Date of Hearing: April 28, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION
Mike Gipson, Chair

AB 480 (Quirk-Silva) – As Introduced February 10, 2025

Majority vote. Fiscal committee.

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

SUMMARY: Removes the one-time limitation on the election to sell a low-income housing tax credit (LIHTC) to an unrelated party, and allows the election to be made after application for a LIHTC.

EXISTING FEDERAL LAW establishes the LIHTC, which provides a credit for the costs of constructing, rehabilitating, or acquiring low-income rental housing. The credit may be claimed over a 10-year period and equals either 70% of the qualified basis for projects that are not federally subsidized or 30% for projects that are federally subsidized. These are commonly referred to as the 9% credit and the 4% credit, respectively, reflecting the annualized credit percentage that a qualified taxpayer may claim over the 10-year period. The 9% credit is subject to an annual federally determined cap that is based on state population, whereas the 4% credit is subject to a state's private activity bond (PAB) capacity. (Internal Revenue Code Section 42 *et seq.*)

EXISTING STATE LAW:

1) Enacts the Personal Income Tax (PIT) Law, which imposes a tax at specified percentages on a taxpayer's taxable income, as defined, and the Corporation Tax (CT) Law, which generally imposes a tax at the rate of 8.84% on the net income of a corporation. (Revenue and Taxation Code (R&TC) Section 17041 *et seq.* and R&TC Section 23151 *et seq.*)

2) Imposes a tax on the gross premiums, as specified, of insurers, as defined, at the rate of 2.35%. (California Constitution, Article XIII, Section 28 and R&TC Section 12201.)

3) Authorizes, under the tax on insurers' gross premiums, the PIT Law, and the CT Law, a state LIHTC that is calculated in partial conformity with the federal LIHTC and may only be claimed over a period of four years. (R&TC Sections 12206 *et seq.*, 17058 *et seq.*, and 23610.5 *et seq*.)

4) Allocates $70 million on an ongoing basis to the California Tax Credit Allocation Committee (CTCAC) 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. (R&TC Sections 12206(g)(1)(A), 17058(g)(1)(A), and 23610.5(g)(1)(A).)

5) Allocates an augmentation to the LIHTC of $500 million, as specified, beginning in the 2020 calendar year, and annually thereafter only if an appropriation is made in the Budget Act. (R&TC Sections 12206 (g)(1)(B), 17058 (g)(1)(B), and 23610.5 (g)(1)(B).)

6) Permits a project receiving a preliminary reservation of LIHTCs on or after January 1, 2016, to elect to sell any portion of the LIHTC, and requires an applicant to revoke the election before the final LIHTC amount is awarded. The applicant may only make the revocation once, and must report certain information regarding the transaction to CTCAC, as specified. (R&TC Sections 12206(q), 17058(q), and 23610.5(q).)

FISCAL EFFECT: The Franchise Tax Board estimates that this bill will not reduce General Fund (GF) revenues in fiscal year (FY) 2025-26, but will reduce GF revenues by $3,000 in FY 2026-27 and by $150,000 in FY 2027-28.

COMMENTS:

1) The author has submitted the following statement in support of this bill:

> California's housing crisis forces too many families into impossible choices: between paying rent or buying groceries, between a long commute or 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.

2) The California Housing Partnership Corporation, writing in support of this bill, states, in part:

> Legislation passed in 2016 allowed for the state Housing Credits to be "certificated," which means the investor may buy the credits outright rather than becoming an owner of the affordable housing development. For reasons related to federal tax law, certificated credits sell at a higher price, increasing private financing for affordable housing and reducing public subsidies. However, current state law prohibits a developer from choosing certificated credits after submitting their initial application to the [CTCAC]. This prohibition unnecessarily prevents some developers from accessing the higher pricing of certificated credits.

3) Committee Staff Comments:

   a) *The LIHTC*: Authorized by Congress in 1986, the LIHTC is the primary federal mechanism to finance affordable housing. The tax credit equals 70% or 30% of an affordable development's qualified basis, generally the amount of construction costs, and may be claimed over a 10-year period. The subsidized amounts of the qualified basis are referred to as the 9% credit and the 4% credit, respectively, representing the annual percentage that may be claimed over the 10-year period. Thus, the statute specifies the amount of subsidy, and the amount of credit that may be claimed annually is formulaically calculated based on the present value of the tax credit over the 10-year window. The two credit amounts are awarded based on federal subsidization, with developments qualifying for the 4% credit generally being subsidized by tax-exempt bonds that often comprise at least 50% of the total financing. The 9% credit is generally reserved for developments that are not federally subsidized.

