



**STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS**

Draft

Date Amended:	06/01/07	Bill No:	AB 493
Tax:	Clean Vehicle Incentive Program	Author:	Ruskin
Related Bills:	AB 307 (Hayashi) AB 846 (Blakeslee) AB 1190 (Horton & Huffman) SB 74 (Florez)		

This analysis will only address the bill's provisions that impact the Board.

BILL SUMMARY

This bill would do the following:

- Require the State Air Resources Board (ARB) to implement a clean vehicle incentive program that provides for a schedule of rebates and surcharges for purchases of new motor vehicles based on the vehicle's emissions of greenhouse gases and other criteria, as specified.
- Authorize the Board of Equalization (Board) to collect the surcharge from a dealer, process rebate claims filed through a dealer and issue rebates to eligible new motor vehicle owners, and refund the amount of surcharge if that motor vehicle is otherwise eligible for a refund.

SUMMARY OF AMENDMENTS

Since the previous analysis, this bill was amended to, among other things, require the Board to make every reasonable effort to pay rebates in 60 days, and move responsibility from the ARB to the Board for determining which vehicles are exempt and which "very low income" new motor vehicle owners would qualify for a refund.

ANALYSIS

CURRENT LAW

Under existing law, a state and local sales and use tax is imposed on the sale or use of tangible personal property in this state, including motor vehicles. Currently, the total combined sales and use tax rate is between 7.25 and 8.75 percent, depending on the location in which the merchandise is sold. The Board does not collect any additional taxes or fees on the sale or use of motor vehicles.

The Board does, however, administer and collect the California tire fee on behalf of the California Integrated Waste Management Board (IWMB). Section 42885 of the Public Resources Code imposes a California tire fee of one dollar seventy-five cents (\$1.75) per tire on every person who purchases a new tire, as defined, until January 1, 2015.

PROPOSED LAW

This bill would add Article 3 (commencing with Section 43300) to Chapter 2 of Part 5 of Division 26 of the Health and Safety Code to establish a clean vehicle incentive program. Among other things, this bill would require the Board to collect the surcharge

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from a dealer, issue rebates to eligible new motor vehicle owners, and refund the amount of the surcharge, as specified.

Proposed ARB duties

Clean vehicle incentive program. After at least two public workshops, but no later than July 1, 2009, this bill would require the ARB, in consultation with those other agencies that the ARB determines are appropriate, to adopt regulations to implement a clean vehicle incentive program. In part, the regulations would establish a schedule of one-time clean vehicle rebates and one-time emissions surcharges for all new motor vehicles eligible for inclusion in the program.

The schedule of rebates and surcharges would take effect July 1, 2010, and apply to motor vehicles beginning with the 2011 model year and each following model year. In the first year of the program, the ARB, in consultation with the Board, would be authorized to delay implementation of the rebate portion of the program up to 60 days after the surcharge portion of the program goes into effect in order to ensure that adequate funds are available to fund rebates.

Calculation of rebates and surcharges. The ARB would be required to calculate the rebate or surcharge to be applied to any motor vehicle subject to the program based on the vehicle's emissions of greenhouse gases, compared to the emissions of all vehicles of the same model year that are subject to the program. The ARB would be authorized to adjust rebates and surcharges based upon the emissions of contributory and/or criteria air pollutants by up to 20%. Once the schedule of rebates and surcharges is set, the ARB may make an adjustment to the schedule once per model year. Any adjustments to the schedule of rebates and surcharges would take effect at least 90 days after the ARB adopts the adjustment.

This bill would also require the ARB to create a zero-band that encompasses vehicles that are assigned neither a surcharge nor a rebate, which would include the middle of the linear scale and between 20 and 25 percent of the fleet of a given model year. Vehicles that would have otherwise been assigned a rebate or surcharge of less than one hundred dollars (\$100) would become part of the zero-band category.

The maximum rebate and surcharge shall have a range of two thousand two hundred fifty dollars (\$2,250) to two thousand five hundred dollars (\$2,500), and no surcharge shall exceed the amount of the sales tax on the purchase price of the vehicle.

