



## **Analysis of Amended Bill**

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Sponsor:

Bill Number: AB 1590

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Amended: March 28, 2019

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Related Bills: See Legislative  
History

**Subject:** Qualified First-Time Homebuyer

### **Summary**

This bill would, under the Personal Income Tax Law (PITL), allow a tax credit to certain low to moderate-income taxpayers that purchase a specified home.

This analysis only addresses the provisions of the bill that impact the department's programs and operations.

**Recommendation – No position.**

### **Summary of Amendments**

The March 28, 2019, amendments added the provisions discussed in this analysis. This is the department's first analysis of the bill.

### **Reason for the Bill**

The reason for the bill is to encourage first-time homebuyers to purchase homes in disadvantaged communities by offering a tax credit.

### **Effective/Operative Date**

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for specified home purchases occurring on or after January 1, 2020, and before January 1, 2023.

### **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.

Expired state law allowed a New Home Credit and a First-Time Buyer's Credit for individuals who purchased a qualified principal residence on or after May 1, 2010, and before January 1, 2011, or on or before July 31, 2011, if the buyer was in an enforceable contract entered into before January 1, 2011, and sent a credit application within 14 days after escrow closed. The credits were 5 percent of the purchase price or \$10,000, whichever was less. The credit was claimed over three years.

The New Home Credit was for a home that was new and had never been occupied. The First-Time Buyer's Credit was available to individuals who did not have an ownership interest in a principal residence either in or out of California during the preceding three years ending on the date of the purchase of the qualified residence. A qualified purchase was escrow closing on or after May 1, 2010. The Franchise Tax Board (FTB) stopped accepting First-time Buyer applications as of midnight Sunday, August 15, 2010.

Under Revenue and Taxation Code (R&TC) section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

### **This Bill**

This bill would, under the PITL, allow a credit to a qualified first-time homebuyer who purchases a qualified principal residence on or after January 1, 2020, and before January 1, 2023. The credit amount would be the lesser of three percent of the purchase price of the qualified principal residence, or \$5,000.

#### *Credit Limitation*

This bill would limit the total amount of credit allowed to fifty million dollars (\$50,000,000).

#### *Credit Requirements*

The amount of the credit would be applied in equal amounts over three successive taxable years, beginning with the tax year in which the home is purchased. The purchase date would be the date that escrow closes.

The qualified first-time homebuyer would only be allowed this credit one time and the credit would be required to be claimed on a timely filed original return.

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

In the case of two or more qualified first-time homebuyers who are not married, the amount of the credit would be allocated among the homebuyers in the same manner as each homebuyer's percentage of ownership, not to exceed \$5,000 in total.

The homebuyer would be required to submit the following to the FTB, within two weeks after the purchase date, for the credit to be allowed:

- A copy of the properly executed settlement statement, and
- A certification from the homebuyer that the individual or individual's spouse meets the definition in this bill of homebuyer, and the residence purchased meets the definition in this bill of disadvantaged community.

This bill would require the homebuyer to occupy the residence as a principal residence for at least two years. If the occupancy requirement is not met, the credit amount used would be recaptured in subsequent tax years. Any recapture of a credit would be treated as a mathematical error and any amount of tax resulting from the recapture would be assessed by the FTB in the same manner as provided by Section 19051. The amount of tax resulting from recapture would be added to the tax for the taxable year in which FTB's determination of the recapture occurred.

Taxpayers would not be eligible for the credit if any of the following applies:

- The taxpayer or the taxpayer's spouse is related to the seller, within the meaning of Section 267 of the Internal Revenue Code, relating to losses, expenses, and interest with respect to transactions between related taxpayers;
- The taxpayer qualifies as a dependent, as defined in Section 17056, of any other taxpayer during the taxable year of the purchase.

#### *Credit Allocation*

The FTB would be required to allocate the credit to the homebuyers on a first-come-first-served basis. If the information required to be submitted to the FTB within 2 weeks after the purchase date is received from two or more homebuyers on the same day, and the remaining credit amount to be allocated is insufficient to be allocated fully to each, the credit shall be allocated to those homebuyers on a pro rata basis.

The date the information is received from the homebuyer would be determined by FTB.

#### *Credit Reservation*

The homebuyer could, but would not be required to, reserve a credit, prior to the close of escrow, with the FTB.

To reserve a credit, the homebuyer and the seller would be required to jointly sign and submit certification to the FTB. Such joint certification would certify under penalty of perjury that the homebuyer and seller have entered into an enforceable contract on or after January 1, 2020, and before January 1, 2023.

The FTB would be required to notify the homebuyer that it has reserved the credit for the homebuyer, upon receipt of the joint certification.

The reservation would be required to be canceled if the homebuyer does not provide the required information.

### *Definitions*

For purposes of the credit, the bill would define the following terms:

- “Qualified first-time homebuyer” means any individual or individual’s spouse who has never had an ownership interest in a principal residence and qualifies as “persons and families of low or moderate income” as defined by Section 50093 of the Health and Safety Code.
- “Qualified principal residence” means a single-family residence, whether detached or attached, that is purchased to be the principal residence of the qualified first-time homebuyer for a minimum of two years and is eligible for the homeowner’s exemption under section 218. The qualified principal residence shall be located in a disadvantaged community identified pursuant to Section 39711 of the Health and Safety Code.
- “Area median income” has the same meaning as defined in subdivision (c) of Section 50093 of the Health and Safety Code.

