Franchise Tax Board

ANALYSIS OF AMENDED BILL

Author:	Strickland	Analyst:	Scott McFarlane	Bill Number:	SB 936
Related Bills:	See Legislative History	Telephone:	845-6075	Amended Date:	March 8, 2010
		Attorney:	Patrick Kusiak	Sponsor:	

SUBJECT: Income Exclusion for Energy Property Grants

SUMMARY

This bill would provide a gross-income and an alternative-minimum-taxable-income exclusion for federal energy property grants that are provided in lieu of federal tax credits.

SUMMARY OF AMENDMENTS

This bill as introduced on February 2, 2010, would make technical, non-substantive changes to a provision of the Revenue and Taxation Code pertaining to the personal income tax tables. The March 8, 2010, amendments eliminated those changes, and would provide the energy property grant exclusion explained in this analysis.

PURPOSE OF THE BILL

The purpose of this bill is to ensure fair and consistent application of California law to recipients of energy property grants made by the Secretary of Treasury.

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

Amendments are suggested to make minor technical changes.

Board Position:			Department Director	Date
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ANALYSIS

FEDERAL/STATE LAW

Federal Law

Renewable Electricity Production Credit

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).

[1] IRC section 48.
[2] Public Law 111-5, Section 1603.

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 50 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.

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 the Personal Income Tax Law and the Corporate Tax Law, this bill would provide:

- 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 that places in service specified energy property in accordance with ARRA; and
- That the basis of the energy property would be reduced by 50 percent of the grant and increased by fifty percent of any energy grant recapture.

TECHNICAL CONSIDERATIONS

Amendments are suggested to make minor technical changes.

LEGISLATIVE HISTORY

AB 1705 (Perez, 2009/2010) is similar to this bill. That bill is currently in the Assembly Revenue and Taxation Committee.

[3] Public Law 111-5, Section 1104.

SBX8 32 (Wolk, Leno, Calderon, and Hancock, 2009/2010) is a 2010 federal conformity bill that would have changed California's specified date of conformity to federal income tax law from January 1, 2005, to January 1, 2009, for taxable years beginning on or after January 1, 2010, and thereby, in general, conform to the numerous changes that were made to federal income tax law during that four-year period. Additionally, that bill (SBX8 32) would have conformed to federal gross-income and alternative-minimum-taxable-income exclusion for federal energy property grants provided in lieu of federal tax credits, similar to the gross-income and alternative-minimum-taxable-income exclusion this bill (SB 936) would provide. That bill was vetoed by the Governor on March 16, 2010.

FISCAL IMPACT

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

ECONOMIC IMPACT

Estimated Revenue Impact of SB 936 Enactment Assumed September 30, 2010 ($ in Millions)			
2009-10	2010-11	2011-12	2012-13
-$24	-$23	-$23	-$15

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FRANCHISE TAX BOARD’S
AMENDMENTS TO SB 936, AS AMENDED MARCH 8, 2010

AMENDMENT 1

On page 2, line 5, strikeout “tax payer”, and insert:

taxpayer

AMENDMENT 2

On page 2, line 12, strikeout “50(a)”, and insert:

48(a)

AMENDMENT 3

On page 2, line 13, strikeout “increased by any recapture provided”, and insert:

adjusted in accordance with rules applied

AMENDMENT 4

On page 2, line 15, after “American Recovery and Reinvestment”, insert:

Tax

AMENDMENT 5

On page 2, line 21, strikeout “tax payer”, and insert:

taxpayer

AMENDMENT 6

On page 2, line 28, strikeout “50(a)”, and insert:

48(a)

AMENDMENT 7

On page 2, line 29, strikeout “increased by any recapture provided”, and insert:

adjusted in accordance with rules applied

AMENDMENT 8

On page 2, line 31, after “American Recovery and Reinvestment”, insert:

Tax