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SB-377 Income taxes: insurance taxes: credits: low-income housing: sale of credit. (2015-2016)

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ENROLLED SEPTEMBER 16, 2015
PASSED IN SENATE SEPTEMBER 11, 2015
PASSED IN ASSEMBLY SEPTEMBER 11, 2015
AMENDED IN ASSEMBLY SEPTEMBER 11, 2015
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CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL

NO. 377

Introduced by Senator Beall

February 24, 2015

An act to add Sections 12206.1, 17058.1, and 23610.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 377, Beall. Income taxes: insurance taxes: credits: low-income housing: sale of credit.

Existing law establishes a low-income housing tax credit program pursuant to which the California Tax Credit Allocation Committee provides procedures and requirements for the allocation of state insurance, income, and corporation tax credit amounts among low-income housing projects based on federal law.

This bill, beginning on or after January 1, 2016, and before January 1, 2026, would allow a taxpayer that is allowed a low-income housing tax credit to elect to sell all or a portion of that credit to one or more unrelated parties, as described, for each taxable year in which the credit is allowed for not less than 80% of the amount of the credit to be sold, and would provide for the one-time

resale of that credit, as provided. The bill would require the California Tax Credit Allocation Committee to enter into an agreement with the Franchise Tax Board to pay any costs incurred by the Franchise Tax Board in administering these provisions. The bill would require the California Tax Credit Allocation Committee to report to the Legislature on the total amounts of credits allowed to, and sold by, taxpayers pursuant to these provisions, as specified.

Existing law, in the case of a partnership, requires the allocation of the 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 these provisions indefinitely.

This bill would take effect immediately as a tax levy.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 12206.1 is added to the Revenue and Taxation Code, to read:

12206.1. (a) (1) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a) of Section 12206, on or after January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code, relating to determination of distributive share.

(2) This subdivision shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(b) (1) For a project that receives a preliminary reservation under Section 12206 beginning on or after January 1, 2016, and before January 1, 2026, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee to sell all or any portion of any credit allowed under Section 12206 to one or more unrelated parties for each taxable year in which the credit is allowed subject to both of the following conditions:

(A) The credit is sold for consideration that is not less than 80 percent of the amount of the credit.

(B) The unrelated party or parties purchasing any or all of the credit pursuant to this subdivision is a taxpayer allowed the credit under Section 12206 for the taxable year of the purchase or any prior taxable year or is a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code, relating to low-income housing credit, for the taxable year of the purchase or any prior taxable year in connection with any project located in this state. For purposes of this subparagraph, "taxpayer allowed the credit under Section 12206" means a taxpayer that is allowed the credit under Section 12206 without regard to the purchase of a credit pursuant to this subdivision.

(2) (A) The taxpayer that originally received the credit shall report to the California Tax Credit Allocation Committee within 10 days of the sale of the credit, in the form and manner specified by the California Tax Credit Allocation Committee, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the taxpayer for the sale of the credit.

(B) The California Tax Credit Allocation Committee shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the California Tax Credit Allocation Committee and the Franchise Tax Board, of the taxpayers that have sold or purchased a credit pursuant to this subdivision.

(3) (A) A credit may be sold pursuant to this subdivision to more than one unrelated party.

(B) (i) Except as provided in clause (ii), a credit shall not be resold by the unrelated party to another taxpayer or other party.

(ii) All or any portion of any credit allowed under Section 12206 may be resold once by an original purchaser to one or more unrelated parties, subject to all of the requirements of this subdivision.

(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by Section 12206 with respect to the credit, none

of which shall apply to any party to whom the credit has been sold or subsequently transferred. Parties who purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.

(5) A taxpayer shall not sell a credit allowed by Section 12206 if the taxpayer was allowed the credit on any tax return of the taxpayer.

(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under Section 12206 if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.

(c) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.

SEC. 2. Section 17058.1 is added to the Revenue and Taxation Code, to read:

17058.1. (a) (1) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a) of Section 17058, on or after January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code, relating to determination of distributive share.

