Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

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Related Bills: See Prior Analysis | Telephone: 845-7800 | Amended Date: January 7, 2008

Attorney: Douglas Powers | Sponsor:

SUBJECT: California Cleantech Advantage Act Of 2008/Costs For Cleantech Property And Research Expenses Credits

__X__ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as amended June 25, 2007.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

_____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENTS CONCERNS stated in the previous analysis of bill as introduced/amended ____________________.

_____ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO ____________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS AMENDED June 25, 2007, STILL APPLIES.

_____ OTHER – See comments below.

SUMMARY

This bill would allow a taxpayer an income tax credit for certain expenditures relating to the clean technology (cleantech) industry.

SUMMARY OF AMENDMENTS

The January 7, 2008, amendments would make the following changes:

- Replace the “California Council on Science and Technology” with “California Alternative Energy and Advanced Transportation Financing Authority” as the agency responsible for administering the requirements provided in this bill.
- Change the date to promulgate rules and regulations necessary to administer the requirements provided in this bill from December 1, 2008, to December 31, 2008.
- Authorize the Alternative Energy and Advanced Transportation Financing Authority to confer and consult with other state agencies, boards, commissions, departments, and authorities to implement the provisions in this bill.
- Clarify that a buyer of unused credits from a qualified taxpayer may apply all or any portion of those credits against the "net tax," for any of the following taxable periods: (1) the taxable year of the buyer immediately preceding the taxable year in which purchased, (2) the taxable year in which purchased, or (3) the taxable year immediately following the taxable year in which purchased.

Board Position:			Legislative Director	Date
_______ S	_______ NA	_______ NP		
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_______ N	_______ OUA	___X___ PENDING		

In addition, the January 7, 2008, amendments would make minor technical changes.

As a result of the amendments, the "This Bill" discussions have been revised and are provided below. In addition, Implementation Considerations identified in the department's analysis of the bill as amended on June 25, 2007, no longer apply. The following Economic Impact and the remaining Policy Concern from the previous analysis of the bill are included below for convenience. The department's previous analysis of the bill as amended on June 25, 2007, continues to apply.

POSITION

Pending.

ANALYSIS

<u>THIS BILL</u>

This bill would allow the following new credit under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL) and add a new rule allowing the sale or trade of unused "qualified tax credits" by a "qualified seller" to a "qualified buyer."

1. This bill would, in modified conformity to federal law, provide a 20% credit for research conducted in California that is dedicated to the development of cleantech technologies beginning taxable year on or after January 1, 2009. This "qualified cleantech research credit" would be in addition to the current California research credit.

   "Cleantech" would be defined to mean technologies identified by the Alternative Energy and Advanced Transportation Financing Authority.

   "Qualified research" would be defined to mean research certified by the Alternative Energy and Advanced Transportation Financing Authority.

   "Qualified taxpayer" would be defined to mean a business that meets the following: (1) has 100 or fewer employees and (2) has average annual gross receipts of $10 Million or less over the previous three taxable years.

   This bill would provide the specified requirements for taxpayers to claim the credit. These requirements include the following:

   - File an application for certification with the California Alternative Energy and Advanced Transportation Financing Authority that the research or planned research is cleantech research.
   - Maintain and provide, upon request by the Franchise Tax Board (FTB), a copy of the application for certification and accompanying materials and substantiation.

This bill would provide the specified requirements for the California Alternative Energy and Advanced Transportation Financing Authority. These requirements include the following:

- Establish a procedure for qualified taxpayers to file with the California Alternative Energy and Advanced Transportation Financing Authority related to a written application.
- Determine and provide certification to applicants meeting the specified requirements in the bill.
- Process and approve, or reject, all applicants for certification.
- Provide, upon request from a taxpayer, a copy of a certification previously issued to that taxpayer.
- Identify and publish a list of technologies that comprise cleantech research.
- Promulgate rules and regulations necessary to administer the requirements provided in this bill by December 31, 2008.
- Provide an annual list to FTB, in the form and manner agreed upon by FTB, information related to the names, taxpayer identification numbers, and the total amount of the tax credit allocated to each qualified taxpayer.

If the credit allowed exceeds the tax for the taxable year, the excess may be carried over to reduce the tax in subsequent years for a maximum of nine years or until exhausted, whichever comes first.

This “qualified cleantech research credit” contains a sunset date of January 1, 2013.

2. In addition to the “qualified cleantech research credit,” this bill would add a new rule that would allow a “qualified seller” to sell or trade any unused “qualified tax credit” at 10% for in-house research conducted in California.

