



STATE BOARD OF EQUALIZATION

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STATE BOARD OF EQUALIZATION  
Notice of Stakeholders' Meeting

Honorable Jerome Horton, Chairman  
Honorable Michelle Steel, Vice Chair

Date	Time	Location
November 30, 2011	10:00 am – 12:00 pm	450 N Street, Room 122, Sacramento

State Board of Equalization (BOE) Property and Special Taxes Department invites you to attend a stakeholders meeting to discuss legislative proposals the Board may consider for next year's legislative session. These proposals have not yet been approved by the Board Members. The proposals may be presented for consideration at a future Board of Equalization Legislative Committee meeting. However, before the proposals are presented at the Legislative Committee meeting, we would like to provide stakeholders an opportunity to discuss the issues and present any suggested changes or comments.

If you would like to participate by teleconference, call (877) 581-9247 and use participant pass code 314904.

Contact

Mr. Phil Bishop at [phil.bishop@boe.ca.gov](mailto:phil.bishop@boe.ca.gov) or at (916) 327-6440.

If you are unable to attend the meeting but would like to provide input for discussion at the meeting, please feel free to email your comments to Mr. Bishop prior to November 28, 2011. Whether or not you are able to attend the stakeholders meeting, you may submit written comments by December 9, 2011.

If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting.

The meeting location is accessible to people with disabilities. Please contact Mr. Bishop if you require special assistance.

This notice is available on the BOE website at <http://www.boe.ca.gov/info/calendar.htm> and <http://www.boe.ca.gov>.

David J. Gau, Deputy Director  
Property and Special Taxes Department

Margaret S. Shedd  
Legislative and Research Division Chief

**Amend Revenue and Taxation Code Sections 7360, 8651, and 60050 of the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, and Diesel Fuel Tax Law, respectively, to make technical and administrative changes related to changes in the fuel tax rates when triggered by a reduction or elimination of the federal fuel taxes.**

**Source: Property and Special Taxes Department**

#### **DIESEL FUEL TAX LAW**

**Existing Law.** Under existing law, a state excise tax of eighteen cents (\$0.18) is imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058. If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate is increased by an amount so that the combined state and federal tax rates per gallon equal what it would have been in the absence of the federal reduction. However, the law does not specify when the state excise rate adjustment becomes effective and when the state excise rate adjustment would revert back to the original, unadjusted state rate.

**This Proposal.** This proposal would specify the effective date of the increase in the diesel fuel tax rate when triggered by a reduction or elimination of the federal diesel fuel tax. This proposal would also specify the circumstance and effective date for which the state tax rate would revert back to the unadjusted rate.

#### **MOTOR VEHICLE FUEL TAX LAW.**

**Existing Law.** Under existing law, a state excise tax of eighteen cents (\$0.18) is imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364. If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate is recalculated by an amount so that the total combined state and federal tax rate per gallon equals twenty-seven cents (\$0.27). However, the law does not specify when the state excise rate adjustment becomes effective and when and under what circumstances the state excise rate adjustment would expire and the state rate would revert to the original, unadjusted rate.

**This Proposal.** This proposal would make the calculation of the adjusted state rate consistent with the diesel fuel tax law method of recalculating the rate when triggered by a reduction of the federal gasoline tax rate by removing the twenty-seven cent (\$0.27) combined rate limit. Additionally, the operative date of the increase would be clarified. Finally, the proposal would specify the circumstance and effective date for which the state tax rate would revert back to the unadjusted rate.

#### **USE FUEL TAX LAW**

**Existing Law.** Under existing law, a state excise tax of eighteen cents (\$0.18) on each gallon is imposed for the use of fuel. In this context, fuel is defined as all

other combustible liquid, by whatever name the gas or liquid may be known or sold, of a kind used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, except fuel that is subject to the diesel fuel tax and motor vehicle fuel tax. If the federal diesel fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate is increased by an amount so that the combined state and federal tax rates per gallon equal thirty-three cents (\$0.33). However, the law does not specify when the state excise rate adjustment becomes effective and when the state excise rate adjustment would revert back to the unadjusted state rate.

**This Proposal.** This proposal would make the computation consistent with the diesel fuel tax law method of recalculating the use fuel tax rate when triggered by a reduction of the federal fuel tax rates, by removing the thirty-three cent (\$0.33) limit. Additionally, the operative date of the increase would be clarified. Finally, the proposal would specify the circumstance and effective date for which the state tax rate would revert back to the unadjusted rate.

