

**CALIFORNIA ALTERNATIVE ENERGY AND  
ADVANCED TRANSPORTATION FINANCING AUTHORITY**  
**Meeting Date: September 22, 2010**

***Request to Approve Emergency Regulations for the SB 71 Sales and Use Tax Exclusion  
Program***

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**Issue.** Senate Bill (SB) 71 (Padilla), signed into law on March 24, 2010, authorized the California Alternative Energy and Advanced Transportation Financing Authority (“Authority” or “CAEATFA”) to approve Projects<sup>1</sup> for sales and use tax exclusions (“STE”) on Qualified Property utilized for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components or systems.

**Request.** Pursuant to this legislative mandate, CAEATFA staff (“Staff”) proposes approving emergency regulations that will enable CAEATFA to implement the Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program (“Program”).

**Sales and Use Tax Exclusion Program Development & Goals.**

1. **Program Development.**

In developing the Program, Staff, with assistance from Blue Sky Consulting Group (Blue Sky), has undertaken a five month, rapid implementation process. Blue Sky provided significant input and subject matter expertise in the development of the net benefits evaluation, application process, regulation development and other programmatic areas. Staff and Blue Sky worked together to gather relevant information, and conducted stakeholder meetings and public workshops involving: State agencies, cities and counties, various interest groups, advanced transportation technology and alternative source manufacturers, renewable energy generators, law firms and consulting groups representing various Advanced Transportation Technology and Alternative Source industries.

CAEATFA conducted a significant public participation process prior to the formal regulatory process. CAEATFA held four public workshops with stakeholders to discuss key issues and gain substantial input to develop the Program. The following workshops were held:

- May 27, 2010 – Sacramento, CA
- June 29, 2010 – Van Nuys, CA
- August 2, 2010 – Sacramento, CA
- September 1, 2010 – Sacramento, CA

Through this process, Staff gained a strong understanding of the Program’s mandate, California’s need for advanced transportation technology and alternative source manufacturing incentives,

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<sup>1</sup> All capitalized terms not defined here are defined in the Program’s statute and proposed emergency regulations.

and Program structuring issues and concerns. At each workshop Staff solicited input from stakeholders and interested parties. Draft emergency regulations were presented at both the third and fourth workshops, and were also posted on the CAEATFA website. To date, 43 public comment letters have been received from stakeholders who engaged in the public rulemaking process. Staff has analyzed and considered all comments and incorporated changes to the emergency regulations when appropriate. The proposed emergency regulations balance stakeholders' comments with the statutory, legal and Program administration framework and requirements. Attachment A provides a summary of the emergency regulations and describes several of the key policy issues.

2. Program Goals.

The purpose of this Program is to promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, air and water pollution, or energy consumption consistent with the statute.

Applicants who receive Board approval must purchase their Qualified Property within a specific timeframe to ensure that the financial assistance is used in a timely fashion to positively affect the broader economy. Twenty-five (25) percent of Qualified Property must be purchased within one year of Board approval, and the remainder of the purchases must occur within three years of approval. The emergency regulations include a provision which would allow the Authority to waive the requirement that all purchases of Qualified Property be made within three years of Application approval upon a finding that it is in the public interest and advances the purpose of the Program.

The Authority's financial assistance – in the form of a conveyance/reconveyance agreement which may enable Applicants to take advantage of the STE – will help a wide range of Projects within various sectors of Advanced Transportation Technology and Alternative Source products, components or systems industries. By providing a significant incentive for these developing industries to locate and expand within California, the STE will assist Projects that may otherwise not be able to move forward without assistance, such as Projects that may require additional capital leverage to develop a manufacturing Facility. It is expected that these Projects will provide significant economic benefits to the State and local jurisdictions in the form of corporate, personal income, sales and property tax revenues, increased employment, and additional economic activity created by the manufacturing Facility.

**Program Administration.**

1. Eligibility Criteria, Evaluation Criteria and Scoring.

Eligibility Criteria.

To qualify, an Applicant must show that the property to be purchased subject to the STE will be used to design, manufacture, produce or assemble an Advanced Transportation Technology or Alternative Source product, component or system. This definition includes, for example,

manufacturers of Alternative Source electricity generation equipment such as solar panels or wind turbines, but would exclude the purchase of that equipment for use of power generation (See Attachment B for the legal analysis of why power generators are not included in this Program).

*Evaluation Criteria.*

Applications that meet the Project definition criteria will be evaluated based on criteria developed and specified in the proposed emergency regulations. These evaluation criteria are designed to measure and quantify the fiscal and environmental benefits of the Project and to compare the result to the cost of the STE.

In order to specifically evaluate the fiscal and environmental results that stem directly from the STE, only the marginal additional production (and resulting fiscal and environmental benefits) associated with the STE are included for purposes of evaluating Applicants. The marginal additional production resulting directly from the STE will be determined based on an assumed increase in equipment purchases resulting from the STE. That is, because the STE in effect lowers the cost of purchasing capital equipment, Applicants are assumed to purchase more such equipment than would be the case in the absence of the STE. The increase in capital purchases resulting from the STE is derived based on a calculation performed by the Executive Director and the Staff in the evaluation process pursuant to parameter assumptions approved by the Board.

The resulting increase in output associated with the additional equipment purchases are subsequently calculated, and the fiscal and environmental effects associated with just this additional output is used for purposes of scoring the Application.

To calculate fiscal effects, a pro rata share of the corporation tax, personal income tax, sales tax, and property tax is calculated (over the life span of the Qualified Property purchased).

To calculate environmental effects, the increased output associated with the marginal equipment purchases is calculated based on Applicant-provided information. The environmental effects of each additional unit of increased output is calculated based on the efficiency gains or energy generation potential of the product. For example, in the case of a solar panel manufacturer, the number of additional panels is calculated and then the generation capacity of the panels in megawatt hours is determined (based on Applicant-provided data). The additional generation capacity results in a reduction in the amount of non-alternative source power that otherwise would be needed. To determine the dollar value of the pollution that is not produced as a result of the deployment of the solar panels, the amount of pollution (CO<sub>2</sub> and non-CO<sub>2</sub>) associated with a megawatt hour of electricity generation is estimated and a dollar value is assigned based on available research and analysis. The total value in dollars of the pollution benefits associated with the Applicant's marginal production is calculated and added to the fiscal benefits.

*Scoring.*

Applicants will receive scores in the areas of fiscal benefits and environmental benefits which will translate into a numerical score. In addition, Applicants may receive up to 200 points for optional supplemental information related to the economic and environmental benefits of the

Project if the Applicant provides such data. Applications that receive a total score greater than or equal to 1,000 points and a total pollution benefit score (i.e., environmental benefits) greater than or equal to 100 will be recommended to the Board for approval. The Executive Director may recommend to the Authority that the 1,000 point threshold be adjusted if it is in the public interest and advances the purposes of the Program. Where a Project receives a total score of less than 1,000 points, the Executive Director may recommend it to the Authority for approval upon a statement articulating specific reasons why the approval is in the public interest and how it advances the Program.

2. Parameter Assumptions.

In order to evaluate the fiscal and environmental benefits of an Application, the evaluation criteria embodied in the emergency regulations rely on a number of specific parameters which the Executive Director must recommend to the Board for approval. In consultation with experts, economists, other State agencies, and data provided by Applicants, the Executive Director will determine the most accurate and appropriate value for each parameter. The following is a list of the specific parameters that the Executive Director must recommend to the Board for approval (these parameters will be brought forward to the Board for approval today in Agenda Item 4.C.):

- Current Statewide Average Sales Tax Rate
- Percent Increase in Capital Investment
- Appropriate Discount Rate for Fiscal and Environmental Effects
- Economic Multiplier
- Average State Income Tax Rate
- Applicable Local Property Tax Rate
- Ratio of State and Local Government Revenues to Gross State Output
- Pollution Cost Per Unit (Gallon of Gas Equivalent or Megawatt hour of electricity) of Volatile Organic Compounds (VOCs), Nitrous Oxide (NO<sub>x</sub>) and Carbon Dioxide (CO<sub>2</sub>) Released in California and the Rest of the United States
- List of Emerging Green Industries (if applicable)

3. Application Timeline.

Applications may be submitted at any time for consideration and will be presented at the *first meeting* occurring at least 60 calendar days after the receipt of the complete Application with some exceptions. This is to ensure that Staff has adequate time to fully analyze each Application before the Board meeting. For example, if an Applicant wishes to have their Application presented at the January 2011 meeting, they would need to submit their Application by Tuesday, November 23<sup>rd</sup> of this year, a total of 62 days in advance.

However, these emergency regulations also enable CAEATFA to consider an Application at a meeting occurring less than 60 calendar days after receipt of a complete Application. Staff has determined that a shortened timeline is necessary for the first two rounds of Applications in order to expedite the process to accommodate the interest in the Program, the urgent nature of the statute, and to promote a more immediate economic stimulus. To accommodate this, Staff will accept the initial Applications in October and November, which will be presented at the

November and December meetings, respectively. This will shorten the review time to approximately 35-45 calendar days, instead of the standard minimum of 60 calendar days.

4. Legal Documents under the Program.

*Regulatory Agreement.*

A Regulatory Agreement will be executed between the Participating Party and the Authority. The Regulatory Agreement will require Applicants to comply with the requirements in the regulations, including a requirement of ongoing reporting and compliance for the term of the agreement. This agreement will last the longer of three years or one-half of the Estimated Useful Lifespan of the longest lived item of Qualified Property identified in the Application. CAEATFA will require that the Regulatory Agreement is executed shortly after the Authority's approval of an Application.

*Conveyance/Reconveyance Agreement.*

In order to receive the STE, an approved Applicant must convey title of the Qualified Property to the Authority, who will then reconvey title back to the Applicant. This conveyance/reconveyance transaction may take place multiple times throughout the period during which the Applicant is making purchases of Qualified Property. The conveyance/reconveyance agreement will contain at a minimum:

- 1) an agreement on the part of the Applicant to convey title to CAEATFA,
- 2) a statement by the Applicant that the Qualified Property has not been put to a taxable use prior to conveyance,
- 3) an agreement on the part of CAEATFA that it will reconvey the title back to the Applicant within 10 days,
- 4) an acknowledgement that there will be no fees for this agreement other than those identified in the regulations,
- 5) an agreement on the part of the Applicant to provide a complete individualized list of Qualified Property purchased, and
- 6) an acknowledgement that the Qualified Property will be installed, maintained and operated within California.

Each conveyance/reconveyance agreement is subject to Administrative Fees identified in the regulations as described above.

5. Prior Use.

CAEATFA will be able to extend the STE to any Qualified Property for which the Participating Party can make a representation that there has been no taxable use of the Qualified Property prior to it being conveyed to CAEATFA.

6. Program Reporting.

*Applicant Reporting.*

Each year, during the term of the Regulatory Agreement the Applicant must submit an annual certification letter and a compliance report. The certification letter must document that the

Qualified Property purchased was used for the purposes specified in the Application since the time of the conveyance/reconveyance agreement. The compliance report shall include data including total payroll, number of jobs, annual product sales, units sold and other reasonably related information requested by the Executive Director. The compliance report information will be used by the Legislative Analyst’s Office to report to the Joint Legislative Budget Committee by January 1, 2019 on the effectiveness of the Program, as required by statute.

CAEATFA Legislative Reporting.

Per SB 71 statute, the Authority is mandated to provide notice to the Legislature once the STE for Projects approved by the Authority exceed \$100 million annually. The Authority will provide notice to the Legislature when \$100 million in exclusions has been spent each year, prior to making additional approvals (because Applicants are not required to immediately spend the entire amount of their exclusion, there may be a lag between the time an exclusion is granted and the time it is actually used to purchase Qualified Property).

Effect of STE on Local Government Jurisdictions.

In an effort to monitor STE use throughout the State in local jurisdictions, the emergency regulations enable CAEATFA to publish the actual total value of STEs by local jurisdiction. Staff recommends that CAEATFA collect data on STE use by jurisdiction and publish it in an aggregate form annually to track STE use patterns within the State.

7. Fees.

The Authority will establish Application and Administrative Fees to cover the costs of administering the Program. The Application Fee will be .0005 (one-twentieth of one percent) of the total amount of Qualified Property identified in the Application and shall be no less than \$250 or greater than \$5,000. The total Administrative Fee amount shall be .004 (four-tenths of one percent) of the total amount of Qualified Property purchased. The Administrative Fee shall be no less than \$15,000 and no more than \$350,000.

For example, if Applicant “Green Manufacturer” submits an Application with Qualified Property purchases valued at \$30 million, an Application Fee of \$5,000 (.0005 of \$30 million equals \$15,000, but the Application Fee has a maximum of \$5,000) would be submitted. In addition, Green Manufacturer would pay a total of \$120,000 (.004 of \$30 million) in Administration Fees. At the time the Regulatory Agreement (further discussed below) 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 Fees will be paid during each subsequent conveyance/reconveyance transactions until all Qualified Property is purchased. If Green Manufacturer’s initial conveyance /reconveyance transaction includes \$5 million in purchases of Qualified Property, Green Manufacturer 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.