This bill would limit the amount of 10% transferable qualified research credits that may be sold to a qualified taxpayer to $1 million per qualified taxpayer per taxable year.

“Qualified seller” is defined to mean a taxpayer that was allowed the “qualified cleantech research credit.”

Unused tax credits may be sold or traded by a “qualified seller” during any taxable year beginning on or after January 1, 2010, but may not be used by a buyer for any taxable year beginning before January 1, 2011.

This bill would prohibit a buyer of unused credits from further selling or transferring those credits.

This bill would specify that a buyer of unused credits from a qualified taxpayer may apply all or any portion of those credits against the "net tax," for any of the following taxable periods: (1) the taxable year of the buyer immediately preceding the taxable year in which purchased, (2) the taxable year in which purchased, or (3) the taxable year immediately following the taxable year in which purchased.

This bill would provide the specified requirements for taxpayers to claim the credit. These requirements include the following:

- File an application for preliminary allocation of the tax credit with the California Alternative Energy and Advanced Transportation Financing Authority.
- File an application for final allocation of the credit based upon the taxpayer's conduct of qualified research during the taxable year with the California Alternative Energy and Advanced Transportation Financing Authority.
- File an application with the California Alternative Energy and Advanced Transportation Financing Authority for certification of the amount of unused credit which may be sold.
- Provide the California Alternative Energy and Advanced Transportation Financing Authority with substantiation.

This bill would provide the specified requirements for the California Alternative Energy and Advanced Transportation Financing Authority. These requirements include the following:

- Establish procedures for qualified taxpayers related to a written application,
- Allocate tax credits to qualified taxpayers.
- Determine and designate a qualified taxpayer.
- Issue a certificate to the qualified taxpayer setting forth the name of the qualified taxpayer and the total amount of the tax credit allocated to the qualified taxpayer.
- Issue a certificate to the qualified taxpayer setting forth the name of the qualified taxpayer and the total amount of unused credit available for sale.
- Promulgate rules and regulations necessary to administer the requirements provided in this bill by December 31, 2008.
- Provide an annual list to the Franchise Tax Board (FTB), in the form and manner agreed upon by FTB, information related to the names, taxpayer identification numbers, and the total amount of the tax credit allocated to each qualified taxpayer.

ECONOMIC IMPACT

The revenue impact of this bill is estimated to be as shown in the following table:

Estimated Revenue Impact of AB 1527 Effective for tax years BOA 1/1/2009 Enacted after 6/30/2007 ($ in Millions)				
	2007-08	2008-09	2009-10	2010-11
Cleantech Research Credit	0	< -0.5	-$5	-$20

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this bill.

<u>Revenue Discussion</u>

The revenue impact for this amended bill is estimated separately for two options: (1) 20% qualified research expense credit relating to the cleantech industry and (2) 10% transfer of unused qualified research credits. The prior revenue impact is revised here to reflect elimination of the limit of up to 50% of the amount of unused research credits that is allowed to be sold by a taxpayer. Considering the research expense credit utilized by the taxpayers under current law and the new provisions that would allow the qualified taxpayers to sell unused credits, it is assumed that 15% of qualified taxpayers would choose Option 1, and the remaining 85% would choose Option 2. The revenue impact of each option is the excess of cleantech research credit used under the proposed law over the research credit used under current law.

Based on various data sources, including the department's 2004 corporate sample and the 2006 Survey of Current Business, an estimate is made for Option 1 that would result in an additional $2.5 million of research credit generated and $2 million excess research credit used for the 2009 tax year. Option 1 is expected to generate approximately the same revenue impact for the 2010 tax year. Option 2 would not have an impact until the 2010 tax year, when the credits generated in 2009 would be sold and used. It is estimated that the Option 2 credit would yield $21 million of excess research credit, which would be used in the 2010 tax year. The total impact of both options for the 2010 tax year is a revenue loss of $23 million ($2 million + $21 million = $23 million).

The tax year estimates are then converted to fiscal year estimates shown in the table. For example, the 2010-11 cash flow estimate of a revenue loss of $20 million includes a $14 million loss for 2010, plus $6 million loss for 2011 due to higher credit use and reduced estimated tax payments.

ARGUMENTS/POLICY CONCERNS

This bill would allow a taxpayer to sell unused tax credits to a third party, which would be purchased at a discount and paid at the face amount by the state. Tax credits influence taxpayer behavior by providing tax relief in exchange for incurring a specified expense or modifying behavior to achieve a state-endorsed purpose. Authorizing the selling of credits permits the third party purchaser to offset income unrelated to the state-endorsed purpose and provides a benefit to a taxpayer that did not actually incur the underlying expense or risk associated with the expenditure.

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