



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

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|-----------------|------------------------|----------------|---|
| Date Amended:   | <b>07/03/01</b>        | Bill No:       | <b>AB 874</b>   |
| Tax:            | <b>Tax on Insurers</b> | Author:        | <b>Horton</b>   |
| Board Position: |                        | Related Bills: | <b>AB 738 (Lowenthal)<br/>SB 24 (Polanco)<br/>SB 73 (Dunn, et al.)<br/>SB 409 (Vincent)</b> |

**BILL SUMMARY**

This bill would extend, until January 1, 2005, the operation of the insurance tax credit for insurers that invest in a community development financial institution (CDFI) that lends to urban, rural, or reservation-based communities in this state.

**ANALYSIS**

**Current Law**

Section 12201 of the Revenue and Taxation Code imposes an annual tax on all insurers doing business in this State. For insurers other than title insurers, Section 12221 of the Revenue and Taxation Code specifies that the basis of the annual tax is gross premiums, less return premiums, received by the insurer on business done in this State. For insurers transacting title insurance, Section 12231 of the Revenue and Taxation Code specifies that the basis of the annual tax is all income from business done in this State except interest and dividends, rents from real property, profits from the sale of investments, and income from investments.

Section 12204 of the Revenue and Taxation Code sets the rate of the annual tax at 2.35 percent, except for specified premiums that are taxed at 0.50 percent. Under Section 12204 of the Revenue and Taxation Code, the tax imposed on insurers is in lieu of all other state, county, and municipal taxes and licenses, including income taxes, with specified exceptions.

Section 12209 of the Revenue and Taxation Code allows as a credit against the amount of insurance tax an amount equal to 20 percent of the amount of each qualified deposit made by an insurer during the year into a CDFI that lends to urban, rural, or reservation-based communities in this state. Section 12209 will remain in effect only until December 31, 2002, and as of that date is repealed.

Current law also provides for a gross premiums tax credit in an amount equal to the amount of the gross premiums tax due from the insurer on account of the pilot project insurance for previously uninsured motorists under Section 12208 of the Revenue and Taxation Code. In addition, Section 12206 of the Revenue and Taxation Code

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authorizes insurers that invest in low-income housing to compete for a gross premiums tax credit granted by the California Tax Credit Allocation Committee. Similar tax credits are also available under the Personal Income Tax Law and the Bank and Corporation Tax Law. The tax credit available under these three laws is limited to a combined total of \$50 million per year.

Under Section 17053.57 of the Personal Income Tax Law and Section 23657 of the Bank and Corporations Tax Law, an aggregate credit of \$2 million annually may be granted under the state income tax laws for up to 20 percent of qualifying deposits with a CDFI. Sections 17053.57 and 23657 remain in effect only until December 1, 2002, and as of that date are repealed.

### **Proposed Law**

Among other things, this bill would extend, until January 1, 2005, the operation of the insurance tax credit for insurers that invest in a CDFI that lends to urban, rural, or reservation-based communities in this state.

This bill would redefine “qualified investment” to mean a deposit or loan that does not earn interest, or an equity investment, or an equity-like debt instrument that conforms to the specifications for these instruments as prescribed by the United States Department of the Treasury, Community Development Financial Institutions fund, or its successor. All “qualified investments” would be required to be equal to or greater than fifty thousand dollars (\$50,000) and made for a minimum duration of 60 months.

Additionally, this bill would require the Board, as requested by the Department of Insurance, California Organized Investment Network, or its successor, to advise and assist in the administration of Section 12209 of the Insurance Tax Law. This bill would also make other non-substantive technical amendments.

### **Background**

In 1998, Assembly Bill 168 (Ch. 9, Torlakson) increased the annual aggregate tax credit granted by the California Tax Credit Allocation Committee for qualifying low-income housing project investments from \$35 million to \$50 million for calendar years 1998 and 1999 only. Assembly Bill 1626 (Ch. 3, Stats. 2000, Torlakson) permanently increased the annual aggregate housing credit that may be allocated by the California Tax Credit Allocation Committee to \$50 million.

During the 1999-2000 Legislative Session, three bills allowing credits against the amount of insurance tax were introduced. Assembly Bill 145 (Ch. 821, Stats. 1999, Vincent), which created the credit proposed to be extended by this bill, added Section 12209 to the California Tax on Insurers Law to allow a credit against the amount of insurance tax in an amount equal to 20 percent of the amount of each qualified deposit made by a taxpayer during the year into a CDFI. Assembly Bill 145 simply allowed the credit available under the Personal Income Tax Law and the Bank and Corporation Tax Law to be available under the Tax on Insurers Law. The Board was neutral on AB 145.