**Regulatory Process.**

1. Emergency Regulations.

On September 16, 2010, a notice of emergency rulemaking, a finding of emergency and the text of emergency regulations were posted to the CAEATFA website and sent to all interested parties. Upon Authority approval of the emergency regulations, an emergency rulemaking file will be submitted to the Office of Administrative Law (OAL). The emergency regulations will be subject to a five day public comment period; CAEATFA will have until day eight to respond to any public comments that are submitted; and OAL must make a final decision on the tenth day following submission. If on the tenth day OAL approves the emergency regulations, the emergency regulations are filed with the Secretary of State and become effective upon this filing date. These emergency regulations will be valid for six months (180 days), during which time CAEATFA will begin the permanent rulemaking process.

2. Permanent Regulations.

The process for approval of permanent regulations will commence by publishing a copy of the emergency regulations in the California Regulatory Notice Register (the “Register”). This starts a 45 calendar day public comment period. After that time, Staff will review and respond to any comments and present the final form of the permanent regulations to the Authority for approval. If there are substantial modifications, the revised regulations must be published in the Register again for a 15 calendar day public comment period before Authority approval. After Authority approval, a permanent rulemaking file is submitted to OAL, and OAL has 30 business days to review the permanent regulations for compliance with the Administrative Procedures Act and the Authority’s statute. Once OAL approves the permanent regulations, they are filed with the Secretary of State and become effective 30 calendar days later.

**Tentative Timeline.**

All of the dates below are tentative and subject to change at any time.

September 16 <sup>th</sup>	CAEATFA posts draft emergency regulations on CAEATFA website
September 22 <sup>nd</sup>	CAEATFA Board reviews/approves emergency regulations and application materials
September 23 <sup>rd</sup>	Emergency regulations are submitted to OAL
October 4 <sup>th</sup>	OAL decision deadline, emergency regulations in effect for 180 days CAEATFA begins accepting Applications
October 11 <sup>th</sup>	Applications due for November 17 <sup>th</sup> Board meeting approval
November 1 <sup>st</sup>	Applications due for December 15 <sup>th</sup> Board meeting approval

**Agenda Item – 4.B.**

November 17 <sup>th</sup>	Initial projects go to the CAEATFA Board for approval and first round of STEs are granted
November 23 <sup>rd</sup>	Applications due for January 2011 Board meeting approval
December 15 <sup>th</sup>	CAEATFA Board meeting for STE approval
December 22 <sup>nd</sup>	Applications due for February 2011 Board meeting approval
April 2 <sup>nd</sup> (2011)	End of 180 Days for emergency regulations

**Recommendation.** Staff recommends adoption of a resolution to approve the proposed emergency regulations establishing the SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program and authorize Staff to undertake emergency and permanent rulemaking proceedings and other actions related to promulgation of the regulations.

**Attachments:**

- Attachment A – Summary of Program Regulations and Key Policy Decisions
- Attachment B – Legal Analysis of the Use of SB 71 STE for Alternative Source Energy Generation Facilities
- Attachment C – Proposed Text of Emergency Regulations
- Attachment D – Proposed Application
- Attachment E – Proposed Application Worksheet
- Attachment F – Senate Bill 71



**RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND PERMANENT RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES**

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009, and 26011.8 to adopt regulations to implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the SB 71 Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program ("SB 71 Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the SB 71 Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting permanent regulations to the Office of Administrative Law.

Section 3. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

## **Attachment A**

### **SUMMARY OF PROGRAM REGULATIONS AND POLICY DECISIONS**

The emergency regulations are intended to provide direction regarding Program usage and focus. In addition, Project eligibility criteria is clearly described, as are Project evaluation criteria, which include a net benefits test consisting of several calculations to be carried out during the Application process.

Following is a brief summary of each of the sections of the proposed emergency regulations, the key elements of each section, and the issues, if any, underlying the section.

#### **Article 2. Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program**

##### **§10030. Purpose and Scope**

- This section states the Public Resources and the Revenue and Taxation Codes which provide CAEATFA the authority to grant sales and use tax exclusions (STE) to qualified Applicants who apply to the STE Program. The main reference is 26011.8 of the Public Resources Code.

##### **§10031. Definitions**

- This section clearly defines terms commonly used in the Application and emergency regulation documents, such as Applicant or Qualified Property.

***Issues:*** Staff and legal counsel have determined, after a lengthy review of public comment and other data, that the definition of Project in relation to Alternative Source components does not include alternative source energy generation facilities. Please see Attachment B for more information on why energy generators are not included in this Program.

##### **§10032. Application Requirements**

- This section discusses the timing of the Application process, such as how often Applications will be considered by the Authority and what type of documentation will be required for an Application to be considered complete. Typically Applications will be reviewed by Staff and presented to the Board at the first meeting occurring at least 60 calendar days after the receipt of a complete Application. However, the Authority may consider an Application earlier.

- Some of the information Applicants will be required to provide includes, but is not limited to, a brief description of the Facility and Products to be produced, projected number of employees hired for the purposes of building the Facility or installing Qualified Property, estimated annual corporate or other personal income taxes paid by the company on its profits, economic value added by the company to its Products, as well as environmental benefits associated with use of the Product.
- Applicants claiming that without the STE the proposed Facility will not be located in California will be required to provide additional documentation proving this claim.
- The Applicant may request a claim of exemption from disclosure under the Public Records Act in the event the Application contains information the Applicant considers a trade secret, confidential or privileged. It will remain at the discretion of the Authority to determine whether or not this information is in fact confidential in the event there is a public records request for such indicated information.

***Issues:*** Typically, recommendations made to the Authority will take at least 60 calendar days after a complete Application is received in order for Staff to complete a thorough review of documentation provided by Applicants, including conducting an analysis of the net benefits to the State including environmental, fiscal and economic benefits of proposed Projects. Initially, CAEATFA hopes to bring Applications to the Authority within a shortened time frame to allow STEs to be granted by the end of the year. This will allow Applicants to meet deadlines Applicants may already have in place and may assist to begin to spur economic growth within the State. CAEATFA intends to achieve this shortened timeline with assistance from Blue Sky under its current contract as well as assistance from Staff of other authorities within the State Treasurer’s Office.

Although some of the information requested in the Application may be deemed confidential or a trade secret by Applicants, all of the information items are necessary for purposes of evaluating Applications pursuant to the “net benefits” test described in Section 10033. In addition, many of the pieces of information requested, specifically as it relates to value added calculations (which allow for estimating company gross margins), are substantially similar to information requested by the federal government as part of the IRS section 48C tax credit program.

### **§10033. Eligibility Requirements and Application Evaluation**

- This section outlines the eligibility requirements and the evaluation criteria used during the Application process.
- Eligible Qualified Property must be used more than 75 percent of the time for the manufacture, design, production or assembly of Advanced Transportation Technology or Alternative Source products, components or systems.

- Evaluation criteria consist of three main categories for determining the Applicant’s total point score and the net benefits realized from granting a STE: fiscal, environmental, and an optional supplemental information category.
- Fiscal benefits examine the marginal increase in Qualified Property purchases and sales that will result from the STE. Fiscal benefits will also consider the marginal increase in the State’s economic output and the extent of increased tax revenues that will accrue to the State and local governments over the lifespan of the Qualified Property granted a STE.
  - Direct fiscal benefits to the State and local governments include the increases in sales taxes, personal income taxes, corporate or other income taxes paid by the company on its profits and property taxes that result from the increase in sales resulting from the STE.
  - Indirect fiscal benefits to the State and local governments consider the effect of increased economic activity caused by additional purchases from in-state suppliers and increased employee wages spurred by the STE (i.e., the multiplier effect).
  - Environmental benefits evaluation criteria examine the extent of pollution reductions an Advanced Transportation Technology or Alternative Source product, component or system will contribute to the environment due to the granted STE. Specifically, the evaluation criteria are designed to estimate the following: the amount of Alternative Source electricity that can be generated by use of products produced by the Applicant or the reduction in energy consumption that result from the use of the Applicants product.
  - The total pollution benefit will take into account the net change in electricity generated from Alternative Sources, the net change in electricity generated from fossil fuel based sources, or the net change in energy consumed due to energy conservation or energy efficiency products. In the case of Advanced Transportation Technologies, the total pollution benefit will take into account the net change in consumption of fossil fuels due to increased used of Advanced Transportation Technologies.
  - The value (in dollars) of the pollution benefit will be calculated based on available research, consultation with experts and other State agencies, and information provided by the Applicant.
- Additional points may be awarded to Projects on the basis of job creation, a determination as to whether the Applicant’s industry is an Emerging Green Industry, the extent to which an Applicant utilizes a manufacturing process that results in substantial environmental improvements over directly comparable processes, or out-of-state environmental benefits.
  - Projects that create jobs in high unemployment rate areas, sufficient permanent jobs relative to the amount of sales and use tax exclusion or construction and installation jobs relative to the amount of sales and use tax exclusion may receive additional points.

- Projects in which the Applicant’s industry is in an Emerging Green Industry, which may be determined from time to time by the Executive Director, may receive additional points.
  - Applicants with manufacturing processes that use less energy or water or result in less atmospheric emissions, waterborne wastes, industrial solid waste and post-consumer solid waste may receive additional points. Substantial improvements must be evidenced by demonstrating improvements relative to third party certification guidelines or standards or State or federal regulations or guidelines.
  - The Applicant may also gain points for demonstrating that its product will produce out-of-state environmental benefits, although these will carry less weight than in-state environmental benefits.
- Applicants receiving a total score, which includes the total fiscal benefit and any additional points, of greater than or equal to 1,000 and a total pollution benefit score of greater than or equal to 100 will be recommended for a sales and use tax exclusion.
  - The Executive Director may recommend to the Authority that the 1,000 point threshold be adjusted if it is in the public interest and advances the purposes of the Program. Where a Project receives a total score of less than 1,000 points, the Executive Director may recommend it to the Authority for approval upon a statement articulating specific reasons why the approval is in the public interest and advances the Program.

***Issues:*** The language of the statute requires that Projects be evaluated based on “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.” To implement a net benefits test requires first determining the extent of additional economic activity that occurs as a result of the STE. The marginal additional economic activity (increased company production capacity and sales) produces fiscal benefits in the form of increased personal income, corporation, sales, and property taxes. This additional, marginal economic activity also stimulates economic activity on the part of suppliers to the Applicant and the Applicant’s additional employees hired as a result of the STE.

The additional sales of Advanced Transportation Technologies or Alternative Source products, components or systems result in reductions in pollution relative to what would otherwise occur. The “net benefits” test devised estimates the extent of these effects and quantifies the “environmental benefits” in dollars.

Determining the extent of the fiscal and environmental benefits requires that Staff perform a series of calculations on data provided by the Applicant, particularly by using input parameters recommended by the Executive Director to and approved by the Board. These input parameters include items such as the percent increase in Qualified Property purchases that occur as a result of the STE, an appropriate discount rate, the relevant economic multiplier, and the dollar value of CO2 and other pollutants.

In addition to the net benefits test, several economic and environmental factors are evaluated and scored based on optional supplemental information that Applicants may choose to provide.

These supplemental scoring factors address more difficult to quantify aspects of an Application, such as the appropriate score to award for Projects located in high unemployment areas. In addition, these factors seek to give Applicants additional points for environmental benefits associated with their manufacturing processes, which are not directly evaluated in the net benefits test.

The regulations also provide flexibility to the Executive Director to adjust the overall 1,000 point threshold or to recommend to the Authority individual Projects for approval if they fall below the 1,000 point threshold. While CAEATFA included numerous potential Project scenarios in developing the emergency regulations, this provision will allow CAEATFA to more appropriately evaluate unique and innovative Projects which may not have been anticipated in the evaluation criteria established in the emergency regulations.

#### **§10034. Approval of Applications by the Authority**

- This section describes the Application approval and appeal process.
- Applicants must deliver a completed Application no less than 60 calendar days prior to the CAEATFA Board meeting at which they wish to obtain a decision on the Application.
- In the event that Applicants do not receive a favorable Staff recommendation to receive a STE, the Applicant may appeal the Staff recommendation to the Executive Director. The Applicant may appeal the Executive Director's recommendation to the Authority.
- Applicants may not appeal the evaluation of another Applicant's Application.

***Issues:*** Applications may be submitted at any time for consideration and will be presented at the ***first meeting*** occurring at least 60 calendar days after the receipt of the complete Application with some exceptions. This is to ensure that Staff has adequate time to fully analyze each Application before the Authority meeting. For example, if an Applicant wished to have their Application presented at the January 2011 meeting, they would need to turn in their Application by Tuesday, November 23<sup>rd</sup> of this year, a total of 62 days in advance.

