STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Amended:	**04/27/10**	Bill No:	**AB 1981**
Tax:	**Vehicle Tire Fee**	Author:	**Hill**
Related Bills:			

This analysis will only address the bill's provisions which impact the State Board of Equalization (Board).

BILL SUMMARY

Among its provisions, this bill would impose a vehicle tire fee of $9.50 on a person who purchases or leases a vehicle from a new motor vehicle dealer.

SUMMARY OF AMENDMENTS

The amendments since the previous analysis make technical changes to the method of fee revenue transfers to the Air Pollution Control Fund.

CURRENT 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, 2015, the tire fee is reduced to seventy-fifty cents ($0.75) per tire.

After deducting 1 ½ percent of the total fees as reimbursement for costs associated with the collection of the fee, a retailer must remit the fees to the Board for deposit in the California Tire Recycling Management Fund. Beginning January 1, 2015, the percentage of reimbursement for costs associated with the collection of the fee will be raised to three percent (3%).

Under existing law, PRC Section 42889 requires the Board 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 moneys remaining in the California Tire Recycling Management Fund are appropriated to the Department of Resources Recycling and Recovery (DRRR) in the annual Budget Act. As of January 1, 2015, the funding for the waste tire program will only be appropriated to the DRRR.

The Board administers and collects the California tire fee on behalf of the DRRR in accordance with the Fee Collection Procedures Law.

PROPOSED LAW

California Tire Fee. This bill would amend PRC Section 42885 to change the definition of a "new tire" in the existing California tire fee, so that it would not include a new tire sold with a new motor vehicle, as defined in PRC Section 42803.5. This bill would further explicitly exclude from the definition of "new tire" a new tire sold or leased with a new or used motor vehicle, as defined in PRC Section 42803.5, by a new motor vehicle dealer, as defined in Vehicle Code (VC) Section 426.

This bill would also amend PRC Section 42885 to exempt from the existing California tire fee, a tire on a vehicle that is sold or leased by a dealer, as defined by VC Section 426.

Vehicle Tire Fee. This bill adds PRC Section 42885.1 to impose a vehicle tire fee of $9.50, effective January 1, 2011, on a person who purchases or leases a vehicle, as defined in VC Section 430. On and after January 1, 2015, the vehicle tire fee is reduced to $5.

The retail vehicle seller would separately state and charge the retail vehicle purchaser or lessee the amount of the vehicle tire fee. This bill defines "Retail vehicle seller" to mean a new motor vehicle dealer, as defined in VC Section 426.

After deducting 1 ½ percent of the total fees as reimbursement for any costs associated with the collection of the fee, the retail vehicle seller must remit the remainder of the fees to the Board for deposit in the California Tire Recycling Management Fund (Fund).

Collection and Administration. The DRRR, or its agent authorized pursuant to PRC Section 42882, may be reimbursed for its costs of administration related to audits, collections, and refunds, but not to exceed 3% of the total amount of fee revenues deposited in the Fund. Though current law provides the DRRR with the authority to contract with any state agency to collect the fee, the Board has collected the fee under a contract with it and its predecessor agency since the inception of the program.

Penalty Provisions. Consistent with existing penalties under the tire fee provisions, the DRRR may pursue a civil action to impose a civil penalty and/or an administrative penalty, as specified, not to exceed, for each violation, $25,000 for the former and $5,000 for the latter.

The DRRR would be authorized to adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty. The Board is not involved in the imposition or collection of these penalties.

Fund. Of the $9.50, or $5 on and after January 1, 2015, vehicle tire fee funds collected by the Board, an amount equal to $4.09 per vehicle on which the fee is imposed will be transferred by the Board to the Air Pollution Control Fund.

Similar to the current tire fee provisions, the remaining funds attributable to the vehicle tire fee will be used to fund the waste tire program and will be appropriated to the DRRR in the annual Budget Act in a manner consistent with the five-year plan adopted and updated by the DRRR. The funds are expended consistent with existing law.

This bill would become effective January 1, 2011.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California New Car Dealers Association (CNCDA) and is intended to restructure the California Tire Fee so that a fee is assessed on the sale or lease of vehicles, rather than by counting the number of new tires mounted on vehicles sold or leased. As explained by the sponsor, dealers have significant problems in tracking the number of new tires installed on a used vehicle prior to sale. The difficulty in tracking the number of new tires mounted on a used vehicle can lead to the incorrect charge of the tire fee.

