STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Dahle	Sponsor:	Bill Number: SB 1020
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Attorney: Shane Hofeling	Related Bills: See Legislative History	

SUBJECT

Income Tax Credit: Backup Power Generator

SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), allow a credit to taxpayers for costs paid or incurred to purchase a backup power generator for use in a high fire-threat district.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to minimize the impact of power shutoffs on residents and businesses located in high fire-threat districts.

ANALYSIS

This bill would, under the PITL and the CTL, for taxable years beginning on or after January 1, 2019, and before January 1, 2021, allow a credit in an amount equal to the costs paid or incurred by a taxpayer for the purchase of a backup power generator for use in a residence or commercial property located in a high fire-threat district. The credit allowed to a taxpayer would be limited to $1,500 and any unused credits would be carried over for up to five years, if necessary. This credit would be allowed in lieu of any deduction for amounts that are taken into account in calculating the credit.

The bill would define "high fire-threat district" as an area identified as tier 2 (elevated) or tier 3 (extreme) fire risk on the fire-threat map maintained by the Public Utilities Commission.

This bill would limit the total amount of the credit allowed to two billion dollars ($2,000,000,000). The Franchise Tax Board (FTB) would be required to allocate the credit to taxpayers on a first-come-first-served basis. The FTB's determination on the date a return is received and the allocation of the credit may not be reviewed in any administrative or judicial proceeding.

Section 3 of this bill contains language to comply with Revenue and Taxation Code (R&TC) section 41. The bill would provide the goal of the credit and state that the measurement of effectiveness would be the number of taxpayers claiming the credit.

This credit would remain in effect only until December 1, 2021, and would be repealed as of that date.

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, 2019, and before January 1, 2021.

Federal/State Law

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 hiring credits). These credits generally are designed to provide incentives for taxpayers to perform various actions or activities that they may not otherwise undertake.

Tax credits are used to reduce the taxpayer's tax liability dollar-for-dollar. One benefit of allowing tax credits rather than deductions is that tax credits are generally claimed after taxable income has been calculated and, therefore, do not create differences between the taxable income amounts shown on the federal and state income tax returns.

There are currently no federal or state credits comparable to the credit this bill would create.

Implementation Considerations

This bill lacks administrative details necessary to implement the credit specified in the bill and to determine its impacts to the department's systems, forms, and processes.

The bill is silent on the following issues:

- Taxpayers would not know whether or not the credit cap of $2,000,000,000 was reached before filing their return, and that could result in denial of the credit and assessment of interest and penalties.
- Unless otherwise provided, the first-come-first-served allocation by FTB would be based on the date a claim for the credit was received by the department regardless of the year of the claim, and that could result in denial of the credit and assessment of interest and penalties. If this is contrary to the author's intent, the bill should be amended.

The bill is silent on the method that the Legislature would obtain the information on the number of taxpayers claiming the credit for use in evaluating the effectiveness of the credit.

This bill would require taxpayers to file amended returns to claim a credit for prior taxable years which would be costly to the department.

Technical Considerations

For clarity, the following changes are recommended:

- On page 2, line 24, strike out "(1)" and insert "(f)"
- On page 2, line 29, strike out "(f)" and insert "(g)"
- On page 3, line 16, strike out "(1)" and insert "(f)"
- On page 2, line 21, strike out "(f)" and insert "(g)"

Policy Concerns

This bill would allow a tax benefit for a prior year, which could be considered a gift of public funds.

Because the bill fails to specify otherwise:

- Multiple taxpayers could purchase a generator for use at the same residence or commercial property and qualify for the credit.
- A taxpayer could purchase a generator, claim the credit, and not install or use the generator for any length of time, even during a power shut off, and qualify for the credit.
- A taxpayer could purchase a generator for any use in a high fire-threat district, claim the credit and qualify for the credit even if the taxpayer does not own or occupy the residence or commercial property.

Generally, credits are limited as a percentage of amounts paid or incurred. This bill would allow a credit that lacks an economic outlay requirement.

LEGISLATIVE HISTORY

SB 1415 (Borgeas, et al., 2019/2020) would, under the PITL, allow a credit up to $3,500 to a qualified taxpayer for the purchase of a back-up electricity generator that does not exceed $7,000 for use in a home or business in a designated wildfire zone. SB 1415 failed to pass out of the Senate by the constitutional deadline.

SB 295 (McGuire, et al., 2019/2020) would have created two home fire safety tax credits, the Qualified Home Hardening credit and the Qualified Vegetation Management credit. SB 295 failed to pass out of the Assembly by the constitutional deadline.

AB 1562 (Kim, et al., 2015/2016), as amended, would have allowed an exemption from the state portion of the sales and use tax for specified purchases of, among other things, a portable generator costing $750 or less used in the event of a power outage. AB 1562 failed to pass out of the Assembly by the constitutional deadline.

AB 1339 (Gorell, et al., 2011/2012), as amended, would have, under the PITL and the CTL, allowed a credit up to $2,500 for 50 percent of amounts paid or incurred for the purchase and installation of an emergency standby generator at a specified service station located in California. AB 1339 failed to pass out of the Assembly by the constitutional deadline.

FISCAL IMPACT

The department's costs to implement this bill were not determined, but staff anticipates costs could be significant.

ECONOMIC IMPACT

Revenue Estimate

This bill would result in the following revenue loss:

Estimated Revenue Impact of SB1020 as Introduced on February 14, 2020
Assumed Enactment after June 30, 2020

($ in Millions)

Fiscal Year	**Revenue**
2019-20	-$90
2020-21	-$180
2021-22	-$200
2022-23	-$42

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

Revenue Discussion

Residential Credit:

Based on wildfire risk data for California, it is estimated there would be approximately 1.6 million residences were located in either an elevated risk or extreme risk fire area in the 2020 taxable year. Of these it is estimated that $400,000 or 25 percent, of households would purchase a new generator or replace an existing one. Based on industry data, it is assumed the maximum credit of $1,500 per household would be met. This would result in a total credit generated of $600 million.

It is estimated, including the S corporation adjustment, $390 million would be earned by taxpayers with sufficient tax liability to offset with the credit in 2020. It is estimated that 80 percent, or $304 million would be claimed in the year generated in. The remainder of the credits would be used over the subsequent four years.

Commercial Property Credit:

Based on data from Dun and Bradstreet, it is estimated there would be approximately 400,000 commercial properties in areas at risk to wildfires in the 2020 taxable year. It is estimated that 40 percent, or 165,000, of businesses would either purchase a new generator, replace an existing unit, or purchase a back-up. Based on industry data it is estimated the maximum credit of $1,500 per business would be met, resulting in a total credit of $250 million.

Using data from the FTB, it is estimated, including the S corporation adjustment, that $214 million would be earned by taxpayers with sufficient tax liability in 2020 to offset the credit. Of this amount, it is estimated that 50 percent, or $105 million, would be claimed in the year generated. The remainder of the credits would be used over the subsequent four years.

To arrive at the offsetting tax effect of generator expense deduction that would otherwise be allowed under current law, it is estimated that qualified taxpayers would be able to deduct approximately $250 million in qualified expenses in taxable year 2020. Applying an average tax rate of 7 percent, results in an offsetting revenue gain of $ 19 million. The resulting net revenue loss, for taxable year 2020, would be $85 million.

Both the Personal Income Tax and Corporation tax year estimates were converted to fiscal year estimates and rounded to arrive at the amounts in the above table. Purchases made in 2019 are accrued back one year.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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