

Amend Section 25205.6 of the Health and Safety Code to exempt nonprofit organizations from the environmental fee.

Source: Honorable Dean Andal

Under existing law, Section 25205.6 of the Health and Safety Code requires corporations in industry groups that use, generate, store, or conduct activities in this state related to hazardous materials to pay an annual fee to the Board of Equalization (Board). This environmental fee is based on the number of employees employed by a corporation in the state during the previous calendar year.

The annual fee is paid to the Board and deposited into the state's Toxic Substances Control Account.

Each year, the Department of Toxic Substances Control (DTSC) sends the Board a list of federal Standard Industrial Classification (SIC) codes for the industry groups that are engaged in activities subject to the environmental fee. All industry groups and SIC codes that are not specifically exempt are included in the listing. These exempt groups include:

- Private households (SIC code 88)
- Nonprofit residential care facilities (SIC code 8361)
- Insurance companies that pay tax on gross premiums in lieu of all other California taxes and license
- Banks that pay a tax on net income in lieu of other California taxes and licenses
- US Government corporations

Background. In 1989, Senate Bill 475 (Chapter 269, Statutes of 1989) added and Assembly Bill 41 (Chapter 1032, Statutes of. 1989) amended Section 25205.6 of the Health and Safety Code to require certain corporations involved in activities related to hazardous materials to pay an annual fee based on the number of employees employed in this state. The purpose of environmental fee was to broaden the revenue base that supports the Hazardous Waste Control Account. In addition, it was believed that businesses that handle hazardous materials should contribute support to the programs that regulate hazardous materials.

In 1994, Assembly Bill 3540 (Chapter 619, Statutes of 1994, Andal) amended Section 25205.6 to add an exemption for nonprofit residential care facilities which are identified by SIC code 8661. According to the Board's Legislative Bill Analysis of AB 3540, the author's office stated that most nonprofit corporations covered by AB 3540 do not generate significant amounts of hazardous waste and the fee imposed was a hardship for many of these businesses.

This proposal would expand the current exemption for nonprofit residential facilities to include all nonprofit organizations exempt from taxation pursuant to Section 23701 of the Revenue and Taxation Code. Section 23701 of the Revenue and Taxation Code relates to organizations organized and operated for nonprofit purposes which are exempt from bank and corporation taxes.

Section 25205.6 of the Health and Safety Code is amended to read:

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of corporations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in ~~subdivision (k) of~~ Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(b) Each corporation of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at two hundred dollars (\$200) for those corporations with 50 or more employees, but less than 75 employees, three hundred fifty dollars (\$350) for those corporations with 75 or more employees, but less than 100 employees, seven hundred dollars (\$700) for those corporations with 100 or more employees, but less than 250 employees, one thousand five hundred dollars (\$1,500) for those corporations with 250 or more employees, but less than 500 employees, two thousand eight hundred dollars (\$2,800) for those corporations with 500 or more employees, but less than 1,000 employees, and nine thousand five hundred dollars (\$9,500) for those corporations with 1,000 or more employees.

(c) The fee imposed pursuant to this section shall be paid by each corporation that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(e) The fee rates specified in subdivision (b) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the board shall adjust the rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the

Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(f) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)), the state is obligated, as authorized by paragraph (2) of subdivision (a) of Section 25351, to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The fee rates specified in subdivision (b) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars (\$3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)). If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)) will exceed three million three hundred thousand dollars (\$3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (b) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars (\$8,200,000) above the revenues provided by the fee rates specified in subdivision (b). Any changes in the fee rates approved by the Legislature in the annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

~~—(g) This section does not apply to nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self-care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

(g) This section does not apply to nonprofit organizations that are exempt from taxation pursuant to Section 23701 of the Revenue and Taxation Code.