

SUMMARY ANALYSIS OF AMENDED BILL

Author: Florez Analyst: Angela Raygoza Bill Number: SB 74
 Related Bills: See Prior Analysis Telephone: 845-7814 Amended Date: May 2, 2007
 Attorney: Daniel Biedler Sponsor: _____

SUBJECT: Biodiesel Fuel Qualified Costs Credit

- 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 an income or franchise tax credit for the costs related to the manufacturing, processing, production, delivery, or sale of biodiesel fuel. In addition, this bill would create a biodiesel equipment and fuel exemption from state sales and use taxes.

This analysis will only address the provisions of the bill that would impact the department.

SUMMARY OF AMENDMENTS

The May 2, 2007, amendments add language that would require the biodiesel fuel to meet certain specifications, and also add certain definitions. The amendments also revise the repeal date and add the credit percentage. The amendments would also add language that addresses partners or shareholders in pass-through entities that are qualified producers. This bill would also add a limited carryover provision and a recapture provision.

- As a result of the amendments, the "Technical Consideration," as provided in the department's analysis of the bill as introduced January 17, 2007, has been resolved, two new technical considerations were added, and the "This Bill," "Implementation Concerns," and "Economic Impact," discussions have been revised. The remainder the analysis as introduced on January 17, 2007, still applies.

Board Position:	Legislative Director	Date
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POSITION

Pending.

ANALYSIS

THIS BILL

For taxable years beginning on or after January 1, 2008, and before January 1, 2014, this bill would provide a credit equal to 35% of the qualified costs paid or incurred to manufacture, process, deliver, or sell biodiesel fuel, including the purchase of property, equipment, buildings, or facilities.

This bill would define biodiesel fuel as any motor fuel or mixture of motor fuels that is:

- Derived wholly or partly from agricultural products, vegetable oils, recycled grease, or animal fats, or the wastes of those products or fats,
- Graded B20 or higher,
- Advertised, offered for sale, suitable for use, or used as a motor fuel in an internal combustion engine, and
- A renewable, biodegradable, mono-alkyl ester combustible liquid fuel, derived as described in paragraph (1) that meets the American Society for Testing and Material specification D6751 for biodiesel fuel (B100) blend stock for distillate fuels.

“Delivery” or “delivering” means the output of biodiesel fuel that is directly used to serve end-use customers.

“Manufacturing” means 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.

“Processing” means the physical application of the materials and labor necessary to manufacturing or producing biodiesel fuel.

“Producing” means the extraction or extracting of agricultural products, vegetable oils, recycled greases, or animal fats, or the wastes of those products or fats for use in the manufacturing of biodiesel fuel.

“Sale” or “selling” means the transfer of title or possession for a consideration, exchange, or barter, in any manner or by any means whatever.

This bill would specify that in the case of a pass-through entity, the 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.

This bill would allow any unused credit to be carried over for the next eight years, or until the credit has been exhausted, whichever occurs first.

This bill would repeal the credit as of January 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.

This bill uses undefined terms, namely, "all costs allocable to that item" and "direct costs." The absence of definitions to clarify these terms could lead to disputes with taxpayers and would complicate the administration of this credit.

This bill provides a recapture provision that applies to any "property" whenever within five years that "property" is sold, transferred, or otherwise disposed of, either directly or indirectly. Because the bill does not clearly specify what items of "property" qualify for the credit, it is similarly unclear to what items of property the recapture provision applies. The author may wish to amend the language to identify "qualified property" for the recapture provision.

TECHNICAL CONSIDERATION

Amendments 1, 2, and 3 have been provided to correct a technical error.

The bill would allow a credit for costs paid or incurred to manufacture biodiesel fuel for taxable years beginning on or after January 1, 2008, and before January 1, 2014. Therefore, the last fiscal year that a credit would normally be allowed would be for the period beginning December 1, 2013, and ending on November 30, 2014. However, the repeal date is January 1, 2014, 11 months before the end of the last taxable year the credit is allowed, so that the bill's provisions appear not to allow the credit for these fiscal year filers. The author may wish to amend the bill to revise the repeal date to December 1, 2014, in order to clearly include this 2013 fiscal year within the bill's provisions.

This bill would require the taxpayer to make an election on its original return for the "qualified costs" that qualify for a credit under any other sections in the California Revenue and Taxation Code. This would allow nonfilers to make an election on their late-filed original return and receive the credit on future returns. If that is not the author's intent, the author may wish to add language requiring the election to be made on a "timely filed" original return.

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 additional audit resources to determine the amount of the credit allowed, as well as a new form or worksheet to be developed for the calculation of the credit. As a result, this bill would impact the department's audit, printing, processing, and storage costs for tax returns. The additional costs have not been determined at this time. As the 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 74 Effective for Tax Years BOA 1/1/2008 Assumed Enactment After 6/30/07 (\$ in Millions)		
2007/08	2008/09	2009/10
-\$1	-\$12	-\$45

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

Revenue Discussion

Qualified biodiesel fuel production costs are correlated to the amount of biodiesel fuel produced in California. Qualified costs would also include pre-production expenses paid or incurred by taxpayers that have yet to produce biodiesel fuel.

The California Energy Commission (CEC) projects biodiesel fuel production in California to range from 90 million gallons to 120 million gallons during 2008; this estimate uses the midpoint of this range, or 105 million gallons.

It is estimated that 105 million gallons of biodiesel fuel will be produced during 2008 at a cost of \$3.50 per gallon (also provided by CEC); qualified costs would total \$367 million (105 million gallons x \$3.50 per gallon). Limiting creditable costs to 35% of qualified costs would total \$130 million in credits for 2008 (\$367 million x 35%). Total credits are increased by 10%, from \$130 million to \$140 million, to account for taxpayers that have paid or incurred costs but have yet to produce biodiesel fuel within a given year.

It is assumed that only 10% of credits generated would reduce current year income tax liabilities. Of the \$140 million credits generated during 2008 approximately \$14 million (\$140 million x 10%) would be applied to reduce tax liabilities for the current year. It is assumed that unused credits would be carried forward and applied ratably in the succeeding four taxable years. The cash flow impact of fiscal year 2007/08 reflects anticipated changes to estimated payments for the 2008 tax year.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 74
As Amended May 2, 2007

AMENDMENT 1

On page 6, line 39, strikeout "or" and insert:

of

AMENDMENT 2

On page 9, line 7, strikeout "net".

AMENDMENT 3

On page 9, line 7, strikeout "or" and insert:

of