

[Assembly Bill 2153](#) (C. Garcia)

Date: 08/09/16

Program: Lead-Acid Battery Fee

Sponsor: Author

Health and Safety Code (HSC) Article 10.5 (commencing with Section 25215)

Effective: Upon enactment but fee operative April 1, 2017

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

Summary: Imposes a BOE-collected \$1 fee on manufacturers and consumers of lead-acid batteries.

Summary of Amendments: Among other things, the amendments since the previous analysis add administrative provisions to the consumer fee, clarify the elective wholesaler process, add collection authority under the Fee Collection Procedures Law, and provide registration, return, and expense reimbursement to BOE.

Purpose: To provide long-term funding to Department of Toxic Substances Control (DTSC) for investigation and cleanup of lead-acid battery recycling facilities.

Fiscal Impact Summary: Potential annual revenue of \$26 million to \$39 million.

Existing Law: Under existing law, there is no specific excise tax or fee on the purchase of lead-acid batteries. Sales of such products are subject to the sales and use tax.

The BOE currently administers a California tire fee in partnership with the Department of Resources Recycling and Recovery (CalRecycle) and the Air Resources Board (ARB). Existing law¹ 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.

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.

CalRecycle may contract² 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 adds HSC Article 10.5 (commencing with Section 25215) to impose a series of fees on lead-acid battery sales in California.

Consumer fee. On and after April 1, 2017, a \$1 California battery fee is imposed on a person, as defined, not including a business, for each purchase of a replacement lead-acid battery from a retail dealer. The retail dealer must separately state the California battery fee on the customer's invoice at the time of sale. The fee is not included in any other fee, charge, or other amounts paid by the customer. The retail dealer may also retain 1.5% of collected fees as cost reimbursement. The dealer is required to remit the remainder of the fees to the BOE at the time the return is required to be filed.

The retail dealer's customer is liable for the fee until it has been paid to the BOE, except that payment to a dealer registered with the BOE for collection of the fee is sufficient to relieve the dealer's customer from further fee liability.

Manufacturer fee. On and after April 1, 2017, a \$1 fee is imposed on a manufacturer for each lead-acid battery sold at retail to a person in California, or that is sold to a dealer, wholesaler, distributor, or other person for retail sale in California. The manufacturer is required to remit the fees to the BOE at the time the return is required to be filed.

¹ Public Resources Code (PRC) Section 42885.

² PRC Section 42882.

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Wholesaler elective fee. On and after April 1, 2017, lead-acid battery wholesalers that ship or arrange for shipment of used lead-acid batteries to a lead-acid battery recycling facility may elect to be considered a manufacturer and remit the \$1 manufacturer fee. If an elective wholesaler only remits a manufacturer fee for a portion of the lead-acid battery inventory sold in the state, the manufacturer shall remain responsible for the manufacturer fee for the remaining lead-acid batteries sold in the state.

Multiple wholesalers may elect to pay the manufacturer fee for a single manufacturer. The manufacturer will remain responsible for manufacturer fees not paid by an elective wholesaler. Elective wholesalers shall notify the lead-acid battery manufacturer from which the wholesaler purchased the lead-acid batteries, the DTSC, and the BOE of its intent to be considered a manufacturer subject to the manufacturer battery fee. Wholesalers must provide at least 30-day's notice to the manufacturer, DTSC, and the BOE, before being considered a manufacturer. A manufacturer who has been notified by a wholesaler of the wholesaler's election, is not subject to the manufacturer battery fee for those lead-acid batteries sold to that wholesaler, provided the manufacturer has registered with the BOE and submits informational returns, as specified. An elective wholesaler is considered a manufacturer until 60 days after the wholesaler provides notice to the manufacturer, DTSC, and the BOE, that the wholesaler no longer intends to be a manufacturer, or until the notified manufacturer registers with the BOE. The manufacturer and elective wholesaler are required to remit the fees to the BOE at the time the return is required to be filed.

Voluntary manufacturer fee. An otherwise exempt manufacturer that has been notified by an elective wholesaler to be considered the manufacturer may voluntarily submit an additional \$1 manufacturer fee for each lead-acid battery that is otherwise paid by a wholesaler. The voluntary manufacturer payment does not relieve an elective wholesaler from remitting the manufacturer fee. A manufacturer that submits a voluntary manufacturer fee is prohibited from passing on the voluntarily remitted fees to a wholesaler. The voluntary manufacturer fee is not considered a tax or fee and is excluded from the Fee Collection Procedures Law.

