

SUMMARY ANALYSIS OF AMENDED BILL

Author: Dutton Analyst: Angela Raygoza Bill Number: SB 206
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: May 26, 2009
 Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Principal Residence Credit

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.
- AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as amended April 28, 2009.
- FURTHER AMENDMENTS NECESSARY.
- DEPARTMENT POSITION CHANGED TO _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED April 28, 2009, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would provide a tax credit for the purchase of a qualified principal residence, as specified.

SUMMARY OF AMENDMENTS

The May 26, 2009, amendments would do the following:

- Modify the operative dates of this bill,
- Allow the credit for the year the residence is purchased,
- Expand the definitions of “qualified principal residence” and “qualified taxpayer;”
- Clarify the division of the credit between married taxpayers, and
- Extend the repeal date from December 1, 2010, to December 1, 2012.

As a result of the May 26, 2009, amendments, the “Effective/Operative Date,” “This Bill,” “Implementation Concerns,” and “Policy Concerns” discussions, as provided in the department’s analysis of the bill as amended April 28, 2009, have been revised. The “Fiscal Impact,” “Economic Impact,” and “Policy Concern” discussions from the department’s analysis as amended April 28, 2009, have been included below for convenience. The remainder of that analysis still applies.

Board Position:	Asst. Legislative Director	Date
<input type="checkbox"/> S		
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
<input type="checkbox"/> O		
<input type="checkbox"/> OUA		
<input type="checkbox"/> NP		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING	Patrice Gau-Johnson	06/04/09

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for purchases of a qualified principal residence on or after the effective date of this bill and before the date that is the same day of the 12th month that would follow the effective date of this bill.

ANALYSIS

THIS BILL

This bill would provide a tax credit under the Personal Income Tax Law (PITL) to an individual who is a purchaser of a qualified principal residence. This bill would apply to purchases of a qualified principal residence on or after the effective date and before the date that is the same day of the 12th month that would follow the effective date of this bill. The amount of the credit would be equal to 10 percent of the purchase price of the residence, not to exceed \$8,000. The credit would be allowed for the taxable year in which the qualified principal residence is purchased.

Under this bill, an individual taxpayer would be allowed one credit for one purchase of a qualified principal residence.

This bill would allow taxpayers 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 certification to Franchise Tax Board (FTB) that the taxpayer and seller have entered into the agreement on or after the effective date and before the date that is the same day of the 12th month that follows the effective date of this bill. FTB would be required to reserve the credit upon receipt of the certification.

This bill would define the following:

- “Qualified principal residence” means a single-family residence, whether detached or attached, that has been previously occupied or foreclosed upon, and that is purchased to be the principal residence of the taxpayer for a minimum of three years immediately following the purchase and is eligible for the homeowner’s exemption.¹
- “Qualified taxpayer” means either of the following:
 - A purchaser that has not owned a principal residence during the three-year period prior to the date of purchase and does not have AGI over \$95,000 or \$170,000 for joint filers.
 - A purchaser of a principal residence that has been foreclosed upon.

¹ California Revenue and Taxation Code (CR&TC) section 218, a homeowner’s property tax exemption is \$7,000 of the full value of the dwelling.

This bill would disallow the credit if the taxpayer does not occupy the qualified principal residence as his or her principal residence for a minimum of three years immediately following the purchase. If the credit is disallowed, this bill would require the taxpayer to be liable for any underpayments attributable to the disallowance of the credit.

This bill would require the credit to be divided equally between married taxpayers. If two or more taxpayers are not married, but purchase a qualified principal residence, the amount of the credit allowed would be allocated between the taxpayers in the same manner as each taxpayer's percentage of ownership. The total amount of credits allowed to all of these taxpayers could not exceed \$8,000.

Under this bill, FTB would be required to determine the date the certification is received from the taxpayer. The determinations made by FTB with respect to the date a certification is received, and whether a return has been timely filed, may not be reviewed in any administrative or judicial proceeding.

This bill would require that any disallowance of a credit claimed due to the date of certification or an untimely filed return would be treated as a mathematical error appearing on the return. Any disallowance would be treated as a mathematical error; any additional tax would be assessed and collected by FTB.²

This bill would allow FTB to prescribe rules, guidelines, or procedures necessary to carry out the purposes of this bill, including any guidelines regarding the allocation of the credit.

Under this bill, the credit allowed would be inapplicable as a business credit and would be excluded from the 50 percent credit limitation under newly enacted state law.³

This credit would be repealed as of December 1, 2012.

IMPLEMENTATION CONSIDERATIONS

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

² CR&TC Section 19051-Any amount of tax in excess of that disclosed by the return, due to a mathematical error, notice of which has been mailed to the taxpayer, and is not a deficiency assessment. The taxpayer has no right of protest or appeal based on that notice; however, the amount of tax erroneously omitted in the return may be assessed and collected in the manner provided in this part as in the case of deficiency assessments.

³ AB 1452 (Committee on Budget, Stats. 2008, Ch. 763) limits the amount of allowable "business credits" to an applicable amount. "Applicable amount" is equal to 50 percent of the tax before the application of any credits. Any disallowed credit remains a credit carryover to subsequent years and the credit carryover period is increased by the number of taxable years the credit amount was disallowed.