Information. No later than May 1, 2010, the ARB would make available to the public the schedule of rebates and surcharges applicable in the fiscal year following their publication and whenever it is updated. The ARB would also be required to provide information to consumers and licensed automobile dealers about the program:

- The ARB must notify licensed dealers about relevant details of the program, including identification of vehicles that are exempt from the program, and provide reasonable assistance to dealers in carrying out the program.
- The ARB may modify the air pollution label that is required to be displayed on new vehicles sold in the state to include specific information on the applicable clean vehicle rebate or emissions surcharge.
- The ARB must incorporate a public education campaign on the clean vehicle incentive program into existing public education campaigns that seek to inform and encourage the public to purchase cleaner vehicles.

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Proposed Department of Motor Vehicles (DMV) duties

Any person that purchases a new motor vehicle out of state and returns to California with the vehicle within 12 months from the date of purchase, and registers the vehicle with DMV, would be required to pay the surcharge to the DMV at the time of the vehicle's initial registration in California, if that vehicle would otherwise have been subject to the surcharge. A procedure will be developed by the ARB, DMV, and Board to implement the collection of the surcharge from the affected registrants.

Proposed Board duties

Rebates. The one-time rebate would apply at the time of the retail sale to the price of the motor vehicle after applicable taxes are added. The rebate would also apply to leased vehicles if the vehicle is leased for one year or more. Rebates are not available for vehicles purchased outside the state of California.

California residents that purchase a new motor vehicle in California that is eligible for a rebate would file a rebate claim, on a form prescribed by the Board, with the dealer at the time of purchase. The dealer would accept the rebate claims and submit them to the Board in a time, place, and manner to be determined by the Board. Additionally, the dealer would provide a proof of purchase form that would include the following:

- The date when the vehicle was purchased.
- The year, make, and model of the vehicle purchased.
- The vehicle identification number (VIN) of the vehicle.
- The price paid for the vehicle.

Rebates would be paid by the Board to the eligible motor vehicle owner. If requested by the owner, the Board would issue the rebate through electronic funds transfer. The Board would be required to make every reasonable effort to pay the rebates within 60 days of receiving the rebate claim form. No interest would be paid on any rebate.

Surcharges. The one-time surcharge would apply at the time of the retail sale to the price of the motor vehicle after applicable taxes are added. The surcharge would also apply, upon execution of a lease, to vehicles leased for one year or more.

Dealers would collect the applicable surcharge from the new motor vehicle owners and shall file and pay the surcharge to the Board in a form, manner and time to be determined by the Board.

Refund of Surcharges. This bill would also provide that a new motor vehicle owner would be refunded the surcharge if the vehicle meets any of the following criteria:

- Emergency vehicles purchased by any local jurisdiction, county agency, or municipality.
- Motor vehicles purchased or leased by microbusinesses, as defined in Section 14837 of the Government Code, for identified work-related purposes to be determined by the ARB in regulations adopted pursuant to this measure.
- Paratransit and other motor vehicles designed or modified specifically for the purpose of transporting disabled persons.
- Vans that are purchased for use in a public or private fleets to be used primarily for the purpose of vanpools.

- Motor vehicles purchased or leased by very low-income residents of the state, to be defined by the Board in regulations adopted pursuant to this measure.

Exempt Vehicles. Motor vehicles that meet both of the following conditions would be exempt from the surcharge and rebate, as identified by the ARB:

- The motor vehicle's primary exhaust is identified by the Office of Environmental Health Hazard Assessment as a chemical that causes cancer.
- The motor vehicle is not subject to a state-mandated inspection and maintenance program.

If a motor vehicle is not identified as an exempt vehicle, but the purchaser of the vehicle believes the vehicle qualifies for an exemption, the purchaser would be required to pay the surcharge at the time of sale and submit an application to the Board within 90 days after payment of the surcharge, certifying that the vehicle qualifies for the exemption. The Board would be required to notify the applicant within 60 days of receipt of the application of its determination of whether an exemption will be granted. If the Board determines that the vehicle qualifies for an exemption from the surcharge, the Board would reimburse the applicant for the value of the surcharge from the clean vehicle incentive account.

The Board would be required to prepare and make available to automobile dealers and to the public an application for use by motor vehicle purchasers seeking reimbursement for a surcharge paid for an exempt vehicle, as described.

General administration. As provided, the Board would be responsible for collecting the surcharge and paying all rebates and refunds of surcharges using the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code.

