Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Dutton	Analyst:	Angela Raygoza	Bill Number:	SB 206
Related Bills:	See Legislative History	Telephone:	845-7814	Amended Date:	June 9, 2009, and July 1, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Principal Residence Credit

SUMMARY

This bill would provide a tax credit for the purchase of a foreclosed home, as specified.

SUMMARY OF AMENDMENTS

The June 9, 2009, amendments removed the following:

- A provision that would have allowed a taxpayer to reserve the credit,
- The definition of "qualified taxpayer,"
- A provision related to the division of the credit between taxpayers,
- Provisions related to certification and disallowance, and
- FTB's authority to prescribe rules for the allocation of the credit.

In addition, this bill would modify the definition of "qualified principal residence."

The July 1, 2009, amendments would do the following:

- Provide criteria for qualified residence that has been foreclosed upon, and
- Add a definition for "qualified taxpayer."

The department's analysis for the bill as amended May 26, 2009, no longer applies.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to reduce blight and increase stability in neighborhoods suffering from California's foreclosure crisis.

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.

Board Position:			Department Director	Date
_______ S	_______ NA	_______ NP		
_______ SA	_______ O	_______ NAR	Selvi Stanislaus	07/03/09
_______ N	_______ OUA	___X___ PENDING		

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Housing and Economic Recovery Act of 2008 (Public Law 110-289)

A “first-time homebuyers” credit was enacted by the Housing and Economic Recovery Act of 2008. The Act added a new refundable tax credit for “first-time homebuyers.” The amount of the credit is the lesser of $7,500 or 10 percent of the home’s purchase price. The credit is phased out for taxpayers with adjusted gross income[1] (AGI) between $75,000 and $95,000 ($150,000 and $170,000 for joint filers). The credit applies to principal residences purchased after April 8, 2008, and before July 1, 2009.

The credit is recaptured under the terms of Internal Revenue Code (IRC) section 36(f) over 15 years with no interest charge, beginning with the second tax year after the tax year in which the home is purchased. If the home is sold before the 15-year period ends, the remaining credit must be recaptured in the year of sale.

American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

The “first-time homebuyers” credit was modified by the American Recovery and Reinvestment Act of 2009. In general, for homes purchased after December 1, 2008, and before December 1, 2009, the maximum credit allowed is increased to $8,000 ($4,000 for married individuals filing separately). The credit is no longer required to be recaptured unless the taxpayer sells the qualified residence within 36 months. The credit applies to homes that are financed by exempt mortgage revenue bonds or located in the District of Columbia.

STATE LAW

Newly enacted state law, SBX2 15 (Ashburn, Stats. 2009 Third Extraordinary Session, Ch. 11), provides a tax credit in the amount of 5 percent of the purchase price of a qualified principal residence or $10,000, whichever is less. The credit is allowed for one purchase of a qualified principal residence by an individual and applies to purchases made on or after March 1, 2009, and before March 1, 2010.[2] Within one week of the sale of the qualified principal residence, the seller is required to provide to the purchaser and to the Franchise Tax Board (FTB) certification that the residence has never been previously occupied.

[1] Adjusted gross income, as defined by IRC section 62, means gross income, which includes all income from whatever source derived, adjusted for certain allowable amounts, including IRA contributions, alimony paid, moving expenses, and Keogh account contributions.

[2] Section 17059 of the Revenue and Taxation Code defines “qualified principal residence” as a single-family residence, whether detached or attached, that has never been occupied, is purchased to be the principal residence of the taxpayer for a minimum of two years and is eligible for the homeowner's exemption under Section 218.

The tax credit is allocated by FTB with a maximum allowable credit of $100 million. Upon receipt of certification from the seller, the credit is allocated on a first-come, first-serve basis. The credit must be claimed on a timely filed original return. The determination 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. Any disallowance of a credit claimed on the basis of exceeding the $100 million limitation is treated as a mathematical error and any tax resulting from such disallowance may be assessed in the same manner as applicable to mathematical errors. The newly enacted state law remains in effect until December 1, 2013, and is repealed as of that date.

THIS BILL

This bill would provide a tax credit under the Personal Income Tax Law (PITL) to a qualified taxpayer who is the 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, a qualified taxpayer would be allowed one credit for one purchase of a qualified principal residence.

This bill would define the following:

"Qualified principal residence" means a single-family residence, whether detached or attached, that has been foreclosed upon, where the residence has gone through the foreclosure process and is in the possession of the lender, 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.[3]

"Qualified taxpayer" means the buyer has an AGI of $95,000 or less, or $170,000 or less for joint filers.

This bill would disallow the credit if the qualified 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 qualified taxpayer to be liable for any underpayments attributable to the disallowance of the credit.

