STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

DRAFT

Date Amended:	**05/04/09**	Bill No:	**AB 150**
Tax:	**Sales and Use**	Author:	**Smyth**
Related Bills:	**AB 1028 (Blumenfield)**		

BILL SUMMARY

This bill would provide a sales and use tax exemption for sales and purchases of energy efficient products, as defined, sold for home or personal use only, on the first Saturday immediately following Earth Day (which occurs on April 22), beginning in 2010.

SUMMARY OF AMENDMENTS

Since the previous analysis, this bill was amended to 1) limit the proposed exemption to energy efficient products sold for home or personal use only, and 2) add a sunset date.

ANALYSIS

CURRENT LAW

Under existing law, the sales or use tax applies to the sale or use of tangible personal property in this state, unless otherwise exempted or excluded by statute. Under current law, the sales and use tax applies to sales and purchases of appliances to the same extent as it applies to any other sale of tangible personal property that is not otherwise exempted or excluded from tax by statute.

PROPOSED LAW

This bill would add Section 6398 to the Sales and Use Tax Law to provide a sales and use tax exemption for sales and purchases of "energy efficient products," on the first Saturday immediately following Earth Day (which occurs on April 22) beginning in 2010. The bill would define "energy efficient products" to mean a product that meets or exceeds the applicable ENERGY STAR efficiency requirements developed by the United States Environmental Protection Agency and the United States Department of Energy. The product also must be purchased for home or personal use.

As a tax levy, the bill would become effective immediately upon enactment, but operative on April 24, 2010. The provisions would remain in effect until January 1, 2015, and as of that date be repealed.

IN GENERAL

ENERGY STAR is a joint program of the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy for the purposes of conserving energy and protecting the environment through energy efficient products and practices.

In 1992 the EPA introduced ENERGY STAR as a voluntary labeling program designed to identify and promote energy-efficient products to reduce greenhouse gas emissions. Computers and monitors were the first labeled products. Through 1995, EPA expanded the label to additional office equipment products and residential heating and cooling equipment. In 1996, EPA partnered with the U.S. Department of Energy for particular product categories. The ENERGY STAR label is now on major appliances, office equipment, lighting, and home electronics. The EPA has also extended the label to cover new homes and commercial and industrial buildings.

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The EPA's ENERGY STAR website (http://www.energystar.gov) provides a listing of qualified ENERGY STAR products in various product categories:

- Appliances include clothes washers, dehumidifiers, dishwashers, ceiling fans, exhaust fans, refrigerators, room air conditioners, and room air cleaners.
- Heating and cooling equipment includes air-source pumps, boilers, central air conditioning, ceiling fans, dehumidifiers, furnaces, geothermal heat pumps, home sealing (insulation), light commercial (heating and cooling equipment used in commercial buildings) programmable thermostats, and ventilating fans.
- Home electronics include battery charging systems, cordless phones, digital-to-analog converter boxes, DVD products, external power adapters, home audio, televisions (TV), TV/VCR and TV/DVD combination units, and VCRs.
- Home envelope include doors, home sealing (adding insulation and sealing air leaks to stop drafts) roof products, skylights, and windows.
- Office equipment includes computers, copiers, external power adapters, fax machines, laptops, mailing machines, monitors, multifunction devices (combines printing, scanning, and faxing all into one unit) printers, and scanners.
- Lighting includes compact fluorescent light bulbs, residential light fixtures, traffic signals, and exit signs.
- Commercial food service includes commercial fryers, commercial hot food holding cabinets, commercial solid door refrigerators and freezers, and commercial steam cookers.
- Other commercial products include battery charging systems, exit signs, external power adapters, roof products, traffic signals, transformers, vending machines, and water coolers.

To encourage individuals to buy energy efficient products, ENERGY STAR partners (manufacturers, utilities, and state agencies) offer rebates on qualified ENERGY STAR products. In addition, certain ENERGY STAR products may be eligible for federal income tax credits.

In 2001, legislation was passed in response to reducing peak electricity consumption which was straining the adequacy and reliability of California's electricity system. The legislation provided funding to the California Energy Commission and other state agencies for grants and rebates to reduce electricity peak load demand. The legislation also directed the California Energy Commission to update the standards of energy efficient appliances.

