

[Assembly Bill 2153](#) (Garcia)

Date: 06/01/16

Program: Lead-Acid Battery Fee

Sponsor: Author

Health and Safety Code (HSC) Article 10.5 (commencing with Section 25215)

Effective: Upon enactment

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*This analysis only addresses the provisions that impact the Board of Equalization (BOE).*

**Summary:** Imposes a BOE-collected \$1 fee on manufacturers and consumers of lead-acid batteries.

**Purpose:** To provide long-term funding to Department of Toxic Substances Control (DTSC) for investigation and cleanup of lead-acid battery recycling facilities.

**Fiscal Impact Summary:** Potential annual revenue of \$39 million.

**Existing Law:** Under existing law, there is no specific excise tax or fee on the purchase of lead-acid batteries. Sales of such products are subject to the sales and use tax.

The BOE currently administers a California tire fee in partnership with the Department of Resources Recycling and Recovery (CalRecycle) and the Air Resources Board (ARB). Existing law<sup>1</sup> 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.

After deducting 1.5% of the total fees as reimbursement for costs associated with the fee collection, the law requires a retailer to remit the fees to the BOE for deposit in the California Tire Recycling Management Fund.

CalRecycle may contract<sup>2</sup> with an existing state agency, including the BOE, to carry out the California Tire Recycling Act. The section further provides that if CalRecycle contracts with the BOE to collect the California tire fee, the BOE may collect that fee pursuant to the Fee Collection Procedures Law.

**Proposed Law:** This bill adds HSC Article 10.5 (commencing with Section 25215) to impose a series of fees on lead-acid battery sales in California.

**Consumer fee.** A \$1 California battery fee is imposed on a consumer or business, as defined, for each purchase of a replacement lead-acid battery from a retail dealer. The retail dealer must separately state the California battery fee on the consumer's invoice at the time of sale. The fee is not included in any other fee, charge, or other amounts paid by the consumer. The retail dealer may also retain 1.5% of collected fees as cost reimbursement. The dealer is required to remit the remainder of the fees to the BOE on a quarterly schedule, with all remitted fees due and payable on or before the 15<sup>th</sup> day of the month following the calendar quarter. The BOE will deposit all moneys into the Lead-Acid Battery Cleanup Fund (Fund), which this bill would establish in the State Treasury.

**Manufacturer fee.** Manufacturers are required to remit a \$1 manufacturer battery fee for each lead-acid battery sold at retail to a person in California, or that is sold to a dealer, wholesaler, distributor, or other person for retail sale in California. The manufacturer is required to remit the fees on a quarterly schedule with all remitted fees due and payable on or before the 15<sup>th</sup> day of the month following the calendar quarter. The BOE will deposit all moneys into the Fund.

**Wholesaler elective fee.** Lead-acid battery wholesalers that ship or arrange for shipment of used lead-acid batteries to a lead-acid battery recycling facility may elect to be considered a manufacturer and remit the \$1 manufacturer fee. Elective wholesalers shall notify the lead-acid battery manufacturer

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<sup>1</sup> Public Resources Code (PRC) Section 42885.

<sup>2</sup> PRC Section 42882.

from which the wholesaler purchased the lead-acid batteries, the DTSC, and the BOE of its intent to be considered a manufacturer subject to the manufacturer battery fee. Wholesalers must provide at least 30-days' notice to the manufacturer, DTSC, and the BOE, before being considered a manufacturer. A manufacturer who has been notified by a wholesaler of the wholesaler's election, is not subject to the manufacturer battery fee for those lead-acid batteries sold to that wholesaler. An elective wholesaler is considered a manufacturer until 60 days after the wholesaler provides notice to the manufacturer, DTSC, and the BOE, that the wholesaler no longer intends to be a manufacturer. All remitted fees are due and payable on or before the 15<sup>th</sup> day of the month following the calendar quarter. The BOE will deposit all moneys into the Fund.

**Voluntary manufacturer fee.** An otherwise exempt manufacturer that has been notified by an elective wholesaler to be considered the manufacturer may voluntarily submit an additional \$1 manufacturer fee for each lead-acid battery that is otherwise covered by a wholesaler. A manufacturer that submits a voluntary manufacturer fee is prohibited from passing on the voluntarily remitted fees to a wholesaler. All remitted fees are due and payable on or before the 15<sup>th</sup> day of the month following the calendar quarter. The BOE then deposits all moneys into the Fund.

The bill requires BOE to develop appropriate procedures for providing notifications to the manufacturer, elective wholesaler, and DTSC, related to the wholesaler election to be considered a manufacturer and when the wholesaler no longer intends to be a manufacturer.

The BOE must establish appropriate procedures for paying the above described fees which will be due and payable quarterly on or before the 15<sup>th</sup> day of the month following each calendar quarter. If the BOE deems it necessary, returns and funds may be submitted on an annual basis.

BOE may audit the returns submitted for any of the above described fees, but only for those persons who remit moneys to the Fund.

DTSC and BOE costs related to collection, audits, and administration of funds associated with the establishment and operation of the Fund are to be reimbursed, but total funds reimbursed shall not exceed three percent (3%) of fiscal year Fund revenues.

