

Date of Hearing: May 9, 2018

ASSEMBLY COMMITTEE ON HOUSING AND COMMUNITY DEVELOPMENT

David Chiu, Chair

AB 2999 (Bonta) – As Introduced February 16, 2018

**SUBJECT:** Income taxes: credits: affordable housing: employer-assisted housing programs

**SUMMARY:** Allows a credit, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, to an employer for the construction of "affordable housing" for employees or for investments in an "employer-assisted housing program." Specifically, **this bill:**

- 1) Allows a tax credit for taxable years beginning on or after January 1, 2019, to an employer in an amount equal to 50% of the amount paid or incurred, or the equivalent value of land or property donated, by the employer during the taxable year for the construction of "affordable housing" for employees or for investments in an "employer-assisted housing program."
- 2) Defines "affordable housing" as housing developments in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to persons or families of low or moderate income.
- 3) Provides that an "employer-assisted housing program" includes monetary assistance for, or the subsidizing of, an employee's rent or mortgage payments or employer-funded housing developments for employees.
- 4) Allows excess tax credit amounts to be carried over to the following taxable year.
- 5) Provides that it is the intent of the Legislature to comply with Revenue and Taxation Code (R&TC) Section 41.
- 6) 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) Allows a state tax credit for costs related to construction, rehabilitation, or acquisition of low-income housing, known as the Low-Income Housing Tax Credit (LIHTC). The credit, which mirrors a federal LIHTC, may be used by taxpayers to offset the tax under the PIT, the CT and the Insurance Tax laws.
- 3) Allows a deduction for charitable contributions made to a qualified organization, including a nonprofit organized pursuant to Internal Revenue Code (IRC) Section 501(c)(3), as specified.
- 4) Requires any bill authorizing a new credit to contain 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:** The Franchise Tax Board (FTB) estimates General Fund revenue losses of \$5.5 billion in fiscal year (FY) 2018-19, \$16 billion in FY 2019-20, and \$21 billion in FY 2020-21.

**COMMENTS:**

Purpose of the bill: According the author, "AB 2999 provides an incentive for employers to help their hard working, deserving employees with some of the highest housing costs in the nation. Employers need to be given tools to help their employees with the increasing burden of housing costs. By creating this Employer-Assisted Housing tax credit program through AB 2999, employers can help their employees with housing and rental costs or help create new construction for their employees. Our goal is to support low to middle income employees who are being hit the hardest with California's housing crisis. If the track record of these programs in other states provides any guidance, we should see increased support of deserving employees across California. Let's continue our work to support working families in California."

*What does this bill do?* This bill appears to encourage the creation of employee affordable housing by providing a tax credit for two things: 1) the construction of affordable housing; and, 2) investments in an employer-assisted housing program. The construction of affordable housing would allow some of the units to be rented or sold to individuals and families who are low or moderate-income. The employer-assisted housing program allows for assistance with an employee's rent or mortgage payments or employer-funded housing developments for employees.

Although the intent, as stated by the author, is to encourage the development and the affordability of housing for low and moderate-income families, this bill lacks parameters to meet the stated goals. As currently drafted, this bill only provides that the construction of "affordable housing" be made available to low and moderate-income families. However, no guidance is provided to help define low and moderate-income. Additionally, as currently drafted, the provisions of this bill only state that some of the units must be made available for rent or sale to low and moderate income families. Without additional guidance, it is possible for employers to receive a credit for the development of a newly built apartment complex with ten units even if only one of those units is made available to a low-income employee. Because of the potentially large credit that may be made available to an employer, a specified percentage of the housing units should be required to be made available to low and moderate-income families.

The second provision of this bill creates an employer-assisted housing program to help assist employees make rent or mortgage payments. The second provision, however, is not specifically limited to low and moderate-income families. As currently drafted, this bill would allow a credit

to an employer that provides rent and mortgage assistance to a high salary employee. If this is not the intent of the author, additional restrictions are needed.

*State oversight:* The LIHTC is overseen by the California Tax Credit Allocation Committee (Committee). In allocating credits to rental housing projects, the Committee 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, the Committee will only provide a rental housing project with the amount of credit necessary to make the project feasible. The Committee, 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 takes a different approach and allows a taxpayer to effectively choose where the housing will be located. 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. The expenditure of these state resources is entirely left up to the taxpayer; as a result, it is unclear if the best projects will be funded. Additionally, it is possible that the lands donated will be located in an area that is relatively far away from the employer's place of business. In these situations, housing may become more affordable but commute times may increase.

*Limiting affordable housing to employees:* As stated by the author, the purpose of this bill is to help provide employees with affordable housing. There are, however, a few policy concerns with limiting the benefits of this bill to employees of the taxpayer. It is not clear to Committee staff how property would be treated if employees move out of the affordable housing unit. Other employees meeting the income restrictions may be allowed to move in, but that assumes that other employees also fall within the low and moderate-income restrictions. If no other employees are available, would the unit sit empty? These restrictions may create a perverse incentive that keeps workers from earning above a certain amount in order to maintain affordable housing.

*Proposed amendments:* To address some of these concerns, the author's office has decided to substantially limit the provisions of this bill. Specifically, the author's office is proposing the following amendments:

- 1) Allow a credit only for the value of land and property donated for the construction of affordable housing;
- 2) Allow the credit to any taxpayer that donates land and property;
- 3) Reduce the credit to 25%;

- 4) Require that at least 25% of the units be made available to low-income residents;
- 5) Expand the population of individuals that may live in the affordable housing units to all low-income residents, but provide the employees of a taxpayer with first priority;
- 6) Define “low-income residents” as individuals or families who are eligible for financial assistance specifically provided by a governmental agency for the benefit of occupants of housing;
- 7) Require that donated land be deed restricted to ensure that the affordable housing units, if rented, be made available to low income families for a period of at least 55 years;
- 8) Limit the total amount of credit that may be provided in a FY to \$10 million;
- 9) Track the number of units that are built in compliance with R&TC Section 41; and,
- 10) Add a five year sunset.

*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 8-1 on May 7, 2018.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American Planning Association, California Chapter  
California Apartment Association

**Opposition**

None on file

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