Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Arambula	Analyst:	Nicole Kwon	Bill Number:	AB 1527
Related Bills:	See Prior Analysis	Telephone:	845-7800	Amended Date:	June 25, 2007
		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 12, 2007.

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

____ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S 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 12, 2007, STILL APPLIES.

____ OTHER – See comments below.

SUMMARY

This bill would allow a taxpayer a qualified research expense credit relating to the clean technology (cleantech) industry.

SUMMARY OF AMENDMENTS

The June 25, 2007, amendments would make the following changes:

- Delete the 50% limitation of the allocated unused credit amount that may be sold by a qualified taxpayer for a taxable year.
- Require a qualified taxpayer to file an application with the California Council on Science and Technology within 90 days of the end of a taxable year for final allocation of the credit that may be sold.
- Add a requirement that the California Council on Science and Technology provide a copy of a previously-issued certification upon request of a qualified taxpayer.
- Eliminate the first-come-first-served basis for the California Council on Science and Technology to process and approve, or reject all applications.

Board Position:			Legislative Director	Date
____ S	____ NA	____ NP		
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____ N	____ OUA	_X_ PENDING		

In addition, the June 25, 2007, amendments would make minor technical changes.

With these amendments, some of the Implementation and Technical Considerations identified in the department's prior analysis are resolved. The remaining unsolved Implementation Considerations with the Policy Concern from the previous analysis are provided below. In addition, as a result of the amendments, a revised Economic Impact is provided below. The remainder of the department's analysis of the bill as amended June 12, 2007, continues to apply.

POSITION

Pending.

IMPLEMENTATION CONSIDERATIONS

It is unclear what would happen if a taxpayer assigns a credit and the credit is partially or completely disallowed in a subsequent audit by the department. The bill should clarify the department's legal authority to adjust the tax liability of the assignee (or purchaser) and reclaim the credit amount, with interest, from the assignee, especially if the assignor (or seller) is either no longer in existence or no longer subject to California's taxing jurisdiction. Moreover, because there may be occasion where the department's audit of the assignor taxpayer's return may occur after normal expiration of the statute of limitations (i.e., under a waiver), it might become necessary for the department to request a waiver of the assignee's (or purchaser's) statute of limitations to prevent the department from being foreclosed from adjusting the assignee's tax liability when the department determines that part or all of the claimed credit should never have been allowed. Further, the department would need to be specifically authorized to disclose the necessary confidential tax information of the assignor to the assignee if such situation arose. Conversely, the assignee would statutorily need authorization to obtain tax information from the assignor about the circumstances surrounding the claiming of the credit that was assigned in order to defend a subsequent proposed adjustment by the department.

Alternatively, if the credit is disallowed only in part upon a Franchise Tax Board audit, it is unclear how this disallowance would be allocated between the assignor and the assignee, particularly if the statute of limitations has expired for one, but not both, of the affected taxpayers. These issues would apply as well for credits that are sold.

ECONOMIC IMPACT

Revenue Estimate

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.

Revenue Discussion

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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