STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	**02/24/06**	Bill No:	**AB 3001**
Tax:	**Covered Electronic Waste Recycling Fee**	Author:	**Pavley**
Related Bills:			

BILL SUMMARY

This bill would impose a six dollar ($6) covered electronic waste recycling (Ewaste) fee upon the purchase of a new or refurbished covered electronic device (CED) that meets the definition of a personal computer.

ANALYSIS

Current Law

Under existing law, the Electronic Waste Recycling Act of 2003[1] (Ewaste Act) requires a consumer to pay a fee upon the purchase of a new or refurbished CED in specified amounts. Unless otherwise provided, a retailer is required to collect a fee from the consumer at the time of the retail sale of the CED.

A CED is defined to mean a video display device containing a screen greater than four inches measured diagonally that is identified as an electronic device presumed to be a hazardous waste when discarded in regulations adopted by the Department of Toxic Substances Control (DTSC). Currently, the following electronic devices are identified as CEDs in regulations adopted by DTSC and are subject to the Ewaste fee:

- Cathode ray tubes (CRTs)
- Devices containing CRTs
- Computer monitors containing CRTs
- Laptop computers with liquid crystal display (LCD)
- LCD containing desktop monitors
- Televisions containing CRTs
- Televisions containing LCDs
- Plasma televisions

Specifically excluded from the definition of CED are certain video display devices, such as a video display device that is part of a motor vehicle, contained within, or a part of a piece of industrial, commercial, or medical equipment, or contained within certain household appliances. Also excluded from the definition of CED is an electronic device

[1] Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code

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that ceases to be a CED, as provided, if the manufacturer obtains DTSC concurrence that an electronic device would not be a hazardous waste when discarded.

Section 25214.10.1(b) of the Health and Safety Code requires DTSC to adopt regulations that identify electronic devices that DTSC determines are presumed to be, when discarded, a hazardous waste. Subdivision (d)(2) of that same section states that a CED identified in the regulations adopted by DTSC become subject to the Ewaste fee on and after July 1 of the year subsequent to the year in which the CED is first identified in the regulations.

Proposed Law

This bill would amend Section 42463 of the Public Resources Code to provide that, on and after July 1, 2007, a CED also includes a personal computer that is identified in the regulations adopted by DTSC pursuant to subdivision (b) of Section 25214.10.1 of the Health and Safety Code.

A personal computer would be defined to mean a box or tower that contains a central processing unit. A "central processing unit" would be defined to mean that part of a computer that performs data manipulation functions, excluding any associated peripheral devices, including, but not limited to, keyboards, video display terminals not subject to this chapter, printers, or disk drives not contained within the physical portion of the unit.

This bill would amend Section 42464 to require a consumer to pay a six dollar ($6) Ewaste fee upon the purchase of a new or refurbished CED that is defined as a “personal computer.” A personal computer would become subject to the fee operative July 1, 2007, or as “otherwise provided by Section 25214.10.1 of the Health and Safety Code, whichever date is later.”

This bill would also amend Health and Safety Code Section 25214.10.1 to provide, on and after July 1, 2007, that the term “electronic device” also includes a personal computer.

Background

In 2003, Senate Bill 20 (Sher, Ch. 526) enacted the Electronic Waste Recycling Act of 2003. Among other things, the Act imposed, on and after July 1, 2004, a fee upon the first sale in the state of a CED to a consumer by a retailer. The Act authorized the California Integrated Waste Management Board to contract with the BOE or another party for collection of the fee.

However, Assembly Bill 901 (Jackson, Ch. 84, Stats. 2004) extended the operative date for the fee from July 1, 2004, to November 1, 2004.

In 2004, Senate Bill 50 (Sher, Ch. 863) made several clarifying changes to the fee and again extended the operative date for the fee by two months to January 1, 2005.

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COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Californians Against Waste and is intended to expand the scope of the Ewaste Act so that the existing collection infrastructure can be immediately expanded to provide free and convenient recycling for the more than 6 million computers that become obsolete in California everyday (more than 110,000 tons annually).

2. **When would a personal computer be subject to the Ewaste fee?** This bill would make a personal computer that is a CED subject to the fee on and after July 1, 2007. To become a CED, a personal computer would have to be identified in DTSC regulations as an electronic device that is presumed to be, when discarded, a hazardous waste. Once identified in the DTSC regulations, a personal computer would become subject to the fee on and after July 1 of the year subsequent to the year a personal computer is first identified in the regulations.

   Therefore, a personal computer would become subject to the Ewaste fee **July 1, 2007**, if such a device is identified in regulations adopted by DTSC during the 2006 calendar year. However, a personal computer would not become subject to the fee until **July 1, 2008**, if the device is identified in regulations adopted by DTSC during the 2007 calendar year.

