

AMENDED IN SENATE APRIL 30, 2007

SENATE BILL

No. 73

Introduced by Senator Florez

January 17, 2007

An act to ~~add Sections 17053.63 and 23663 to amend Section 23036 of, and to add and repeal Sections 17053.63 and 23663 of,~~ the Revenue and Taxation Code, relating to taxation, ~~and making an appropriation therefor,~~ to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 73, as amended, Florez. Income and corporation taxes: credit: biodiesel fuel.

The Personal Income Tax Law and the Corporation Tax Law authorize various deductions and credits in computing the taxes imposed by those laws.

This bill would, under both laws, for taxable years beginning on or after January 1, 2008, *and before January 1, 2014*, allow a ~~refundable~~ tax credit, *that, upon appropriation by the Legislature, would be refunded* in an amount equal to a specified amount for each gallon of biodiesel fuel, as defined, produced or manufactured by a qualified ~~producer taxpayer~~ *refinery* located in this state to be reimbursed ~~on a quarterly~~ *an annual* basis, as provided.

This bill would provide that *any* refunds of this credit *authorized by the Legislature* shall be continuously appropriated from the State Highway Account in the State Transportation Funds.

The Corporation Tax Law defines the term "tax" for those purposes, and provides that credits shall be allowed against the tax in a specified order.

This bill would add to that list of credits, credits that contain refundable provisions, but do not contain carryover provisions.

This bill would take effect immediately as a tax levy.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes-no~~. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17053.63 is added to the Revenue and
2 Taxation Code, to read:

3 17053.63. (a) For each taxable year beginning on or after
4 January 1, 2008, there shall be allowed a credit against the “net
5 tax,” as defined by Section 17039, an amount equal to thirty cents
6 (\$0.30) for each gallon of biodiesel fuel produced or manufactured
7 during the taxable year by a qualified ~~producer~~ *taxpayer* at any
8 ~~facility refinery~~ located in this state.

9 (b) The credit authorized under this section and Section 23663
10 shall not exceed an aggregate amount of ~~thirty~~ *60* million gallons
11 per taxable year as produced or manufactured by all qualified
12 ~~producers taxpayers~~ who receive a credit under this section.

13 (c) For purposes of this section:

14 (1) “Biodiesel fuel” means a renewable, biodegradable, mono
15 alkyl ester combustible liquid fuel derived from vegetable oils or
16 animal fats that meets the American Society for Testing and
17 Materials specification ~~D6751-02~~ *D6751* for biodiesel fuel (B100)
18 blend stock for distillate fuels.

19 (2) ~~“Facility” means a qualified producer’s refinery located in~~
20 ~~California that produces or manufactures biodiesel fuel.~~

21 (3) ~~“Qualified producer” means any person who owns or~~
22 ~~operates a facility and who is engaged in the production or~~
23 ~~manufacture of biodiesel fuel at that facility.~~

24 (2) “Manufacture” means the activity of converting or
25 conditioning property by changing the form, composition, quality,
26 or character of the property for ultimate sale or use as biodiesel
27 fuel.

28 (3) “Produce” means the extraction or extracting of vegetable
29 oils or animal fats for use in the manufacturing of biodiesel fuel.

30 (4) (A) “Qualified taxpayer” means any taxpayer who owns
31 or operates a refinery that produces or manufactures biodiesel
32 fuel at that refinery.

1 (B) *In the case of any passthrough entity, the determination of*
2 *whether a taxpayer is a qualified taxpayer under this section or*
3 *Section 23663 shall be made at the entity level and any credit*
4 *under this section shall be allowed to the passthrough entity and*
5 *passed through to the partners or shareholders in accordance with*
6 *applicable provisions of Part 10 (commencing with Section 17001)*
7 *or Part 11 (commencing with Section 23001). For purposes of this*
8 *paragraph, “passthrough entity” means any partnership or “S”*
9 *corporation.*

10 (5) *“Refinery” means a facility located in California that*
11 *produces or manufactures biodiesel fuel.*

12 (d) ~~Not later than 25 days after the end of each calendar-quarter~~
13 ~~year, each qualified-producer taxpayer shall submit any information~~
14 ~~as the Franchise Tax Board or the Treasurer requires to the~~
15 ~~Franchise Tax Board to substantiate the total amount of biodiesel~~
16 ~~fuel produced or manufactured by the qualified-producer taxpayer~~
17 ~~for the previous calendar-quarter year.~~

