



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

DRAFT

Date Amended:	<b>03/24/08</b>	Bill No:	<b><u><a href="#">AB 2638</a></u></b>
Tax:	<b>Air Quality and Environmental Health Fee</b>	Author:	<b>Coto</b>
Related Bills:			

***This analysis only addresses the provisions that impact the Board.***

**BILL SUMMARY**

This bill would require the Board of Equalization (Board) to collect a fee on the sale or lease of new passenger motor vehicles, as specified, related to their weight rating, retail price, and fuel economy.

**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. 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 Chapter 11, commencing with Section 44299.95, to Part 5 of Division 26 of the Health and Safety Code to require, beginning on and after July 1, 2009, the State Air Resources Board (ARB) to impose a fee in an amount established by that agency. The fee would be determined after the ARB conducts a study to determine the amount of air pollution created by the affected vehicles and the cost of mitigation for that air pollution. The ARB would adopt a system of assessing the vehicles for their fair share of air pollution and set a fee at a rate sufficient to fund that mitigation.

The unspecified fee would be imposed on the sale, or lease of one year or longer, of a new passenger motor vehicle that meets all of the following requirements:

- Has a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and
- Has a manufacturer's suggested retail price (MSRP) of more than eighty thousand dollars (\$80,000), and
- Has a federal fuel economy rating of 15 miles per gallon (MPG) or less.

The Board would be required to collect the fee from the motor vehicle dealer pursuant to the Fee Collection Procedures Law and deposit all funds into the California Air Quality

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and Environmental Health Fund, which this bill creates. Moneys in the Fund would be available to the Board to cover administrative costs in collection of the fee.

This bill would become effective January 1, 2009, but operative July 1, 2009.

### BACKGROUND

Last year the Legislature considered AB 493 (Ruskin) which would have established a clean vehicle incentive program. The bill would have required the ARB to implement a program that would have provided a schedule of rebates and surcharges for purchases of new motor vehicles based on the vehicle's emissions of greenhouse gases and other criteria. Additionally, the Board would have been authorized to collect the surcharge from a dealer and process rebate and refund claims as specified. AB 493 died in the Assembly on the third reading file.

### COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the author and is intended to provide funding for the abatement of vehicle air pollution.
2. **What kind of vehicles would be subject to the fee?** This bill provides that the new passenger motor vehicles subject to the fee would meet all three specified criteria regarding GVWR, MSRP, and federal fuel economy rating. In general, all new automobiles sold in the United States are required to display a window sticker, also called a Monroney sticker, which must include, among other things, the MSRP and the federal city and highway MPG. The GVWR is not required to be displayed.

Those vehicles with a GVWR of more than 8,500 pounds are exempt from fuel economy regulations. Therefore, some large pickup trucks, vans, and SUVs do not have federal fuel economy information on the window sticker. In addition, many manufacturers of sedans and two-seater cars provide the unladen, or curb weight, of the vehicles in their specifications, not the GVWR. The fuel economy ratings, as determined by the Environmental Protection Agency (EPA), lists the city and highway MPG separately, but there is no official combined MPG, or combined federal fuel economy rating, for the vehicles.

Although this bill requires the Board to collect the fee from motor vehicle dealers, it does not provide the Board or the motor vehicle dealers with sufficient or applicable information about the vehicles on which the fee is imposed. Moreover, although the operative date is July 1, 2009, there is no indication as to what model year of new passenger motor vehicles the fee would apply.

If the author intends to assess an environmental fee modeled on the federal "Gas Guzzler" tax, a federal tax on the sales of cars with very poor fuel efficiency, then the U.S. Department of Energy and EPA maintain a website – [www.fueleconomy.gov](http://www.fueleconomy.gov) – that lists those vehicles subject to that tax.

3. **When would the fee go into effect?** This is a non-urgency bill and if passed would go into effect January 1, 2009, with an operative date of July 1, 2009. The ARB would have the responsibility of conducting a study to determine the amount of air pollution for the affected vehicles, the costs for mitigating that air pollution, and then determining the fee, relative to the vehicle's "fair share of air pollution," at an amount sufficient to fund the mitigation costs. The bill language is rather ambiguous, but it appears the fee structure would be set by the ARB using emergency regulations.

The use of emergency regulations may assist the ARB in passing the regulations, but it may not assist the Board in preparing the necessary administrative functions to collect the fee. Some of these functions include notification to affected motor vehicle dealerships and consumers, changes in computer programming, returns, forms, website information, and preparation of regulations. In order to provide sufficient consumer notification and to address administrative start-up lead time, it may be necessary to change the operative date to January 1, 2010

4. **This bill does not specify a fee amount.** This bill provides that the ARB would “adopt a system of assessing the vehicles for their fair share of air pollution” at a fee amount “sufficient to fund that mitigation.” This provision is rather vague as to how the fee amount would be established. If the intent is to have the ARB adopt emergency regulations to establish the fee amounts, specify the computation of the fee, indicate the frequency of rate changes, and specify notification requirements to the Board and other affected parties, then this language should be made more specific.
5. **This bill needs to specify which agency will carry out certain administrative provisions.** It is suggested that this bill be amended to authorize the ARB to handle the petitions for redetermination and approve claims for refund based upon the grounds that the ARB improperly or erroneously established the fee to be assessed or identifying the wrong vehicle to which this fee applies. It would be difficult for Board staff to resolve feepayer protests and claims based on actions of another state agency, and in doing so could result in a significant number of additional appeals conferences and Board hearings. Board staff is available to work with the author’s office in drafting appropriate amendments.
6. **Other technical concerns.** In order to avoid ambiguity with the assessment and administration of the proposed fee, the author may wish to amend the bill to address the following concerns:
  - The fee is currently imposed on the sale or lease of a vehicle that meets the specified requirements. The Board is authorized to collect the fee from the motor vehicle dealer. Is it the author’s intent that the dealer pay the fee and seek reimbursement from the purchaser of the vehicle? Or, should the person who becomes a new passenger motor vehicle owner pay the fee to the dealer?
  - In the event a new passenger motor vehicle owner is required to pay the fee to the dealer, then the dealer should be required to collect the fee and that fee would then become a debt owed to the state by the dealer.
  - If the dealer is directly responsible for the fee, how does that relate to the use of the vehicle by the purchaser? If the person who becomes a new passenger motor vehicle owner pays the fee to the dealer, are there any exemptions (e.g. emergency vehicles or paratransit vehicles)?
  - Does the new passenger motor vehicle need to be registered or used in California? What if a California resident purchases a vehicle out-of-state for use in this state that otherwise meets the vehicle qualifications to be assessed the fee? Is that vehicle exempt from the fee?

- A definition should be provided for a “new passenger motor vehicle.” Additional definitions should be provided to either separately define, or refer to existing state or federal statutes that define GVWR, MSRP, and “federal fuel economy rating.”

7. **This bill could increase state and local sales tax revenues.** In order to be reimbursed for the fee, motor vehicle dealers may increase the price of the vehicles subject to the fee, which would be reflected in the retail sales price of the new passenger motor vehicle sold or leased to the purchaser.

Sales tax is due based on the gross receipts or sales price of tangible personal property in this state. Since the proposed fee would not be specifically excluded from gross receipts or sales price, it would be included in the amount on which sales tax is computed.

8. **Legal challenges of any new fee program might be made on the grounds that the fee 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.

**COST ESTIMATE**

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would include registering automobile dealerships, developing related computer programs, mailing and processing returns and payments, carrying out compliance and audit efforts to ensure proper reporting, 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 fee, or the specific new passenger motor vehicles to which the fee would apply. Accordingly, a revenue estimate can not be prepared.

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