



STATE OF CALIFORNIA  
**Franchise Tax Board**

## Bill Analysis

Author: Padilla

Sponsor:

Bill Number: SB 1191

Related Bills: See Legislative  
History

Amended March 20, 2024,  
and April 11, 2024

### SUBJECT

Gross Income Exclusion for Payments Made Under Federal Environmental Credit Provisions

### SUMMARY

This bill, beginning January 1, 2023, would allow a gross income exclusion for payments received for the sale or transfer of specified federal clean energy credits.

### RECOMMENDATION

No position—The Franchise Tax Board (FTB) has not formally voted or taken a position on this bill.

### SUMMARY OF AMENDMENTS

The March 20, 2024, amendments removed provisions from this bill as introduced on February 14, 2024, relating to deferred compensation and replaced them with the provisions discussed in this analysis.

The April 11, 2024, amendments added reference to Public Law 117-169, specified what is included in a “payment made pursuant to Internal Revenue Code (IRC) section 6418,” and removed definitions for applicable entity and eligible taxpayer.

This is the FTB’s first analysis of the bill.

### REASON FOR THE BILL

The reason for this bill is to encourage investment in clean energy.

### ANALYSIS

This bill would, under the Personal Income Tax Law (PITL) and Corporation Tax Law (CTL), for taxable years beginning on or after January 1, 2023, exclude from gross income a payment received by a taxpayer pursuant to Internal Revenue Code (IRC) section 6417 that elects to treat specified clean energy credits as payments against

their federal income tax, a payment received by a taxpayer from a transferee for the transfer of certain specified energy credits pursuant to IRC section 6418, and the value of specified energy credits received by a transferee pursuant to a transfer of specified credits pursuant to IRC section 6418.

This bill would conform to the federal treatment of transferred credits by a partnership or S corporation, regarding a partner's distributive share, rules for basis and the pass thru rules for shareholders.

This bill would include Revenue and Taxation Code section 41 requirements that the FTB annually collect data on the number of payments made, as specified, and submit a report to the Legislature on or before December 1, 2025, comparing the number of payments excluded with investment in traditional tax equity structures in taxable years ending on or before December 31, 2024. This report shall continue to be due to the legislature each December 1, thereafter through January 1, 2036.

#### *Effective/Operative Date*

This bill would be effective January 1, 2025, and specifically operative for taxable years beginning on or after January 1, 2023.

#### *Federal/State Law*

##### *Federal Law*

Existing federal law allows an exclusion from gross income for any payment made to an applicable entity or unrelated party for the purchase of specified clean energy credits. In addition, existing federal law allows an exclusion from gross income any amount received as consideration for a transfer of specified clean energy credits. As part of this law certain tax-exempt entities may treat the purchased specified clean energy credits as a payment of federal income tax and therefore refundable. No deduction is allowed for any amount paid in consideration of a transfer of the specified clean energy credits.

##### *State Law*

*No comparable provision in state law.*

#### *Implementation Considerations*

The FTB has identified the following implementation and policy considerations for purposes of a high-level discussion; additional considerations may be identified as the bill moves through the legislative process. The FTB staff is available to work with the author's office to resolve these and other considerations that may be identified.

This bill would require the FTB to annually report on investment in traditional tax equity structures in taxable years ending on or before December 31, 2024, however, the FTB would not have this data. The author may wish to amend the bill to change the reporting requirements.

The Section 41 performance metric for the number of payments made to eligible taxpayers would not be included in any form or schedule that is required to be filed with the tax return. To collect the requested metric, the FTB would need taxpayers to submit the reporting information on Form 4197 - Information on Tax Expenditure Items. This form captures additional metrics and is used to report on specified exclusions that are not currently reported on the return. Because taxpayers are not required to include this form, the data collected may be limited. Taxpayer reporting is more robust when the performance metric is tied to items clearly reported on filed tax returns. Where items, such as income exclusions, do not appear on a tax return, it may be more effective to have the Legislative Analyst Office and/or industry experts help the Legislature understand whether the specified goals are being achieved.

This bill as introduced in the 2024 legislative session would allow taxpayers a gross income exclusion for payments made for taxable years beginning on or after January 1, 2023. If this bill were to be enacted this calendar year, the exclusions allowed by this bill would be considered retroactive to the specified operative date of January 1, 2023. The FTB has already developed the forms and instructions for the 2023 taxable year and many taxpayers have already filed their returns for the 2023 taxable year. Thus, the FTB may incur additional costs to develop additional tax forms and process amended returns for taxpayers that already reported these payments as income. To alleviate these considerations, the author may wish to change the operative date to January 1, 2024.

