

Date of Hearing: July 14, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

SB 302 (Padilla) – As Amended March 27, 2025

Majority vote. Fiscal committee.

**SENATE VOTE:** 38-0

**SUBJECT:** Personal Income Tax Law and Corporation Tax Law: exclusions: environmental credits

**SUMMARY:** Excludes from gross income, under the Personal Income Tax (PIT) Law and the Corporation Tax (CT) Law, any payment made relating to an elective payment and transfer of certain federal tax credits. Specifically, **this bill**:

- 1) Excludes from gross income, for taxable years beginning on or after January 1, 2023, any payment made, as provided in federal law, relating to the elective payment and the transfer of "federal emissions reduction tax credits." The treatment of this authorization under federal law for partnerships and S corporations applies to this bill's exclusion.
- 2) Prohibits any deduction for an amount paid in consideration of a transferred "federal renewable resources tax credit."
- 3) Provides that, for the purposes of this bill, that a payment made in consideration for the transfer of a "federal renewable resources tax credit" includes the value of the credit received by the transferee.
- 4) Finds and declares, for the purposes of complying with Revenue and Taxation Code Section 41, that the goal of this bill is to promote the investment and construction of clean energy projects and clean energy advanced manufacturing facilities in California. The Legislature may use data from taxpayers utilizing the "federal emissions reduction tax credits" and who file in California. The Franchise Tax Board (FTB) is required to report this data on or before November 1, 2029, in compliance with existing law. This reporting requirement is made inoperative on January 1, 2037.
- 5) Further finds and declares that:
  - a) It is essential that California implement all feasible measures to ensure that electric rates remain affordable throughout the clean energy transition;
  - b) California has created ambitious climate and energy goals to achieve a net-zero carbon economy by 2045. The California Air Resources Board 2022 Scoping Plan calls for California to cut air pollution by 71% and reduce fossil fuel consumption by 86%;
  - c) The 100% Clean energy Act of 2018, enacted by SB 100 (De León), Chapter 312, Statutes of 2018, updated the California Renewables Portfolio Standard program to

ensure that by 2030, at least 60% of California's electricity is renewable and for California to provide 100% of its retail sales from renewable zero-emission sources by 2045;

- d) The Clean Energy, Jobs and Affordability Act of 2022 enacted by SB 1020 (Laird), Chapter 351, Statutes of 2022, made it the policy of the state that eligible renewable energy resources and zero-carbon resources supply 90% of all retail sales of electricity by December 31, 2035, 95% of all retail sales by December 31, 2040, 100% of all retail sales by December 31, 2045, and 100% of electricity procured to serve all state agencies by December 31, 2035;
- e) The federal inflation Reduction Act of 2022 (Public Law 117-169) represents the largest federal investment in clean energy and climate action to date. The act's goal is to accelerate the transition to clean energy, reduce greenhouse gas emissions, and support energy innovation and investment, creating jobs and improving public health outcomes;
- f) The federal Inflation Reduction Act of 2022 (Public Law 117-169) created additional tools – direct pay and transferability – for clean energy tax credits that seek to expand and increase investment in the clean energy sector;
- g) Clean energy tax credits help to reduce the costs of renewable energy projects and increase investment in the clean energy sector;
- h) California's ambitious climate and energy goals will require a massive buildout of new clean energy projects. California must nearly double its clean energy capacity over the next five years alone to stay on track with its goals; and,
- i) It is critical that California take full advantage of all tools and resources at its disposal to help accelerate the pace and scale of clean energy development in California.

