

State of California

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Legislative Change No. 10-4
Bill Number: AB 183 Author: Caballero Chapter Number: **10-12**

Laws Affecting Franchise Tax Board: Section 17059.1 of the Revenue and Taxation Code

Date Filed with the Secretary of State: March 25, 2010

SUBJECT: Principal Residence Credit

Assembly 183 (Caballero/Ashburn), as enacted on March 25, 2010, made the following changes to laws impacting the Franchise Tax Board:

Section 17059.1 of the Revenue and Taxation Code is added:

This act provides a credit under the Personal Income Tax Law 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 is allowed for purchases made on or after May 1, 2010, and on or before December 31, 2010. This act requires an enforceable contract to be executed by December 31, 2010, for purchases occurring on or after December 31, 2010, and prior to August 1, 2011.

The act requires that the credit is claimed in equal amounts over three taxable years, beginning with the taxable year in which the purchase of the residence is made. An individual taxpayer is allowed one credit for the purchase of one qualified principal residence.

This act defines 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.¹
- “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.

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.

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Date
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This act allows taxpayers 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 are required to jointly sign and submit to the Franchise Tax Board (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 is required to notify the taxpayer that the credit is 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 act allows 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 act requires that if the taxpayer does not occupy the qualified principal residence for at least two years immediately following the purchase, the credit is canceled, and any previously applied credit is recaptured. The taxpayer is liable for any increase in tax attributable to the recapture of any credit previously allowed under this act.

This act equally apportions 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 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 that is allocable is limited to \$200 million. The credit is allocated \$100 million for purchases of qualified principal residences that have never been occupied and \$100 million for purchases by first-time homebuyers.

This act requires 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 is reduced by an amount equal to 70 percent and 57 percent, respectively.

For example, under this act the 70 percent rate is 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 is 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 is required to establish a wait list for subsequently received certifications and reservations. The order of priority is based on the date the certification or 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 act, if the taxpayer is both a first-time home buyer and the purchaser of a residence that has never been occupied, the FTB is 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 allocates 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 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. 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.

This credit is not a business credit for purposes of the 50 percent business-credit limitations.²

This act remains in effect until December 1, 2014, and as of that date is repealed.

This act is effective immediately on March 25, 2010, and is 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 31, 2010.

This act will not require any reports by the department to the Legislature.

²CR&TC section 17039.2 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.