Franchise Tax Board

SUMMARY ANALYSIS OF AMENDED BILL

Author:	Calderon	Analyst:	Funmi Obatolu	Bill Number:	AB 1341
Related Bills:	See Legislative History	Telephone:	845-5845	Amended Dates	May 2 &11, 2017
		Attorney:	Bruce Langston	Sponsor:	

SUBJECT: Near-Zero-Emission and Zero-Emission Vehicle Credit and Deduction

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow a qualified taxpayer:

- A credit for the purchase or lease of a new electric vehicle.
- A deduction for the purchase of a used near-zero or zero-emission vehicle.

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

RECOMMENDATION – NO POSITION

Summary of Amendments

The May 2, 2017, amendments specified that a qualified taxpayer must claim the income tax credit on an originally filed return and modified the credit's operative and sunset dates. The May 11, 2017, amendments added a provision allowing a deduction for the purchase of a used near-zero- or zero-emission vehicle and further modified the income tax credit provision. These amendments resolved four of the implementation considerations and one policy concern discussed in the department's analysis of the bill as amended on March 29, 2017, and created additional implementation considerations and policy concerns.

As a result of the amendments, the "Effective/Operative Date," "Federal /State Law," "This Bill," "Implementation Considerations," "Economic Impact" and "Policy Concerns" sections have been revised. The remainder of the department's analysis of the bill as amended March 29, 2017, still applies. The "Fiscal Impact," section has been restated for convenience. The "Support/Opposition" section has been revised with updated information.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2018, and specifically operative for taxable years beginning on or after January 1, 2018, and before January 1, 2023.

FEDERAL/STATE LAW

Above-the-line deductions

Existing federal and state laws allow for the deduction of certain expenses, from gross income, when calculating adjusted gross income (AGI), such as moving expenses and interest on education loans, certain ordinary and necessary trade and business expenses, losses from the sale or exchange of certain property, contributions for pension, profit-sharing and annuity plans of self-employed individuals, retirement savings, and alimony. Thus, all taxpayers with these types of expenses receive the benefit of the deduction, regardless of whether the taxpayer itemizes deductions or uses the standard deduction. These are known as above-the-line deductions.

There is no existing state or federal above-the-line deduction similar to the deduction this bill would create.

Credits

Existing state and federal 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.

Credits for Plug-in Electric Drive Motor Vehicles

Federal law provides a credit for Qualified Plug-in Electric Drive Motor Vehicles, including passenger vehicles and light trucks.

The credit is equal to $2,500, plus, for a vehicle which draws propulsion energy from a battery with at least 5 kilowatt hours of capacity, $417, plus an additional $417 for each kilowatt hour of battery capacity in excess of 5 kilowatt hours. The total amount of the credit allowed for a vehicle is limited to $7,500.

The vehicle must be acquired by a taxpayer for use or lease, and not for resale. Additionally, the original use of the vehicle must commence with the taxpayer and the vehicle must be used predominantly in the United States. For purposes of the credit, a vehicle is not considered acquired prior to the time when title to the vehicle passes to the taxpayer under state law. Current state law lacks a credit comparable to the credit this bill would create.

THIS BILL

Credit for the purchase or lease in California of new vehicles that are registered in California

Under the PITL, for each taxable year beginning on or after January 1, 2018, and before January 1, 2023, a qualified taxpayer would be allowed a tax credit in an amount equal to the following amounts paid or incurred for the purchase or lease in California of new vehicles that are registered in California:

- $1,500 for plug-in hybrid electric vehicles with an electric range of more than 20 miles.
- $2,500 for battery electric vehicles.
- $5,000 for hydrogen fuel cell electric vehicles.

A qualified taxpayer who is a low-income purchaser as defined would be allowed an additional credit of $500 for each vehicle type.

In lieu of claiming the credit against the "net tax", a qualified taxpayer purchasing a near-zero-emission or a zero-emission vehicle may assign the tax credit to a financing entity at the time of purchase by entering the following information into an election statement:

- The vehicle identification number of the vehicle eligible for the credit.
- An affirmation that all the following requirements have been met:
  - The vehicle purchased is a “near-zero-emission or “zero-emission” vehicle, as defined.
  - The individual or individuals purchasing the vehicle is a qualified taxpayer, as defined. The qualified taxpayer assigns the tax credit to the financing entity and forfeits the right to claim the tax credit on their tax return in exchange for good and valuable consideration.

