Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Miller/Jeffries	Analyst:	Matthew Cooling	Bill Number:	AB 363
Related Bills:	See Prior Analysis	Telephone:	845-5983	Amended Date:	May 11, 2009
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Fire Safety Compliance Credit

X DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced February 23, 2009.

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 INTRODUCED February 23, 2009, STILL APPLIES.

X OTHER – See comments below.

SUMMARY

This bill would create a tax credit for the costs incurred to bring a qualified home into fire safety compliance, as specified.

SUMMARY OF AMENDMENTS

The May 11, 2009, amendments would do the following:

- Limit the amount of the credit to 50 percent of costs paid or incurred to bring a qualified home into compliance,
- Disallow any other deduction or credit for the qualified expenses associated with this credit, as specified,
- Define "Fire Hazard Severity Zone," "local agency-very high fire hazard severity zone," "wildland-urban interface fire area," and "new building,"
- Remove "dwelling unit" from the definition of a "qualified home,"
- Require a local agency to certify that a home meets fire safety requirements, as specified,
- Limit the carryover period, and
- Add a coauthor.

Board Position:			Asst. Legislative Director	Date
____ S	____ NA	____ NP		
____ SA	____ O	____ NAR	Patrice Gau-Johnson	5/15/09
____ N	____ OUA	X PENDING		

As a result of the amendments, the "Implementation Considerations" and some of the "Policy Concerns" discussed in the department's analysis of the bill as introduced February 23, 2009, have been resolved. Additional implementation concerns and the remaining concerns are listed below for convenience. In addition, the "This Bill," "Implementation Considerations," and "Economic Impact" discussions as provided in the analysis of the bill as introduced have been revised. Except for the discussions listed here, the remainder of the department's analysis of this bill as introduced February 23, 2009, still applies.

POSITION

Pending.

ANALYSIS

THIS BILL

For taxable years beginning on and after January 1, 2009, this bill would allow a tax credit in an amount equal to 50 percent of the qualified costs paid or incurred for repair, rehabilitation, or improvement made toward bringing a qualified home into compliance with the fire hazard severity zone, local agency very-high fire hazard severity zone, or wildland-urban interface fire area building requirements. The credit would be allowed for the taxable year in which a qualified home is brought into compliance. This bill would also allow a taxpayer to carry over any unused credit for up to four years.

This bill would specify that this credit would be allowed in lieu of any other credit or deduction allowed by any other statute for qualified costs.

This bill would define the following:

- "Fire Hazard Severity Zone" would mean a geographical area designated a fire hazard severity zone by the Director of Forestry and Fire Protection pursuant to Section 4203 of the Public Resources Code.

- "Local Agency Very High Fire Hazard Severity Zone" would mean an area designated as a "very high fire hazard severity zone" by the Director of Forestry and Fire Protection pursuant to Section 51178 of the Government Code that is not a state responsibility area.

- "Wildland-urban interface fire area" would mean a geographical area designated a fire hazard severity zone by the Director of Forestry and Fire Protection pursuant to Section 4203 of the Public Resources Code.

This bill would define "qualified costs" as costs paid or incurred for the construction, repair, rehabilitation, or improvement of a qualified home made toward bringing the home into compliance with current fire safety regulations imposed on new construction. Qualified costs would also include, but would not be limited to, costs for materials and labor.

This bill would define a “qualified home” as a single-family, primary residence located in a fire hazard severity zone, local agency very-high fire hazard severity zone, or wildland-urban interface fire area that is not a new building subject to current fire safety compliance regulations for new construction. “New building” would mean any building for which a building permit is submitted on or after July 1, 2008.

This bill would require that the construction, repair, rehabilitation, or improvements made to the home would be certified by a local agency building inspector. The bill would also specify that the inspector would have to verify that the taxpayer’s construction, repair, rehabilitation, or improvements are made toward compliance with the regulations of the Department of Forestry and Fire Protection.

IMPLEMENTATION CONSIDERATIONS

This bill uses the term “primary residence,” which is undefined. The absence of a definition to clarify this term could lead to disputes with taxpayers and would complicate the administration of this credit. It is recommended that the author amend the bill to use the term “principle residence” referencing Internal Revenue Code section 121.

This bill would require a local agency building inspector to certify that the construction, repair, rehabilitation, or improvements are made “toward compliance” with specific regulations. It is unclear how “toward compliance” is to be measured and could result in disputes with taxpayers. It is recommended that the bill be amended to instead require that the certification be done when compliance has been achieved.

Generally, bills that require certification also provide that the certification be provided to the department upon request to allow Franchise Tax Board (FTB) to verify that the taxpayer is eligible for the credit. This bill fails to provide that requirement. It is recommended that the author amend the bill to require the certification to be submitted by the taxpayer to FTB upon request.

In addition, because the credit would be allowed for 50 percent of the qualified costs for the taxable year in which a qualified home is brought into compliance, it is unclear if costs for the construction, repair, rehabilitation, or improvements made to the home would include costs paid or incurred in prior years. For example, if a taxpayer begins construction to bring a home into compliance in one year, and finishes in the second year, would the taxpayer be able to include all of the costs associated with bringing the home into compliance to calculate the credit, or would the taxpayer only be allowed the credit for expenses in the year of completion? The author may wish to amend this bill to clarify which costs associated with construction, repair, rehabilitation, or improvements made to the home can be included in the calculation of the credit.

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 AB 363 Effective On or After January 1, 2009 Enactment Assumed After June 30, 2009 ($ in Millions)			
Fire Safety Compliance Credit	2009-10	2010-11	2011-12
	-$21	-$110	-$190

This estimate 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 taxpayers in the specified fire zones that incur qualified costs, the amount of those costs, and the amount of credits that can be applied to reduce tax liabilities.

According to the International Journal of Wildland Fire (2007), there were approximately 5.1 million housing units in California on the wildland-urban interface in 2000. It is estimated that by 2008, the number has grown to approximately 5.6 million housing units. A description of the housing units was not broken out further, and cannot be identified as primary residences. For purposes of this estimate, it is assumed that 90 percent of units, or approximately 5 million housing units (5.6 million housing units X 90%), are primary residences.

If, in each year, approximately 1 percent of the 5 million qualified homes, or 50,000 property owners (5 million x 1 %), would incur an average of $10,000 in qualified costs for construction, repair, rehabilitation, or improvements, qualified costs would be $250 million (50,000 property owners x $10,000 qualified costs X 50% credit).

It is assumed one-third of credits generated would be applied to reduce tax liabilities in the year generated, creating a potential annual loss of approximately $83 million ($250 million x 33%). The 2009 taxable year impact would be reduced to 10 percent of the full-year impact, or $8.3 million, to account for late enactment of the bill. It is assumed that unused credits would be used ratably over a three-year period. In each successive year, applied credits would increase due to the build up of carryover credits.

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

ARGUMENTS/POLICY CONCERNS

This bill lacks a sunset date. Sunset dates generally are provided to allow periodic review of the effectiveness of the credit by the Legislature.

Conflicting tax policies come into play whenever a credit is provided for an item that is otherwise reflected as an adjustment to the basis of property for tax purposes. This bill would provide a credit and allow the full amount to be added to basis for improvements made to a qualified home. This would have the effect of providing a double benefit for that item or cost. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a difference between state and federal taxable income, which is contrary to the state's general federal conformity policy.

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