A developer applying for the credit must meet certain criteria, including that the property contain a certain portion of units affordable to households at specified rents. Once an application by the developer for LIHTCs is approved, the developer then seeks financing. Financing for the developer generally arises by partnering with an investor, often a financial institution. Traditionally, a developer, whether for-profit or non-profit, enters into a business arrangement with an investor. The investor provides financing up front for the developer in exchange for a corresponding amount of credits. The investor may then claim those credits over the 10-year period. The development must remain subject to the affordability restrictions for a 15-year period; otherwise, the credits are subject to recapture by the Internal Revenue Service (IRS). Typically, the partnership agreement will vest the overwhelming majority of ownership share with the investor as the "economic substance doctrine" applies to LIHTCs[1]. In a LIHTC partnership, the investor partner will often own up to 99.99% of the partnership, which facilitates the distribution of the credit between the partners.

The IRS allocates LIHTC funding for each state on an annual per-capita formula. The available amount of 9% credits is governed by a flat amount awarded per-resident in the state, whereas the 4% credit is dependent on the availability of PABs in the state. The availability of a state's PABs is also governed by a per-capita formula, or available in a flat, aggregate amount, whichever is more.

b) *State LIHTC*: In 1987, responding to the authorization of the LIHTC by Congress, the Legislature approved a state LIHTC program. The state program augments the federal program, and a developer may only be awarded a state credit if they have previously received, or are currently receiving, an allocation of federal credits. While the state LIHTC generally conforms to the federal credit, there are some important modifications. The state LIHTC may be claimed over a 4-year period, rather than 10 years. Additionally, the amount of the qualified basis that the state credit subsidizes is 30% for a non-federally subsidized project (9% credit), and 13% for a federally subsidized project (4% credit).

While the federal government provides significant funding for LIHTCs, state housing finance agencies are primarily responsible for administering the program. In California, the CTCAC is responsible for administering the LIHTC program. The federal government allocates a certain amount for LIHTCs each year, pursuant to the per-capita based calculation noted previously. The CTCAC then considers applications by developers based on a competitive scoring system. An initial amount of credits is awarded to the developer; and once the project is complete, the CTCAC does a final evaluation of the project to see if any unused credits may be reallocated. The CTCAC then distributes relevant tax documents to the appropriate parties substantiating that the credits are certified. Afterwards, the CTCAC is responsible for overseeing the ongoing

---

[1] The "economic substance doctrine" is the legal principle established by court precedent that prohibits tax benefits for tax-motivated transactions that have no "business purpose" or no "economic substance."

compliance of the project with LIHTC requirements, such as affordability restrictions. Credits awarded in this manner are often referred to as "allocated credits."

c) *Wait, how does this work*? The LIHTC is a product of the Laffer-curve era of policy. The credit relies on creating market incentives to direct investor dollars towards otherwise unprofitable affordable housing. In essence, tax credits are assigned to developers who enter business arrangements with investors. These investors exchange liquid capital for the credits, providing the developer with upfront financing and the investor with ongoing tax liability reductions for their profitable ventures. Two factors cause the exchanged value of these credits to be generally less than the face value of those credits when awarded: time value of money and federal tax law. Time value of money is a financial principle that states the value of a dollar is worth more today than tomorrow, as money today can be invested for gain and has yet to be impacted by inflation. Thus, the value of the upfront capital investors provide to developers is theoretically greater than the nominally equivalent value of the credits later claimed by the investor. This principle impacts the value to investors of both state and federal credits.