(2) To the extent the allocation of the credit to a partner under Section 17058 lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in paragraph (1).

(3) This subdivision shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(b) (1) For a project that receives a preliminary reservation under Section 17058 beginning on or after January 1, 2016, and before January 1, 2026, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee to sell all or any portion of any credit allowed under Section 17058 to one or more unrelated parties for each taxable year in which the credit is allowed subject to both of the following conditions:

(A) The credit is sold for consideration that is not less than 80 percent of the amount of the credit.

(B) The unrelated party or parties purchasing any or all of the credit pursuant to this subdivision is a taxpayer allowed the credit under Section 17058 for the taxable year of the purchase or any prior taxable year or is a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code, relating to low-income housing credit, for the taxable year of the purchase or any prior taxable year in connection with any project located in this state. For purposes of this subparagraph, "taxpayer allowed the credit under Section 17058" means a taxpayer that is allowed the credit under Section 17058 without regard to the purchase of a credit pursuant to this subdivision.

(2) (A) The taxpayer that originally received the credit shall report to the California Tax Credit Allocation Committee within 10 days of the sale of the credit, in the form and manner specified by the California Tax Credit Allocation Committee, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the taxpayer for the sale of the credit.

(B) The California Tax Credit Allocation Committee shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the California Tax Credit Allocation Committee and the Franchise Tax Board, of the taxpayers that have sold or purchased a credit pursuant to this subdivision.

(3) (A) A credit may be sold pursuant to this subdivision to more than one unrelated party.

(B) (i) Except as provided in clause (ii), a credit shall not be resold by the unrelated party to another taxpayer or other party.

(ii) All or any portion of any credit allowed under Section 17058 may be resold once by an original purchaser to one or more unrelated parties, subject to all of the requirements of this subdivision.

(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by Section 17058 with respect to the credit, none of which shall apply to any party to whom the credit has been sold or subsequently transferred. Parties who purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.

(5) A taxpayer shall not sell a credit allowed by Section 17058 if the taxpayer was allowed the credit on any tax return of the taxpayer.

(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under Section 17058 if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.

(c) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.

SEC. 3. Section 23610.7 is added to the Revenue and Taxation Code, to read:

23610.7. (a) (1) For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a) of Section 23610.5, on or after January 1, 2016, the credit shall be allocated to the partners of a partnership owning the project in accordance with the partnership agreement, regardless of how the federal low-income housing tax credit with respect to the project is allocated to the partners, or whether the allocation of the credit under the terms of the agreement has substantial economic effect, within the meaning of Section 704(b) of the Internal Revenue Code, relating to determination of distributive share.

(2) To the extent the allocation of the credit to a partner under Section 23610.5 lacks substantial economic effect, any loss or deduction otherwise allowable under this part that is attributable to the sale or other disposition of that partner's partnership interest made prior to the expiration of the federal credit shall not be allowed in the taxable year in which the sale or other disposition occurs, but shall instead be deferred until and treated as if it occurred in the first taxable year immediately following the taxable year in which the federal credit period expires for the project described in paragraph (1).

(3) This subdivision shall not apply to a project that receives a preliminary reservation of state low-income housing tax credits under the set-aside described in subdivision (c) of Section 50199.20 of the Health and Safety Code unless the project also receives a preliminary reservation of federal low-income housing tax credits.

(b) (1) For a project that receives a preliminary reservation under Section 23610.5 beginning on or after January 1, 2016, and before January 1, 2026, a taxpayer may make an irrevocable election in its application to the California Tax Credit Allocation Committee to sell all or any portion of any credit allowed under Section 23610.5 to one or more unrelated parties for each taxable year in which the credit is allowed subject to both of the following conditions:

(A) The credit is sold for consideration that is not less than 80 percent of the amount of the credit.

