

AMENDED IN SENATE JUNE 1, 2016

AMENDED IN SENATE MAY 2, 2016

**SENATE BILL**

**No. 1149**

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**Introduced by Senator Stone**

February 18, 2016

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An act to add ~~Sections 17141.7 and 17205 to~~ *and repeal Section 17059 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1149, as amended, Stone. Personal income taxes: ~~deduction: individual home ownership savings accounts. credit: principal residence.~~

The Personal Income Tax Law, in modified conformity with federal income tax laws, allows various exclusions from gross income, and allows various deductions in computing the income that is subject to the taxes imposed by that law, including miscellaneous itemized deductions that are allowed only to the extent that the aggregate amount of those deductions exceeds 2% of adjusted gross income. *Law allows various credits against the taxes imposed by that law.*

This bill, on and after January 1, 2017, would allow a deduction in an amount equal to the amount of rent, not to exceed \$18,000, paid during the taxable year by a qualified taxpayer, as defined, provided that the qualified taxpayer deposits the qualified amount, as defined, into a home ownership savings account, as defined. The bill would exclude from gross income any income accrued during the taxable year to a home ownership savings account. The bill would provide that a qualified taxpayer may withdraw amounts from a home ownership savings account to pay for the downpayment of a principal residence, as defined, and would provide that any amount withdrawn from that

account that is not used for that purpose would be included as income for that taxpayer. The bill would define various terms for its purposes.

*This bill would, for a qualified principal residence, as defined, that is purchased after January 1, 2017, and before January 1, 2020, allow a credit against those taxes in an amount equal to the lesser of 5% of the purchase price or \$10,000 to qualified first-time homebuyers, as defined. This bill would require the credit to be applied in equal amounts over 3 successive taxable years and would limit the total amount of the credit that may be allowed to \$100,000,000.*

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 17059 is added to the Revenue and
- 2     Taxation Code, to read:
- 3     17059. (a) (1) *In the case of any qualified first-time*
- 4     *homebuyer who purchases a qualified principal residence on and*
- 5     *after January 1, 2017, and before January 1, 2020, there shall be*
- 6     *allowed as a credit against the “net tax,” as defined in Section*
- 7     *17039, an amount equal to the lesser of 5 percent of the purchase*
- 8     *price of the qualified principal residence or ten thousand dollars*
- 9     *(\$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 qualified first-time homebuyer.*
- 17    (b) *For purposes of this section:*
- 18    (1) *“Qualified first-time homebuyer” means any individual, or*
- 19    *the individual’s spouse, who had no present ownership interest in*
- 20    *a principal residence during the preceding three-year period*
- 21    *ending on the date of the purchase of the qualified principal*
- 22    *residence. A qualified first-time homebuyer’s adjusted gross income*
- 23    *during that period shall not exceed the following amounts:*

1 (A) One hundred thousand dollars (\$100,000) for a qualified  
2 taxpayer filing a joint return, head of household, or a surviving  
3 spouse, as defined in Section 17046.

4 (B) Fifty thousand dollars (\$50,000) for a qualified taxpayer  
5 filing a return other than as described in subparagraph (A).

6 (2) “Qualified principal residence” means a single-family  
7 residence, whether detached or attached, that has never been  
8 occupied, that is purchased to be the principal residence of the  
9 taxpayer for a minimum of two years and is eligible for the  
10 homeowner’s exemption under Section 218.

11 (c) (1) No credit shall be allowed under this section unless the  
12 qualified first-time homebuyer submits with his or her tax return  
13 a certification by the seller of the qualified principal residence  
14 that the residence has never been previously occupied. The seller  
15 shall provide the certification to the qualified first-time homebuyer  
16 and to the Franchise Tax Board within one week of the sale of the  
17 qualified principal residence.

18 (2) If the qualified first-time homebuyer does not occupy the  
19 qualified principal residence as his or her principal residence for  
20 at least two years immediately following the purchase the credit  
21 shall be canceled, and the qualified first-time homebuyer shall be  
22 liable for any credit allowed under this section on previous tax  
23 returns.

24 (3) A credit shall not be allowed under this section unless the  
25 qualified first-time homebuyer submits a certification that he or  
26 she is a first-time homebuyer.

