ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author:	Tran	Analyst:	William Koch	Bill Number:	AB 2589
Related Bills:	See Legislative History	Telephone:	845-4372	Amended Date:	April 8, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Dual Renewable Energy Device Credit

SUMMARY

This bill would provide a refundable credit for the production of energy using dual renewable energy devices, as specified.

SUMMARY OF AMENDMENTS

The April 8, 2010, amendments deleted spot bill language and added the provisions discussed in this analysis.

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

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to promote renewable energy and provide incentives for businesses to locate in California.

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, 2011.

POSITION

Pending.

Summary of Suggested Amendments

Department staff is available to assist the author's office to resolve the implementation and technical concerns identified in this analysis.

Board Position:			Department Director	Date
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ANALYSIS

FEDERAL/STATE LAW

Existing federal and state 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.

Federal law currently provides a renewable electricity production credit and an energy credit. The renewable electricity production credit is part of the general business credit. The energy credit is a component of the investment credit, which is also part of the general business credit.

The federal renewable electricity production credit is allowed for the production of electricity from qualified energy resources at qualified facilities. Qualified energy resources include wind, closed-loop biomass, open-loop biomass, geothermal energy, solar energy, small irrigation power, municipal solid waste, and qualified hydropower production. 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. For taxable year 2009, the credit, in general, is 2.1 cents per kilowatthour of electricity produced. The credit amount is indexed annually for inflation.

The federal energy credit is allowed as a percentage of the cost of new property that is equipment that either (1) uses solar energy to generate electricity, to heat or cool a structure, or to provide solar process heat, or (2) is used to produce, distribute, or use energy derived from a geothermal deposit, but only, in the case of electricity generated by geothermal power, up to the electric transmission stage. Property used to generate energy for the purposes of heating a swimming pool is not eligible solar energy property. The credit, in general, is 30 percent of the cost of property that uses solar energy and 10 percent of the cost of property that uses geothermal energy.

Current state law has no comparable credits.

Prior state law allowed a credit for taxable years beginning on or after January 1, 2001, and before December 1, 2006, for taxpayers who purchased a solar or wind energy system for installation and electrical generation in California.

THIS BILL

This bill would, for taxable years beginning on or after January 1, 2011, allow a tax credit in an amount equal to one and eight-tenths cents ($.018) per kilowatthour produced by a dual renewable energy device during the taxable year by a qualified producer at a facility located in California or within three miles off the shore of California.

In addition, this bill would:

- Define “dual renewable energy device” as a device that utilizes two different renewable energy generating technologies where neither technology produces less than 20 percent of the total energy production by the device.
- Provide the definition of “facility” by reference to Section 25741(b) of the Public Resource Code.
- Define “qualified producer” as any taxpayer who owns a facility and who is engaged in the production of electricity using dual renewable energy devices.
- Provide in the case of any passthrough entity, the determination of whether a taxpayer is a qualified producer would be made at the entity level. Any credit would be allowed to the passthrough entity and passed through to the partners or shareholders in accordance with Part 10 or Part 11, as applicable, of the Revenue and Taxation Code.
- Require a qualified producer to submit to the Franchise Tax Board (FTB) any information the FTB or the Treasurer specifies to substantiate the total amount of kilowatthours produced no later than 25 days after the end of each calendar quarter.
- Allow any credit in excess of a taxpayer’s liability or other amounts due the FTB from the qualified producer to be refunded to the qualified producer on an annual basis.
- Require the FTB to submit an annual list of qualified producers that are eligible to receive a refund of the credit to the Treasurer, in a form agreed upon by the FTB and the Treasurer.
- Provide, upon appropriation by the Legislature, that the amounts that are determined by the Treasurer to be necessary to make the credit refunds be transferred to the Treasurer for the purpose of making those refunds.
- Allow the tax credit to taxpayers taxable under the Personal Income Tax Law and the Corporation Tax Law.
- Remain in effect until January 1, 2016, and as of that date be repealed.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns for this bill. 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 to a taxpayer that is qualified producer based on the amount of kilowatthours produced by a dual renewable energy device. Department staff lacks expertise in the field of renewable energy technology. 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, such as the California Energy Commission, and the taxpayer.

2. This bill would require a qualified producer to submit to the FTB any information the FTB or the Treasurer specifies to substantiate the total amount of kilowatthours produced no later than 25 days after the end of each calendar quarter. Tax credits are claimed by taxpayers on tax returns that are due annually. It is unclear why the qualified producer would be required to submit information to the FTB quarterly, which would increase the FTB's administrative costs for this bill.

3. The provisions of this bill would remain in effect until January 1, 2016, and be repealed as of that date. However, the bill is silent as to the final taxable year the credit could be claimed. If the author's intent is allow the credit for taxable years beginning on or after January, 1, 2011, and before January 1, 2016, the bill should be amended as such. In that case, the appropriate repeal date would be January 1, 2017.

4. This bill would involve the Treasurer in aspects of this credit, including making refunds of the credit. It appears the Controller should be substituted for the Treasurer, as it is the Controller's duty to account for and control disbursement of all state funds.

<u>TECHNICAL CONSIDERATIONS</u>

The following technical considerations were identified to provided clarity and consistency within the bill.

Page 2, line 16, after "facility" insert "has the same meaning as In-state renewable electricity generation facility".

Page 2, line 28, strikeout "limited liability company,".

Page 3, line 3, strikeout "qualified".

Page 3, line 4, strikeout "producer" and insert "taxpayer".

Page 3, line 4, strikeout "qualified".

Page 3, line 5, strikeout "producer" and insert "taxpayer".

Page 3, line 31, after "facility" insert "has the same meaning as In-state renewable electricity generation facility".

Page 4, line 3, strikeout "limited liability company,".

Page 4, line 12, strikeout "qualified".

Page 4, line 13, strikeout "producer" and insert "taxpayer"

Page 4, line 13, strikeout "qualified".

Page 4, line 14, strikeout "producer" and insert "taxpayer".

LEGISLATIVE HISTORY

AB 811 (Levine, 2007/2008) would have allowed a credit for an unspecified percentage of the cost to construct an eligible renewable resource. The renewable resource credit provisions were amended out of AB 811.

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

SB 463 (Strickland, 2009/2010) would have allowed a tax credit of up to $3,000 for the purchase and installation of a renewable energy resource project or a renewable energy resource conversion technology project. SB 463 was held in suspense in the Senate 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 law provides the following two energy related credits:

- The renewable energy technologies investment tax credit is equal to 75 percent of capital, maintenance, and research and development costs. The costs must be incurred between July 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, *Massachusetts*, *Minnesota*, and *New York* do not have a credit similar to the credit proposed by this bill.

FISCAL IMPACT

The department's costs to administer this bill cannot be determined until the implementation concerns identified have been resolved.

ECONOMIC IMPACT

Revenue Estimate

The revenue impact of this bill depends on the number of dual renewable energy devices operated by qualified producers at facilities located in California (or within three miles offshore) during the taxable year, and the average kilowatt hours of energy produced. Due to the conceptual nature of these devices, the amount of electricity that would be produced is unknown. However, given the amount of electricity generated by existing renewable energy devices, allowing this refundable credit could result in revenue losses in the tens of millions to hundreds of millions of dollars.

POLICY CONCERNS

Historically, the department has had significant problems with refundable credits and fraud. These problems are aggravated because if a refund is made that is later determined to be fraudulent; the refund commonly cannot be recovered. Striking the refundability provision from this credit would substantially reduce the department's concerns about fraud.

LEGISLATIVE STAFF CONTACT

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