

ASSEMBLY BILL

No. 1806

**Introduced by Assembly Member Hagman
(Coauthor: Assembly Member Tran)**

February 10, 2010

An act to amend Section 17152 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1806, as introduced, Hagman. Personal income taxes: capital gains: sale of principal residence: surviving spouse.

The Personal Income Tax Law provides, in modified conformity to federal income tax laws, for the manner in which taxable gains are to be recognized upon the disposition of property, including real property that is the principal residence of the taxpayer.

This bill would provide additional conformity to those federal income tax laws relating to the exclusion of gain from sale of principal residence by a surviving spouse.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

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

1 SECTION 1. Section 17152 of the Revenue and Taxation Code
2 is amended to read:
3 17152. Section 121 of the Internal Revenue Code, relating to
4 exclusion of gain from sale of principal residence, is modified as
5 follows:

1 (a) The two-year period in Section 121(a) of the Internal
2 Revenue Code shall be reduced by the period of the taxpayer's
3 service, not to exceed 18 months, in the Peace Corps during the
4 five-year period ending on the date of the sale or exchange.

5 (b) If the taxpayer is prohibited from filing a joint return
6 pursuant to Section 18521, Section 121(b)(2)(A) of the Internal
7 Revenue Code shall nevertheless be treated as being satisfied if
8 the taxpayer files a joint return for federal income tax purposes
9 for the same taxable year. However, in no instance shall the total
10 amount excludable from gross income under Section 121(a) of the
11 Internal Revenue Code with respect to any sale or exchange exceed
12 the maximum amount allowed by Section 121(b) of the Internal
13 Revenue Code.

14 (c) (1) If a taxpayer has, at any time, made an election for
15 federal purposes under Section 121(f) of the Internal Revenue
16 Code not to have Section 121 of the Internal Revenue Code apply
17 to a sale or exchange, Section 121 of the Internal Revenue Code
18 shall not apply to that sale or exchange for state purposes, a
19 separate election for state purposes shall not be allowed under
20 paragraph (3) of subdivision (e) of Section 17024.5, the federal
21 election shall be binding for purposes of this part, and that election
22 shall be treated as an election to include in gross income for
23 purposes of this part all the gain from the sale or exchange of that
24 property, including that amount which, but for that election, would
25 have been excluded from income under Section 121(a) of the
26 Internal Revenue Code for state purposes.

27 (2) If a taxpayer fails to make an election for federal purposes
28 under Section 121(f) of the Internal Revenue Code to not have
29 Section 121 of the Internal Revenue Code apply to a sale or
30 exchange, no election under Section 121(f) of the Internal Revenue
31 Code shall be allowed for state purposes, Section 121 of the
32 Internal Revenue Code shall apply to that sale or exchange for
33 state purposes, and a separate election for state purposes shall not
34 be allowed under paragraph (3) of subdivision (e) of Section
35 17024.5.

36 (d) (1) If a taxpayer has, at any time, made an election for
37 federal purposes under Section 312(d)(2) of the Taxpayer Relief
38 Act of 1997 (Public Law 105-34), relating to sales before date of
39 enactment, or Section 312(d)(4) of that act, relating to binding
40 contracts, to not have the amendments made by Section 312 of the

1 Taxpayer Relief Act of 1997 (Public Law 105-34) apply to a sale
2 or exchange, the amendments made by the act adding this
3 subdivision shall not apply to that sale or exchange, Sections 1, 4,
4 and 6 of Chapter 610 of the Statutes of 1997 shall not apply to that
5 sale or exchange, a separate election for state purposes shall not
6 be allowed under paragraph (3) of subdivision (e) of Section
7 17024.5, and the federal election shall be binding for purposes of
8 this part.

9 (2) If a taxpayer fails to make an election for federal purposes
10 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public
11 Law 105-34), relating to sales before date of enactment, or Section
12 312(d)(4) of that act, relating to binding contracts, to not have the
13 amendments made by Section 312 of the Taxpayer Relief Act of
14 1997 (Public Law 105-34) apply to a sale or exchange, an election
15 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public
16 Law 105-34), relating to sales before date of enactment, or Section
17 312(d)(4) of that act, relating to binding contracts, shall not be
18 allowed for state purposes, the amendments made by the act adding
19 this subdivision shall apply to that sale or exchange, Sections 1,
20 4, and 6 of Chapter 610 of the Statutes of 1997 shall apply to that
21 sale or exchange, and a separate election for state purposes shall
22 not be allowed under paragraph (3) of subdivision (e) of Section
23 17024.5.

24 (e) (1) If a taxpayer has, at any time, made or revoked an
25 election for federal purposes under Section 121(d)(9) of the Internal
26 Revenue Code to suspend the running of the five-year period
27 described in Sections 121(a), 121(c)(1)(B), and 121(d)(7) of the
28 Internal Revenue Code, that election or revocation of election to
29 suspend the five-year period under Section 121(d)(9) of the Internal
30 Revenue Code shall be applicable for state purposes, a separate
31 election or revocation of election for purposes of Section 121(d)(9)
32 of the Internal Revenue Code may not be allowed under paragraph
33 (3) of subdivision (e) of Section 17024.5, and the federal election
34 or revocation of election shall be binding for purposes of this part.

35 (2) If a taxpayer fails to make an election for federal purposes
36 under Section 121(d)(9) of the Internal Revenue Code to suspend
37 the running of the five-year period described in Sections 121(a),
38 121(c)(1)(B), and 121(d)(7) of the Internal Revenue Code, that
39 five-year period may not be suspended under Section 121(d)(9)
40 of the Internal Revenue Code for state purposes, and a separate

1 election for state purposes shall not be allowed under paragraph
2 (3) of subdivision (e) of Section 17024.5.

3 (f) Section 121(d)(10) of the Internal Revenue Code, relating
4 to property acquired from a decedent, shall not apply.

5 (g) *Section 121(b)(4) of the Internal Revenue Code, relating to*
6 *special rule for certain sales by surviving spouse, shall apply to*
7 *sales or exchanges that occur on or after January 1, 2010.*

8 SEC. 2. This act provides for a tax levy within the meaning of
9 Article IV of the Constitution and shall go into immediate effect.