

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

***Request to Authorize Staff to Initiate Rulemaking to Establish a Sales and Use Tax Exclusion
Program for Alternative Source Energy Generation Projects***

Prepared By: Martha Alvarez

Summary. At the August 25, 2010, California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) Board meeting, the CAEATFA Board discussed and reviewed a draft policy that could potentially be used to evaluate alternative source energy generators seeking a sales and use tax exclusion (STE). The Board did not adopt a policy but rather, directed CAEATFA Staff (Staff) to work with the California Energy Commission (CEC) and the California Public Utilities Commission (CPUC) in identifying appropriate criteria for such a program.

Staff is requesting Board approval to begin the rulemaking process to establish a Sales and Use Tax Exclusion Program for alternative source energy generators under CAEATFA's pre-SB 71 statutory authority.

Background. Stakeholders have expressed significant interest in CAEATFA adopting a STE program for alternative source energy generation projects. This issue was initially brought to CAEATFA's attention in 2004 when CE Obsidian Energy LLC inquired to CAEATFA about a STE under California Revenue and Taxation and Public Resources Codes. No action was taken on this inquiry.

Prior to the adoption of Senate Bill (SB) 71 (Padilla), CAEATFA had authority to provide STE's for eligible projects in the State; however, neither a specific structure nor regulations were developed to implement such a program broadly. In June 2008, the CAEATFA Board approved a policy to provide STE's for zero emission vehicles. Under that policy, Tesla Motors was approved for a STE in October 2009.

The adoption of SB 71 has increased awareness of CAEATFA's broader statutory authority to grant a STE to eligible projects in California. At the July 28, 2010 CAEATFA meeting, the Board directed CAEATFA Staff to recommend eligibility criteria for a STE program under its pre-SB 71 authority that includes alternative source energy generators – which are excluded from the SB 71 STE program that is currently being developed. On August 25, 2010, the Board provided further direction to Staff to collaborate with the CEC and CPUC in developing the new program.

CAEATFA's legal counsel has advised that the most appropriate course in developing such a program is through promulgation of regulations in compliance with the rulemaking process set forth in the Administrative Procedures Act (APA).

Agenda Item – 4.D.

The regulations will establish the eligibility and evaluation criteria to be used by CAEATFA in deciding whether to provide STEs to companies that advance California’s renewable portfolio standards and the goals of Assembly Bill 32. The eligibility and evaluation criteria may also assess which projects have net fiscal, economic and environmental benefits to the State.

Staff will continue to work with the CPUC and CEC – to provide technical expertise – throughout the public regulatory process. At this time, Staff is determining the timetable for completing the rulemaking process and launching the new program.

Staff Recommendation. Staff recommends approval of the resolution to authorize CAEATFA Staff to initiate the formal rulemaking process to develop regulations establishing a sales and use tax exclusion program for qualified alternative source energy generator projects.

RESOLUTION TO AUTHORIZE STAFF TO INITIATE RULEMAKING TO ESTABLISH SALES AND USE TAX EXCLUSION PROGRAM FOR ALTERNATIVE SOURCE ENERGY GENERATION PROJECTS

September 22, 2010

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority (“Authority”), a public instrumentality, is authorized and empowered by the provisions of the California Alternative Energy and Advanced Transportation Financing Authority Act (“Act”) to provide financial assistance to Participating Parties for projects as those terms are defined in the Act; and

WHEREAS, the Authority’s authorizing statute defines alternative sources as “the application of cogeneration technology, as defined in Public Resources Code 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”; and

WHEREAS, existing law provides that the transfer of title of tangible personal property constituting any project under the Act to the Authority by a Participating Party, or the lease or transfer of title 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; and

WHEREAS, the Authority has determined that making the sales and use tax exclusion available to alternative source energy generators in a targeted program would provide significant greenhouse gas reductions, green jobs, economic expansion, and reduce the State’s dependency on foreign oil; and

WHEREAS, the program will be designed to provide sales and use tax exclusions to alternative source energy generation projects that advance California’s renewable portfolio standards and Assembly Bill 32 goals and which have net fiscal, economic and environmental benefits to the State.

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

Section 1. The Authority hereby authorizes Authority Staff to initiate the public rulemaking process to establish a sales and use tax exclusion program for alternative source energy generation projects pursuant to the Authority’s pre-SB 71 statutory authority.

Section 2. The Executive Director of the Authority is hereby authorized to collaborate with the California Energy Commission and the California Public Utilities Commission, among other relevant State agencies and departments and other key stakeholders, in developing regulations establishing the new program.

Agenda Item – 4.D.

Section 3. The Executive Director and Deputy Executive Director of the Authority are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting regulations to the Office of Administrative Law.

Section 4. The Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making changes to the regulations as may be required for 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 5. This Resolution shall take effect immediately upon its passage and remain in full force and effect thereafter.