Franchise Tax Board

ANALYSIS OF ORIGINAL BILL

Author:	Harper, et al	Analyst:	Davi Milam	Bill Number:	AB 2673
Related Bills:	See Legislative History	Telephone:	845-2551	Introduced Date:	February 19, 2016
		Attorney:	Bruce Langston	Sponsor	

SUBJECT: Sales Tax Reimbursement or Use Tax Paid for Hydrogen Refueling Station

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow certain taxpayers an income tax credit for sales and use taxes previously paid on hydrogen station refueling equipment.

This analysis only addresses provisions that would impact the department's programs and operations.

RECOMMENDATION

No position.

Summary of Suggested Amendments

Amendments have been suggested under the "Technical Considerations" discussion to address inconsistencies and to eliminate unnecessary language.

REASON FOR THE BILL

The reason for the bill is to provide additional funding for hydrogen station refueling equipment by eliminating applicable sales and use tax.

EFFECTIVE/OPERATIVE DATE

As a tax levy, this bill would be effective upon enactment and specifically operative for taxable years beginning on or after January 1, 2016, and before January 1, 2017, for certain property placed in service from January 1, 2014, to January 1, 2017.

FEDERAL/STATE LAW

Federal Law

Federal law provides a credit for alternative fuel vehicle refueling property that includes, but is not limited to, charging stations for electric vehicles.[1] This credit is available through December 31, 2016.

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[1] The federal credit provides that qualified alternative fuels include natural gas, liquefied petroleum gas, hydrogen, non-hydrogen, electricity, E85, or diesel fuel blends containing a minimum of 20 percent biodiesel.

The federal credit is calculated as 30 percent of qualified alternative fuel vehicle refueling property placed into service during the taxable year. For business or investment use property (depreciable property), the allowable credit may not exceed $30,000.[2] For consumers who purchase qualified residential fueling equipment, the allowable credit may not exceed $1,000.

Qualified alternative fuel vehicle refueling property is any property (other than a building or its structural components) used for either of the following:

- Storing alternative fuel at the point where the fuel is delivered into the fuel tank of a motor vehicle that is propelled by such; or
- Dispensing alternative fuel at such point into the fuel tank of a motor vehicle that is propelled by such fuel.

In addition, the following requirements must be met to qualify for the credit:

- The original use of the property commences with the taxpayer;
- The property is not used predominantly outside the United States; and
- If the property is not business or investment use property, the property must be installed on property used as the taxpayer's main home.

The charging station's cost must first be reduced by any deduction taken for the charging station in accordance with Internal Revenue Code (IRC) section 179.

If the property no longer qualifies for the credit within three years from the date placed in service, the credit would be subject to recapture.

State Law

Current state law lacks a comparable credit to the one that this bill would create.

Existing state law provides general rules that apply to the division of credits among two or more taxpayers, a husband and wife, and partners. In the case of a partnership, credits are allocated among partners pursuant to the written partnership agreement. State law also provides that any credit limitation applies at both the entity and individual taxpayer level, unless otherwise specified.

State law provides that an “S” corporation may apply one-third (33 percent) of the CTL credit against the “S” Corporation’s franchise or income tax, and the “S” Corporation will pass through 100 percent of the PITL credit to the shareholders.

[2] Unused credits that qualify as general business tax credits may be carried backward one year and carried forward 20 years.

THIS BILL

For the taxable years beginning on or after January 1, 2016, and before January 1, 2017, this bill would, under the PITL and the CTL, allow a qualified grant recipient a credit in an amount equal to the sum of sales tax reimbursements and use taxes previously paid during the period from January 1, 2014, to January 1, 2017, by the qualified grant recipient for hydrogen station refueling equipment that is placed in service during that period.

This bill would, by referencing Revenue and Taxation Code Section 6377.5, added by this bill, define the following phrases:

- "Qualified grant recipient" means a person who received a grant pursuant to Section 44272 of the Health and Safety Code for development of hydrogen refueling stations within this state.
- "Hydrogen station refueling equipment" means any of the following:
  - Equipment, including, but not limited to, machinery, devices, contrivances, and component, repair, or replacement parts, whether purchased separately or in conjunction with a complete machine and regardless of whether the equipment or component parts are assembled by the grant recipient or another party, to be located at a hydrogen refueling station within this state and used exclusively for the distribution, dispensing, storage, or production of hydrogen fuel for fuel cell electric vehicles, including, but not limited to, pressurized storage, compression, pre-cooling, and pumping of hydrogen fuel.
  - Personal property that is software or software services, regardless of location, and computer, computer-type, or data processing hardware or hardware services, regardless of location, that is used exclusively for the distribution, storage, or production of hydrogen fuel for fuel cell electric vehicles.
  - Any other personal property required to operate, control, regulate, or maintain the hydrogen refueling station equipment.

This bill would provide the following:

- A credit allowed to a pass-thru entity would be passed through to the partners or shareholders in accordance with provisions of existing state law.
- An unlimited carryover period for excess credit amounts.
- The credit would not be subject to the reporting requirement under Revenue and Taxation Code section 41.[3]
- The credit would remain in effect only until December 1, 2017, and would be repealed as of that date.

[3] Under Revenue and Taxation Code section 41, legislation that would create a new tax credit is required to include specific goals, purposes, objectives, and performance measures to allow the Legislature to evaluate the credit's effectiveness.

