

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Gorell Analyst: Michelle Chan Bill Number: AB 6
Related Bills: See Legislative History Telephone: 845-6805 Amended Date: March 21, 2013
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Prewiring for Alternative Energy Sources Tax Credit

SUMMARY

This bill would allow a tax credit for the costs paid or incurred to install prewiring for alternative energy sources at certain service stations.

RECOMMENDATION

No position.

Summary of Amendments

The March 21, 2013, amendments removed provisions that would have allowed a tax credit for the purchase and installation of an emergency standby generator and added provisions that would allow a tax credit for the costs paid or incurred for the installation of prewiring for alternative energy sources at service stations located along county-designated evacuation routes.

This analysis replaces the department's analysis of the bill as introduced December 3, 2012.

REASON FOR THE BILL

The reason for this bill is to provide an incentive for certain service station operators to install prewiring for the use of an alternative energy source 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, 2014, and before January 1, 2019.

Board Position:

_____ S _____ NA X NP
_____ SA _____ O _____ NAR
_____ N _____ OUA

Executive Officer

Date

Selvi Stanislaus

4/12/13

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.

Additionally, current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

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

THIS BILL

For taxable years beginning on or after January 1, 2014, and before January 1, 2019, this bill would allow a tax credit under Personal Income Tax Law and Corporation Tax Law in an amount equal to 50 percent of the amount paid or incurred during the taxable year, up to \$2,500, for the installation of prewiring for alternative energy sources at a service station located in this state.

This bill provides the following definitions:

- “Prewiring” means wiring, including, but not limited to, a transfer switch that would enable the use of an alternative energy source to operate fuel pumps, dispensing equipment, payment acceptance equipment, and safety systems, including, but not limited to, emergency fuel shutoff systems and fire alarms, that allows a service station to continue to maintain electrical power to provide services to the public during a power outage.
- “Service station” means an establishment that sells to the public gasoline or other fuel that powers motor vehicles and that is located on a county-designated evacuation route.

This bill would allow any unused credit to be carried over to reduce tax for the following eight years if necessary, until the credit is exhausted.

This tax credit would be repealed as of December 1, 2019.

IMPLEMENTATION CONSIDERATIONS

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

This bill would allow a credit in an amount equal to 50 percent of the amount paid or incurred for the installation of rewiring, not to exceed two thousand five hundred dollars (\$2,500). It is unclear whether the \$2,500 limitation applies to the amount of the credit or the cost of the installation of rewiring. To avoid disputes between taxpayers and the department, the author may wish to amend the bill for clarity.

This bill uses the undefined phrases, "alternative energy source" and "county-designated evacuation route," which could be more broadly interpreted than the author intends. For example, the term "alternative energy source" could be interpreted to include solar panels, wind power, geothermal and hydroelectric. The absence of definitions to clarify these phrases could lead to disputes with taxpayers and would complicate the administration of this credit.

This bill fails to specify what costs would be considered "in connection" with the installation of appropriate rewiring for alternative energy sources. For example, would costs "in connection" include labor, equipment, administrative, and overhead? In order to avoid disputes between taxpayers and the department, it is recommended that this bill be amended for clarity.

The credit would be limited to service stations located on a county-designated evacuation route. Typically, credits involving areas for which the department lacks expertise are certified by another agency or agencies that possess the relevant expertise. The certification language would specify the responsibilities of both the certifying agency and the taxpayer. It is recommended that this bill be amended to include a certifying agency.

LEGISLATIVE HISTORY

AB 1339 (Gorell, 2011/2012), AB 2665 (Strickland, 2009/2010), and AB 2623 (Strickland, 2007/2008) would have allowed a tax credit for the purchase and installation of an emergency standby generator at a service station located within California. AB 1339 and AB 2665 failed to pass out of the Assembly Appropriations Committee, and AB 2623 failed to pass out of the Assembly Revenue and Taxation Committee.

OTHER STATES' INFORMATION

The states surveyed include *Florida, Illinois, Massachusetts, Michigan, Minnesota, and New York*. These states do not offer a credit similar to the credit proposed in this bill. These states were selected due to their similarities to California's economy, business entity types, and tax laws.

FISCAL IMPACT

Until the implementation concerns have been resolved, department staff is unable to determine the costs to administer this bill.

ECONOMIC IMPACT

Revenue Estimate

Estimated Revenue Impact of AB 6 As Amended March 21, 2013 For Taxable Years Beginning On or After January 1, 2014 and before January 1, 2019 Enactment Assumed after June 30, 2013		
2012-13	2013-14	2014-15
-\$100,000	-\$300,000	- \$350,000

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

LEGAL IMPACT

This bill would restrict the tax credit to the installation of appropriate rewiring for alternative energy sources at a service station located within California. This bill could raise constitutional concerns under the Commerce Clause of the United States Constitution because it could appear to improperly favor in-state activity over out-of-state activity. On August 28, 2012, (Cutler v. Franchise Tax Board), the Court of Appeal issued a unanimous opinion holding that California's Qualified Small Business Stock statutes were unconstitutional. Specifically, the Court of Appeal held that the statutory scheme's requirement of a large California presence in order to qualify for an investment incentive discriminated against interstate commerce, and therefore violated the federal dormant commerce clause. While no court decision has yet invalidated, as a general matter, state income tax credits that provide an incentive for in-state activity, i.e., property placed in service in the state, employees employed in the state, etc., targeted tax credits such as the Rewiring for Alternative Energy Sources Credit may be subject to constitutional challenge.

SUPPORT/OPPOSITION

Support: None provided.

Opposition: None provided.

ARGUMENTS

Proponents: Supporters could argue that the tax credit provided by this bill could help save lives by increasing the ability of service stations located on a county-designated evacuation routes to remain open for business during emergencies.

Opponents: Some could argue that California's economic recovery remains fragile and the state should avoid any additional tax expenditures.

POLICY CONCERNS

This bill would allow a credit for the installation of certain wiring that is currently deductible as a business expense. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

LEGISLATIVE STAFF CONTACT

Michelle Chan

Legislative Analyst, FTB

(916) 845-6805

michelle.chan@ftb.ca.gov

Mandy Hayes

Revenue Manager, FTB

(916) 845-5125

mandy.hayes@ftb.ca.gov

Jahna Carlson

Acting Asst. Legislative Director, FTB

(916) 845-5683

jahna.carlson@ftb.ca.gov