Initiated in 2001, Flex Your Power is California's statewide energy efficiency marketing and outreach program (http://www.fypower.org). Flex Your Power is a partnership of California's utilities, residents, businesses, institutions, government agencies and nonprofit organizations working to save energy. The program's primary funding is from the Public Goods Charge as approved by the California Public Utilities Commission. The Flex Your Power website provides information regarding qualified ENERGY STAR products. The website also provides information on rebates and incentives for buying ENERGY STAR products http://www.fypower.org/res/tools/rgl.html. Currently, rebates for ENERGY STAR clothes washers range from $35 to $150 per unit. There are also rebates, ranging from $30 to $175, for ENERGY STAR air conditioners, dishwashers, and refrigerators.

BACKGROUND

This bill is very similar to AB 882 (Hernandez) of the 2007-2008 Legislative Session. AB 882 would have provided a sales and use tax exemption for sales and purchases of energy efficient products, as defined, on April 22 (Earth Day) of each year beginning in 2008. This bill failed to pass through the Assembly Appropriations Committee.

Numerous bills were introduced during the 2001- 2002 Legislative Session in response to California's energy crisis, but failed to pass. These bills included the following:

Bill Number	Legislative Session	Author	Type
AB 695	2001-02	Pescetti	Residential and commercial refrigerators, air conditioners, clothes washers, and dish washers
AB 124x	2001-02	Pescetti	Residential and commercial appliances
AB 52xx	2001-02	Reyes	Appliances and florescent lightbulbs
AB 27x	2001-02	Koretz	Power generating equipment
SB 71x	2001-02	Perata	Power generating equipment
AB 51x	2001-02	Daucher	Generators installed under a qualified interruptible service contract of 3 years or more
AB 58x	2001-02	Cox	Solar energy system systems for heating water or providing electrical power
AB 1319	2001-02	Cox	Solar energy system systems for heating water or providing electrical power
AB 3052	2001-02	Pescetti	Residential and commercial refrigerators and clothes washers
SB 1074	2001-02	Soto	Microturbines, fuel cells, photovoltaic cells, solar thermal water heating systems, wind energy equipment, and electrical generators operating on renewable biomass fuel
SB 877	2001-02	Poochigian	Qualified cogeneration equipment used on dairy farms.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Home Depot and is intended to encourage the use of energy efficient products.

2. **The May 4, 2009 amendments** 1) limit the proposed exemption to energy efficient products, as defined, sold for household and personal use only, 2) change the exemption period to the first Saturday immediately following Earth Day (which occurs on April 22), instead of April 24 of each year, and 3) provide a sunset date of January 1, 2015.

3. **The proposed exemption would apply to energy-efficient products purchased for home or personal use only.** Under the United States Environmental Protection Agency's (EPA) Energy Star website (http://www.energystar.gov), there are several product categories for ENERGY STAR products—appliances, heating and cooling equipment, home electronics, home envelope, and lighting. All of these categories include products which may be purchased for home or personal use. Energy Star products listed under the category of "appliances" include clothes washers, dehumidifiers, dishwashers, refrigerators, room air conditioners, and room air cleaners. Board staff contacted the EPA to see what data was available on Energy

Star residential appliances and discovered that exhaust fans and ceiling fans are also categorized as residential appliances.

The author's office has indicated that they want the exemption to apply to any energy-efficient products which are purchased for home or personal use only. In order to avoid any ambiguity, Board staff recommends that the bill be amended to list each energy efficient product item that would be entitled to the proposed exemption.

4. **Exemption applies to layaway sales and other orders placed during the exemption period.** Because the exemption only applies for the first Saturday, immediately following Earth Day (April 22), the bill contains language to address certain transactions that may overlap exempt and taxable periods. The bill provides that layaway agreements entered into on the first Saturday immediately following Earth Day, for which the purchaser has made a deposit of at least 10 percent of the sale price, would qualify for the exemption. The bill also provides that orders placed during the one-day exemption period and paid for in full, but delivered subsequent to the exemption period, would also qualify for the tax exemption.

5. **Exemption may not apply to some merchandise exchanges and rain checks.** Under current law, when merchandise is returned for other merchandise, the law considers the transaction as two separate transactions: a recision of the original sale and a separate sale of the replacement merchandise. For example, if a customer purchases a deluxe refrigerator and exchanges the refrigerator for a smaller model, the transaction is regarded under the law as a separate sale of the smaller model refrigerator and a recision of the original sale of the deluxe model refrigerator. The retailer is allowed to deduct from his or her taxable sales amount for purposes of reporting the correct amount of sales tax to the Board, the sales price of the deluxe model refrigerator, and is also required to include in his or her taxable sales amount, the sales price of the smaller model refrigerator. Using this example under the proposed exemption period, if the deluxe model refrigerator is purchased during the exemption period, and is exchanged for the smaller model refrigerator *after* the exemption period, the proposed exemption would not apply to the exchange of the smaller model refrigerator since that transaction is recognized under the law as having occurred after the exempt period. This may result in reporting errors by retailers and added confusion and inquiries by customers.