BOE administration. The BOE will assess and collect the fee in accordance with the Fee Collection Procedures Law (FCPL).³ The references in the FCPL to "fee" include the fee imposed by this bill, and the reference to "feepayer" includes a dealer, manufacturer, importer, and wholesaler, including an elective wholesaler. However, "feepayer" does not include a manufacturer that makes a voluntary payment, as provided.

The FCPL generally provides for the BOE's administration of fee programs. Among other things, the FCPL provides for collection, reporting, return, refund, and appeals procedures, as well as the BOE's authority to adopt regulations related to the FCPL's administration and enforcement.

The bill requires BOE to develop appropriate procedures for providing notifications to the manufacturer, elective wholesaler, and DTSC, related to the wholesaler election to be considered a manufacturer and when the wholesaler no longer intends to be a manufacturer.

Dealers, manufacturers, importers, wholesalers, and elective wholesalers of lead-acid batteries in or into this state are required to register with the BOE.

Quarterly returns with remittances are due on or before the last day of the calendar month following the calendar quarter. The BOE may require returns for other than quarterly periods, and shall specify the return filing method.

Revenues collected, less refunds and expense reimbursement to the BOE, will be deposited into the Lead-Acid Battery Cleanup Fund (Fund), which this bill creates. The Fund will repay any moneys loaned to pay BOE implementation costs. Upon appropriation by the Legislature, moneys in the Fund will be used to investigate, evaluate, clean up, abate, remediate, remove, monitor, or otherwise respond to any area in the state that has been contaminated by the production, recycling, or improper disposal of lead-acid batteries.

³ Part 30 (commencing with Section 55001) of Division 2 of the RTC.

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An unspecified loan is made to the BOE for fee program implementation costs with repayment from fee proceeds. Emergency regulation authority is also provided to the BOE.

Petition for redetermination and claim for refund. The BOE will handle and decide petitions for redetermination and claims for refund, except for those filed to challenge whether the battery is a lead-acid battery. The BOE will forward such petitions or refund claims to the department for a decision.

Definitions. This bill defines several key terms, including, but not limited to, the following:

- “Board” means State Board of Equalization.
- “Business” means any “person,” as that term is defined, that is not a natural person.
- “Dealer” means every person who engages in the retail sale of replacement lead-acid batteries directly to persons in California. “Dealer” includes a manufacturer of a new lead-acid battery that sells at retail directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or Internet Web site or any other similar electronic means.
- “Lead-acid battery” means any battery weighing over five (5) kilograms that is primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid, solid, or gel state, with a capacity of six (6) volts or more that is used for any of the following purposes:
 - As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.
 - As a motive power battery that is designed to provide the source power for propulsion or operation of a vehicle, including a watercraft.
 - As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.
 - As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Vehicle Code Section 670, including a vehicle as defined in Vehicle Code Section 36000, or an aircraft.
 - To use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Section 321(h), as that definition may be amended.
- “Manufacturer” means either of the following:
 - The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state, unless subdivision (b) of HSC Section 25215.35 applies to the lead-acid battery, in which case the wholesaler shall be deemed the manufacturer, except for purposes of HSC Section 25215.65. If an entity engages a third party to manufacture lead-acid batteries on its behalf, that entity shall be deemed the manufacturer of those lead-acid batteries.
 - If there is no person, as described above, who is subject to the state’s jurisdiction, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution.
- “Person” means an individual, trust, firm, joint stock company, business concern, corporation, including, but not limited to, a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.
- “Replacement lead-acid battery” means a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which the lead-acid battery intended to be used. “Replacement lead-acid battery” does not include a spent, discarded, refurbished, or reused lead-acid battery.

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- “Retail sale” or a “sale at retail” has the same meaning as defined in RTC Section 6007. “Retail” sale does not include sales of batteries for which a California battery fee has been paid, sale of battery that is transported and used outside the state, battery sales for incorporation into new equipment for subsequent resale, or the replacement of a lead-acid battery pursuant to a warranty or vehicle service contract described in Insurance Code Section 12800.
- “Used lead-acid battery” means a lead-acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any reason.
- “Wholesaler” means any person who purchases a lead-acid battery from a manufacturer for the purpose of selling the lead-acid battery to a dealer, high-volume customer, or to a person for incorporation into new equipment for resale.

This bill contains an urgency provision and is effective immediately.

