

AMENDED IN SENATE MARCH 18, 2010

AMENDED IN SENATE SEPTEMBER 4, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 183

Introduced by ~~Committee on Budget (Evans (Chair), Arambula, Beall, Blumenfield, Brownley, Caballero, Carter, De La Torre, Feuer, Hill, Huffman, Monning, Ruskin, and Swanson) Assembly Member Caballero~~

(Principal coauthors: Senators Ashburn and Calderon)

(Coauthor: Assembly Member Huber)

(Coauthor: Senator Alquist)

February 2, 2009

~~An act to amend Section 13311.1 of, and to amend, repeal, and add Section 5924 of, the Government Code, to amend Section 2103.1 of the Streets and Highways Code, to add Section 12104 to the Welfare and Institutions Code, and to amend Section 39 of Chapter 12 of the Statutes of 2009 of the Third Extraordinary Session, relating to state finances, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to add and repeal Section 17059.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 183, as amended, ~~Committee on Budget Caballero. Budget Act of 2009. Income tax credit: qualified principal residence.~~

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified

principal residence, as defined, or \$10,000, for purchases made between March 1, 2009, and before March 1, 2010, subject to specified restrictions.

This bill would authorize a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified principal residence, as defined, or \$10,000, for purchases made between May 1, 2010, and on or before December 31, 2010, or on or after December 31, 2010, and before August 1, 2011, subject to specified restrictions, including the submission of a certification to the Franchise Tax Board by either the taxpayer or seller, made under the penalty of perjury, that the residence has either never been occupied or that the taxpayer is a first-time home buyer.

This bill would limit the total amount of credits to \$200,000,000 and would require that the aggregate limitation of \$100,000,000 in credits for the purchase of qualified principal residences that have never been occupied be reduced by 70% of the credit amount allocated under each certification by the Franchise Tax Board, and would require that the aggregate limitation of \$100,000,000 in credits for the purchase of a qualified principal residence by first-time home buyers be reduced by 57% of the credit amount allocated under each certification by the Franchise Tax Board.

By expanding the definition of an existing crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

~~(1) Existing law sets forth the duties and authority of the Treasurer generally in the sale of state bonds. Moneys are continuously appropriated from the General Fund in an annual amount necessary to pay all obligations, including principal, interest, fees, costs, indemnities, and all other amounts incurred by the state under or in connection with any credit enhancement or liquidity agreement entered into by the state, as specified, for bonds payable pursuant to an appropriation from the General Fund. Existing law prohibits the amount appropriated for these fees, costs, and other similar expenses from exceeding a percentage of~~

the original principal amount of the bonds that is specified in the federal Internal Revenue Code.

This bill would, until June 30, 2013, instead increase that percentage by which those expenses are calculated to 3%, thereby making an appropriation.

~~(2) Existing law authorizes the Director of Finance to defer payments of General Fund moneys in July through September of 2009, in an amount not to exceed \$750,000,000, appropriated to the University of California in the Budget Act of 2009, as specified. Existing law also authorizes the director to defer payments of General Fund moneys in July 2009, in an amount not to exceed \$290,000,000, appropriated to the California State University in the Budget Act of 2009, as specified. Existing law specifies the schedule of payments for these deferred amounts.~~

~~This bill would additionally authorize the director to defer payments of General Fund moneys owed in February 2010, in an amount not to exceed \$250,000,000, appropriated to the University of California in the Budget Act of 2009. The bill also would authorize the director to defer payments of General Fund moneys owed in February 2010 in an amount not to exceed \$250,000,000, and owed in March 2010 in an amount not to exceed \$150,000,000, appropriated to the California State University in the Budget Act of 2009, as specified. The bill would specify a schedule of payments for these deferred amounts.~~

~~(3) Existing law defers, until October 2009, the disbursal of payments of General Fund moneys for July 2009, in an amount not to exceed \$200,000,000, appropriated to the Board of Governors of the California Community Colleges for apportionments to community college districts.~~