#### **EXISTING FEDERAL LAW:**

- 1) Imposes a tax on the adjusted gross income, with certain deductions, of every individual and corporation, as defined. (Internal Revenue Code (IRC) Section 1, *et seq.*)
- 2) Authorizes various credits against income tax liability, generally designed to incent certain desirable behavior, including the following "federal emissions reduction tax credits":
  - a) The alternative fuel vehicle refueling property credit, which provides a credit equal to 30% of the installation costs of any qualified property used to refuel vehicles with clean-burning fuel or recharge electric vehicles. (IRC Section 30C);
  - b) The renewable electricity production credit, which provides a credit equal to \$0.30 of every 1 kilowatt (kW) of electricity produced by certain renewable resources. (IRC Section 45);
  - c) The carbon oxide sequestration credit, which provides a credit equal to \$17 per metric ton of carbon oxide captured using specified equipment and disposed of in secure geological storage, and \$12 per metric ton of carbon oxide captured and used as an injectant in qualified enhanced oil or natural gas recovery projects. These dollar amounts are

adjusted to \$36 and \$26, respectively, for carbon oxide processed through a direct air capture facility. (IRC Section 45Q);

- d) The zero-emission nuclear power production credit, which provides a credit equal to \$0.30 of every 1 kW of electricity produced at a qualified nuclear power facility, and sold to an unrelated person. This credit is reduced based on the amount of a facility's gross receipts. (IRC Section 45U);
  - e) The clean hydrogen production credit, which provides a credit equal to the product of each kilogram of clean hydrogen produced and a percentage based on the emissions intensity of the hydrogen produced. (IRC Section 45V);
  - f) The advanced manufacturing production credit, which provides a credit equal to certain amounts based on the type of eligible component produced and sold. (IRC Section 45X);
  - g) The clean electricity production credit, which provides a credit equal to the product of each kW of electricity produced at a qualified facility, and specified rates based on the generation capacity of a qualified facility. (IRC Section 45Y);
  - h) The clean fuel production credit, which provides a credit equal to the product of the per gallon amount of clean transportation fuel, and the emissions factor for said fuel. This credit is available for sustainable aviation fuel (SAF), and non-SAF transportation fuel that provides a certain equivalent amount of carbon dioxide emissions reduction. (IRC Section 45Z);
  - i) A credit equal to the product of the basis of each qualified energy property placed in service during each taxable year, and an applicable percentage based on the method of generation. (IRC Section 48);
  - j) The qualifying advanced energy project credit, which provides a credit equal to 30% of the basis of property used for certain purposes, including the generation of electricity from certain renewable resources, the production of certain energy conservation technologies, the production of certain renewable or low-emission fuels, among other activities. (IRC Section 48C); and,
  - k) The clean electricity investment credit, which provides a credit equal to the product of the amount of investment in any qualified generation facility or energy storage technology, and certain percentages based on the generation or storage capacity of the facility or technology, as applicable. (IRC Section 48E.)
- 3) Authorizes the elective payment (IRC Section 6417) and transfer (IRC Section 6418) of the above listed federal emissions reduction tax credits. The gross income derived from the elective payment or transfer of a credit by an eligible taxpayer is excluded. A purchaser of a transferred tax credit is prohibited from deducting any associated amount paid in consideration for the tax credit, and the gain associated with the difference from the discounted purchase price of the credit and the face value of the credit is excluded from gross income.
- 4) Requires that the entire amount of the gain or loss on the sale or exchange of property be recognized, and that the basis of property is the amount paid for the property in cash or other

property. (IRC Sections 1001 and 1012.) The sale or exchange of a capital asset for an amount in excess of its basis generally results in a capital gain that is subject to taxation. (IRC Section 1222.)

**EXISTING STATE LAW** conforms to federal tax law, with certain modifications, as of January 1, 2015, and, therefore, does not conform to any of the federal emissions reduction tax credits, nor the authorization and treatment of their elective payment and transfer.

**FISCAL EFFECT:** The FTB notes that the recent creation of the federal transferability and elective payment provisions for federal emissions reduction tax credits leads to little data regarding market participants and their potential tax burden in the state, but notes that initial data suggest a market up to \$23 billion in credit transfers annually. The FTB, assuming that 15% of these total transaction were completed by California businesses with varying tax attributes, estimates a General Fund revenue loss of up to \$280 million.

