

[Assembly Bill 1239](#) (Gordon & Atkins)

Date: 06/23/16

Program: California Tire Regulatory Fee

Sponsor: Authors

Public Resources Code Sections 42885 and 42889

Effective January 1, 2017 until January 1, 2024

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This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Imposes an up-to-\$1 California tire regulatory fee upon a waste tire generator.

Summary of Amendments: Among the amendments since the previous analysis, the bill allows retailers to retain 1.5% of the California tire regulatory fee owed, and repeals both the current California tire fee and the proposed California tire regulatory fee on January 1, 2024.

Purpose: To provide funding to CalRecycle for costs related to certain administrative and regulatory activities regarding waste tire generators.

Fiscal Impact Summary: Potential annual revenue of \$32.4 million.

Existing Law: Under existing law, Public Resources Code (PRC) Section 42885 imposes a California tire fee of one dollar and seventy-five cents (\$1.75) per tire on every person who purchases a new tire, as defined. Beginning January 1, 2024, the tire fee decreases to seventy-five cents (\$0.75) per tire. The retail seller charges and collects the California tire fee from the retail purchaser at the time of sale.

After deducting 1.5% of the total fees as reimbursement for costs associated with the fee collection, the law requires a retailer to remit the fees to the BOE for deposit in the California Tire Recycling Management Fund (Tire Fund). Beginning January 1, 2024, the reimbursement percentage for costs associated with the fee collection increases to 3 percent.

PRC Section 42889 requires the BOE to transfer an amount equal to seventy-five cents (\$0.75) per tire on which the fee is imposed to the Air Pollution Control Fund, administered by the State Air Resources Board. The annual Budget Act appropriates the remaining Tire Fund balance to the Department of Resources Recycling and Recovery (CalRecycle). As of January 1, 2024, all Tire Fund moneys will be appropriated to CalRecycle.

PRC Section 42882 authorizes CalRecycle to contract with an existing state agency, including the BOE, to carry out the California Tire Recycling Act. The section further provides that if CalRecycle contracts with the BOE to collect the California tire fee, the BOE may collect that fee pursuant to the Fee Collection Procedures Law.

Proposed Law: This bill amends PRC Section 42885 to impose a California tire regulatory fee upon a waste tire generator that is a new tire retail seller according to a CalRecycle determined rate schedule.

Prior to establishing or adjusting the tire regulatory fee rate, CalRecycle must review the fee at a public hearing and then establish the fee by regulation. The fee amounts and any adjustments must ensure there are sufficient revenues equivalent to the reasonable regulatory costs incurred by CalRecycle incident to audits, inspections, administrative costs, adjudications, manifesting, registration, and other regulatory activities regarding these retail sellers as waste tire generators, but not to exceed one dollar (\$1.00) per new tire sold. CalRecycle may differentiate in setting fees between waste tire generators who are retail sellers of new tires depending upon the nature of the retail seller's activity generating waste tires, the number of waste tires generated, and other appropriate basis.

On or before August 1, 2017, and no more frequently than biannually thereafter, CalRecycle may adjust the fee, effective January 1 of the following year, to ensure sufficient revenues, provided that the fee does not exceed \$1 per new tire sold.

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

A waste tire generator that is a new tire retail seller shall remit the fees to the state on a quarterly basis, due on the 15th of the month following the period, for deposit into the Tire Fund. The new tire retail seller, upon whom the proposed fee is imposed, may retain 1.5% of the fees owed as reimbursement for any costs associated with the administration and remittance of the fee. CalRecycle will track the tire regulatory fee revenue separately.

Consistent with the current California Tire Fee, the tire regulatory fee will not be imposed on a tire sold with, or sold separately for use on a self-propelled wheelchair, a motorized tricycle or motorized quadricycle, or used on a vehicle that is similar to a motorized tricycle or motorized quadricycle, as specified.

The bill becomes operative January 1, 2017. This bill also repeals the current California tire fee and the proposed California tire regulatory fee on January 1, 2024.

Commentary:

1. **The June 23, 2016 amendments** allow retailers to retain 1.5% of the California tire regulatory fee owed, and repeals both the current California tire fee and the proposed California tire regulatory fee on January 1, 2024. **The June 15, 2016 amendments** required CalRecycle to track the tire regulatory fees separately in order to use the revenues specifically for their intended purposes. The amendments also required adoption of regulations prior to establishing the fee rate and exempt from the fee tires used on self-propelled wheelchairs and similar scooters. **The June 2, 2016 amendments** lowered the fee cap from \$1.25 to \$1.00 per new tire. Beginning August 1, 2017, the bill also requires CalRecycle to biannually adjust the fee amount to ensure sufficient revenues, but not to exceed the \$1 cap amount. The **May 5, 2015 amendments** limited the California tire regulatory fee to a waste tire generator that is a new tire retail seller. The **April 21, 2015 amendments** created the Tire Recycling Incentive Program Act, which awards payments to eligible recipients. The April and May amendments do not impact the BOE.
2. **This bill would establish a new policy that allows retailers to retain a portion of the fees imposed directly on them.** Of the 34 tax and fee programs currently administered by the BOE, retailer cost reimbursement is only allowed under the BOE-administered fee programs which impose fees on the consumer and require retailers to collect and remit those fees. These programs include the California tire fee, and the covered electronic waste fee (eWaste).¹ The lumber products assessment statute² provides start-up cost reimbursement for retailers that collect the assessment from their customers. The Regional Railroad Accident and Preparedness and Immediate Response (RRAPIR) fee.³ statute allows the railroad to collect an amount not to exceed 5% of the fees collected to offset their administrative collection costs. All of these fee programs, in some manner, allow for fee collection reimbursement for the service the retailer (or the railroad) provides to the state.

