **this bill**:

1) Provides, on or after January 1, 2019, and before January 1, 2024, a credit equal to 50% of funds contributed to a "qualified developer" for the development of a "qualified project," not to exceed $250,000.

2) Defines a "qualified developer" as a nonprofit organization organized pursuant to Internal Revenue Code Section 501(c)(3) that has received a welfare exemption pursuant to Revenue and Taxation Code (R&TC) Section 214.5.

3) Defines a "qualified project" as a project that meets the following requirements:

   a) The housing units will be sold to persons or families with incomes between 30% to 80% of the "area median income" and be subject to a contract that meets all of the following:

      i) The contract restricts the use of the land for at least 30 years to owner-occupied housing available at an affordable housing cost in accordance with Health and Safety Code Section 50052.5;

      ii) The contract includes a deed of trust on the property in favor of the nonprofit corporation to ensure compliance with the terms of the program, which has no value unless the owner fails to comply with the covenants and restrictions of the terms of the home sale; and,

      iii) The local housing authority or an equivalent agency, or, if none exists, the city attorney or county counsel, has made a finding that the long-term deed restrictions in the contract serve a public purpose.

   b) Is subject to equity sharing provisions as described in Government Code Section 65915(c)(2); and,

   c) Has a specific site in California with a parcel identifier or address.

4) Defines "area median income" in the same manner as provided for under Health and Safety Code Section 50093.

5) Limits the credit to $5 million per fiscal year, plus both of the following:

   a) The unallocated credit amount, if any, for the preceding fiscal year; and,

   b) The amount of previously reserved credits not claimed.

6) Requires a taxpayer, prior to paying any funds to a qualified developer for a qualified project, to request a tentative credit reservation from Franchise Tax Board (FTB) in a form and manner prescribed by FTB. To obtain a tentative credit reservation, the taxpayer shall identify the qualified developer and the qualified project in the request.

7) Provides that the amount of the tentative credit reservation shall be equal to 50% of the amount paid or incurred by a taxpayer during the taxable year, but shall not exceed $250,000 for any qualified project.

8) Requires FTB to approve the request for a credit reservation, and allows the FTB to verify that the developer is a qualified developer and that the project is a qualified project.

9) Requires FTB to determine the aggregate amount of all tentative credit reservations, and to only approve a request for a tentative credit reservation if the amount does not exceed the $5 million cap.

10) Allows the credit to be assigned among members of the same combined report.

11) Provides that Revenue and Taxation Code Section 41 does not apply.

12) Allows unused excess credit to be carried forward to the following taxable year and succeeding five taxable years, if necessary, until the credit is exhausted.

13) Provides that this credit is in lieu of any other credit or deduction that the taxpayer may have otherwise claimed.

14) Repeals the credit on December 1, 2024.

15) Takes effect immediately as a tax levy.

EXISTING LAW:

1) Allows various tax credits under both the PIT Law and the CT Law. These credits are generally designed to encourage socially beneficial behavior or to provide relief to taxpayers who incur specified expenses.

2) Provides a Low-Income Housing Tax Credit (LIHTC) for the costs of constructing, rehabilitating, or acquiring low-income housing. The credit amount varies depending on several factors including when the housing was placed in service and whether it was federally subsidized. The California Tax Credit Allocation Committee allocates and administers the federal and state LIHTC program.

3) Allows a deduction for charitable contributions made to a qualified organization, including nonprofits organized pursuant to IRC Section 501(c)(3).

4) Applies performance measurement standards to any new tax credit under either the PIT Law or CT Law if enacted by a bill introduced on or after January 1, 2015. Specifically, existing law requires all of the following:

   a) Specific goals, purposes, and objectives that the tax credit will achieve;

b) Detailed performance indicators for the Legislature to use when measuring whether the tax credit meets the goals, purposes, and objectives stated in the bill; and,

c) Data collection requirements to enable the Legislature to determine whether the tax credit is meeting, failing to meet, or exceeding those specific goals, purposes, and objectives. The requirements shall include the specific data and baseline measurements to be collected and remitted in each year the credit is in effect, for the Legislature to measure the change in performance indicators, and the specific taxpayers, state agencies, or other entities required to collect and remit data. (R&TC Section 41).

