Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Walters	Analyst:	William Koch	Bill Number:	SB 1416
Related Bills:	See Legislative History	Telephone:	845-4372	Introduced Date:	February 19, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Exclusion/Capital Gains On Principal Residence Of Taxpayers 65 Or Older

SUMMARY

This bill would provide an exclusion from gross income for gain on the sale of a principal residence by a taxpayer who is 65 years or older for taxable years beginning on or after January 1, 2010.

PURPOSE OF THE BILL

It appears the purpose of this bill is to provide financial relief to senior citizens that sell their principal residence.

EFFECTIVE/OPERATIVE DATE

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

POSITION

Pending.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

Federal Law

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

Board Position:			Department Director	Date
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_______ N	_______ OUA	___X___ PENDING		

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, 2009, for taxable years beginning on or after January 1, 2010 via 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. California conforms to these provisions.

THIS BILL

This bill would provide an exclusion from gross income, without limitation, for gain on the sale or exchange of a principal residence by a taxpayer 65 years or older, and would apply to taxable years beginning on or after January 1, 2010.

IMPLEMENTATION CONSIDERATIONS

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

1. This bill uses the undefined term “principal residence.” The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this exclusion.
2. This bill has no limitation on the amount of gain that a taxpayer can exclude from gross income with respect to the sale or exchange of a principal residence. If this is not the intent of the author, amendments would be necessary.
3. This bill lacks provisions that would specify the treatment of a sale if a taxpayer files a joint return, which could lead to disputes between the taxpayer and the department.

LEGISLATIVE HISTORY

AB 1806 (Hagman, 2009/2010) 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. AB 1806 is currently in the Assembly Revenue and Taxation Committee.

AB 1580 (Calderon, 2009/2010) was a federal conformity bill that would have provided the same benefit as AB 1806 through conformity to the “specified date” of January 1, 2009. Governor Schwarzenegger vetoed AB 1580.

SB 401 (Wolk, Ch. 14, Stats. 2010) is a federal conformity bill that provides the same benefit as AB 1806 though conformity to the “specified date” of January 1, 2009.

SBX8 32 (Wolk, 2009/2010) was a federal conformity bill that would have provided the same benefit as AB 1806 through conformity to the “specified date” of January 1, 2009. Governor Schwarzenegger vetoed SBX8 32.

FISCAL IMPACT

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

ECONOMIC IMPACT

<u>Revenue Estimate</u>

Estimated Revenue Impact of AB 1416 As Introduced February 19, 2010 Effective for Taxable Years Beginning On or After January 1, 2010 Enactment Assumed After June 30, 2010 ($ in Millions)		
2010-11	2011-12	2012-13
-$21	-$19	-$20

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

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