

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: October 11, 2013

From: Randy Ferris 
Chief Counsel

Subject: **Delegation of Non-discretionary Administrative Rate-Setting Adjustments to Executive Director – Board Meeting, October 29-31, 2013**
Chief Counsel Report – Item M1

Recommendation

Staff recommends that the Board delegate to the Executive Director the authority to determine certain mandated, non-discretionary tax and fee rate-setting adjustments.¹

Background

Government Code section 15604 permits the Board to appoint its “secretary” (also known as its “Executive Director”) and to prescribe his or her duties. It further provides that the Board may employ expert and clerical assistants as it deems necessary in the performance of its powers and duties. Revenue and Taxation Code section 7 underscores the nature of this delegation in directing that whenever a power is granted to or a duty imposed on the Board, it may be exercised or performed by any deputy or person authorized by the Board unless the law specifically restricts the exercise of that particular power or duty. The Revenue and Taxation Code’s direction as to delegation of powers and duties is further supported by Government Code section 18572, which refers to delegations involving state civil service employees.²

The attached “Table of Mandated, Non-discretionary Rate-setting Adjustments” identifies the tax and fee programs, the applicable rate-setting law, and the Department staff which actually develop and/or determine the legally-mandated, non-discretionary rate-setting adjustments for each respective program for which we are recommending a delegation. A determination of these rates is based purely on mechanical computations that are either provided to the Board by other state or

¹ Although it is not a rate-setting duty, staff believes certain exemption threshold adjustments required under the Sales and Use Tax Law deserve similar delegation consideration. For ease of expression, for purposes of staff’s recommendation, rate-setting duties are inclusive of mandated, non-discretionary exemption threshold adjustments.

² Government Code section 18572 provides as follows: “[w]henever a power is granted or a duty imposed upon an appointing power, the power may be exercised or the duty performed by a deputy of the appointing power or by a person authorized pursuant to law by him, unless it is expressly otherwise provided.”

local agencies or based on the California Consumer Price Index. Currently, there is no delegation of authority in place authorizing the Executive Director to perform these non-discretionary rate-setting functions. Moreover, we have found no legal authority specifically restricting the exercise of these particular powers or duties.

Therefore, in order to streamline Board processes and more efficiently facilitate administration of the Board's duties with respect to these non-discretionary rate-setting functions, we are seeking a delegation of authority to the Executive Director for the following tax and fee rate-setting duties mandated by law:

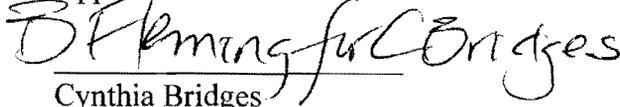
1. Private Railroad Car Tax Rate
2. Occupational Lead Poisoning Prevention Fee
3. Hazardous Substances Programs
 - Activity Fee
 - Disposal Fee
 - Environmental Fee
 - Facility Fee
 - Generator Fee
 - Permit-by-Rule or Conditional Authorization Fee
4. Membership Fees Nominal Amount Exemption
5. Coins and Bullion Bulk Sale Threshold Exemption
6. Emergency Telephone Users Surcharge
7. Timber Yield Tax Rate

Please see the attachment for the details related to each delegation request.

Recommended by:


Randy Ferris
Chief Counsel

Approved:


Cynthia Bridges
Executive Director

BOARD APPROVED except item #7, Timber Yield Tax

At the October 29, 2013, 2013 Board Meeting
Joann Richmond, Chief
Board Proceedings Division

RMF:DC:hp

Attachment: Table of Mandated, Non-discretionary Rate-setting Adjustments

cc: Ms. Cynthia Bridges MIC: 73
Ms. Amy Kelly MIC: 82
Ms. Deborah Cooke MIC: 82

Table of Mandated, Non-discretionary Rate-setting Adjustments

Tax/Fee Program	Who Owns the Program?	Rate-setting Law Section	Board Meeting When Rate Setting Usually Appears for Approval	When Does Rate Become Effective?	Who Develops/Determines the Rate and Prepares the documents for the Public Agenda Notice (PAN)?
Private Railroad Car Tax Rate	Property Taxes	Article XIII, § 19 of Cal. Constitution R&TC § 11401 & § 11403	July	July 1-June 30	Research and Statistics with information from county assessors
Occupational Lead Poisoning Prevention Fee	Special Taxes	Health & Safety Code (H&SC) § 105190	September/October	Jan. 1 –Dec. 31	Special Taxes based on changes to the California Consumer Price Index (CCPI) published by the Cal. Dept. of Industrial Relations
Hazardous Substances Programs <ul style="list-style-type: none"> • Activity Fee • Disposal Fee • Environmental Fee • Facility Fee • Generator Fee • Permit-by-Rule or Conditional Authorization Fee 	Special Taxes	All H&SC Sections <ul style="list-style-type: none"> • § 25205.7 • § 25174.2 • § 25205.6 • § 25205.4 • § 25205.5 • § 25205.14 	September/October	Jan. 1-Dec. 31	Special Taxes based on changes to the CCPI published by the Cal. Dept. of Industrial Relations

Table of Mandated, Non-discretionary Rate-setting Adjustments

Tax/Fee Program	Who Owns the Program?	Rate-setting Law Section	Board Meeting When Rate Setting Usually Appears for Approval	When Does Rate Become Effective?	Who Develops/Determines the Rate and Prepares the documents for the Public Agenda Notice (PAN)?
Membership Fees Nominal Amount Exemption	Sales and Use Tax	Regulation 1584	September, Every Five Years	January 1	Tax Policy Division based upon CCPI
Coins and Bullion Bulk Sale Threshold Exemption	Sales and Use Tax	R&TC § 6355	September	January 1	Tax Policy Division based upon CCPI
Emergency Telephone Users Surcharge	Special Taxes	R&TC § 41030 R&TC § 41031 R&TC § 41032	October/November	Jan 1-Dec. 31	Office of Emergency Services determines rate by October 1. Must be published in Board meeting minutes no later than Nov. 15 Special Taxes prepares PAN material.
Timber Yield Tax Rate	Property Taxes	R&TC § 38202	December	January 1	Research and Statistics. Property Taxes prepares PAN material.