

California Alternative Energy and Advanced Transportation Financing Authority
SB 71 – Sales and Use Tax Exclusions

Frequently Asked Questions ¹

As of 2/15/2011

What types of purchases qualify?

- 1. Do purchases of equipment used to make energy efficiency items such as energy efficient light bulbs, windows, or appliances qualify?**
Purchases of Qualified Property used to manufacture items that conserve energy may be eligible for the sales tax exclusion.
- 2. Under SB 71, are sales of my product excluded from sales tax, or just the equipment I use to make my products?**
In general, only the equipment used in the manufacturing process is excluded from sales tax. Sales of the products themselves are still subject to sales tax.
- 3. Does the property or equipment purchased need to be new or can it be used?**
Any purchase of Qualified Property that would otherwise be subject to sales tax, whether purchased new or used may qualify.
- 4. Do I have to purchase the property or equipment, or can it be leased?**
Only purchases can qualify. Leased equipment does not qualify under the Program.
- 5. Will R&D and/or pre-production purchases be considered Qualified Property purchases?**
R&D and/or pre-production purchases may qualify to the extent that all of the other project evaluation criteria are met.
- 6. Can I make purchases from out of state?**
Yes, purchases can be made from in state or out of state vendors. However, CAEATFA cannot do anything to affect the imposition of sales tax by the state in which the purchases are made.
- 7. Do purchases of equipment used to generate electricity, such as wind turbines or solar panels, qualify for the sales tax exclusion? (Updated as of 9/14/2010)**

Equipment purchased for use in generating facilities is not eligible for a sales tax exclusion under SB 71. For more information please see the policy posted on our website: [Legal Analysis of the Use of SB 71 Sales and Use Tax Exclusions for Alternative Source Energy Generation Facilities.](#)

¹ Capitalized terms are defined in the Program's statute and proposed regulations.

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Application Procedures and Timing

8. How do I apply? When can I apply? (Updated as of 2/15/2011)

Companies wishing to apply for the sales tax exclusion will need to submit an Application to CAEATFA. CAEATFA began accepting Applications in October 2010. The Application Materials and Information can be found on the CAEATFA website on the [SB 71 main page](#). Complete Applications should be turned into the CAEATFA office as well as emailed to caeatfa@treasurer.ca.gov. Applications are not considered complete until there is receipt of the complete physical Application at CAEATFA's office with original signatures and Application Fees. It is also required that Applicants review the [Program Regulations](#) before submitting an Application. Board meeting dates and their specific [Application deadlines](#) can be found on our website.

9. Can I submit an Application for multiple purchases/pieces of equipment? (New as of 9/14/2010)

Yes, an Applicant may submit an Application which includes multiple purchases with multiple pieces of equipment over the course of a certain time period as long as it adheres to the regulations. Companies who are granted a sales and use tax exclusion are required to use twenty five (25) percent of the exclusion within the first year of Board approval of the Application and must use the remainder of the exclusion within three years of the Board approval.

10. Is the Application process competitive or first come, first serve? (Updated as of 2/15/2011)

CAEATFA does not anticipate a competitive process at this point. Applications are being accepted on an ongoing basis. Applicants are evaluated to assess whether projects result in a net benefit to the State. The Program scoring is discussed in more detail in item 15 below and in Program regulations.

11. How long does it take from the time I submit my Application to the time my Application is considered by the Board? (Updated as of 2/15/2011)

Applications will be brought to the CAEATFA Board for consideration at the first meeting occurring at least 60 days after CAEATFA's receipt of a complete Application.

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12. Where are the regulations posted? Will there be public input? (Updated as of 2/15/2011)

The Program’s regulations were approved by the CAEATFA Board on September 22, 2010 and enacted on October 4, 2010. These regulations have been posted on our [website](#). In the coming months CAEATFA anticipates completing the regular rulemaking process. More information regarding this process will be posted on the CAEATFA website as it becomes available. If you are interested in receiving CAEATFA’s public notices please sign up for the [CAEATFA listserve](#).

