



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

DRAFT

Date Amended:	04/16/09	Bill No:	AB 1028
Tax:	Sales and Use	Author:	Blumenfield
Related Bills:	AB 150 (Smyth)		

BILL SUMMARY

This bill would provide a sales and use tax exemption for qualified renewable energy systems, as defined, for a one-month period beginning on April 1, 2010, and ending on April 30, 2010.

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 equipment used to generate electricity 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.

Revenue and Taxation Code Section 6353, however, provides a sales and use tax exemption for sales and purchases of gas and electricity when delivered to consumers through mains and lines.

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 “qualified renewable energy systems” purchased on and after April 1, 2010, and before May 1, 2010. This bill would define “qualified renewable energy systems” to mean those systems deemed by the California Public Utilities Commission to be eligible solar electric equipment under the California Solar Initiative.

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 The provisions of this bill would remain in effect until July 1, 2010, and as of that date be repealed.

IN GENERAL

The California Public Utilities Commission (CPUC) initially created a solar program by regulation, known as the California Solar Initiative. In 2006, SB 1 (Ch. 132, Murray) authorized the California Solar Initiative Program in statute to be administered by the CPUC through California’s three major investor-owned utilities—Pacific Gas and Electric, Southern California Edison, and San Diego Gas and Electric. All electric customers of these three utilities are eligible to apply for cash rebates for solar for existing homes, as well as existing and new commercial, industrial, government, non-profit, and agricultural facilities—within the service territories of the three investor-owned utilities.

The rebates vary according to system size, customer class, and performance and installation factors. There are two incentive programs available to customers: Expected Performance Based Buydown (EPBB) and Performance Based Incentive (PBI). Under the EPBB program, purchasers of solar systems of less than 50 kilowatt may apply for a

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lump sum cash rebate. Customers receive their rebate payment after their new system is fully installed and interconnected. Under the PBI program, customers with solar systems between 50 kilowatt and 1 megawatt may apply for rebates at a fixed monthly payment amount over a five-year period. The rebate is determined by the actual output of the system, as metered and reported to the utility.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to provide an incentive for homeowners and businesses to purchase solar energy systems. According to the author's office, this bill is part of Assembly Member Blumenfield's Solar Stimulus Package consisting of seven bills that would promote the use of solar and renewable energy systems by schools, universities, nonprofit entities, public agencies and homeowners.
2. **Specific rules apply to construction contracts.** Under the Sales and Use Tax Law, generally, contracts for improvements to real property, such as the installation of a solar energy system, constitute construction contracts and the contractor is responsible for payment of the tax on his or her purchase of materials, such as electrical wiring, piping, etc. furnished and installed in the performance of a that contract. Solar panels which are combined with other tangible personal property and installed as roofing shingles, skylights, wall panels or windows, and become an integral and inseparable part of the real property are considered materials. Other and more common types of solar panels, however, are considered fixtures when they are an accessory to a building or structure and do not lose their identity as an accessory when installed. In most applications, solar panels installed as part of a solar energy system are considered fixtures.

The contractor is regarded as a retailer of fixtures, such as solar panels, and the sales tax applies to the sale of the panels by the contractor to the customer. The tax applies to the sales price, which is the price stated in the contract. If the contract does not state the sales price, then the sales price is the cost price to the contractor, assuming the contractor purchases the fixtures in completed condition. Typically, a contractor who furnishes and installs a solar energy system bills the customer on a lump sum basis, without any separate charge for the materials, fixtures, or sales tax. In such cases, the contractor would receive the benefit of the proposed exemption on his or her purchase of the components of the system. It is not certain that a contractor billing in lump would pass on this tax savings to the customer since the tax is not reflected in the contract.

3. **Which solar technologies are covered under the California Solar Initiative?** The California Solar Initiative covers solar photovoltaic systems (which are roof-mounted, ground-mounted, or building-integrated), as well as non-photovoltaic electric displacing systems and electric generating systems. Non-photovoltaic solar systems include solar water heaters, solar space heating and solar cooling systems, and electrical generating solar systems, such as dish sterling, solar troughs, dish and lens, and concentrating solar systems.
4. **Definition for qualified renewable energy systems needs clarifying.** A qualified renewable energy system would be a system deemed by the CPUC to be eligible solar electric equipment under the California Solar Initiative. Administered by the CPUC, it provides solar incentives for photovoltaic and non-photovoltaic solar energy systems. SB 1 (Murray, Chapter 132, Stats. 2006) authorized the CPUC's

California Solar Initiative Program in statute and provided definitions and eligibility criteria for solar energy systems, including criteria for solar incentives.