2. **The April 27, 2010 amendments** are related to the method of fee revenue transfers to the Air Pollution Control Fund.

3. **The proposed changes exempt used motor vehicle sales by a new motor vehicle dealer from any tire fee.** Proposed subdivisions (b) and (i) of PRC Section 42885 exempt from the current California tire fee a tire on a vehicle that is sold or leased by a new motor vehicle dealer, as defined by VC Section 426. The definition

of a “new tire” is revised so that it does not include a new tire sold with a new or used motor vehicle, as defined in PRC Section 42803.5, which is sold or leased by a new motor vehicle dealer.

The proposed vehicle tire fee in PRC Section 42885.1 is charged to and collected from a person who purchases or leases a vehicle, as defined in VC Section 430, which is the definition of a “new vehicle” and does not include a used vehicle. Used vehicles are defined in VC 665. Additionally, only those new vehicles sold or leased by a new motor vehicle dealer, as defined in VC Section 426, are subject to the vehicle tire fee.

With this proposed law change, any “new” tire on a “new” vehicle purchased or leased from a new motor vehicle dealer would be subject to the proposed vehicle tire fee, but a “new” tire on a “used” vehicle sold by a new motor vehicle dealer would not.

4. **Difficulty with current fee.** As explained by the sponsor, new motor vehicle dealers have significant problems in tracking the number of new tires installed on a used vehicle prior to sale. The difficulty in tracking the number of new tires mounted on a used vehicle can lead to the incorrect charge of the tire fee. For example, a typical new vehicle dealer lot would have both new and used vehicles for sale or lease. Upon the sale or lease of a vehicle, which is defined in the bill as a “new vehicle,” pursuant to VC Section 430, the dealer would charge a vehicle tire fee that would include five new tires – four tires plus the spare, when the “vehicle” is a passenger car or light truck, or more, for larger, multi-axle vehicles, and less for motorcycles. When a used vehicle is taken as a trade-in by the dealer and retained on the lot, the new motor vehicle dealer may mount new tires on the used vehicle. Typically, the new motor vehicle dealer would take the new tire(s) out of its parts department and mount it/them on the used vehicle. The dealer would then be responsible for accounting for the new tire(s) mounted on that used vehicle and would charge the customer accordingly. The tire fee would be specified on the vehicle sales contract.

   New motor vehicle dealers believe that a flat rate per-vehicle fee would be easier to administer than the existing per-tire fee. As explained previously, the bill appears to exempt all new tires mounted on a used vehicle that is sold or leased by a new motor vehicle dealer.

   In general, used vehicle dealers would be selling used vehicles, not “new vehicles” as defined in VC Section 430; therefore, under most circumstances, a used vehicle dealer would only charge the existing tire fee for each “new tire” sold with a used vehicle and not the proposed vehicle tire fee. In contrast, a new motor vehicle dealer would charge the vehicle tire fee on the purchase or lease of a new vehicle, but would not be required to charge the California tire fee **or** the vehicle tire fee on the purchase or lease of a used vehicle.

5. **The flat rate $9.50 fee would be an increase in the amount of tire fee paid by many new vehicle purchasers.** The $9.50 vehicle tire fee is greater than the tire fee amount charged for five new tires on a new vehicle ($1.75 x 5 = $8.75). For new vehicles that have dual rear tires (a dually), this bill represents a fee decrease (e.g., seven new tires on the dually - $1.75 x 7 = $12.25). For the majority of purchasers or lessees of a new vehicle, this change is a slight increase ($0.75) in their current liability for five new tires under the California tire fee.

However, there is no limitation in the bill as to what constitutes a "vehicle" for purposes of imposition of the vehicle tire fee, other than to specify that it only applies to a "new vehicle," as defined in VC Section 430. A "vehicle" may be a new passenger vehicle or light truck, with five or seven new tires, or it may be a new motorcycle, with only two new tires, or a new heavy truck-tractor with a trailer, with 18 new tires, since there is no requirement in the bill that the new vehicle be a new "motor vehicle" that is self-propelled. (See VC Section 670, defining "vehicle," and VC Section 415, defining "motor vehicle.") Presumably, the purchasers of these "new vehicles" would each pay the $9.50 vehicle tire fee.