Commentary:

1. **The August 9, 2016 amendments**, among other things, (1) delete provisions that would have terminated the BOE’s authority to collect the manufacturer fee, under specified conditions, (2) delete certain “liability relief” provisions, and (3) delete the Fund balance provision related to manufacturer fee suspension and resumption. **The August 1, 2016 amendments**, among other things, (1) revised definitions, (2) added administrative provisions to the consumer fee, (3) terminated the BOE’s authority to collect the manufacturer fee under specified conditions, (4) clarified the elective wholesaler process, (5) specified the BOE collection using the FCPL, (6) provided registration, return, and expense reimbursement to BOE, and (7) added a Fund ceiling and floor related to the suspension and resumption of manufacturer battery fees.
2. **A voluntary fee payment option is unique.** Although the BOE administers over 30 different tax and fee programs, none of those programs offers a voluntary fee payment option. The voluntary manufacturer fee is intended to provide certain “liability relief” benefits to the manufacturer, including offsetting any payment or reimbursement that the state or regional board may require for lead release cleanup activities from a lead-acid battery recycling facility. However, because the manufacturer “liability relief” provisions have been deleted from the bill, the incentive for manufacturers to make the voluntary payment is not apparent.

BOE staff was unable to find any statutory guidance related to voluntary payments. Consequently, it lacks guidance regarding return filing, remittance requirements, and collection procedures. The FCPL does not apply to voluntary payments. Moreover, the statute does not specify that these voluntary payments are non-refundable. As such, manufacturers may request refunds of voluntary payments without limitation. BOE staff suggests the bill be amended to have manufacturers “elect” to have additional manufacturer fees imposed on them, and that these additional “elective manufacturer” fees be administered consistent with the required manufacturer fee.

3. **The elective wholesaler fee provision may protect manufacturers from tax collection.** This bill allows a wholesaler to elect to assume the manufacturer’s responsibility to pay the fee. As each business entity is a separate person, a manufacturer could establish a separate entity that elects to assume the manufacturer’s fee responsibility, helping manufacturers limit their fee liability. BOE would be limited to collection from the elective wholesaler and would be unable to pursue collection against the manufacturer, in whose place the elective wholesaler stands.

The FCPL does not allow the BOE to pierce the corporate veil or to pursue the manufacturer as a “successor” responsible party. In effect, manufacturers could be encouraged to set up “wholesaler” companies, which could provide them legal protection from tax collection if the elective wholesaler fails to pay the manufacturer fees. BOE staff suggests a provision to determine if a manufacturer has ultimate ownership of the elective wholesaler, and hold the manufacturer liable for any unpaid fees if the elective wholesaler, in which they have ultimate ownership, fails to comply with the laws.

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4. **The lead-acid battery fee is more complex than existing BOE administered fee programs.** The BOE currently administers similar fee programs, including the California tire fee program. In general, a fee is imposed on the purchaser of the tire, with the retailer required to collect and submit the fees to the BOE. The BOE registers the retailer, accepts returns and payments, and conducts audit and enforcement activities. The more centralized the program, and the fewer the registrants, exemptions, and fees, the more efficient and cost effective the program.

This bill proposes a mandatory consumer fee, a mandatory manufacturer fee, an elective wholesaler fee, and a voluntary manufacturer fee. The \$1 fee may be imposed as many as three times on the same product, at three different levels in the supply and distribution chain as follows: (1) the consumer fee is imposed on the purchaser and collected by the retail dealer for each replacement lead-acid battery; (2) the manufacturer fee is imposed on the manufacturer for each lead-acid battery it sells at retail to a person in California, or to a dealer, wholesaler, distributor, or other person for retail sale in this state; (3) the elective wholesaler fee is available to wholesalers that ship or arrange for shipment of used lead-acid batteries to a lead-acid battery recycling facility; and (4) the voluntary manufacturer fee is imposed on each lead-acid battery that is otherwise covered by a wholesaler. The proposed fee program may present the BOE with unique challenges in registration, audit, compliance, appeals, and other administrative functions.

5. **DTSC will handle all appeal and refund cases related to whether or not a battery is a lead-acid battery.** The BOE administers other fee programs with partner state agencies. Certain programs require the partner state agency to handle appeal and refund cases related to fee imposition and areas that fall within the partner agency's expertise. Similar to other tax and fee programs, the DTSC will handle any appeal or refund case in which the feepayer claims a battery is not a lead-acid battery subject to the fee.
6. **A core charge is distinct from this fee.** In general, this bill authorizes retail dealers to charge each person who purchases a replacement lead-acid battery and who does not simultaneously provide the retail dealer with a used lead-acid battery of the same type and size a refundable core charge deposit for each battery purchased. The retail dealer is required to separately state the refundable core charge on a receipt. The core charge may be refunded to that person if, within 45 days of the sale of the replacement battery, the person presents a similar used lead-acid battery. Retail dealers may retain the replacement lead-acid battery refundable core charge if it is not properly claimed within 45 days of purchase. The BOE is not responsible for core charge policy and administrative issues; the author may wish to clarify whether DTSC has this responsibility.
7. **Administrative start-up cost funding is essential.** The proposed fees are imposed as of April 1, 2017. As a result, the BOE must begin to implement the bill in fiscal year 2016-17. Therefore a loan from the General Fund (GF) to the Fund of \$1.2 million is needed. In order to meet the April 1 startup, BOE staff would need to begin implementation upon passage of the bill. Without a specific appropriation to the BOE, the BOE would need to enter into an inter-agency contract for funding. Contract negotiations could delay startup of the fee collection program.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed fee. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the proposed fee program. A GF diversion typically results in a negative impact on GF-supported programs and related state and local government revenues.

8. **Technical suggestion.** Electronic filing of returns provides for schedules that capture data related to manufacturers and elective wholesalers. The schedules would provide efficiencies for subsequent desk or field audits, as well as provide data to DTSC. E-filed returns are consistent with BOE's other tax and fee programs and are consistent with the BOE's future legacy system, CROS (Centralized Revenue Opportunity System). BOE staff suggests the following technical amendment to require E-filing and provide efficiencies for audits and compliance:

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25215.47 (a) The return required to be filed pursuant to Section 55040 of the Revenue and Taxation Code shall be prepared and filed by the person required to register with the board, in the form prescribed by the board, and shall contain the information the board deems necessary or appropriate for the proper administration of this article and the Fee Collection Procedures Law. Except as provided in subdivision (b), the return shall be filed on or before the last day of the calendar month following the calendar quarter to which the return relates, together with a remittance payable to the board for the fee amount due for that period. Returns shall be filed using electronic media with the board and authenticated in a form, or pursuant to methods, as may be prescribed by the board,~~including, but not limited to, electronic media.~~

Costs: The BOE would incur substantial costs to implement a new fee program. These costs include: feepayer identification, notification, and registration; regulation development; manual and publication revisions; fee return design; computer programming; return, payment, and wholesaler and manufacturer election and notification processing; audit and collection tasks; staff training; and public inquiry responses. These costs are estimated to be \$1.2 million in fiscal years (FY) 2016-17 and 2017-18, \$1.4 million in FY 2018-19, and \$1.6 million in FY 2019-20 and ongoing.

Revenue Impact:

Background, Methodology, and Assumptions. This bill requires a retail dealer to charge a consumer or business a \$1 fee for each replacement lead-acid battery purchased. This bill also requires a lead-acid battery manufacturer to pay \$1 for each lead-acid battery it sells at retail to a person in California, or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California. The bill further provides for an elective wholesaler fee and a corresponding voluntary manufacturer fee. As discussed previously, BOE staff believes the maximum lead-acid battery fees imposed, elected, paid, or voluntarily made is \$3 per lead-acid battery.

Industry data indicates an estimated 105.3 million replacement lead-acid batteries (automotive and other internal combustion) sold in the United States in 2015. Based on California's population, staff estimated lead-acid battery sales in the state to be 12.6 million units (12% × 105.3 million batteries). Taking into account industry growth, staff estimated sales to be 13 million batteries in 2017.

This bill has been amended to delete certain manufacturer "liability relief" provisions, as such BOE staff assumes the voluntary manufacturer fee would be affected. Because this fee is strictly voluntary and not dependent on an obligation to pay or the BOE's authority to collect, and the "limited relief" provisions were deleted, it would seem logical to assume the manufacturers would not voluntarily pay the manufacturer fee. As such, to the extent manufacturers do not pay the voluntary fee, the projected revenues would decrease. The voluntary manufacturer fee accounts for one-third of the projected revenues.

Revenue Summary. Based on the maximum fee of \$3 per battery (manufacturer fee, consumer fee, and voluntary fee), and considering the bill's deletion of the manufacturer's "liability relief" provisions, staff estimates annual revenues to be between \$26 to \$39 million (13 million batteries × \$3).

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.

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