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SENATE BILL NO. 906

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance)

(Patrons Prior to Substitute—Senators Stosch and McEachin [SB 1441])

Senate Amendments in [] — February 6, 2009

A BILL to amend the Code of Virginia by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.12, relating to a homebuyer income tax credit.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 3 of Chapter 3 of Title 58.1 a section numbered 58.1-339.12 as follows:

§ 58.1-339.12. Homebuyer tax credit.

A. For purposes of this section:

"Eligible taxpayer" means an individual whose federal adjusted gross income for the taxable year in which the qualified purchase was made does not exceed (i) \$150,000 for taxpayers who are married filing jointly for purposes of the Virginia individual income tax, or (ii) \$75,000 for taxpayers filing as single or as married filing separately for purposes of the Virginia individual income tax. In addition, the individual and his spouse, if married, shall have had no present ownership interest in a principal residence during the three-year period ending on the purchase date of the principal residence to which the credit allowed under this section is applicable.

"Principal residence" means the same as such term is defined in § 36(c) of the Internal Revenue Code of 1954, as amended or renumbered.

"Purchase" means the same as such term is defined in § 36(c) of the Internal Revenue Code of 1954, as amended or renumbered.

"Qualified purchase" means the purchase of a principal residence in the Commonwealth by an eligible taxpayer or taxpayers.

B. For taxable years beginning on or after January 1, 2009, but before January 1, 2011, any eligible taxpayer who makes a qualified purchase during the taxable year shall be allowed a credit against the tax imposed by Article 2 (§ 58.1-320 et seq.) of this chapter for such taxable year equal to \$2,500 for eligible taxpayers filing as single or as married filing separately and \$5,000 for eligible taxpayers who are married filing jointly.

C. A principal residence that is constructed by a taxpayer shall be treated as purchased by the taxpayer on the date that the taxpayer first occupies such residence.

D. If the amount of the credit exceeds the taxpayer's individual income tax liability for the taxable year in which the qualified purchase was made, the excess may be carried over for credit against the individual income tax in the next five taxable years until the total amount of the tax credit has been taken.

E. Notwithstanding any other provision of this section, if within two years from the date of purchase of the principal residence the taxpayer disposes of the residence (or such residence ceases to be the principal residence of the taxpayer and, if married, the taxpayer's spouse), all credit claimed under this section shall be recaptured. No recapture shall apply in the case of (i) any residence that is compulsorily or involuntarily converted within the meaning of § 1033(a) of the Internal Revenue Code of 1954, as amended or renumbered, (ii) a transfer of a residence to which § 1041(a) of the Internal Revenue Code of 1954, as amended or renumbered, applies, or (iii) the taxpayer's death. The Tax Commissioner shall develop guidelines for the recapture of any credit, which guidelines shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

2. That the provisions of this act shall not become effective unless (i) the American Recovery and Reinvestment Act of 2009 (H.R. 1, 111th Congress, 1st Session), or similar federal legislation, that makes supplemental appropriations for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization is enacted into law prior to March 27, 2009; and (ii) such federal legislation allows for [the tax credit under this act (and at least up to the anticipated negative fiscal impact on the revenues of the Commonwealth from the provisions of this act) to be a suitable use for such supplemental appropriations. The determination under clause (ii) shall be made by the Secretary of Finance. such supplemental appropriations, in an amount at least equal to the combined anticipated negative fiscal impact on the revenues of the Commonwealth for the 2009-2010 and 2010-2011 fiscal years pursuant to the provisions of this act, to be lawfully used for the tax credit under this act. Determinations as to whether the conditions under clauses (i) and (ii) have been met shall be made by the Secretary of Finance in writing to the Governor by no later than April 1, 2009.]

ENGROSSED

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