

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: V. Manuel Perez Analyst: Scott McFarlane Bill Number: AB 1705
Related Bills: See Legislative History Telephone: 845-6075 Introduced Date: February 1, 2010 Amended Date: March 8, 2010
Attorney: Patrick Kusiak Sponsor:

SUBJECT: Income Exclusion for Specified Energy Property Grants

SUMMARY

This bill would exclude from income federal energy grants that are provided in lieu of federal energy credits.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to ensure that renewable energy projects are not unduly taxed on federal cash grants, thereby supporting the creation of green jobs in our state.

EFFECTIVE/OPERATIVE DATE

As a tax levy, the bill would be immediately effective and would specifically apply to specified federal grants paid in any taxable year pursuant to a federal law enacted on February 17, 2009.

POSITION

Pending.

Summary of Suggested Amendments

Technical amendments are suggested to eliminate an unnecessary section relating to the exclusion from alternative minimum taxable income.

ANALYSIS

FEDERAL/STATE LAW

Federal Law

Renewable Electricity Production Credit

Table with Board Position (S, SA, N, NA, OUA, NP, NAR, PENDING) and Department Director/Date (Selvi Stanislaus, 03/18/10).

An income tax credit is allowed for the production of electricity from qualified energy resources at qualified facilities (the “renewable electricity production credit”). Qualified energy resources comprise wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, qualified hydropower production, and marine and hydrokinetic renewable energy. Qualified facilities are, generally, facilities that generate electricity using qualified energy resources. To be eligible for the credit, electricity produced from qualified energy resources at qualified facilities must be sold by the taxpayer to an unrelated person.

Energy Credit

An income tax credit is also allowed for certain energy property placed in service. Qualifying property includes certain fuel cell property, solar property, geothermal power production property, small wind energy property, combined heat and power system property, and geothermal heat pump property.¹

Grants in Lieu of Credits

The American Recovery and Reinvestment Tax Act of 2009 (ARRA) authorizes the Secretary of the Treasury to provide a grant to each person who places in service during 2009 or 2010 energy property that is either (1) an electricity production facility otherwise eligible for the renewable electricity production credit or (2) qualifying property otherwise eligible for the energy credit.² In general, the grant amount is 30 percent of the basis of the property that would (1) be eligible for credit under Internal Revenue Code (IRC) section 48 or (2) comprise an IRC section 45 credit-eligible facility. For qualified microturbine, combined heat and power system, and geothermal heat pump property, the amount is 10 percent of the basis of the property. Qualifying property must be depreciable or amortizable to be eligible for the grant.

Taxpayers are permitted to claim the credit with respect to otherwise eligible property that is not placed in service in 2009 and 2010 so long as construction begins in either of those years and is completed prior to 2013 (in the case of wind facility property), 2014 (in the case of other renewable power facility property eligible for credit under IRC section 45), or 2017 (in the case of any specified energy property described in IRC section 48).

It is intended that the grant provision mimic the operation of the credit under IRC section 48.³ For example, IRC section 48 was amended to provide that the amount of the grant is not includable in gross income. However, the basis of the property is reduced by fifty percent of the amount of the grant. In addition, some or all of each grant is subject to recapture if the grant eligible property is disposed of by the grant recipient within five years of being placed in service.

Nonbusiness property and property that would not otherwise be eligible for credit under IRC section 48 or part of a facility that would be eligible for credit under IRC section 45 is not eligible for a grant under the provision. The grant may be paid to whichever party would have been entitled to a credit under IRC section 48 or IRC section 45, as the case may be.

¹ IRC section 48.

² Public Law 111-5, Section 1603.

³ Public Law 111-5, Section 1104.

If a grant is paid, no renewable electricity credit or energy credit may be claimed with respect to the grant eligible property. In addition, no grant may be awarded to any federal, state, or local government (or any political subdivision, agency, or instrumentality thereof) or any IRC section 501(c) tax-exempt entity.

No grant may be made unless the application for the grant has been received before October 1, 2011.

California Law

California has no comparable credit or grant.

The exclusion of the grant from federal income and the corresponding basis adjustments are provided under IRC section 48. California does not conform to IRC section 48; thus, the amount of the grant is included in California gross income and there is no required basis adjustment.

THIS BILL

Under Personal Income Tax Law (PITL) and Corporate Tax Law (CTL), this bill would provide the following:

- An exclusion from gross income and from alternative minimum taxable income for any grant made in any taxable year by the Secretary of the Treasury to a taxpayer who places in service specified energy property in accordance with ARRA; and
- That the basis of the energy property would be reduced by fifty percent of the grant and increased by fifty percent of any energy grant recapture.

TECHNICAL CONSIDERATIONS

Sections 1 and 2 of the bill would exclude specified energy grants from gross income and from alternative minimum taxable income under PITL and CTL; therefore, Section 3 of the bill, that would provide that IRC section 56(g)(4)(B)(i) shall not apply, is unnecessary. Technical amendments are suggested to eliminate this unnecessary section.

LEGISLATIVE HISTORY

SBX8 32 (Wolk, et al., 2009/2010) would provide a gross-income and alternative-minimum-taxable-income exclusion for ARRA energy grants in any taxable year, similar to this bill. That bill has passed the Legislature, and is pending action by the Governor.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 1705 Enactment Assumed After June 30, 2010 (\$ in Millions)			
2009-10	2010-11	2011-12	2012-13
-\$24	-\$23	-\$23	-\$15

LEGISLATIVE STAFF CONTACT

Legislative Analyst
Scott McFarlane
(916) 845-6075
scott.mcfarlane@ftb.ca.gov

Revenue Manager
Monica Trefz
(916) 845-4002
monica.trefz@ftb.ca.gov

Legislative Director
Brian Putler
(916) 845-6333
brian.putler@ftb.ca.gov

Analyst Scott McFarlane
Telephone # 845-6075
Attorney Patrick Kusiak

FRANCHISE TAX BOARD'S
AMENDMENTS TO AB 1705, AS AMENDED MARCH 8, 2010

AMENDMENT 1

On page 3, strikeout lines 19 through 27, inclusive.

AMENDMENT 2

On page 3, line 34, strikeout "SEC. 4.", and insert:
SEC. 3.

AMENDMENT 3

On page 4, line 1, strikeout "SEC. 5.", and insert:
SEC. 4.