

AMENDED IN SENATE JUNE 24, 2009

AMENDED IN ASSEMBLY MAY 21, 2009

AMENDED IN ASSEMBLY MAY 13, 2009

AMENDED IN ASSEMBLY MAY 11, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 765

Introduced by Assembly Members Caballero and Solorio
(Coauthors: Assembly Members Conway, Coto, Emmerson,
***Galgiani*, Gilmore, Hagman, Harkey, Hill, Huber, Jeffries, *Logue*,**
Ma, Mendoza, Nestande, Nielsen, Portantino, Salas, Silva, Smyth,
Torres, and Tran)

February 26, 2009

An act to amend Section 17059 of the Revenue and Taxation Code, relating to taxation, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 765, as amended, Caballero. Income tax credit: purchase: principal residence.

The Personal Income Tax Law authorizes a credit against the taxes imposed by that law in an amount equal to the lesser of 5% of the purchase price or \$10,000 in the case of the purchase of a qualified principal residence on and after March 1, 2009, and before March 1, 2010, but not to exceed an aggregate limitation of \$100,000,000 for all credits allowable. Existing law requires a certification that the residence has never been occupied be provided to the Franchise Tax Board within one week of the sale of the qualified principal residence.

This bill would allow a taxpayer to reserve a credit with the Franchise Tax Board and would require that the certification be provided to the Franchise Tax Board within one week of the close of escrow of the qualified principal residence.

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

Vote: ~~majority~~^{2/3}. 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 of the Revenue and Taxation Code
2 is amended to read:

3 17059. (a) (1) In the case of any taxpayer who purchases a
4 qualified principal residence on and after March 1, 2009, and before
5 March 1, 2010, there shall be allowed as a credit against the “net
6 tax,” as defined in Section 17039, an amount equal to the lesser
7 of 5 percent of the purchase price of the qualified principal
8 residence or ten thousand dollars (\$10,000). *Purchases occurring*
9 *after March 1, 2010, and prior to December 1, 2010, must be*
10 *pursuant to an enforceable contract to purchase the qualified*
11 *principal residence executed before March 1, 2010.*

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

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

19 (4) A taxpayer may, but is not required to, reserve a credit prior
20 to close of escrow. To reserve a credit, the taxpayer and seller shall
21 jointly sign and submit to the Franchise Tax Board a certification
22 that they have entered into the agreement on or after March 1,
23 2009, and before March 1, 2010. Upon receipt of the joint
24 certification, the Franchise Tax Board shall notify the taxpayer
25 that the board has conditionally reserved the credit for the taxpayer.

26 (b) (1) For purposes of this section, “qualified principal
27 residence” means a single-family residence, whether detached or
28 attached, that has never been occupied, that is purchased to be the

principal residence of the taxpayer for a minimum of two years and is eligible for the homeowner's exemption under Section 218.

(2) No credit shall be allowed under this section unless the taxpayer submits with his or her tax return a certification by the seller of the qualified principal residence that the residence has never been previously occupied. The seller shall provide the certification to the taxpayer and to the Franchise Tax Board within one week of the close of escrow of the qualified principal residence.

(3) If the taxpayer does not occupy the qualified principal residence as his or her principal residence for at least two years immediately following the purchase the credit shall be canceled, and the taxpayer shall be liable for any credit allowed under this section on previous tax returns.

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

(2) If two or more taxpayers who are not married purchase a qualified principal residence, the amount of the credit allowed under subdivision (a) shall be allocated among the taxpayers in the same manner as each taxpayer's percentage of ownership, except that the total amount of the credits allowed to all of these taxpayers shall not exceed ten thousand dollars (\$10,000).

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

(e) (1) Upon receipt of the certification from the seller, as described in paragraph (2) of subdivision (b), the Franchise Tax Board shall allocate the credit to the taxpayer on a ~~first-come, first-served~~ *first-come-first-served* basis. *For each certification received from a seller, the Franchise Tax Board shall reduce the total remaining amount of credits available by the average tax credit that the Franchise Tax Board estimates will be used by the average taxpayer.*

(2) The taxpayer shall claim the credit on a timely filed original return.

(3) The date a certification is received shall be determined by the Franchise Tax Board.

(4) (A) The determinations of the Franchise Tax Board with respect to the date a certification is received, and whether a return

1 has been timely filed for purposes of this subdivision, may not be
2 reviewed in any administrative or judicial proceeding.

3 (B) Any disallowance of a credit claimed due to a determination
4 under this subdivision, including the application of the limitation
5 specified in paragraph (1), shall be treated as a mathematical error
6 appearing on the return. Any amount of tax resulting from that
7 disallowance may be assessed by the Franchise Tax Board in the
8 same manner as provided by Section 19051.

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

17 (g) The credit allowed by this section is not a business credit
18 within the meaning of Section 17039.2.

19 (h) This section shall remain in effect only until December 1,
20 2013, and as of that date is repealed.

21 *SEC. 2. This act is an urgency statute necessary for the*
22 *immediate preservation of the public peace, health, or safety within*
23 *the meaning of Article IV of the Constitution and shall go into*
24 *immediate effect. The facts constituting the necessity are:*

25 *In order to facilitate California's economic recovery, a large*
26 *part of which is the maintenance of the new home tax credit that*
27 *is in imminent danger of expiring, it is necessary that this act take*
28 *effect immediately.*