



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

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Date Amended:	04/15/09	Bill No:	<u>SB 338</u>
Tax:	Sales and Use	Author:	Alquist
Related Bills:	AB 1111 (Blakeslee)		

BILL SUMMARY

This bill would amend the definition of “project” in the Public Resources Code for purposes of authorizing the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to provide bond financing to participating parties for renewable energy projects.

ANALYSIS

CURRENT LAW

Under existing law, California imposes a sales tax on a retailer’s gross receipts from the retail sale of tangible personal property in this state, unless the sale is specifically exempt from taxation by statute. This tax is imposed on the retailer who may collect reimbursement from the customer if the contract of sale so provides. Under the law, it is presumed that gross receipts from a particular sale of tangible personal property are subject to tax, unless the seller can establish either that the sale was not a retail transaction or that the sale is subject to an exemption.

Revenue and Taxation Code Section 6010.8 provides that “sale” and “purchase” do not include any transfer of title of tangible personal property constituting any project to the CAEATFA by any participating party, nor any lease or transfer of title of tangible personal property constituting any project by the authority to any participating party, when the transfer or lease is made pursuant to Division 16 (commencing with Section 26000) of the Public Resources Code. The terms “project” and “participating party” are defined in Section 6010.8 by reference to Section 26003 of the Public Resources Code.

Under subdivision (f) of Public Resources Code Section 26003, “participating party” means either of the following:

- (1) Any person or any entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that applies for financial assistance from CAEATFA for the purpose of implementing a project in a manner prescribed by CAEATFA.
- (2) Any public agency or nonprofit corporation that applies for financial assistance from CAEATFA for the purpose of implementing a project in a manner prescribed by CAEATFA.

Subdivision (g) of Public Resources Code Section 26003 defines “project” as any land, building, improvement thereto, rehabilitation, work, property, or structure, real or personal, stationary or mobile, including, but not limited to, machinery and equipment, whether or not in existence or under construction, that utilizes or is designed to utilize, an alternative source, or that is utilized for the design, technology transfer, manufacture, production, assembly, distribution, or service of advanced transportation technologies.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the Board’s formal position.

PROPOSED LAW

This bill would amend Section 26003 of the Public Resources Code to add “renewable energy projects” to the definition of “project.”

The bill would become operative January 1, 2010.

BACKGROUND

The CAEATFA was created in 1980 with an authorization of \$200 million in revenue bonds to finance projects that utilize alternative sources of energy, such as cogeneration, wind, and geothermal power. It was renamed in 1994 as the California Alternative Energy and Advanced Transportation Financing Authority and its charge was expanded to include the financing of "advanced transportation" technologies.

The CAEATFA consists of five members: the Director of Finance, the Chairman of the California Energy Commission, the President of the Public Utilities Commission, the Controller, and the Treasurer.

During the energy crisis of 2001, the CAEATFA's authority was expanded to provide financial assistance to public power entities, independent generators, and others for new and renewable energy sources, and to develop clean distributed generation.

Last year, to help state agencies lead the way in meeting California's greenhouse gas reduction goals, the CAEATFA was given the authority to issue electricity pre-payment bonds to finance the purchase of renewable energy by state agencies and schools.

The CAEATFA has \$53 million of bonds outstanding, no bonds unsold, and approximately \$813.9 million in remaining bonding capacity.

IN GENERAL

In a typical transaction involving the financing of manufacturing equipment with CAEATFA, persons who are applying for financing would pay an application fee and would be required to obtain a resolution from the CAEATFA Board approving the proposed transaction. If approved, that person (or its special purpose entity) would be regarded as a participating party, and the transaction would be regarded as a “project” for purposes of the Public Resources Code and the sales and use tax exclusion.

The participating party may then purchase the manufacturing equipment (and other property meeting the “project” definition) without payment of tax, and resell the equipment to CAEATFA. This transfer may be excluded from sales and use taxes as a transfer from a participating party to CAEATFA.

The applicant and CAEATFA then enter into a lease, whereby CAEATFA transfers to the applicant the manufacturing equipment. Upon complete installation of all the manufacturing equipment, ownership of the manufacturing equipment is transferred from CAEATFA to the participating party. This transfer may also be excluded from sales and use taxes.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the City of San Jose to improve the ability of CAEATFA to offer financial assistance to manufacturers of renewable energy.

2. **Any change to the Public Resources Code definition of “project” could have a direct sales and use tax implication.** The exclusion provided in Revenue and Taxation Code Section 6010.8 is linked directly with the term, “project” as defined in Public Resources Code Section 26003. If that term is either broadened or narrowed within the context of the Public Resources Code, it can result in a direct state and local sales and use tax revenue loss or gain.

Since this bill would broaden the definition of “project” to include renewable energy projects, the potential for a direct sales and use tax state and local revenue loss would exist. The extent of that loss would be dependent on the number of new projects approved by the CAEATFA pursuant to this bill and the dollar amount of machinery and equipment sold, leased or transferred pursuant to Section 6010.8.

3. **How does the exclusion from sales and use tax work?** Once CAEATFA approves a participating parties’ project, the qualifying party (or CAEATFA) would simply acquire their qualifying machinery and equipment without payment of tax by issuing an exemption certificate in accordance with the Board’s Regulation 1667 <http://www.boe.ca.gov/pdf/reg1667.pdf> and vendors making sales to those parties would retain that certificate in their records to support the nontaxable sale.
4. **Recent “project” qualifying for the exclusion under existing provisions.** Last year, the CAEATFA approved the financing of the purchase of an estimated \$100 million worth of manufacturing equipment for lease to Tesla, a Silicon Valley-based manufacturer of electric vehicles. That transaction was structured in a manner that qualified under the exclusion provided in Revenue and Taxation Code Section 6010.8, and could save Tesla an estimated \$9 million in sales and use tax on the deal.
5. **Related legislation.** AB 1111 (Blakeslee) has also been introduced this year to include alternative source components within the term “project” which would also expand the sales and use tax exclusion contained in Revenue and Taxation Code Section 6010.8.

COST ESTIMATE

Some absorbable administrative costs would be incurred in notifying retailers, revising the Board’s publications, and answering inquiries from taxpayers.

REVENUE ESTIMATE

We estimate that in 2008, California capital expenditures of machinery and equipment related to clean renewable energy production amounted to approximately \$225 million. We have no information to determine what portion of that amount would be acquired in transactions qualifying for the exclusion under Section 6010.8. If all persons making capital expenditures of machinery and equipment in California for renewable energy production structured their transactions to meet the conditions of the exclusion, then the annual state and local revenue loss could be as high as \$20 million (\$225 million x 9%) as follows:

		<u>Millions</u>
State General Fund	(6.0%)	\$13.54
Fiscal Recovery Fund	(0.25%)	.56
Local	(2.0%)	4.50
District	(0.75%)	<u>1.69</u>
 Total		 <u>\$20.29</u>

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