27 (d) (1) In the case of two married qualified first-time  
28 homebuyers filing separately, the credit allowed under subdivision  
29 (a) shall be equally apportioned between the two qualified  
30 first-time homebuyers.

31 (2) If two or more qualified first-time homebuyers who are not  
32 married purchase a qualified principal residence, the amount of  
33 the credit allowed under subdivision (a) shall be allocated among  
34 them in the same manner as each qualified first-time homebuyer’s  
35 percentage of ownership, except that the total amount of the credits  
36 allowed to all of these qualified first-time homebuyers shall not  
37 exceed ten thousand dollars (\$10,000).

38 (e) The total amount of credit that may be allowed pursuant to  
39 this section shall not exceed one hundred million dollars  
40 (\$100,000,000).

1     (f) *The qualified first-time homebuyer shall claim the credit on*  
2 *a timely filed original return.*

3     (g) (1) *Upon receipt of the certification from the qualified*  
4 *first-time homebuyer, as described in paragraph (1) of subdivision*  
5 *(c), the Franchise Tax Board shall allocate the credit to the*  
6 *qualified first-time homebuyer on a first-come-first-served basis.*

7     (2) *If the certifications of two or more qualified first-time*  
8 *homebuyers are received on the same day and the remaining*  
9 *amount of credit to be allocated is insufficient to be allocated fully*  
10 *to each, the credit shall be allocated to those qualified first-time*  
11 *homebuyers on a pro rata basis.*

12     (3) *The date a certification is received shall be determined by*  
13 *the Franchise Tax Board. The determinations of the Franchise*  
14 *Tax Board with respect to the date a certification is received, and*  
15 *whether a return has been timely filed for purposes of this*  
16 *subdivision, may not be reviewed in any administrative or judicial*  
17 *proceeding.*

18     (4) *Any disallowance of a credit claimed due to a determination*  
19 *under this section, including the application of the limitation*  
20 *specified in paragraph (2), shall be treated as a mathematical*  
21 *error appearing on the return. Any amount of tax resulting from*  
22 *that disallowance may be assessed by the Franchise Tax Board in*  
23 *the same manner as provided by Section 19051.*

24     (h) *A credit shall not be allowed under this section if the*  
25 *qualified first-time homebuyer, or his or her spouse, is related to*  
26 *the seller within the meaning of Section 267 of the Internal Revenue*  
27 *Code, related to losses, expenses, and interest with respect to*  
28 *transactions between related taxpayers.*

29     (i) *A credit shall not be allowed under this section if the qualified*  
30 *first-time homebuyer qualifies as a dependent, as defined in Section*  
31 *17056, of any other taxpayer during the taxable year of the*  
32 *purchase.*

33     (j) *The Franchise Tax Board may prescribe rules, guidelines,*  
34 *or procedures necessary or appropriate to carry out the purposes*  
35 *of this section, including any guidelines regarding the allocation*  
36 *of the credit allowed under this section. Chapter 3.5 (commencing*  
37 *with Section 11340) of Part 1 of Division 3 of Title 2 of the*  
38 *Government Code does not apply to any rule, guideline, or*  
39 *procedure prescribed by the Franchise Tax Board pursuant to this*  
40 *section.*

1 (k) Section 41 does not apply to the credit allowed by this  
2 section.

3 (l) This section shall remain in effect only until December 1,  
4 2023, and as of that date is repealed.

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

8 SECTION 1. ~~Section 17141.7 is added to the Revenue and  
9 Taxation Code, to read:~~

10 ~~17141.7. For each taxable year beginning on or after January  
11 1, 2017, gross income does not include, under the same conditions  
12 as provided in Section 408 of the Internal Revenue Code relating  
13 to individual retirement accounts, any income accruing during the  
14 taxable year to a home ownership savings account, as defined in  
15 Section 17205.~~

16 SEC. 2. ~~Section 17205 is added to the Revenue and Taxation  
17 Code, to read:~~

18 ~~17205. (a) For each taxable year beginning on or after January  
19 1, 2017, there shall be allowed as a deduction an amount equal to  
20 the amount of rent, not to exceed eighteen thousand dollars  
21 (\$18,000), paid during the taxable year by a qualified taxpayer  
22 provided that the qualified taxpayer deposits the qualified amount  
23 into a home ownership savings account.~~

