

Assembly Bill No. 183

Passed the Assembly March 22, 2010

Chief Clerk of the Assembly

Passed the Senate March 22, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Section 17059.1 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL’S DIGEST

AB 183, Caballero. Income tax credit: qualified principal residence.

The Personal Income Tax Law authorizes various credits against the taxes imposed by that law, including 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, for purchases made between March 1, 2009, and before March 1, 2010, subject to specified restrictions.

This bill would authorize 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, for purchases made between May 1, 2010, and on or before December 31, 2010, or on or after December 31, 2010, and before August 1, 2011, subject to specified restrictions, including the submission of a certification to the Franchise Tax Board by either the taxpayer or seller, made under the penalty of perjury, that the residence has either never been occupied or that the taxpayer is a first-time home buyer.

This bill would limit the total amount of credits to \$200,000,000 and would require that the aggregate limitation of \$100,000,000 in credits for the purchase of qualified principal residences that have never been occupied be reduced by 70% of the credit amount allocated under each certification by the Franchise Tax Board, and would require that the aggregate limitation of \$100,000,000 in credits for the purchase of a qualified principal residence by first-time home buyers be reduced by 57% of the credit amount allocated under each certification by the Franchise Tax Board.

By expanding the definition of an existing crime, this bill imposes a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the

state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 17059.1 is added to the Revenue and Taxation Code, to read:

17059.1. (a) (1) In the case of any taxpayer who purchases a qualified principal residence on and after May 1, 2010, and on or before December 31, 2010, or any taxpayer who purchases a qualified principal residence on and after December 31, 2010, and before August 1, 2011, pursuant to an enforceable contract executed on or before December 31, 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 qualified principal residence is purchased on the date on which escrow closes with respect to the purchase of the qualified principal residence.

(b) For purposes of this section:

(1) “Qualified principal residence” means a single-family residence, whether detached or attached, that is purchased to be the principal residence of the taxpayer, is eligible for the homeowner’s exemption under Section 218, and has either never been occupied or is purchased by a first-time home buyer.

(2) “First-time home buyer” means any individual, or individual’s spouse, who had no present ownership interest in a principal residence during the preceding three-year period ending on the date of the purchase of the qualified principal residence.

(c) (1) (A) A taxpayer may, but is not required to, reserve a credit prior to close of escrow for the purchase of a qualified principal residence that has never been occupied. 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 an enforceable contract on or after May 1, 2010, and on or before December 31, 2010. Upon receipt of the joint certification, the Franchise Tax Board shall notify the taxpayer that the board has reserved the credit for the taxpayer, pending receipt, within two weeks after the close of escrow, of the information required under paragraph (2) for a qualified principal residence that has never been occupied.

(B) The reservation of a credit shall be canceled if a taxpayer does not provide either the information required under paragraph (2) or a notification of cancellation before August 16, 2011.

(2) No credit shall be allowed under this section unless the taxpayer submits to the Franchise Tax Board, within two weeks after the date of the purchase of the qualified principal residence, a copy of the properly executed settlement statement and either one of the following:

(A) If the qualified principal residence has never been occupied, a certification by the seller, made under penalty of perjury, that the residence has never been previously occupied.

(B) If the qualified principal residence is purchased by a taxpayer who is a first-time home buyer, a certification from the taxpayer, made under penalty of perjury, that he or she is a first-time home buyer.

(d) 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, any remaining unapplied credit shall be canceled and any previously applied credit shall be recaptured, and the taxpayer shall be liable for any increase in tax attributable to the recapture of any credit previously allowed under this section.

(e) (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 an amount equal to the lesser of 5 percent of the purchase price of the qualified principal residence or ten thousand dollars (\$10,000).

(f) (1) The total amount of credit that may be allocated pursuant to this section shall not exceed one hundred million dollars (\$100,000,000) for the purchase of qualified principal residences that have never been occupied and one hundred million dollars (\$100,000,000) for the purchase of qualified principal residences by first-time home buyers.

(A) For each certification or reservation received from a taxpayer for the purchase of a qualified principal residence that has never been occupied, the total amount of credit available for allocation shall be reduced by an amount equal to 70 percent of the amount of the credit for the purchase of a qualified principal residence that has never been occupied.

(B) For each certification received from a taxpayer for the purchase of a qualified principal residence by a first-time home buyer, the total amount of credit available for allocation shall be reduced by an amount equal to 57 percent of the amount of the credit for the purchase of a qualified principal residence by a first-time home buyer.

(2) Once the credits allocated for qualified principal residences that have never been occupied exceed the limit established in subparagraph (A) of paragraph (1), the Franchise Tax Board shall establish a wait list for subsequently received certifications or reservations, with an order of priority based on the date certification or reservation was received by the Franchise Tax Board. The Franchise Tax Board shall notify taxpayers on the wait list no later than December 31, 2011, as to whether they have been allocated a credit and the amount allocated.

(3) In the case where a taxpayer is both a first-time home buyer, as described in paragraph (2) of subdivision (b), and the purchaser of a qualified principal residence that has never been occupied, the Franchise Tax Board shall allocate that taxpayer their credit amount from the one hundred million dollars (\$100,000,000) for qualified principal residences that have never been occupied.

(g) (1) Upon receipt of the information described in subdivision (c), the Franchise Tax Board shall allocate the credit to the taxpayer on a first-come-first-served basis.

(2) (A) Except as provided in subparagraph (B), the taxpayer shall claim the credit on a timely filed original return.

(B) Taxpayers on the wait list, as described in paragraph (2) of subdivision (f), that are allocated a credit for a qualified principal residence that was purchased in the 2010 taxable year may claim the credit on an amended income tax return for that taxable year.

(3) The date the information described in subdivision (c) is received shall be determined by the Franchise Tax Board.

(4) (A) The determinations of the Franchise Tax Board with respect to the date the information described in subdivision (c) is received, the allocation and reservation of credit, 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 subdivision (f), 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.

(h) 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.

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

(j) No credit shall be allowed under this section if any of the following apply:

(1) The taxpayer was allowed a credit under Section 17059.

(2) The taxpayer is not 18 years of age or older as of the date of purchase. A taxpayer who is married at the date of purchase shall be considered to be 18 years of age if the spouse of the taxpayer is 18 years of age or older on the date of purchase.

(3) The taxpayer or the taxpayer's spouse, if the taxpayer is married, is related to the seller within the meaning of Section 267 of the Internal Revenue Code, related to losses, expenses, and interest with respect to transactions between related taxpayers.

(4) The taxpayer qualifies as a dependent, as defined in Section 17056, of any other taxpayer for the taxable year of the purchase.

(k) This section shall remain in effect only until December 1, 2014, and as of that date is repealed.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

Approved _____, 2010

Governor