

AMENDED IN ASSEMBLY MARCH 25, 2010

AMENDED IN ASSEMBLY MARCH 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1806

Introduced by Assembly Member Hagman
(Coauthors: Assembly Members *Blakeslee, DeVore, Gilmore,*
***Harkey, Smyth, and 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 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:

SECTION 1. Section 17152 of the Revenue and Taxation Code is amended to read:

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

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

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

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

(2) If a taxpayer fails to make an election for federal purposes under Section 121(f) of the Internal Revenue Code to not have Section 121 of the Internal Revenue Code apply to a sale or exchange, no election under Section 121(f) of the Internal Revenue Code shall be allowed for state purposes, Section 121 of the Internal Revenue Code shall apply to that sale or exchange for state purposes, and a separate election for state purposes shall not

1 be allowed under paragraph (3) of subdivision (e) of Section
2 17024.5.

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

16 (2) If a taxpayer fails to make an election for federal purposes
17 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public
18 Law 105-34), relating to sales before date of enactment, or Section
19 312(d)(4) of that act, relating to binding contracts, to not have the
20 amendments made by Section 312 of the Taxpayer Relief Act of
21 1997 (Public Law 105-34) apply to a sale or exchange, an election
22 under Section 312(d)(2) of the Taxpayer Relief Act of 1997 (Public
23 Law 105-34), relating to sales before date of enactment, or Section
24 312(d)(4) of that act, relating to binding contracts, shall not be
25 allowed for state purposes, the amendments made by the act adding
26 this subdivision shall apply to that sale or exchange, Sections 1,
27 4, and 6 of Chapter 610 of the Statutes of 1997 shall apply to that
28 sale or exchange, and a separate election for state purposes shall
29 not be allowed under paragraph (3) of subdivision (e) of Section
30 17024.5.

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

(3) of subdivision (e) of Section 17024.5, and the federal election or revocation of election shall be binding for purposes of this part.

(2) If a taxpayer fails to make an election for federal purposes under Section 121(d)(9) of the Internal Revenue Code to suspend the running of the five-year period described in Sections 121(a), 121(c)(1)(B), and 121(d)(7) of the Internal Revenue Code, that five-year period may not be suspended under Section 121(d)(9) of the Internal Revenue Code for state purposes, and a separate election for state purposes shall not be allowed under paragraph (3) of subdivision (e) of Section 17024.5.

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

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

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