Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Ashburn	Analyst:	Angela Raygoza	Bill Number:	SBX8 21
Related Bills:	See Legislative History	Telephone:	845-7814	Introduced Date:	February 1, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Principal Residence Credit

SUMMARY

This bill provides a credit under the Personal Income Tax Law (PITL) to an individual who is a purchaser of a new home or a first-time home buyer, as specified.

PURPOSE OF THE BILL

According to the language of the bill, the purpose is to address the fiscal emergency declared by the Governor on January 8, 2010,

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for purchases that occur on or after May 1, 2010, and on or before December 31, 2010.

The purchase of a qualified principal residence that occurs on and after December 31, 2010, and before August 1, 2011, must be made pursuant to an enforceable contract to purchase the qualified principal residence executed on or before December 1, 2010.

POSITION

Pending.

ANALYSIS

Federal Law

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Board Position:			Department Director	Date
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First-Time Homebuyer's Credit

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.

The Worker, Homeownership and Business Assistance Act of 2009 (Public Law 111-92)

The deadline to qualify for the "first-time homebuyer" credit was extended from Nov. 30, 2009, to April 30, 2010. Additionally, if a buyer enters into a binding contract by April 30, 2010, the buyer has until June 30, 2010, to settle on the purchase. The new law also provides a "long-time resident" credit of up to $6,500 to others who do not qualify as "first-time homebuyers." To qualify, a buyer must have owned and used the same home as a principal or primary residence for at least five consecutive years of the eight-year period ending on the date of purchase of a new home as a primary residence. For homes purchased in 2009, the credit does not have to be paid back unless the home ceases to be the taxpayer's main residence within a three-year period following the purchase.

For all qualifying purchases in 2010, taxpayers have the option of claiming the credit on either their 2009 or 2010 tax returns.

[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.

STATE LAW

Current law 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 for purchases made on or after March 1, 2009, and before March 1, 2010. 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.

The tax credit is allocated by the FTB with a maximum 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 the 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.

PROGRAM BACKGROUND

As of July 3, 2009, the FTB stopped accepting new home credit applications and as of August 31, 2009, the entire $100 million in principal residence credits had been allocated.

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 in an amount equal to the lesser of 5 percent of the purchase price or $10,000. The credit would be allowed for purchases made on or after May 1, 2010, and on or before December 31, 2010. This bill would require an enforceable contract to be executed by December 1, 2010, for purchases occurring on or after December 31, 2010, and prior to August 1, 2011.

The bill would require that the credit be claimed in equal amounts over three taxable years, beginning with the taxable year in which the purchase of the residence is made.

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

This bill would define the following:

- "Qualified principal residence" means a single-family residence, whether detached or attached, that is purchased to be the principal residence of the taxpayer, is eligible for the home exemption, and has either never been occupied or is purchased by a first-time home buyer.[2]
- "First-time home buyer" means any individual, or individual's spouse, who had no present ownership interest in a principal residence during the preceding three-year period ending on the date of the purchase of the qualified principal residence.

Under this bill, taxpayers would be allowed to reserve a credit prior to the close of escrow for the purchase of a qualified principal residence that has never been occupied. To reserve a credit, the taxpayer and seller would be required to jointly sign and submit to the FTB, certification that the taxpayer and seller have entered into an enforceable contract on or after May 1, 2010, and on or before December 31, 2010. Upon receipt of the certification, the FTB would be required to notify the taxpayer that the credit has been reserved. The reservation of a credit is required to be canceled if a taxpayer fails to provide both the settlement statement and certification of the qualified principal residence or a notification of cancellation before August 16, 2011.

This bill would allow a credit if the taxpayer submits to the FTB, within two weeks, after the date of purchase of the qualified principal residence, a copy of the properly executed settlement statement and either one of the following:

- Certification from the seller, made under penalty of perjury, that the residence has never been previously occupied, or
- Certification from the taxpayer, made under penalty of perjury, that he or she is a first-time home buyer.

This bill would require that if the taxpayer does not occupy the qualified principal residence for at least two years immediately following the purchase, the credit would be canceled, and any previously applied credit would be recaptured. The taxpayer would be liable for any increase in tax attributable to the recapture of any credit previously allowed under this section.

This bill would equally apportion the credit between two married taxpayers filing separately. For two or more taxpayers who are not married and purchase a qualified principal residence, the amount of the credit allowed would be 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 that would be allowable is limited to $200 million. The credit would be allocated $100 million for purchases of qualified principal residences that have never been occupied and $100 million for purchases by first-time homebuyers.

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[2] 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 require that for each certification or reservation received from a taxpayer, for the purchase of a qualified principal residence that has never been occupied or for a first-time homebuyer, the total amount of credit available for allocation would be reduced by an amount equal to 70 percent and 57 percent, respectively.

