

2023 Instructions for Form FTB 3521

Low-Income Housing Credit

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2015**, and to the California Revenue and Taxation Code (R&TC).

What's New

Low-Income Housing Credit - For taxable years beginning on or after January 1, 2023, California law allows a taxpayer to claim the Low-Income Housing Credit (LIHC) in the taxable year the building is placed in service and the federal credit period commenced, provided that the housing sponsor has filed a taxpayer certification with the California Tax Credit Allocation Committee (CTCAC) and delivered a copy to the taxpayer, even if the CTCAC has not yet issued a certificate. If the CTCAC issues a certificate with a credit amount that is inconsistent with the taxpayer's certification, upon which a credit has been claimed, the taxpayer is required to amend any previously filed tax returns to reflect the credit amount certified by the CTCAC. For information, see California Revenue and Taxation Code (R&TC) Sections 17058 and 23610.5.

General Information

You are **not** required to attach form CTCAC 3521A, Certificate of Final Award of California Low-Income Housing Tax Credits, to your tax return. However, you must retain the certificate and make a copy available to the Franchise Tax Board (FTB) upon request.

Rental Real Estate Activities - For taxable years beginning on or after January 1, 2020, the dollar limitation for the offset for rental real estate activities shall not apply to the LIHC program. For more information, see R&TC Section 24692(e)(1), or Section 17561(d)(1).

Allocation to Partners - For partnerships owning projects that receive a preliminary reservation of the LIHC on or after January 1, 2009, the prior law exception that requires a partnership to allocate the credit among partners based upon the partnership agreement is re-enacted, regardless of how the federal LIHC is allocated to the partners, or whether the allocation under the terms of the partnership agreement has substantial economic effect, within the meaning of Internal Revenue Code (IRC) Section 704(b).

The sunset date for the requirement that a partnership allocate the LIHC among partners based upon the partnership agreement was removed.

Sale of Credit - For projects that receive a preliminary reservation of the LIHC on or after January 1, 2016, a taxpayer may make an election in its application to the CTCAC to sell all or any portion of the LIHC allowed to one or more unrelated parties for each taxable year in which the credit is allowed, subject to both of the following conditions:

- The LIHC is sold all or in a portion for consideration that is not less than 80% of the amount of the credit.
- The taxpayer made the election on the application submitted to the CTCAC to sell all or part of the LIHC.

The taxpayer may, only once, revoke an election to sell the credit at any time before the CTCAC allocates a final credit amount for the project. After that, an election is irrevocable.

The taxpayer that originally receives the LIHC must report the specific information about the sale of the credit to the CTCAC within 10 days of the sale, to include the buyer's taxpayer identification number, the face amount of the LIHC sold, and amount of consideration received. For more information, go to the CTCAC website at treasurer.ca.gov/ctcac.

The sunset date regarding the provision that a taxpayer may make an election to sell all or any portion of the LIHC subject to certain conditions was removed. A taxpayer may make a one-time revocation of the election to sell all or any portion of the LIHC at any time before the CTCAC allocates a final credit amount for a project at which point, the election would become irrevocable.

Farmworker Housing Credit (FWHC) -

For taxable years beginning on or after January 1, 2009, the farmworker housing credit has been consolidated into the low-income housing tax credit. You may claim a credit carryover for the eligible costs to construct or rehabilitate qualified farmworker housing under former R&TC Sections 17053.14 and 23608.2 only if a carryover is available from taxable years 1997 through 2008. See form FTB 3540, Credit Carryover and Recapture Summary, for more information.

Important: Only credits received by an affiliated corporation, allocated under R&TC Section 23610.5(q) for low-income housing credits, are entered on this form. See specific instructions for line 3.

A Purpose

Use form FTB 3521, Low-Income Housing Credit, if you are an owner of a residential rental project providing low-income housing in California.

Also, use form FTB 3521 to claim a credit that was:

- Allocated from an affiliated corporation.
- Passed through from S corporations, estates, trusts, partnerships, or limited liability companies (LLCs) classified as partnerships.

S corporations, estates, trusts, partnerships, and LLCs classified as partnerships should complete form FTB 3521 to figure the amount of credit to pass through to shareholders, beneficiaries, partners, or members. Attach this form to Form 100S, California S Corporation Franchise or Income Tax Return; Form 541, California Fiduciary Income Tax Return; Form 565, Partnership Return of Income; or Form 568, Limited Liability Company Return of Income. Show the pass-through credit for each shareholder, beneficiary, partner, or member on Schedules K-1 (100S, 541, 565, or 568), Share of Income, Deductions, Credits, etc.