*Section 7360 of the Revenue and Taxation Code is amended to read:*

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the rate of federal fuel tax imposed on motor vehicle fuel is reduced ~~below the rate of nine cents (\$0.09) per gallon~~ and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state tax rate under paragraph (1) and combined with the reduced federal fuel tax rate per gallon equals twenty-seven cents (\$0.27) what the combined state and federal fuel tax rate per gallon would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt from the increase in the state rate calculated under this section paragraph (2).

(4) The state tax rate calculated under paragraph (2) shall become effective:

(A) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(B) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(C) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(b) (1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of motor vehicle fuel, other than aviation gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to 17 3/10 cents (\$0.173) per gallon.

(2) For the 2011-12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

*Section 8651 of the Revenue and Taxation Code is amended to read:*

8651. (a) An excise tax of eighteen cents (\$0.18) is hereby imposed on each gallon of fuel for the use of such fuel as defined in section 8604.~~at the following rate per gallon:~~

~~(1) Fourteen cents (\$0.14) during 1990, on and after August 1.~~

~~(2) Fifteen cents (\$0.15) during 1991.~~

~~(3) Sixteen cents (\$0.16) during 1992.~~

~~(4) Seventeen cents (\$0.17) during 1993.~~

~~(5) Eighteen cents (\$0.18) on and after January 1, 1994.~~

(b) If the rate of federal fuel tax imposed on diesel and kerosene is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by this section, on and after the date of the reduction, shall be ~~increased~~ recalculated by an amount so that the combined state tax rate combined with and the reduced federal fuel tax rate per gallon equals what the combined state and federal fuel tax rate per gallon would have been in the absence of the federal reduction.~~the following:~~

~~(1) Twenty-nine cents (\$0.29) during 1990, on and after August 1.~~

~~(2) Thirty cents (\$0.30) during 1991.~~

~~(3) Thirty-one cents (\$0.31) during 1992.~~

~~(4) Thirty-two cents (\$0.32) during 1993.~~

~~(5) Thirty-three cents (\$0.33) on and after January 1, 1994.~~

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt from the increase in the state rate calculated under this section subdivision (b).

(d) The state tax rate calculated under subdivision (b) shall become effective:

(1) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(2) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(3) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

*Section 60050 of the Revenue and Taxation Code is amended to read:*

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) If the rate of federal fuel tax imposed on diesel fuel is reduced below the ~~rate of fifteen cents (\$0.15) per gallon~~ and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by paragraph (1), including any reduction or adjustment to the state tax rate pursuant to subdivision (b), ~~on and after the date of the reduction,~~ shall be ~~increased~~ recalculated by an amount so that the combined state tax rate under paragraph (1) and combined with the reduced federal fuel tax rate per gallon equals what it the combined state and federal fuel tax rate per gallon would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt from the increase in the state rate calculated under this section paragraph (2).

(4) The state tax rate calculated under paragraph (2) shall become effective:

(A) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the

date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(B) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(C) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(b)(1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to 13.6 cents (\$0.136) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012-13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate reduction in paragraph (1) in that manner as to result in a revenue loss attributable to paragraph (1) that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Sections 6051.8 and 6201.8 does not produce a net revenue gain in state taxes.

**Amend Public Resources Code Section 42885 to expand the definition of “retail seller” to include persons that take delivery of new tires from an unregistered out-of-state seller on behalf of a retail purchaser, or mount new tires upon which the California tire fee has not been paid to a retail seller, or directly to the state.**

**Source: Property and Special Taxes Department**

**Existing Law.** Under existing law, Public Resources Code Section 42885 requires every person who purchases a new tire to pay a California tire fee (fee) of one dollar and seventy-five cents (\$1.75) (or seventy-five cents (\$0.75), beginning January 1, 2015), per each new tire purchased. The retail seller is required to collect the fee from the retail purchaser at the time of the retail sale of the new tire.

**This Proposal.** This proposal would amend Public Resources Code Section 42885 to require any person that receives a new tire on behalf of a retail purchaser, or mounts a new tire for a retail purchaser, to collect the fee from the retail purchaser unless the purchaser can document that the fee has already been paid. The proposal would also add a definition for “retail seller” to mean a person who makes a retail sale of a new tire. The definition would also include:

- A manufacturer of new tires who sell those tires directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, a catalog, or the Internet, or any other similar electronic means, and
- A person who receives or mounts a new tire for a consumer.

