BILL ANALYSIS

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Department, Board, Or Commission	Author	Bill Number
Franchise Tax Board	**Ashburn**	**SBX2 15**

SUBJECT

Qualified Principal Residence Purchase Credit

SUMMARY

This bill provides a credit under the Personal Income Tax Law (PITL) to an individual who is a purchaser of a qualified principal residence. The amount of the credit would be equal to the lesser of 5% of the purchase price of the qualified principal residence or $10,000.

The bill requires that the credit be claimed ratably over three taxable years, beginning with the taxable year in which the purchase of the residence is made.

PURPOSE OF BILL

The purpose of the bill is to encourage sales of new single-family residences.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill is effective immediately, and specifically operative for purchases of qualified principal residences made on or after March 1, 2009, and before March 1, 2010.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

Federal Law

<u>First-Time Homebuyer's Credit</u>

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% 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.

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[1] Adjusted Gross Income as defined by IRC section 62 means gross income minus deductions.

The credit is recaptured under the terms of IRC 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
The “first-time homebuyers” credit was modified by the American Recovery and Reinvestment Act of 2009. In general, for homes purchased before December 1, 2009, the maximum credit is increased to $8,000 ($4,000 for a married individual filing separately), the credit is no longer recaptured unless the taxpayer sells the home within 36 months, and the credit can apply to homes that are financed by exempt mortgage revenue bonds or located in the District of Columbia.

State Law

Existing state law does not provide a comparable “first-time homebuyer’s” credit.

THIS BILL

This bill provides a credit under the Personal Income Tax Law (PITL) to an individual who is a purchaser of a qualified principal residence. The amount of the credit would be equal to the lesser of 5% of the purchase price of the qualified principal residence or $10,000.

The bill requires that the credit be claimed ratably over three taxable years, beginning with the taxable year in which the purchase of the residence is made.

The credit is allowed for one purchase of a qualified principal residence by an individual and would apply to purchases made on or after March 1, 2009, and before March 1, 2010.

This bill defines “qualified principal residence” as all of the following:

- a single-family residence, whether detached or attached,
- that has never been occupied,
- that is purchased to be the principal residence of the purchaser for a minimum of two years, and
- is eligible for the homeowner’s exemption.[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.

[2] R&TC section 218.

The credit will be cancelled if the taxpayer fails to occupy the qualified principal residence as his or her principal residence for at least two years immediately following the purchase. In such case, the taxpayer is liable for any credit allowed in previous years.

In the case of two married taxpayers filing separately, the credit is equally divided between the taxpayers. If two or more taxpayers who are not married purchase a qualified principal residence, the credit is allocated among the taxpayers in the same manner as each taxpayer's percentage of ownership, but the total allocated credit may not exceed $10,000.

The total credit allowed is limited to $100 million. Upon receipt of certification from the seller, FTB will allocate the credit based 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 credit is specifically not a business credit for purposes of the 50% business-credit limitations.[3]

FTB may prescribe rules, guidelines, or procedures necessary or appropriate to administer the credit. Any disallowance of the credit by the FTB is treated as a mathematical error, and may not be protested or appeal. Those rules, guidelines, and procedures are exempt from provisions of the Administrative Procedures Act regarding regulations.

The provisions of this bill remain in effect until December 1, 2013, and as of that date are repealed.

LEGISLATIVE HISTORY

SB 49 (Dutton, 2009/2010) would provide a credit similar to the one provided by this bill. That bill is currently at the Senate Revenue and Taxation Committee.

OTHER STATES' INFORMATION

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

[3] R&TC section 17039.2.

FISCAL IMPACT

This bill requires the taxpayer to submit certification of the “qualified principal residence” with the tax return. As a result, this bill would impact the department processing and storage costs for tax returns. The additional costs have not been determined at this time but are estimated to exceed $1 million.

ECONOMIC IMPACT

Revenue Estimate

Based on the data and assumptions discussed below, this proposal would result in the following revenue losses:

Estimated Revenue Impact Qualified Principal Residence Purchase Credit Effective for Homes Purchased between March 1, 2009 and March 2, 2010 Assumed Enactment Date Before 2/28/09 ($ in Millions)			
2008/09	2009/10	2010/11	2011/12
-$2	-$11	-$11	-$9

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 is dependent upon the number of taxpayers that purchase a new or previously unoccupied single-family home. The home must serve as a primary residence and be purchased on or after March 1, 2009 and before March 2, 2010.

Based on historical data from the California Builder’s Association for 2008 and using the Department of Finance’s growth projections for new home starts as a proxy for growth in new home sales, it is estimated that approximately 27,000 new homes will be sold during 2009 in California. To exclude investment purchases, because qualified purchases must serve as a taxpayer’s primary residence, projected new home sales for 2009 are reduced by 5% to 25,650 (27,000 x 1- 5%). Because qualified purchases are limited to those made on or after March 1, 2009, total sales for 2009 are reduced by 17% (2 months/12 months) to 21,300 (25,650 x 1-17%). Using the same methodology, and reducing the figures to reflect purchases made by March 1, 2010, qualified purchases for tax year 2010 are estimated to total 6,000.

To determine the value of credits generated and used, taxpayers with no tax liability were excluded. To serve as a proxy, tax data for individuals who reported the mortgage interest deduction for tax year 2005 was analyzed finding that approximately 75% of these filers had a tax liability. Applying this statistic to the estimate of qualified purchases, it is assumed approximately 16,000 (21,300 x 75%) purchasers would have a tax liability, and approximately 5,000 (21,300 x 24%) would not.

Since this bill limits the amount of credit allowed to $100 million, the total amount of credit allocated would only be $100 million. It is assumed that one-third of the homebuyers who do not have a tax liability will receive certification for the credit. Thus, of the $100 million allocation, approximately $16 million would be allocated to homebuyers who do not have a tax liability (5,000 homebuyers x 1/3rd x $10,000 = $16 million). However, since it is estimated that the $100 million cap will be depleted prior to the end of 2009, it is estimated that only $11 million of the $100 million cap will be allocated to homebuyers who do not have a tax liability.

The remaining $89 million will be claimed — one-third each year — by taxpayers on their 2009, 2010, and 2011 tax returns. For the 2009 taxable year, it is estimated that there would be approximately $30 million in credits claimed ($89 million x 1/3) and approximately $13 million in credits used to offset tax. It is estimated that, on average, taxpayers will be able to use approximately 38% of the credit claimed each year. For the 2009 taxable year, it is estimate that there would be approximately $11 million in credits used to offset PIT taxes ($30 million x 38% = approximately $11 million).

Revenue losses for the next two years would be comparable, slightly over $11 million per year. The figures in the chart have been adjusted to reflect the cash flow impact on a fiscal-year basis. The revenue loss for fiscal year 09/10 includes credits used to reduce tax year 2009 liabilities and reduced estimated payments for tax year 2010 liabilities.

VOTES

Assembly Floor	Ayes: 62, Noes: 11
Senate Floor	Ayes: 37, Noes: 11

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