

SUMMARY ANALYSIS OF AMENDED BILL

Author: Florez Analyst: Angela Raygoza Bill Number: SB 73
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: April 30, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Biodiesel Fuel Credit/Ordering Of Tax Credit/Credits That Contain Refundable Provisions But Not Carryover Provisions/S Corporation Technical Amendment

- DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _____.
- 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 _____.
- REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED January 17, 2007, STILL APPLIES.
- OTHER – See comments below.

SUMMARY

This bill would allow a refundable tax credit for each gallon of biodiesel fuel that is produced or manufactured at any facility located in California.

SUMMARY OF AMENDMENTS

The April 30, 2007, amendments would increase the aggregate amount of gallons allowed to qualify for the credit under this section per taxable year, for all taxpayers claiming this credit, from 30 to 60 million. The amendments would remove the terms "Facility" and "Qualified Producer" and add language to define "Manufacture," "Produce," and "Refinery." In addition, the amendments would add language that addresses partners or shareholders in pass-through entities that are qualified producers and add a credit ordering rule to the Corporation Tax Law for refundable credits.

Board Position:	Legislative Director	Date
<input type="checkbox"/> S	Brian Putler	5/30/07
<input type="checkbox"/> SA		
<input type="checkbox"/> N		
<input type="checkbox"/> NA		
<input type="checkbox"/> O		
<input type="checkbox"/> OUA		
<input type="checkbox"/> NP		
<input type="checkbox"/> NAR		
<input checked="" type="checkbox"/> PENDING		

As a result of the amendments, the "Policy Concerns" and "Technical Consideration," as provided in the department's analysis of the bill as introduced January 17, 2007, have been resolved and "This Bill," "Implementation Concerns," and "Economic Impact" have been revised. The remainder of that analysis still applies.

POSITION

Pending.

ANALYSIS

THIS BILL

This bill would allow, for each taxable year beginning on or after January 1, 2008, and before January 1, 2014, a credit of \$.30 for each gallon of biodiesel fuel produced or manufactured during the taxable year by a qualified taxpayer at any refinery located in California.

The credit allowed cannot exceed an aggregate amount of 60 million gallons per taxable year, as produced or manufactured by all qualified taxpayers who receive this credit.

This bill would specify in the case of a pass-through entity that a determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level and any credit shall be allowed to the pass-through entity and passed through to the partners or shareholders.

The bill would define the following terms:

- "Biodiesel fuel" is a renewable, biodegradable, mono alkyl ester combustible liquid fuel derived from vegetable oils, or animal fats that meet the American Society for Testing and Materials specification for biodiesel fuel (B100) blend stock for distillate fuels. Therefore, the biodiesel fuel produced or manufactured that is eligible for credit must be 100% biodiesel and not some lesser amount of biodiesel blended with diesel fuel.
- "Manufacture" is the activity of converting or conditioning property by changing the form, composition, quality, or character of the property for ultimate sale or use as biodiesel fuel.
- "Produce" is the extraction or extracting of vegetable oils or animal fats for use in the manufacturing of biodiesel fuel.
- "Qualified Taxpayer" is any taxpayer who owns or operates a refinery that produces or manufactures biodiesel fuel at the refinery.
- "Pass-through entity" means any partnership or "Sub Chapter S" corporation.
- "Refinery" is a facility located in California that produces or manufactures biodiesel fuel.

This bill would require that within 25 days after the end of each calendar year, each qualified taxpayer would be required to substantiate the total amount of biodiesel fuel that was produced or manufactured during the previous calendar year. This information would be submitted to the Franchise Tax Board (FTB) as required.

This bill specifies that if the credit allowed exceeds the taxpayer's liability, the excess would be credited, upon appropriation by the Legislature, against other amounts due. Any remaining credit would be refunded on an annual basis to the qualified taxpayer by the Treasurer.

FTB would be required to submit an annual list to the Treasurer of the qualified taxpayers that are eligible to receive a refund; the Legislature would be required to make the refunds from the State Highway Account.

This bill would repeal the credit as of January 1, 2014.

This bill would modify the ordering rule for Corporation Tax Law credits by adding language that prescribes the order in which credits that contain refundable provisions may be applied.