Specifically excluded from the definition of “retail seller” would be a person that operates, in whole or in part, as a short-term rental company that purchases motor vehicles, construction equipment, or farm equipment on which new tires are mounted if those vehicles and/or equipment are subsequently rented to other persons for periods of four months or less. Such persons would be considered a retail purchaser and subject to the fee as provided under existing law.

And lastly, this proposal would add a definition for the term “retail sale” to have the same meaning as that term is defined under Sales and Use Tax Law Section 6007.

**Background.** Online purchases aren’t limited to the small and unsubstantial. Based on the number of online tire retailers, it appears online tire purchases are gaining popularity. These online retailers are providing tools on their websites to help make the online tire shopping experience as easy and efficient as possible. However, purchasing tires from an out-of-state retailer generally means that the fee isn’t being paid to the state because that retailer seller outside the state may not be engaged in business in California and required to collect the fee from the purchaser. And unless the purchaser is paying the fee directly to the state when purchasing tires from an out-of-state seller, the fee is likely going uncollected. These fees, in part, fund the tire recycling program and the mitigation or remediation of the air pollution caused by tires in the state.

Purchasing new tires online typically requires a few extra services to be performed, such as mounting, balancing, and tire stems. While it is possible for purchasers to mount and balance tires at home, they generally have tires shipped to, or will transport

the tires themselves to, a local tire store to have these services performed. While a tire store is required to collect the fee on new tires they sell, they are not currently required to collect the fee on new tires that are drop-shipped, or carried-in for tire mounting services, where the fee has not been paid by the retail purchaser to the retail seller of the new tires or directly to the state.

This proposal would address the issue of fee collection where new tires are sold by a seller not engaged in business in this state to a retail purchaser in this state, and the new tires are delivered to a local tire store in this state on behalf of the purchaser for redelivery and installation. It also addresses fee collection where new tires are sold by a seller not engaged in business in this state to a retail purchaser in this state, delivered to the retail purchaser, and carried by the purchaser to a local tire store for mounting.

This proposal would also clarify that rental companies renting or leasing motor vehicles, construction equipment, or farm equipment for a period of four months or less are considered a "retail purchaser" and required to pay the fee to the retail seller at the time of the sale, or directly to the state.

*Section 42885 of the Public Resources Code, as amended by Section 55 of Chapter 77 of the Statutes of 2006, is amended to read:*

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) A person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of one dollar and seventy-five cents (\$1.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 1 1/2 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(4) Any person in this state that receives from an out-of-state retail seller a new tire on behalf of a retail purchaser of a new tire or mounts a new tire for a retail purchaser of a new tire must collect the California tire fee from the retail purchaser and remit the California tire fee to the state, unless the retail purchaser can support by documentation that the California tire fee has already been paid to the retail seller of the new tire or to the person receiving the new tire or directly to the state.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (b) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) A person or business who knowingly, or with reckless disregard, makes a false statement or representation in a document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on a person who intentionally or negligently violates a permit, rule, regulation, standard, or requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section:

(1) "New tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. "New tire" does not include retreaded, reused, or recycled tires.

(2) (A) "Retail seller" means a person who makes a retail sale of a new tire. "Retail seller" includes a manufacturer of new tires who sells those tires directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, a catalog, or the Internet or any other similar electronic means. "Retail seller" also includes a person who receives or mounts a new tire for a consumer.

(B) "Retail seller" does not include a person that operates, in whole or in part, as a short term rental company when that person purchases motor vehicles, construction equipment, or farm equipment on which new tires are mounted and subsequently rents or leases the motor vehicles, construction equipment, or farm equipment to others for periods of four months or less. With respect to purchases of motor vehicles, construction equipment, and farm equipment that are subsequently rented or leased to others for four months or less, such person is a person on whom the fee is imposed, pursuant to paragraph (1) of subdivision (b), not a retail seller, and shall pay the fee to the state unless the fee is paid to the retail seller at the time of purchase.

(3) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(h) The California tire fee shall not be imposed on a tire sold with, or sold separately for use on, any of the following:

- (1) A self-propelled wheelchair.
- (2) A motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.
- (3) A vehicle that is similar to a motorized tricycle or motorized

quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

For the section that will become operative January 1, 2015:

*Section 42885 of the Public Resources Code, as added by Chapter 707 of the Statutes of 2004, is amended to read:*

42885. (a) For purposes of this section, "California tire fee" means the fee imposed pursuant to this section.

(b) (1) A person who purchases a new tire, as defined in subdivision (g), shall pay a California tire fee of seventy-five cents (\$0.75) per tire.

