AMENDED IN SENATE SEPTEMBER 4, 2009

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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
(Principal coauthors: Senators Ashburn, Steinberg, and Wolk)
(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, *making an appropriation therefor,* 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 limit the credit to taxpayers who purchased a qualified principal residence on and after March 1, 2009, and before July 3, 2009, and on and after the effective date of this bill and before March 1, 2010. This bill would also require the aggregate limitation of credits to be reduced by a specified amount per certification received by the Franchise Tax Board.

(2) The bill would appropriate the sum of $44,000 from the General Fund to the Franchise Tax Board, in augmentation of a specified appropriation made in the 2009-10 Budget Act.

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

Vote: ⅔. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

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

SECTION 1. Section 17059 of the Revenue and Taxation Code is amended to read:

17059. (a) (1) In the case of any taxpayer who purchases a qualified principal residence on and after March 1, 2009, and before July 3, 2009, and any taxpayer who purchases a qualified *principal* residence on and after the effective date of the act amending this paragraph~~,~~ and before March 1, 2010, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to the lesser of 5 percent of the purchase price of the qualified principal residence or ten thousand dollars ($10,000).

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

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

(b) (1) For purposes of this section, "qualified principal residence" means a single-family residence, whether detached or 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~~ *after* 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 allocated pursuant to this section shall not exceed one hundred million dollars ($100,000,000). For each certification received from a seller, as described in paragraph (2) of subdivision (b), the total remaining amount of credit available for allocation shall be reduced by an amount equal to 70 percent of the credit allocated to the taxpayer. No credit may be allocated to a taxpayer that purchased a qualified principal residence before July 3, 2009, unless a certification was provided to the Franchise Tax Board within one week ~~of the sale~~ *before or after the close of escrow* and *received by the Franchise Tax Board* no later than July 2, 2009.

(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 basis.

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

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

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

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

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

SEC. 2. The sum of forty four thousand dollars ($44,000) is hereby appropriated from the General Fund to the Franchise Tax Board, in augmentation of Item 1730-001-0001 of Section 2.0 of the Budget Act of 2009, as amended by Section 104 of Chapter 1 of the 2009-10 Fourth Extraordinary Session.

~~SEC. 2.~~

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

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