IMPLEMENTATION CONSIDERATIONS

The following implementation concerns were discussed in the department's analysis of the bill as introduced January 17, 2007. These concerns remain and are included for convenience. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- This bill lacks direction for certification and reporting requirements to substantiate the total amount of biodiesel fuel produced by a qualified producer for the taxable year that qualifies for the credit under the standard proposed by the bill (D100). It is also unknown who will be responsible for tracking the total limit on eligible biodiesel fuel that is produced in each taxable year. If the department would be responsible for this, it would require a tracking system and would result in a significant impact on the department's operations and costs. Often credits requiring this type of specialized expertise are enacted or proposed using the appropriate state agency that possesses this expertise for allocation and certification purposes, and then the department can receive the necessary information from the appropriate state agency.
- This bill uses terms that are undefined, including "owns or operates" and "who is engaged in the production or manufacture of biodiesel fuel." The absence of definitions to clarify terms could lead to disputes with taxpayers and would complicate the administration of this credit.
- The mandate to issue regulations under this bill may result in delays in implementing this credit to the extent the statute is not clear and the department's regulations will be necessary to supply any missing interpretations. Furthermore, the actual rulemaking authority language contained in the bill is not necessary if the author only intends the department to issue interpretative regulations because the department already possesses that general authority. If the author intends the department to issue regulations that would supply missing pieces and/or interpretations of the bill's provisions that would have the force and effect of binding law, then the bill's language does not provide the specific grant of legislative authority that is needed for those regulations to be considered "legislative regulations" in a manner similar to the "legislative regulations" authorized in Revenue and Taxation Code section 18152.5(k), relating to small business stock. Without a grant of "legislative rulemaking" authority, the statutory provisions themselves would need to clearly detail all the rules necessary to implement these credits.

TECHNICAL CONSIDERATION

The technical considerations as discussed in the department's analysis of the bill as introduced January 17, 2007, have been resolved; however, new considerations have been identified as explained below:

- This bill would provide that FTB submit an annual list to the Treasurer of those qualified taxpayers that are eligible to receive a refund under this section. The author may wish to revise the sentence to clarify that FTB must submit the list to the State Treasurer rather than to the treasurer of the qualified taxpayers. Amendments 1 through 6 have been provided to correct the technical error.
- The bill would allow the biodiesel fuel credit to be claimed for taxable years beginning on or after January 1, 2008, with a repeal date of January 1, 2014. Therefore, the last fiscal year that a credit would be allowed would be for the period beginning December 1, 2013, and ending on November 30, 2014. However, in the bill under the personal income and corporation tax law, the biodiesel fuel credit repeal date is January 1, 2014, 11 months before the end of the last taxable year the credit is allowed. The author may wish to amend the bill to revise the repeal date to December 1, 2014, to include the last fiscal year.

FISCAL IMPACT

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

This bill would require an annual listing to be made by the department to the Treasurer of the qualified taxpayers that are eligible to receive a refund. As a result, this bill would impact the department's audit costs, as well as printing, processing, and storage costs for tax returns. The additional costs have not been determined at this time. As this bill continues to move through the legislative process, costs will be identified and an appropriation will be requested.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses.

Estimated Revenue Impact of SB 73 Effective for Tax Years BOA 1/1/2008 Assumed Enactment After 6/30/07 (\$ in Millions)		
2007/08	2008/09	2009/10
-\$0.5	-\$10	-\$17

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 level of production of biodiesel fuel is influenced by the price of crude oil, the California Energy Commission (CEC) projects biodiesel fuel production in California to range from 90 million gallons to 120 million gallons during 2008. The CEC originally projected that 39 million gallons of biodiesel fuel would be produced during 2008, in California. The range mentioned above reflects CEC's revised projection and is based on new information about biodiesel fuel plants and their production capacity.

This bill would provide credits with an aggregate limit on creditable qualified biodiesel fuel produced or manufactured in any taxable year to 60 million gallons. This bill would result in a maximum of \$18 million in credits (60 mil. gallons x 30 cents = \$18 million) in any taxable year. A portion of these credits would reduce income tax liabilities and unused credits would be refunded. Based on a review of tax liabilities of potentially qualified taxpayers, this estimate assumes the refundable portion of the credit at 95%, or \$17 million (\$18 million x 95% = \$17 million). The disbursement of the refund would be dependent on whether the taxpayer filed their return by the original or extended due date. Therefore, credits generated during a calendar year would be refunded over multiple fiscal years.

In the table above, the estimate is presented on a fiscal year cash flow basis. A small portion of credits generated during calendar year 2008 would impact fiscal year 2007/08 due to anticipated changes in estimated payments. The impact for 2008/09 of \$10 million consists of \$9.5 million from the 2008 taxable year and \$0.5 million from the 2009 taxable year.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 73
As Amended April 30, 2007

AMENDMENT 1

On page 3, line 25, after "list", insert:
to the State Treasurer

AMENDMENT 2

On page 3, line 26, before the first "Treasurer", insert:
State

AMENDMENT 3

On page 3, line 26, ~~strikeout "to the Treasurer"~~

AMENDMENT 4

On page 9, line 5, after "list", insert:
to the State Treasurer

AMENDMENT 5

On page 9, line 6, before "Treasurer", insert:
State

AMENDMENT 6

On page 9, line 6, ~~strikeout "to the Treasurer"~~