Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Levine	Analyst:	Jennifer Bettencourt	Bill Number:	AB 811
Related Bills:	See Legislative History	Telephone:	845-5163	Introduced Date:	February 22, 2007
		Attorney:	Douglas Powers	Sponsor:	

SUBJECT: Renewable Energy Resource Credit

SUMMARY

This bill would allow a credit for an unspecified percentage of the cost to construct an eligible renewable resource.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to provide an incentive to encourage the construction of renewable energy facilities in California.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective immediately upon enactment and operative for taxable years beginning on or after January 1, 2007, and before January 1, 2012.

POSITION

Pending.

ANALYSIS

<u>FEDERAL/STATE LAW</u>

Federal law currently provides two energy-related credits: (1) an energy credit that is one portion of the investment credit, and (2) a business credit for the production of electricity from certain renewable resources.

The energy investment credit is equal to 10% of the basis of energy property placed in service during the taxable year. Energy property includes equipment that uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat. It also includes equipment that produces, distributes, or uses energy derived from geothermal deposits. The equipment must meet performance and quality standards prescribed by federal regulations.

Board Position:			Department Director	Date
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The business credit for the production of electricity from certain renewable resources is equal to 1.5 cents multiplied by the amount of kilowatt-hours of electricity produced by the taxpayer from qualified energy resources at a qualified facility. To qualify for the credit, the electricity is required to be sold to an unrelated person during the taxable year. Qualified energy resources include wind, closed-loop biomass, and poultry waste.

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. Current state law does not have a credit similar to the one contained in this bill.

<u>THIS BILL</u>

This bill would provide a credit equal to an unspecified percentage of qualified costs paid or incurred by a taxpayer for the construction of an eligible renewable resource. This bill defines “eligible renewable source” by reference to Section 399.12 of the Public Utilities Code, and would be defined as follows:

- An eligible renewable source is an electric generating facility, subject to certain limitations, and meets the definition of “in-state renewable electricity generation facility” as defined in Section 25741 of the Public Resources Code,.

- An “in-state renewable electricity generation facility” uses biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, digester gas, municipal solid waste conversion, landfill gas, ocean wave, ocean thermal, or tidal current, and

    - Is located in the state or near the border of the state and the first point of transmission of electricity produced is within this state and delivered to an in-state location, or
    - Meets specific requirements if located outside the state or the United States.

This bill specifies that any excess of the credit would be carried over to the following year, and the succeeding 10 years if necessary, until the credit is exhausted. The credit would be in effect until January 1, 2013, and would be repealed as of that date.

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.

- This bill should specify the credit percentage and maximum amount that would be available to a taxpayer for the costs of constructing an eligible renewable resource. Without specification, the department would be unable to administer this credit.

- The department lacks the expertise to determine whether a renewable resource meets the requirements set forth in the Public Utilities Code. Often credits requiring specialized expertise contain language that specifies an appropriate state agency for certification purposes. The author may wish to amend the bill to specify the certifying agency.

- It is recommended that the bill define the term "construction" and the costs related to "construction" that would qualify for this credit. Absence of definitions can cause disputes between taxpayers and the department.

- This bill would specify a repeal date of January 1, 2013. The credit provided by this bill would be for taxable years beginning on or after January 1, 2007, and before January 1, 2012. Credit provisions are generally repealed as of December 1^{st} of the last calendar year in which the credit could be claimed to avoid confusion between calendar and fiscal year taxpayers. The appropriate repeal date for this credit would be December 1, 2012.

LEGISLATIVE HISTORY

AB 2567 (Arambula, 2005/2006) would have allowed a 20% research expense credit for specified research activities related to the development of renewable technologies. AB 2567 was held in the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida*, *Illinois*, *Massachusetts*, *Michigan*, *Minnesota*, and *New York*. These states were selected due to their similarities to California's economy, business entity types, and tax laws. *Florida* has no personal income tax.

Florida allows corporations to claim one of the following two energy related credits:

- The renewable energy technologies investment tax credit is equal to 75% of capital, maintenance, and research and development costs. The costs must be incurred between January 1, 2006, and June 30, 2010.
- The renewable energy production credit is for new or expanded renewable energy facilities and is equal to $.01 per kilowatt-hour of electricity produced. For new facilities, the credit is based on the entire amount of electricity produced, and for expanded facilities, the credit is based on the increases in the facility's electrical production achieved after May 1, 2006.

Michigan allows an income tax credit that is similar to California's research credit. The credit is for qualified businesses located within an alternative energy renaissance zone that are engaged solely in the research, development, or manufacturing of an alternative energy technology, including renewable energy.

Illinois, *Minnesota*, and *New York* do not have a similar credit.

ECONOMIC IMPACT

Revenue Estimate

Until the bill is amended to specify the amount of the credit that would be available to a taxpayer for the costs of constructing an eligible renewable resource, the revenue impact is unknown.

ARGUMENTS/POLICY CONCERNS

This bill does not limit the amount of the credit that may be taken. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis, or alternatively on the basis of total credits for the entire year for all taxpayers. The latter would require a state agency to certify and approve the bill's criteria as discussed under "Implementation Considerations" in this analysis.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense. The author may wish to consider specifying that the credit would be taken in lieu of any other credit or deduction allowed for the same costs.

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