

AMENDED IN ASSEMBLY APRIL 8, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2589**

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**Introduced by Assembly Member Tran**

February 19, 2010

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~~An act to amend Section 43511 of the Revenue and Taxation Code, relating to taxation. An act to add and repeal Sections 17053.64 and 23661 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2589, as amended, Tran. ~~Hazardous Substances Tax Law. Income taxes: renewable energy credits.~~

*The Personal Income Tax Law and the Corporation Tax Law allow various credits against the taxes imposed by those laws.*

*This bill would, until January 1, 2016, allow a credit, under both laws, to qualified producers in the amount of \$0.018 per kilowatthour produced by dual renewable energy devices, as provided.*

*This bill would, upon the appropriation of the Legislature, transfer amounts necessary to refund that credit from the General Fund to the Treasurer for the purpose of making those refunds.*

*This bill would take effect immediately as a tax levy.*

~~The existing California Taxpayers' Bill of Rights, which is administered by the State Board of Equalization, governs the assessment, audit, and collection of taxes under, among other acts, the Hazardous Substances Tax Law.~~

~~This bill would make a technical nonsubstantive change to that provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

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

1     SECTION. 1. Section 17053.64 is added to the Revenue and  
2     Taxation Code, to read:  
3     17053.64. (a) For each taxable year beginning on or after  
4     January 1, 2011, there shall be allowed a credit against the “net  
5     tax,” as defined by Section 17039, an amount equal to one and  
6     eight-tenths cents (\$0.018) per kilowatthour (KWh) produced by  
7     a dual renewable energy device during the taxable year by a  
8     qualified producer at a facility located in this state or within three  
9     miles off the shore of this state.  
10    (b) For purposes of this section:  
11    (1) “Dual renewable energy device” means a device that utilizes  
12    two different renewable energy generating technologies in the  
13    same device where neither renewable generating technology  
14    produces less than 20 percent of the total energy production by  
15    the device.  
16    (2) “Facility” as defined in subdivision (b) of the Section 25741  
17    of the Public Resources Code.  
18    (3) (A) “Qualified producer” means any taxpayer who owns  
19    a facility and who is engaged in the production of electricity using  
20    dual renewable energy devices.  
21    (B) In the case of any passthrough entity, the determination of  
22    whether a taxpayer is a qualified producer under this section shall  
23    be made at the entity level and any credit under this section or  
24    Section 23661 shall be allowed to the passthrough entity and  
25    passed through to the partners or shareholders in accordance with  
26    applicable provisions of this part or Part 11(commencing with  
27    Section 23001). For purposes of this paragraph, “passthrough  
28    entity” means any partnership, limited liability company, or “S”  
29    corporation.  
30    (c) Not later than 25 days after the end of each calendar quarter,  
31    a qualified producer shall submit any information that the  
32    Franchise Tax Board or the Treasurer requires to the Franchise  
33    Tax Board to substantiate the total amount of kilowatthours  
34    produced.

1 (d) In the case where the credit allowed by this section exceeds  
2 the taxpayer's liability computed under this part, the excess shall  
3 be credited against other amounts due, if any, from the qualified  
4 producer and the balance, if any, shall be refunded to the qualified  
5 producer on an annual basis.

6 (e) The Franchise Tax Board shall submit an annual list of  
7 qualified producers that are eligible to receive a refund under this  
8 section, to the Treasurer, in a form agreed upon by the Franchise  
9 Tax Board and the Treasurer.

10 (f) Upon appropriation by the Legislature the amounts that are  
11 determined by the Treasurer to be necessary to make the refunds  
12 required by subdivision (e) shall be transferred to the Treasurer  
13 for the purpose of making those refunds.

14 (g) This section shall remain in effect only until January 1, 2016,  
15 and as of that date is repealed.

16 SEC. 2. Section 23661 is added to the Revenue and Taxation  
17 Code, to read:

18 23661. (a) For each taxable year beginning on or after  
19 January 1, 2011, there shall be allowed a credit against the "tax,"  
20 as defined by Section 23036, an amount equal to one and  
21 eight-tenths cents (\$0.018) per kilowatthour (KWh) produced by  
22 a dual renewable energy device during the taxable year by a  
23 qualified producer at a facility located in this state or within three  
24 miles off the shore of this state.

25 (b) For purposes of this section:

26 (1) "Dual renewable energy device" means a device that utilizes  
27 two different renewable energy generating technologies in the  
28 same device where neither renewable generating technology  
29 produces less than 20 percent of the total energy production by  
30 the device.

31 (2) "Facility" as defined in subdivision (b) of the Section 25741  
32 of the Public Resources Code.

33 (3) (A) "Qualified producer" means any taxpayer who owns  
34 a facility and who is engaged in the production of electricity using  
35 dual renewable energy devices.

36 (B) In the case of any passthrough entity, the determination of  
37 whether a taxpayer is a qualified producer under this section shall  
38 be made at the entity level and any credit under this section or  
39 Section 17053.64 shall be allowed to the passthrough entity and  
40 passed through to the partners or shareholders in accordance with

1 applicable provisions of this part or Part 10 (commencing with  
 2 Section 17001). For purposes of this paragraph, “passthrough  
 3 entity” means any partnership, limited liability company, or “S”  
 4 corporation.

5 (c) Not later than 25 days after the end of each calendar quarter;  
 6 a qualified producer shall submit any information that the  
 7 Franchise Tax Board or the Treasurer requires to the Franchise  
 8 Tax Board to substantiate the total amount of kilowatthours  
 9 produced.

10 (d) In the case where the credit allowed by this section exceeds  
 11 the taxpayer’s liability computed under this part, the excess shall  
 12 be credited against other amounts due, if any, from the qualified  
 13 producer and the balance, if any, shall be refunded to the qualified  
 14 producer on an annual basis.

15 (e) The Franchise Tax Board shall submit an annual list of  
 16 qualified producers that are eligible to receive a refund under this  
 17 section, to the Treasurer, in a form agreed upon by the Franchise  
 18 Tax Board and the Treasurer.

19 (f) Upon appropriation by the Legislature the amounts that are  
 20 determined by the Treasurer to be necessary to make the refunds  
 21 required by subdivision (e) shall be transferred to the Treasurer  
 22 for the purpose of making those refunds.

23 (g) This section shall remain in effect only until January 1, 2016,  
 24 and as of that date is repealed.

25 SEC. 3. This act provides for a tax levy within the meaning of  
 26 Article IV of the Constitution and shall go into immediate effect.

27 SECTION 1. ~~Section 43511 of the Revenue and Taxation Code~~  
 28 ~~is amended to read:~~

29 ~~43511. (a) The board shall administer this article.~~

30 ~~(b) Unless the context indicates otherwise, the provisions of~~  
 31 ~~this article shall apply to this part.~~