AMENDED IN SENATE APRIL 14, 2009

SENATE BILL No. 49

Introduced by Senator Dutton

January 13, 2009

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

LEGISLATIVE COUNSEL'S DIGEST

SB 49, as amended, Dutton. Income tax credit: qualified principal residence.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law. *Existing law authorizes a credit against those taxes in an amount equal to the lesser of 5% of the purchase price of a qualified principal residence, as defined, or $10,000. Existing law requires a taxpayer to provide the Franchise Tax Board with a certification from the seller of qualified principal residence that the residence, has never been previously occupied within one week of the sale of the residence and caps the total amount of the credit at $100,000,000.*

This bill would ~~allow a credit for the purchase during a specified period of a qualified principal residence, as defined, in an amount equal to that portion of the purchase price that does not exceed $10,000, as provided~~ *provide that a taxpayer may reserve a credit with the Franchise Tax Board and 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 also remove the cap on the total credit amount allowed.*

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 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 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.

(4) A taxpayer may, but is not required to, reserve a credit prior to close of escrow. To reserve a credit, the taxpayer and seller shall jointly sign and submit to the Franchise Tax Board a certification that they have entered into the agreement on or after March 1, 2009, and before March 1, 2010. Upon receipt of the joint certification, the Franchise Tax Board shall reserve the credit for the 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, *whether or not the taxpayer reserves a credit pursuant to paragraph (4) of subdivision (a),* 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 ~~sale~~ *close of escrow* of the qualified principal residence. *If the taxpayer reserves a*

credit pursuant to paragraph (4) of subdivision (a), the close of escrow need not occur before March 1, 2010.

(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)~~

(d) (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)~~

(e) 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)~~

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

~~(h)~~

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

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

~~SECTION 1. Section 17059 is added to the Revenue and Taxation Code, to read:~~

~~17059. (a) (1) In the case of any individual who is a purchaser of a qualified principal residence during the taxable year, there shall be allowed as a credit against the "net tax," as defined in Section 17039, an amount equal to that portion of the purchase price of the residence that does not exceed ten thousand dollars ($10,000).~~

~~(2) The amount of the credit allowed under paragraph (1) shall be equally divided among the three taxable years beginning with the taxable year in which the purchase of the qualified principal residence is made.~~

~~(b) (1) The credit under this section shall be allowed only with respect to purchases made on or after March 1, 2009, and before March 1, 2010.~~

~~(2) The credit under this section shall be allowed only for one purchase of a qualified principal residence with respect to any individual.~~

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

~~(1) "Qualified principal residence" means a new or previously unoccupied single-family residence, whether detached or attached, that is purchased to be the principal residence of the purchaser for a minimum of one year.~~

~~(2) No credit shall be allowed under this section unless the taxpayer submits a certification by the seller of the residence that the residence is a new or previously unoccupied single-family residence.~~

~~(3) Any credit allowed by this section shall be disallowed, and shall be recaptured in accordance with rules established by the Franchise Tax Board, if the individual does not occupy the qualified principal residence as his or her principal residence for at least one year during the period that this section is in effect.~~

~~(d) (1) In the case of two married individuals filing separately, subdivision (a) shall be applied to each individual by substituting five thousand dollars ($5,000) for ten thousand dollars ($10,000) in subdivision (a).~~

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

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

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