(2) The retail seller shall charge the retail purchaser the amount of the California tire fee as a charge that is separate from, and not included in, any other fee, charge, or other amount paid by the retail purchaser.

(3) The retail seller shall collect the California tire fee from the retail purchaser at the time of sale and may retain 3 percent of the fee as reimbursement for any costs associated with the collection of the fee. The retail seller shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(4) Any person in this state that receives from an out-of-state retail seller a new tire on behalf of a retail purchaser of a new tire or mounts a new tire for a retail purchaser of a new tire must collect the California tire fee from the retail purchaser and remit the California tire fee to the state, unless the retail purchaser can support by documentation that the California tire fee has already been paid to the retail seller of the new tires or to the person receiving the new tire or directly to the state.

(c) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and making refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(d) The California tire fee imposed pursuant to subdivision (b) shall be separately stated by the retail seller on the invoice given to the customer at the time of sale. Any other disposal or transaction fee charged by the retail seller related to the tire purchase shall be identified separately from the California tire fee.

(e) Any person or business who knowingly, or with reckless disregard, makes a false statement or representation in a document used to comply with this section is liable for a civil penalty for each violation or, for continuing violations, for each day that the violation continues. Liability under this section may be imposed in a civil action and shall not exceed twenty-five thousand dollars (\$25,000) for each violation.

(f) In addition to the civil penalty that may be imposed pursuant to subdivision (e), the board may impose an administrative penalty in an amount not to exceed five thousand dollars (\$5,000) for each violation of a separate provision or, for continuing violations, for each day that the violation continues, on a person who intentionally or negligently violates a permit, rule, regulation, standard, or

requirement issued or adopted pursuant to this chapter. The board shall adopt regulations that specify the amount of the administrative penalty and the procedure for imposing an administrative penalty pursuant to this subdivision.

(g) For purposes of this section:

(1) "New tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motorized equipment, or a new tire sold with a new or used motor vehicle, as defined in Section 42803.5, including the spare tire, construction equipment, or farm equipment. "New tire" does not include retreaded, reused, or recycled tires.

(2) (A) "Retail seller" means a person who makes a retail sale of a new tire. "Retail seller" includes a manufacturer of new tires who sells those tires directly to a consumer through any means, including, but not limited to, a transaction conducted through a sales outlet, a catalog, or the Internet or any other similar electronic means. "Retail seller" also includes a person who receives and mounts a new tire for a consumer.

(B) "Retail seller" does not include a person that operates, in whole or in part, as a short term rental company when that person purchases motor vehicles, construction equipment, or farm equipment on which new tires are mounted and subsequently rents or leases the motor vehicles, construction equipment, or farm equipment to others for periods of four months or less. With respect to purchases of motor vehicles, construction equipment, and farm equipment that are subsequently rented or leased to others for four months or less, such person is a person on whom the fee is imposed, pursuant to paragraph (1) of subdivision (b), not a retail seller, and shall pay the fee to the state unless the fee is paid to the retail seller at the time of purchase.

(3) "Retail sale" has the same meaning as defined under Section 6007 of the Revenue and Taxation Code.

(h) The California tire fee shall not be imposed on a tire sold with, or sold separately for use on, any of the following:

(1) A self-propelled wheelchair.

(2) A motorized tricycle or motorized quadricycle, as defined in Section 407 of the Vehicle Code.

(3) A vehicle that is similar to a motorized tricycle or motorized quadricycle and is designed to be operated by a person who, by reason of the person's physical disability, is otherwise unable to move about as a pedestrian.

(i) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

**Amend Public Resources Code Section 42464 to make permissive whether a retailer of covered electronic devices that elects to pay the Electronic Waste Recycling Fee on behalf of a consumer provides an express statement to that effect on the receipt given to the consumer.**

**Source: Property and Special Taxes Department**

**Existing Law.** Public Resources Code Section 42464 requires a consumer to pay a covered electronic waste recycling fee (eWaste fee) upon the purchase of a new or refurbished covered electronic device. A retailer is required to collect from the consumer the eWaste fee at the time of the retail sale of a covered electronic device. The retailer is required to separately state the eWaste fee on the receipt given to the customer at the time of the sale unless the retailer elects to pay the fee on behalf of the consumer, in which case the retailer is required to provide an express statement to that effect on the receipt given to the consumer at the time of the sale. If a retailer elects to pay the fee on behalf of the consumer, and not be required to include a separate statement on the invoice to that effect, the fee is a debt owned by the retailer to the state, and the consumer is not liable for the fee.

