STATE OF CALIFORNIA
Franchise Tax Board

Bill Analysis

Author: Borgeas	Sponsor:	Bill Number: SB 1266
	Related Bills: See Legislative History	Introduced: February 18, 2022 Amended: March 31, 2022 and April 18, 2022

SUBJECT

Electricity Generator or Solar Battery 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 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).

RECOMMENDATION

No position.

SUMMARY OF AMENDMENTS

The March 31, 2022, amendments changed the definition of "Designated wildfire zone" and "qualified expenditure" and modified the credit limitation.

The April 18, 2022, amendments added this credit to the CTL, revised the definition of a small business, and modified the reporting requirements under Revenue and Taxation Code (RTC) section 41.

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

REASON FOR THE BILL

The reason for this bill is to encourage the purchase of backup electricity generators or solar batteries in designated wildfire zones.

ANALYSIS

This bill would, under the PITL and CTL, for taxable years beginning on or after January 1, 2023, and before January 1, 2028, 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 or solar battery during the taxable year for use in a residence or commercial property in a designated wildfire zone.

The credit allowed to a taxpayer would be limited per residence or commercial property, and per taxable year to:

- $3,500 for the purchase of a backup electricity generator, or
- $5,000 for the purchase of a solar battery.

The bill would define the following terms and phrases:

- "Qualified expenditure" means the purchase of a backup electricity generator or the purchase of a solar battery 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 territory within a high fire-threat district designated a Tier 3 fire-threat area, as determined by the Public Utilities Commission.
- "Small business" means a business that has an average annual gross receipts of $15,000,000 or less over the previous three taxable years.

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

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

In compliance with RTC section 41, this bill would provide that the measurement of effectiveness of the credit would be the number of tax returns claiming the credit and the amount of total credits claimed. The Franchise Tax Board (FTB) would be required to annually report to the legislature data on the credit through taxable year 2028.

This credit would be repealed by its own terms on December 1, 2028.

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, 2023, and before January 1, 2028.

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).

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.

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 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 undefined terms of "backup electricity generator" and "solar battery." 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 report to the legislature on the credits through taxable year 2028. 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 2023, the first year of the proposed credit, by May 2025. Thus, the earliest that complete data from these returns could be published by the FTB would be approximately May 2025. The author may wish to amend the bill by specifying that data would be published by June beginning in 2025, and annually thereafter, until two years after the sunset date.

Technical Considerations

For consistency of terminology within the RTC, it is recommended that the phrase "natural person" within the definition of "qualified taxpayer" be replaced with "an individual."

For the purposes of the CTL, this bill would include in the definition of "qualified taxpayer" a natural person. Natural persons are subject to taxation under the PITL, not the CTL. It is recommended that "natural persons" is removed from the definition of qualified taxpayer" under the CTL provision.

Similarly, references to "residence" should be removed from the CTL provision because taxpayers subject to the CTL do not have a residence.

In RTC 17053.49(a) and 23627(a), strike out "each taxable year beginning on and" and insert "taxable years beginning on or".

Policy Considerations

Because the bill does not specify otherwise:

- Multiple taxpayers could purchase a generator or solar battery for use at the same residence or commercial property and qualify for the credit.
- 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.
- A taxpayer could purchase a generator or solar battery 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 or solar battery 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.

LEGISLATIVE HISTORY

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.

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 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 SB1266 Amended, April 18, 2022
Assumed Enactment after June 30, 2022

($ in Millions)

Fiscal Year	Revenue
2022-2023	-$44
2023-2024	-$90
2024-2025	-$100

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.

SUPPORT/OPPOSITION

To be determined.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov