

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

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.

Existing Law: Existing law does not impose a 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 \$1 fee on manufacturers for each lead-acid battery sold at retail or sold to specified persons for retail sale in California until March 31, 2022. Additionally, this bill imposes a \$1 fee on consumers of lead-acid batteries purchased from a retail dealer in California until April 1, 2022, after which the fee increases to \$2.

Consumer fee. On and after April 1, 2017 until March 31, 2022, a \$1 California battery fee is imposed on a person, as defined, for each purchase of a replacement lead-acid battery from a retail dealer. Except for sales to businesses, 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. Dealers are allowed to bundle the fees on the customer's receipt if the customer purchases more than one lead-acid battery in a single transaction.

On and after April 1, 2022, the California battery fee is increased to \$2.

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 to collect the fee is sufficient to relieve the dealer's customer from further fee liability.

Manufacturer fee. On and after April 1, 2017 until April 1, 2022, 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.

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 and manufacturer.

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.

Dealers and manufacturers of lead-acid batteries are required to register with the BOE.

Electronically filed 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.

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. Upon appropriation by the Legislature, moneys in the Fund will be used to investigate, evaluate, clean up, remediate, remove, monitor, or otherwise respond to any area in the state that is reasonably suspected to have been contaminated by the operation of a lead-acid battery recycling facility.

A \$1.2 million special fund loan is made to the BOE for 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, except a natural person or a city, county, city and county, district, commission, the state, or any department, agency, or political subdivision of any of those, or an interstate body, or to the extent permitted by law, the United States and its agencies and instrumentalities.
- “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.
- “Manufacturer” means either of the following:

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

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- The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state.
- 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 is intended to be used. "Replacement lead-acid battery" does not include a spent, discarded, refurbished, or reused lead-acid battery.
- "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. It also does not include the sale of any battery intended for use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act (21 USC 321(h)) as that definition may be amended.
- "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. However the fee is imposed beginning April 1, 2017.

Commentary:

1. **Effect of this bill.** Imposes a BOE-collected \$1 fee on manufacturers and consumers of lead-acid batteries to fund a lead acid battery recycling facility contamination cleanup program. Beginning April 1, 2022, the manufacturer fee terminates and the consumer fee increases to \$2.
2. **Summary of amendments.** The **August 31, 2016 amendments**, among other things, (1) increased the consumer fee to \$2 on and after April 1, 2022, (2) terminated the \$1 manufacturer fee on an after April 1, 2022, (3) deleted the elective wholesaler and manufacturer fee provisions, and (4) authorized a \$1.2 million loan from the California Tire Recycling Management Fund to the BOE for implementation costs. The **August 19, 2016 amendments**, among other things, (1) deleted the voluntary payment option but allowed manufacturers to elect to have an additional fee imposed on them, (2) required e-filed returns, (3) specified a Fund floor and ceiling which would trigger fee rates of \$0 or \$1 respectively, and (4) provided a \$1.2 million GF or special fund loan to the BOE. The **August 9, 2016 amendments**, among other things, (1) deleted provisions that would have terminated the BOE's authority to collect the manufacturer fee, under specified conditions, (2) deleted certain "liability relief" provisions, and (3) deleted 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 that the FCPL would apply to BOE collection, (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.

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3. **The fee is consistent with 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.
4. **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.
5. **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.

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 and payment 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. Beginning April 1, 2017 until March 31, 2022, this bill requires a retail dealer to charge a consumer 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.

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% x 105.3 million batteries). Taking into account industry growth, staff estimated sales to be 13 million batteries in 2017.

Revenue Summary. Based on the maximum fee of \$2 per battery (manufacturer fee and consumer fee), staff estimates annual revenues to be \$26 million (13 million batteries x \$2).

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