However, the Authority may consider an Application at a meeting occurring less than 60 calendar days. Staff has determined that a shortened timeline may be necessary for the first one to two rounds of Applications in order to expedite the process to accommodate the interest in the Program, the urgent nature of the statute and to promote a more immediate economic stimulus. Staff expects to accept Applications in October and November to be presented at the November and December meetings, respectively. This will shorten the review time to approximately 35-45 calendar days, instead of the minimum of 60 calendar days.

#### **§10035. Regulatory Agreement and Compliance**

- This section describes the terms that will be included on the Regulatory Agreement entered into by the Applicant and the Executive Director. The Regulatory Agreement

must be executed within 30 calendar days of the Authority approval and will be in effect for a period equal to the longer of three years or one-half of the Estimated Useful Lifespan of Qualified Property listed in the Application.

- This section also includes the type of additional documentation the Applicant is required to submit annually, such as a certification letter documenting that the Qualified Property was used for the purposes specified in the Application as well as a compliance report with information on the number of jobs created and total number of units sold.
- In order to receive the sales and use tax exclusion, approved Applicants must convey title of the Qualified Property to the Authority and then the Authority will reconvey the title back to the Applicant. Applicants must purchase at least 25 percent of the Qualified Property within one year of approval by the Authority, and all purchases must be made within three years of Authority approval.
- The conveyance of title to Qualified Property will occur under a Conveyance/Reconveyance agreement that will require at a minimum:
  - An agreement by the Participating Party to convey title of Qualified Property to CAEATFA.
  - Representations that the Participating Party has not put the Qualified Property to a taxable use prior to the conveyance.
  - A requirement that CAEATFA reconvey title within 10 days of the initial conveyance.
  - An agreement that there will be no fees for the conveyance or reconveyance other than those set forth in the emergency regulations.
  - A requirement that the Applicant provide a complete individualized list of Qualified Property within 30 days after the term of the agreement.
  - A requirement that the Applicant indemnify and hold harmless CAEATFA from claims connected with: 1) the Project, 2) the transactions associated with the Project, 3) any violation of law connected with the Project, and 4) any dispute or ruling regarding the ultimate taxability of the sale or use of the Qualified Property.
  - A requirement that the Qualified Property be installed, maintained and operated within the State of California.

**Issues:** The Regulatory Agreement and subsequent conveyance and reconveyance of the Qualified Property provide the legal mechanism for excluding certain purchases from sales and use taxes and ensure ongoing compliance with the statute and regulations. Applicants must purchase the specified portion of the Qualified Property within the time frame outlined above in an effort to provide a more immediate stimulus to the California economy consistent with the Legislative intent of the Program. The STE aims to support such job creation and manufacturing and thus all Qualified Property purchases must be made within three years of the Authority's approval. Requiring Applicants to utilize their STE within the specified timeframe also serves to prevent Applicants from applying for a STE in advance of the actual need for equipment purchases.

The Authority may publish STE by jurisdiction. This information may be used to track STE use patterns within the State.

**§10036. Fees**

- This section outlines how Application and Administrative Fees will be calculated for Applicants.
- The Application Fee shall equal .0005 of the total amount of Qualified Property identified in the Application. The minimum fee shall be \$250 and may not exceed \$5,000.
- The Administrative Fee shall equal .004 of the total amount of Qualified Property purchased. The minimum fee shall be \$15,000 and may not exceed \$350,000. The \$15,000 minimum fee shall be due upon execution of the Regulatory Agreement and the balance of the fee shall be assessed at the time of each subsequent conveyance/reconveyance agreement.

***Issues:*** The Application Fee is consistent with fee structures in other boards and authorities under the jurisdiction of the State Treasurer's Office. These Fees will assist CAEATFA with the costs of reviewing Applications. The Administrative Fees were established at a rate which would cover the costs of administering the Program, while still providing a substantial financial benefit to the Applicant, meaning that the ratio to the total fees to total STE savings is extremely low, in most cases less than 5 percent.



## Attachment B

### LEGAL ANALYSIS OF THE USE OF SB 71 STE FOR ALTERNATIVE SOURCE ENERGY GENERATION FACILITIES

The comments on this question have focused almost exclusively on the definition of “project” included in SB 71 and now codified at Public Resources Code (PRC) Section 26003(g)(2) and how it relates to the definition of alternative source found at PRC Section 26003(c)(1). For example, one commenter provided the following interpretation:

The term “alternative source products, components, or systems” clearly can be interpreted to include the production of alternative renewable energy. We see no reason that CAEATFA cannot determine that certain forms of renewable energy constitute a “product” eligible for sales and use tax exclusion under SB 71. Similarly, “alternative source system” can be interpreted by CAEATFA to include renewable energy production systems – including equipment used to generate renewable electricity according to the provisions of SB 71. Finally, “alternative source components” can clearly be interpreted to include renewable energy production components – including the equipment used to generate renewable electricity according to SB 71. (Emphasis in original)

Viewed in a vacuum, perhaps the language of PRC 26003(g)(2) could be interpreted to encompass all of those aspects of the renewable energy generation industry. However, SB 71 was not enacted in a vacuum, but rather against the backdrop of existing law. For this reason, it is not enough to look at and parse the language of PRC 26003(g)(2). One must also consider the provisions of the CAEATFA statute as it existed prior to the enactment of SB 71. Specifically, consideration must be given to the pre-existing definition of project now found at PRC 26003(g)(1).

In coming to a conclusion regarding the project definition adopted in SB 71, CAEATFA has relied on the plain language of the statute and Legislative history. In looking to the plain language, CAEATFA has undertaken a comparison and analysis of the pre-SB 71 definition of project in Public Resources Code Section 26003(g)(1) to the Section 26003(g)(2) definition adopted in SB 71.

The differences between the two give a good idea of the Legislature’s intent and lead to a conclusion that the Legislature did not contemplate generating facilities to be included in the SB 71 Program.

**26003(g) (1)** "Project" means a land, building, improvement to the land or building, 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,

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*Note: All capitalized terms that are not defined in this document are defined in the program’s statute and the proposed emergency regulations.*

distribution, or service of advanced transportation technologies, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.

First, under PRC Section 26003(g)(1) CAEATFA has no authority to provide financial assistance to alternative source product manufacturers. The reference to manufacture in this section applies only to advanced transportation technologies. Second, it is clear that under PRC Section 26003(g)(1) CAEATFA has the authority to provide financial assistance to alternative source generating facilities as “machinery and equipment... that utilizes or is designed to utilize an alternative source... ”.

With this in mind, CAEATFA believes it is reasonable to assume that had the Legislature intended to include both alternative source generation and manufacturing in SB 71 it could have done so by simply adding alternative source manufacturing to the PRC Section 26003(g)(1) definition. But that is not what happened<sup>2</sup>. With SB 71, the Legislature adopted a completely different definition of project:

**26003(g)(2)** "Project," for the purposes of Section 26011.8, means 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.

Apart from the addition of authority to provide financial assistance to alternative source manufacturing, the most obvious difference between 26003(g)(1) and SB 71's (g)(2) is the deletion of the reference to machinery or equipment that utilizes or is designed to utilize an alternative source. The Legislative decision to delete this language from the SB 71 definition cannot be ignored. It is a well recognized principle of statutory construction that when the Legislature has carefully employed a term in one place, and has excluded it in another, it should not be implied where excluded. (*State Building and Construction Trades Council of California v. Duncan* (2008) 162 Cal.App.4th 289).

To include generation – “machinery and equipment that utilizes or is designed to utilize an alternative source” – in the SB 71 Program would require CAEATFA to ignore the obvious differences between the two project definitions.

In sum, the Legislature tailored the SB 71 Program to give CAEATFA a limited ability to provide assistance to manufacturers of alternative source products, components or systems. By omitting the reference to facilities that utilize an alternative source, it carved alternative source generation out of the Program.

Going beyond the plain language of the statute and looking to the Legislative history of SB 71 reinforces this conclusion and demonstrates that the Legislature firmly believed that generation

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<sup>2</sup> It's worth noting, that the addition of alternative source manufacturing to the pre-SB 71 definition (now 26003(g)(1)) was considered and rejected by the legislature in AB 1111 (Blakesley).

was encompassed in CAEATFA's pre-existing authority. That being the case there was no need to include it in the SB 71 Program.

**Excerpts from the Senate Floor Analysis for SB 71 (3/23/10)**

**Summary:** Expands the range of projects which may be approved for a sales tax exclusion to include equipment used to manufacture products that produce energy from alternative sources such as solar, wind and biomass.

**Existing Law:** CAEATFA was established in 1980 as a means to encourage the use of equipment using alternative or renewable energy sources, such as wind, solar, cogeneration and geothermal. Under its existing authority, CAEATFA may approve projects and authorize financial assistance for the purchase of equipment that uses such alternative energy sources. CAEATFA is authorized to provide financial assistance to projects that meet its approval through the issuance of bonds, loans, loan guarantees and credit enhancements. In addition, existing law permits CAEATFA to approve projects and exclude equipment purchased pursuant to those projects from state and local sales and use tax. Currently projects that may be approved by the authority do not include equipment that is used to manufacture alternative or renewable energy products (such as solar panels, photovoltaic cells or wind turbines).

When speaking of SB 71 the Legislature understood the provisions to apply to equipment used to manufacture products that produce energy from alternative sources. Logically then, SB 71's project definition would be limited to the machinery and equipment necessary to manufacture solar panels or wind turbines. In contrast, when speaking of existing law, the Legislature spoke in terms of equipment that uses alternative sources.

From the plain language and the Legislative history, it is clear that the Legislature knew CAEATFA had the existing authority to provide financial assistance including sales and use tax exclusions to projects under the pre-SB 71 definition. SB 71 was enacted to grant some authority to provide similar financial assistance to manufacturing.

**Attachment C**

**PROPOSED TEXT OF REGULATIONS**

**CALIFORNIA CODE OF REGULATIONS**

**Title 4. Business Regulations**

**Division 13. California Alternative Energy and Advanced Transportation Financing Authority**

**CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY REGULATIONS IMPLEMENTING**

**ADVANCED TRANSPORTATION AND ALTERNATIVE SOURCE MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM**

September 16, 2010

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### **Section 10030. Purpose and Scope**

These regulations establish procedures for granting sales and use tax exclusions to qualifying Applicants pursuant to Chapter 10, Statutes of 2010, which authorizes the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) to award such sales and use tax exclusions.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10031. Definitions**

- A) “Administrative Fee” means the fee payable following approval of an Application at the time of conveyance/reconveyance of property to CAEATFA.
- B) “Advanced Transportation Technology” or “Advanced Transportation Technologies” is defined as stated in Section 26003(d) of the Public Resources Code.
- C) “Alternative Source” is defined as stated in Sections 26003(c) and 26011.8(b)(2) of the Public Resources Code.
- D) “Applicant(s)” means a natural person; business entity, whether organized for profit or not for profit; or public agency, acting individually or as a group, submitting an Application.
- E) “Application” means a completed formal request for sales and use tax exclusion as specified in Section 10033.
- F) “Application Fee” means the fee payable at the time of Application for a sales and use tax exclusion.
- G) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) established pursuant to Division 16 (commencing with Section 26000 of the Public Resources Code).
- H) “Emerging Green Industry” means an innovative industry, technology or product that may be identified by the Executive Director as having a potentially significant impact on the State’s environmental goals, the advancement of which is in the public interest, and which advances the purposes of the Program. The Executive Director may from time to time submit to the Authority a list of Emerging Green Industries which will be identified by North American Industry Classification System (NAICS) code (or its equivalent) or by description of the product or manufacturing process. Once approved by the Authority, the list of these industries will be publicly posted on the Authority’s website.
- I) “Estimated Useful Lifespan” means the length of time the Qualified Property or Advanced Transportation Technology or Alternative Source product, component, or system can reasonably be expected to last in a productive capacity, as identified in the Application or the Regulatory Agreement.
- J) “Executive Director” means the executive director of CAEATFA.
- K) “Facility” or “Facilities” mean a design, manufacturing, production, or assembly facility that includes or will include tangible personal property utilized for the design, manufacture, production, or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems.