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

[3] 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.

Under this bill, the credit allowed would not be a business credit and, thus, would be exempt from the 50 percent credit limitation under newly enacted state law.[4]

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

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.

LEGISLATIVE HISTORY

AB 765 (Caballero and Solorio, 2009/2010) would allow a taxpayer to reserve the qualified principal residence credit before escrow closes and require FTB to estimate an average tax credit to apply to the aggregate credit allocation amount. AB 765 is currently in the Senate Revenue and Taxation Committee.

AB 902 (Torres, 2009/2010) is similar to this bill, the difference is that AB 902 would allow a maximum credit of $3,000 for the amounts paid or incurred by a taxpayer for a single purchase of foreclosed property that would be the primary residence for the taxpayer. This bill was held in the Assembly Revenue and Taxation Committee.

SB 49 (Dutton, 2009/2010) and SBX3 38 (Calderon, 2009/2010) would make substantive changes to the Qualified Purchase Residence Credit. SB 49 would eliminate the provision that would allow the taxpayer to reserve the credit and would eliminate the current allocation cap of $100 million. This bill is currently in the Senate Revenue and Taxation Committee suspense file. SBX3 38 would extend the operative date to purchase a qualified residence from March 1, 2010, to December 1, 2010, if an enforceable contract is entered into by March 1, 2010, and increase the allocation cap from $100 million to $300 million. SBX3 38 is currently in the Senate Rules Committee.

SBX 2 15 (Ashburn, Stats. 2009 Third Extraordinary Session, Ch. 11) allows a $10,000 credit for the purchase of a qualified principal residence for a purchase made after March 1, 2009, and before March 1, 2010. The credit is being allocated by FTB with a maximum allocation of $100 million.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the credit proposed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

---

[4] 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.

FISCAL IMPACT

If the bill is amended to resolve the implementation considerations addressed in this analysis, the department's costs are expected to be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of SB 206 As Amended July 1, 2009 Income Tax Credit – Principal Residence Enactment Assumed After September 1, 2009 ($ in Millions)		
2009-10	2010-11	2011-12
- $130	-$100	$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 revenue impact of this bill would depend on the number of qualified taxpayers who purchase a qualified principal residence and the amount of credits that could be applied to reduce tax liabilities. The qualified principal residence would be a foreclosed on property in the possession of the lender and serve as a primary residence that would be purchased on or after the date of enactment and before the date that is the same day of the 12th month that follows the enactment date.

Based on historical data from the California Association of Realtors and using the Department of Finance (DOF) growth projections for total home sales, it is estimated that approximately 584,000 homes would be sold in California during 2009 and 715,000 homes would be sold during 2010.

It is assumed that 35 percent of home purchases, 204,400 (584,000 x 35%) during 2009 and 250,250 (715,000 x 35%) during 2010, are foreclosed homes in possession of the lender to be used for primary residences. It is also assumed that 50 percent of the sales are purchased by qualified taxpayers whose AGI is not over $95,000 for single-filers and $170,000 for joint-filers. For 2009 and 2010, the number of foreclosed homes in possession of the lender and purchased by qualified taxpayers would be 102,200 (204,400 x 50%) and 125,125 (250,250 x 50%), respectively.

The credit would be limited to foreclosed homes in possession of the lender purchased within one year of enactment of this bill. Assuming enactment on September 1, 2009, 33 percent of 2009 foreclosed homes purchased or approximately 33,726 (102,200 x 33%) and 67 percent of 2010 foreclosed homes purchased or approximately 83,833 (125,125 x 67%) would qualify for the credit.

To account for a purchase of a foreclosed home in possession by a lender that would be less than $80,000 (because the credit allowed must be equal to 10 percent of the purchase price, not to exceed $8,000), it is assumed that the average credit generated would be $7,500. During 2009 and 2010, credits generated are estimated at approximately $253 million (33,726 purchases x $7,500 credit amount) and approximately $629 million (83,833 x $7,500 credit amount), respectively.

It is further assumed that qualified taxpayers would have sufficient tax liability to use 35 percent of available credits in the year generated. Revenue losses are estimated to be approximately $89 million ($253 million x 35%) for 2009 and approximately $220 million ($629 million x 35%) for 2010.

Taxable year estimates are converted to cash flow fiscal year estimates in the table above.

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.

LEGISLATIVE STAFF CONTACT

Legislative Analyst	Revenue Director	Asst. Legislative Director
Angela Raygoza	Jay Chamberlain	Patrice Gau-Johnson
(916) 845-7814	(916) 845-3375	(916) 845-5521
angela.raygoza@ftb.ca.gov	jay.chamberlain@ftb.ca.gov	patrice.gau-johnson@ftb.ca.gov