Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Dutton	Analyst:	Angela Raygoza	Bill Number:	SB 206
Related Bills:	See Prior Analysis	Telephone:	845-7814	Amended Date:	July 2, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Principal Residence 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 _____.

__X__ FURTHER AMENDMENTS NECESSARY.

____ DEPARTMENT POSITION CHANGED TO _____.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 9, 2009, and July 1, 2009, STILL APPLIES.

____ OTHER – See comments below.

SUMMARY

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

SUMMARY OF AMENDMENTS

The July 2, 2009, amendments would do the following:

- Add intent language,
- Place a cap on the total amount of credit that is available for the 2009-10 and 2010-11 fiscal years, and
- Require the Department of Housing and Community Development to reimburse the General Fund from funds received from the federal Neighborhood Stabilization Program 2 Funds, to the extent authorized by federal law, for amounts allowed under the bill's provisions.

Board Position:			Asst. Legislative Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Patrice Gau-Johnson	7/7/09
_____ N	_____ OUA	__X__ PENDING		

As a result of the amendments, the "This Bill", "Implementation Considerations", "Fiscal Impact", "Economic Impact" and "Policy Consideration" discussions have been revised. A "Policy Consideration" has been added. The remainder of the department's analysis of the bill as amended June 9, 2009, and July 1, 2009, still applies.

POSITION

Pending.

Summary of Suggested Amendments

Amendment 1 provides suggested language to fund the department's costs to implement this bill's provisions.

ANALYSIS

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.[1]

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

[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 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 Franchise Tax Board (FTB) to prescribe rules, guidelines, or procedures necessary to carry out the purposes of this bill.

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.[2]

The total amount of credits that may be allowed cannot exceed $130 million for the 2009–10 fiscal year and $100 million for the 2010–11 fiscal year.

The bill would provide that the Department of Housing and Community Development would be required to pay the General Fund, using funds from the Neighborhood Stabilization Program 2 Funds, to the extent federal law authorized the use of those funds for this purpose, an amount equal to the amount of tax credits allowed.

The bill contains legislative findings and declarations that specify that targeted neighborhoods in California must be revitalized, that the state must act to arrest the decline of neighborhoods affected by foreclosed and abandoned residential properties, and that the state must invest in affordable housing opportunities.

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

IMPLEMENTATION CONSIDERATIONS

Because the amendments would place a cap on the amount of credits allowed in each of the two fiscal years, the credits claimed would need to be tracked to ensure that the limitation is not exceeded in each fiscal year. This would require modifications to the department's systems, forms and processing procedures, which would result in additional operational costs for the department as detailed in the Fiscal Impact discussion below.

It is unclear whether the author intends the amount of the credit allowed to be the amount claimed by a taxpayer on a return or if the amount used by the taxpayer to reduce the tax shown on the return. The term "allocate" is generally used to measure the increments that a credit is distributed; the term "allowed" is generally reserved for FTB to determine how much of a credit the taxpayer is entitled to; the term "claim" generally reflects the amount that the taxpayer takes against the net tax due on the tax return. It is recommended that these terms be clarified to prevent disputes between taxpayers and the department.

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[2] 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 would set a limit on the amount of credits allowed for the 2009-10 and 2010-11 fiscal years, while the credit could be claimed on three different taxable year returns (2009, 2010, and 2011, depending on when the home is purchased). The bill lacks specificity on how credits claimed after it is exhausted for the fiscal year are to be handled. It also lacks clear criteria for determining how the credit is allocated, such as a first-come, first-served basis. Leaving these details undetermined could create a situation where a taxpayer claimed a credit they believed they were entitled to, but are denied the credit because it has been exhausted. The taxpayer's return would be adjusted, and the taxpayer would be assessed applicable penalty and interest for underpayment of tax they believed was paid through the disallowed credit. It is recommended that the bill be amended to include provisions specifying the rules that would apply when the credit is exhausted to prevent disputes between the department and taxpayers claiming the credit.

FISCAL IMPACT

The provisions of the bill would require the department to track the amount of credits allowed on the taxable year returns for two consecutive fiscal years. This would require modifications to the department systems, forms, and processing procedures that would increase department operating costs in the first year by approximately $364,000 and on-going annual costs of $587,000. Suggested appropriation language is attached to this analysis to fund the department's costs for this credit. If appropriation is not provided, the department would be required to obtain funding through the normal budget process, which would delay implementation of the provisions of this bill.

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 Effective For One Taxable Year Beginning On Date of Enactment Enactment Assumed on September 1, 2009 ($ in Millions)		
2009-10	2010-11	2011-12
- $45	-$35	$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 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 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 the homes purchased by taxpayers, 204,400 (584,000 x 35%) during 2009 and 250,250 (715,000 x 35%) during 2010, would be foreclosed homes in possession of the lender that would be used for primary residences. It is also assumed that 50 percent of the sales that would be 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 or 33,726 (102,200 x 33%) of 2009 foreclosed homes purchased and 67 percent or 83,833 (125,125 x 67%) of 2010 foreclosed homes purchased 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 (83,886 x $7,500 credit amount), respectively. However, the current amendment limits the amount of credit that could be allocated to $130 million for the 2009-10 fiscal year and $100 million for the 2010-11 fiscal year.

Based on data from the current housing credit, it is estimated that qualified taxpayers would have sufficient tax liability to use 35 percent of available credits in the year generated. Thus, the revenue losses of the bill as amended would be approximately $45 million ($130 million x 35%) for 2009-10 fiscal year and $35 million ($100 million x 35%) for 2010-11 fiscal year.

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

POLICY CONSIDERATION

The following policy concern from the June 9, 2009, and July 1, 2009, analysis is unresolved and listed below:

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 July 2, 2009, amendments raise an additional policy concern, as follows:

In general, when limitations are specified for a tax return status of single or married filing joint, the specified amount for a married filing joint return is typically twice the amount stated for a single return. These provisions are inconsistent with the general application of limits.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 206
As Amended July 2, 2009

AMENDMENT 1

On page 3, after line 31, insert:

SEC.4. The sum of three hundred sixty four thousand dollars ($364,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget, Chapter XX, Statutes of XXXX.