18 (e) ~~In the case where the credit allowed by this section exceeds~~
19 ~~the taxpayer’s liability computed under this part, the excess shall~~
20 ~~be credited, upon appropriation by the Legislature, against other~~
21 ~~amounts due, if any, from the qualified-producer taxpayer and the~~
22 ~~balance, if any, shall be refunded to the qualified-producer on a~~
23 ~~quarterly basis; taxpayer on an annual basis.~~

24 (f) ~~The Franchise Tax Board shall submit a quarterly~~ *an annual*
25 *list, in a form agreed upon by the Franchise Tax Board and the*
26 *Treasurer, to the Treasurer of those qualified-producers taxpayers*
27 *that are eligible to receive a refund under this section.*

28 (g) ~~Those amounts that are determined by the Treasurer to be~~
29 ~~necessary to make the refunds required by this subdivision any~~
30 ~~refunds authorized by the Legislature shall be continuously~~
31 ~~appropriated from the State Highway Account, notwithstanding~~
32 ~~Section 13340 of the Government Code, commencing with the~~
33 ~~2007–2008 fiscal year, but otherwise without regard to fiscal years,~~
34 ~~to the Treasurer for the purpose of making those refunds.~~

35 (h) ~~The Franchise Tax Board shall prescribe all rules and~~
36 ~~regulations necessary for the implementation of this section.~~

37 (i) ~~This section shall remain in effect only until January 1, 2014,~~
38 ~~and as of that date is repealed, unless a later enacted statute, that~~
39 ~~is enacted before January 1, 2014, deletes or extends that date.~~

1 *SEC. 2. Section 23036 of the Revenue and Taxation Code is*
2 *amended to read:*

3 23036. (a) (1) The term “tax” includes any of the following:

4 (A) The tax imposed under Chapter 2 (commencing with Section
5 23101).

6 (B) The tax imposed under Chapter 3 (commencing with Section
7 23501).

8 (C) The tax on unrelated business taxable income, imposed
9 under Section 23731.

10 (D) The tax on—S “S” corporations imposed under Section
11 23802.

12 (2) The term “tax” does not include any amount imposed under
13 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
14 of subdivision (f) of Section 24667.

15 (b) For purposes of Article 5 (commencing with Section 18661)
16 of Chapter 2, Article 3 (commencing with Section 19031) of
17 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
18 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
19 and for purposes of Sections 18601, 19001, and 19005, the term
20 “tax” also includes all of the following:

21 (1) The tax on limited partnerships, imposed under Section
22 17935, the tax on limited liability companies, imposed under
23 Section 17941, and the tax on registered limited liability
24 partnerships and foreign limited liability partnerships imposed
25 under Section 17948.

26 (2) The alternative minimum tax imposed under Chapter 2.5
27 (commencing with Section 23400).

28 (3) The tax on built-in gains of—S “S” corporations, imposed
29 under Section 23809.

30 (4) The tax on excess passive investment income of—S “S”
31 corporations, imposed under Section 23811.

32 (c) Notwithstanding any other provision of this part, credits are
33 allowed against the “tax” in the following order:

34 (1) Credits that do not contain carryover provisions.

35 (2) Credits that, when the credit exceeds the “tax,” allow the
36 excess to be carried over to offset the “tax” in succeeding taxable
37 years, except for those credits that are allowed to reduce the “tax”
38 below the tentative minimum tax, as defined by Section 23455.

39 The order of credits within this paragraph shall be determined by
40 the Franchise Tax Board.

- 1 (3) The minimum tax credit allowed by Section 23453.
- 2 (4) Credits that are allowed to reduce the “tax” below the
- 3 tentative minimum tax, as defined by Section 23455.
- 4 (5) Credits for taxes withheld under Section 18662.
- 5 (6) *Credits that contain refundable provisions, but do not*
- 6 *contain carryover provisions.*
- 7 (d) Notwithstanding any other provision of this part, each of
- 8 the following applies:
- 9 (1) No credit may reduce the “tax” below the tentative minimum
- 10 tax (as defined by paragraph (1) of subdivision (a) of Section
- 11 23455), except the following credits:
- 12 (A) The credit allowed by former Section 23601 (relating to
- 13 solar energy).
- 14 (B) The credit allowed by former Section 23601.4 (relating to
- 15 solar energy).
- 16 (C) The credit allowed by former Section 23601.5 (relating to
- 17 solar energy).
- 18 (D) The credit allowed by Section 23609 (relating to research
- 19 expenditures).
- 20 (E) The credit allowed by former Section 23609.5 (relating to
- 21 clinical testing expenses).
- 22 (F) The credit allowed by Section 23610.5 (relating to
- 23 low-income housing).
- 24 (G) The credit allowed by former Section 23612 (relating to
- 25 sales and use tax credit).
- 26 (H) The credit allowed by Section 23612.2 (relating to enterprise
- 27 zone sales or use tax credit).
- 28 (I) The credit allowed by former Section 23612.6 (relating to
- 29 Los Angeles Revitalization Zone sales tax credit).
- 30 (J) The credit allowed by former Section 23622 (relating to
- 31 enterprise zone hiring credit).
- 32 (K) The credit allowed by Section 23622.7 (relating to enterprise
- 33 zone hiring credit).
- 34 (L) The credit allowed by former Section 23623 (relating to
- 35 program area hiring credit).
- 36 (M) The credit allowed by former Section 23623.5 (relating to
- 37 Los Angeles Revitalization Zone hiring credit).
- 38 (N) The credit allowed by former Section 23625 (relating to
- 39 Los Angeles Revitalization Zone hiring credit).