This bill would exempt the Franchise Tax Board (FTB) from the Administrative Procedure Act (APA) when the FTB is prescribing rules, guidelines, or procedures necessary or appropriate to administer the credit that would be enacted by this bill.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional concerns may be identified as the bill moves through the legislative process. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

This bill uses the undefined phrase "sum of sales tax reimbursements." The use of undefined phrases could lead to disputes with taxpayers and would complicate the administration of this bill. For clarity and ease of administration, it is recommended that the bill be amended.

This bill lacks administrative details necessary to administer the bill's provisions. For example:

- It is unclear how the department would verify that the taxpayer is a qualified grant recipient who placed the equipment in service or determine the "sum of sales tax reimbursements" and "use taxes previously paid" that is attributed to the taxpayer.
- Department staff lacks expertise on what constitutes hydrogen station refueling equipment. 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.

TECHNICAL CONSIDERATIONS

This bill would allow the credit for taxes "previously paid." Typically, credits are allowed for amounts that are either "paid or incurred," thus providing for both cash-basis and accrual-basis accounting methods.

The end date for the tax credit should be "December 31, 2016" rather than "January 1, 2017" as the sales and use tax exemption that would be added by this bill would begin January 1, 2017. Thus, it would be unlikely that a credit could be claimed for sales and use taxes paid on January 1, 2017.

This bill would provide that a credit allowed to a pass-thru entity would be passed through as provided under existing law. The bill should be amended to eliminate unnecessary language.

LEGISLATIVE HISTORY

AB 2675 (Harper, 2015/2016) would allow a credit for acquiring electric vehicle infrastructure. AB 2675 is pending before the Assembly Revenue and Taxation Committee.

AB 1159 (Manuel, 2009/2010) would have allowed a tax credit equal to 100 percent of the sales or use tax paid to acquire property used to produce or generate renewable energy. AB 1159 failed to pass by the constitutional deadline.

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.

Although *Florida, Illinois, Massachusetts* and *Michigan* do not offer a tax credit similar to the credit this bill would allow, *Massachusetts* provides grant funding for public and private fleets to purchase alternative fuel vehicles and infrastructure. The remaining three states offer rebate programs relating to the purchase or lease and installation of electric vehicle supply equipment.

Minnesota laws do not provide a credit comparable to the credit that would be allowed by this bill.

New York offers a nonrefundable tax credit for alternative fuels vehicle refueling property[4] and electric recharging property[5] that is available only when the property is used in a trade or business located in the state of *New York*. The credit is equal to the lesser of $5,000 or 50 percent of the cost of property. Any unused credit may be carried forward indefinitely.

FISCAL IMPACT

The department is unable to determine the costs to implement this bill. As the bill moves through the legislative process and the implementation concerns are resolved, costs will be identified and an appropriation will be requested, if necessary.

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[4] Alternative fuels vehicle refueling property includes all of the equipment needed to dispense any fuel at least 85 percent of the volume of which consists of one or more of the following: natural gas, liquefied natural gas, liquefied petroleum, or hydrogen.
[5] Electric vehicle recharging property includes all of the equipment needed to convey electric power from the electric grid or another power source to an onboard vehicle energy storage system.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2673 As Introduced February 19, 2016 Assumed Enactment After June 30, 2016 (In $ Millions)		
2016-17	2017-18	2018-19
- $4.3	- $0.8	- $0.5

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill. In addition, this estimate only reflects the revenue impact to income and franchise taxes.

Revenue Discussion:

According to data from the California Environmental Protection Agency Air Resources Board, approximately 51 hydrogen refueling stations are expected to be placed into service by qualified grant recipients between 2014 and 2016. Based on a 2013 Report by the National Renewable Energy Laboratory, the average cost of hydrogen refueling station equipment is estimated to be $2.8 million per station. It is assumed 75 percent of station costs are qualifying equipment costs. This results in an estimated $107 million in qualified equipment expenses. Applying an average state sales tax rate of 8.5 percent, an estimated $9.1 million in credits would be available in 2016. It is assumed that 100 percent of the sales and use tax paid would qualify as the credit amount. Research indicates that 75 percent, or $6.8 million, of hydrogen refueling stations would be put into service by income and franchise taxpayers and the remaining 25 percent would be put into service by entities that do not pay income tax, such as cities and counties. The estimate assumed that 60 percent, or $4.1 million, in generated credits would be used in 2016 and the remainder would be used over the next several years. It is assumed that 70 percent would be claimed by corporations and the remaining 30 percent would be claimed by personal income taxpayers.

The tax year estimates are converted to fiscal year estimates, and then rounded to arrive at the amounts reflected in the above table.

SUPPORT/OPPOSITION

Support: First Element Fuel, sponsor.

Opposition: None provided.

ARGUMENTS

Proponents: Some may say that the bill would expand the state's hydrogen station refueling equipment thereby encouraging expansion of hydrogen-fueled vehicle use in the state as well as reducing carbon emissions.

Opponents: Some may argue that eligibility for the credit is overly narrow and should be expanded to encourage investment in infrastructure to support all types of alternative-fuels.

POLICY CONCERNS

This bill fails to limit the amount of the credit that may be taken. Generally, credits are limited as a percentage of amounts paid or incurred. Credits that could potentially be quite costly are sometimes limited either on a per-project or per-taxpayer basis.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same amounts paid for hydrogen station refueling equipment.

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

The bill requires the hydrogen station refueling equipment to be "placed in service." Because the bill fails to specify otherwise, the credit would be allowed for equipment placed in service outside of the state.

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