The financing entity would be required to compensate the qualified taxpayer for the full nominal value of the tax credit. Such compensation would be considered a refund of state taxes and not considered as income to the qualified taxpayer. The financing entity would be required to electronically submit a report containing the information in the election statement to the Franchise Tax Board (FTB) within 30 days of the purchase of a near-zero-emission or zero-emission vehicle.

The FTB would create the election statement and may request any necessary information including the following:

- The vehicle identification number of the vehicle eligible for the credit.
- An affirmation that the taxpayer and the vehicle qualify for the credit.

A financing entity that is assigned the tax credit would be allowed for each taxable year beginning on or after January 1, 2018, and before January 1, 2023, the tax credit assigned to it against the “net tax” as defined in Section 17039 or the “tax” as defined in Section 23036.

The qualified taxpayer must first obtain the preapproval from the State Air Resources Board.

The State Air Resources Board would be required to implement a process to allow a qualified applicant to obtain preapproval from the State Air Resources Board prior to purchasing or leasing a near-zero- or zero-emission vehicle. The process would provide the applicant a unique identifiable number, which the applicant can present to a dealer, and would enable the unique identifiable number to be verified by a dealer at the time of purchase or lease. The verification of the applicant’s eligibility must be provided to a dealer in an electronic or paper format.

This bill would define the following:

"Qualified taxpayer" means an individual or individuals who meet the income eligibility requirements specified by the State Air Resources Board[1] and who purchased a near-zero-emission or zero-emission vehicle during the taxable year.

“Low-income purchaser” means an individual or individuals whose household income does not exceed 80 percent of the median income of the county in which they reside as determined by the United States Department of Housing and Urban Development.

"Near-zero-emission vehicle" means a vehicle that utilizes zero-emission technologies, enables technologies that provide a pathway to zero-emissions operations, or incorporates other technologies that significantly reduce criteria pollutants, toxic air contaminants, and greenhouse gas emissions, as determined by the State Air Resources Board in consultation with the State Energy Resources Conservation and Development Commission consistent with meeting the state's mid- and long-term air quality standards and climate goals.

"Zero-emission vehicle" means a vehicle that produces no emissions of criteria pollutants, toxic air contaminants, and greenhouse gases when stationary or operating, as determined by the State Air Resources Board.

The bill would allow any unused credit to be carried forward for seven years.

The bill contains language that it is the intent of the Legislature to enact legislation to provide that the credit would be refundable, upon appropriation, if the amount of the credit exceeds the taxpayer's net tax, in lieu of the credit carry forward.

Except for a credit assigned to a financing entity, the credit would be allowed only on a timely filed original return.

The income eligibility provisions in Section 44274.3 of the Health and Safety Code shall remain in effect for purposes of qualifying for these income tax credits.

The credit would be repealed by its own terms on December 1, 2023.

Deduction for Purchase of Used Near-Zero-Emission or Zero-Emission Vehicle

Under the PITL, for taxable years beginning on or after January 1, 2018, and before January 1, 2023, a qualified taxpayer, who during the taxable year, purchased a used near-zero- or zero-emission vehicle, would be allowed an "above-the-line" deduction[2] in the following amounts:

1) $1,500 for plug-in hybrid electric vehicles with an electric range of more than 20 miles.

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[1] Eligibility requirements pursuant to Health and Safety Code sections 44258.4(c)(3)(B) and 44274.3.
[2] A deduction that reduces gross income to arrive at AGI, before the itemized or standard deduction.

2) $2,500 for battery electric vehicles.
3) $5,000 for hydrogen fuel cell electric vehicles.

For purposes of the deduction, this bill would define the following:

"Qualified taxpayer" would mean an individual or individuals who meet the income eligibility requirements specified by the State Air Resources Board.[3]

"Near-zero-emission vehicle" would mean a vehicle that utilizes zero-emission technologies, enables technologies that provide a pathway to zero-emissions operations, or incorporates other technologies that significantly reduce criteria pollutants, toxic air contaminants, and greenhouse gas emissions, as defined by the State Air Resources Board in consultation with the State Energy Resources Conservation and Development Commission consistent with meeting the state's mid- and long-term air quality standards and climate goals.

"Zero-emission vehicle" would mean a vehicle that produces no emissions of criteria pollutants, toxic air contaminants, and greenhouse gases when stationary or operating, as determined by the State Air Resources Board.

The tax deduction would remain in effect until December 1, 2023, and as of that date would be repealed.

IMPLEMENTATION CONSIDERATIONS

Department staff has identified the following implementation considerations for purposes of a high-level discussion; additional considerations 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 considerations that may be identified.

