SENATE, No. 4041

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED NOVEMBER 8, 2021

Sponsored by:
Senator NILSA I. CRUZ-PEREZ
District 5 (Camden and Gloucester)

SYNOPSIS

Establishes New Jersey Homebuyer Tax Credit Program under gross income tax for certain home purchases during qualified periods by first-time homebuyers.

CURRENT VERSION OF TEXT

As introduced.

AN ACT establishing a New Jersey Homebuyer Tax Credit Program under the gross income tax for certain home purchases during qualified periods, supplementing chapter 4 of Title 54A of the New Jersey Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. A first-time homebuyer taxpayer shall be allowed a credit against the tax otherwise due under the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq., for a qualified home purchase, in an amount equal to five percent of the price paid for the purchase or $15,000, whichever is less, and subject to the further limitations imposed by this section; provided, however, that the taxpayer intends to use the home as the taxpayer's principal residence for 36 consecutive months next following the date of the qualified home purchase.

b. The amount of all credits allowed pursuant to this section shall not exceed $100,000,000, to be allocated over four terms as follows:

(1) up to $25,000,000 for contracts of sale executed on or before the 365th day next following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill); and

(2) up to $25,000,000 for contracts of sale executed after the 365th, but before the 730th, day next following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill).

(3) Upon a joint resolution adopted by the Senate and General Assembly and signed by the Governor that extends the tax credit program, as prescribed by subsection g. of this section, the balance of credits allowed pursuant to an extension of the tax credit program shall be allocated as follows:

(a) up to $25,000,000 for contracts of sale executed on or before the 365th day next following the date the Governor signs the joint resolution; and

(b) up to $25,000,000 for contracts of sale executed after the 365th, but before the 730th, day next following the date the Governor signs the joint resolution.

(4) For each term in which credits are allowed pursuant to this subsection, up to $18,750,000 shall be allowed for qualified home purchases of new qualified residential properties, and up to $6,250,000 shall be allowed for qualified home purchases of qualified residential properties previously occupied as a residence.

c. The director shall establish a convenient method, which may include an Internet or other electronic format, for first-time homebuyer taxpayers to apply for a determination of their preliminary eligibility to claim a credit, which determination shall be provided by the director to the taxpayer before the taxpayer's intended purchase date. Notice of the director's determination of preliminary eligibility or denial of preliminary eligibility to claim a credit shall be provided to applicants in the order in which the director receives the applications, and the limits provided in this subsection shall be allocated to applications in the order in which they are received and approved by the director. No credit shall be allowed under this section for a home purchase if a determination of preliminary eligibility of that home purchase is not provided by the director. The application shall include such information as the director determines is necessary to make a prompt determination of preliminary eligibility and shall include, but may not be limited to: (1) the taxpayer's certification of intention to use the home as the taxpayer's principal residence for 36 consecutive months after the qualified home purchase; and (2) in the case of a qualified home purchase of a new qualified residential property, the home seller's certification that the new qualified residential property has never been occupied as a principal residence.

d. (1) A first-time homebuyer taxpayer completing a qualified home purchase of a qualified residential property previously occupied as a residence within 365 days following the date of the execution of the contract of sale may claim a credit allowed pursuant to this section. To reserve a credit, the taxpayer and seller shall jointly sign and submit to the director a certification that they have entered into a fully executed contract of sale. Upon receipt of the certification, the director shall notify the taxpayer that the division has reserved the credit for the taxpayer, pending the director's receipt from the taxpayer, within 14 calendar days of settlement, of the Closing Disclosure for the qualified home purchase of a qualified residential property previously occupied as a residence.

(2) A first-time homebuyer taxpayer completing a qualified home purchase of a new qualified residential property within 545 days following the date of the execution of the contract of sale may claim a credit allowed pursuant to this section. To reserve a credit, the taxpayer and seller shall jointly sign and submit to the director a certification that they have entered into a fully executed contract of sale. Upon receipt of the certification, the director shall notify the taxpayer that the division has reserved the credit for the taxpayer, pending the director's receipt from the taxpayer, within 14 calendar days of settlement, of the Closing Disclosure for the qualified home purchase of a new qualified residential property.

e. The total amount of the credit allowed shall be divided and applied in equal amounts for three consecutive taxable years, beginning in the taxable year of the purchase and continuing in the next two taxable years. The amount of the credit allowed shall be applied against the tax otherwise due under N.J.S.54A:1-1 et seq. in each taxable year after all other credits and payments allowed in the taxable year. If the credit allowed reduces the tax liability otherwise due to zero, any amount of the credit remaining shall be paid to the taxpayer as a refund of an overpayment of tax pursuant to N.J.S.54A:9-7, provided however, subsection (f) of that section, concerning the allowance of interest, shall not apply. The director shall determine the form and manner by which a first-time homebuyer taxpayer shall apply for and be eligible to receive a refund of an overpayment pursuant this section.