**Definitions.** This bill defines several key terms, including, but not limited to, the following:

- "Business" means any "person," as that term is defined, that is not a natural person.
- "Lead-acid battery" means any battery weighing over five (5) kilograms that is primarily composed of both lead and sulfuric acid, whether sulfuric acid is in liquid, solid, or gel state, with a capacity of six (6) volts or more that is used for any of the following purposes:
  - As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.
  - As a motive power battery that is designed to provide the source power for propulsion or operation of a vehicle, including a boat.
  - As a stationary storage or standby battery that is designed to be used in systems where the battery acts as either electrical storage for electricity generation equipment or a source of emergency power, or otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.
  - As a source of auxiliary power to support the electrical systems in a vehicle.
- "Manufacturer" means either of the following:
  - The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state, unless subdivision (b) of Section 25215.35 applies to the lead-acid battery, in which case the wholesaler shall be deemed the manufacturer, except for purposes of Section 25215.65.
  - If there is no person, as described above, who is subject to the state's jurisdiction, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution.

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- “Person” means a natural person, trust, firm, joint stock company, corporation, company, partnership, limited liability company, or association.
- “Replacement lead-acid battery” means a new lead-acid battery that is sold at retail subsequent to the original sale or lease of the equipment or vehicle in which the lead-acid battery intended to be used. “Replacement lead-acid battery” does not include a spent, discarded, refurbished, or reused lead-acid battery.
- “Retail” sale, or a sale “at retail” means the sale of a new lead-acid battery to a person in California who is the ultimate user either at a California store or via the internet, telephone, mail order, or otherwise, including, but not limited to, the sale of a new lead-acid battery in connection with vehicle service or repair. “Retail” sale does not include sales to a wholesaler or dealer, to a person for incorporation into new equipment for subsequent resale, or replacement of a lead-acid battery pursuant to a vehicle manufacturer’s warranty or service contract described in Section 12800 of the Insurance Code.
- “Used lead-acid battery” means a lead-acid battery no longer fully capable of providing the power for which it was designed or that a consumer or other user no longer wants for any reason.
- “Wholesaler” means any person who purchases a lead-acid battery from a manufacturer for the purpose of selling the lead-acid battery to a dealer, high-volume customer, or to a person for incorporation into new equipment for resale.

This bill contains an urgency provision and is effective immediately.

### Commentary:

1. **A voluntary fee payment option is unique.** Although the BOE administers over 30 different tax and fee programs, none of those programs offers a voluntary fee payment option. The voluntary manufacturer fee is intended to provide certain benefits to the manufacturer, including offsetting any payment or reimbursement that the state or regional board may require for lead release cleanup activities from a lead-acid battery recycling facility.

The \$1 voluntary manufacturer fee is “per lead-acid battery that is **otherwise covered by a wholesaler.**” Does that mean that if the elective wholesaler fee is not paid, the voluntary manufacturer fee should not be paid, or that the voluntary fee should be considered the manufacturer’s fee? If a wholesaler is noncompliant, should a mechanism exist to set aside a wholesaler’s election and notify the manufacturer that it is required to make payments? What is the author’s intent regarding the “otherwise covered by a wholesaler” phrase?

Is the voluntary manufacturer subject to audit, collection, registration, return filing, penalties, and other fee administration activities to the same extent as other fee payers? What if the “otherwise exempt” manufacturer does not register with the BOE, or file returns, or submit to audit? It is not clear how the BOE would compel “otherwise exempt” manufacturers to comply with typical fee administration requirements.

2. **The intent of the elective wholesaler fee provisions is unclear.** Only a wholesaler “who ships or arranges for the shipment of used lead-acid batteries to a lead-acid battery recycling facility” may elect to be considered a manufacturer. BOE staff is uncertain whether all lead-acid battery wholesalers in this state ship or arrange for shipment of used lead-acid batteries to a lead-acid battery recycling facility. Does the author intend the elective wholesaler fee to apply only to those used lead-acid batteries that are actually shipped by a wholesaler to a lead-acid battery recycling facility? Should the DTSC be able to review, deny, or reverse a wholesaler election and hold the manufacturer liable for fee payment?
3. **Existing BOE administered fee programs are less complex.** The BOE currently administers similar fee programs, including the California tire fee program. In general, a fee is imposed on the purchaser of the tire, with the retailer required to collect and submit the fees to the BOE. The BOE

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registers the retailer, accepts returns and payments, and conducts audit and enforcement activities. The more centralized the program, and the fewer the registrants, exemptions, and fees, the more efficient and cost effective the program.

This bill proposes a mandatory consumer fee, a mandatory manufacturer fee, an elective wholesaler fee, and a voluntary manufacturer fee. The \$1 fee may be imposed as many as three times on the same product, at three different levels in the supply and distribution chain as follows: (1) the consumer fee is imposed on the purchaser and collected by the retail dealer for each replacement lead-acid battery; (2) the manufacturer fee is imposed on the manufacturer for each lead-acid battery it sells at retail to a person in California, or to a dealer, wholesaler, distributor, or other person for retail sale in this state; (3) the elective wholesaler fee is due from wholesalers that ship or arrange for shipment of used lead-acid batteries to a lead-acid battery recycling facility; and (4) the voluntary manufacturer fee is per lead-acid battery that is otherwise covered by a wholesaler. The proposed fee program may present the BOE with unique challenges in registration, audit, compliance, appeals, and other administrative functions.

