SENATE COMMITTEE ON APPROPRIATIONS
Senator Anthony Portantino, Chair
2021 - 2022 Regular Session

SB 601 (Ochoa Bogh) - Personal income taxes: exclusions: capital gains: sale of residence

Version: April 22, 2021
Urgency: No
Hearing Date: May 17, 2021
Policy Vote: GOV. & F. 4 - 0
Mandate: Yes
Consultant: Robert Ingenito

Bill Summary: SB 601 would increase the Home Sale Gain Exclusion for sellers who sell to a first-time homeowner.

Fiscal Impact: The Franchise Tax Board (FTB) indicates that this bill would result in General Fund revenue losses of $120 million in 2021-22, $80 million in 2022-23, and $85 million in 2023-24. FTB's implementation costs have yet to be determined.

Background: Tax expenditure programs (TEPs) are special tax provisions that reduce the amount of revenues the "basic" tax system would otherwise generate in order to provide (1) benefits to certain groups of taxpayers, and/or (2) incentives to encourage certain types of behavior and activities, such as charitable giving. Specifically, current law provides for, among other things, various income and corporation tax credits and deductions, as well as exemptions from the sales and use tax. The Department of Finance is required to publish a list of TEPs (currently totaling several hundred), which currently total $75 billion annually. Two common types of TEPS are tax deductions and tax credits. Unlike tax deductions, which reduce the amount of earnings subject to tax, credits reduce (dollar for dollar) the amount of taxes owed.

For tax calculation purposes, gross income means all income regardless of source, unless specifically exempted. Federal and state law grant a Home Sale Gain Exclusion, which allows taxpayers to exclude the capital gain from the sale of their primary residence. To qualify, taxpayers must have lived in their home for at least two of the last five years, and the gain is limited to (1) $250,000 for taxpayers who are single or married filing separately, and (2) $500,000 for taxpayers who are married filing jointly or surviving spouses who sell their home within two years of their spouse's death. If taxpayers are selling their vacation home, rental property, or a home that they have only lived in for one year, they cannot claim the exclusion.

The median price for a single family home reported reached $759,000 in April, 2021, a 24 percent increase from the previous year. Consequently, first-time homebuyers are finding it increasingly difficult to enter the market.

Proposed Law: This bill would, for taxable years 2021 through 2025, increase the Home Sale Gain Exclusion for taxpayers who sell their residence to a qualified first-time homeowner to (1) $300,000 for taxpayers who are single or married filing jointly, and (2) $600,000 for taxpayers who are married filing separately, a head of household, or a surviving spouse.

A "qualified first-time homeowner" means any individual and, if married, that individual's spouse who had no ownership interest in a principal residence during the preceding three-year period ending on the closing date of the purchase of the qualified principal residence. Qualified first-time homeowner does not include any individual, their spouse, or both, if the individual and their spouse are treated as a "related party," as defined in the Internal Revenue Code.

A "qualified principal residence" means a single family residence, whether detached or attached, that is purchased to be the principal residence of a qualified first-time homeowner for a minimum of two years and is eligible for the homeowner's exemption for property tax purposes.

Related Legislation:

- SB 1116 (Moorlach, 2018), was substantially similar to this bill, and would have, increased the maximum amount of the income exclusion on the sale of a principal residence, when the buyer is a first-time homeowner. The bill was held under submission on the Suspense File of this Committee.

- AB 1806 (Hagman, 2010), would have provided conformity to the federal capital gain exclusion from gross income on the sale of a personal residence by a surviving spouse. The bill failed passage in the Assembly Revenue and Taxation Committee.

- SB 401 (Wolk, Chapter 14, Statutes of 2010) changed the specified date from January 1, 2005, to January 1, 2009, for taxable years beginning on or after January 1, 2010, which among other things, conformed to federal law that allows surviving spouse to exclude from gross income up to $500,000 of the gain from sale of principal residence if the sale occurs within 2 years of the death of the spouse.

- SB 1416 (Walters, 2010) would have provided an exclusion from gross income, without limitation, for gain on the sale or exchange of a principal residence by a taxpayer 65 years or older. The bill failed passage in the Senate Revenue and Taxation Committee.

Staff Comments: Any local government costs resulting from the mandate in this measure are not state-reimbursable because the mandate only involves the definition of a crime or the penalty for conviction of a crime.

-- END --