Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Stone	Analyst:	Jessica Deitchman	Bill Number:	SB 1149
Related Bills:	See Legislative History	Telephone:	845-6310	Amended Dates:	May 2, 2016 and June 1, 2016
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: First-Time Homebuyer Credit

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), create a tax credit for first-time homebuyers.

RECOMMENDATION

No position.

Summary of Amendments

The May 2, 2016, amendments re-casted and renamed provisions that would have established individual home ownership savings accounts with tax benefits similar to those applicable to an individual retirement account.

The June 1, 2016, amendments removed the provisions of the bill related to individual home ownership savings accounts and replaced them with the provisions discussed in this analysis. This analysis replaces the department's analysis of the bill as introduced February 18, 2016.

REASON FOR THE BILL

The reason for the bill is to encourage Californians to purchase a new home by providing a tax credit to help offset the cost.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for purchases of a qualified principal residence on or after January 1, 2017, and before January 1, 2020.

PROGRAM BACKGROUND

Prior Federal Law

Housing and Economic Recovery Act of 2008 (Public Law 110-289)

For principal residences purchased after April 8, 2008, and before July 1, 2009, a "first-time homebuyer" 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 was the lesser of $7,500 or 10 percent of the home's purchase price. The credit was phased out for taxpayers with adjusted gross income[1] (AGI) between $75,000 and $95,000 ($150,000 and $170,000 for joint filers).

American Recovery and Reinvestment Act of 2009 (Public Law 111-5)

The "first-time homebuyer" credit was modified by the American Recovery and Reinvestment Act of 2009. In general, for homes purchased after December 31, 2008, and before December 1, 2009, the maximum credit allowed was increased to $8,000 ($4,000 for married individuals filing separately).

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 November 30, 2009, to April 30, 2010, by the Worker, Homeownership, and Business Assistance Act of 2009. Additionally, if a buyer entered into a binding contract by April 30, 2010, the buyer had until June 30, 2010, to settle on the purchase. The new law provided a "long-time resident" credit of up to $6,500 to others who did 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 did not have to be paid back unless the home ceased to be the taxpayer's main residence within a three-year period following the purchase.

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

Prior State Law

For qualified principal residences purchased on or after March 1, 2009, and on or before March 1, 2010, or on or after May 1, 2010, and on or before December 31, 2010, state law provided a tax credit in the amount of 5 percent of the purchase price of a qualified principal residence or $10,000, whichever was less. Unlike the federal credit, within one week of the sale of the qualified principal residence the seller was required to provide to the purchaser and to the Franchise Tax Board (FTB) certification that the residence had either never been previously occupied or was purchased by a first-time homebuyer. The credit was allocated by the FTB on a first-come, first-served basis, with a maximum allocation of $100 million.

FEDERAL/STATE LAW

Current state and federal law lack a credit similar to the one this bill would provide.

[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.

THIS BILL

This bill would allow a credit to a qualified first-time homebuyer who purchases a qualified principal residence on and after January 1, 2017, and before January 1, 2020, in an amount equal to the lesser of 5 percent of the purchase price of the qualified principal residence or $10,000.

- The amount of credit allowed would be applied in equal amounts over the three successive taxable years beginning with the taxable year in which the purchase of the qualified principal residence is made.
- The credit would be allowed for the purchase of only one qualified principal residence with respect to any qualified first-time homebuyer.

The bill would define the following terms:

- "Qualified first-time homebuyer" would mean any individual, or the 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 a the qualified principal residence. A qualified first-time homebuyer's AGI during that period would not be allowed to exceed the following amounts:
    - $100,000 for a qualified taxpayer filing a joint return, head of household, or a surviving spouse.
    - $50,000 for a qualified taxpayer filing a return other a taxpayer filing a joint, head of household or surviving spouse return.

- "Qualified principal residence" would mean a single-family residence, whether detached or attached, that has never been occupied, and that is purchased to be the principal residence of taxpayer for a minimum of two years and is eligible for the homeowner's exemption under Section 218 of the Revenue and Taxation Code (R&TC).[2]

No credit would be allowed unless the qualified first-time homebuyer submits with his or her tax return a certification by the seller of the qualified principal residence that the residence has never been previously occupied. The seller would provide the certification to the qualified first-time homebuyer and to the FTB within one week of the sale of the qualified principal residence.

- If the qualified first-time homebuyer does not occupy the qualified principal residence as his or her principal residence for at least two years immediately following the purchase, the credit would be canceled and the qualified first-time homebuyer would be liable for any credit allowed on previous tax returns.
- A credit would not be allowed unless the qualified first-time homebuyer submits a certification that he or she is a first-time homebuyer.

[2] The California Constitution provides for the exemption of $7,000 (maximum) in assessed value from the property tax assessment of any property owned and occupied as the owner's principal place of residence.

In the case of two married qualified first-time homebuyers filing separately, the credit allowed would be equally apportioned between the two first-time homebuyers.

