Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Harper, et al.	Analyst:	Davi Milam	Bill Number:	AB 2673
Related Bills:	See Prior Analysis	Telephone:	845-2551	Amended Date:	March 28, 2016
		Attorney:	Bruce Langston	Sponsor	

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

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 refueling station equipment.

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

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 28, 2018, amendments added coauthors, modified a definition, made technical changes, and removed the requirement that the equipment must be placed in service.

Except for the "Effective/Operative Date," "This Bill," "Implementation Considerations," "Economic Impact," and "Policy Concerns" sections, the remainder of the department's analysis of the bill as introduced February 19, 2016, still applies.

The "Technical Considerations" and "Fiscal Impact" sections have been restated for convenience.

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 amounts paid during the period from January 1, 2014, to January 1, 2017.

THIS BILL

For 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 an income tax 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 refueling station equipment.

This bill would, by referencing Revenue and Taxation Code (R&TC) 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 refueling station 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, dispensing, storage, or production of hydrogen fuel at a hydrogen refueling station for fuel cell electric vehicles.
  - Any other personal property required to operate, control, regulate, or maintain the hydrogen refueling station equipment.

This bill would specify 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 R&TC section 41.[1]
- The credit would remain in effect only until December 1, 2017, and would be repealed as of that date.

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.

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[1] Under R&TC 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.

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 a taxpayer is a qualified grant recipient or determine the "sum of sales tax reimbursements" and "use taxes previously paid" that is attributed to a taxpayer.
- Department staff lacks expertise on hydrogen refueling station 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.

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.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2673 As Amended March 28, 2016 Assumed Enactment After June 30, 2016 ($ In Millions)		
2016-17	2017-18	2018-19
- $4.5	- $0.9	- $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 Energy Commission approximately 54 hydrogen refueling stations are expected to receive qualified grants 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 $113 million in qualified equipment expenses. Applying an average state sales tax rate of 8.5 percent to this amount, results in an estimated $9.6 million in sales and use tax paid. For purposes of this estimate, it is assumed that 100 percent of the sales and use tax paid would qualify as the credit amount. The available credit amount was reduced to $7.3 million based on research indicating that 75 percent of hydrogen refueling stations would be built by income and franchise taxpayers and the remaining 25 percent would be built by entities that do not pay income tax, such as cities and counties. The estimate assumed that 60 percent, or $4.3 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.

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.

Because the bill fails to specify otherwise, the credit would be allowed for certain personal property located outside of the state.

Most credits involving the acquisition and subsequent use of an item of property allow the credit to be claimed in the taxable year that the "placed in service date" occurs.

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