The Fee Collection Procedures Law contains "generic" administrative provisions for the administration and collection of fee programs to be administered by the Board. It was added to the Revenue and Taxation Code to allow bills establishing a new fee to reference this law, thereby reducing the number of sections within the bill required to provide the necessary administrative provisions. Among other things, the Fee Collection Procedures Law includes collection, reporting, refund, and appeals provisions, as well as providing the Board the authority to adopt regulations relating to the administration and enforcement of the Fee Collection Procedures Law. Except for surcharges collected by the DMV, this bill would require the Board to handle all rebates and refund claims and collect all surcharges from dealers.

Shared Financial Responsibilities

This bill would create the Clean Vehicle Incentive Account, which would be administered by the ARB in consultation with the Board. The funds collected from emissions surcharges would be credited to, and clean vehicle rebates would be debited from, the Clean Vehicle Incentive Account. Moneys in the fund would be continuously appropriated without regard to fiscal year and may be used only to pay for the following:

- Clean vehicle rebates.
- Refunds of emissions surcharges.
- Reimbursing the Board and the Controller's office for their administrative costs related to the program.

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- Administrative costs of the ARB related to the program.
- Reimbursing the DMV for costs incurred related to Section 43308.

The bill also provides for a loan of up to one million five hundred thousand dollars (\$1,500,000) from the Vehicle Inspection and Repair Fund to the Clean Vehicle Incentive Account.

The schedule of rebates and surcharges would be designed to ensure that the program will be self-financing and will generate adequate revenues to do all of the following:

- Fund the cost of all rebates and refunds of surcharges associated with the program.
- Fund all administrative costs associated with the program.
- Provide for a reserve within the program equal to approximately 15 percent of the estimated rebates to ensure the Clean Vehicle Incentive Account, to the extent possible, will have a positive balance at the end of each fiscal year.

Appropriate adjustments to the surcharges, rebates, and the placement of the zero band would be required annually or biannually based on recent and anticipated changes in motor vehicle sales to ensure that the program continues to generate adequate revenues to provide sufficient incentives to reduce greenhouse gas emissions and to maintain a self-financing program.

If the Department of Finance determines that the 15% reserve in the Clean Vehicle Incentive Account is either excessive or insufficient to fund all the costs of rebates, refunds, and administration, it may direct the ARB to reduce or increase the size of the reserve in a manner to be determined by ARB.

BACKGROUND

Last year's AB 2791 (Ruskin) would have required the ARB to implement a Clean Vehicle Discount Program that provided a discount or surcharge for all motor vehicles based on the vehicle's emissions of greenhouse gases and other specified criteria. The ARB would have been authorized to contract with the Board to perform its responsibilities under the Program. AB 2791 passed the Assembly but died in Senate Rules Committee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Union of Concerned Scientists and is intended to encourage automobile buyers to purchase cleaner vehicles and encourage manufacturers to offer more low-emitting vehicles to California consumers.
2. Among other things, **the June 1, 2007 amendments** provide the following: (1) redefines "motor vehicle" and "vehicle" to mean a light- or medium-duty passenger vehicle with a gross vehicle weight rating of 10,000 pounds or less; (2) specify that the Board make every reasonable effort to pay rebates within 60 days of receiving a rebate claim form; (3) no longer limit rebates to the amount of the sales tax on the purchase price of the motor vehicle; the maximum rebate is \$2,500; (4) increase from 30 days to 60 days the time that the ARB, in consultation with the Board, may delay implementation of the rebates after the surcharges take effect in the first year of the program; (5) provide a time frame for payment of the surcharge that is consistent with the imposition of the use tax; (6) require that a lessee of a vehicle pay the surcharge upon execution of the lease; (7) clarify that the dealer's display of

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the assigned surcharge shall include an explanation that the surcharge may be limited by the sales tax on the purchase price of the motor vehicle; (8) change the responsibilities from the ARB to the Board for determining whether a “very low income” new motor vehicle owner or lessee would qualify for a refund of a surcharge; (9) move responsibility from the ARB to the Board for determining which vehicles are exempt from the surcharge, refund, or rebate; (10) increase the loan amount from \$900,000 to \$1.5 million for initial implementation costs for the Board, ARB, DMV, and the Controller’s office; and (11) provide that the ARB, in consultation with the Board, provide a report to the Legislature by January 1, 2013, and tri-annually thereafter, which discusses specified elements of the clean vehicle incentive program. The **April 11, 2007 amendments** added additional coauthors and made one technical change.