13. Are submitted Applications disclosed to the public? How are industry trade secrets be handled? (Updated as of 2/15/2011)

Yes, all Application materials, legal documents, correspondence, and other materials are subject to the Public Records Act and may be disclosed if a request is made to CAEATFA. Applicants may request that certain portions of their Application and other materials submitted are not to be disclosed to the extent that confidential information or trade secrets are included. Any claim of confidentiality must pertain to specific information and ultimately, the determination of what information is required to be released is exclusively CAEATFA’s to make. Applicants must make such claims at the time of submitting these documents.

14. How does CAEATFA score Applications and determine eligibility? (Updated as of 2/15/2011)

Applications will be evaluated based on the criteria specified in the authorizing statute and made more specific in the Program regulations. In general, projects must demonstrate both fiscal and environmental benefits to the State for a total net benefit to the State, as specified in the Program regulations. Complete Applications receiving both a total score greater than or equal to the threshold value of 1,000 and an environmental benefits score of greater than or equal to 100 will be recommended for a sales and use tax exclusion. The Program regulations also include a provision that provides the Executive Director may recommend an Application that doesn’t meet the scoring minimum¹ to the board for approval upon a statement articulating specific reasons why the approval is in the public interest and advances the purposes of the Program. For more information about the current scoring system, please see the current [Program regulations](#).

¹ Where a Project receives a total score of less than 1,000 or an environmental score of less than 100, or both.

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15. Is there an appeals process? (Updated as of 9/14/2010)

Applicants that do not receive a recommendation for approval from the Authority staff will be notified in writing of the staff recommendation prior to the board meeting in which the Application will be considered. Applicants that do not receive a favorable recommendation from the staff may appeal the staff recommendation to the Executive Director. If the Executive Director agrees with the staff recommendation and does not recommend the Application for approval to the Authority board, the Applicant may appeal the Executive Director's recommendation to the Authority board. No Applicant may appeal the evaluation of another Applicant's Application.

General Program Information

16. Does the legislation cover projects retroactively? Will there be refunds of sales tax previously paid? (Updated as of 2/15/2011)

The sales and use tax exclusion can apply to any Qualified Property for which the Applicant can make a representation that there has been no functional use prior to the Qualified Property being conveyed to CAEATFA. Applicants are advised to consult with tax counsel with respect to the making of this representation.

17. Is there a limit on the total number or amount of exclusions to be granted?

No, CAEATFA must inform the Legislature when the total value of the exclusions reaches \$100 million annually, but there is no limit on the amount of the exclusions that can be granted.

18. Will CAEATFA exceed the "soft cap" of \$100 million on the exclusions?

At this point, we anticipate that more than \$100 million in exclusions will be granted, but the precise timing of the Applications and approval will ultimately dictate whether this amount is exceeded in the first year or not until subsequent years.

19. Is the \$100 million amount referring to the value of tax exclusions or the value of purchases?

The \$100 million refers to the value of the exclusions, e.g. the amount of sales tax not paid.

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20. Will there be a cap on the exclusion amount for individual Projects? (Updated as of 2/15/2011)

Currently the Program does not have a cap on the amount of exclusion available per Project.

21. How many Projects will be approved each year?

There is no cap on the number of Projects that can be approved. CAEATFA will approve as many projects as meet the eligibility requirements as set forth in the authorizing statute.

22. Will there be a single Application deadline or multiple deadlines? (Updated as of 2/15/2011)

CAEATFA accepts Applications on a rolling basis and does not anticipate that process changing in the near future.

23. When does this Program expire? (Updated as of 2/15/2011)

The SB 71 Program expires on January 1, 2021, although purchases made after that date for previously approved Applications will still be eligible for the sales tax exclusion.

24. What fees does CAEATFA charge? How are they determined? (Updated as of 2/15/2011)

CAEATFA charges an Application Fee equal to 0.0005 times the total amount of Qualified Property identified in the Application, to be submitted with the Application. The minimum Application Fee shall be \$250 and shall not exceed \$5,000. Applications are not considered complete until the Application Fee is received in CAEATFA's office. No portion of the Application Fee will be refunded.