### *Other Provisions*

This bill also contains uncodified language to comply with R&TC section 41. This bill would require:

- The Legislative Analyst’s Office (LAO) to review the effectiveness of the tax credits. The LAO may request information from the FTB and any state governmental entity with authority relating to the implementation of housing policy.
- The FTB and any state governmental entity with authority relating to the implementation of housing policy to provide data to the LAO, as requested, for purposes of the LAO’s review.

The Legislature would use the following performance indicators to determine whether the credit meets the specific goals, purposes and objectives listed in the bill:

- The number of qualified first-time homebuyers that claimed the credit.
- The amount of tax credits used by the first-time homebuyers, as categorized by the following:
  - a) Extremely low income (0 to 30 percent of area median income);
  - b) Very low income (30 to 50 percent of area median income);
  - c) Low income (50 to 80 percent of area median income); and
  - d) Moderate income (80 to 120 percent of area median income).
- The amount of tax credits used by geographic location, as categorized by the following:
  - a) Census Tract;
  - b) County;
  - c) City; and
  - d) Zip Code.
- The reduction in vehicle miles traveled pursuant to Section 14522 of the Government Code.

This bill would exempt the FTB's rules, guidelines, or procedures from the requirements of the Administrative Procedure Act (APA).

The determination of the FTB with respect to the date the information from the homebuyer is received, the allocation of the credit, the credit reservation, and whether a return is timely filed for purposes of this credit, may not be reviewed in any administrative or judicial proceeding.

This credit would be repealed by its own terms on December 1, 2026.

### **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.

Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

This bill uses a phrase that is undefined, i.e., “shall be applied.” The absence of definitions to clarify this phrase could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define this phrase.

The bill includes reporting requirements in uncodified law that are overly broad and may require the FTB to provide information that isn't available. For ease of administration it is recommended that the bill include these requirements in the relevant section of the R&TC. Additionally, it is recommended the bill be amended to require reporting on information available to the FTB.

### **Technical Considerations**

It is recommended that this bill be amended to clarify the intent as follows: On page 2, lines 21-22, insert commas.

“(1) “Qualified first-time homebuyer” means any individual, or Individual’s spouse, who has never had an ownership interest in a”

### **Legislative History**

AB 155 (Voepel, 2019/2020) would allow a tax credit of \$5,000 to a taxpayer that builds a qualified residence. AB 155 is pending before the Assembly Committee on Revenue and Taxation.

AB 282 (Voepel, 2019/2020) would allow a tax credit of \$1,000 to a taxpayer that purchases a principal residence completed as new construction. AB 282 is pending before the Assembly Committee on Revenue and Taxation.

SB 384 (Morrell, 2019/2020) would increase the amount of gain exclusion on sales of principal residences to first-time home buyers. SB 384 failed to pass out of the Senate Committee on Environmental Quality.

AB 198 (Patterson, et. al., 2017/2018), would have, among other provisions, allowed a deduction for certain amounts paid by first-time homebuyers for a principal residence. AB 198 failed to pass by the constitutional deadline.

AB183 (Caballero, Chapter 12, Statutes of 2010) created a New Home Credit and a First-Time Buyer Credit for taxpayers who purchased a principal residence on or after December 31, 2010, and before August 1, 2011. The total credit was limited to \$200 million, and both credits were repealed on December 1, 2014.

### Other States' Information

Review of *Illinois, Massachusetts, Michigan, Minnesota, and New York* laws lack 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

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.

### Economic Impact

#### Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1590 as Amended on March 28, 2019.

For Purchases Made On or After January 1, 2020, and Before January 1, 2023, Pursuant to an Enforceable Contract Executed On or After January 1, 2020, and Before January 1, 2023.

Assumed Enactment after June 30, 2019.

(\$ in Millions)

Fiscal Year	Revenue
2019-2020	-\$5.5
2020-2021	-\$8.7
2021-2022	-\$7.8

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 previous first-time homebuyer credit data from the FTB, it is assumed the \$50 million of credit would be fully allocated in 2020, the first year the credit would be available. Applying the credit amounts over three successive taxable years, beginning with the taxable year in which the purchase of the qualified principal residence is made, results in an estimated \$16.7 million dollars in credit available in the 2020, 2021, and 2022 taxable years. It is assumed that 60 percent of qualified first-time homebuyers would have tax liability to offset the credit resulting in a revenue loss of \$10 million in 2020 and each year thereafter.

Of the \$10 million in credit claimed each year, it is estimated that 20 percent, or \$2 million, would be recaptured in taxable year 2021, for homeowners who do not occupy the residence for the first year immediately following the purchase of the residence, and 30 percent, or \$3.2 million, would be recaptured in taxable year 2022 for homeowners who do not occupy the residence for the first two years immediately following the purchase of the residence, resulting in an offsetting revenue gain.

This estimate assumes taxpayers would meet the requirements to claim the credit. However, taxpayers who claim the credit without a credit certification would be subject to the underpayment and monthly penalties and interest which would result in a revenue gain.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts shown in the above table.

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