~~This bill would additionally defer, until May 2010, the disbursal of payments of General Fund moneys for March 2010, in an amount not to exceed \$100,000,000, appropriated to the board for apportionments to community college districts.~~

~~(4) Existing law requires state excise fuel tax revenues to be deposited in various accounts and to be allocated, in part, for various purposes, including the cost of collection and authorized refunds. Existing law requires the balance of these funds remaining after authorized deductions to be transferred to, and deposited monthly in, the Highway Users Tax Account in the Transportation Tax Fund. Existing law provides for annual and monthly apportionment by the Controller of specified revenues in the Highway Users Tax Account to cities, counties, and cities and counties for the transportation purposes authorized by Article~~

XIX of the California Constitution. Existing law, pursuant to Chapter 23 of the Fourth Extraordinary Session of the Statutes of 2009, requires transfers of those revenues from the Highway Users Tax Account to counties or cities that would otherwise be made during certain months of 2009 to instead be deferred and made after January 1, 2010.

This bill would instead provide for the apportionments for the months of July and August of 2009 to cities, counties, and cities and counties to be paid in September 2009, and apportionments for November and December of 2009 and January, February, and March of 2010 to be paid on or within 2 working days of April 28, 2010, with specified exceptions. The bill would also authorize the affected local agencies to use specified transportation bond funds and other available funds to meet certain cash obligations.

(5) Existing law provides for the State Supplementary Program for the Aged, Blind and Disabled (SSP), which requires the State Department of Social Services to contract with the United States Secretary of Health and Human Services to, on behalf of the state, make combined state and federal payments to SSP recipients to supplement Supplemental Security Income (SSI) payments made available pursuant to the federal Social Security Act.

Existing law provides that the contract with the United States Secretary of Health and Human Services requires the state to pay the secretary an amount equal to expenditures made by the secretary as supplemental payments to SSP recipients less amounts payable by the federal government.

This bill would, upon the order of the Director of Finance, require the Director of Social Services to defer the above-described payments to the federal government in February 2010, and March 2010, and, instead, make payments for those months after April 20, 2010, but no later than May 31, 2010.

(6) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$ -majority. Appropriation: yes-no. Fiscal committee: yes. State-mandated local program: no-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17059.1 is added to the Revenue and
- 2 Taxation Code, to read:

1 17059.1. (a) (1) *In the case of any taxpayer who purchases*
2 *a qualified principal residence on and after May 1, 2010, and on*
3 *or before December 31, 2010, or any taxpayer who purchases a*
4 *qualified principal residence on and after December 31, 2010,*
5 *and before August 1, 2011, pursuant to an enforceable contract*
6 *executed on or before December 31, 2010, there shall be allowed*
7 *as a credit against the “net tax,” as defined in Section 17039, an*
8 *amount equal to the lesser of 5 percent of the purchase price of*
9 *the qualified principal residence or ten thousand dollars (\$10,000).*

10 (2) *The amount of any credit allowed under paragraph (1) shall*
11 *be applied in equal amounts over the three successive taxable*
12 *years beginning with the taxable year in which the purchase of*
13 *the qualified principal residence is made.*

14 (3) *The credit under this section shall be allowed for the*
15 *purchase of only one qualified principal residence with respect to*
16 *any taxpayer.*

17 (4) *A qualified principal residence is purchased on the date on*
18 *which escrow closes with respect to the purchase of the qualified*
19 *principal residence.*

20 (b) *For purposes of this section:*

21 (1) *“Qualified principal residence” means a single-family*
22 *residence, whether detached or attached, that is purchased to be*
23 *the principal residence of the taxpayer, is eligible for the*
24 *homeowner’s exemption under Section 218, and has either never*
25 *been occupied or is purchased by a first-time home buyer.*

26 (2) *“First-time home buyer” means any individual, or*
27 *individual’s spouse, who had no present ownership interest in a*
28 *principal residence during the preceding three-year period ending*
29 *on the date of the purchase of the qualified principal residence.*

