



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE BILL ANALYSIS**

DRAFT

Date:	<b>02/21/14</b>	Bill No:	<b><a href="#">Assembly Bill 2666</a></b>
Tax Program:	<b>eWaste</b>	Author:	<b>Daly</b>
Sponsor:	<b>CalTax</b>	Sections:	<b>PRC 42463</b>
Related Bills:		Effective:	<b>01/01/15</b>

**BILL SUMMARY**

Among other things, this measure excludes the United States and its agencies and instrumentalities from paying the covered electronic waste recycling fee (eWaste fee).

**ANALYSIS**

**CURRENT LAW**

Under existing law, the Electronic Waste Recycling Act of 2003<sup>1</sup> (eWaste Act) requires a consumer to pay an eWaste fee upon the purchase of a new or refurbished covered electronic device (CED). The eWaste Act requires a retailer to collect from the consumer the eWaste fee at the time of the retail sale of a CED.

Public Resources Code (PRC) Section 42463 defines the following for the purposes of the eWaste Act:

- “Consumer” means a person who purchases a new or refurbished covered electronic device in a transaction that is a retail sale or in a transaction to which a use tax applies pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.
- “Person” means an individual, trust firm, joint stock company, business concern, and corporation, including, but not limited to, a government corporation, partnership, limited liability company, and association. Notwithstanding Section 40170, “person” also includes a city, county, city and county, district, commission, the state or a department, agency, or political subdivision thereof, an interstate body, and the United States and its agencies and instrumentalities to the extent permitted by law.

**PROPOSED LAW**

This bill amends PRC Section 42463(n) to specifically exclude from the definition of “person” the United States and its agencies and instrumentalities.

In addition, the bill makes a technical, housekeeping change by defining “CalRecycle” to mean the Department of Resources Recycling and Recovery.

The bill becomes effective January 1, 2015.

<sup>1</sup> Chapter 8.5 (commencing with Section 42460) of Part 3 of Division 30 of the Public Resources Code.

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.*

## BACKGROUND

The BOE administers several hazardous waste fees<sup>2</sup> for the Department of Toxic Substances Control (DTSC), pursuant to the Hazardous Substances Tax Law.<sup>3</sup>

Except for the environmental fee<sup>4</sup>, the federal government pays all these fees when they are applicable to its activities. Similarly, the federal government also pays the solid waste fee pursuant to PRC Section 48000 when it is applicable to its activities. BOE staff understands that the federal government pays these fees because Congress has waived federal sovereign immunity from such fees under the Resource Recovery and Conservation Act of 1976 (RCRA).<sup>5</sup>

RCRA subjects the federal government to State and local requirements respecting solid waste control and abatement or hazardous waste disposal and management. These requirements include (1) reasonable service charges, such as, but not limited to, fees or charges for permits and inspections, and (2) other nondiscriminatory charges assessed in connection with a State or local solid waste or hazardous waste regulatory program.

Among other things, the California Legislature enacted the eWaste Act to establish “a comprehensive and innovative system for the reuse, recycling, and proper and legal disposal of [CEDs].” The Act imposes an eWaste fee on every consumer “upon the purchase of a new or refurbished [CED].” The BOE deposits the eWaste fee revenue into the Electronic Waste and Recovery and Recycling Account, which may be spent solely for activities that relate to the reuse, recycling, and proper disposal of CEDs.

BOE staff considers the eWaste fee to be a nondiscriminatory charge assessed in connection with California’s hazardous waste regulatory program for the proper reuse, recycling, and disposal of CEDs. Accordingly, BOE takes the position that the eWaste fee is a fee the federal government should pay because Congress expressly waived sovereign immunity in this instance when it enacted RCRA.

The federal government, however, considers the eWaste fee to be a tax and therefore does not reimburse retailers for the eWaste fee. Although existing law requires the consumer (e.g. federal government) to pay the eWaste fee upon the purchase of a new or refurbished CED, the law also requires the retailer to collect and remit the fee to the BOE at the time of retail sale. Accordingly, the law still requires the retailer to remit the fee to the BOE, regardless of whether the retailer is able to collect the fee from the federal government.

## COMMENTS

1. **Sponsor and purpose.** This measure is sponsored by CalTax and intends to provide relief to retailers unable to collect the eWaste fee from the federal government.

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<sup>2</sup> The Health and Safety Code (HSC) imposes these hazardous waste fees: Sections 25174.1 (disposal fee), 25205.2 (facility fee), 25205.5 (generator fee), 25205.6 (environmental fee), and 25205.7 and 25205.14 (various application and permit fees).

<sup>3</sup> Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

<sup>4</sup> The court determined the environmental fee as a tax, and not a fee, pursuant to *Morning Star Co. v. Bd. of Equalization* (2011) 201 Cal.App.4th 737. Accordingly, unless Congress has expressly waived federal sovereign immunity with respect to this tax, and it has not, the federal government is exempt from paying the environmental fee.

<sup>5</sup> Specifically 42 U.S.C. Section 6961(a), as amended.

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2. **This bill relieves retailers of the requirement to collect the fee from the U.S. government.** This measure no longer imposes the eWaste fee upon the United States and its agencies and instrumentalities. Currently, such agencies are subject to the eWaste fee, which existing law requires a retailer to collect at the time of the retail sale of the CED.
3. **BOE has no administrative concerns.** The bill's provisions are not problematic for the BOE to implement. However, retailers that make sales to the United States and its agencies and instrumentalities may require computer programming changes and staff training.

### **COST ESTIMATE**

BOE administrative costs related to this bill include publication revisions and taxpayer outreach. These administrative costs are insignificant (under \$10,000).

### **REVENUE ESTIMATE**

BOE staff lacks any detailed information that relates to CED sales to the federal government in this state. Therefore, BOE staff relied on various outside data sources and assumptions to arrive at this estimate, as follows:

- In 2013, there were 246,000 federal government employees in California, according to the Employment Development Department.
- 80% of the federal employees use CEDs purchased by federal agencies,
- Each CED has a 5 year life span, and
- The average CED size is greater than or equal to 15 inches, but less than 35 inches, which results in a \$4 eWaste fee.

Based on the information above, BOE staff estimates a \$157,000 annual revenue loss (246,000 California federal employees x 80% CED use x 20% annual CED replacement x \$4 eWaste fee = \$157,000).

**Qualifying Remarks.** This revenue estimate is highly uncertain because of lack of data; actual revenue loss could be higher or lower.

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

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