Public Resources Code Section 25781 defines the California Solar Initiative to mean the program providing ratepayer funded incentives for eligible solar energy systems adopted by the CPUC in Decision 06-01-024. Section 25781 also defines “solar energy system” to mean a system that meets or exceeds the eligibility criteria established by the California Energy Commission and CPUC pursuant to Section 25782, which includes the eligibility requirements for solar energy systems receiving ratepayer funded solar incentives. Since the term for a solar energy system is defined in the Public Resources Code, perhaps the definition in this bill should reference that section. Clarification of this term will help the Board to administer the proposed exemption.

The CPUC has published the California Solar Initiative Program Handbook, which describes the requirements for receiving incentives for the purchase and installation of solar energy systems. However, the program handbook does not contain a comprehensive list of eligible solar electric systems. Since the CPUC administers the program, perhaps the CPCU can provide Board staff with a listing of eligible solar electric systems.

Finally, solar photovoltaic and non-photovoltaic systems are comprised of equipment and components such as inverters, net meters, mounting equipment, tracking equipment, pipes, pumps, and wiring. Would the proposed exemption apply to related equipment and components?

Board staff is willing to work with the author’s office to draft amendments to address these issues.

5. **Technical amendments.** Board staff notes that both subdivisions (a) and (c) contain drafting errors. We recommend the following amendments to correct these errors:

(a) To commemorate the 40th anniversary of Earth Day, on and after April 1, 2010, ~~to before May 1, 2010~~ and including April 30, 2010, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, qualified renewable energy systems.

(c) This section shall remain in effect only until July 1, 2010, and as of that date is repealed ~~is enacted before January 1, 2011, deletes or extends that date.~~

6. **Related Legislation.** AB 150 (Smyth) would provide a sales and use tax exemption for sales and purchases of energy efficient products, as defined, on April 24 (which date annually occurs during the week of Earth Day) of each year beginning in 2010. This bill was placed on the suspense file in the Assembly Revenue and Taxation Committee.

COST ESTIMATE

Some costs would be incurred in notifying affected retailers and contractors, verifying claimed exemptions, preparing a special publication and exemption certificate, and answering inquires from the public and taxpayers. An estimate of these costs is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

This bill would provide that during the period April 1, 2010, to April 30, 2010, the gross receipts from the sale, storage, use, or other consumption, in this state, for qualified renewable energy systems that have been approved by the California Public Utilities Commission to be eligible solar electric equipment under the California Solar Initiative Incentive program.

According to information we received from the CPUC, since 2007, \$3.2 billion in qualified renewable energy systems (22,000) have been approved under the California Solar Initiative Incentive program. Since that time, over \$768 million renewable systems have been completed. The average value of each qualified renewable system amounts to \$145,000 as shown:

California Solar Initiative Qualified Renewable Energy Systems

Total value of qualified renewable energy systems	\$3,200,000,000
Total number of qualified renewable energy systems	22,000
Average value of each energy system	\$ 145,000
Non-taxable labor charges (50% of system cost)	\$ 72,500
<u>Taxable gross receipts subject to tax holiday exemption</u>	<u>\$72,500</u>

The actual number of renewable energy system not yet completed that may qualify for this proposed exemption during the tax holiday period cannot be determined. However, as an order of magnitude, if 1,000 taxpayers purchased these systems during the tax holiday period, the taxable gross receipts would amount to \$72.5 million (1,000 x \$72,500). The state and local sales and use tax revenue loss would amount to \$6.5 million.

REVENUE SUMMARY

The revenue loss from exempting qualified renewable energy systems during the period April 1, 2010 to April 30, 2010 amounts to \$6.5 million in state and local sales and use taxes as follows:

	<u>Revenue Loss</u>
State (6.00%)	\$4,333,000
Fiscal Recovery Fund (0.25%)	181,000
Local (2.00%)	\$1,444,000
District (0.75%)	\$542,000
<u>Total</u>	<u>\$6,500,000</u>

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