- L) “Green Component” means the component or system within Advanced Transportation Technologies or Alternative Source products, components, or systems that is primarily responsible for or required to enable the increase in energy efficiency, Alternative Source generation, or pollution reduction.
- M) “Participating Party” is defined as stated in Section 26003(f) of the Public Resources Code.
- N) “Program” means the sales and use tax exclusion program created pursuant to Public Resources Code Section 26011.8.
- O) “Project” is defined as stated in Section 26003(g)(2) of the Public Resources Code. Project does not include machinery or equipment that utilizes or is designed to utilize an Alternative Source.
- P) “Qualified Property” means the tangible personal property identified in the Application or Regulatory Agreement necessary for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems to be purchased for use in the Facility. Qualified Property must be used for the purpose stated in the Application for a period equal to the longer of (a) one year or (b) one-half of the Estimated Useful Lifespan of the Qualified Property.
- Q) “Regulatory Agreement” means the agreement specified in Section 10035.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of  
the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10032. Application Requirements**

- A) Timing of Application submissions.
  - 1) Except as otherwise provided by the Authority pursuant to subparagraph 2, Applications may be submitted for consideration at any time. Applications will be presented at the first meeting at which Applications will be considered occurring at least 60 calendar days after the receipt of the complete Application, except as noted in paragraphs 2, 3, and 4 below.
  - 2) The Authority may limit the number of meetings each year at which Applications will be considered.
  - 3) Upon a recommendation of the Executive Director, the Authority may consider an Application at a meeting occurring less than 60 calendar days after the receipt of the complete Application.
  - 4) The Authority may, upon a finding that it is in the public interest and advances the purposes of the Program, at any time announce that it is not accepting further Applications.
- B) Application. Applicants shall submit to the Authority the information required by this section.
  - 1) Applications not meeting all requirements shall be considered incomplete. An Applicant shall be notified by the Authority should its Application be deemed incomplete and may correct any deficiency and resubmit the Application. Resubmitted Applications will be reviewed for completeness and, if complete, will be further reviewed by staff and

presented to the Authority pursuant to the regular review and evaluation process and timeline.

- 2) Determination of completeness, compliance with all requirements, and the scoring of the Application shall be based entirely on the documents contained in the Application as of the date on which the Application was submitted. Any additional documents pertaining to the requirements or scoring categories that the Applicant chooses to submit shall be accepted after the Application-filing date only with the understanding that, for purposes of calculating the 60 calendar days to determine the earliest meeting at which the Application will be heard, the date the additional documentation is received shall be the date of receipt of the Application. In the event the Authority asks an Applicant for additional information or requests clarification of errors, Applicants shall be given up to five (5) business days from the date of receipt of Staff notification to submit said documents to complete the Application. A timely response shall not cause a redetermination of the date of receipt. The Authority may request additional clarifying information from third party sources, such as local government entities, other state agencies, or subject matter experts. To the extent that third party information is received that contradicts or otherwise calls into question information provided in the Application or otherwise may result in a reduction in the score that an Application would receive, the Applicant will be notified and will be given three business days to respond to the third party information received.
  - 3) An Application may not be changed, nor may any additional information with respect to scoring be submitted subsequent to the Application filing date, except as noted above.
  - 4) Applications not submitted with the Application Fee will be considered incomplete.
- C) Documentation. The following documentation relevant to the proposed Facility is required to be submitted with all Applications:
- 1) Applicant Certification. A signed statement certifying the responsibility of the Applicant to:
    - i) provide Application-related documentation to the Authority upon request;
    - ii) be familiar with and comply with Program statutes and regulations;
    - iii) hold the Authority and its employees and consultants harmless from any and all issues arising from the Applicant's participation in the Program;
    - iv) agree to comply with and remain in compliance with all applicable laws and regulations during the term of the Regulatory Agreement;
    - v) acknowledge that the Authority has recommended the Applicant seek tax advice;
    - vi) acknowledge that the Application will be evaluated according to Authority regulations;
    - vii) acknowledge that continued compliance with Program requirements, including ongoing reporting requirements and any costs associated with such requirements for the term of the Regulatory Agreement, is the responsibility of the Applicant;
    - viii) acknowledge that information submitted to the Authority may be subject to disclosure pursuant to the Public Records Act (Government Code Sections 6250, et seq.);
    - ix) agree to enter with the Authority into a Regulatory Agreement if the Application is approved; and,
    - x) acknowledge, under penalty of perjury, that all information provided to the Authority is true and correct, and that the Applicant has an affirmative duty to notify the

- Authority of any material changes to the information submitted in the Application.
- 2) Legal Information. Applicants shall complete a legal status questionnaire.
  - 3) Designated Contact Person. The Application must identify a designated contact person who can respond to questions from the Authority or provide additional information if requested. If the designated contact person is not directly employed by Applicant, the Application must include appropriate documentation signifying the contact person's authority to represent and act on behalf of the Applicant with respect to the Application.
  - 4) Applicant and Facility Information. Applicants are responsible for providing all requested information, which shall include:
    - i) Applicant Information.
      - (1) Name, phone number, email address, mailing address, and taxpayer identification number of Applicant,
      - (2) Applicant organization type (e.g., corporation, LLC, partnership, etc.),
      - (3) Name, phone number, email address, and mailing address of designated contact person
      - (4) Contact's title or relationship to Applicant,
      - (5) The name(s) of the owners of the Applicant's business entity.
        - (a) If the Applicant is a corporation, include the names of the officers of the corporation, major shareholders (10.0% or greater), and date and place of incorporation.
        - (b) If the Applicant is a sole proprietorship, include the name of the proprietor and the date and place of establishment.
        - (c) If the Applicant is another type of legal entity, identify the name(s) of the owners and each owner's share of ownership (the totals of the reported shares of ownership should equal 100%).
    - ii) Facility Information
      - (1) Brief description of Facility and product(s) to be produced, including the following:
        - (a) Physical location of the Facility
        - (b) A description of the Facility, including the design, manufacturing, or assembly process to be employed, the product to be produced, and the intended or likely customers.
        - (c) Identification of the Advanced Transportation Technology or Alternative Source product, component or system to be produced. In the case of a Facility producing property or products that, after further manufacture, will become the Green Component of an Advanced Transportation Technology or Alternative Source product or system, the Applicant must describe both the property or product produced by the Facility and the Green Component of the Advanced Transportation Technology or Alternative Source product or system for which the product produced will be used.
        - (d) Current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application, including the expected date of any needed permits or additional financing necessary for Facility completion.
        - (e) Total value of the capital stock used to produce the product, including the anticipated Qualified Property purchases. The value is not the cost of the



- capital stock, but the depreciated value of the capital stock excluding buildings and land.
- (f) Projected average number of employees at the Facility, measured in full time equivalents, assuming Qualified Property is utilized.
  - (g) Projected number of employees employed for purposes of constructing the Facility or installing Qualified Property, measured in full time equivalents.
  - (h) Estimated annual corporate or other income taxes paid by the company on its profits.
- iii) Qualified Property Information. Completed provisional Qualified Property list to include the following information for each piece of property to be subject to the sales and use tax exclusion. Good faith estimates are acceptable if specific property characteristics are not available at the time of Application. Individual items of Qualified Property valued at less than \$10,000 can be grouped together provided that (a) the total value of the group of items does not exceed \$100,000 and (b) the individual items are reasonably related, such as items that will be used together to construct or assemble a larger piece of machinery or equipment that will be used to design, manufacture, produce or assemble Advanced Transportation Technologies or Alternative Source products, components, or systems.
- (1) Brief description of Qualified Property to be purchased
  - (2) Estimated cost of the Qualified Property to be purchased
  - (3) Average Estimated Useful Lifespan of the Qualified Property, weighted by cost.
  - (4) Estimated percent of time Qualified Property will be used to make Advanced Transportation Technologies or Alternative Source products, components, or systems.
- iv) Product information (all information must relate solely to the Facility or product to be produced with Qualified Property if the Applicant produces other goods or services):
- (1) Brief description and name of the product to be produced with Qualified Property and within California, including the six-digit (NAICS) code.
  - (2) Estimated average annual number of Advanced Transportation Technologies or Alternative Source products, components, or systems to be sold or shipped
  - (3) Estimated per unit sales price.
  - (4) Estimated total Facility sales in dollars.
  - (5) Estimated per unit production-related purchases from suppliers, assuming Qualified Property is utilized or installed.
  - (6) Estimated percent of production costs from California suppliers, defined as suppliers that manufacture, assemble, or produce the product or service supplied in the state of California.
  - (7) Estimated per unit labor costs, assuming Qualified Property is utilized or installed.
  - (8) Estimated Useful Lifespan of product, component, or system.
  - (9) Estimated percent of total Advanced Transportation Technology or Alternative Source products, components, or systems to be sold in California.
  - (10) Statement as to whether the technology, product, component, or system is a subcomponent of an Advanced Transportation Technology or Alternative Source end-of-supply-chain product.

- (11) Total value of the end-of-supply-chain Green Component.
- v) Environmental Benefit Information.
- (1) For Facilities producing the Green Component of Alternative Source products, components or systems:
    - (a) Annual MWh generated per unit.
    - (b) Lbs. of CO<sub>2</sub> (or equivalent) emitted per MWh.
    - (c) Lbs. of SO<sub>2</sub> emitted per MWh.
    - (d) Lbs. of NO<sub>x</sub> emitted per MWh.
    - (e) Amount of other pollutants emitted per MWh.
  - (2) For Facilities producing the Green Component of Alternative Source energy efficiency products, components or systems
    - (a) Type and units of energy conserved
    - (b) Annual baseline system consumption of energy per unit
    - (c) Annual improved system consumption of energy per unit
  - (3) For Facilities producing the Green Component of Advanced Transportation Technology products, components, or systems
    - (a) Annual baseline system consumption of energy per unit
    - (b) Annual improved system consumption of energy per unit
    - (c) Annual consumption of any offsetting energy required to achieve improved system performance
  - (4) For Facilities producing the Green Component of Alternative Source or Advanced Transportation Technology products, components, or systems that do not fall within the above categories of products, the Applicant shall explain and quantify the following:
    - (a) Environmental benefits associated with use of the product
    - (b) Net annual reduction in consumption of energy, if any
    - (c) Amount of other pollutants emitted, if any
- vi) Optional Supplemental Information. The following information may be submitted with an Application. Submission of this information may increase an Applicants score, as specified in Section 10033.
- (1) Applicants claiming any additional significant environmental benefits associated with use of their product beyond those associated with reduced energy consumption or increased Alternative Source energy generation may provide a description of these benefits, including the amount of pollution avoided and a quantification of the impact of the pollution reduction in dollars if possible.
  - (2) Applicants utilizing a manufacturing or production process that is characterized by substantial environmental improvements relative to the processes employed by directly comparable entities in energy use, water use, atmospheric emissions, waterborne waste, industrial solid waste, or post-consumer solid waste may submit the following information, submission of which may increase an Applicant's score:
    - (a) An explanation of the process improvements
    - (b) Demonstrated proof of input use and output emission improvements over the standard processes
    - (c) Quantification of the amount of the process improvements
  - (3) Additional documentation only for Applicants claiming that without the exclusion

the proposed Facility will not be sited in California. Determination of Facility benefits, as further delineated in Section 10033, may be increased for Facilities that would not locate production Facilities in California absent the grant of the sales and use tax exclusion. For Applicants claiming that Facility location or expansion decisions are dependent upon receipt of the sales and use tax exclusion, Applications must provide evidence to support the claim. Such evidence may include the following:

- (a) Internal financial analysis demonstrating the extent of an advantage for a non-California site.
  - (b) Location consultant report demonstrating the extent of an advantage for a non-California site.
  - (c) Other internal or external analyses demonstrating that, absent the grant of the sales and use tax exclusion, the proposed Facility will not proceed at the California site.
- vii) Calculations and assumptions relied upon by the Applicant. For any calculation performed by or assumption relied upon by the Applicant in completing the Application, the Applicant must provide an explanation of the basis for the value resulting from the calculation or reasonableness of the assumption relied upon. Applicants may be asked to provide additional supporting information, including business plans, pro forma financial statements or other comparable documents used for the purpose of soliciting investors to verify responses contained in the Application. Applications that do not adequately document any calculations or assumptions relied upon will be considered incomplete.
- 5) Application materials and supporting documentation in excess of thirty pages will not be considered or reviewed except to the extent that documentation in excess of this page limit is provided in response to a direct request for additional information from the Authority.
- D) Trade secrets and confidential information. If elements of an Application contain information the Applicant considers to be trade secrets, confidential, privileged or otherwise exempt from disclosure under the Public Records Act (California Government Code Section 6250, et seq.), the Applicant shall assert a claim of exemption at the time of Application by identifying in an accompanying letter each of the items to be restricted. The asserted claim shall indicate the specific information within the Application to which the claim is made. Upon receipt of a Public Records Act request for documents that may include information the Applicant has identified as trade secret, confidential, privileged or otherwise exempt from disclosure, the Authority shall provide notice to the Applicant and provide the Applicant with three business days to provide the Authority with an explanation as to why the information is not subject to disclosure pursuant to the Public Records Act. The Authority shall consider a claim of exemption and the basis for it, but retains the authority to make the final determination as to what information will be released under the Public Records Act. Applicants will be notified by the Authority prior to release of any such information.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10033. Eligibility Requirements and Application Evaluation**