   Another source of confusion could result from the use of rain checks. Current law also provides that a rain check issued by a retailer does not constitute a sale of tangible personal property. Therefore, if a retailer is out of stock of a particular item and issues a rain check to the customer during the exemption period, and the customer subsequently uses the rain check to purchase the out of stock item after the proposed exemption period, the exemption would not apply.

6. **Other States.** The following states provide a sales tax holiday for energy-efficient products:

   - Connecticut enacted a sales tax holiday period on home weatherization products for the period of November 25, 2005, through April 1, 2006, then reinstated the holiday period for the period June 1, 2006, through June 30, 2007. In 2007, legislation was enacted to extend permanently this exemption. Residential weatherization products include: programmable thermostats, window film, caulking of a type marketed for preventing drafts (caulking of windows and

doors), window and door weather strips, insulation (attic and wall insulation, spray foam insulation, water pipe insulation, heating duct insulation, and switch and outlet insulators), water heater blankets, water heaters, and ENERGY STAR boilers, natural gas and propane furnaces, windows, and doors. Connecticut also enacted a sales tax holiday period for sales of energy-star rated household appliances for the period of June 4, 2007, through September 30, 2007.

- Florida enacted a one-week sales tax holiday for new energy-efficient products in October of 2005 and 2006. Energy-efficient products include any dishwasher, clothes washer, air conditioner, ceiling fan, incandescent or fluorescent light bulb, dehumidifier, programmable thermostat, and refrigerator that have been designated as meeting or exceeding the federal ENERGY STAR efficiency requirements and has the ENERGY STAR label affixed to the product or product packaging. The sales tax exemption applies only to products having a sales price of $1,500 or less per product, and must be purchased for noncommercial home or personal use.
- Georgia enacted its fourth annual ENERGY STAR sales tax holiday for a four-day period in October 2008. The October 2008 holiday was expanded for the first time to include WaterSense labeled products. Energy efficient or water efficient products that cost $1,500 or less per item are exempt from the tax. Energy-efficient products include any dishwasher, clothes washer, air conditioner, ceiling fan, fluorescent light bulb, dehumidifier, programmable thermostat, refrigerator, door, and window that have been designated as meeting or exceeding the federal ENERGY STAR requirements. WaterSense labeled products include bathroom sink faucets, high-efficiency toilets, showerheads, and faucet accessories. The exemption applies to products purchased for home or personal use.
- North Carolina enacted its first sales tax holiday for energy-efficient appliances for a three-day period in November 2008. Energy-efficient products include clothes washers, freezers, refrigerators, central air conditioners, room air conditioners, air-source heat pumps, geothermal heat pumps, ceiling fans, dehumidifiers, and programmable thermostats that have been designated as meeting or exceeding the federal ENERGY STAR efficiency requirements and has the ENERGY STAR label affixed to the product or product packaging.
- Texas enacted a sales tax holiday for energy efficient appliances and other household equipment bearing an ENERGY STAR label for the 2008 Memorial Day weekend. Eligible ENERGY STAR items include: air conditioners priced under $6,000, clothes washers, ceiling fans, dehumidifiers, dishwashers, light bulbs, programmable thermostats, and refrigerators priced under $2,000.
- Virginia enacted a sales tax holiday for a four-day period in October 2008 and in October 2009. During this period, purchases of certain Energy Star and WaterSense qualified products purchased for residential use and costing $2,500 or less are exempt from the sales tax.
- West Virginia enacted a sales tax holiday for the period beginning September 1, 2008 through November 30, 2008. During this period, purchases of qualified Energy Star products purchased for residential use only and costing $5,000 or less are exempt from sales tax.

7. **The exemption applies to use tax transactions.** California consumers ordering these products from out-of-state, Internet and mail order retailers would be entitled to the exemption during the same period.

8. **Items purchased for use in a trade or business would not be covered by the proposed exemption.** Therefore, purchases of qualifying Energy Star products by contractors who will affix or install the products in the customer's home would be considered purchased for trade or business and *would not qualify* for the proposed exemption.

