



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

Date Introduced:	<b>05/17/01</b>	Bill No:	<b>SB 71XX</b>
Tax:	<b>Sales and Use</b>	Author:	<b>Perata</b>
Board Position:		Related Bills:	<b>SB 71X (Perata) AB 695 (Pescetti) AB 1319 (Cox) AB 27X (Koretz, et al.) AB 29XX (Koretz) AB 51X (Daucher) AB 58X (Cox) AB 124X (Pescetti) SB 877 (Poochigian) SB 1074 (Soto)</b>

***This analysis will not address the bill's provisions concerning the Public Utilities Code, Water Code, and Personal Income and Bank and Corporations Tax Laws as they do not impact the Board.***

**BILL SUMMARY**

This bill would, among other things, do the following:

- Until January 1, 2006, provide a sales and use tax exemption for sales and purchases of any qualified power generation system, as defined and specified.
- As an alternative, authorize any retailer, as specified, to claim a credit on his or her sales and use tax return, for a specified amount authorized under the Personal Income Tax Law or Bank and Corporations Tax Law attributable to the costs of a qualified power generation system.
- Create the Tax Allocation Committee within the State Treasurer's Office, and authorize that committee to allocate to each qualified taxpayer the amount of the exemption allowed in accordance with an allocation plan.
- Specify that the aggregate amount of exemptions and credits claimed may not exceed \$50 million.

**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 power generating equipment 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.

*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, among other things, would:

- Add Section 6367.5 to the Sales and Use Tax Law to provide a sales and use tax exemption until January 1, 2006, for sales and purchases of qualified power generating equipment, purchased by a qualified taxpayer.
- Add Sections 17053.84 and 23684 to the Personal Income Tax Law and Bank and Corporation Tax Law, respectively, to enable qualified taxpayers, in lieu of claiming the exemption under proposed Section 6367.5, to claim credit against personal income or bank and corporation taxes for a specified percentage of costs incurred in acquiring a qualified power generating system
- Define a “qualified taxpayer” to mean any taxpayer that purchases or leases a qualified power generation system as an alternative means of supplying its power needs and installs that qualified power generation system in this state.
- Define “power generation system” to mean devices, either newly installed or converted from a preexisting power generation system, used for the individual function of producing electricity at the rate of 50 megawatts or less per day, and includes any solar energy, wind-driven, fuel cell, microturbine, photovoltaic, and natural gas generation system, but does not include any diesel, oil, gasoline, or steam generation system.
- In lieu of the exemption proposed by Section 6367.5, and the income tax credits authorized under 17053.84 and 23684, authorize a retailer who is a qualified taxpayer to claim credit on his or her sales and use tax return for the total amount of credit authorized under 17053.84 and 23684.
- Create the Tax Allocation Committee within the Treasurer’s office, with the Director of Finance, the Treasurer, and the Controller as members of that committee.
- Authorize the Tax Allocation Committee to allocate the tax credits and incentives provided by Sections 6902.3, 6367.5, 17053.84 and 23684, up to \$50 million annually.

The bill would become operative on the first day of the calendar quarter commencing more than 90 days after the bill becomes effective.

### In General

The California Energy Commission, with the passage of Senate Bill 90 (Sher, Ch. 905, Stats. 1997), has the authority to administer funds collected from the state's investor-owned utilities to support renewable energy technologies. Assembly Bill 1890 (Brulte, et al., Ch. 854, Stats. 1996), which also deregulated the electricity industry, established a new statewide renewables policy by providing \$540 million collected from Southern California Edison, Pacific Gas and Electric Company, and San Diego Gas & Electric over four years beginning in 1998 to support existing, new and emerging renewable technologies from 1998 to 2001.

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AB 1890 also required the Energy Commission to submit a report to the Legislature outlining allocation and distribution recommendations for those renewables funds. This report, as adopted by the Legislature, became SB 90 - the administrative guidelines for the Renewable Energy Program.

Senate Bill 90 implemented the report's recommendations and created a Renewable Resource Trust Fund containing four accounts: the Existing Renewable Resources Account, the New Renewable Resources Account, the Emerging Renewable Resources Account (Buy-Down Program), and the Customer-Side Renewable Resources Purchases Account.

The "Buy-Down Program" provides cash rebates on eligible renewable energy electric-generating systems, such as small wind turbines, fuel cells, solar photovoltaics and other solar power generating equipment. The Commission provides a rebate of up to \$3,000 per kilowatt, or 50 percent off the system purchase price (whichever is less) of certified equipment.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to reduce the demand on the state's power grid during peak hours.
2. **Why allow taxpayers to claim an income tax credit on sales and use tax returns?** The bill would enable a taxpayer, in lieu of claiming the income tax credit, to apply that credit against his or her sales and use tax liability on each return, until the credit is exhausted. A preferable approach would be to either have the taxpayers file a claim for refund with the Franchise Tax Board, since that agency would be charged with administration of the income tax credit provisions, or enable taxpayers to file a claim for refund with this Board for the amount of allowable credit. In that way, sales tax returns would not require revision, computer programming would not be required, and the amount claimed can be verified through documentation submitted with the claim for refund.
3. **Suggested amendments:**
  - On page 4, lines 16 through 23, the language is confusing and unnecessary. The language makes reference to "claiming a credit under this section." However, the section referenced is authorizing an exemption, not a credit. Since existing provisions of the Sales and Use Tax Law already require taxpayers claiming exemptions to obtain and retain documentary evidence to support exempt sales, it is suggested that this language be stricken from the bill.
  - On page 6, line 29, "6902.3" should be replaced with "6367.5."

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**4. Related legislation.** Several sales and use tax measures have been introduced this session to respond to California's energy crisis. These include the following:

AB 27X and AB 29XX (Koretz) – These measures are identical to SB 71XX. Although the Board has not had an opportunity to take a position on AB 29XX, the Board supports AB 27X.

AB 695 (Pescetti) - This measure would provide a sales and use tax exemption for sales and purchases of energy efficient residential and commercial appliances, as defined. The Board's position on this measure is "neutral."

AB 51X (Daucher) - This measure would add an exemption for generators installed under a qualified interruptible service contract of 3 years or more in duration. The Board has not taken a position on this measure.

AB 58X (Cox) and AB 1319 (Cox) - These measures would both provide a state tax exemption for any solar energy system designed to provide thermal energy for the purpose of heating water or providing electrical power, as specified. The Board supports both measures.

AB 124X (Pescetti) - This measure would provide a sales and use tax exemption for sales and purchases of energy efficient residential and commercial appliances, as defined. The Board supports this measure.

SB 877 (Poochigian) - This measure would exempt purchases of qualified cogeneration equipment, as defined, for use on dairy farms, and would also authorize an income tax credit for an amount equal to the portion of property taxes attributable to those fixtures and improvements to a dairy farm utilized in the cogeneration or transformation of dairy industry by-products into fuel sources used for the operation of that dairy farm. The Board supports this measure.

SB 1074 (Soto) - This bill would, until January 1, 2003, exempt microturbines, fuel cells, and photovoltaic cells or any other solar energy cell or panel. The Board's position on this measure is "neutral."

#### **COST ESTIMATE**

Some costs would be incurred in modifying sales and use tax returns for the proposed credit, programming costs for the revised returns, notifying affected retailers, and verifying claimed exemptions and credits. An estimate of these costs is pending.

#### **REVENUE ESTIMATE**

The bill would place an annual cap of \$50 million on the allowable exemptions and credits. The proposed sales and use tax exemption would additionally apply to local and district taxes. Therefore, in addition to the State's General Fund being impacted, a portion of the cap amount would include local and district taxes.

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