

## CALIFORNIA BILL PERMITTING BIFURCATION OF STATE TAX CREDITS ON GOVERNOR'S DESK

The continuing drama surrounding the California state budget crisis has resulted in some important affordable housing measures being held hostage to a budget deal. The legislation aimed at bifurcating state and Federal credits, Senate Bill 585 (Lowenthal), passed the Assembly and Senate almost unopposed and is now before Governor Schwarzenegger awaiting his signature.

S.B. 585 finally permits the California low income housing tax credit to be bifurcated from the Federal low income housing tax credit. The net result should be to add needed efficiencies to using state and Federal tax credits. The present tax scheme requires that state tax credits and Federal tax credits be allocated in the same manner (essentially in the manner depreciation is allocated). This has limited the utility of state tax credits to those investors needing to offset sizable California and Federal taxes with both California state and Federal credits. The limited pool of investors has resulted in state tax credit pricing being artificially depressed to varying degrees. S.B. 585 will permit greater efficiencies by permitting state and Federal credits to be marketed to investors needing those specific credits.

S.B. 585's allocation methodology is simple. It provides that state credits are allocated in any manner and to any partner as determined by the partnership agreement. Revenue & Taxation Section 17058(b)(1)(C)(i) would state:

*For a project that receives a preliminary reservation of the state low-income housing tax credit, allowed pursuant to subdivision (a), on or after January 1, 2009, and before 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.*

We have attached the final form of S.B. 585 for your review. Please note that the bill still requires the Governor's signature and that should not be considered a foregone conclusion. The Franchise Tax Board has opposed the bill. A similar measure was before then Governor Davis half a dozen years ago and he ended up vetoing that particular bill on somewhat shaky policy grounds.

Please do not hesitate to contact Steve Ryan (415.262.5150), Ofer Elitzur (415.262.5165) or Lisa Weil (415.262.5175) of our Affordable Housing Practice Group if you have any questions concerning this legislation.

sb\_585\_bill\_2008 08 26 link

© 2008 Cox, Castle & Nicholson LLP is a full service law firm offering comprehensive legal services to the business community and specialized services for the real estate industry. Reproduction is prohibited without written permission of the publisher. This CCN Affordable Housing Practice Alert is for educational and informational purposes only. It is not a full analysis of the matters summarized and is not intended and should not be construed as legal advice. This communication may be considered advertising under applicable laws.

**Los Angeles**  
2049 Century Park East, 28th Floor  
Los Angeles, CA 90067  
P (310) 277-4222  
F (310) 277-7889

**Orange County**  
1980 MacArthur Blvd., Suite 500  
Irvine, CA 92612  
P (949) 476-2111  
F (949) 476-0256

**San Francisco**  
555 California Street, 10th Floor  
San Francisco, CA 94104  
P (415) 392-4200  
F (415) 392-4250