Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Strickland	Analyst:	William Koch	Bill Number:	AB 2665
Related Bills:	See Legislative History	Telephone:	845-4372	Introduced Date:	February 19, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Service Station Emergency Standby Generator Credit

SUMMARY

This bill would allow a tax credit for the purchase and installation of an emergency standby generator at a service station located within California.

PURPOSE OF THE BILL

According to the intent language of this bill, the purpose of this bill is to provide an incentive for service station operators to purchase generators to continue to maintain electrical power to provide services to the public during power outages.

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, and before January 1, 2016.

POSITION

Pending.

ANALYSIS

FEDERAL/STATE LAW

Current federal and state laws generally allow a depreciation deduction for the obsolescence or wear and tear of property used in the production of income or property used in a trade or business. The amount of this deduction is determined, in part, by the cost (or basis) of the property. In addition, the property must have a limited, useful life of more than one year. Depreciable property includes equipment, machinery, vehicles, and buildings, but excludes land. Significant improvements to property are added to the basis of the property and are depreciated over the property's remaining useful life.

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.

Neither federal nor state laws have a credit comparable to the credit proposed by this bill.

Board Position:			Department Director	Date
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THIS BILL

For taxable years beginning on or after January 1, 2011, and before January 1, 2016, this bill would allow a personal and a corporate income tax credit in an amount equal to 5 percent of the costs paid or incurred for the purchase and installation of an emergency standby generator at a service station located in this state.

This bill provides the following definitions:

- "Emergency standby generator" is an electrical generator that is rated by the manufacturer to generate at least 30 kilowatts of electricity and whose sole function is to automatically provide electric power when electric power from a utility service is interrupted.
- "Service station" is an establishment that offers for sale or sells gasoline or other fuel to power motor vehicles to the public.

This bill specifies that a taxpayer would be required to recapture the allowed amount of the tax credit if the taxpayer subsequently sells or removes the generator from service within one year from the date it was placed in service. The recaptured amount would be added to the tax for the taxable year in which the emergency standby generator is sold or removed from service.

This bill would allow any unused credit to be carried over until exhausted.

This tax credit would be repealed as of December 1, 2016.

IMPLEMENTATION CONSIDERATIONS

Implementing this bill would require some changes to existing tax forms and instructions and information systems, which could be accomplished during the department's normal annual update.

LEGISLATIVE HISTORY

AB 2623 (Strickland, 2007/2008) contained provisions similar to this bill. AB 2623 failed to pass out of the Assembly Revenue and Taxation Committee.

SBX2 38 (Oller, 2001/2002) would have created a tax credit for the purchase of a backup generator and related equipment used to produce electricity. SBX2 38 failed to pass out of the Senate Environmental Quality Committee.

SBX1 38 and SB 220 (Oller, 2001/2002) were identical to SBX2 38. SBX1 38 died in the Senate Environmental Quality Committee when the first extraordinary session ended; SB 220 failed passage in the Senate Environmental Quality Committee.

OTHER STATES' INFORMATION

Florida, Illinois, Massachusetts, Michigan, Minnesota, and *New York* laws do not provide a credit comparable to the emergency standby generator credit that would be allowed by this bill. The laws of these states were reviewed because their tax laws are similar to California's income tax laws.

FISCAL IMPACT

This bill would require a calculation for the credit that would require a new form or worksheet to be developed. As a result, this bill would impact the department's printing, processing, and storage costs for tax returns, instructions, and publications. These changes could be incorporated into the department's annual changes, and as such, the costs would be minor.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue losses:

Estimated Revenue Impact of AB 2665 Effective For Tax Years Beginning On or After January 1, 2011 Enactment Assumed After June 30, 2010 ($ in Millions)					
2010-11	2011-12	2012-13	2013-14	2014-15	2015-16
-$0.1	-$0.4	-$0.6	-$0.6	-$0.5	-$0.2

This estimate does not account for changes in employment, personal income, or gross state product that could result from this bill.

POLICY CONCERNS

This bill would not require a taxpayer to reduce the depreciable basis of the emergency standby generator by the amount of the credit allowed.

Conflicting tax policies come into play whenever a credit is provided for an item that is already deductible as a business expense or is depreciable. Providing both a credit and allowing the full amount to be deducted would have the effect of providing a double benefit for that item. On the other hand, making an adjustment to reduce basis in order to eliminate the double benefit creates a difference between state and federal taxable income, which is contrary to the state's general federal conformity policy.

This bill would allow an unlimited carryover period. Consequently, the department would be required to retain the carryover on tax forms indefinitely. Recent credits have been enacted with a limited carryover period because experience shows credits typically are exhausted within eight years of being earned.

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