For example, under this bill the 70 percent rate would be applied as follows, a taxpayer, that purchased a home that has never been occupied, could be allocated a $10,000 credit, but the total amount of credits available for allocation would be reduced by 70 percent of the credit allocated, or $7,000.

When the credits allocated for principal residences that have never been occupied exceed the $100 million limit, the FTB would be required to establish a wait list for subsequently received certifications and reservations. The order of priority would be based on the date the certification and reservation was received by the FTB. Taxpayers on the wait list are required to be notified by the FTB no later than December 31, 2011, as to whether they have been allocated a credit and the amount allocated.

Under this bill, if the taxpayer is both a first-time home buyer and the purchaser of a residence that has never been occupied, the FTB would be required to allocate the credit from the $100 million for principal residences that have never been occupied.

Upon receipt of required certifications of a contract or a purchase and either no previous occupancy or qualification as a first-time home buyer from the buyer and/or the seller, the FTB would allocate the credit based on a first-come, first-serve basis. The credit must be claimed on a timely filed original return, except for taxpayers that purchased a home that was never previously occupied who were allocated a credit from the wait list for a qualified principal residence that was purchased in the 2010 taxable year. Those taxpayers may claim the credit on an amended income tax return for the 2010 taxable year. The determination by the 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 limitations each for principal residences that have never been occupied and first-time homebuyers would be treated as a mathematical error and any tax resulting from such disallowance may be assessed in the same manner as applicable to mathematical errors. Any disallowance may not be protested or appealed.

The FTB may prescribe rules, guidelines, or procedures necessary or appropriate to administer the credit. Those rules, guidelines, and procedures are exempt from provisions of the Administrative Procedures Act regarding regulations.

The credit would not be a business credit for purposes of the 50 percent business-credit limitations.[3]

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[3]CR&TC section 17039.2 limits the amount of allowable “business credits” to an applicable amount. Applicable amount” is equal to 50% 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 provision would remain in effect until December 1, 2014, and as of that date would be repealed.

TECHNICAL CONSIDERATION

For purchases on or after December 31, 2010, and before August 1, 2011, this bill would require an enforceable contract to be signed on or before December 1, 2010. The December 1, 2010 date is a technical error and should be December 31, 2010. On page 2, line 8, strike out "December 1, 2010," and insert "December 31, 2010."

LEGISLATIVE HISTORY

AB 765 (Caballero/Solorio, 2009/2010) would have allowed a maximum credit of $10,000 for the purchase of a qualified principal residence, subject to a $100 million allocation cap. The bill would have required that for each certification received from the seller the total amount of credit available for allocation would have been reduced by 70 percent of the credit allocated to the taxpayer. This bill failed passage out of the Senate Revenue and Taxation Committee.

ABX8 34 (Jeffries, 2009/2010) and this bill are identical to each other. ABX8 34 is currently in the Assembly Rules Committee.

SB 49 (Dutton, 2009/2010) would have extended the cease operative date for the Principal Residence Credit from December 1, 2010, to 12 months after the effective date of the bill. This bill would also have eliminated the $100 million cap and that the credit would be allocated on a first-come first-serve requirement. This bill failed passage out of the Senate Revenue and Taxation Committee by the constitutional deadline.

SB 913 (Calderon, 2009/2010) is similar to the provisions in SBX6 3 and SBX8 39 (see below); however, SB 913 only applies to purchases of principal residences that have never been occupied. SB 913 is currently in the Senate Revenue and Taxation Committee.

SBX6 3 (Calderon, 2009/2010) and SBX8 39 (Calderon, 2009/2010) are identical to each other and would: (1) extend the purchase dates for the principal residence credit and reduce the amount of credit that may be allocated to taxpayers by 70 percent, (2) enact a new principal residence credit to a home that has never been occupied and an occupied home, and (3) increase the allocation limit amount to $200 million. SBX6 3 is currently in the Senate Rules Committee; SBX8 39 is in the Senate Revenue and Taxation 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 purchase made after March 1, 2009, and before March 1, 2010. The credit was fully allocated by the FTB on July 3, 2009, 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 allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

Implementing this bill would require the FTB to create a new process within existing systems to bifurcate allocated credits when the seller submits a certification that the property sold was unoccupied or the purchaser was a first-time homebuyer. The FTB would be required to update forms and change systems to account for the credit. The FTB estimates the costs to the department to implement this bill would be approximately $1.3 million (13.2 PYs). If this bill is enacted without funding, the department would be required to redirect resources, which would have an adverse impact on current revenue generating programs and procedures.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of SBX8-21 Principal Residence Credit Effective For Purchases Made On or After May 1, 2010 And Before August 1, 2011, But Only for Enforceable Contracts Entered Into On or Before December 31, 2010 Enactment Assumed After April 1, 2010 ($ in Millions)				
2009-10	2010-11	2011-12	2012-13	2013-14
-$6	-$69	-$67	-$54	-$4

LEGISLATIVE STAFF CONTACT

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

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

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