1 (O) The credit allowed by Section 23633 (relating to targeted
2 tax area sales or use tax credit).

3 (P) The credit allowed by Section 23634 (relating to targeted
4 tax area hiring credit).

5 (Q) The credit allowed by Section 23649 (relating to qualified
6 property).

7 (2) No credit against the tax may reduce the minimum franchise
8 tax imposed under Chapter 2 (commencing with Section 23101).

9 (e) Any credit which is partially or totally denied under
10 subdivision (d) is allowed to be carried over to reduce the “tax”
11 in the following year, and succeeding years if necessary, if the
12 provisions relating to that credit include a provision to allow a
13 carryover of the unused portion of that credit.

14 (f) Unless otherwise provided, any remaining carryover from a
15 credit that has been repealed or made inoperative is allowed to be
16 carried over under the provisions of that section as it read
17 immediately prior to being repealed or becoming inoperative.

18 (g) Unless otherwise provided, if two or more taxpayers share
19 in costs that would be eligible for a tax credit allowed under this
20 part, each taxpayer is eligible to receive the tax credit in proportion
21 to his or her respective share of the costs paid or incurred.

22 (h) Unless otherwise provided, in the case of an ~~S~~ “S”
23 corporation, any credit allowed by this part is computed at the ~~S~~
24 “S” corporation level, and any limitation on the expenses
25 qualifying for the credit or limitation upon the amount of the credit
26 applies to the S corporation and to each shareholder.

27 (i) (1) With respect to any taxpayer that directly or indirectly
28 owns an interest in a business entity that is disregarded for tax
29 purposes pursuant to Section 23038 and any regulations thereunder,
30 the amount of any credit or credit carryforward allowable for any
31 taxable year attributable to the disregarded business entity is limited
32 in accordance with paragraphs (2) and (3).

33 (2) The amount of any credit otherwise allowed under this part,
34 including any credit carryover from prior years, that may be applied
35 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
36 the taxable year is limited to an amount equal to the excess of the
37 taxpayer’s regular tax (as defined in Section 23455), determined
38 by including income attributable to the disregarded business entity
39 that generated the credit or credit carryover, over the taxpayer’s
40 regular tax (as defined in Section 23455), determined by excluding

1 the income attributable to that disregarded business entity. No
2 credit is allowed if the taxpayer’s regular tax (as defined in Section
3 23455), determined by including the income attributable to the
4 disregarded business entity is less than the taxpayer’s regular tax
5 (as defined in Section 23455), determined by excluding the income
6 attributable to the disregarded business entity.

7 (3) If the amount of a credit allowed pursuant to the section
8 establishing the credit exceeds the amount allowable under this
9 subdivision in any taxable year, the excess amount may be carried
10 over to subsequent taxable years pursuant to subdivisions (d), (e),
11 and (f).

12 (j) (1) Unless otherwise specifically provided, in the case of a
13 taxpayer that is a partner or shareholder of an eligible ~~pass-through~~
14 *passthrough* entity described in paragraph (2), any credit passed
15 through to the taxpayer in the taxpayer’s first taxable year
16 beginning on or after the date the credit is no longer operative may
17 be claimed by the taxpayer in that taxable year, notwithstanding
18 the repeal of the statute authorizing the credit prior to the close of
19 that taxable year.

20 (2) For purposes of this subdivision, “eligible ~~pass-through~~
21 *passthrough* entity” means any partnership or ~~S~~ “S” corporation
22 that files its return on a fiscal year basis pursuant to Section 18566,
23 and that is entitled to a credit pursuant to this part for the taxable
24 year that begins during the last year a credit is operative.

25 (3) This subdivision applies to credits that become inoperative
26 on or after the operative date of the act adding this subdivision.