f. (1) A taxpayer shall be required to repay the amount of all credits applied upon a determination by the director that a credit applied for and claimed against tax otherwise due, or for which a refund of tax is paid, does not meet the requirements of this section, including but not limited to:

(a) the failure of a first-time homebuyer taxpayer to use the home as the taxpayer's principal residence for 36 consecutive months after the home purchase; or

(b) the use of an agent to conceal the identity of the true purchaser of the home for purposes of claiming more than one credit pursuant to this section.

(2) In the event of the death of a first-time homebuyer taxpayer occurring on or before the 36th consecutive month next following the date of the qualified home purchase, any heir of the taxpayer to whom the home is devised shall:

(a) meet the definition of "first-time homebuyer taxpayer" pursuant to subsection h. of this section; and

(b) use the home as the principal residence of the devisee for the balance of the 36 consecutive months next following the date of the qualified home purchase.

If a devisee fails to meet any qualification required pursuant to this paragraph, then the balance of the credit shall be disallowed for all taxable years next following the taxable year in which the death of the taxpayer occurs.

g. (1) No later than the 1,095th day next following the effective date of P.L. , c. (C.) (pending before the Legislature as this bill), the Office of Revenue and Economic Analysis in the Department of the Treasury shall prepare and submit a report to the Governor and, pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), to the Legislature. The report shall analyze the costs and benefits of the tax credit program provided by this section, including but not limited to:

(a) the impact of the tax credit program on State revenues;

(b) the extent to which home purchases by first-time homebuyers, including but not limited to purchases of new qualified residential property, increased during the terms the tax credit was available, as compared with historical trends and comparable housing markets outside of New Jersey;

(c) whether the data suggests that a two year extension of the tax credit program may have a material, positive impact on the State's construction, real estate, and any other sectors of the State economy;

(d) whether the fiscal condition and outlook of the State has materially changed such as to materially affect the purpose underlying the program to promote home ownership and strengthen key sectors of the State's economy; and

(e) any other information determined by the Office of Revenue and Economic Analysis to be relevant to the costs and benefits of the tax credit program to the State.

(2) Upon receipt of the report pursuant to this subsection, the Legislature may adopt and the Governor may sign a joint resolution that extends the tax credit, pursuant to paragraph (3) of subsection b. of this section, for an additional two years, except as otherwise provided in this section.

h. As used in this section:

"First-time homebuyer taxpayer" means a taxpayer:

(1) who is a State resident and a natural person;

(2) who has not previously owned qualified residential property; and

(3) whose most-recently reported New Jersey gross income, combined with the most-recently reported New Jersey gross income of all other individuals expected by the taxpayer to be permanent residents of the qualified residential property for more than 180 days of the next succeeding taxable year, including but not limited to the taxpayer's spouse or domestic partner, shall not exceed at the time the contract of sale is executed:

(a) $118,000 for households with no more than two persons, or

(b) $135,000 for households with three or more persons.

"New qualified residential property" means a dwelling unit not previously occupied as a residence.

"Qualified residential property" means a dwelling house, a condominium unit under the form of real property ownership provided for under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.), a unit in a cooperative or mutual housing corporation, a unit in a horizontal property regime under the form of real property ownership provided under the "Horizontal Property Act," P.L.1963, c.168 (C.46:8A-1 et seq.), a unit in a continuing care retirement community, or a manufactured home that is taxable as real property or that is installed in a mobile home park.

"Qualified home purchase" means the acquisition, by sale, of a qualified residential property that is occupied as a first-time homebuyer taxpayer's principal residence or the construction of a new qualified residential property paid for by the taxpayer and occupied as the taxpayer's principal residence; provided, however, that the value of the qualified residential property does not exceed $560,000 at the time the contract of sale is executed.

"Principal residence" means a qualified residential property actually and continually occupied by a first-time homebuyer taxpayer as the taxpayer's permanent residence, as distinguished from a vacation home, property owned and rented or offered for rent by the taxpayer, and other secondary real property holdings.

i. Notwithstanding any provision of P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the director may adopt immediately upon filing with the Office of Administrative Law such regulations as the director deems necessary to implement the provisions of this act, which shall be effective for a period not to exceed 180 days following the date of enactment of P.L. , c. (C.) (pending before the Legislature as this bill) and may thereafter be amended, adopted, or readopted by the director in accordance with the requirements of P.L.1968, c.410. The regulations may include examples of circumstances in which repayment of credit amounts are required, manner and terms of repayment, and circumstances in which a waiver of repayment maybe granted in the discretion of the director.