This bill uses terms that are undefined, “previously occupied” and “foreclosed upon.” Undefined terms can lead to disputes between the taxpayers and the department. The author may wish to amend the bill to define these terms to ease the department’s administration of this bill.

This bill would allow FTB to prescribe guidelines regarding the allocation of the credit. Because this bill lacks a credit allocation limit, it is unclear how FTB would prescribe guidelines for the allocation of this credit. It is recommended the author amend the bill to clarify the intent regarding the allocation of the credit to avoid confusion.

In addition, the following implementation concerns identified in the department’s analysis dated April 28, 2009, are unresolved:

This bill uses a term that is undefined, “certification.” 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 the taxpayer to reserve a credit prior to the close of escrow. Generally, credits that have an allocation cap can be reserved to guarantee the taxpayer receives the credit before the maximum allocation is reached. Because this bill lacks a maximum allocation for the credit, taxpayers who purchase during the operative 12-month period and claim the credit on the return for the taxable year would receive the credit. It is recommended the author amend the bill to clarify the intent of the credit reservation to avoid confusion.

This bill would require the FTB to determine the date certification is received from the taxpayer; however, the date of certification would not impact the eligibility for the credit. It is unclear if the certification is the reservation for the credit or another piece of certification required by the taxpayer. If the author’s intent is to require certification to verify the taxpayer has not purchased a principal residence three years to the date of purchase, it is recommended the bill be amended to specify this requirement.

This bill would disallow the credit if the taxpayer fails to occupy the qualified residence for at least three years following the purchase of the residence. It is unclear how the department would determine if a taxpayer fails to occupy the residence for a minimum of three years after the purchase. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. It is recommended that the bill be amended to provide certification language. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. The language should also require that the certification be provided to the department upon request.

In addition, the bill is unclear if the \$8,000 credit applies to individuals and to married individuals filing joint. If two married individuals purchase the same residence, the language could be interpreted to allow each married person a credit of \$8,000 for a total of \$16,000. If this is not the author’s intent, it is recommended bill be amended to clarify the tax treatment for married individuals.

TECHNICAL CONSIDERATIONS

Amendments 1 and 2 have been provided to correct technical errors.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until implementation concerns have been resolved but are anticipated to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of SB 206 As Amended May 26, 2009 Enactment Assumed After June 30, 2009 (\$ in Millions)		
2009-10	2010-11	2011-12
- \$280	\$0	\$0

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

Revenue Discussion

The number of qualified taxpayers who purchase a qualified principal residence and the amount of credits that can be applied to reduce tax liabilities would determine the revenue impact of this bill. The qualified principal residence must serve as a primary residence and be purchased during a 12-month period beginning with the date of enactment.

Based on historical data from the California Association of Realtors and using growth projections for total home sales by Department of Finance, homes sales would be approximately 584,000 in California during 2009.

The number of projected home sales was reduced for the following:

- To exclude unqualified taxpayers who have owned a principal residence during the three-year period prior to the date of purchase and who have AGI over \$95,000 for single filers, and \$170,000 for joint filers,
- To exclude investment purchases, and
- To exclude sales made in December of 2009.

Therefore, to arrive at an estimate of qualified taxpayers, projected home sales would be reduced by two-thirds to approximately 195,000 [584,000 homes sales in 2009 x (1 – 67%)]. Home sales would be limited to those made on or after January 1, 2009, and before December 1, 2009. In addition, projected homes sales would be further reduced to exclude sales during the month of December. December's home sales would be approximately five percent of annual sales. This would reduce qualified home sales by five percent to approximately 185,000 [195,000 x (1-5%)].

To account for purchases of a principal residence for less than \$80,000, (i.e. condominiums, manufactured homes, fabricated homes, etc.), it is assumed the average credit generated would be \$7,500.

During tax year 2009, credits generated would be estimated at approximately \$1.4 billion (185,000 purchases x \$7,500 credit amount). Of this \$1.4 billion, it is assumed that taxpayers would have sufficient tax liability to use 20 percent of available credits. The revenue loss would be approximately \$280 million (\$1.4 billion x 20%). Because the credit is non-refundable and has no carryover provision, taxpayers must claim the credit to reduce their tax liability on a timely filed original return. The full revenue loss of \$280 million would be only in fiscal year 2009-10.

POLICY CONCERNS

Because this bill fails to specify otherwise, a taxpayer could potentially claim the credit proposed by this bill and the newly enacted Qualified Purchase Residence Credit SBX2 15 (Ashburn, Stats. 2009 Third Extraordinary Session, Ch. 11). Generally, a credit is allowed in lieu of any deduction or credit already allowable for the same item of expense to eliminate multiple tax benefits.

The bill does not provide for the carryover of any unused credits. As a result, any credit in excess of a taxpayer's liability for the 2009 taxable year will not be used.

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Angela Raygoza
(916) 845-7814
angela.raygoza@ftb.ca.gov

Revenue Director
Jay Chamberlain
(916) 845-3375
jay.chamberlain@ftb.ca.gov

Assistant Legislative Director
Patrice Gau-Johnson
(916) 845-5521
patrice.gau-johnson@ftb.ca.gov

Analyst	Angela Raygoza
Telephone #	845-7814
Attorney	Patrick Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 206
As Amended May 26, 2009

AMENDMENT 1

On page 2, line 33, after "seventy" insert:
thousand

AMENDMENT 2

On page 2, line 36, after "foreclose upon" insert:

.