- A) Staff summary and recommendation. Following receipt of a complete Application, Authority staff will review each Application and prepare a summary and recommendation to the Authority. The summary and recommendation will include a calculation of the benefits of the Facility and an assessment of whether the proposed Facility meets the eligibility requirements.
- B) Eligibility. To be eligible for the sales and use tax exclusion, a Facility must:
- 1) Include the purchase of tangible personal property otherwise subject to sales and use tax used substantially for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems or for the design, manufacture, production or assembly of a component of the Green Component of an Advanced Transportation Technologies or Alternative Source products or systems..
    - i) For this purpose, “used substantially” shall mean that the qualified property must be used more than 75.0 percent for the design, manufacture, production or assembly of Advanced Transportation Technologies or Alternative Source products, components, or systems during the longer of (a) one year or (b) one-half of the weighted average Estimated Useful Lifespan of the Qualified Property (WALS).
  - 2) Produce benefits to the State of California, as determined by the Authority subject to the criteria and evaluation process identified herein.
- C) Evaluation. Applications shall be scored according to the benefits provided to the state by the marginal increase in Qualified Property purchases resulting from the sales and use tax exclusion. Applicants must demonstrate that the benefits of the marginal increase in Qualified Property purchases exceed the cost to the state of the sales and use tax exclusion. Benefits can be a combination of fiscal, environmental and other benefits, as specified. Each Application will be evaluated based on these elements as specified below.
- 1) Fiscal Benefits
    - i) The estimated marginal increase in Qualified Property (MIQP) purchases resulting from sales and use tax exclusion. The increase in purchases will be calculated using Applicant-provided information on the total value of the Qualified Property (VQP) and the estimated percent increase in capital investment (PICI) associated with the relevant sales and use tax rate as determined by the Executive Director based on the relevant research literature or consultation with professional economists or other experts. Where the Applicant can demonstrate that the Facility would have been located outside of California absent the sales and use tax exclusion, the Executive Director will adjust the PICI to reflect this fact. The MIQP will be calculated pursuant to the following formula:

$$\text{MIQP} = (\text{VQP} / (1 + \text{PICI}) * \text{PICI})$$

- ii) The estimated marginal increase in sales (MIS) resulting from sales and use tax exclusion. The increase in sales will be calculated by multiplying MIQP times the ratio of the estimated annual units of production times the average per unit sales price times to the value of the capital stock (VCS) used to produce the product, pursuant to the following formula:

$$\text{MIS} = \text{MIQP} * (\text{Estimated Annual Sales Value} / \text{VCS})$$

(1) The present value of the MIS (PVMIS) will be calculated based on the weighted average life span (WALS) of the Qualified Property as provided by the Applicant and a discount rate recommended by the Executive Director based on the relevant research literature, consultation with outside experts, or information provided by other state agencies and approved by the Authority

iii) The estimated annual marginal increase in units (MIU) resulting from sales and use tax exclusion. The increase will be calculated using the marginal increase in sales (MIS) and Applicant-provided data on the sales price per unit (\$Unit), pursuant to the following formula:

$$\text{MIU} = (\text{MIS} / \$\text{Unit})$$

iv) The estimated annual increase in employee wages (AIEW) will be calculated based on Applicant-provided information about the per unit labor costs and the per unit price, pursuant to the following formula:

$$\text{AIEW} = (\text{MIU}) * \text{average per unit labor cost}$$

v) The estimated marginal increase in state economic output (MISO) resulting from the sales and use tax exclusion. The MISO will be calculated using the MIS, the AIEW resulting from the marginal increase in sales, the marginal increase in in-state supplier purchases (MISP) and a multiplier effect (Multiplier) to be determined by the Executive Director based on the relevant research literature, consultation with outside experts, or information provided by other state agencies, pursuant to the following formulas:

$\text{MISP} = \text{MIU} * \text{percent of production costs from California suppliers} * \text{Per unit production-related purchases from suppliers}$

$$\text{MISO} = (\text{MISP} * \text{Multiplier} + \text{AIEW} * \text{Multiplier} - \text{AIEW})$$

(1) The present value of the MISO (PVMISO) will be calculated based on the WALS of the Qualified Property as provided by the Applicant and a discount rate recommended by the Executive Director and approved by the Authority

vi) The estimated extent of increased tax revenues, or total fiscal benefits (TFB), that will accrue to the state and local governments over the WALS resulting from the PVMIS and PVMISO. TFB is the sum of the increased direct fiscal benefits (DFB) and the indirect fiscal benefits (IFB).

$$\text{TFB} = \text{DFB} + \text{IFB}$$

(1) The DFB are the sum of the increases in sales taxes (IST), personal income taxes

(IPIT), corporate or other income taxes paid by the company on its profits (ICIT) and property taxes (IPT) that result from the company's MIS.

$$DFB = IST + IPIT + ICIT + IPT$$

- (a) The IST is calculated using MIS, Applicant-provided data on the percent of sales in California (POSCA), and the current statewide average sales tax rate (STR) as determined by the Executive Director based on information collected by the California State Board of Equalization, and the value added (VA), pursuant to the following formula:

$$IST = POSCA * PVMIS * VA * STR$$

- (b) The IPIT is calculated using the present value of the AIEW and the average state income tax rate (SIR) as determined by the Executive Director by using the most recent two-year average of personal income tax rates published by the California Franchise Tax Board, pursuant to the following formula:

$$IPIT = \text{Present Value (AIEW)} * SIR$$

- (i) The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate recommended by the Executive Director.
- (c) The ICIT paid by the company on its profits is the present value of the estimated annual tax liability that is attributable to the Qualified Property.
- (i) The ICIT is calculated using Applicant-provided data on estimated annual tax liability (ATL), the value of the capital stock (VCS) used to produce the product and the MIQP pursuant to the following formula:

$$ICIT = \text{Present Value (ATL * MIQP/VCS)}$$

- (ii) The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate recommended by the Executive Director.
- (d) The increase in property taxes (IPT) is the present value of the annual property taxes paid on the MIQP.
- (i) The annual property tax amount is calculated using MIQP and the current property tax rate (PTR) as determined by the Executive Director based on information collected by the California State Board of Equalization, pursuant to the following formula:

$$IPT = \text{Present Value (MIQP * PTR)}$$

- (ii) The present value is based on the WALs of the capital equipment purchased as provided by the Applicant and the discount rate

recommended by the Executive Director.

- (2) The indirect fiscal benefits (IFB) result from increased state and local revenues resulting from increased economic activity caused by additional purchases from in-state suppliers and increased employee wages resulting from the MIQP.
- (a) The increase in revenues is calculated using PVMISO and the ratio of state and local government revenues to gross state output (GRSO) as determined by the Executive Director using the sum of the latest two-year average of actual state general fund revenues from the California Department of Finance, the latest two-year average of actual aggregate city and county revenues excluding intergovernmental transfers and service charges from the cities annual report and the counties annual report from the California State Controller's Office, divided by the latest two-year average of gross state product from U.S. Department of Commerce's Bureau of Economic Analysis, pursuant to the following formula:

$$\text{IFB} = \text{PVMISO} * \text{GRSO}$$

2) Environmental Benefits.

- i) The allocated share (AS) is the estimated percent of the pollution benefit from the Green Component of the Advanced Transportation Technology or Alternative Source product, component, or system that can be attributed to the Applicant's use of the Qualified Property. The AS is calculated using Applicant-provided data on the percent of time (POT) that the Qualified Property will be used to make the Advanced Transportation Technology or Alternative Source product, component or system and the fractional component contribution (FCC) of the Applicant's product to the Green Component of the end-of-supply-chain product. FCC will be calculated by dividing the value added (VA) per unit by the Applicant by the total value of the end-of-supply-chain product for Facilities producing end products or systems or by the total value of the Green Component of the end-of-supply-chain product for Facilities producing subcomponents (End \$). The AS will be calculated pursuant to the following formulas:

$$\text{FCC} = (\text{VA} * \$\text{Unit}) / \text{End } \$$$

and

$$\text{AS} = \text{POT} * \text{FCC}$$

- ii) The estimated impact of pollution from a gallon of gasoline equivalent (GGE) or a MWh of electricity. GGE refers to the number of gallons of a fuel that has the equivalent amount of energy to one gallon of gasoline.
- (1) The dollar value of pollution costs associated with a GGE (\$GGE) is calculated based on the percent of sales in California (POSCA) as provided by the Applicant and the pollution cost per unit of volatile organic compounds (VOCs), nitrous oxide (NOx), and carbon dioxide or carbon dioxide equivalent (CO2) as determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies, pursuant to the following formula:

$$\$GGE = \text{Pollution cost of CO}_2 \text{ per GGE} + (\text{POSCA} * (\text{pollution cost of VOC per GGE} + \text{pollution cost of NO}_x \text{ per GGE}))$$

- (2) The dollar value pollution costs associated with a MWh of electricity generation (\$MWh) is calculated based on the POSCA as provided by the Applicant and the pollution cost per unit of CO<sub>2</sub>, nitrous oxide, and sulfur dioxide released from a MWh of electricity production in California (CA) and the rest of the United States (US) as determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies, pursuant to the following formula:

$$\$MWh = (\text{POSCA} * (\text{pollution cost of CA CO}_2 \text{ per MWh} + \text{pollution cost of CA NO}_x \text{ per MWh} + \text{pollution cost of CA SO}_2 \text{ per MWh})) + ((1-\text{POSCA}) * \text{pollution cost of US CO}_2 \text{ per MWh})$$

- (3) The dollar value per pound of any other offsetting energy pollutants (\$OP) shall be determined by the Executive Director based on the relevant research literature, expert analysis, or information provided by other state agencies.

(a) Any non-greenhouse gas emissions benefits will be weighted according to the POSCA.

- iii) The total pollution benefit (TPB) will be calculated based on the marginal increase in product sales due to the sales and use tax exclusion in the following areas:

- (1) Net change in use of electricity generated from alternative sources (increased use of alternative sources). The total pollution benefit (TPB) resulting from the net change in electricity generated from alternative sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

(a) The LPB is calculated using information on the annual net electricity generation per unit (MWhG), the annual emissions per MWh of offsetting pollutants (OP) as provided by the Applicant, and estimates of the pollution cost in dollars of avoided MWh (\$MWh) and the pollution cost in dollars of any offsetting energy pollutants (\$OP) as calculated by the Executive Director, pursuant to the following formula:

$$\text{LPB} = \text{Present Value } (\$MWh * \text{MWhG}) - (\text{OP} * \$OP)$$

- (i) The present value is based on the estimated useful lifespan of the product (ULOP) as provided by the Applicant and the discount rate recommended by the Executive Director, pursuant to the following formula:

- (b) The TPB is then calculated pursuant to the following formula:

$$\text{TPB} = \text{Present Value } (\text{LPB} * \text{AS} * \text{MIU})$$

- (i) The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate recommended by the Executive Director.



(2) Net change in use of electricity generated from current sources (energy efficiency). The TPB resulting from the net change in the use of electricity generated from current sources is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

(a) The LPB is calculated using the annual net improvement in system consumption per unit (NI) as provided by the Applicant and estimates of the dollar value of pollution avoided per MWh (\$MWh) or per GGE (\$GGE), respectively, as determined by the Executive Director, pursuant to the following formula:

$$\text{LPB} = \text{Present Value (NI * \$MWh)}$$

or

$$\text{LPB} = \text{Present Value (NI * \$GGE)}$$

(i) The present value is based on the ULOP as provided by the Applicant and the discount rate recommended by the Executive Director.

(b) The TPB is then calculated pursuant to the following formula:

$$\text{TPB} = \text{Present Value (LPB * AS * MIU)}$$

(i) The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate recommended by the Executive Director.

(3) Net change in consumption of fossil fuels due to increased use of Advanced Transportation Technologies. The TPB resulting from the net change in consumption of fossil fuels is based on the lifetime pollution benefit (LPB) of each unit and the increase in unit sales that can be attributed to the sales and use tax exclusion.

(a) The LPB is calculated by using the annual net improvement in system consumption per unit (NI) and the annual consumption of offsetting energy (OFF) as provided by the Applicant and estimates of the dollar value of pollution avoided per GGE (\$GGE) and the dollar value of pollution emitted as a result of the offsetting energy consumption (\$MWh) as determined by the Executive Director, pursuant to the following formula:

$$\text{LPB} = \text{Present Value } ((\$GGE * \text{NI}) - (\text{OFF} * \$MWh))$$

(i) The present value is based on the ULOP as provided by the Applicant and the discount rate recommended by the Executive Director.

(b) The TPB is then calculated pursuant to the following formula

$$\text{TPB} = \text{Present Value (LPB * AS * MIU)}$$

(i) The present value is based on the WALs of the capital equipment as provided by the Applicant and the discount rate recommended by the

Executive Director.