9. **Related legislation.** AB 1028 (Blumenfield) would provide a sales and use tax exemption on the sale and use of qualified renewable energy systems, as defined, for the month of April in 2010

COST ESTIMATE

Administrative costs would be incurred in preparing and mailing a special notice to affected retailers, creating and distributing new sales tax charts to affected retailers, and answering potentially numerous inquiries. A detailed cost estimate is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

The EPA provided Board staff with a list of Energy Star products for home or personal use, as well as the number of units of each product sold in the United States. The table below lists each product, the US shipment unit, the estimated number sold in California, the estimated average price of each product, and the estimated sales.

	Number of Energy Star Products Sold in U.S. in 2007	Estimated Number sold in California	Estimated Average Price	Total California Energy Star Sales
Home Office Equipment				$0
-Residential Copiers	0	0	$ -	$0
-Residential Facsimile	415,000	49,800	$ 112	$5,577,600
-Residential Printers	3,066,000	367,920	$ 207	$76,159,440
-Residential Scanners	2,628,000	315,360	$ 356	$112,268,160
-Residential Multi-function Devices	1,269,000	152,280	$ 116	$17,664,480
-Residential CRTs	53,000	6,360	$ 149	$947,640
-Residential LCDs	16,074,000	1,928,880	$ 190	$366,487,200
-Residential PCs	27,401,000	3,288,120	$ 805	$2,646,936,600

	Number of Energy Star Products Sold in U.S. in 2007	Estimated Number sold in California	Estimated Average Price	Total California Energy Star Sales
Home Electronics		-		$0
-TVs	16,649,000	1,997,880	$ 3,535	$7,062,505,800
-VCRs	0	-	$ 44	$0
-TV/VCR/DVD	802,000	96,240	$ 385	$37,052,400
-DVD Players	8,395,000	1,007,400	$ 89	$89,658,600
-Mini-Systems	351,000	42,120	$ 223	$9,392,760
-Home Theater	800,000	96,000	$ 367	$35,232,000
-Audio Separates	762,000	91,440	$ 439	$40,142,160
-CD Players	0	-		$0
-Answering Machines	0	0		$0
-Cordless Phones	1,850,000	222,000	$ 37	$8,214,000
-DSS Cordless Phones	412,000	49,440	$ 101	$4,993,440
-DSS Combo Phones	3,191,000	382,920	$ 101	$38,674,920
-Additional Handsets	160,000	19,200	$ 43	$825,600
-Satellite Receivers	0	0	$ -	$0
-Analog Cable Boxes	0	0	$ -	$0
-Digital Cable Boxes	0	0	$ -	$0
-Digital Converter	0	-	$ -	$0
-Videophone	0	0	$ -	$0
-PVR	0	0	$ -	$0
-Video Game	0	0	$ -	$0
-Internet Appliance	0	0	$ -	$0
-Multifunction Set-Top Box	0	0	$ -	$0
Subtotal Set-top Box		-	$ -	$0
-External Power Supplies	312,041,000	37,444,920	$ 195	$7,301,759,400
-Battery Charging Systems	6,505,000	780,600	$ -	$0
Residential Appliances				$0
-Clothes Washers	4,318,000	518,160	$ 824	$426,963,840
-Dishwashers	5,135,000	616,200	$ 597	$367,871,400
-Refrigerators	4,520,000	542,400	$ 1,434	$777,801,600
-RACs	4,263,000	511,560	$ 279	$142,725,240
-Dehumidifiers	1,151,000	138,120	$ 229	$31,629,480
-Exhaust Fans	805,000	96,600	$ 157	$15,166,200
-Ceiling Fans Only	2,647,000	317,640	$ 65	$20,646,600
-Ceiling Fan with Light Kit	132,000	15,840	$ 145	$2,296,800
-Light Kit for Ceiling Fan	21,000	2,520	$ 60	$151,200
Total				**$19,703,003,040**

Based on the EPA data for the estimated quantity sold and the estimated average price per product, the total California sales are estimated to be $20 billion in 2007. The state of Texas found that during a one-week sales tax holiday of clothing and footwear, sales were double that of a regular weekly period. Based on this information, Board staff assumes that the one-day period represents 2/365 of a year's worth of sales. Thus, using the information above, Board staff estimates sales to be $94 million.

REVENUE SUMMARY

The annual revenue loss from exempting $94 million in energy efficient products purchased for home or personal use from the sales and use tax for a one-day period each year would be approximately $8.5 million:

	Revenue Loss
State (6.00%)	$ 5,640,000
Fiscal Recovery Fund (0.25%)	235,000
Local (2.00%)	1,880,000
Special district loss (0.75%)	705,000
Total	$ 8,460,000

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