#### *Technical Considerations*

None noted.

#### *Policy Considerations*

None noted.

### **LEGISLATIVE HISTORY**

AB 1973 (Lackey, 2023/2024) would provide a qualified taxpayer an exclusion from gross income for any amount received from a settlement entity in connection with the 2020 Bobcat Fire. This bill is in the Senate pending referral.

AB 1865 (Patterson, et al., 2023/2024) would create a homeownership savings account (HomeSA) that would provide certain income tax benefits similar to an individual retirement account (IRA). This bill is currently in the committee process.

SB 1246 (Stern and Valladares, Chapter 841, Statutes of 2022) provides, to qualified taxpayers, an exclusion from gross income for amounts received from Southern California Edison in settlement for claims relating to the 2017 Thomas Fire or the 2018 Woolsey Fire and allows refunds of tax previously paid on those amounts.

SB 796 (Bradford, et al. Chapter 435, Statutes of 2021) allows for a gross income exclusion for a one-time sale, transfer, or encumbrance of a portion of land within Manhattan State Beach, known as "Peck's Manhattan Beach Tract Block 5" and commonly referred to as "Bruce's Beach."

AB 2928 (Cooper, 2021/2022) would have allowed a gross income exclusion for moneys awarded to a taxpayer pursuant to the Clean Cars 4 All Program. This bill did not pass out of the Assembly Committee on Transportation by the constitutional deadline.

### **PROGRAM BACKGROUND**

None noted.

### **OTHER STATES' INFORMATION**

None noted.

### **FISCAL IMPACT**

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

### **ECONOMIC IMPACT**

#### *Revenue Estimate*

Estimating the revenue impact of providing an exclusion from gross income for the election to receive a refund payment or an exclusion from gross income for the payment received by a transferor and the related elimination of the expense deduction by the transferee cannot be predicted. To determine the magnitude of the income exclusion and the disallowed deduction, both the dollar amount of the transaction and the frequency of transactions by California business would need to be known. Because it is difficult to predict the frequency and the value of future credit transfers, the revenue impact is unknown. However, should 15 percent of all transactions include a California business, the estimated impact to the General Fund could be a revenue gain or loss upwards of \$250 million.

### *Revenue Discussion*

The revenue impact from conforming to the gross income exclusion for the payment received by a transferor of a credit and the elimination of the expense deduction depends on several factors: the price of the transaction, the type of businesses involved in the transaction, their domicile, and their profitability. If the entities involved in the transaction are both California businesses with similar attributes, such as profitability, apportionment factors, and marginal tax rates, then the exclusion of income for the transferor and the elimination of the business expense deduction for the transferee would cancel each other out and result in no net impact on state revenue. However, if the tax attributes on the entities involved the transaction differ, then the transfer could result in a revenue gain or loss depending on the situation.

For example, if a California business transfers a credit to a non-California business that has a California filing requirement, then the impact of the gross income exclusion would depend on the California business profitability and their apportionment factor. The exclusion would reduce income subject to apportionment and would result in a revenue loss to the state. However, if that business were in a loss position, the exclusion would not impact the taxpayer's income subject to apportionment and would not change the amount of tax due. But it could increase the amount of Net Operating Loss carryover available to the taxpayer in future years.

If both entities are profitable California C-corporations, then their respective apportionment factors would determine the revenue impact of the transaction. If the transferer has a higher apportionment factor than the transferee then the transaction could result in a revenue loss, if reversed the transaction could result in a revenue gain.

Because these transactions are relatively new, very little data is currently available. However, the department identified several articles indicating the U.S. transfer market could result in up to \$20 billion a year in credit transfers. If 15 percent of these transactions, or \$3 billion, were completed by California businesses with differing apportionment factors or entity types, the estimated impact to the General Fund could be a revenue gain or loss upwards of \$250 million. However, due to the factors discussed above, the actual revenue impact is unknown.

### **LEGAL IMPACT**

None noted.

### **EQUITY IMPACT**

None noted.

### **APPOINTMENTS**

None noted.

## **SUPPORT/OPPOSITION**

Senate Revenue and Taxation Committee Analysis 04-05-2024

### *Support*

Advanced Energy United

American Clean Power- California

California Efficiency + Demand Management Council

California Energy Storage Alliance

California Wind Energy Association

Clean Power Campaign

Independent Energy Producers Association

Large Scale Solar Association

Solar Energy Industries Association

### *Opposition*

None on file.

## **ARGUMENTS**

Proponents: None on file.

Opponents: None on file.

## **LEGISLATIVE CONTACT**

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