Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Caballero, et al.	Analyst:	Angela Raygoza	Bill Number:	AB 765
Related Bills:	See Prior Analysis	Telephone:	845-7814	Amended Date:	May 21, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Qualified Principal Residence Purchase Credit

____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended ________________.

_X_ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended ________________.

____ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO ________________.

_X_ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED May 11 and May 13, 2009, STILL APPLIES.

_X_ OTHER – See comments below.

SUMMARY

This bill would allow the Qualified Principal Residence Purchase Credit to be reserved in advance.

SUMMARY OF AMENDMENTS

The May 21, 2009, amendments would do the following:

- Revise language that would restore the cease operative date to March 1, 2010,
- Remove language that would require an enforceable contract, as specified,
- Revise language that would restore the aggregate credit allocation to $100 million, and
- Remove language that would specify that the bill would be a tax levy.

Board Position:			Asst. Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	05/29/09
____ N	____ OUA	_X_ PENDING		

As a result of the May 21, 2009, amendments, the “Effective/Operative Date,” “This Bill,” ”Implementation Considerations,” and “Economic Impact” as provided in the department’s analysis of the bill as amended May 11, and May 13, 2009, have been revised. The May 21, 2009, amendments resolved the implementation consideration that requested clarification regarding the increased allocation credit limit. The remaining implementation concerns have been repeated below for convenience and a policy concern has been added. The remainder of the department’s analysis for May 11, and May 13, 2009, still applies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative on January 1, 2010.

ANALYSIS

THIS BILL

Under this bill, a taxpayer would be allowed to reserve a credit prior to the close of escrow. To reserve the credit, the taxpayer and seller would be required to jointly sign and submit to Franchise Tax Board (FTB) certification that the taxpayer and seller have entered into the agreement on or after March 1, 2009, and before March 1, 2010. FTB would be required to conditionally reserve the credit upon receipt of the certification.

This bill would specify that the seller provide certification to the taxpayer and FTB within one week of the close of escrow of the qualified principal residence.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill uses a term that is undefined, “conditionally reserve.” It is unclear what the conditions would be to reserve the credit under which the credit would be reserved but not allocated. The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this credit.

This bill would allow a taxpayer to reserve a credit prior to the close of escrow. It is unclear whether the reservation of a credit would reduce the credit available for allocation. It is also unclear how or when the department would be notified if the taxpayer cancels escrow. In addition, the bill fails to specify how the department would handle such a cancellation. For example, a taxpayer reserves a credit prior to the close of escrow. The taxpayer cancels escrow and fails to notify FTB. If the reservation of credit reduces the amount available for allocation, a portion of the $100 million would have been allocated and would not be available for taxpayers that close escrow and submit the necessary certification later. To ease administration of this bill, it is recommended that the bill be amended to clarify the intent to avoid confusion by taxpayers.

ECONOMIC IMPACT

Because this bill removed the provision that would have increased the aggregate credit allocation limit to $300 million and restored the $100 million credit allocation limit, there is no longer a revenue impact.

POLICY CONCERN

This bill would allow the taxpayer to reserve a credit prior to the close of escrow. Because this bill is no longer a tax levy, the department would begin reserving credits on or after January 1, 2010, which could be after the $100 million limit on the credit has been reached and allocations of credit are no longer available.

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