



Summary Analysis of Amended Bill

Author: Rubio, et al.

Sponsor:

Bill Number: AB 1590

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Amended: August 30, 2019

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Related Bills: See Prior Analysis

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 home, if an appropriation is specified in the Budget Act.

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

Recommendation – No position.

Summary of Amendments

The August 30, 2019, amendments added a provision reducing the credit amount to \$0 unless there is an appropriation in the Budget Act for the credit.

Except for the "This Bill" section, the remainder of the department's analysis of the bill as amended on June 24, 2019, still applies. The "Effective/Operative Date," "Implementation Considerations," "Fiscal Impact," "Economic Impact," and "Policy Concerns" sections have been restated below for convenience.

Effective/Operative Date

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

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. For tax years beginning on or after January 1, 2020, and before January 1, 2025, the credit amount would be \$0 absent an appropriation for the credit in the Budget Act for the taxable year.

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 Franchise Tax Board (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.

This bill would require the homebuyer to occupy the residence as a principal residence for at least two years immediately following the purchase. 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 be ineligible 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; or
- 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 would be allocated to those homebuyers on a pro rata basis.

The date the information is received from the homebuyer would be determined by the 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 (HSC).
- “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 Revenue and Taxation Code (R&TC) section 218.
- “Area median income” has the same meaning as defined in subdivision (c) of Section 50093 of the HSC.

Other Provisions

In 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 be required to 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.

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

The FTB's determination 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 consideration. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

The bill includes reporting requirements that are overly broad and may require the FTB to provide information that is currently unavailable. For ease of administration it is recommended that the bill be amended to specify the information the FTB would be required to provide to the LAO.

Fiscal Impact

Staff estimates costs of approximately \$1,810,000 in fiscal year 2020-2021, including startup costs of \$962,000 to develop, program, and test revisions to existing systems, and to create new forms and Internet content, and costs of \$848,000 to administer the credit certification and allocation, and respond to taxpayer contacts.

Ongoing costs of \$755,000 for fiscal year 2021-2022, through 2023-2024, are estimated for staffing costs to administer the credit certification and allocation, and respond to taxpayer contacts.

Economic Impact

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1590 as Amended on August 30, 2019
Assumed Enactment after June 30, 2019.

(\$ in Millions)

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

*This estimate assumes a bill providing appropriations related to the Budget Act would fully allocate funds to this credit.

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.

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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