4. **Should the DTSC handle all appeal and refund cases?** The BOE administers other fee programs with partner state agencies. Certain programs require the partner state agency to handle appeal and refund cases related to the fee imposition and areas that fall within the partner agency's expertise. BOE staff suggests that any appeal or refund case in which the fee payer claims a battery is not a lead-acid battery subject to the fee should be handled by DTSC.
5. **A core charge is a separate charge from this fee.** In general, this bill authorizes retail dealers to charge each person who purchases a replacement lead-acid battery and who does not simultaneously provide the retail dealer with a used lead-acid battery of the same type and size a refundable core charge deposit for each battery purchased. The retail dealer is required to separately state the refundable core charge on a receipt. The core charge may be refunded to that person if, within 45 days of the sale of the replacement battery, the person presents a similar used lead-acid battery. Retail dealers may retain the replacement lead-acid battery refundable core charge if it is not properly claimed within 45 days of purchase. The BOE is not responsible for core charge policy and administrative issues; the author may wish to clarify if DTSC has this responsibility.
6. **Administrative start-up cost funding is essential.** The proposed fees are imposed upon enactment. As a result, the BOE must begin to implement the bill in fiscal year 2016-17. However, the BOE would not expect the 2016-17 Budget to include any funding to implement this bill. Consequently, an adequate appropriation is necessary to cover administrative implementation costs. Typically, the BOE seeks administrative cost reimbursement from the account into which fee proceeds are deposited. However, this bill creates the Fund, which lacks money to reimburse the BOE prior to collection of the fee. Upfront BOE implementation cost reimbursement is essential. Thus, BOE staff suggests the bill authorize a loan from the General Fund (GF) or other eligible fund to the Fund to be repaid from fees collected.

Constitutional and statutory provisions prohibit the BOE from using special fund appropriations to support the administration of the proposed fee. Without an appropriation, it may be necessary for the BOE to divert GF dollars to implement the proposed fee program. A GF diversion typically results in a negative impact on GF-supported programs and related state and local government revenues.

7. **Delayed operative date necessary.** To effectively implement this bill, the BOE must notify and register fee payers, develop computer programs, hire and train key staff, create necessary forms and returns, and answer fee payer inquiries. These functions must take place before the fee becomes operative.

As an urgency bill, the lead-acid battery fees become effective immediately. Accordingly, **the bill provides the BOE no lead time** to effectively or successfully implement the proposed fee program. In addition, the bill provides no lead time for retailers/dealers, manufacturers, and wholesalers to

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prepare for and implement the fees and allows no time for the BOE to properly notify and register the affected retailers/dealers, manufacturers, and wholesalers. To provide the BOE with a necessary six month lead time, staff suggests an amendment to delay the operative date to the first day of the first calendar quarter commencing more than six months after the bill is enacted.

8. **Technical amendments.** Numerous technical amendments are needed, including, but not limited to: (1) referencing the Fee Collection Procedures Law, which contains BOE fee administration provisions; (2) clarifying fee imposition language; (3) adding electronic return filing requirements; (4) allowing BOE to retain moneys to reimburse ongoing costs and deposit remainder into the Fund; and (5) clarifying some definitions. BOE staff are available to assist the author's office with technical amendments.

**Costs:** The BOE would incur substantial costs to implement a new fee program. These costs include: feepayer identification, notification, and registration; regulation development; manual and publication revisions; fee return design; computer programming; return, payment, and wholesaler and manufacturer election and notification processing; audit and collection tasks; staff training; and public inquiry responses. A detailed cost estimate is pending.

### **Revenue Impact:**

**Background, Methodology, and Assumptions.** This bill requires a retail dealer to charge a consumer or business a \$1 fee for each replacement lead-acid battery purchased. This bill also requires a lead-acid battery manufacturer to pay \$1 for each lead-acid battery it sells at retail to a person in California, or that it sells to a dealer, wholesaler, distributor, or other person for retail sale in California. The bill further provides for an elective wholesaler fee and a corresponding voluntary manufacturer fee. As discussed previously, BOE staff believes the maximum lead-acid battery fees imposed, elected, paid, or voluntarily made is \$3 per lead-acid battery.

Industry data indicates an estimated 105.3 million replacement lead-acid batteries (automotive and other internal combustion) sold in the United States in 2015. Based on California's population, staff estimated lead-acid battery sales in the state to be 12.6 million units (12% × 105.3 million batteries). Taking into account industry growth, staff estimated sales to be 13 million batteries in 2017.

**Revenue Summary.** Based on the maximum fee of \$3 per battery (manufacturer fee, consumer fee, and voluntary fee), staff estimates annual revenues to be \$39 million (13 million batteries × \$3).

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.