

Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author: Gorell Analyst: William Koch Bill Number: AB 1339
Related Bills: See Legislative History Telephone: 845-4372 Introduced Date: February 18, 2011
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.

RECOMMENDATION AND SUPPORTING ARGUMENTS

No position.

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, 2012, and before January 1, 2017.

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.

Table with Board Position (S, SA, N, NA, O, OUA, NP, NAR) and Executive Officer (Selvi Stanislaus) and Date (04/19/11).

## THIS BILL

For taxable years beginning on or after January 1, 2012, and before January 1, 2017, this bill would allow a personal and a corporate income and franchise tax credit in an amount equal to 50 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” means an independently owned and operated establishment that offers for sale or sells gasoline or other fuel to power motor vehicles to the public.

This bill would:

1. Require the taxpayer to recapture the allowed amount of the tax credit if the taxpayer subsequently sells, returns to the vendor, or otherwise 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.
2. Provide that if the State Air Resources Board or the State Energy Resources Conservation and Development Commission establish a certification standard for emergency standby generators, the credit would be limited to energy efficient or low emission emergency standby generators that satisfy that standard. The credit would only be allowed for such generators for taxable years beginning on and after January 1 immediately following the calendar year in which the certification standard is established. Notice of such certification standard must be made to the Franchise Tax Board (FTB) within ten working days of establishing that standard.
3. Require the FTB to post on its Internet Web site a notice to taxpayers regarding the establishment of a certification standard for emergency standby generators.
4. Allow any unused credit to be carried over for eight years.
5. Repeal the tax credit as of December 1, 2017.

## IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concern for this bill. Department staff is available to work with the author’s office to resolve this and other concerns that may be identified.

This bill defines “service station” as an independently owned and operated establishment that offers for sale or sells gasoline or other fuel to power motor vehicles to the public. The term “independently owned and operated” is undefined and could lead to disputes between the department and taxpayers. If the author’s intent is to prevent vertically-integrated oil companies that produce and/or refine crude oil and that own and operate service stations from claiming the credit, amendments to the bill are necessary.

### LEGISLATIVE HISTORY

AB 2665 (Strickland, 2009/2010) contained provisions substantially similar to this bill. AB 2665 failed to pass out of the Assembly Appropriations Committee.

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 failed passage out of the Senate Environmental Quality Committee when the first extraordinary session ended; SB 220 failed passage out of the Senate Environmental Quality Committee.

### OTHER STATES’ INFORMATION

*Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York* laws do not provide a tax 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

Estimated Revenue Impact of AB 1339 For Taxable Years Beginning On or After January 1, 2012 Enactment Assumed After June 30, 2011				
2011-12	2012-13	2013-14	2014-15	2015-16
-\$300,000	-\$1,300,000	-\$2,400,000	-\$3,100,000	-\$3,300,000

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

## **SUPPORT/OPPOSITION**

Support: Association of California Healthcare Districts

Opposition: Unknown

## **ARGUMENTS**

Pro: The tax credit provided by this bill would increase the ability of service stations to remain open for business during emergencies, which could help save lives.

Con: California's fiscal situation is so dire; the state should avoid any additional tax expenditures.

## **LEGISLATIVE STAFF CONTACT**

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