(B) (i) The unrelated party or parties purchasing any or all of the credit pursuant to this subdivision is a taxpayer allowed the credit under Section 23610.5 for the taxable year of the purchase or any prior taxable year or is a taxpayer allowed the federal credit under Section 42 of the Internal Revenue Code, relating to low-income housing credit, for the taxable year of the purchase or any prior taxable year in connection with any project located in this state.

(ii) For purposes of this subparagraph, "taxpayer allowed the credit under Section 23610.5" means a taxpayer that is allowed the credit under Section 23610.5 without regard to any of the following:

(I) The purchase of a credit under Section 23610.5 pursuant to this subdivision.

(II) The assignment of a credit under Section 23610.5 pursuant to subdivision (q) of Section 23610.5.

(III) The assignment of a credit under Section 23610.5 pursuant to Section 23363.

(2) (A) The taxpayer that originally received the credit shall report to the California Tax Credit Allocation Committee within 10 days of the sale of the credit, in the form and manner specified by the California Tax Credit Allocation Committee, all required information regarding the purchase and sale of the credit, including the social security or other taxpayer identification number of

the unrelated party to whom the credit has been sold, the face amount of the credit sold, and the amount of consideration received by the taxpayer for the sale of the credit.

(B) The California Tax Credit Allocation Committee shall provide an annual listing to the Franchise Tax Board, in a form and manner agreed upon by the California Tax Credit Allocation Committee and the Franchise Tax Board, of the taxpayers that have sold or purchased a credit pursuant to this subdivision.

(3) (A) A credit may be sold pursuant to this subdivision to more than one unrelated party.

(B) (i) Except as provided in clause (ii), a credit shall not be resold by the unrelated party to another taxpayer or other party.

(ii) All or any portion of any credit allowed under Section 23610.5 may be resold once by an original purchaser to one or more unrelated parties, subject to all of the requirements of this subdivision.

(4) Notwithstanding any other law, the taxpayer that originally received the credit that is sold pursuant to paragraph (1) shall remain solely liable for all obligations and liabilities imposed on the taxpayer by Section 23610.5 with respect to the credit, none of which shall apply to any party to whom the credit has been sold or subsequently transferred. Parties who purchase credits pursuant to paragraph (1) shall be entitled to utilize the purchased credits in the same manner in which the taxpayer that originally received the credit could utilize them.

(5) A taxpayer shall not sell a credit allowed by Section 23610.5 if the taxpayer was allowed the credit on any tax return of the taxpayer.

(6) Notwithstanding paragraph (1), the taxpayer, with the approval of the Executive Director of the California Tax Credit Allocation Committee, may rescind the election to sell all or any portion of the credit allowed under Section 23610.5 if the consideration for the credit falls below 80 percent of the amount of the credit after the California Tax Credit Allocation Committee reservation.

(c) The California Tax Credit Allocation Committee may prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this section, including any guidelines regarding the allocation of the credit allowed under this section. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any rule, guideline, or procedure prescribed by the California Tax Credit Allocation Committee pursuant to this section.

SEC. 4. (a) The California Tax Credit Allocation Committee shall enter into an agreement with the Franchise Tax Board to pay any costs incurred by the Franchise Tax Board in the administration of Sections 12206.1, 17058.1, and 23610.7 of the Revenue and Taxation Code as added by this act.

(b) (1) The California Tax Credit Allocation Committee shall report to the Legislature as follows:

(A) On or before January 1, 2021, for calendar years 2016 to 2019, inclusive, the total amounts of credits allowed to, and sold by, taxpayers pursuant to Sections 12206.1, 17058.1, and 23610.7 of the Revenue and Taxation Code, including a separate accounting of credits sold to original purchasers by the original investors and credits resold by the original purchasers to secondary purchasers.

(B) On or before January 1, 2025, for calendar years 2016 to 2023, inclusive, the total of credits allowed to, and sold by, taxpayers pursuant to Sections 12206.1, 17058.1, and 23610.7 of the Revenue and Taxation Code, including a separate accounting of credits sold to original purchasers by the original investors and credits resold by the original purchasers to secondary purchasers.

(2) The reports submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.