- If two or more qualified first-time homebuyers who are not married purchase a qualified principal residence, the amount of credit allowed would be allocated among them in the same manner as each qualified first-time homebuyer's percentage of ownership, except that the total amount of the credits allowed to all of these qualified first-time homebuyers could not exceed $10,000.

The total amount of credit that may be allowed could not exceed $100,000,000.

The credit must be claimed on a timely-filed original return.

Upon receipt of the certification from the qualified first-time homebuyer that the qualified principal residence has never been occupied, the FTB would allocate the credit on a first-come-first-served basis.

- If the certification of two or more qualified first-time homebuyers are received on the same day and the remaining amount of credit to be allocated is insufficient to be allocated fully to each, the credit would be allocated to those qualified first-time homebuyers on a pro-rata basis.
- The date a certification is received would be determined by the FTB. The determinations of the FTB with respect to the date a certification is received, and to whether a return has been timely filed, could not be reviewed in any administrative or judicial proceeding.
- Any disallowance of this credit, including the application of the limitation, would be treated as a mathematical error appearing on the return. Any amount of tax resulting from that disallowance may be assessed by the FTB as a mathematical error (R&TC section 19051).

A credit would not be allowed if the qualified first-time homebuyer, or his or her spouse, is related to the seller within the meaning of Section 267 of the Internal Revenue Code (losses, expenses, and interest with respect to transactions between related taxpayers).

A credit would not be allowed if the qualified first-time homebuyer qualifies as a dependent of any other taxpayer during the taxable year of the purchase.

The FTB could prescribe rules, guidelines, or procedures necessary or appropriate to carry out the purposes of this credit, including any guidelines regarding the allocation of the credit. Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 or Title 2 of the Government Code would not apply to any rule, guideline, or procedure prescribed by the FTB.

The bill provides that R&TC section 41[3] would not apply to this credit.

This bill would remain in effect only until December 1, 2023, and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

Currently, the bill would require this credit to be allocated on a first-come-first-served basis as returns are filed, even though homes may be purchased throughout the year. Because of this timing delay, taxpayers would lack certainty that they would be allocated the credit, and those taxpayers that had an ability to file a return sooner would be more likely to receive the credit than those that file later in the year. It appears that the intent of the bill is to allocate the credit before the homebuyer files a return; however, the bill lacks language to require the taxpayer to request a "reservation" of the credit before the return is filed. If it is the author's intent that the credit be reserved before the homebuyer file their return, the bill should be amended to clarify this process.

This bill would require the filing of an amended return to recapture the credit for the tax year when the credit was originally reported. This recapture could result in a taxpayer owing additional penalties and interest. Generally recapture provisions require the recognition of the recapture in the taxable year in which the recapture event occurs. The author may wish recast the recapture provision to trigger recapture in the taxable year when the event occurs.

TECHNICAL CONSIDERATIONS

On page 2, line 4, strikeout "and" and insert "or"

For consistency throughout the language of the bill, recommend substituting "qualified first-time homebuyer" wherever the term "qualified taxpayer" is used throughout the bill.

On page 34, after "procedures" strike "necessary or appropriate"

LEGISLATIVE HISTORY

AB 183 (Caballero/Ashburn, Chapter 12, Statutes of 2010) allowed a $10,000 credit for the purchase of a qualified principal residence for any purchase made on or after May 1, 2010, and on or before December 31, 2010.

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[3] The R&TC section 41 requires any new tax credit legislation introduced on or after January 1, 2015, to include specific goals, purposes, objectives, and performance measures.

SBX2 15 (Ashburn, Chapter 11, Statutes of 2010 2nd Ex. Session 2009) allowed a $10,000 credit for the purchase of a qualified principal residence for purchases 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 lack 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

The department's costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified and an appropriation will be requested, if necessary.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB 1149 As Amended June 1, 2016 Assumed Enactment After June 30, 2016 ($ in Millions)		
2016-17	2017-18	2018-19
- $7.6	- $13	- $13

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill.

Revenue Discussion

Based on previous new and first-time homebuyer tax credit data, it is assumed the $100 million of available credit would be fully allocated when returns are filed for tax year 2017, the first year available. Taxpayers would be allowed to claim an estimated $33.3 million dollars in credit in 2017, 2018 and 2019. Based on tax return data for the qualified income ranges, the estimated average tax liability is under $1,300. Therefore, it is assumed that 40 percent of the credit would be used each year, resulting in a $13 million annual revenue loss. The tax-year estimates are converted to fiscal years, and then rounded to arrive at the amounts reflected in the above table.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Some could argue that this bill would encourage home ownership in California by incentivizing first-time homebuyers with a credit.

Opponents: Some could argue that this bill would not encourage home ownership because the credit would not substantially reduce the costs to purchase a home.

POLICY CONCERNS

This bill lacks carryover language. As a result, any unused credit would be lost if the taxpayer is unable to use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

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