



Analysis of Original Bill

Author: Voepel

Sponsor:

Bill Number: AB 155

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Introduced: January 7, 2019

Attorney: Shane Hofeling

Related Bills: See Legislative
History

Subject: Principal Residence Credit

Summary

This bill would, under the Personal Income Tax Law (PITL), allow a tax credit to a taxpayer that builds a qualified principal residence.

Recommendation – No position.

Reason for the Bill

The reason for the bill is to encourage Californians to build and occupy new homes by offering a tax credit.

Effective/Operative Date

As a tax levy, this bill would be effective immediately upon enactment and would be specifically operative for taxable years beginning on or after January 1, 2020, and before January 1, 2025.

Federal/State 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 hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Neither federal nor state law allow a credit similar to the one that would be provided by this bill.

This Bill

This bill would, under the PITL, for taxable years beginning on or after January 1, 2020, and before January 1, 2025, allow a tax credit equal to \$5,000 that is paid or incurred during the taxable year by a taxpayer for building a qualified principal residence.

“Qualified principal residence” would mean a single family residence that meets both of the following:

- The building costs for the residence were \$350,000 or less, and
- The residence will be used exclusively as a principal residence of that taxpayer for at least the first five taxable years after the taxable year the taxpayer is allowed the credit.

A taxpayer may only be allowed this credit one time. Unused credits could be carried over for up to five years, or until exhausted, whichever comes first.

If the qualified taxpayer uses the qualified principal residence for any purposes other than as the principal residence of the taxpayer in the first five taxable years after the year for which the taxpayer was allowed the credit, the Franchise Tax Board (FTB) would be required to recapture the credit amount. The amount of tax resulting from the recapture would be added to the tax otherwise due by the taxpayer for the taxable year in which the FTB discovers the improper use of the qualified principal residence.

The credit would be repealed by its own terms as of December 1, 2025.

Implementation Considerations

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

This bill uses phrases that are undefined, i.e., “building costs,” “principal residence,” and “qualified taxpayer.” The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this bill. It is recommended the bill be amended to provide definitions for these terms.

The credit would be limited to taxpayers that pay or incur costs to build a qualified residence. If the author intends for the credit to apply to the purchase of single family homes other than newly constructed homes, the bill should be amended.

Because the bill fails to specify otherwise, it could be argued that the entire \$5,000 credit would be triggered when the first dollar of cost was paid or incurred by the taxpayer. If this is inconsistent with the author’s intent this bill should be amended.

For purposes of administering the recapture provision, it is unclear how the department would verify that (1) the building costs remained within the specified limit of \$350,000 and (2) a taxpayer's use remained exclusively as a qualified residence for the specified period. The author may wish to amend the bill to specify that the credit is allowed for the taxable year that the final building cost can be determined, for example, the taxable year that the certificate of occupancy is issued.

Legislative History

AB 282 (Voepel, 2019/2020) would allow a credit of \$1,000 to a taxpayer that builds a new primary residence. AB 282 is currently before the Assembly Revenue and Taxation Committee.

Other States' Information

Review of *Illinois, Florida, Massachusetts, Michigan, Minnesota, and New York* laws found no comparable tax credits. These states were selected and reviewed due to their similarities to California's economy, business entity types, and tax laws.

Fiscal Impact

Department staff is unable to determine the costs to administer this bill until the implementation concerns have been resolved. As the bill continues to move through the legislative process, costs will be identified.

Economic Impact

Revenue Estimate

This bill would result in the following revenue impact:

Estimated Revenue Impact of AB 155 as Introduced January 7, 2019
Assumed Enactment after June 30, 2019

(\$ in Millions)

| Fiscal Year | Revenue |
|--------------------|----------------|
| 2019-2020 | - \$35 |
| 2020-2021 | - \$70 |
| 2021-2022 | - \$90 |

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Based on building permit data from the United States Census Bureau, there would be approximately 80,000 new single-family residences built in California in 2020. Research indicates that approximately 25 percent, or 20,000, would be built by the owner. Of those it is estimated that 75 percent, or 15,000, would have an average building cost of \$350,000 or less. The number of qualified taxpayers is increased by 70 percent to account for multiple homeowners each claiming the credit. Using a credit rate of \$5,000 per taxpayer results in an estimated \$120 million in credit generated. These calculations were repeated for non-resident taxpayers resulting in an addition \$2 million in credit generated, for a total of \$122 million in taxable year 2020.

Beginning in taxable year 2021, a one percent recapture is added to each year to account for taxpayers to account for taxpayers who utilize the home for purposes other than a qualified principal residence within the first five years. This estimate does not include any adjustments that would account for issues related to self-certification. It is estimated that 80 percent of taxpayer would have a tax liability to offset with the credit and of those, 60 percent would use the credit in the year generated and the remaining would be used over the subsequent four years. This results in an estimated revenue loss of \$60 million in the taxable year 2020 and would increase to \$120 million by taxable year 2024.

The tax-year estimates are converted to fiscal-year revenue estimates, rounded and reflected in the above table.

Policy Concerns

The credit would be allowed for expenses paid or incurred either inside or outside California.

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