Under IRC Section 42(a), as adopted by California, the LIHC for any year is the applicable percentage of the qualified basis of each qualified low-income building. See R&TC Sections 17058 and 23610.5.

B CA and Federal Differences

1. California Tax Credit Allocation Committee authorization. The CTCAC must authorize the amount of the credit allocated to any low-income housing project. California requires that the credit be allocated based on a project's need for the credit for economic viability.

The low-income housing project must be located in California and must either:

- Have been allocated a federal LIHC.
- Qualify for the credit under IRC Section 42(h)(4)(B), the special rule where 50% or more of the building is financed with exempt bonds subject to a volume cap.

For taxable years beginning prior to January 1, 2023, the CTCAC must have issued form CTCAC 3521A to the taxpayer, certifying the amount of California credit to which the owner is entitled each year, before claiming the LIHC.

For taxable years beginning on or after January 1, 2023, California law allows a taxpayer to claim the LIHC in the taxable year the building is placed in service and the federal credit period has commenced, provided that the housing sponsor has filed a taxpayer certification with the CTCAC and delivered a copy to the taxpayer.

The amount of credit claimed by the taxpayer cannot exceed of the lesser of the following:

- The applicable percentages for each of the four credit years multiplied by the qualified basis of the building set forth in the preliminary reservation.
- The amount of credit the project is eligible for as stated in the taxpayer certification.

A taxpayer certification is a certified statement from the certified public accountant of the housing sponsor. The taxpayer certification must contain the amount of the credit the project is eligible for, the taxable year the building is placed in service, and the taxable year in which the federal credit period for the building has commenced.

If the CTCAC issues a certificate with a credit amount that is inconsistent with the taxpayer's certification, upon which a credit has been claimed, the taxpayer is required to amend any previously filed tax returns to reflect the credit amount certified by the CTCAC. For more information, get R&TC Sections 17058 and 23610.5.

To apply for the certificate, write to:

CALIFORNIA TAX CREDIT ALLOCATION
COMMITTEE
915 CAPITOL MALL RM 485
SACRAMENTO CA 95814
Telephone: 916.654.6340

2. Applicable percentage. The applicable percentage for purposes of determining the LIHC amount was expanded in the 2020 calendar year. For a new building not federally subsidized that received an allocation after 1989, the applicable percentage is:

- For each of the first three years, the percentage prescribed by the Secretary of the Treasury for such buildings.
- For the 4th year, the difference between 30% and the sum of the applicable percentages for the first three years.

For a new building that is federally subsidized that receives an allocation from the additional \$500,000,000 available for allocation in the 2020 calendar year, or after, the applicable percentage is:

- For each of the first three years, 9% of the qualified basis of the building.
- For the 4th year, 3% of the qualified basis of the low-income building.

For a new building that is federally subsidized or an existing building that is "at risk of conversion" that receives an allocation after 1989, the applicable percentage is:

- For each of the first three years, the percentage prescribed by the Secretary of the Treasury for new buildings that are federally subsidized.
- For the 4th year, the difference between 13% and the sum of the applicable percentages for the first three years.

For a building that is at least 15 years old, serving households of very low or extremely low-income, that receives an allocation from the \$70,000,000 available for allocation in the 2001 calendar year, or after, and will use this allocation to complete substantial rehabilitation, the applicable percentage is:

- For each of the first three years, 30% of the qualified basis of the building.
- For the 4th year, 5% of the qualified basis of the low income building.

A qualified low-income building receiving this allocation is ineligible to also receive an allocation from the \$500,000,000 available for allocation in the 2020 calendar year, or after, mentioned above. For more information, see R&TC Sections 17058 and 23610.5.

The credit percentage will be adjusted monthly to reflect the present value at the time the building is placed in service. See the Internal Revenue Service revenue ruling published monthly dealing with federal interest rates.

Farmworker Housing Applicable

Percentage – Beginning on or after January 1, 2018, farmworker housing is housing in which at least 50% of the units are available to, and occupied by, farmworkers and their households. In the case of any qualified low-income housing that is federally subsidized farmworker housing, the applicable percentage is:

- For each of the first 3 years, 20% of the qualified basis of the building.
- For the 4th year, 15% of the qualified basis of the building.