The Cigarette and Tobacco Products Tax Law is the only BOE-administered program that allows a tax or feepayer to “reimburse” themselves for a tax or fee imposed on them.⁴ Licensed distributors receive a 0.85% discount on the purchase of tax stamps. The discount is intended to help defray the cost (leasing of equipment/labor cost) to the distributor for affixing the stamps.

This bill imposes a fee on a new tire retail seller but allows that retailer to retain 1.5% of the fee imposed directly on them.

¹ Chapter 8.5 (commencing with Section 42460), Electronic Waste Recycling, of Part 3 of Division 30 of the Public Resources Code (PRC).

² Article 9.5 (commencing with Section 4629), Timber Regulation and Forest Restoration Fund, of Chapter 8 of Part 2 of Division 4 of the PRC.

³ Article 3.9 (commencing with Section 8574.30), Regional Railroad Accident Preparedness and Immediate Response, of Chapter 7 of Division 1 of the Government Code.

⁴ Section 30166, of Article 2 of Chapter 3.5 of Part 13 (commencing with Section 30001) of Division 2 of the Revenue and Taxation Code.

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3. **The BOE and CalRecycle contract does not include the California tire regulatory fee.** Pursuant to PRC Section 42882, CalRecycle contracts with the BOE to collect the California Tire Fee. The current contract specifically provides for the *California Tire Fee* collection. Accordingly, the current contract excludes additional fee collection, including the fee proposed by this measure.

If CalRecycle intends to contract with the BOE for the California Tire Regulatory Fee collection, BOE staff recommends the bill include a date by which the CalRecycle notifies the BOE of the established rate schedule.

4. **Time for direct collection responsibility?** SB 937 (Chapter 35, Statutes of 1990) enacted, among other things, the California Tire Fee.⁵ CalRecycle has contracted with the BOE since the fees enactment, July 1, 1991, to collect the California Tire Fee.

If CalRecycle anticipates contracting with the BOE for California Tire Regulatory Fee collection, the author may wish to amend the bill to specifically require the BOE to collect both the California Tire Fee and California Tire Regulatory Fee and appropriate funds to reimburse the BOE for the fee administration and collection. Currently, existing law authorizes CalRecycle to contract with a state agency for fee collection. The suggested amendment eliminates the need for that annual contract. The BOE staff is available to draft the suggested amendments.

5. **What is a waste tire generator?** Section 3 currently does not define a “waste tire generator,” while Section 4 defines a “waste tire generator” to have the same meaning as defined by [Section 18450 of Title 14 of the California Code of Regulations](#). That definition means “any person whose act or process produces any amount of waste or used tires, causes a waste or used tire hauler to transport those waste or used tires, or otherwise causes waste or used tires to become subject to regulation.” This term is similarly defined in PRC Section 42950. BOE staff suggest the two fee sections maintain consistency and either retain or delete the “waste tire generator” definition.

Costs: While this bill establishes a new California Tire Regulatory Fee, it does not require the BOE to collect that fee. If CalRecycle contracts with the BOE for the fee collection, the BOE costs would include fee payer identification and notification; return, payment, and refund claim processing; audit and collection tasks; computer programming; return and publication revisions; and public inquiry responses. These costs are estimated to be \$891,000 in FY 2016-17, \$270,000 in FY 2017-18, and \$248,000 in FY 2018-19 and ongoing.

Revenue Impact: Background, Methodology, and Assumptions. BOE staff estimates that 31.5 million tires were sold in fiscal year (FY) 2014-15. Based on industry forecast, staff estimates tire sales to be 32.1 million in FY 2016-17 and 32.4 million in FY 2017-18.

For the purposes of providing an estimate, staff used the proposed maximum regulatory fee of \$1.00 per tire. The bill does not provide any other fees. The bill does state that CalRecycle may differentiate in setting fees between waste tire generators who are retail sellers of new tires depending upon the nature of the retail seller’s activity generating waste tires, the number of waste tires generated, and other appropriate basis.

Revenue Summary. With a January 1, 2017 operative date and a \$1.00 per new tire rate, staff estimates fee revenue will amount to the following:

- FY 2016-17 (half year) impact - \$16.1 million $((\$1.00 \times 32.1 \text{ million tires})/2 = \$16.1 \text{ million})$
- FY 2017-18 - \$32.4 million $(\$1.00 \times 32.4 \text{ million tires} = \$32.4 \text{ million})$

Assuming that there would be a range of fees set by CalRecycle, staff acknowledges that this estimate may be overstated given the maximum fee is used in the calculation. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

⁵ Previously known as the tire disposal fee.

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