

# ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Strickland Analyst: William Koch Bill Number: AB 2623

Related Bills: See Legislative History Telephone: 845-4372 Amended Date: March 25, 2008

Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** Service Station Emergency Standby Generator Credit

## SUMMARY

This bill would allow a tax credit for the purchase and installation of an emergency standby generator.

## SUMMARY OF AMENDMENTS

The March 25, 2008, amendments deleted spot bill language and added provisions that would allow a tax credit for the purchase and installation of an emergency standby generator at a service station located in California.

This is the department's first analysis of this bill.

## PURPOSE OF THE BILL

According to the language of this bill, the purpose of this bill is to provide an incentive for service station operators to purchase generators to produce their own electricity during an emergency.

## EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and specifically operative for taxable years beginning on or after January 1, 2009, and before January 1, 2014.

## POSITION

Pending.

## ANALYSIS

### FEDERAL/STATE LAW

Current state and federal laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life.

Board Position:

\_\_\_\_\_ S      \_\_\_\_\_ NA      \_\_\_\_\_ NP  
\_\_\_\_\_ SA      \_\_\_\_\_ O      \_\_\_\_\_ NAR  
\_\_\_\_\_ N      \_\_\_\_\_ OUA        X   PENDING

Department Director

Date

Selvi Stanislaus

4/28/08

Existing state and federal laws provide various tax credits designed to provide tax relief for taxpayers who incur certain expenses (e.g., child adoption) or to influence behavior, including business practices and decisions (e.g., research credits or economic development area hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Neither state nor federal laws have a credit comparable to the credit proposed by this bill.

### THIS BILL

For taxable years beginning on or after January 1, 2009, and before January 1, 2014, this bill would allow a personal and a corporate income tax credit in an amount equal to 5% of the costs paid or incurred for the purchase and installation of an emergency standby generator at a service station located in this state.

This bill provides the following definitions:

- “Emergency standby generator” is an electrical generator whose sole function is to automatically provide electric power when electric power from a utility service is interrupted.
- “Service station” is an establishment that offers for sale or sells gasoline or other fuel to power motor vehicles to the public.

This bill specifies that a taxpayer would be required to recapture the allowed amount of the tax credit if the taxpayer subsequently sells or removes the generator from the state within one year from the date it was placed in service. The recaptured amount would be added to the net tax for the taxable year in which the emergency standby generator is sold or removed from California.

This tax credit would be repealed as of December 1, 2014.

### IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author’s office to resolve these and other concerns that may be identified.

1. This bill would allow a credit for the purchase and installation of an emergency standby generator. Department staff lacks the expertise to establish criteria for the generator. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. To ease the administration of this credit, the author may wish to amend this bill to add certification language that would specify the responsibilities of both the certifying agency and the taxpayer, and/or add language to the bill that would require the generator to produce a minimum number of kilowatts (KW).

2. The recapture provisions of this bill only include a taxpayer that sells or removes the generator from this state. A taxpayer could transfer the generator to another service station within this state or return the generator to the vendor and still be eligible for the credit. The author may wish to amend this bill to add recapture language in the event the generator, for any reason, is removed from the taxpayer's service station within one year of being placed in service.

## LEGISLATIVE HISTORY

SBX2 38 (Oller, 2001/2002) would have created a tax credit for the purchase of a backup generator and related equipment used to produce electricity. SBX2 38 failed to pass out of the Senate Environmental Quality Committee.

SBX1 38 and SB 220 (Oller, 2001/2002) were identical to SBX2 38. SBX1 38 died in the Senate Environmental Quality Committee when the first extraordinary session ended; SB 220 failed passage in the Senate Environmental Quality Committee.

## OTHER STATES' INFORMATION

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not provide a credit comparable to the emergency standby generator credit allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

## FISCAL IMPACT

The department's costs to administer this bill cannot be determined until the implementation concerns have been resolved, but are anticipated to be minor.

## ECONOMIC IMPACT

### Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB2623 As Amended March 25, 2008 Effective for Tax Years Beginning On and After January 1, 2009		
2008-09	2009-10	2010-11
-\$150,000	-\$500,000	-\$500,000

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

Revenue Discussion

The revenue impact of the bill would depend on the number of California service stations that purchase and install an emergency generator, and the associated costs.

The California Energy Commission lists 9,400 retail service stations in California. Assuming 15% have already purchased and installed emergency generators, the prospective number of service stations that may benefit under this bill would be 7,990. It is assumed that 33%, or 2,637, of the 7,990 service stations would purchase and install emergency generators within the 4 years this credit would be offered at the following rates:

<i>Taxable Year</i>	<i>Assumed Rate of Installs</i>	<i>Number of Service Stations</i>
2009	10%	264
2010	25%	659
2011	30%	791
2012	35%	923
<i>Total</i>		<i>2,637</i>

The assumed cost for a light industrial generator (30-40 KW) is \$9,000, and the assumed cost of a large generator (100 KW) is \$25,000. Additionally, wiring and transfer switch installation costs are estimated to be \$4,000. Each participating service station would incur the \$4,000 installation cost. This estimate assumes 80% of each year's participants would purchase a small generator and 20% would purchase a large generator.

For taxable year 2009, 264 service stations would incur \$4,000 in installation costs per generator for a total of approximately \$1 million. 80%, or 211, service stations would each spend \$9,000 on a light industrial generator for a total of approximately \$1.9 million; 20%, or 53, service stations would each spend \$25,000 on a large generator for a total of approximately \$1.3 million. The combined total of these expenses is \$4.2 million (\$1 million + \$1.9 million + \$1.3 million).

Taxable year 2009 potential tax credits are estimated to be \$210,000 (\$4.2 million x 5% credit). It is assumed that 90% of the credits generated, or \$189,000, would be applied against personal and corporate net taxes.

The same assumptions and calculations were applied to the service stations expected to participate in taxable years 2010 through 2012. The table in the Revenue Estimate section reflects fiscal year estimates.

## **POLICY CONCERNS**

This bill would not require a taxpayer to reduce the depreciable basis of the emergency standby generator by the amount of the credit allowed.

Conflicting tax policies come into play whenever a credit is provided for an item that is already deductible as a business expense or is depreciable. Providing both a credit and allowing the full amount to be deducted would have the effect of providing a double benefit for that item. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a difference between state and federal taxable income, which is contrary to the state's general federal conformity policy.

In addition, this credit could not be carried over if the taxpayer does not use the entire credit amount in the year claimed. The author may wish to add language allowing a limited carryover period.

## **LEGISLATIVE STAFF CONTACT**

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