24 ~~(b) Any amount withdrawn from a home ownership savings  
25 account shall be included in the income of the payee or distributee  
26 for the taxable year in which the payment or distribution is made,  
27 unless the payment or distribution is used to pay for the  
28 downpayment of a principal residence by a qualified taxpayer who  
29 established the account.~~

30 ~~(c) For purposes of this section:~~

31 ~~(1) "Home ownership savings account" means a trust that meets  
32 all of the following requirements:~~

33 ~~(A) Is designated as a home ownership savings account by the  
34 trustee.~~

35 ~~(B) Is established for the exclusive benefit of any qualified  
36 taxpayer establishing the account where the written governing  
37 instrument creating the account provides for the following:~~

38 ~~(i) All contributions of the qualified amount to the account are  
39 required to be in cash.~~

1 ~~(ii) The account is established to pay, pursuant to the~~  
2 ~~requirements and limitations of this section, for the downpayment~~  
3 ~~of a principal residence by a qualified taxpayer establishing the~~  
4 ~~account.~~

5 ~~(iii) The account shall be closed and any remaining balance~~  
6 ~~distributed to the qualified taxpayer after the qualified taxpayer~~  
7 ~~withdraws money from the home ownership savings account for~~  
8 ~~the down payment of a principal residence.~~

9 ~~(C) Is, except as otherwise required or authorized by this section,~~  
10 ~~subject to the same requirements and limitations as an individual~~  
11 ~~retirement account established under Section 408 of the Internal~~  
12 ~~Revenue Code and any regulations adopted thereunder. If a~~  
13 ~~qualified taxpayer uses the money in the home ownership savings~~  
14 ~~account for the downpayment of a principal residence, no additional~~  
15 ~~tax shall be imposed in accordance with Section 72(t) of the~~  
16 ~~Internal Revenue Code, relating to 10-percent additional tax on~~  
17 ~~early distributions from qualified retirement plans, and Section~~  
18 ~~219 of the Internal Revenue Code, relating to individual retirement~~  
19 ~~savings, shall not apply. Any age limitations that apply to an~~  
20 ~~individual retirement account established under Section 408 of the~~  
21 ~~Internal Revenue Code, relating to individual retirement plans,~~  
22 ~~shall not apply to a home ownership savings account.~~

23 ~~(D) Is the only home ownership savings account ever established~~  
24 ~~by the qualified taxpayer.~~

25 ~~(2) “Principal residence” has the same meaning as within Section~~  
26 ~~121 of the Internal Revenue Code relating to exclusion of gain~~  
27 ~~from sale of principal residence.~~

28 ~~(3) “Qualified amount” means the marginal tax rate applicable~~  
29 ~~to the qualified taxpayer multiplied by the amount of rent, not to~~  
30 ~~exceed eighteen thousand dollars (\$18,000), paid during the taxable~~  
31 ~~year by the qualified taxpayer.~~

32 ~~(4) (A) “Qualified taxpayer” means a taxpayer who qualifies~~  
33 ~~under clause (i) or (ii) and who had no present ownership interest~~  
34 ~~in a principal residence during the preceding three-year period~~  
35 ~~ending on the date of the purchase of the principal residence. A~~  
36 ~~qualified taxpayer’s adjusted gross income per taxable year shall~~  
37 ~~not exceed the following amounts:~~

38 ~~(i) One hundred thousand dollars (\$100,000) for a qualified~~  
39 ~~taxpayer filing a joint return, head of household, or a surviving~~  
40 ~~spouse, as defined in Section 17046.~~

1     ~~(ii) Fifty thousand dollars (\$50,000) for a qualified taxpayer~~  
2     ~~filing a return other than as described in clause (i).~~  
3     ~~(B) For each taxable year beginning on or after January 1, 2018,~~  
4     ~~the Franchise Tax Board shall recompute the adjusted gross income~~  
5     ~~amounts described in paragraph (A) in the same manner as~~  
6     ~~prescribed in subdivision (h) of Section 17041.~~  
7     ~~(5) “Trustee” shall have the same meaning as it does under~~  
8     ~~Section 408 of the Internal Revenue Code, relating to individual~~  
9     ~~retirement accounts, and any regulations adopted thereunder.~~  
10     ~~SEC. 3. This act provides for a tax levy within the meaning~~  
11     ~~of Article IV of the Constitution and shall go into immediate effect.~~