**COMMENTS:**

- 1) The author has provided the following statement in support of this bill:

The Federal Inflation Reduction Act (IRA) includes several clean energy investment incentives to accelerate our transition from fossil fuels. These incentives are necessary to spur clean energy development and make renewable projects possible. Currently, California law needs to conform with the new federal tax code for project developers to access those critical federal credits. If developers are unable to fully utilize these incentives, clean energy projects in California will cost more to build leading to higher ratepayer costs. California cannot afford to put extra costs on clean energy and ultimately to ratepayers and needs to conform our tax code with the IRA to unlock millions in federal tax incentives and bring down the costs of California's clean energy.

- 2) A coalition of electric generation companies, business organizations, and environmental advocates, writing in support of this bill, state, in part:

The 2022 IRA introduced key incentives to spur clean energy investment, including the ability to sell clean energy tax credits directly for cash, expanding access to capital beyond a small universe of financial institutions (IRC §6418). In addition, the IRA included a provision allowing certain taxpayers to receive direct payments from the Treasury (IRC §6417). By enabling a broader range of investors to participate, these provisions reduce financing barriers and lower the overall cost of clean energy projects. However, California is one of only five states that has yet to align its tax code with federal law, putting the state at risk of higher project costs and slower clean energy deployment. Failure to act would result in these costs being passed through to ratepayers.

According to an independent analysis conducted by E3, conformity would decrease residential rates for the state's investor-owned utilities by up to 3% by 2040. For a typical household consuming 850 kWh/month, this reflects savings of ~\$762 over the next 15 years (or ~\$48/year). That represents measurable, ongoing savings that will have a meaningful impact on ratepayers at a time when every dollar counts.

- 3) Committee Staff Comments:

- a) *Federal emissions reduction tax credits*: Existing federal law authorizes a series of tax credits designed to incent certain emissions reduction activities in the generation of electricity, production of low- and no-emissions fuels, development of energy storage, and the manufacturing of energy efficient upgrades and goods, among other activities. California, however, does not conform to these credits as California does not automatically conform to federal tax law changes. Rather, California conforms to federal tax law as of a certain date, January 1, 2015, with certain modifications to those provisions, and provides that no federal tax credits or their carryover apply for state tax purposes unless otherwise provided. California has not conformed to these federal credits, and they do not apply for state tax purposes.
- b) *IRA (Public Law 117-169)*: According to the Department of Energy, the IRA represents the single largest investment in climate and energy in the nation's history. The IRA provided numerous financial incentives for various emissions reduction projects throughout the nation. Among these authorizations, the IRA enacted monetization mechanisms for certain federal emissions reduction tax credits. The first mechanism is the election to treat certain tax credits as a refund, and the second is the authorization to transfer credits.
- c) *Election to treat as refund*: The IRC now allows certain tax filers to elect to treat their federal emissions reduction credit as a refund of overpayment. Generally, when a taxpayer fulfills their obligation to pay tax in excess of the liability, the taxpayer is entitled to a refund of the excess amount. Additionally, tax filers who generate credits, but who do not have sufficient taxable income to claim the entire amount of the credit, or who are exempt from taxation, would be unable to realize the full benefit of the tax credit generated. Thus, certain tax filers earning certain credits may elect to treat the credit as an overpayment, thereby receiving a refund from the Internal Revenue Service (IRS), generally in an amount equal to the credit. This authorization essentially makes these credits refundable, without directly authorizing refundability.
- d) *Transferability of credits*: In addition to the election authorization, the IRC allows taxpayers to transfer, or sell, credits they generate, subject to certain restrictions. In essence, this allows tax filers who have earned the credit to monetize the credit even if their tax liability is insufficient to claim a portion or all of the credit. Generally, transferable tax credits are sold at a discount of their face value. A tax credit worth \$10 will be sold at a discount of, hypothetically, \$9. This transaction allows the seller to gain financing immediately and provides the purchaser a decrease in tax liability. Thus, purchasers of credits are often investors seeking to offset their tax liability from other profitable ventures.
- e) *Capital assets and their tax treatment*: Capital assets are assets expected to generate revenue and be useful for longer than one year. Thus, capital assets are not subject to standard treatment of income, but have separate rules for determining the taxable value attributable to these assets. When acquiring a capital asset, the cost of the asset forms the basis. This basis is subject to adjustment, as specified. Rather than deducting the cost of the capital asset in the year of acquisition, the basis may be depreciated over the expected operating life of the asset. When the asset is disposed of, the difference in the basis and the amount exchanged for the asset constitutes the gain or loss attributable to that asset. Capital gains and losses are summed, and the resulting amount is either taxable, if there is

