



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Enrolled:	Chapter 10	Bill No:	SB 71
Tax:	Sales and Use	Author:	Padilla, et al.
Related Bills:	AB 1111 (Blakeslee) ABx3 82 (Blakeslee) ABx6 3 (Blakeslee) SB 1467 (Padilla, et al.) SBx6 12 (Padilla, et al.) SBx8 22 (Padilla, et al.) SB 338 (Alquist)		

BILL SUMMARY

This bill would amend the definition of “project” in the Public Resources Code for purposes of expanding the authorization for the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to provide financial assistance to participating parties in the form of the sales and use tax exclusion established in Section 6010.8 of the Sales and Use Tax Law, under specified criteria.

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.

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.

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.

PROPOSED LAW

This bill would amend Section 26003 of, and add and repeal Section 26011.8 to, the Public Resources Code to do the following:

- Amend the definition of “project” to include any tangible personal property that is utilized for the design, manufacture, production, or assembly of advanced transportation technologies or alternative source products, components, or systems.
- Authorize CAEATFA to approve “projects” that would be excluded from sales and use tax and specify the criteria under which CAEATFA would approve those projects.

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, Chairman of the California Energy Commission, President of the Public Utilities Commission, Controller, and Treasurer.

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 author and is intended to improve the ability of CAEAFTA to offer financial assistance in the form of a sales and use tax exclusion to manufacturers of advanced transportation technologies and renewable energy. The goal is to promote the creation of California-based manufacturing, jobs, the reduction of greenhouse gases, and reductions in air and water pollution and energy consumption.
2. **Any change to the Public Resources Code's definition of "project" can 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. When that term is broadened within the context of the Public Resources Code, it can result in a direct state and local sales and use tax revenue loss.

Since this bill would broaden the definition of "project" to include tangible personal property related to specified 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 and other tangible personal property sold, leased or transferred pursuant to Section 6010.8.

3. **CAEATFA will determine the extent to which the sales and use tax exclusion applies.** The bill requires CAEATFA to publish notice of the availability of project applications and deadlines for submission of project applications to CAEATFA. It also requires CAEATFA to evaluate those applications based on several criteria, including, among other things, the extent to which the project develops manufacturing facilities or purchases equipment for manufacturing facilities located in California, and the extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.
4. **Once exclusions exceed \$100 million, the bill requires CAEATFA to provide a 20-day advance notice to the Legislature.** An "exclusion" for purposes of the Sales and Use Tax Law is generally regarded as an amount which otherwise would constitute a "sale" and a "purchase," but which, under the specific provision of the Sales and Use Tax Law (i.e., in this case, Section 6010.8), is excluded from those terms. Therefore, CAEATFA would be required to provide the 20-day advance notice when the amount of purchases excluded from the tax exceeds \$100 million, which would amount to about \$9 million in sales and use tax.
5. **Related legislation.** The following bills have been introduced during the 2009-10 Regular Session and various Extraordinary Sessions that contain provisions similar to this bill:

AB 1111 (Blakeslee) – Died in the Assembly Appropriations Committee.

ABx3 82 (Blakeslee) – Died at the desk. This bill was never heard.

ABx6 3 (Blakeslee) – This bill was never heard.

SB 1467 (Padilla, et al.) – Referred to the Senate Revenue and Taxation Committee and Utilities and Energy, Utilities and Communications Committee.

SBx6 12 (Padilla, et al.) – Introduced February 25, 2010

SBx8 22 (Padilla, et al.) – Referred to Senate Rules Committee.

SB 338 (Alquist) – Held in the Senate Appropriations Committee.

COST ESTIMATE

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

REVENUE ESTIMATE

We estimate that in 2009, California capital expenditures of machinery and equipment related to clean renewable energy production amounted to approximately \$228 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. Data limitations also make it impossible to produce a reliable estimate of the potential revenue loss from exempting green manufacturers' purchases of *all* tangible personal property from the sales and use tax. For instance, the National Income and Product Accounts data (the Gross Domestic Products data) only focus on firms' capital and equipment purchases, and do not have specific series for the other tangible personal property that firms purchase. Anecdotal evidence suggests that capital and equipment represent the majority of the dollar value of tangible personal property purchases by manufacturing firms. Other purchases, such as pencils, paper, and various consumable supplies, would be comparatively smaller, about 20% of their capitol equipment expenditures or \$45 million. If all persons making capital expenditures of qualifying "projects" in California for renewable energy production structured all their purchase transactions to meet the conditions of the exclusion, then the annual state and local revenue loss could be as high as \$25 million (\$228 million + \$45 million x 9%), with an annual increase of one percent, as follows:

Jurisdictions	Fiscal Year Revenue		
	2010-11	'2011-12	2012-13
	(000's)		
¹ State	\$ 16.4	\$ 13.8	\$ 13.9
Fiscal Recovery (0.25%)	.7	.7	.7
Local	5.5	5.5	5.6
Special District	2.4	2.3	2.2
Total	<u>\$ 25.0</u>	<u>\$ 22.3</u>	<u>\$ 22.4</u>

¹Beginning 7/1/11 state rate equals 5%

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