



## Bill Analysis

Author: Bigelow

Sponsor:

Bill Number: AB 2892

Related Bills: See Legislative  
History

Introduced: February 18, 2022  
Amended: April 5, 2022, and  
April 18, 2022

### SUBJECT

Backup Power Generators Tax Credit

### SUMMARY

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), allow a credit to qualified taxpayers for amounts paid or incurred for the purchase of a backup electricity generator for use in a residential or commercial property in a designated wildfire zone.

### RECOMMENDATION

No position.

### SUMMARY OF AMENDMENTS

The April 5, 2022, amendments removed all the provisions relating to biofuel taxes and replaced them with the provisions discussed in this analysis.

The April 18, 2022, amendments, changed the eligibility for the credit regarding the number of public safety power shutoffs in designated wildfire zones.

This is the department's first analysis of the bill.

### REASON FOR THE BILL

The reason for the bill is to encourage the purchase of backup electricity generators for use in designated wildfire zones.

### ANALYSIS

This bill would, under the PITL and CTL, for taxable years beginning on or after January 1, 2022, and before January 1, 2027, 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 backup electricity generator during the taxable year for use in a home or commercial property in a designated wildfire zone. This bill would allow a maximum credit to a qualified taxpayer of \$9,000 per taxable year. The bill would allow unused credits to be carried over for five years, if necessary, until the credit is exhausted.

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The bill would define the following terms and phrases:

- 1) "Designated wildfire zone" means:
  - a) A high or very high fire hazard severity zone, as determined by the Department of Forestry and Fire Protection, as defined in the Government Code.
  - b) A high or very high fire hazard severity zone as indicated on maps adopted by the Department of Forestry and Fire Protection, as specified in the Public Resources Code.
  - c) An area affected by one or more public safety power shutoffs in the prior taxable year.
- 2) "Public safety power shutoff" means the proactive deenergization of electric facilities to mitigate wildfire risk caused by utility infrastructure.
- 3) Under the PITL, "qualified taxpayer" means a natural person or a small business that pays or incurs a qualified expenditure. Under the CTL, "qualified taxpayer" means a small business that pays or incurs a qualified expenditure.
- 4) "Qualified expenditure" means the purchase of a backup electricity generator that does not exceed \$18,000 for use in a residence or commercial property in a designated wildfire zone.
- 5) "Small business" means a business that is all of the following:
  - a) Independently owned and operated.
  - b) Has fewer than 100 employees.
  - c) Has an average annual gross receipts of \$15,000,000 or less over the previous three years.

The bill would allow unused credits to be carried over for five years, if necessary, until the credit is exhausted.

As the bill does not specify otherwise, this credit would not reduce regular tax below the tentative minimum tax.

This credit would be repealed by its own terms on December 1, 2027.

For purposes of Revenue and Taxation Code (RTC) section 41, this bill would provide that the measurement of effectiveness of the credit would be the number of taxpayers that are allowed the credit. The Franchise Tax Board (FTB) would be required to annually publish anonymized data on the credit through calendar year 2027. This reporting would be treated as an exception to the general prohibition against disclosure of taxpayer information.

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### *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, 2022, and before January 1, 2027.

### *Federal/State Law*

Existing federal and state 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.

Current state and federal laws generally allow taxpayers engaged in a trade or business to deduct all expenses that are considered ordinary and necessary in conducting that trade or business.

Currently, there are 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 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.

This bill uses these undefined terms "backup electricity generator" and "independently owned and operated." The absence of definitions to define these terms could lead to disputes with taxpayers. The author may want to amend the bill to clearly define these terms.

This bill would require the FTB to annually publish data on the credits through calendar year 2027. Regarding the timing of the publication, because tax returns are filed a year in arrears and take time to process, complete data for the first year a tax credit 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 2022, the first year of the proposed credit, by May 2024. Thus, the earliest that complete data from these returns could be published by the FTB would be approximately May 2024. The author may wish to amend the bill to specify that FTB would begin publishing data starting sometime in May through July 2024, based on data availability, and annually thereafter, until the allowed credits for all applicable tax years have been reported.

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### Technical Considerations

None noted.

### *Policy Considerations*

Because the bill does not specify otherwise:

- 1) Multiple taxpayers could purchase a generator or solar battery for use at the same residence or commercial property and qualify for the credit.
- 2) A taxpayer could purchase a generator or solar battery, claim the credit, and not install or use the generator or battery for any length of time or during a power shut off, and qualify for the credit.
- 3) 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 a credit for a backup electricity generator that may be currently deductible as a business expense. 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 defines “qualified expenditure” as the purchase of a backup electricity generator that does not exceed \$18,000 and is used for a specified purpose. In the case of a purchase that exceeds \$18,000 a credit would not be allowed. If this is contrary to the author’s intent, the bill should be amended.

### **LEGISLATIVE HISTORY**

SB 1266 (Borgeas, 2021/2022), similar to this bill, would, under the PITL, allow a credit to qualified taxpayers for the amount paid or incurred to purchase a backup electricity generator or solar battery for use in a residential or commercial property in a designated wildfire zone, limited to \$3,500 (generator) or \$5,000 (battery). SB 1266 is currently in the committee process and has been referred to the Senate Committee on Governance and Finance.

SB 295 (McGuire, et al., 2019/2020) would have, under the PITL, created two home fire safety tax credits, the Qualified Home Hardening credit and the Qualified Vegetation Management credit. SB 295 did not pass out of the Assembly by the constitutional deadline.

SB 1020 (Dahle, 2019/2020) would have, under the PITL and CTL, allowed a credit up to \$1,500 to taxpayers for costs to purchase a backup power generator for use in a high fire-threat district, as identified on the Public Utilities Commission fire-threat map. SB 1020 did not pass out of the Senate by the constitutional deadline.

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SB 1415 (Borgeas, et al., 2019/2020) would have, under the PITL, allowed a credit to qualified taxpayers for 50 percent of 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. SB 1415 did not pass out of the Senate by the constitutional deadline.

**PROGRAM BACKGROUND**

None noted.

**FISCAL IMPACT**

The department’s costs to implement this bill have yet to be determined. As the bill moves through the legislative process, costs will be identified.

**ECONOMIC IMPACT**

*Revenue Estimate*

This bill would result in the following revenue loss:

Estimated Revenue Impact of AB 2892 as Amended on April 18, 2022  
Assumed Enactment after June 30, 2022

(\$ in Millions)

<b>Fiscal Year</b>	<b>Revenue</b>
2022-2023	-\$1,200
2023-2024	-\$900
2024-2025	-\$950

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.

**LEGAL IMPACT**

None noted.

**APPOINTMENTS**

None noted.

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## **SUPPORT/OPPOSITION**

As noted in the Assembly Revenue and Taxation Committee analysis dated April 22, 2022, the following organization is in support of the bill.

### *Support*

Rural County Representatives of California

### *Opposition*

None on file.

## **ARGUMENTS**

According to the April 22, 2022, Assembly Revenue and Taxation Committee analysis.

### *Proponents*

The author has provided the following statement in support of the bill:

The Caldor Fire was one of many that roared through California last year, and left a big impact on my district. This year it is of utmost importance to provide a short term solution for those who experience power outages due to wildfires or PSPS (public safety power shutoff) events. AB 2892 offers some relief to Californians who need costly generators for back-up power.

### *Opponents*

None on file.

## **LEGISLATIVE CONTACT**

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