Assembly Bill 1432 (Ch. 808, Stats. 1999, Oller) added Section 12208 to the Revenue and Taxation Code to provide a gross premiums tax credit in an amount equal to the

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amount of the gross premiums tax due from an insurer on account of pilot project insurance for previously uninsured motorists.

Assembly Bill 1080 (Villaraigosa, et al) would have added Section 12207 to the Revenue and Taxation Code to create an insurance tax credit for insurers that contribute to an eligible community development corporation. AB 1080 was amended in the Senate Appropriations Committee to delete the insurance tax credit provisions.

Also during the 1999-2000 Legislative Session, two bills which would have allowed a 50 percent credit against the gross premiums tax were introduced. Senate Bill 1465 (Polanco) was held in the Senate Rules Committee and SB 1151 (Polanco) was held under submission in Assembly Revenue and Taxation Committee.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Advocacy Group and is intended to continue matching insurance industry capital investment opportunities for economic and affordable housing needs.
2. **The July 3, 2001 amendments** delete from the definition of "community development financial institution" an institution that has affordable low-income housing as its primary mission, redefine the term "qualified investment" and require the Board to advise and assist in the administration of the annual community development financial institution tax credit.

The May 10, 2001 and June 20, 2001 amendments extended the operation date of the credit authorized under the Bank and Corporation Tax Law and the operation date of the CDFI credit authorized under the Personal Income Tax Law, respectively.

3. **What does "advise and assist in the administration of this section" entail?** The provision that would require the Board, as requested by the Department of Insurance, California Organized Investment Network or its successor, to advise and assist in the administration of Section 12209 was taken from SB 409 (Vincent). The Department of Insurance, which is the sponsor of SB 409, explained that this provision would simply allow the Department of Insurance, California Organized Investment Network to consult with the Board on issues or questions related to the CDFI credit where the Board has had prior experience with similar issues through the administration of its tax programs.

According to the Department of Insurance, there has been only one occasion in the prior year and a half that this proposed provision under the Personal Income Tax Law and Bank and Corporation Tax Law would have applied, but the issue was addressed informally through the Franchise Tax Board. There has not been an instance to date where the Department of Insurance, California Organized Investment Network would have needed the Board's assistance on a CDFI credit related issue.

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4. **The Board staff does not foresee any administrative problems with this measure.** The Board of Equalization, the State Controller, and the Department of Insurance share administrative responsibility for the insurance tax program. Section 28 of Article XIII of the California Constitution states that the Board shall assess taxes under the Insurance Tax Law. Upon recommendation from the Department of Insurance, the Board also issues deficiency assessments in cases of underpayment of the tax by an insurer. The Office of the Controller has the responsibility to collect the tax and issue refunds. Audit verification work is the responsibility of the Department of Insurance.

As the law is currently administered, the Department of Insurance would be responsible for the verification of the tax credit. It is anticipated that the increase in the tax credit as proposed by this measure would have a minimal impact on the Board's current functions under the Insurance Tax Law.

5. **Related legislation.** As of the date of this analysis, four other bills addressing insurance tax credits have been introduced: Assembly Bill 738 (Lowenthal), Senate Bill 24 (Polanco), Senate Bill 73 (Dunn) and Senate Bill 409 (Vincent).

Assembly Bill 738 would create an insurance tax credit for insurers that contribute to an eligible community development corporation. That bill is intended to encourage investments in community facilities located in low-income areas and in programs intended to benefit low-income persons.

Senate Bill 24 would create an insurance tax credit for insurers that invest in certified capital companies, which in turn would make investments in new businesses or expanding businesses.

Senate Bill 73 would, for purposes of existing low-income housing tax credits, provide a \$70 million maximum aggregate dollar amount for 2001 calendar year and each calendar year, thereafter. In addition, the bill would provide for the 2002 calendar year and each calendar year thereafter an adjustment for inflation measured by an increase in the Consumer Price Index.

Senate Bill 409, which is similar to this measure, would extend the operation of the insurance tax credit for insurers that invest in a CDFI that lends to urban, rural, or reservation-based communities in this state until January 1, 2007.

## **COST ESTIMATE**

The administrative costs associated with this bill would be absorbable. These costs would include informing, advising, and answering inquiries from the public.

## **REVENUE ESTIMATE**

This measure would extend, until January 1, 2005, the operation of the insurance tax credit for insurers that invest in a CDFI that lends to urban, rural, or reservation-based communities in this state. This measure would maintain the current limit for the tax

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credit allocated annually of \$2 million. Accordingly, this measure could potentially decrease the General Fund by \$6 million for calendar years 2003 to 2005, inclusive.

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