The bill would allow the deduction irrespective of the vehicle's purchase price. For example, a qualified taxpayer who purchased a used battery electric vehicle for less than $2,500 would receive a deduction of $2,500. If this is contrary to the author's intent, the bill should be amended.

This bill uses terms and phrases that are undefined, i.e., “plug-in hybrid vehicles,” “battery electric vehicles,” ”hydrogen fuel cell electric vehicles,” ”used,” “financing entity,” “election statement,” “good and valuable consideration,” “full nominal value.” The absence of definitions to clarify these terms 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.

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[3] Eligibility requirements pursuant to Health and Safety Code section 44258.4(c)(3)(B).

The definition of a "low-income purchaser" would include an individual or individuals whose household income does not exceed 80 percent of the median income of the county in which the individual or individuals reside. Household income is not a figure that appears on federal or state tax returns. To avoid confusion and for ease of administration, the author may want to consider replacing the reference to household income with a reference to AGI, and specifying the years the AGI limitation would apply.

This bill lacks administrative details necessary to implement the bill and determine its impacts to the department's systems, forms, and processes. The bill is silent or unclear on the following issues:

- Because the bill fails to specify otherwise, no credit would be allowed on the purchase of a new near-zero-emission or zero-emission vehicle if the vehicle utilized technology other than the specified electric technologies (plug-in hybrid electric, as specified, battery electric, or hydrogen fuel cell electric).
- It is unclear whether a qualified taxpayer that was also a low-income purchaser would be allowed to assign the additional $500 credit.
- The bill fails to limit the number of purchases a qualified taxpayer could make that would be eligible for the credit or deduction.
- Because the bill fails to specify otherwise a qualified taxpayer could, for example, purchase a new electric vehicle, as specified, thus generating a credit, and then sell that car (now a used electric vehicle, as specified) to another qualified taxpayer thus generating a deduction on the same vehicle in the same taxable year.
- It is unclear how a corporate taxpayer that is assigned the credit would be allowed and report the credit as the bill lacks credit provisions under the Corporation Tax Law. For clarity, ease of administration, and the ensure consistency with the author's intent, this bill should be amended.
- This bill would require the State Air Resource Board to preapprove an applicant's eligibility for the credit. However, the preapproval process lacks a requirement to report such eligibility to the FTB in a form and manner that would allow the FTB to verify that reported credits were properly claimed. For ease of administration it is suggested that this bill be amended to include a reporting requirement "in the form and manner specified by the FTB."
- For purposes of the deduction it is unclear how the FTB would verify that the individual and the used vehicle meets the eligibility requirements as specified.

FISCAL IMPACT

The department's costs to implement this bill have yet to be determined. 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

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 1341 As Amended May 11, 2017 Assumed Enactment After June 30, 2017 ($ in Millions)		
2017-18	2018-19	2019-20
- $65	- $150	- $170

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

Revenue Discussion

Based on available electric vehicles sales data, it is estimated that approximately 90,000 qualified new vehicles, which includes leased vehicles, and 20,000 used vehicles would be sold in 2018. Approximately 85 percent, or 94,000, would be purchased by taxpayers who have taxable income.

For those who purchase or lease a qualified new vehicle, the total credit generated is estimated to be $185 million in taxable year 2018. Approximately $10 million of this amount would be attributed to the additional $500 credit allowed for a low-income purchaser. It is assumed that 40 percent of the credit generated would be assigned to a corporate financing entity and 60 percent of the credit would be claimed by the individual taxpayer purchasing or leasing a qualified vehicle. It is further assumed that 75 percent of the credit would be claimed in the year generated and the remaining 25 percent would be claimed over the next several years. A 5 percent reduction is added to account for credits claimed on other than timely filed returns. This results in an estimated loss of $133 million in the 2018 taxable year.

It is estimated that for those who purchase qualified used vehicles and claim the deduction, taxable incomes would be reduced by $40 million in 2018. Using an average tax rate of 4 percent, the estimated loss from the deduction would be $1.7 million in 2018.

The combined estimated revenue loss is $135 million. The estimate is then adjusted to reflect changes in the economy over time. The tax-year estimates are converted to fiscal-year estimates and then rounded to arrive at the amounts shown in the above table.

SUPPORT/OPPOSITION[4]

Support: Alliance of Automobile Manufacturers, Association of Global Automakers, CALSTART.

Opposition: None provided.

POLICY CONCERNS

This bill would create differences between federal and California tax law, thereby increasing the complexity of California tax return preparation.

This bill would allow taxpayers in certain circumstances to claim multiple tax benefits for the same item of expense.

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[4] Assembly Committee on Revenue and Taxation analysis, dated April 21, 2017.