



Bill Analysis

Author: Padilla

Sponsor:

Bill Number: SB 302

Related Bills: See Legislative
History

Introduced: February 10, 2025

SUBJECT

Gross Income Exclusion for Payments Made Under Federal Environmental Credit Provisions

SUMMARY

This bill, under the Personal Income Tax Law (PITL) and the Corporation Tax Law (CTL), would allow a gross income exclusion for payments received for the sale or transfer of specified federal clean energy credits beginning January 1, 2023.

RECOMMENDATION

No position—The three-member Franchise Tax Board has not formally voted or taken a position on this bill.

SUMMARY OF AMENDMENTS

Not applicable.

REASON FOR THE BILL

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

ANALYSIS

This bill would, under the PITL and the 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 Franchise tax Board (FTB) annually collect data on the number of payments made, as specified, and submit a report to the Legislature on or before December 1, 2026, comparing the number of payments excluded with investment in traditional tax equity structures in taxable years ending on or before December 31, 2025. This report shall continue to be due to the legislature each December 1, thereafter through January 1, 2037.

Effective/Operative Date

This bill would be effective January 1, 2026, 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 an elective 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.

The federal elective payment and credit transfer provisions are allowed for the following federal tax credits:

- Energy Credit (IRC section 48)
- Clean Electricity Investment Credit (IRC section 48E)
- Renewable Electricity Production Credit (IRC section 45)
- Clean Electricity Production Credit (IRC section 45Y)
- Commercial Clean Vehicle Credit (IRC section 45W), (applies to elective pay option only)
- Zero-emission Nuclear Power Production Credit (IRC 45U)
- Advanced Manufacturing Production Credit (IRC 45X),
- Clean Hydrogen Production Credit (IRC 45V),
- Clean Fuel Production Credit (IRC 45Z)
- Carbon Oxide Sequestration Credit (IRC 45Q),
- Credit for Alternative Fuel Vehicle Refueling / Recharging Property (IRC 30C),
- Qualifying Advanced Energy Project Credit (IRC 48C)

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.

This bill as introduced in the 2025 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, 2025.

Technical Considerations

None noted.

Policy Considerations

A bill that authorizes a gross income exclusion is exempt from including information about detailed performance indicators and data collection requirements, if the Legislature determines there is no available data to collect and report. This bill would require detailed performance indicators and data collection requirements. If the author determines there is no available data to collect or report, this information does not need to be included in the bill.

LEGISLATIVE HISTORY

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."

SB 1191 (Padilla, 2023/2024), similar to this bill, would have allowed a gross income exclusion for payments received for the sale or transfer of specified federal clean energy credits. This bill did not pass out of the Senate by the constitutional deadline.

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 identified.

ECONOMIC IMPACT

Revenue Estimate

Estimating the revenue impact of conforming to the exclusion from gross income for the election to receive a refund payment or conforming to the 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 of about \$250 million. In addition, because this bill is retroactive to taxable years beginning on or after January 1, 2023, the revenue impact for the first couple of years could exceed a \$250 million revenue gain or loss as taxpayers amend prior year returns.

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 in 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 \$23 billion a year in credit transfers. If 15 percent of these transactions, or \$3.5 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 of about \$250 million. However, due to the factors discussed above, the actual revenue impact is unknown. In addition, because this bill is retroactive to taxable years beginning on or after January 1, 2023, the revenue impact for the first couple of years could exceed a \$250 million revenue gain or loss as taxpayers amend prior year returns.

LEGAL IMPACT

None noted.

EQUITY IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Senate Revenue and Taxation Committee Report, March 26, 2025

Support:

Advanced Energy United
American Clean Power - California
American Council on Renewable Energy (ACORE)
California Chamber of Commerce
California Efficiency Demand Management Council
California Energy Storage Alliance
California Taxpayers Association
Center for Energy Efficiency and Renewable Technologies
Clean Power Campaign
Clearway Energy Group LLC
Council on State Taxation
EDF Renewables
Family Business Association of California
Fluence
Independent Energy Producers Association
Invenergy, LLC
Kern County Taxpayers Association
Large Scale Solar Association
Marin Clean Energy (MCE)
Orange County Taxpayers Association
San Diego Community Power
Silicon Valley Leadership Group
Solano County Taxpayers Association
Solar Energy Industries Association
State Building & Construction Trades Council of California
The California Wind Energy Association (CALWEA)
Wellhead Electric Company, INC.

Opposition:

None on file.

ARGUMENTS

To be determined.

LEGISLATIVE CONTACT

FTBLegislativeServices@ftb.ca.gov