   If the author intends for a personal computer to be subject to the fee on or after July 1, 2007, whether or not such a device is identified in regulations adopted by DTSC, the bill should be amended to clarify that intent. Board staff is available to work with the author's office in drafting appropriate amendments.

3. **Does "personal computer" only include desktop computers?** This bill would define a "personal computer" to mean a box or tower that contains a central processing unit. A box (also known as a computer case) contains the main components of a computer, and a tower is a common type of computer case. Personal computers that use a box or tower (such as mini tower, mid-sized tower, and full-sized tower) are generally desktop computers.

   Other types of personal computers, such as personal digital assistants (PDAs), portable computers and tablet computers, do not use a box or tower to contain a CPU. Therefore, it appears such products do not meet the definition of "personal computer" as defined in this measure. If the author intends for these types of personal computers to be subject to the fee, the bill should be amended to clarify that intent.

   It should also be noted that a laptop computer[2], which does not use a box or tower, is currently subject to the fee because of its integrated LCD monitor.

4. **How would the Ewaste fee apply to bundled personal computer purchases?** Desktop computers are generally sold bundled with a monitor. As such, the Ewaste fee would apply to both the monitor and the computer if the CPU is contained in a box or tower. All-in-one desktop computers (such as the Gateway Profile 5 series and Apple iMac G5) that have the CPU mounted in the same chassis as the monitor would be subject to the fee based only the monitor since all-in-one computers do not use a box or tower.

[2] Laptop computers with LCD screens greater than four inches measured diagonally.

5. **Would the exclusions from the definition of CED provided in current law be allowed for a personal computer?** Currently, Public Resources Code Section 42463(f) defines the term "covered electronic device" to mean a video display device containing a screen greater than four inches, measured diagonally, that is identified in the regulations adopted by DTSC, as specified. Paragraph (3) of that same section also specifies what does not constitute a CED. These items are as follows:

   - A video display device that is a part of a motor vehicle, as defined in Section 415 of the Vehicle Code, or any component part of a motor vehicle assembled by, or for, a vehicle manufacturer or franchised dealer, including replacement parts for use in a motor vehicle.
   - A video display device that is contained within, or a part of a piece of industrial, commercial, or medical equipment, including monitoring or control equipment.
   - A video display device that is contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air-conditioner, dehumidifier, or air purifier.

   This bill would include a personal computer, as specified, within the definition of a CED. A personal computer would not fall within the definition of a video display device provided in section 42463(v). Since the exclusions from the definition of CED apply only to a video display device, a personal computer would not qualify. As such, a personal computer that is part of a motor vehicle, contained within or part of a piece of industrial, commercial or medical equipment, or contained within certain appliances would be subject to the Ewaste fee.

6. **Suggested technical amendment.** Section 42464(a)(4) incorrectly references the definition of a CED as paragraph (2) of subdivision (f). Although the paragraph and subdivision number is correct, the definition is contained in Section 42463. The following language is suggested to correct the reference error:

   > 42464. (a)(4) (A) Six dollars ($6) for each covered electronic device that meets the definition specified in paragraph (2) of subdivision (f) of Section 42463.

7. **Legal challenges to any 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.

   Senate Bill 20, which enacted the Electronic Waste Recycling Act of 2003 and imposed the Ewaste fee, passed the Legislature and was signed by the Governor as a majority vote bill. Opponents of that measure questioned whether the Ewaste fees imposed were in legal effect "taxes" required to be enacted by a two-thirds vote of the Legislature. Similarly, opponents of this measure might question whether this bill is a tax increase on personal computers which would also require a two-thirds vote of the Legislature for enactment.

8. **The provisions of the bill would not be problematic to administer.** Imposing the Ewaste fee upon the purchase of a new or refurbished CED that meets the definition of a personal computer would not be problematic for the BOE to administer.

COST ESTIMATE

Some administrative costs may be incurred in revising returns and publications, and answering inquires from the public. A detailed estimate of these costs is pending.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

This bill proposes a fee collection of six dollars ($6) at the time of the retail sale of a personal computer.

The California Integrated Waste Management Board (CIWMB) published a baseline study titled 'Selected E-Waste Diversion in California' in November 2001. The report highlighted computer sales and projections from year 2001 to 2006. In 2006, computer sales were projected to be 7.82 million units. Revenues at a $6 per unit rate would amount to $46.9 million (7.82 million units x $6 per unit = $46.9).

Revenue Summary

This bill would result in an annual revenue increase of $46.9 million.

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