- 3. How many new motor vehicle owners would be affected by this bill?** This bill would authorize the establishment of a vehicle incentive program that would affect eligible new motor vehicles and the purchasers of those vehicles. Certain motor vehicles would be exempt from the program, as provided in statute or later determined by the Board. Currently, there are only two specified exemptions. Additionally, 20% to 25% of the fleet of a given model year would be placed in a zero band that would not be subject to a surcharge or rebate. There are certain new motor vehicle owners that may seek an exemption from the surcharge, however, the program requires that they pay the surcharge first and then seek a refund. The California Motor Car Dealers Association estimates that new registrations of new light vehicles could approach 2.2 million by 2009. The Assembly Appropriations Committee estimated approximately \$880 million in continuing annual revenues with \$555 million in payments. Assuming there were 2.2 million new car sales, 40% of which would pay a surcharge and 25% receiving a rebate or refund, with a median surcharge of \$1,000 on all new motor vehicles not otherwise exempt, these amounts suggest that 1,435,000 of the eligible new cars and buyers would be affected.

The volume of new registrants with the Board would rival or exceed the total amount of registrants with the Board’s largest tax program – the sales and use tax. The amount of revenues (from surcharges) would be comparable to the revenue from the Fuel Taxes Division (exclusive of the Motor Vehicle Fuel Tax). Based on these comparisons, the scope and magnitude of the clean vehicle incentive program would suggest that the Board would be adding a program that could significantly affect the agency.

- 4. This bill would be a departure from the Board’s current tasks.** In general, the Board deals with businesses which are responsible for the collection and/or payment of the taxes and fees. These businesses register with the Board and have responsibilities to file returns, pay or remit taxes or fees, and maintain books and records. Generally, businesses are responsible for collecting the proper amount of taxes or fees; over-collection of the tax or fee is discouraged. Given current processes, and unlike the Franchise Tax Board, the Board does not issue large quantities of refunds to tax or fee payers or their customers. Consequently, the Board’s business strategies and current electronic services efforts are more focused on processing incoming payments, including electronic funds transfers (EFT) payments. This bill would require the Board to administer a large disbursement program, to issue rebates and refunds of surcharges to qualified new motor vehicle owners, including rebates through EFT if requested by the claimant. Meeting the

requirements of this bill may require major changes to the Board's processes and strategies.

5. **Exemptions and Refunds.** There are only two proposed exemptions provided for vehicles: (1) motor vehicles whose primary exhaust is identified by the Office of Environmental Health Hazard Assessment as a chemical that causes cancer; and (2) motor vehicle that are not subject to a state-mandated inspection and maintenance program. A new motor vehicle owner that purchases a vehicle that meets these two requirements would not be subject to a surcharge. These "exemptions" could be more appropriately described as "exclusions."

It appears, however, that there are at least five more instances in which the author intends to provide an "exemption." The previously described "exclusions," which is to say that a surcharge or rebate is not paid, are different from the "exemptions," as previously listed under **Refund of Surcharges**. Rather than excluding these owners, this bill requires that the surcharge be paid and a refund be pursued. The Board would then be responsible for administering all refunds of surcharges and would determine which new motor vehicle owners meet the refund requirements.

The Board would be responsible for handling all determinations regarding which vehicles are exempt from the program and would also handle all applications for exemption and any resulting reimbursement for the value of the surcharge.

6. **This bill is now consistent with the application of use tax for vehicles purchased in another state.** This bill would impose a surcharge upon new vehicles purchased in another state by any person *if that person returns to this state and registers the vehicle in this state within one year of purchase*, if that vehicle would have otherwise been assigned a surcharge.

Presently, from October 2, 2004, through June 30, 2007, any vehicle purchased outside of California and brought into the state within 12 months from the date of its purchase is presumed to be acquired for storage, use, or other consumption in California. Use tax is due if any of the following occur:

- The vehicle was purchased by a California resident as defined in Section 516 of the California Vehicle Code.
- The vehicle is subject to registration in California during the first 12 months of ownership.
- The vehicle is used or stored in this state for more than one-half of the time during the first 12 months of ownership.