**This Proposal.** This proposal would amend Public Resources Code Section 42464 to allow a retailer of a covered electronic device that elects to pay the fee on behalf of the consumer to do so without including an express statement to that effect on the receipt given to the consumer. This proposal would also provide that, when a retailer of a covered electronic device does not provide an express statement to that effect, or otherwise does not separately state the fee, on the invoice, receipt, or contract given to the consumer, it will be presumed that the retailer has elected to pay the fee on behalf of the consumer. Whether or not an express statement that the fee has been paid on behalf of the consumer is included on the invoice, receipt, or contract given to the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable to the state for the fee.

**Background.** Currently, the retailer must collect the eWaste fee from the consumer and separately state the amount on the invoice, or if the retailer elects to pay the fee on behalf of the consumer, include an express statement to that effect on the receipt given to the consumer. In instances where the retailer elects to pay the fee on behalf of the consumer, they do not have a way to reimburse themselves for the cost of the fee liability to the State. This proposal would provide the retailer with an option to pay the fee on behalf of the consumer and not require a separate statement on the invoice.

*Section 42464 of the Public Resources Code is amended to read:*

42464. (a) On and after January 1, 2005, or as otherwise provided by Section 25214.10.1 of the Health and Safety Code, a consumer shall pay a covered electronic waste recycling fee upon the purchase of a new or refurbished covered electronic device, in the following amounts:

- (1) Six dollars (\$6) for each covered electronic device with a screen size of less than 15 inches measured diagonally.
- (2) Eight dollars (\$8) for each covered electronic device with a screen size greater than or equal to 15 inches but less than 35 inches measured diagonally.
- (3) Ten dollars (\$10) for each covered electronic device with a screen size greater than or equal to 35 inches measured diagonally.

(b) Except as provided in subdivision (d), a retailer shall collect from the consumer a covered electronic waste recycling fee at the time of the retail sale of a covered electronic device.

(c) (1) A retailer may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(2) If a retailer makes an election pursuant to paragraph (2) of subdivision (d), and the conditions of subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (d) are met, the vendor, in lieu of the retailer, may retain 3 percent of the covered electronic waste recycling fee as reimbursement for all costs associated with the collection of the fee and the vendor shall transmit the remainder of the fee to the state pursuant to Section 42464.4.

(d) (1) (A) If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the retailer ~~shall~~ may provide an express statement to that effect on the invoice, receipt, or contract given to the consumer at the time of sale. If a retailer elects to pay the covered electronic waste recycling fee on behalf of the consumer, the fee is a debt owed by the retailer to the state, and the consumer is not liable for the fee.

(B) If a retailer does not provide an express statement to that effect on the invoice, receipt, or contract given to the consumer, it shall be presumed that the retailer will pay the covered electronic waste recycling fee on behalf of the consumer. The fee is a debt owed by the retailer to the state and the consumer is not liable for the fee.

(2) A retailer may elect to pay the covered electronic waste recycling fee on behalf of the consumer by paying the covered electronic waste recycling fee to the retailer's vendor, but only if all of the following conditions are met:

(A) The vendor is registered with the State Board of Equalization to collect and remit the covered electronic waste recycling fee pursuant to this chapter.

(B) The vendor holds a valid seller's permit pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code.

(C) The retailer pays the covered electronic waste recycling fee to the vendor that is separately stated on the vendor's invoice to the retailer.

(D) The retailer provides an express statement on the invoice, contract, or other record documenting the sale that is given to the consumer, that the covered electronic waste recycling fee has been paid on behalf of the consumer.

(3) For the purpose of making the election in paragraph (2), if the conditions set forth in subparagraphs (A), (B), (C), and (D) of paragraph (2), are met, the covered electronic waste recycling fee is a debt owed by the vendor to the state, and the retailer is not liable for the fee.

(e) Except as provided in subdivision (d), ~~the~~ retailer shall separately state the covered electronic waste recycling fee on the receipt given to the consumer at the time of sale.

(f) On or before August 1, 2005, and, thereafter, no more frequently than annually, and no less frequently than biennially, the board, in collaboration with the department, shall review, at a public hearing, the covered electronic waste recycling fee and shall make any adjustments to the fee to ensure that there are sufficient revenues in the account to fund the covered electronic waste recycling program established pursuant to this chapter. Adjustments to the fee that are

made on or before August 1, shall apply to the calendar year beginning the following January 1. The board shall base an adjustment of the covered electronic waste recycling fee on both of the following factors:

(1) The sufficiency, and any surplus, of revenues in the account to fund the collection, consolidation, and recycling of covered electronic waste that is projected to be recycled in the state.