30 (c) (1) (A) *A taxpayer may, but is not required to, reserve a*
31 *credit prior to close of escrow for the purchase of a qualified*
32 *principal residence that has never been occupied. To reserve a*
33 *credit, the taxpayer and seller shall jointly sign and submit to the*
34 *Franchise Tax Board a certification that they have entered into*
35 *an enforceable contract on or after May 1, 2010, and on or before*
36 *December 31, 2010. Upon receipt of the joint certification, the*
37 *Franchise Tax Board shall notify the taxpayer that the board has*
38 *reserved the credit for the taxpayer, pending receipt, within two*
39 *weeks after the close of escrow, of the information required under*

1 paragraph (2) for a qualified principal residence that has never
2 been occupied.

3 (B) The reservation of a credit shall be canceled if a taxpayer
4 does not provide either the information required under paragraph
5 (2) or a notification of cancellation before August 16, 2011.

6 (2) No credit shall be allowed under this section unless the
7 taxpayer submits to the Franchise Tax Board, within two weeks
8 after the date of the purchase of the qualified principal residence,
9 a copy of the properly executed settlement statement and either
10 one of the following:

11 (A) If the qualified principal residence has never been occupied,
12 a certification by the seller, made under penalty of perjury, that
13 the residence has never been previously occupied.

14 (B) If the qualified principal residence is purchased by a
15 taxpayer who is a first-time home buyer, a certification from the
16 taxpayer, made under penalty of perjury, that he or she is a
17 first-time home buyer.

18 (d) If the taxpayer does not occupy the qualified principal
19 residence as his or her principal residence for at least two years
20 immediately following the purchase, any remaining unapplied
21 credit shall be canceled and any previously applied credit shall
22 be recaptured, and the taxpayer shall be liable for any increase
23 in tax attributable to the recapture of any credit previously allowed
24 under this section.

25 (e) (1) In the case of two married taxpayers filing separately,
26 the credit allowed under subdivision (a) shall be equally
27 apportioned between the two taxpayers.

28 (2) If two or more taxpayers who are not married purchase a
29 qualified principal residence, the amount of the credit allowed
30 under subdivision (a) shall be allocated among the taxpayers in
31 the same manner as each taxpayer's percentage of ownership,
32 except that the total amount of the credits allowed to all of these
33 taxpayers shall not exceed an amount equal to the lesser of 5
34 percent of the purchase price of the qualified principal residence
35 or ten thousand dollars (\$10,000).

36 (f) (1) The total amount of credit that may be allocated pursuant
37 to this section shall not exceed one hundred million dollars
38 (\$100,000,000) for the purchase of qualified principal residences
39 that have never been occupied and one hundred million dollars

1 (\$100,000,000) for the purchase of qualified principal residences
2 by first-time home buyers.

3 (A) For each certification or reservation received from a
4 taxpayer for the purchase of a qualified principal residence that
5 has never been occupied, the total amount of credit available for
6 allocation shall be reduced by an amount equal to 70 percent of
7 the amount of the credit for the purchase of a qualified principal
8 residence that has never been occupied.

9 (B) For each certification received from a taxpayer for the
10 purchase of a qualified principal residence by a first-time home
11 buyer, the total amount of credit available for allocation shall be
12 reduced by an amount equal to 57 percent of the amount of the
13 credit for the purchase of a qualified principal residence by a
14 first-time home buyer.

15 (2) Once the credits allocated for qualified principal residences
16 that have never been occupied exceed the limit established in
17 subparagraph (A) of paragraph (1), the Franchise Tax Board shall
18 establish a wait list for subsequently received certifications or
19 reservations, with an order of priority based on the date
20 certification or reservation was received by the Franchise Tax
21 Board. The Franchise Tax Board shall notify taxpayers on the wait
22 list no later than December 31, 2011, as to whether they have been
23 allocated a credit and the amount allocated.