FISCAL EFFECT: Unknown

COMMENTS:

Background: Habitat for Humanity is a non-profit organization that works with families who contribute sweat equity to the construction of the home. Habitat for Humanity attaches a covenant or restrictions sometimes known as a "silent second mortgage," secured by a deed of trust that limits any family purchasing the home from reselling it so that the home remains affordable should the initially selected family choose to move. Households that assume a mortgage from Habitat for Humanity are restricted from spending more than 30% of their income on their monthly mortgage, which includes property taxes, insurance, HOA dues, and deferred maintenance. Homeowners can sell their homes at any time. However, Habitat for Humanity receives first right of refusal so the home can continue to serve local families. The right-of-first refusal is generally extinguished once the mortgage is paid in full.

This bill would enact a new tax expenditure program in the form of a tax credit for housing units that will generally be sold to low and moderate-income families. A taxpayer would make a charitable donation to a qualified developer and would receive a tax credit for 50% of the donated amount, not to exceed $250,000. The bill narrowly applies to projects that are for-sale housing for low- and moderate-income families that conform to the Habitat for Humanity model – households cannot pay more the 30% of their income toward a mortgage, household income is between 30% and 80% of the area median income, and a contract with a non-profit restricts the home to owner-occupancy for 30-years. This bill includes a five-year sunset date.

Purpose of this bill: According to the author, this bill "will help low-income families become homeowners by stimulating private investment in affordable housing development projects. This bill will create an affordable housing development tax credit, incentivizing private entities to contribute to qualified non-profit corporations that are building homes to be sold to families whose income is 30-80% of the area median income.…Between January 1, 2019, and January 1, 2024, the tax credit would allow a donor to claim a 50% tax credit on their donations to a qualified non-profit corporation building homes for low-income families. Cost to the State for the credit would be capped at $5 million annually. This will support funding and investment for affordable housing while reducing the burden on the state budget and taxpayers."

Proponents state that AB 2922 "is modeled after successful tax incentive programs in other states and would create an affordable housing development tax credit, incentivizing private entities to contribute to qualified non-profit organizations that are building long-term for-sale, deed restricted homes for families with incomes at or below 80% of the area median income. These types of projects do not qualify for the federal or state low-income housing tax credit program because they are for-sale homes, as opposed to rental homes."

State Oversight: The LIHTC is overseen by the California Tax Credit Allocation Committee (TCAC). In allocating credits to rental housing projects, TCAC performs feasibility analyses on every project to ensure that allocations do not exceed the amount required for project feasibility. Although statutes define the qualifying basis for determining the maximum credit, TCAC will only provide a rental housing project with the amount of credit necessary to make the project feasible. TCAC, in allocating credits, will also consider factors other than cost. For example, Internal Revenue Code Section 42 requires that each state give preference to projects that serve the lowest income tenants, projects obligated to serve qualified low-income tenants for the longest period of time, and projects located in qualified census tracts that contribute to a concerted community revitalization plan. California additionally adds its own requirements when reviewing LIHTC applications. Public policies encouraging smart growth principles and energy efficiencies are part of California's housing tax credit program. California implements a competitive scoring system where points are awarded for a variety of items, ranging from serving lower income tenants to achieving energy efficiencies to the degree that the project will contribute to revitalization efforts in the area where it will be located. The criteria for choosing eligible projects are, in part, a way of ensuring that the best projects among the applicants are chosen.

This bill, however, takes a different approach and allows a taxpayer to qualify for the credit so long as its contribution is being given to a qualified developer for the development of a qualified project. All qualifying projects will serve low-income and moderate- income families, but no feasibility test is required. There is also no way of knowing how or where the funds will be spent, and this bill does not assess a community's need for the qualified project.

Evaluation of the new credit: The committee may wish to consider that to meaningfully evaluate this new credit after five years, the Legislature will need information. The committee may wish to require a qualified developer that benefits from the tax credit to report each year to the Department of Housing and Community Development (HCD) the following information: number of units built the location of the units, and the household income of the individual or family that owns the unit. HCD would be required to submit this information at the end of each year to the Legislature.

Double-referred: This bill is double-referred. It was heard in the Assembly Committee on Revenue and Taxation and passed out on a vote of 10-0 on April 30, 2018.

REGISTERED SUPPORT / OPPOSITION:

Support

Habitat for Humanity (Sponsor)
California Housing Consortium
Non-Profit Housing Association of Northern California

Opposition

None on file

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