27 ~~SEC. 2.~~

28 *SEC. 3.* Section 23663 is added to the Revenue and Taxation
29 Code, to read:

30 23663. (a) For each taxable year beginning on or after January
31 1, 2008, there shall be allowed a credit against the “tax,” as defined
32 by Section 23036, an amount equal to thirty cents (\$0.30) for each
33 gallon of biodiesel fuel produced or manufactured during the
34 taxable year by a qualified ~~producer taxpayer~~ *taxpayer* at any ~~facility~~
35 *refinery* located in this state.

36 (b) The credit authorized under this section and Section ~~1705363~~
37 *17053.63* shall not exceed an aggregate amount of ~~thirty~~ *60* million
38 gallons per taxable year as produced or manufactured by all
39 qualified ~~producers taxpayers~~ *taxpayers* who receive a credit under this
40 section.

1 (c) For purposes of this section:

2 (1) “Biodiesel fuel” means a renewable, biodegradable, mono
3 alkyl ester combustible liquid fuel derived from vegetable oils or
4 animal fats that meets the American Society for Testing and
5 Materials specification ~~D6751-02~~ *D6751* for biodiesel fuel (B100)
6 blend stock for distillate fuels.

7 ~~(2) “Facility” means a qualified producer’s refinery located in
8 California that produces or manufactures biodiesel fuel.~~

9 ~~(3) “Qualified producer” means any person who owns or
10 operates a facility and who is engaged in the production or
11 manufacture of biodiesel fuel at that facility.~~

12 (2) “Manufacture” means the activity of converting or
13 conditioning property by changing the form, composition, quality,
14 or character of the property for ultimate sale or use as biodiesel
15 fuel.

16 (3) “Produce” means the extraction or extracting of vegetable
17 oils or animal fats for use in the manufacturing of biodiesel fuel.

18 (4) (A) “Qualified taxpayer” means any taxpayer who owns
19 or operates a refinery that produces or manufactures biodiesel
20 fuel at that refinery.

21 (B) In the case of any passthrough entity, the determination of
22 whether a taxpayer is a qualified taxpayer under this section shall
23 be made at the entity level and any credit under this section or
24 Section 17053.63 shall be allowed to the passthrough entity and
25 passed through to the partners or shareholders in accordance with
26 applicable provisions of Part 10 (commencing with Section 17001)
27 or Part 11 (commencing with Section 23001). For purposes of this
28 paragraph, “passthrough entity” means any partnership or “S”
29 corporation.

30 (5) “Refinery” means a facility located in California that
31 produces or manufactures biodiesel fuel.

32 (d) Not later than 25 days after the end of each calendar ~~quarter~~
33 year, each qualified ~~producer~~ taxpayer shall submit any information
34 as the Franchise Tax Board or the Treasurer requires to the
35 Franchise Tax Board to substantiate the total amount of biodiesel
36 fuel produced or manufactured by the qualified ~~producer~~ taxpayer
37 for the previous calendar ~~quarter~~ year.

38 (e) In the case where the credit allowed by this section exceeds
39 the taxpayer’s liability computed under this part, the excess shall
40 be credited, *upon appropriation by the Legislature*, against other

1 amounts due, if any, from the qualified ~~producer~~ *taxpayer* and the
2 balance, if any, shall be refunded to the qualified ~~producer on a~~
3 ~~quarterly basis.~~ *taxpayer on an annual basis.*

4 (f) The Franchise Tax Board shall submit ~~a quarterly~~ *an annual*
5 list, in a form agreed upon by the Franchise Tax Board and the
6 Treasurer, to the Treasurer of those qualified ~~producers~~ *taxpayers*
7 that are eligible to receive a refund under this section.

8 (g) Those amounts that are determined by the Treasurer to be
9 necessary to make ~~the refunds required by this subdivision~~ *any*
10 *refunds authorized by the Legislature* shall be continuously
11 appropriated from the State Highway Account, notwithstanding
12 Section 13340 of the Government Code, commencing with the
13 2007–2008 fiscal year, but otherwise without regard to fiscal years,
14 to the Treasurer for the purpose of making those refunds.

15 (h) The Franchise Tax Board shall prescribe all rules and
16 regulations necessary for the implementation of this section.

17 (i) *This section shall remain in effect only until January 1, 2014,*
18 *and as of that date is repealed, unless a later enacted statute, that*
19 *is enacted before January 1, 2014, deletes or extends that date.*

20 ~~SEC. 3.~~

21 *SEC. 4.* This act provides for a tax levy within the meaning of
22 Article IV of the Constitution and shall go into immediate effect.