a cumulative gain, or generally eligible for deduction as a net operating loss in a different taxable year.

- f) *IRS Memorandum 201147024*: Citing an IRS Office of Chief Counsel Memorandum issued in 2011, the FTB considers transferred credits as capital assets<sup>1</sup>. That memorandum addressed the tax treatment of certain Massachusetts State Tax Credits and pointed to case law justifying the IRS's treatment of these transferred credits as capital assets. The memo noted that the basis for the credit was the price paid by the purchaser, and that any difference between the price paid and the amount of the credit against tax liability was treated as a capital gain or loss, though Committee staff notes that it would be exceedingly unlikely for a purchaser to pay more than the face value of the credit.
- g) *Public Law 119-21*: Recently enacted federal legislation begins to phase out many of the credits benefitting from the transferability and elective payment provisions in the IRA over the course of the next few years. Thus, certain credits would no longer be generated after their repeal, and the provisions of this bill would be moot for those repealed credits.
- h) *This bill*: This bill would provide a gross income exclusion for payments made pursuant to the elective payment and transferability of certain federal emissions reduction credits. Thus, tax filers who have generated a credit and choose to have that credit treated as a refund of overpayment of tax, and receive a direct payment from the IRS, are not subject to taxation on that payment. Similarly, when transferring credits, this bill would exclude from the seller's gross income the discounted price paid by the purchaser, and would exclude from gross income the purchaser's gain resulting from the difference in the discounted purchase price and the credit amount available as a reduction of tax liability. A purchaser of the credit would be prohibited from taking the cost of the credit as a deduction that may otherwise be allowed.
- i) *FTB analysis*: The FTB, in its analysis of this bill, notes that this bill is retroactive to January 1, 2023. The FTB notes that it may incur additional costs to develop additional tax forms and process amended returns for taxpayers that already reported the payments addressed by this bill as income.
- j) *Violation of Committee policy*: This Committee requires that any measure authorizing a tax expenditure include an appropriate five-year sunset. As currently drafted, this bill would authorize gross income exclusions in perpetuity. The Committee should consider amending this bill to include a five-year sunset to the gross income exclusion contained in this bill.

## REGISTERED SUPPORT / OPPOSITION:

### Support

Advanced Energy United  
AES US Services, LLC  
American Clean Power, California  
American Council on Renewable Energy

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<sup>1</sup> IRS Office of Chief Counsel Memorandum 201147024 (Nov. 25, 2011)

CalChamber  
California Community Choice Association  
California Efficiency + Demand Management Council  
California Energy Storage Alliance  
California Retailers' Association  
California State Building and Construction Trades Council  
California Taxpayers Association  
California Wind Energy Association  
Center for Energy Efficiency and Renewable Technologies  
Clean Power Campaign  
Council on State Taxation  
EDF Renewables  
Engie North America  
Environmental Defense Fund  
Family Business Association of California  
Fluence Energy, Inc.  
Independent Energy Producers Association  
Intersect Power  
Invenergy, LLC  
Kern County Taxpayers Association  
Large-scale Solar Alliance  
Marine Clean Energy  
National Resources Defense Council  
Orange County Taxpayers Association  
RWE  
San Diego Community Power  
San Jose Clean Energy  
Silicon Valley Leadership Group  
Solano county Taxpayers Association  
Solar Energy Industries Association  
The Utility Reform Network  
Wellhead Electric Company, Inc.

**Opposition**

None on file

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