24 (3) In the case where a taxpayer is both a first-time home buyer,
25 as described in paragraph (2) of subdivision (b), and the purchaser
26 of a qualified principal residence that has never been occupied,
27 the Franchise Tax Board shall allocate that taxpayer their credit
28 amount from the one hundred million dollars (\$100,000,000) for
29 qualified principal residences that have never been occupied.

30 (g) (1) Upon receipt of the information described in subdivision
31 (c), the Franchise Tax Board shall allocate the credit to the
32 taxpayer on a first-come-first-served basis.

33 (2) (A) Except as provided in subparagraph (B), the taxpayer
34 shall claim the credit on a timely filed original return.

35 (B) Taxpayers on the wait list, as described in paragraph (2)
36 of subdivision (f), that are allocated a credit for a qualified
37 principal residence that was purchased in the 2010 taxable year
38 may claim the credit on an amended income tax return for that
39 taxable year.

1 (3) *The date the information described in subdivision (c) is*
2 *received shall be determined by the Franchise Tax Board.*

3 (4) (A) *The determinations of the Franchise Tax Board with*
4 *respect to the date the information described in subdivision (c) is*
5 *received, the allocation and reservation of credit, and whether a*
6 *return has been timely filed for purposes of this subdivision, may*
7 *not be reviewed in any administrative or judicial proceeding.*

8 (B) *Any disallowance of a credit claimed due to a determination*
9 *under this subdivision, including the application of the limitation*
10 *specified in subdivision (f), shall be treated as a mathematical*
11 *error appearing on the return. Any amount of tax resulting from*
12 *that disallowance may be assessed by the Franchise Tax Board in*
13 *the same manner as provided by Section 19051.*

14 (h) *The Franchise Tax Board may prescribe rules, guidelines,*
15 *or procedures necessary or appropriate to carry out the purposes*
16 *of this section, including any guidelines regarding the allocation*
17 *of the credit allowed under this section. Chapter 3.5 (commencing*
18 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*
19 *Government Code does not apply to any rule, guideline, or*
20 *procedure prescribed by the Franchise Tax Board pursuant to this*
21 *section.*

22 (i) *The credit allowed by this section is not a business credit*
23 *within the meaning of Section 17039.2.*

24 (j) *No credit shall be allowed under this section if any of the*
25 *following apply:*

26 (1) *The taxpayer was allowed a credit under Section 17059.*

27 (2) *The taxpayer is not 18 years of age or older as of the date*
28 *of purchase. A taxpayer who is married at the date of purchase*
29 *shall be considered to be 18 years of age if the spouse of the*
30 *taxpayer is 18 years of age or older on the date of purchase.*

31 (3) *The taxpayer or the taxpayer's spouse, if the taxpayer is*
32 *married, is related to the seller within the meaning of Section 267*
33 *of the Internal Revenue Code, related to losses, expenses, and*
34 *interest with respect to transactions between related taxpayers.*

35 (4) *The taxpayer qualifies as a dependent, as defined in Section*
36 *17056, of any other taxpayer for the taxable year of the purchase.*

37 (k) *This section shall remain in effect only until December 1,*
38 *2014, and as of that date is repealed.*

39 SEC. 2. *No reimbursement is required by this act pursuant to*
40 *Section 6 of Article XIII B of the California Constitution because*

1 *the only costs that may be incurred by a local agency or school*
 2 *district will be incurred because this act creates a new crime or*
 3 *infraction, eliminates a crime or infraction, or changes the penalty*
 4 *for a crime or infraction, within the meaning of Section 17556 of*
 5 *the Government Code, or changes the definition of a crime within*
 6 *the meaning of Section 6 of Article XIII B of the California*
 7 *Constitution.*

8 *SEC. 3. This act provides for a tax levy within the meaning of*
 9 *Article IV of the Constitution and shall go into immediate effect.*

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**All matter omitted in this version of the bill
 appears in the bill as amended in the
 Senate, September 4, 2009. (JR11)**

CORRECTIONS:
 Heading—Page 1.