- (4) Other environmental benefits. Any other environmental benefits asserted by the Applicant shall be evaluated by the Executive Director based on verification of Applicant-provided information regarding the methodology for calculating such benefits and shall be added to the appropriate Total Pollution Benefit (TPB) amount determined pursuant to these regulations.
- 3) The value of the sales and use tax exclusion. For each Application, the total cost of the sales and use tax exclusion will be calculated by multiplying the value of the Qualified Property (VQP) as reported by the Applicant times the STR.
- 4) Calculation of points. Points for fiscal benefits will be calculated by dividing total fiscal benefits (TFB) by the value of the sales and use tax exclusion and multiplying the result by 1,000. Points for environmental benefits will be calculated by dividing total pollution benefits (TPB) by the value of the sales and use tax exclusion and multiplying the result by 1,000.
- 5) Additional points. The total amount of additional points cannot exceed 200. Points shall be awarded as follows:
- i) Unemployment score. An Applicant may earn up to 40 points for creating jobs in high unemployment areas.
- (a) The unemployment rate for the area means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The most current annual average unemployment rate information available at the time of the Application submission shall be used.
- (b) Points are based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate, pursuant to the following formula:

$$\text{Points} = (\text{Local Rate} / \text{State Rate}) * 100) - 110$$

- (i) Non-integer points (e.g., 20.4) will be rounded to the nearest whole integer for scoring purposes.
- ii) New jobs score. An Applicant may earn up to 40 points for creating new jobs.
- (1) The Executive Director will calculate the amount of the sales and use tax exclusion per job created by the Applicant as a result of the MIQP. The number of jobs created by the Applicant as a result of the MIQP will be calculated by multiplying the total number of full time equivalent jobs associated with the production of the Applicant's product times the ratio of the MIQP to the VCS. Points will be awarded as follows:
- (a) Less than or equal to \$50,000 in sales and use tax exclusion per job – 40 points
- (b) Less than or equal to \$100,000 in sales and use tax exclusion per job but greater than \$50,000 per job – 30 points
- (c) Less than or equal to \$150,000 in sales and use tax exclusion per job but greater than \$100,000 per job – 20 points
- (d) Less than or equal to \$200,000 in sales and use tax exclusion per job but greater than \$150,000 per job – 10 points

- (e) Greater than \$200,000 in sales and use tax exclusion per job – 0 points
- iii) Construction or installation jobs score. An Applicant may earn up to 20 points for creating construction or installation related jobs.
  - (1) The Executive Director will calculate the amount of the sales and use tax exclusion per annual full time equivalent construction or installation job created by the Applicant as a result of the MIQP. The number of annual full time equivalent construction or installation jobs created by the Applicant as a result of the MIQP will be calculated by multiplying the total number of annual full time equivalent construction or installation jobs associated with construction of the Applicant's Facility or the installation of the Applicant's equipment times the ratio of the MIQP to the VCS. Points will be awarded as follows:
    - (a) Less than or equal to \$50,000 in sales and use tax exclusion per job – 20 points
    - (b) Less than or equal to \$100,000 in sales and use tax exclusion per job but greater than \$50,000 per job – 15 points
    - (c) Less than or equal to \$150,000 in sales and use tax exclusion per job but greater than \$100,000 per job – 10 points
    - (d) Less than or equal to \$200,000 in sales and use tax exclusion per job but greater than \$150,000 per job – 5 points
    - (e) Greater than \$200,000 in sales and use tax exclusion per job – 0 points
- iv) Emerging Green Industry score. An Applicant may earn up to 40 points if the Applicant's industry is in an Emerging Green Industry as defined in Section 10031.H. The Executive Director will determine if an Applicant's industry is an Emerging Green Industry and award points to those Applicants that qualify.
- v) Process improvement score. An Applicant may earn up to 40 points for utilizing a manufacturing process that is characterized by substantial environmental improvements relative to the manufacturing processes employed by directly comparable products or processes in the following categories:
  - (1) Process Inputs. For inputs to the manufacturing process, improvement means decreased use of the following inputs:
    - (a) Energy. Process energy is the energy required to operate and run the subsystem process(es), including but not limited to such items as heat exchangers, pumps, blowers, and boilers.
    - (b) Water. Water withdrawn from a stream, used in a process, treated, and replaced in essentially the same quality and in the same location should not be included. Water withdrawn from groundwater and subsequently discharged to a surface water body should be included because the groundwater is not replaced to maintain its beneficial purposes. In practice, the water quantity to be estimated is net consumptive usage. Consumptive usage as a life-cycle inventory input is the fraction of total water withdrawal from surface or groundwater sources that either is incorporated into the product, co-products (if any), or wastes, or is evaporated.
  - (2) Process outputs. For outputs of the manufacturing process, improvement refers to decreased creation of the following outputs:

- (a) Atmospheric emissions. Atmospheric emissions from the production process are particulates, nitrogen oxides, volatile organic compounds (VOCs), sulfur oxides, carbon monoxide, aldehydes, ammonia, lead, and other atmospheric
  - (b) emissions monitored by the state or the United States Environmental Protection Agency.
  - (c) Waterborne wastes. Waterborne waste from the production process include biological oxygen demand (BOD), chemical oxygen demand (COD), suspended solids, dissolved solids, oil and grease, sulfides, iron, chromium, tin, metal ions, cyanide, fluorides, phenol, phosphates, ammonia, and other waterborne waste monitored by the state or the United States Environmental Protection Agency.
  - (d) Industrial solid waste. Industrial solid waste refers to the solid waste generated during the production of a product and its packaging and is typically divided into two categories: process solid waste and fuel-related solid waste. Process solid waste is the waste generated in the actual process, such as trim or waste materials that are not recycled, as well as sludges and solids from emissions control devices. Fuel-related waste is solid waste produced from the production and combustion of fuels for transportation and the operating process. Fuel combustion residues, mineral extraction wastes, and solids from utility air control devices are examples of fuel-related wastes.
  - (e) Post-consumer solid waste. Post-consumer solid waste refers to the product/packaging once it has met its intended use and is discarded into the municipal solid waste stream.
- (3) For each area in which an Applicant demonstrates substantial improvement relative to comparable production processes for like products, the Executive Director will award 10 points with a maximum of 40 points. Substantial improvement will be evidenced by documentation evidencing improvements relative to standards such as those identified by third-party certifiers, state or federal regulations, or academic studies.
- vi) Out-of-state environmental benefits score. An Application may be awarded points for non-greenhouse gas environmental benefits attributable to Advanced Transportation Technologies or Alternative Source products, components, or systems sold outside of California, pursuant to the following:
- (1) The Executive Director will calculate the value of the non-greenhouse gas environmental benefits resulting from the marginal increase in out-of-state product sales due to the sales and use tax exclusion, pursuant to the following equations:
    - (i) The dollar value of an out-of-state non-greenhouse gas benefit from a GGE (\$OSG) pursuant to the following formula:
 
$$\text{\$OSG} = (1 - \text{POSCA}) * (\text{pollution cost of VOC per GGE} + \text{pollution cost of NOx per GGE})$$
    - (ii) The dollar value of an out-of-state non-greenhouse gas benefit from a MWh (\$OSM) is calculated pursuant to the following formula:

$$\$OSM = (1-POSCA) * (\text{pollution cost of US NO}_x \text{ per MWh} + \text{pollution cost of US SO}_2 \text{ per MWh})$$

(iii) The dollar value per unit of any other offsetting pollutants (\$OP) be weighted by the POSCA and incorporated by the Executive Director into the calculation of the out-of-state environmental benefits score.

(iv) The total value of out-of-state non-greenhouse gas pollution benefits (TOB) due to electricity generated from alternative sources (increased use of alternative sources) is calculated pursuant to the following formula:

$$\begin{aligned} LPB &= \text{Present Value } ((NI * \$OSM) - (OP * \$OP)) \\ &\text{and} \\ TOB &= \text{Present Value } (LPB * AS * MIU) \end{aligned}$$

(v) The total value of out-of-state non- greenhouse gas pollution benefits (TOB) to electricity generated from non-alternative sources or fossil fuels burned (conservation) is calculated pursuant to the following formula:

$$\begin{aligned} LPB &= \text{Present Value } (NI * \$OSM) \\ &\text{or} \\ LPB &= \text{Present Value } (NI * \$OSG) \\ &\text{and} \\ TOB &= \text{Present Value } (LPB * AS * MIU) \end{aligned}$$

(vi) The total value of out-of-state non-greenhouse gas benefits (TOB) due to increased use of advanced transportation technologies is calculated pursuant to the following formula:

$$\begin{aligned} LPB &= \text{Present Value } ((NI * \$OSG) - (OFF * \$OSM)) \\ &\text{and} \\ TOB &= \text{Present Value } (LPB * AS * MIU) \end{aligned}$$

(b) The Authority will then calculate the ratio of the total value of out-of-state non-greenhouse gas benefits (TOB) to the value of the sales and use tax exclusion and the result will be multiplied times 1000 and divided in half to determine the Applicant's point total, pursuant to the following formula:

$$\text{Points} = ((TOB / \text{Sales and Use Tax Exclusion}) * 1000)/2$$

(i) Non-integer point totals will be rounded to the nearest whole integer for scoring. A maximum of 40 points may be awarded for out-of-state pollution benefits

- 6) Total Score. The total number of additional points not to exceed 200 determined pursuant to Section 10033.C.5. shall be added to the number of points determined pursuant to Section 10033.C.4. The result of this sum is the Applicant's total score. Complete Applications receiving both a total score greater than or equal to the threshold value of 1,000 and a TPB score of greater than or equal to 100 will be recommended for a sales and use tax exclusion. Notwithstanding the foregoing, where a project receives a total score of less than 1,000, a TPB score of less than 100, or both the Executive Director may recommend it 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.
- 7) Upon a recommendation from the Executive Director that it is in the public interest and advances the purposes of the Program, the Authority may adjust the threshold value set forth in Section 10033.C.6.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of  
the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10034. Approval of Applications by the Authority**

- A) Applications may be considered at meetings in accordance with the schedule established by the Authority pursuant to Section 10032. The Authority will evaluate Applications based on the eligibility requirements contained in Section 10033 and the summary and recommendation prepared by the Authority staff.
- B) For each Application, the Authority will determine whether the Application meets the eligibility requirements and will produce benefits for the State of California.
- C) 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, the Applicant may appeal the Executive Director's recommendation to the Authority. No Applicant may appeal the evaluation of another Applicant's Application.
- D) Rejected Applications. Applicants whose applications are not approved by the Authority will be notified in writing following the Authority's board meeting in which the determination was made.
- E) Approved Applications. For each approved Application, the Authority will pass a resolution including the following findings:
  - 1) The Applicant to be a Participating Party (Pub. Res. Code Sec. 26003(f))
  - 2) The equipment proposed for the sales and use tax exclusion to be a "project" (Pub. Res. Code Sec. 26003(g)(2))
  - 3) The conveyance/reconveyance arrangement constitutes financial assistance (Pub. Res. Code Sec. 26003(e)(2))
- F) Applicants with Applications that are approved by the Authority will be notified in writing following the Authority's board meeting at which the determination was made. The amount

of the sales and use tax exclusion approved by the Authority will be stated in the letter.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10035. Regulatory Agreement and Compliance**

- A) Regulatory Agreement. All recipients of sales and use tax exclusions are required to execute a Regulatory Agreement as a condition to the Authority's making a finding and awarding a sales and use tax exclusion.
- 1) This agreement, to be entered into between the Applicant and the Authority's Executive Director, will require the Applicant to comply with the requirements set forth in these regulations. This agreement must be signed by a representative of the Applicant's company authorized to enter into contracts on behalf of that company and returned to CAEATFA within 30 calendar days from the acceptance date shown on the notification provided pursuant to Section 10034.G.
  - 2) The Regulatory Agreement will commence upon execution and will continue in force for a period equal to the longer of (a) three years or (b) one-half of the Estimated Useful Lifespan of the longest lived item of Qualified Property identified in the Application.
- B) Conveying title to the Authority. In order to receive the sales and use tax exclusion, Applicants must convey title of the Qualified Property to the Authority for purposes of reconveyance back to the Applicant without financial consideration.
- 1) Conveyance of title to CAEATFA by Participating Parties and from CAEATFA to Participating Parties shall be pursuant to a title conveyance agreement by and between CAEATFA and the Participating Party that shall include but not be limited to:
    - i) An agreement by the Participating Party to convey title of Qualified Property to CAEATFA.
    - ii) Representations that the Participating Party has not put the Qualified Property to a taxable use prior to the conveyance.
    - iii) A requirement that CAEATFA reconvey title within 10 days of the initial conveyance.
    - iv) An agreement that there will be no fees for the conveyance or reconveyance other than those set forth in the regulations.
    - v) A requirement that the Participating Party provide a complete individualized list of Qualified Property within 30 days after the term of the agreement.
    - vi) A requirement that the Participating Party indemnify and hold harmless CAEATFA from claims connected with the: 1) Project, 2) transactions associated with the Project, 3) any violation of law connected with the Project, and 4) any dispute or ruling regarding the ultimate taxability of the sale or use of the Qualified Property.
    - vii) A requirement that the Qualified Property be installed, maintained and operated within the State of California.
  - 2) To the extent that purchases of Qualified Property are made in multiple separate transactions, each purchase shall be subject to the same conveyance/reconveyance requirements until the total amount of Qualified Property purchases equals the total amount of exclusion granted.

- 3) Applicants will be assessed an Administrative Fee at the time of each conveyance/reconveyance transaction, as identified in Section 10036, Fees.
- C) Compliance. Applicants are responsible for compliance with all applicable Program regulations, including the following:
- 1) Exercise of sales and use tax exclusion. Except as noted in subparagraphs i and ii below, within one year of approval by the Authority, the Applicant must make purchases of Qualified Property totaling not less than twenty-five percent (25.0%) of the total amount listed in the approval resolution; all purchases of Qualified Property must be made within three years of Application approval. Regulatory Agreements for Facilities not meeting these requirements will be rescinded, and no purchases will be excluded from the imposition of the sales and use tax.
    - i) Upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that the first year purchases of Qualified Property are at least twenty-five percent (25.0%) of the total amount listed in the approval resolution.
    - ii) Upon a finding that it is in the public interest and advances the purposes of the Program, the Authority may waive the requirement that all purchases of Qualified Property be made within three years of Application approval.
  - 2) Obligation to inform the Authority. Applicants must inform the Authority of any change in the ownership of the Qualified Property, including the name, ownership percentage, and mailing address of the new owners.
    - i) Any transfer of Qualified Property ownership prior to the expiration of the Regulatory Agreement shall be evidenced by a written agreement between the parties to the transfer. Such sale or transfer may require Applicant to repay the amount of the sales and use tax exclusion if the new owner of the Qualified Property does not enter into a Regulatory Agreement with the Authority within 30 calendar days of the close of the transaction in which the owner acquires title to the Qualified Property.
  - 3) Certification letter. During the term of the Regulatory Agreement, Applicants must submit an annual certification letter documenting that the Qualified Property was used for the purposes specified in the Application for the entire period since conveyance/reconveyance.
  - 4) Annual compliance report. During the term of the Regulatory Agreement the Applicant must submit an annual compliance report. This report shall contain:
    - i) Total payroll, number of jobs, total annual product sales (in dollars), total number of units sold, and any other information requested by the Executive Director that is reasonably related to the purposes of the Program.
  - 5) Retention of records. Applicants must retain records necessary to document information provided in the annual compliance reports and certification letters for at least five (5) years following the date of the latest certification letter or compliance report required.
  - 6) False Information. Upon a finding that information supplied by an Applicant, or any person acting on behalf of an Applicant, is false or no longer true, and the Applicant has not notified the Authority in writing, the Authority may, after written notice to the Applicant, rescind the approval resolution and conveyance/reconveyance agreement, in addition to other remedies.
  - 7) Rescission. Following a finding that an Applicant has provided false information pursuant to paragraph 6 or has otherwise violated the Regulatory Agreement, the



Authority may, after written notice to the Applicant, rescind the approval resolution and conveyance/reconveyance agreement, in addition to other remedies. Applicants may request an opportunity to be heard in front of the Authority to contest rescission. Any such request must be made in writing to the Authority and postmarked no later than fifteen (15) calendar days following the mailing of written notice from the Authority. Upon a final decision by the Authority, the approval resolution and conveyance/reconveyance agreement shall be rescinded, and notice of the rescission may be provided to the Board of Equalization.

- 8) Reporting. The Authority may from time to time publish the actual total value of the sales and use tax exclusion by local jurisdiction. If the Executive Director determines that publishing such information could cause the price paid by an Applicant to a supplier for a Qualified Property purchase or the identity of that supplier to become known, then the information from multiple local jurisdictions will be aggregated so as to protect the confidentiality of this information.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

### **Section 10036. Fees**

#### **A) Application Fee.**

- 1) Every Applicant shall be required to pay an Application Fee.
- 2) The Application Fee shall be equal to .0005 (one twentieth of one percent) of the total amount of Qualified Property identified in the Application. The minimum Application Fee shall be \$250 and shall not exceed \$5,000.
- 3) This fee shall be paid in a check payable to the Authority, and shall be submitted with the Application.
- 4) This fee is not refundable.

#### **B) Administrative Fee.**

- 1) The Authority shall charge an Administrative Fee to cover the costs associated with the Program, including the costs of compliance monitoring.
- 2) The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.
- 3) In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.
- 4) \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.
- 5) The balance of an Applicant's Administrative Fee shall be payable at the time of each subsequent conveyance/reconveyance calculated on that transaction's Qualified Property purchase amount.
- 6) The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of total amount of Qualified Property actually purchased.
- 7) The Administrative Fee shall be paid in checks payable to the Authority.
- 8) The total Administrative Fee is not refundable.

Authority: Section 26011.8, Public Resources Code; and Section 6010.8 of  
the Revenue and Taxation Code.

Reference: 26011.8, Public Resources Code.

**Attachment D**

PROPOSED APPLICATION



**California Alternative Energy and Advanced  
Transportation Financing Authority  
(CAEATFA)**

Advanced Transportation and Alternative Source  
Manufacturing Sales and Use Tax Exclusion Program



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Sacramento, CA 95814

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[www.treasurer.ca.gov/caeatfa](http://www.treasurer.ca.gov/caeatfa)



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## SUBMISSION OF APPLICATION

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- Your original, signed Application to the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or “Authority”) must be submitted with two duplicates, along with an electronic version e-mailed to the e-mail address indicated on the cover sheet. Applicants are not required to submit materials electronically, but they are strongly encouraged to do so.
- These guidelines provide the order and content of your Application. Defined terms have the meaning set forth in the California Code of Regulation Title 4, Division 13.
- If you do not have information for one or more required items, please state in your Application why and when you expect to submit those items. In the event the Authority asks an Applicant for additional information or requests clarification of errors, the Applicant shall be given up to 5 (five) business days from the date of receipt of Staff notification to provide the additional formation without extending the Application review period.
- **If your Application is not complete, CAEATFA's review may be postponed until the additional information has been provided.**
- Additional information may be obtained by accessing the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) web site at <http://www.treasurer.ca.gov/caeatfa> or by calling CAEATFA at (916) 651-8157.

## APPLICANT RESPONSIBILITIES

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- The Applicant must meet the relevant requirements of Sec. 26011.8 Public Resources Code; and Section 6010.9 of the Revenue and Taxation Code.
- The Applicant must review the California Alternative Energy and Advanced Transportation Financing Authority Act and Title 4, Division 13 of the California Code of Regulations.
- A senior company official with primary responsibility for financing the Project must certify, to the best of his or her knowledge, that the Application contains no false or incorrect information and that the Application, including all exhibits and attachments, is truly descriptive and representative of the Project.
- The Applicant has a continuing duty to inform CAEATFA when any information in the Application or supplemental material is no longer accurate and immediately supply CAEATFA with updated information.
- The Applicant must provide an updated Legal Status Questionnaire (Attachment A) for any action requiring CAEATFA Board approval.

## FEES

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- Application Fee: The Applicant must pay an Application Fee to CAEATFA upon submission of the Application.
  - The Application Fee shall be equal to 0.0005 (one twentieth of one percent) of the total amount of Qualified Property purchases identified in the Application. The minimum Application Fee shall be \$250 and shall not exceed \$5,000.
  - The Application Fee shall be paid in the form of a check payable to CAEATFA.
  - The Application Fee is non-refundable.
- Administration Fee: The Authority shall charge an Administration Fee to cover the costs associated with the Program, including costs of compliance monitoring.
  - The Administration Fee amount shall be calculated as follows:
    - The total Administrative Fee amount shall be .004 (four tenths of one percent) of the total amount of the Qualified Property purchased.
    - In no case shall the total Administrative Fee be less than \$15,000 nor more than \$350,000.
  - \$15,000 of the total Administrative Fee shall be due upon the execution of the Regulatory Agreement between the Applicant and the Authority.

- The balance of an Applicant's Administrative Fee shall be payable at the time of each subsequent conveyance/reconveyance calculated on that transaction's Qualified Property purchase amount.
- The initial \$15,000 paid by the Applicant at the time of executing the Regulatory Agreement will be credited to the Applicant's total Administrative Fee upon a determination of the total amount of Qualified Property actually purchased.
- The Administrative Fee shall be paid in checks payable to the Authority.
- The total Administrative Fee is not refundable.

## APPLICATION DOCUMENTS CHECKLIST

This checklist is provided to ensure that a completed Application package is filed with CAEATFA **and must be submitted with the Application**. If an attachment does not apply, please write N/A in the space provided.

Your Application package must contain the following:

- \_\_\_\_\_ Application Fee made payable to CAEATFA (see "Fees" on page 3 for calculation).
- \_\_\_\_\_ One (1) original and Two (2) copies of this completed Application, along with an electronic version e-mailed to the email address indicated on the cover sheet.<sup>‡</sup>
- \_\_\_\_\_ One (1) original and Two (2) copies of the completed Application spreadsheet, CAEATFA\_Sales\_Tax\_Exclusion\_Application.xls, along with an electronic version e-mailed to the email address indicated on the cover sheet.\*
- \_\_\_\_\_ One (1) original and Two (2) copies of a narrative description of the Facility, along with an electronic version e-mailed to the email address indicated on the cover sheet. \*
- \_\_\_\_\_ Applicant Certification
- \_\_\_\_\_ Legal Status Questionnaire (Attachment A)

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<sup>‡</sup> Applicants are not required to submit materials electronically, but they are strongly encouraged to do so.

STATE OF CALIFORNIA

CALIFORNIA ALTERNATIVE ENERGY  
AND ADVANCED TRANSPORTATION FINANCING AUTHORITY  
915 Capitol Mall, Room 457  
Sacramento, CA 95814  
Telephone: (916) 654-8157  
Fax: (916) 657-4821



**MEMBERS:**

Bill Lockyer, Chairman  
**State Treasurer**

John Chiang  
**State Controller**

Ana J. Matosantos  
Department of Finance

Michael R. Peevey, President  
*Public Utilities Commission*

Karen Douglas, Chair  
*California Energy Commission*

**EXECUTIVE DIRECTOR:**  
Christine Solich

CAEATFA USE ONLY: Application # _____ Date Received: _____ Fee Amt. Received: _____
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**CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED  
TRANSPORTATION FINANCING AUTHORITY**

**ADVANCED TRANSPORTATION AND ALTERNATIVE SOURCE MANUFACTURING  
SALES AND USE TAX EXCLUSION APPLICATION**

Submission Date: \_\_\_\_\_

Requested Approval Date: \_\_\_\_\_

*(Approximate date you wish your project to go before the Authority Members for approval)*

Legal Name of Applicant: \_\_\_\_\_

Facility Name(s) and Address(es): \_\_\_\_\_



**In addition to the information requested in this Application, each Applicant is required to:**

- 1. Prepare and attach a narrative Facility description.** Facility description should include a description of the Advanced Transportation Technology or Alternative Source product, component or system to be produced; current Facility status and a schedule indicating the estimated Facility construction start date through the placed-in-service date for the Qualified Property identified in the Application; the expected date of any needed permits or additional financing necessary for Facility completion.
  
- 2. Complete the companion spreadsheet,**  
“CAEATFA\_Sales\_Tax\_Exclusion\_Application.xls” which contains the following sections:  
PART I – APPLICANT INFORMATION  
PART II – FACILITY & PRODUCT INFORMATION  
PART III – QUALIFIED PROPERTY LIST

## APPLICANT CERTIFICATION

We, the undersigned, hereby submit an Application to the California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA” or the “Authority”) for the purpose of securing a sales and use tax exclusion as described herein and have reviewed the CAEATFA Act and submit this Application in compliance with the Act and the implementing regulations.

We agree it is our responsibility to provide one copy of a complete Application that bears original signatures and two duplicate copies of the Application (along with e-mailing an electronic version to the email address indicated on the cover sheet), accompanied by one check payable to the CAEATFA in the amount per the Application Fee calculation indicated in the regulations. We understand that thorough and complete answers and accurate data and information are required. We understand that if additional space is required, each additional page will be clearly labeled.

We understand that CAEATFA may verify the information provided, analyze materials submitted, and request Application-related documentation as well as conduct its own investigation to evaluate the Application. We understand that we have a continuing duty to inform CAEATFA when any information in the Application or supplemental materials is no longer accurate and will immediately supply CAEATFA with updated information.

We have read and understand all Public Resource Code sections relevant to the CAEATFA Advanced Transportation and Alternative Source Manufacturing Sales and Use Tax Exclusion Program. We acknowledge that CAEATFA suggests that we seek advice from legal counsel on matters related to taxation. We acknowledge that all materials and requirements are subject to change by enactment of State legislation.

