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DATE: October 6, 2008
TO: Low Income Housing Tax Credit Stakeholders
FROM: William J. Pavão, Executive Director
SUBJECT: State Tax Credit Legislation Enacted

Two bills sponsored by State Treasurer Bill Lockyer were chaptered into State law on September 27 and September 28, 2008. The bills, authored by Senator Alan Lowenthal, permit the bifurcation of State and federal low income housing tax credits (SB 585), and streamline the State farmworker housing tax credit by folding it into the State low income housing tax credit (SB 1247). The following summarizes each of the two bills.

Credit Bifurcation (SB 585, Ch. 382 Statutes of 2008)

SB 585 amends three portions of the State Revenue and Taxation Code, making parallel changes to the treatment of taxes on insurance company income, personal income, and corporate income. Low income housing projects receiving a preliminary reservation from the California Tax Credit Allocation Committee (TCAC) between January 1, 2009 and December 31, 2015 will now be able to allocate the California State low income housing tax credits among ownership partners based upon the terms of the partnership agreement.

The partnership agreement may assign the State credits among partners separate from the assignment of the federal credits, and regardless of the proportionate ownership share of the respective partners. This provision recognizes that the partner assigned the state credits would have an ownership interest lower than their proportionate share of the State credits. However, where an investor is allocated State credit that lacks substantial economic effect, losses or other deductions attributable to the sale of their interest may not be taken until the tax year following the expiration of the federal credit period. That is, the State credit investor may not take losses or deductions upon sale until after the 10-year federal credit period.

With the exception of State low income housing tax credits under the farmworker set-aside (see SB 1247 analysis below), State credits must continue to be used within a project receiving federal nine percent (9%) or four percent (4%) credits.

Finally, SB 585 contains language highlighting the unique nature of State low income housing tax credits in light of the permissible departure from long-standing "substantial economic effect" policies.

State Farmworker Housing Credit (SB 1247, Ch. 521, Statutes of 2008)

SB 1247 eliminates the separate State farmworker housing tax credit, and instead establishes an annual set-aside of State low income housing tax credits for farmworker housing developments. The bill continues the authorization for TCAC to award \$500,000 annually in State credits for farmworker projects, in addition to the general State credit annual authorization. The bill also specifically authorizes previously accumulated farmworker credit to be made available under the new statutory provisions.

State credits set-aside for farmworker projects may be sought without a reservation of federal 9% or 4% credits. The bill also incorporates farmworker definitions that were formerly contained in the farmworker credit statute.

The provisions of this bill are effective January 1, 2009.

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If you have any questions about these bills, please contact your regional TCAC analyst.