6. **This bill should contain a specific appropriation to the Board.** This bill would require, on and after January 1, 2011, a retail vehicle seller to charge the retail vehicle purchaser or lessee a vehicle tire fee of $9.50. In order to implement the vehicle fee program, the Board would need to identify the affected dealers, prepare notices, create and revise returns, forms and publications, develop and/or modify computer programs, answer fee-related inquiries, and hire staff in the 2010-11 fiscal year. The Board would need an adequate appropriation to cover these administrative start-up costs not currently identified in the Board's 2009-10 budget.

7. **Legal challenges of any new fee program might be made on the grounds that the fee 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 fee imposed is in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include notifying and registering new vehicle dealers, developing computer programs, developing forms and publications, mailing and processing returns and payments, conducting audits, carrying out compliance efforts, developing regulations, training staff, and answering fee-related inquiries. A cost estimate of this workload is pending.

REVENUE ESTIMATE

BACKGROUND, METHODOLOGY, AND ASSUMPTIONS

Under existing law, PRC Section 42885 imposes a California tire fee, as of January 1, 2005, of one dollar and seventy-five cents ($1.75) per tire on every person who purchases a new tire, as defined. As of January 1, 2015 the tire fee is reduced to seventy-fifty cents ($0.75) per tire and remains at that rate.

This bill would exempt from the current California tire fee a new tire on any new vehicle that is sold or leased by a new motor vehicle dealer, as defined by VC Section 426. The definition of "new tire" is amended to read that it does not include "*a new tire sold with a new or used motor vehicle, as defined by Section 42803.5 of the PRC, which is* *sold or leased by a new motor vehicle dealer, as defined by Section 426 of the Vehicle Code."* The proposed *"vehicle tire fee"* imposes a fee on a person who purchases or leases a new vehicle from a new motor vehicle dealer.

New Vehicle Impact

The *California Auto Outlook*, a publication printed, sponsored and distributed by the California New Car Dealers Association (CNCDA) provides forecast and analysis of California's new light vehicle market. In a January 2010 release, it projected California new light vehicle registrations for 2010 to be 1,145,000 units. For 2011 we estimate new light vehicle registrations to be 1,338,332 units.

A fee increase of $0.75 ($9.50 proposed fee - $8.75 ($1.75 X 5 tires) existing fee = $0.75) per new car would result in an estimated revenue increase of $1 million (1,338,332 units X $0.75 = $1 million.

Used Vehicle Impact

According to the National Automobile Dealers Association (NADA), new car dealers in the U.S sold 18.5 million used cars in 2007, of which 11.4 million used cars were sold at retail and 7.1 million used cars were sold at wholesale. Adjusting for the downturn in the economy, we estimate 9.8 million used car sales by new car dealers in the U.S in 2011.

California represents an estimated 11.7% of new car registrations nationwide. If we apply the 11.7% to the 9.8 million used cars, we estimate used car sales in California by new car dealers amounts to 1.1 million cars (11.7% × 9.8 million used cars = 1.1 million used cars).

The California Tire Fee Return requires the total number of new tires sold at retail and new tires self consumed to be reported. The Board does not have detailed information on the vehicles on which new tires are mounted. We did not find any industry reports to suggest any component or tire spending by new car dealers. The unavailability of such data makes it difficult to measure the bill's impact and this led us to make certain assumptions.

As an order of magnitude, if each used car sold by a new car dealer would have at least one new tire replacement by the dealer, the estimated revenue loss from exempting used car sales in 2011 would be $1.9 million (1.1 million used cars × current $1.75 tire fee = $1.9 million)

REVENUE SUMMARY

- Based on estimated 2011 new car sales by new car dealers in California, we estimate that the proposed fee of $9.50 per new car would result in revenue increase of $1 million in 2011 (1,338,332 new cars × $0.75 = $1 million).
- Based on estimated 2011 used car sales by new car dealers in California and making the assumption that each used car sold by the new car dealer would at least have one new tire replacement, we estimate a revenue loss of $1.9 million (1.1 million used cars × current $1.75 tire fee = $1.9 million).

If enacted, this bill would have a net revenue loss impact of $900,000 ($1.9 million minus $1.0 million).

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 Board's formal position.

Qualifying Remark

This revenue estimate is based on new and used passenger vehicles and light trucks data. Under this bill, the term "*vehicle*" also includes recreational vehicles, trucks, trailers and buses. Since these type of vehicles have anywhere from seven to eighteen tires, the additional revenue loss could be in the hundreds of thousands of dollars.

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