2. This act shall take effect on the first day of the sixth month next following the date of enactment.

STATEMENT

This bill establishes the New Jersey Homebuyer Tax Credit Program under the gross income tax.

To qualify for the credit, a taxpayer is required to: (1) be a first-time homebuyer; and (2) enter into a contract of sale on a qualified home purchase within certain prescribed dates. For qualifying new home purchases, a taxpayer has 18 months from the contract of sale in which to complete the purchase. For qualifying previously occupied homes, a taxpayer has 12 months from the contract of sale in which to complete the purchase. The taxpayer is also required to occupy the property as her or his principal residence for at least three consecutive years after the date of the purchase.

The tax credit provided by the bill is refundable and is allowed for up to $15,000 or five percent of the purchase price, whichever is less. The total credits available are capped at $100 million, with up to $25 million allocated for qualified home purchases made between the effective date of the bill and up to one year thereafter; and up to $25 million allocated for qualified home purchases made after one year, but before two years, after the effective date of the bill. If the tax credit program is renewed, up to $25 million is available for qualified home purchases made up to one year after the renewal date; and up to $25 million is available for qualified purchases made between one year, but before two years, after the date the program is renewed. For each year the program is in effect, up to $18.75 million is allocated for purchases of newly constructed homes not previously occupied, and up to $6.25 million is allocated for purchases of previously occupied homes.

The credit is only available to taxpayers who are New Jersey residents, are natural persons, and have not previously owned qualified residential property. Moreover, the New Jersey reported gross income of the taxpayer, combined with the New Jersey reported gross income of other individuals expected to be permanent residents of the property (domiciled for more than 180 days of the year), cannot exceed: (1) $118,000 for households with up to two persons; and (2) $135,000 for households with three or more persons. The value of the qualified residential property likewise cannot exceed $560,000.

The credit is provided on a first-come, first-serve basis, and the claiming of the credit for personal income tax filing purposes will be divided into three equal credit amounts claimed over three taxable years. The terms of the credit require that the home continue to be occupied as the taxpayer's principal residence for three years.

If the taxpayer fails to use the home as his or her principal residence for at least 36 months next following the date of the qualified home purchase, then the taxpayer must pay back the full amount of the credit received. Likewise, if the Director of the Division of Taxation in the Department of the Treasury determines that a taxpayer has used a strawman to make more than one qualified home purchase, in order to “flip houses” and claim multiple credits pursuant to the bill, then the taxpayer is required to pay back the full amount of all credits received; this prohibition is not intended to preclude the use of a real estate agent or broker in facilitating a qualified home purchase. In the event the taxpayer dies during the 36 months the qualified residential property is required to be used as the taxpayer’s principal residence, then any heirs to whom the property has been bequeathed are required to: (1) meet the definition of “first-time homebuyer taxpayer”; and (2) use the property as that heir’s or heirs’ principal residence for the balance of the 36 months; otherwise, the credit is disallowed for all tax years beginning after the death of the original purchaser/taxpayer.

Finally, after the end of the second year in which this program is operational, the Office of Revenue and Economic Analysis in the Department of the Treasury is required to prepare and submit a report to the Governor and Legislature to study the efficacy of the tax credit program. This report, at a minimum, is required to include: (1) the impact of the tax credit program on State revenue; (2) the extent to which home purchases by first time homebuyers (including purchases of new qualified residential property) increased during the period the tax credits were available; (3) whether the data suggests that a two year extension of the tax credit program may have a material, positive impact on the State’s construction, real estate, and any other sectors of the State economy; and (4) whether the fiscal condition and outlook of the

State has materially changed in way that materially affect the purpose underlying the program to promote home ownership and strengthen key sectors of the State's economy. Upon receipt of this report, the Legislature may adopt, and the Governor may sign, a joint resolution that extends the program for two additional years.

The effective date of this bill is the first day of the sixth month next following the date of enactment.

The bill is intended to create a substantial and immediate incentive for potential homebuyers. Recognizing that much direct and indirect economic activity is generated through new home construction and home resales, this incentive is expected not only to strengthen homebuilding industry in this State, but also to stimulate economic growth through indirect related spending, including boosting State and local government revenue collections generated by this activity.