CAEATFA will charge a Program Administrative fee equal to 0.004 times the total amount of the Qualified Property purchased. The minimum Administrative Fee will be \$15,000 and shall not exceed \$350,000. \$15,000 of the total fee will be paid upon the execution of the Master Agreement (30 days after the Board Approval). The \$15,000 will be credited to the total amount of the Administrative Fee due upon a final determination of the total Qualified Property purchased (after the final conveyance/reconveyance transaction). A portion of the Administrative Fee will be collected at the time of each purchase of Qualified Property. The fee amount will be equal to 0.004 multiplied times the total amount of Qualified Property purchased, and is

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to be paid at the time of each subsequent purchase of Qualified Property. If an Applicant spends less than the total amount of Qualified Property approved in the Application, the Administrative Fee will be adjusted accordingly. In the case that an Applicant has over-paid in Administrative Fees a portion of the Fee may be refunded. However, the minimum \$15,000 Administrative Fee is not refundable.

Example: Applicant “Green Company” submits an Application and is approved by the CAEATFA board for Qualified Property purchases valued at \$30 million. Pursuant to the Program Regulation Green Company will pay a total of \$120,000 (.004 of \$30 million) in Administrative Fees if it purchases the entire amount of Qualified Property for which is was approved. At the time the Regulatory Agreement is executed with the Applicant, an initial \$15,000 of the total \$120,000 in Administrative Fees must be submitted. The remainder of the Administrative Fee will be paid during each subsequent conveyance/reconveyance transaction until all Qualified Property is purchased. If Green Company’s initial conveyance/reconveyance transaction includes \$5 million in purchases of Qualified Property, Green Company would submit an Administrative Fee of \$20,000 (.004 of \$5 million). This process would continue until the Applicant has paid the entire \$120,000 in Administrative Fees. If Green Company only spends \$28 million, their adjusted Administrative Fee would be \$112,000 (.004 of \$28 million). If Green Company has already paid a total of \$120,000 in Administrative Fees they may be refunded the additional \$8,000 in Fees they paid.

Post Approval Process

25. What is the timeframe for purchasing Qualified Property once approved? Does it all have to be purchased at once or can there be multiple purchases? (Updated as of 9/14/2010)

Applicants will be required to identify the amount of their expected purchases at the time they submit their Application. Following Board approval of the Application, purchases may be made all at once or over time, although Applicants will be required to make at least twenty five (25) percent of the purchases identified in their Application within one year of Application approval. All purchases must be made within three years following Application approval, unless a longer time period is granted by the Authority.

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26. Is there a requirement for certification of output for environmental benefits?

(Updated as of 2/15/2011)

Applicants are not currently required to obtain third party verification of environmental benefits; however, all approved Applicants will be required to submit an annual compliance report containing information about the project, such as number of jobs created and number of units of the product sold. Applicants will also be required to inform CAEATFA of any material changes to their project or the product to be produced, including any changes to the anticipated environmental benefits identified in the Application. CAEATFA retains the right to audit any information provided by an Applicant to CAEATFA, pursuant to the audit provisions in the Master Regulatory and Title Conveyance Agreement.

27. Do both public and private projects qualify?

Yes, both public and private projects may qualify. Any entity meeting the definition of Participating Party in Public Resources Code Section 26003(f) may apply.

28. Will CAEATFA notify local jurisdictions when Applications are submitted for projects in their area or monitor the impact of the Program in these areas?

(Updated as of 2/15/2011)

CAEATFA posts its agenda each month at least 10 calendar days prior to the Board meeting. The agenda is also emailed out to the CAEATFA electronic ListServ at the same time it is posted to the website. This agenda will include all Applications which are being considered for Board approval at that meeting. Those who are interested in being notified of Applicants being forwarded to the Board for approval should [sign up for the CAEATFA ListServ](#).

Each approved Applicant will submit data regarding their purchases each time there is a conveyance /reconveyance between the Applicant and CAEATFA, noting the specific zip code of the location where the Qualified Property is purchased. CAEATFA may collect data and publish sales and use tax exclusion use patterns within the State. Data on sales and use tax exclusion impacts will be reported by jurisdiction in aggregate form.

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