



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced:	02/20/07	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 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.

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

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Proposed Air Resources Board (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 30 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 rebate or surcharge shall exceed the amount of the sales tax on the purchase price of the vehicle.

Exempt Vehicles. Motor vehicles that meet both of the following conditions would be exempt from the surcharge:

- 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 by the ARB, 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 ARB certifying that the vehicle qualifies for the exemption. The ARB 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 ARB determines that the vehicle qualifies for an exemption from the surcharge, the ARB would reimburse the applicant for the value of the surcharge from the clean vehicle incentive account.

The ARB 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.

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, including, but not limited to, the following:

- Notify licensed dealers about relevant details of the program, including vehicles exempt from the program, and provide reasonable assistance to dealers in carrying out the program.
- Modification of 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.

Proposed Department of Motor Vehicles (DMV) duties

Any California resident that purchases a new motor vehicle out of state and returns to California with the vehicle within 90 days 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, 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 with the dealer at the time of purchase. The dealer would accept the rebate claims and submit them to the Board in a form, manner and time 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. 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 to leased vehicles if the vehicle is leased for one year or more. Under such circumstances, the surcharge amount could be amortized over the life of the lease.

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.
- Vehicles that are purchased by the state for use in official state business, except that vehicles purchased or leased for Members of the Legislature shall be subject to the surcharge.
- Motor vehicles purchased or leased by very low-income residents of the state, to be defined by the ARB in regulations adopted pursuant to this measure.

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, or surcharges reimbursed by the ARB (see **Comment 4**), this bill would require the Board to handle all rebates and refund claims, and collect all surcharges from dealers. However, the Board would not have the authority to determine if a vehicle is exempted from the surcharge. Exemptions would be handled by the ARB.

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 to pay for the following:

- Clean vehicle rebates.
- Refunds of emissions surcharges.
- Reimbursing the Board for its administrative costs related to the program.
- 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 nine hundred thousand dollars (\$900,000) from the Motor Vehicle Account in the State Transportation 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 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 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. **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

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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 ARB. 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 cars and light trucks could approach 2.2 million by 2009. Last year the author introduced AB 2791 which involved a similar incentive program to reduce greenhouse gases. AB 2791 involved a surcharge that would be collected by a dealer, and a discount that would be provided to the new motor vehicle purchaser and then reimbursed to the dealer by the state. In 2006, the Assembly Appropriations Committee estimated approximately \$80 million in annual revenues with \$77 million in payments (assuming 2.2 million new car sales, 40% of which are high emitters, with a median surcharge of \$1,000 on all new motor vehicle owners not otherwise exempt.) These amounts suggest that less than 10% of the eligible new cars and buyers would be affected, which appears to be low. This bill requires the dealer to collect the surcharge and remit it to the Board. Rebate claims would be collected by the dealer and the Board would issue rebates directly to the eligible owners. Would the Board be dealing with rebates to possibly 100,000 or more new motor vehicle owners? How many surcharge payers would be eligible for a refund? How will rebates and surcharges affect vehicle manufacturer's products and purchaser's decisions in the first model year? Having an accurate estimate of new motor vehicle owners affected by this bill would allow the Board to accurately estimate revenues and costs.

3. **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.
4. **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. As previously explained (see *Refund of Surcharges*), there are five instances in which a new motor vehicle owner may be refunded a surcharge. Rather than exempting 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. On the other hand, the ARB would handle 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.

Although there are only two exemptions specified for vehicles, those new motor vehicle owners seeking a refund of the surcharge may believe they are “exempt” and thus mistakenly file claims for refund with the ARB, or seek to appeal a Board decision to the ARB. It may be necessary to clearly delineate the functions of the Board and the ARB with respect to exemptions and reimbursements for the latter, and rebates and refunds for the former.

5. **This bill is not 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 anyone who is a California resident at the time of purchase *if the resident returns to this state and registers the vehicle in this state within 90 days 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. 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 by a California resident. However, the surcharge would only apply to a California resident (the use tax could apply to both a resident and nonresident) and could be imposed based upon different timing rules than the use tax. This provision may be renewed again, or changed, by the Legislature. Therefore, it should be noted that collection of the surcharge could be confusing to both the DMV and the vehicle owner, which could lead to collection errors.

6. **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:
- How and when would a surcharge on a vehicle that is leased for one year or more be reported or paid to the Board? Since the surcharge may be amortized

over the life of the lease, would those amounts be paid to the dealer and reported to the Board as amortized or collected and reported at the end of the lease?

- Would the rebate to be paid to a California resident that leases a new motor vehicle for a term of one year or more be paid at the execution of the lease, or the completion of the lease term?
- What happens when a new motor vehicle is 100% financed, the rebate is paid to the eligible owner, and the owner subsequently fails to complete the terms of repayment of the loan? What if the vehicle is immediately resold but prior to the rebate being paid?
- Are the rebates to be issued to qualified California residents for the purchase or lease of certain new motor vehicles to be treated as reportable income for federal and state income tax purposes? Would the Board be responsible for issuing the appropriate 1099's?
- Dealers would be required to clearly display the amount of the assigned rebate or surcharge for each affected new vehicle. But what amount would that be? No rebate or surcharge would exceed the amount of the sales tax on the purchase price of the vehicle. Therefore, the surcharge or rebate could be affected by the varying sales tax rates throughout the state and the purchase price of the vehicle.

7. **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.

8. **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.

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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.

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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