The CTCAC may allocate the credits even if the taxpayer receives federal credits pursuant to IRC 42(d)(5)(B) relating to increase in credit for buildings in high-cost areas.

3. Credit period. California uses a 4-year period instead of the 10-year period allowed under federal law. California does not apply the federal special rule for the first year of the credit period under IRC Section 42(f)(2).

4. Accelerated credit election. California law contains no provision for acceleration of the credit. See R&TC Sections 17058(p) and 23610.5(p).

5. Compliance period. The compliance period (during which a housing project remains subject to the set-aside and rent requirements that qualified it for the LIHC) is 30 consecutive years, instead of the 15-year period allowed under federal law. This period begins with the first taxable year of the credit period.

6. Recapture of credit. California law contains no provision for recapture of the credit. See R&TC Sections 17058(i) and 23610.5(i).

If the FWHC was allocated under the former R&TC Sections 17053.14 and 23608.2 prior to January 1, 2009, and the property is disposed of or stops operating, with respect to the costs of constructing or rehabilitating farmworker housing, within 360 months after completion, the portion of the credit claimed that represents the portion of the 360-month period must be recaptured. Get form FTB 3540 to recapture FWHC amount.

C Basis

Generally, the eligible basis of a building for its entire 30-year compliance period is figured as of the date it is placed in service. For housing projects consisting of two or more buildings, figure the credit separately for each building.

For new buildings, the eligible basis is generally the cost of construction.

For existing buildings, the eligible basis is the cost of acquisition plus any rehabilitation expenses incurred before the close of the first year of the credit period. The owner must have acquired the building by purchase from an unrelated person, and it must have been at least 10 years since the building was last placed in service or substantially improved.

When figuring the eligible basis of a new or existing building, do not include the cost of land. You must reduce the basis by the amount of any federal grants received and by any basis allocable to units that are not low-income units and are above the average quality standard of the low-income units in the building.

Residential rental property may qualify for the credit even though part of the building in which the residential units are located is used for commercial purposes. To figure the eligible basis of such property, do not include the cost of the nonresidential rental property. You may generally include the basis of common areas or tenant facilities, such as swimming pools or parking areas.

D Limitations

S corporations may claim only 1/3 of the credit against the 1.5% entity-level tax (3.5% for financial S corporations). The remaining 2/3 must be disregarded and may not be used as carryover. S corporations can pass through 100% of the credit to their shareholders.

If a C corporation had unused credit carryovers when it elected S corporation status, the carryovers were reduced to 1/3 and transferred to the S corporation. The remaining 2/3 were disregarded. The allowable carryovers may be used to offset the 1.5% tax on net income in accordance with the respective carryover rules. These C corporation carryovers may not be passed through to shareholders. For more information, get Schedule C (100S), S Corporation Tax Credits.

If a taxpayer owns an interest in a disregarded business entity, [a single member limited liability company (SMLLC) not recognized by California, and for tax purposes treated as a sole proprietorship owned by an individual or a branch owned by a corporation], the credit amount received from the disregarded entity that can be utilized is limited to the difference between the taxpayer's regular tax figured with the income of the disregarded entity, and the taxpayer's regular tax figured without the income of the disregarded entity.

If the disregarded entity reports a loss, the taxpayer may not claim the credit this year but can carry over the credit amount received from the disregarded entity to the next succeeding taxable year.

For more information on SMLLC, get Form 568, Limited Liability Company Tax Booklet.

This credit cannot reduce the minimum franchise tax (corporations and S corporations), the annual tax (limited partnerships, limited liability partnerships, and LLCs classified as partnerships), the alternative minimum tax (corporations, exempt organizations, individuals, and fiduciaries), the built-in gains tax (S corporations), or the excess net passive income tax (S corporations).

This credit can reduce regular tax below tentative minimum tax. Get the applicable Schedule P (100, 100W, 540, 540NR, or 541), Alternative Minimum Tax and Credit Limitations, for more information.

This credit is not refundable.

E Assignment of Credits

Assigned Credits to Affiliated Corporations – Credit earned by members of a combined reporting group may be assigned to an affiliated corporation that is an eligible member of the same combined reporting group. A credit assigned may only be claimed by the affiliated corporation against its tax liability. For more information, get form FTB 3544, Assignment of Credit, or go to ftb.ca.gov and search for **credit assignment**.