We agree that if this Application for sales and use tax exclusion is approved by the Authority, the Applicant will enter into a Regulatory Agreement with the Authority. In carrying out the development and operation of the proposed Project, we agree to comply with and will remain in compliance with all applicable State laws and will abide by all CAEATFA Program and regulatory requirements during the term of the Regulatory Agreement. We acknowledge that continued compliance with Program requirements, including ongoing reporting requirements and any costs associated with such requirements for the term of the Regulatory Agreement, is the responsibility of the Applicant.

We understand that at the time of the Authority’s approval of the Application, additional fees may be owed to CAEATFA. We represent that we have read the Program regulations regarding fees and all other Program requirements.

We agree to hold the Authority and its members, officers, agents, and employees harmless from any and all matters arising out of or related to our participation in the sales and use tax exclusion Program, including any action that ultimately results in the required payment of sales and use tax..

We acknowledge that the granting of a sales and use tax exclusion shall not be used by us as evidence of the opinion of, or approval by the Authority or any of its members,

officers, agents or employees as to the financial or technical feasibility of the Project or Facility nor of the capabilities of the Applicant, any of its officers, members, agents or employees to finance, construct and operate the Project.

We declare under penalty of perjury that the information contained in the Application, exhibits, and attachments is true and correct to the best of the undersigned's knowledge and belief. We understand that misrepresentation may result in the rescission of the Authority's approval of the Application, and other actions, which the Authority is authorized to take. We understand that any further or supplemental information or documentation required to be provided shall be accompanied by a declaration under penalty of perjury that the supplemental information or documentation is true and correct to the best of the Applicant's knowledge and belief.

We acknowledge that any materials provided to CAEATFA may be considered public records subject to disclosure pursuant to the California Public Records Act (Government Code Sections 6250, et seq.).

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Signature of Applicant's Senior Official

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Print Name

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Title

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Date

**ATTACHMENT A: LEGAL STATUS QUESTIONNAIRE**

Legal Applicant Name: \_\_\_\_\_

1. Disclose material information relating to any legal or regulatory proceeding or investigation in which the Applicant is or has been a party and which might have a material impact on the financial viability of the Project or the Applicant. Such disclosures should include any parent, subsidiary, or affiliate of the Applicant that is involved in the management, operation, or development of the Project.

2. Disclose any civil, criminal, or regulatory action in which the Applicant, or any current Board members (not including volunteer Board members of non-profit entities), partners, limited liability corporation members, senior officers, or senior management personnel has been named a defendant in such action in the past ten years involving fraud or corruption, or matters involving health and safety where there are any allegations of serious harm to employees, the public, or the environment.

*Disclosures should include civil or criminal cases filed in state or federal court; civil or criminal investigations by local, state, or federal law enforcement authorities; and enforcement proceedings or investigations by local, state or federal regulatory agencies. The information provided must include relevant dates, the nature of the allegation(s), charters, complaint or filing, and the outcome. For a publicly-traded company, the relevant sections of the company's 10K, 8K, and 10Q most recently filed with the Securities and Exchange Commission may be attached in response to question #1. With respect to a response for question #2, previous 10K, 8K, and 10Q filings of the company may be attached if applicable.*

I certify this information contained in the legal questionnaire is accurate and complete

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## **ATTACHMENT B: TRADE SECRETS AND CONFIDENTIAL INFORMATION**

If elements of this Application contain information the Applicant considers to be trade secret, confidential, privileged or otherwise exempt from disclosure under the Public Records Act (California Government Code Section 6250, et seq.), the Applicant shall assert a claim of exemption at the time of Application by identifying in an accompanying letter each of the items to be restricted.

The asserted claim shall indicate the specific information within the Application to which the claim is made. Upon receipt of a Public Records Act request for documents that may include information the Applicant has identified as trade secret, the Authority shall provide notice to the Applicant and provide the Applicant with three business days to provide the Authority with an explanation as to why the information is not subject to disclosure pursuant to the Public Records Act. The Authority shall consider the claim and the basis for it, but retains the authority to make the final determination as to what information will be released under the Public Records Act. Applicants will be notified by the Authority prior to release of any such information.

If the Applicant chooses to assert such a claim, attach the claim to the Application.

## **Attachment E**

Please note that Attachment E: Application Worksheet, is included as a separate excel document.

## **Attachment F**

### **Senate Bill No. 71 CHAPTER 10**

An act to amend Section 26003 of, and to add and repeal Section 26011.8 of, the Public Resources Code, relating to economic development, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 24, 2010. Filed with Secretary of State March 24, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 71, Padilla. Economic development: sales and use tax exclusions: environmental technology project.

The California Alternative Energy and Advanced Transportation Financing Authority Act established the California Alternative Energy and Advanced Transportation Financing Authority. The authority is authorized to do all things necessary and convenient to carry out the purposes of the act. The authority is also required to establish a renewable energy program to provide financial assistance, as defined, to certain entities for projects to generate new and renewable energy sources, develop clean and efficient distributed generation, and demonstrate the economic feasibility of new technologies. Existing law provides that the transfer of title of tangible personal property constituting a project under the act to the authority by a participating party, or the lease or transfer of tangible personal property constituting a project under the act by the authority to a participating party pursuant to the act is not a "sale" or "purchase" for the purposes of the Sales and Use Tax Law.

This bill would, for purposes of the act until January 1, 2021, expand the definition of "alternative sources" and "projects," as specified. The bill would, until January 1, 2021, authorize the authority to evaluate project applications, and to approve projects, as defined, for financial assistance under the existing exclusion from a "sale" or "purchase" subject to sales or use tax, as provided. This bill would require the Legislative Analyst's Office to submit a report to the Joint Legislative Budget Committee, as provided.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and districts, as specified, may impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are automatically incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 26003 of the Public Resources Code is amended to read:

26003. As used in this division, unless the context otherwise requires:

(a) “Authority” means the California Alternative Energy and Advanced Transportation Financing Authority established pursuant to Section 26004, and any board, commission, department, or officer succeeding to the functions of the authority, or to which the powers conferred upon the authority by this division shall be given.

(b) “Cost” as applied to a project or portion of the project financed under this division means all or part of the cost of construction and acquisition of all lands, structures, real or personal property or an interest in the real or personal property, rights, rights-of-way, franchises, easements, and interests acquired or used for a project; the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which those buildings or structures may be moved; the cost of all machinery, equipment, and furnishings, financing charges, interest prior to, during, and for a period after, completion of construction as determined by the authority; the cost of the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011; provisions for working capital; reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial, accounting, auditing and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction, acquisition, or financing of a project.

(c) (1) “Alternative sources” means the application of cogeneration technology, as defined in Section 25134; the conservation of energy; or the use of solar, biomass, wind, geothermal, hydroelectricity under 30 megawatts, or any other source of energy, the efficient use of which will reduce the use of fossil and nuclear fuels.

(2) “Alternative sources” does not include a hydroelectric facility that does not meet state laws pertaining to the control, appropriation, use, and distribution of water, including, but not limited to, the obtaining of applicable licenses and permits.

(d) “Advanced transportation technologies” means emerging commercially competitive transportation-related technologies identified by the authority as capable of creating long-term, high value-added jobs for Californians while enhancing the state’s commitment to energy conservation, pollution reduction, and transportation efficiency. Those technologies may include, but are not limited to, any of the following:

(1) Intelligent vehicle highway systems.

(2) Advanced telecommunications for transportation.

(3) Command, control, and communications for public transit vehicles and systems.

(4) Electric vehicles and ultralow-emission vehicles.

(5) High-speed rail and magnetic levitation passenger systems.

(6) Fuel cells.

(e) “Financial assistance” includes, but is not limited to, either, or any combination, of the following:

(1) Loans, loan loss reserves, interest rate reductions, proceeds of bonds issued by the authority, insurance, guarantees or other credit enhancements or liquidity facilities, contributions of money, property, labor, or other items of value, or any combination thereof, as determined by, and approved by the resolution of, the board.



- (2) Any other type of assistance the authority determines is appropriate.
- (f) “Participating party” means either of the following:
- (1) A person or an entity or group of entities engaged in business or operations in the state, whether organized for profit or not for profit, that does either of the following:
- (A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.
- (B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
- (2) A public agency or nonprofit corporation that does either of the following:
- (A) Applies for financial assistance from the authority for the purpose of implementing a project in a manner prescribed by the authority.
- (B) Participates in the purchase or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
- (g) (1) “Project” means a land, building, improvement to the land or building, 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, or an arrangement for the purchase, including prepayment, or sale of energy derived from an alternative source pursuant to subdivision (g) of Section 26011.
- (2) “Project,” for the purposes of Section 26011.8, means 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.
- (h) “Public agency” means a federal or state agency, department, board, authority, state or community college, university, or commission, or a county, city and county, city, regional agency, public district, school district, or other political entity.
- (i) (1) “Renewable energy” means a device or technology that conserves or produces heat, processes heat, space heating, water heating, steam, space cooling, refrigeration, mechanical energy, electricity, or energy in any form convertible to these uses, that does not expend or use conventional energy fuels, and that uses any of the following electrical generation technologies:
- (A) Biomass.
- (B) Solar thermal.
- (C) Photovoltaic.
- (D) Wind.
- (E) Geothermal.
- (2) For purposes of this subdivision, “conventional energy fuel” means any fuel derived from petroleum deposits, including, but not limited to, oil, heating oil, gasoline, fuel oil, or natural gas, including liquefied natural gas, or nuclear fissionable materials.
- (3) Notwithstanding paragraph (1), for purposes of this section, “renewable energy” also means ultralow-emission equipment for energy generation based on thermal energy systems such as natural gas turbines and fuel cells.
- (j) “Revenue” means all rents, receipts, purchase payments, loan repayments, and all other income or receipts derived by the authority from a project, or the sale, lease, or other disposition of alternative source or advanced transportation technology facilities, or the making of loans to finance alternative source or advanced transportation technology facilities, and any income or revenue derived from the investment of money in any fund or account of the authority.

SEC. 2. Section 26011.8 is added to the Public Resources Code, to read:

26011.8. (a) The purpose of this section is to promote the creation of California-based manufacturing, California-based jobs, the reduction of greenhouse gases, or reductions in air and water pollution or energy consumption. In furtherance of this purpose, the authority may approve a project for financial assistance in the form of the sales and use tax exclusion established in Section 6010.8 of the Revenue and Taxation Code.

(b) (1) For purposes of this section, “project” means a project as defined in paragraph (2) of subdivision (g) of Section 26003.

(2) For purposes of this section, “alternative sources” also includes advanced electric distributive generation technology as defined in Section 379.8 of the Public Utilities Code or energy storage technologies and their component materials.

(c) The authority shall publish notice of the availability of project applications and deadlines for submission of project applications to the authority.

(d) The authority shall evaluate project applications based upon all of the following criteria:

(1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.

(2) 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.

(3) The extent to which the project will create new, permanent jobs in California.

(4) To the extent feasible, the extent to which the project, or the product produced by the project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by any federal or state law or regulation.

(5) The extent of unemployment in the area in which the project is proposed to be located.

(6) Any other factors the authority deems appropriate in accordance with this section.

(e) At a duly noticed public hearing, the authority shall approve, by resolution, project applications for financial assistance.

(f) Notwithstanding subdivision (j), and without regard to the actual date of any transaction between a participating party and the authority, any project as defined in subdivision (g) of Section 26003 approved by the authority by resolution for the sales and use tax exclusion pursuant to Section 6010.8 of the Revenue and Taxation Code prior to the effective date of this section, shall not be subject to this section.

(g) The Legislative Analyst’s Office shall report to the Joint Legislative Budget Committee on the effectiveness of this program, on or before January 1, 2019, by evaluating factors, including, but not limited to, the following:

(1) The number of jobs created by the program in California.

(2) The number of businesses that have remained in California or relocated to California as a result of this program.

(3) The amount of state and local revenue and economic activity generated by the program.

(4) The amount of reduction in greenhouse gases, air pollution, water pollution, or energy consumption.

(h) Once the exclusions granted pursuant to Section 6010.8 of the Revenue and Taxation Code for projects approved by the authority pursuant to this section exceed one hundred million dollars (\$100,000,000) annually, the authority shall provide a 20-day notice to the Legislature prior to making additional approvals pursuant to this section.

(i) The authority shall make every effort to expedite the operation of this section, and shall adopt regulations for purposes of implementing the section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that Chapter 3.5, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(j) This section shall remain in effect only until January 1, 2021, and as of that date is repealed. The sale or purchase of tangible personal property of a project approved prior to January 1, 2021, shall continue to be excluded from sales and use taxes pursuant to Section 6010.8 of the Revenue and Taxation Code for the period of time set forth in the authority's resolution approving the project pursuant to this section.

SEC. 3. Notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any sales and use tax revenues lost by it under this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to create jobs to stimulate the economy, it is necessary that this act go into immediate effect.