However, if a purchaser submits satisfactory documents to the Board showing that the vehicle was purchased for use outside of California during the first 12 months of ownership, use tax may not apply. Documents, such as out-of-state registration, the purchase agreement showing out-of-state delivery, or insurance documents will be evaluated by the Board. The applicable use tax is remitted to the DMV at the time the vehicle is registered in this state, which would be the same method of collection of the surcharge for vehicles purchased outside this state.

7. **Other technical concerns.** In order to avoid any ambiguity with administration of the rebate and surcharge, the following amendments should be considered to address Board staff concerns which include, in part, the following:

- The difference between an “exclusion” and an “exemption” should be made clear. The “exclusion” could apply to the two requirements in which a surcharge is not paid and an “exemption” could apply to the five instances in which a surcharge is paid but is subject to refund.
 - If an “exclusion” is made for motor vehicles (1) whose primary exhaust is identified by the Office of Environmental Health Hazard Assessment (OEHHA) as a chemical that causes cancer and (2) that are not subject to a state-mandated inspection and maintenance program, then the ARB should be the agency responsible for identifying, to the extent possible, motor vehicles that are “excluded” from the program. The Board does not have the technical expertise or resources to make determinations related to cancer causing chemicals, whereas the ARB and OEHHA are both part of the California Environmental Protection Agency.
 - Specified time frames, such as the 60 days for the Board to pay a rebate, or the 60 days for the Board to make a determination regarding an “exemption,” impose additional burdens upon the Board’s administrative functions. To meet these exigent requirements the Board would have to significantly augment staffing.
8. **Legal challenges of any new fee/surcharge program might be made on the grounds that the fee/surcharge is a tax.** In July 1997, the California Supreme Court held in *Sinclair Paint Company v. State Board of Equalization* (1997) 15 Cal.4th 866 that the Childhood Lead Poisoning Prevention Act of 1991 imposed bona fide regulatory fees and not taxes requiring a two-thirds vote of the Legislature under Proposition 13. In summary, the Court found that while the Act did not directly regulate by conferring a specific benefit on, or granting a privilege to, those who pay the fee, it nevertheless imposed regulatory fees under the police power by requiring manufacturers and others whose products have exposed children to lead contamination to bear a fair share of the cost of mitigating those products’ adverse health effects.

Although this measure has been keyed by the Legislative Counsel as a majority vote bill, opponents of this measure might question whether the surcharge imposed is in legal effect “taxes” required to be enacted by a two-thirds vote of the Legislature.

9. **Related Legislation.** A number of bills have been introduced to provide a tax incentive for the purchase and use of environmentally friendly products. AB 307 (Hayashi) would exempt from the sales and use tax a “fuel cell vehicle,” or a “fuel cell system” used exclusively for the purpose of upgrading a fuel cell vehicle, sold or leased to a “qualified person.”

AB 846 (Blakeslee) would create exemptions from the sales and use tax for low sulfur fuel products used by water common carriers in either the vessel’s auxiliary or main engine, under specified conditions.

AB 1190 (Horton & Huffman) would establish a clean fuel incentive to encourage the distribution and sale of fuels that have lower emissions of greenhouse gases. The incentives would be offered in the form of “credits” for cleaner fuels to offset the current fuel taxes, and provide a surcharge to be added to the current fuel taxes for fuels with greater greenhouse gas emissions.

SB 74 (Florez) would provide a state and local sales and use tax exemption for a specified time for biodiesel fuel, and for tangible personal property purchased for use by a qualified person in the manufacturing, processing, or production of biodiesel fuel, as defined.

COST ESTIMATE

The Board would perform administrative and collection functions related to rebates, surcharges, and refunds of surcharges. Recent amendments place additional time sensitive requirements related to rebates and “exemption” determinations that are to be administered by the Board. Additionally, the revenues and rebates, as estimated by the Assembly Appropriations Committee, suggest that the Board would be adding a program that would handle over \$1 billion in incoming and outgoing funds, with over a million potential new registrants.

The Board would incur major costs (over \$1 million) to adequately develop and administer a new rebate and surcharge program. These costs would include registering automobile dealerships, building a database for issuing rebates, developing related computer programs, mailing and processing returns and payments and rebates, conducting audits, developing regulations, training staff, and answering inquiries from the public. A cost estimate of this workload is pending.

REVENUE ESTIMATE

This measure does not specify the amount of the rebate and surcharge, or the specific motor vehicles to which the rebate or surcharge would apply. Accordingly, a revenue estimate can not be prepared.

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