F Carryover

If the available credit exceeds the current year tax liability, the unused credit may be carried over to succeeding years until exhausted. Use Part II to figure your carryover. Apply the carryover to the earliest taxable year possible. This credit may not be carried back and applied against a prior year's tax.

G Gain on Sale of Credit

The sale of the credit is a sale of property. The seller is required to report gain from the sale. Basis in property is generally the cost of the property. A seller that was allocated an LIHC by the CTCAC does not have a basis in the credit because the seller did not pay for the credit.

The gain from the sale of the credit is the excess of the total consideration received over the basis. The total amount of consideration received is the sum of any money received plus the fair market value of the property (other than money) received. A seller that was allocated an LIHC by the CTCAC will recognize and report gain on the full amount of consideration received because the seller's basis in the credit is \$0 (zero).

Specific Line Instructions

Part I – Available Credit

Line 2 – The available credit is the smaller of:

- The amount designated on form CTCAC 3521A.
- The amount computed in Part III, line 20.
- For taxable years beginning on or after January 1, 2023, the amount stated in the taxpayer certification. For more information, see R&TC Section 12206(b)(2)(C). ~~This will provide the full set of rules regarding the taxpayer certification process.~~

If form FTB 3521 is completed by a pass-through entity (S corporation, estate, trust, partnership, or LLC classified as a partnership), the entity must attach a separate schedule to the form that shows each shareholder's, beneficiary's, partner's, or member's name, identification number, the amount of pass-through credit, and the corresponding building identification number.

Line 3 – If you received more than one pass-through credit from S corporations, estates, trusts, partnerships, or LLCs classified as partnerships, more than one allocated credit from affiliate corporations, or a combination of pass-through and allocated credits, add the amounts and enter the total on line 3. Attach a schedule showing the names and identification numbers of the entities from which the credits were passed through or allocated to you.

Important: Affiliated corporations that qualify as eligible assignees and receive credits assigned under R&TC Section 23663, **do not** enter any of these credits from form FTB 3544, Part B, List of Assigned Credit Received and/or Claimed by Assignee, on this line. The corporation only enters credits allocated under the LIHC R&TC Section 23610.5(q).

For more information on how to report and track assigned credits received by eligible assignees under R&TC Section 23663, get form FTB 3544, Part B.

Line 7 – If any part of the amount on line 4 is from a passive activity, you must complete form FTB 3801-CR, Passive Activity Credit Limitations, or form FTB 3802, Corporate Passive Activity Loss and Credit Limitations, to determine your allowable credit. Complete form FTB 3801-CR or form FTB 3802 **before** completing the rest of this form.

You cannot claim the credit on any building that has been allowed any relief from the passive loss rules under IRC Section 502 of the Tax Reform Act of 1986.

Line 10 – Affiliated corporations enter only credits allocated under LIHC R&TC Section 23610.5(q) on this line. Do not enter credits assigned from form FTB 3544, Part A, Election to Assign Credit Within Combined Reporting Group. See line 12b and its specific line instructions for more information on how to enter those credits on this form.

Part II – Carryover Computation

Line 12a – **Do not** include assigned credits claimed on form FTB 3544, Part B.

This amount may be less than the amount on line 11 if your credit is limited by your tax liability. For more information, see General Information D, Limitations, and refer to the credit instructions in your tax booklet. Use credit code 172 when you claim this credit.

Line 12b – Corporations that assign credit to other corporations within the same combined reporting group must complete form FTB 3544, Part A. Enter the total amount of credit assigned from form FTB 3544, Part A, column (g) on this line.

Part III – Basis Reconstructions

Use Part III only if the eligible basis decreased on a project or building.

Line 17 – Only the portion of the basis attributable to the low-income rental units in the building at the close of the year qualifies for the credit. This is the smaller of the following:

- The percentage of low-income units to all residential rental units (the "unit percentage").
- The percentage of floor space of the low-income units to the floor space of all residential rental units (the "floor space percentage").

Low-income units are units occupied by qualifying tenants, while residential rental units are all units, whether or not occupied.

Franchise Tax Board Privacy Notice on Collection

Our privacy notice can be found in annual tax booklets or online. Go to ftb.ca.gov/privacy to learn about our privacy policy statement, or go to ftb.ca.gov/forms and search for 1131 to locate FTB 1131 EN-SP, Franchise Tax Board Privacy Notice on Collection – Aviso de Privacidad del Franchise Tax Board sobre la Recaudación. To request this notice by mail, call 800.338.0505 and enter form code 948 when instructed.