Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Hagman	Analyst:	David Scott	Bill Number:	AB 1806
Related Bills:	See Legislative History	Telephone:	845-5806	Introduced Date:	February 10, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Exclusion Of Capital Gain On Sale Of Residence By Surviving Spouse

SUMMARY

This bill would provide modified federal conformity for the exclusion of capital gain on the sale of a principal residence by a surviving spouse for sales that occur on or after January 1, 2010.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to benefit Californians who have lost spouses by providing tax relief in conformity with recent federally enacted laws.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for sales that occur on or after January 1, 2010.

POSITION

Pending.

SUMMARY OF SUGGESTED AMENDMENTS

A technical amendment is needed and is provided below.

ANALYSIS

FEDERAL/STATE LAW

In General

Federal Law

Gross income means all income from whatever source derived, including gains from dealings in property, unless specifically excluded.

Board Position:			Department Director	Date
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Gross income does not include gain from the sale or exchange of property if, during the five-year period ending on the date of the sale or exchange, such property has been owned and used by the taxpayer as the taxpayer's principal residence for periods aggregating two years or more.

Limitation

The amount of gain excluded from gross income with respect to any sale or exchange of a principal residence cannot exceed $250,000.

In the case of a husband and wife who file a joint return for the tax year of the sale or exchange of the property, the $250,000 limitation (described above) that applies to the exclusion of gain from the sale or exchange of a principal residence becomes $500,000 if:

- Either spouse meets the ownership requirements with respect to the property;
- Both spouses meet the use requirements with respect to the property; and
- Neither spouse is ineligible for the benefits of the exclusion with respect to the property because of the one sale every two years rule.

The Mortgage Forgiveness Debt Relief Act of 2007 amended Internal Revenue Code (IRC) section 121(b) to allow a surviving spouse to exclude from gross income up to $500,000 of the gain from the sale or exchange of a principal residence owned jointly with a deceased spouse if the sale or exchange occurs within two years of the death of the spouse and other ownership and use requirements have been met.

California Law

California conforms by reference to IRC section 121, relating to exclusion of gain from sale of principal residence, as of the “specified date” of January 1, 2005, in Revenue and Taxation Code section 17152 in the personal income tax law. The Mortgage Forgiveness Debt Relief Act of 2007, increased the amount of the exclusion of gain on the sale of a principal residence by a surviving spouse to $500,000 for federal purposes. Because this federal change was made after the “specified date” of January 1, 2005, California has not conformed to these provisions. California allows a surviving spouse to exclude up to $250,000 of gain from gross income.

THIS BILL

This bill would provide conformity to the federal capital gain exclusion from gross income on the sale of a personal residence by a surviving spouse, if the sale is within two years of the date of death of the other spouse. It would apply to sales occurring on or after January 1, 2010.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the normal annual update.

TECHNICAL CONSIDERATIONS

California conforms to the IRC as of the "specified date" of January 1, 2005. However, the referenced IRC provision had not yet been enacted. Suggested amendments to resolve this issue are attached.

LEGISLATIVE HISTORY

AB 1580 (Calderon, 2009/2010) was a federal conformity bill that would have provided the same benefit through conformity to the "specified date" of January 1, 2009. Governor Schwarzenegger vetoed AB1580. (See attachment A.)

SBX8 32 (Wolk, 2009/2010) is a federal conformity bill that would provide the same benefit through conformity to the "specified date" of January 1, 2009. This bill is at the assembly desk.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1806 For Taxable Years Beginning On or After January 1, 2010 Enactment Assumed Before June 30, 2010				
Provisions	2009-10	2010-11	2011-12	2012-13
Allow surviving spouse to exclude from gross income, up to $500,000 of the gain from sale of principal residence, if the sale occurs within two years of the death of the spouse	$0	-$300,000	-$200,000	-$300,000

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FRANCHISE TAX BOARD’S
PROPOSED AMENDMENTS TO AB 1806
As introduced on February 10, 2010

AMENDMENT 1

On page 4, line 6, strike out "spouse,” and insert:

spouses, as added by section 7(a) of Public Law 110-142,

Attachment A

BILL NUMBER: AB 1580
VETOED DATE: 10/11/2009

To the Members of the California State Assembly:

I am returning Assembly Bill 1580 without my signature.

It is disappointing that a multi-year, complex bill on federal tax conformity is damaged when a single provision is inserted at the last minute, especially when the process up to that point had been built on consensus. There are many federal tax provisions that California does not conform with, many of which would be supported by some of the entities involved. Likewise, when there are provisions that others object to, these should be discarded as well.

Many provisions in this bill will help taxpayers and the state of California. However, I cannot support this bill until it reflects consensus. I would urge the Legislature to send me legislation that demonstrates the agreements reached prior to the inclusion of the last provision on erroneous refund claims.

I look forward to signing a measure that reflects all the work on this extremely important and complicated effort.

Sincerely,

Arnold Schwarzenegger