

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1806**

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**Introduced by Assembly Member Hagman**  
**(Coauthor Coauthors: Assembly Member Members Harkey, Smyth,**  
**and Tran)**

February 10, 2010

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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 amended, 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 *the* sale of *a* 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:

1 17152. Section 121 of the Internal Revenue Code, relating to  
2 exclusion of gain from sale of principal residence, is modified as  
3 follows:

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

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

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

30 (2) If a taxpayer fails to make an election for federal purposes  
31 under Section 121(f) of the Internal Revenue Code to not have  
32 Section 121 of the Internal Revenue Code apply to a sale or  
33 exchange, no election under Section 121(f) of the Internal Revenue  
34 Code shall be allowed for state purposes, Section 121 of the  
35 Internal Revenue Code shall apply to that sale or exchange for  
36 state purposes, and a separate election for state purposes shall not  
37 be allowed under paragraph (3) of subdivision (e) of Section  
38 17024.5.

39 (d) (1) If a taxpayer has, at any time, made an election for  
40 federal purposes under Section 312(d)(2) of the Taxpayer Relief

1 Act of 1997 (Public Law 105-34), relating to sales before date of  
2 enactment, or Section 312(d)(4) of that act, relating to binding  
3 contracts, to not have the amendments made by Section 312 of the  
4 Taxpayer Relief Act of 1997 (Public Law 105-34) apply to a sale  
5 or exchange, the amendments made by the act adding this  
6 subdivision shall not apply to that sale or exchange, Sections 1, 4,  
7 and 6 of Chapter 610 of the Statutes of 1997 shall not apply to that  
8 sale or exchange, a separate election for state purposes shall not  
9 be allowed under paragraph (3) of subdivision (e) of Section  
10 17024.5, and the federal election shall be binding for purposes of  
11 this part.

12 (2) If a taxpayer fails to make an election for federal purposes  
13 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public  
14 Law 105-34), relating to sales before date of enactment, or Section  
15 312(d)(4) of that act, relating to binding contracts, to not have the  
16 amendments made by Section 312 of the Taxpayer Relief Act of  
17 1997 (Public Law 105-34) apply to a sale or exchange, an election  
18 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public  
19 Law 105-34), relating to sales before date of enactment, or Section  
20 312(d)(4) of that act, relating to binding contracts, shall not be  
21 allowed for state purposes, the amendments made by the act adding  
22 this subdivision shall apply to that sale or exchange, Sections 1,  
23 4, and 6 of Chapter 610 of the Statutes of 1997 shall apply to that  
24 sale or exchange, and a separate election for state purposes shall  
25 not be allowed under paragraph (3) of subdivision (e) of Section  
26 17024.5.

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

38 (2) If a taxpayer fails to make an election for federal purposes  
39 under Section 121(d)(9) of the Internal Revenue Code to suspend  
40 the running of the five-year period described in Sections 121(a),

1 121(c)(1)(B), and 121(d)(7) of the Internal Revenue Code, that  
2 five-year period may not be suspended under Section 121(d)(9)  
3 of the Internal Revenue Code for state purposes, and a separate  
4 election for state purposes shall not be allowed under paragraph  
5 (3) of subdivision (e) of Section 17024.5.

6 (f) Section 121(d)~~(4)~~ (11) of the Internal Revenue Code,  
7 relating to property acquired from a decedent, shall not apply.

8 (g) Section 121(b)(4) of the Internal Revenue Code, relating to  
9 special rule for certain sales by surviving~~-spouse~~ spouses, as added  
10 by Section 7(a) of the *Mortgage Forgiveness Debt Relief Act of*  
11 *2007 (Public Law 110-142)*, shall apply to sales or exchanges that  
12 occur on or after January 1, 2010.

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

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