(2) The sufficiency of revenues in the account for the board and the department to administer, enforce, and promote the program established pursuant to this chapter, plus a prudent reserve not to exceed 5 percent of the amount in the account.

**Amend Revenue and Taxation Code Sections 30121 and 30131.1 of the Cigarette and Tobacco Products Tax Law to revise the definition of tobacco products to include all products and articles made of, or containing, tobacco that are intended for human consumption.**

**Source: Property and Special Taxes Department**

**Existing Law.** Under the existing Cigarette and Tobacco Products Tax Law, Sections 30121 and 30131.1 define “tobacco products” to include cigars, smoking tobacco, chewing tobacco, snuff, and other products containing at least 50 percent tobacco. In other words, tobacco products include all cigars, smoking tobacco, chewing tobacco, and snuff, regardless of the amount of tobacco they contain. In addition, the term “tobacco products” includes other articles or products that contain at least 50 percent tobacco.

Section 30123 (Proposition 99) imposes a tax on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the combined rate of tax imposed on cigarettes. In addition, Section 30131.2 (Proposition 10) imposes an additional tax on tobacco products based on the wholesale cost of the tobacco products distributed at a rate which is equivalent to the 50-cent per pack tax on cigarettes also imposed by Section 30131.2. The tobacco products tax rate is determined annually by the BOE and based on the March 1 wholesale cost of cigarettes. Currently, the surcharge rate for fiscal year 2011-12 is 31.73 percent. The Proposition 99 tobacco products surtax imposed under Section 30123 is deposited into the Cigarette and Tobacco Products Surtax Fund (including any revenues that result from an indirect increase in the other tobacco products tax triggered by a cigarette tax increase), while the Proposition 10 surtax imposed under Section 30131.2 is deposited into the California Children and Families Trust Fund.

**This Proposal.** This proposal would amend Sections 30121 and 30131.1 to remove from the definition of tobacco products the 50 percent threshold for other articles or products made of, or containing tobacco.

**Background.** All forms of cigars, smoking tobacco, chewing tobacco, and snuff are tobacco products and subject to the excise tax, regardless of the amount of tobacco the product contains. For any other article or product to fall within the definition of tobacco products, it must be made of, or contain, at least 50 percent tobacco. This 50 percent content threshold excludes certain products containing tobacco that are meant for human consumption, including, but not limited to, tobacco wraps (also known as blunts, rolling blunts, or blunt wraps), as well as new products entering the marketplace for test-marketing in early 2011 called “orbs” or “strips” and “dissolvables.” Since these products do not meet the definition of tobacco products based on the tobacco content, they do not fall within the definition of tobacco products and are not subject to the tobacco products tax.

A phone survey of 49 of the 50 state (Georgia did not respond) tax revenue agencies indicates that no other state has a 50 percent tobacco content threshold, or any other specified percent of tobacco content, that applies to determine if tobacco products are subject to their state’s excise tax.

This proposal is intended to include within the definition of tobacco products all products containing tobacco that are intended for human consumption, regardless of the tobacco content. Accordingly, all products containing tobacco, including new and emerging tobacco products that fall under the 50 percent tobacco content threshold, would be considered tobacco products for purposes of the Cigarette and Tobacco Products Tax Law and subject to the excise tax.

**In General.** The definition of tobacco products was added to the Cigarette and Tobacco Products Tax Law by Proposition 99 (Cigarette and Tobacco Products Surtax), which was approved by voters in the November 1988 General Election. The intent of the 50 percent threshold included in the tobacco products definition, as added by Proposition 99, is unclear since BOE staff did not draft the initiative. Proposition 99 also contained language stating that the provisions of the Cigarette and Tobacco Products Surtax may be amended only by vote of four-fifths of the membership of both houses of the Legislature, and all amendments must be consistent with its purposes.

*Section 30121 (b) of the Revenue and Taxation Code is amended to read:*

30121. (b) "Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of or containing ~~at least 50 percent, tobacco~~ that are intended for human consumption, but does not include cigarettes.

*Section 30131 (b) of the Revenue and Taxation Code is amended to read:*

30131.1. (b) "Tobacco products" includes, but is not limited to, all forms of cigars, smoking tobacco, chewing tobacco, snuff, and any other articles or products made of or containing ~~at least 50 percent, tobacco~~ that are intended for human consumption, but does not include cigarettes.