   Federal tax law authorizes a deduction equal to the amount of state and local taxes (SALT) paid, commonly called the "SALT deduction". This deduction is generally uncapped for business entities. Additionally, a state tax credit that directly reduces a taxpayer's state tax liability is not considered gross income for federal tax purposes. Correspondingly, the value of the state tax credit cannot be claimed as an itemized deduction that reduces a taxpayer's federal adjusted gross income. For example, a taxpayer claiming a $10 state tax credit on $100 in state tax liability would be eligible to deduct $90 from their federal adjusted gross income. Applying the 21% federal tax rate, the reduction in federal tax liability of a $100 deduction is $21, whereas the reduction attributable to a $90 deduction is only $18.90. This interaction only impacts the value to investors of the state LIHTC and applies to allocated credits.

d) *Recent modifications to the state LIHTC*: Over the past decade, the Legislature has endeavored to increase the value of LIHTCs for investors, thereby increasing the amount an investor is willing to pay a developer for credits.

   In 2016, the Legislature allowed developers to sell state LIHTCs to unrelated third parties. In other words, the investor would not be required to form an ownership entity with the developer. Credits sold to investors in this manner are commonly referred to as "certificated credits." Unlike the traditional LIHTC, certificated credits are not considered a reduction in state tax liability for the purposes of the SALT deduction. This means that, unlike the previously noted example, the amount of SALT deduction is not reduced by the amount of state tax credit claimed. Thus, certificated credits are often more valuable for investors and they generally garner higher financing for the developer. The initial legislation authorizing certificated credits contained a sunset that was subsequently removed. Existing law provides that the developer must elect to certificate credits when applying for the LIHTC and may only once revoke that election before a final credit amount is allocated.

   In 2019, the Legislature authorized a $500 million augmentation to the state 4% LIHTC. Prior to this augmentation, the 4% credit was significantly undersubscribed as developers had insufficient financing to pair with the credit, and allocations of the 4% credit remained well below the federally established cap for California. The augmentation provided that paired financing and the 4% credit soon became oversubscribed, causing the California Debt Limit Allocation Committee to institute a competitive process for awarding PABs. Prior to this augmentation, the state was essentially leaving some federal dollars unutilized. Last Legislative Session, the Legislature expanded this augmentation by allowing the 9% credit to receive some or all of this allocation.

e) *This bill*: As currently drafted, this bill seeks to further increase the value of LIHTCs for investors by creating greater flexibility in choosing whether credits are allocated or certificated. Two modifications to existing law seek to effect this goal. The first authorizes the election to be made any time before a final allocation of credits is made to the developer. The second allows a developer to revoke the election more than once. In totality, this bill would allow developers to choose whether their awarded credits are allocated or certificated at any time before the final credit amount is awarded by the CTCAC.

   The election for certificated credits was initially restricted to prevent overestimation of credit need by developers. A developer initially applying for allocated credits might request a higher amount of LIHTC because of the lower assumed price that investors are willing to pay. Forcing developers to choose what type of credit they sought on the front end ensured the CTCAC would not award an amount of credits in excess of the need for the project. The CTCAC, however, discourages this practice through its tiebreaker process when evaluating applications and through its final evaluation of the development's financing, where the CTCAC can recapture any excess amount of credits awarded. Therefore, the author and sponsors contend the current restrictions on the election to sell LIHTCs to unrelated parties prior to the final amount of credit being awarded are unnecessary and prevent developers from realizing the maximum potential financing arising from these public dollars.

f) *Previous legislation*:

   i) AB 346 (Qurik-Silva), Chapter 739, Statutes of 2023, authorized projects receiving the 9% credit to receive some or all of the $500 million LIHTC augmentation.

   ii) AB 83 (Committee on Budget), Chapter 15, Statutes of 2020, removed the sunset provision on the authorization to certificate LIHTCs, among other provisions.

   iii) AB 101 (Committee on Budget), Chapter 159, Statutes of 2019, among other provisions, allocated a $500 million augmentation to the LIHTC program beginning in the 2020 calendar year, and annually thereafter, upon appropriation.

   iv) SB 873 (Committee on Budget and Fiscal Review), Chapter 32, Statutes of 2016, authorized the sale of LIHTCs to unrelated parties for projects awarded a preliminary reservation of LIHTCs on or after January 1, 2016, and before January 1, 2020, among other provisions.

REGISTERED SUPPORT / OPPOSITION:

Support

California Housing Consortium
California Housing Partnership Corporation
Housing California
Southern California Association of Nonprofit Housing

Opposition

None on file

Analysis Prepared by: Harrison Bowlby / REV. & TAX. / (916) 319-2098