



Bill Analysis

Author: Borgeas, et al.	Sponsor:	Bill Number: SB 1415
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Attorney: Shane Hofeling	Related Bills: See Legislative History	

SUBJECT

Income Tax Credit: Back-up Electricity Generators

SUMMARY

This bill would, under the Personal Income Tax Law (PITL), allow a credit to qualified taxpayers for the amount paid or incurred to purchase a back-up electricity generator for use in a residential or commercial property in a designated wildfire zone.

RECOMMENDATION

No position

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

The reason for the bill is to encourage the purchase of back-up electricity generators in designated wildfire zones.

ANALYSIS

This bill would, under the PITL, for taxable years beginning on or after January 1, 2021, and before January 1, 2026, allow a credit in an amount equal to 50 percent of the amount paid or incurred by a qualified taxpayer for the purchase of a back-up electricity generator during the taxable year for use in a home or business in a designated wildfire zone. The credit allowed to a taxpayer would be limited to \$3,500 per taxable year.

The bill would define the following terms and phrases:

- “Qualified expenditure” means the purchase of a back-up electricity generator that does not exceed \$7,000, for use in a residence or commercial property in a designated wildfire zone.
- “Qualified taxpayer” means a natural person or a small business that incurs a qualified expenditure.
- “Designated wildfire zone” means a very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection (CAL FIRE) pursuant to Section 51178 of the Government Code (GC), or a high or very high fire hazard severity zone as indicated on maps adopted by the CAL FIRE pursuant to section 4202 of the Public Resources Code (PRC). (Please see Appendix A for additional detail).

The bill would allow unused credits to be carried over until exhausted.

Section 2 of this bill contains language to comply with Revenue and Taxation Code (R&TC) section 41. This bill would provide the goal of the credit and state that the measurement of effectiveness would be the number of taxpayers that are allowed the credit. The Franchise Tax Board (FTB) would be required to annually publish data on the credit through calendar year 2026.

This credit would remain in effect only until December 1, 2026, and would be repealed as of that date.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, 2021, and before January 1, 2026.

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).

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

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 undefined terms "back-up electricity generator" and "small business." The absence of definitions to define these terms could lead to disputes with taxpayers and would complicate the administration of this bill. The author may want to amend the bill to clearly define these terms.

This bill defines "qualified expenditure" as the purchase of a back-up electricity generator that does not exceed \$7,000, and is used for a specified purpose. In the case of a purchase that exceeds \$7,000, a credit may not be allowed. If this is contrary to the author's intent, the bill should be amended.

The bill is silent on the method the qualified taxpayer would use to determine whether the home or business is located in a designated wildfire zone. The author may wish to include a reference to a map, such as the fire-threat map maintained by the Public Utilities Commission.

The bill would require the FTB to annually publish data on the credits through calendar year 2026. To ensure the Legislature has the necessary data, the author may wish to amend the bill to specify the data to be published, the method and location of the publication, the timing of the publication, and provide an exception for the disclosure of confidential taxpayer information in Article 2 (commencing with Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the R&TC. Regarding the timing of the report, because tax returns are filed a year in arrears and take time to process, a report containing complete data for the first year a tax expenditure appears on a return is between two years and three years after the taxable year. For instance, the FTB would complete processing of returns for tax year 2021, the first year of the credit, by April 2023. Thus, the earliest that complete data from these returns could be published by the FTB would be approximately April 2023.

Technical Considerations

For consistency of terminology within the Revenue and Taxation Code, on page 2, line 21, within the definition of "qualified taxpayer," it is recommended that the phrase "natural person" be replaced with "individual."

Policy Considerations

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 use in a residence or commercial property in a designated wildfire zone, claim the credit and qualify for the credit even if the taxpayer does not own or occupy the residence or commercial property.
- This bill would allow for an unlimited carryover period. Consequently, the department would be required to retain the carryover on the tax forms indefinitely.
- This bill would allow a credit for a back-up electricity generator that may be currently deductible as a business expenses. Generally, a credit is allowed in lieu of a deduction in order to eliminate multiple tax benefits for the same item of expense.

This bill would provide a tax benefit for sole proprietorships, noncorporate partners of partnerships, limited partnerships, and limited liability companies not electing to be taxed as corporations, limited liability partnerships, and real estate mortgage investment conduits under the PITL that would not be provided to other business entities such as corporations. Thus, this bill would provide differing treatment based solely on classification.

LEGISLATIVE HISTORY

SB 1020 (Dahle, 2019/2020) would, under the PITL and CTL, allow a credit up to \$1,500 to taxpayers for costs to purchase a back-up power generator for use in a high fire-threat district, as identified on the Public Utilities Commission fire-threat map. SB 1020 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.

PROGRAM BACKGROUND

None noted.

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 SB1415 as Introduced on February 21, 2020
Assumed Enactment after June 30, 2020

\$ in Millions)

Fiscal Year	Revenue
2020-2021	-\$210
2021-2022	-\$380
2022-2023	-\$420

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.

Because the impact of current economic circumstances is unknown, this estimate is subject to change.

Revenue Discussion

Residences:

Based on wildfire risk data for California, it is estimated that there would be approximately 1.6 million residences located in high fire risk areas or very high fire risk areas in the 2021 taxable year. It is estimated that approximately 400,000, or 25 percent of households would purchase a new generator or replace an existing one. The total amount of the credits that will be claimed for residences is estimated at \$525 million for the 2021 taxable year.

Small businesses:

Using data from FEMA, it is estimated there would be approximately 400,000 commercial properties in areas at risk to wildfires in the 2021 taxable year. U.S. Census data indicates that over 70 percent or 280,000 are small businesses whose income would be reported on personal income tax returns. It is estimated that 40 percent, or about 110,000 are expected to buy a new generator. The total expenditure will result in tax credits of \$230 million in 2021 for generators purchased by small businesses.

The total credits in 2021 is estimated at \$760 million. Using data from the FTB, it is estimated, including the S corporation adjustment or \$470 million would be earned by taxpayers with sufficient tax liability in 2021 to offset the credit. Of that amount, it is estimated 75 percent, or \$350 million, would be claimed in the year generated and the remaining credits would be used over the subsequent four years.

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

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE STAFF CONTACT

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Appendix A

Designated Wildfire Zone Code References

Code Reference	Summary
GC section 51178	Requires the director of CAL FIRE to identify areas in the state as very high fire hazard severity zones based on statewide criteria and other factors.
PRC section 4202	Requires the director of CAL FIRE to classify lands within state responsibility areas into fire hazard severity zones.