

**Amend Section 25205.6 of the Health and Safety Code to exempt nonprofit organizations, unless otherwise specified, from the environmental fee.**

**Source: Honorable Dean Andal**

Under existing law, Section 25205.6 of the Health and Safety Code requires corporations that use, generate, store, or conduct activities in this state related to hazardous materials to pay an annual fee to the State Board of Equalization (Board). The amount of the fee varies based on the number of employees employed by a corporation in the state during the previous calendar year. The 2001 fee rates for a corporation with 50 to 74 employees is \$217 per year, while a corporation with 1,000 or more employees pays \$10,331 per year. Corporations with less than 50 employees are not subject to the fee.

The annual fee is paid to the Board and deposited into the state's Toxic Substances Control Account.

Each year, the DTSC provides the Board a list of federal Standard Industrial Classification (SIC) codes for the industry groups that are engaged in activities subject to the fee. Current law specifically excludes from the fee nonprofit residential care facilities assigned SIC code 8361. In addition, the DTSC has identified private households assigned SIC code 88 as a SIC code group not primarily engaged in a business activity that uses, generates or stores hazardous materials. The following industry groups have also been identified as exempt from the fee based upon the Revenue and Taxation Code or other statutory provisions:

- Insurance companies that pay tax on gross premiums in lieu of all other California taxes and license
- Banks that pay a tax on net income in lieu of other California taxes and licenses
- US Government corporations

In order to impose liability for the fee, it is only necessary to show that the corporation is primarily engaged in activities that fall within a SIC code for an industry which uses, generates, stores, or conducts activities related to hazardous materials as determined by the DTSC. It is not necessary to show that any particular corporation in fact uses, generates, stores, or conducts activities related to hazardous materials. Nor does the fee depend on the amount of "hazardous waste" (which term has a different definition than "hazardous material" in the Health and Safety Code) generated, stored or disposed. Accordingly, it is not the type or level of activity of a corporation per se that triggers the imposition of the fee, but rather the fee applies generally to all corporations in certain SIC codes.

In addition to the fee which is based on SIC code and number of employees, the Board administers four other hazardous waste fee programs in cooperation with the DTSC which relate directly to the amount of **hazardous waste** disposed of, generated or stored by a person.

**Background.** In 1989, Senate Bill 475 (Chapter 269, Statutes of 1989) added and Assembly Bill 41 (Chapter 1032, Statutes of 1989) amended Section 25205.6 of the Health and Safety Code to require certain corporations involved in activities related to hazardous materials to pay an annual fee based on the number of employees employed in this state. The purpose of the fee was to broaden the revenue base that supports the Hazardous Waste Control Account. In addition, it was believed that corporations that handle hazardous materials should contribute support to the programs that regulate hazardous materials.

In 1994, Assembly Bill 3540 (Chapter 619, Statutes of 1994, Andal) amended Section 25205.6 to add an exemption for nonprofit residential care facilities which are identified by SIC code 8361. According to the Board's Legislative Bill Analysis of AB 3540, the author's office stated that most nonprofit corporations exempted from the environmental fee by AB 3540 did not generate significant amounts of hazardous waste and the fee imposed was a hardship for many of these corporations.

**Comments.** This proposal would expand the current exemption from payment of the environmental fee for nonprofit residential care facilities to include all nonprofit corporations exempt from taxation pursuant to Section 23701 of the Revenue and Taxation Code, unless specifically excluded. Section 23701 of the Revenue and Taxation Code provides that specified organizations organized and operated for nonprofit purposes are exempt from state income taxes upon application for and issuance by the Franchise Tax Board of a determination exempting the organization from tax.

Nonprofit corporations to which the fee would continue to apply include those corporations identified by SIC Major Group 80 and corporations exempt from taxation pursuant to Section 23701g of the Revenue and Taxation Code.

Standard Industrial Classification Major Group 80 includes establishments primarily engaged in furnishing medical, surgical, and other health services to persons. Section 23701g includes social organizations organized for pleasure, recreation, and other non-profitable purposes, substantially all of the activities of which are for such purposes and no part of the net earnings of which inures to the benefit of any private shareholder. These two types of organizations are not included within the proposed exemption because it would give an unfair competitive advantage to a nonprofit corporation that might be in competition with a for-profit corporation in the same field.

*Section 25205.6 of the Health and Safety Code is amended to read:*

25205.6. (a) On or before November 1 of each year, the department shall provide the board with a schedule of codes, that consists of the types of corporations that use, generate, store, or conduct activities in this state related to hazardous materials, as defined in ~~subdivision (k)~~ of Section 25501, including, but not limited to, hazardous waste. The schedule shall consist of identification codes from one of the following classification systems, as deemed suitable by the department:

(1) The Standard Industrial Classification (SIC) system established by the United States Department of Commerce.

(2) The North American Industry Classification System (NAICS) adopted by the United States Census Bureau.

(b) Each corporation of a type identified in the schedule adopted pursuant to subdivision (a) shall pay an annual fee, which shall be set at two hundred dollars (\$200) for those corporations with 50 or more employees, but less than 75 employees, three hundred fifty dollars (\$350) for those corporations with 75 or more employees, but less than 100 employees, seven hundred dollars (\$700) for those corporations with 100 or more employees, but less than 250 employees, one thousand five hundred dollars (\$1,500) for those corporations with 250 or more employees, but less than 500 employees, two thousand eight hundred dollars (\$2,800) for those corporations with 500 or more employees, but less than 1,000 employees, and nine thousand five hundred dollars (\$9,500) for those corporations with 1,000 or more employees.

(c) The fee imposed pursuant to this section shall be paid by each corporation that is identified in the schedule adopted pursuant to subdivision (a) in accordance with Part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code and shall be deposited in the Toxic Substances Control Account. The revenues shall be available, upon appropriation by the Legislature, for the purposes specified in subdivision (b) of Section 25173.6.

(d) For purposes of this section, the number of employees employed by a corporation is the number of persons employed in this state for more than 500 hours during the calendar year preceding the calendar year in which the fee is due.

(e) The fee rates specified in subdivision (b) are the rates for the 1998 calendar year. Beginning with the 1999 calendar year, and for each calendar year thereafter, the board shall adjust the rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Consumer Price Index issued by the Department of Industrial Relations or by a successor agency.

(f) Pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)), the state is obligated, as

authorized by paragraph (2) of subdivision (a) of Section 25351, to pay specified costs of removal and remedial actions carried out pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9601, et seq.). The fee rates specified in subdivision (b) are intended to provide sufficient revenues to fund the purposes of subdivision (b) of Section 25173.6, including appropriations in any given fiscal year of three million three hundred thousand dollars (\$3,300,000) to fund the state's obligation pursuant to paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)). If the department determines that the state's obligation under paragraph (3) of subsection (c) of Section 104 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Sec. 9404(c)(3)) will exceed three million three hundred thousand dollars (\$3,300,000) in any fiscal year, the department shall report that determination to the Legislature in the Governor's Budget. If, as part of the Budget Act deliberations, the Legislature concurs with the department's determination, the Legislature shall specify in the annual Budget Act those pro rata changes to the fee rates specified in subdivision (b) that will increase revenues in the next calendar year as necessary to fund the state's increased obligations. However, the Legislature shall not specify fee rates in the annual Budget Act that increase revenues in an amount greater than eight million two hundred thousand dollars (\$8,200,000) above the revenues provided by the fee rates specified in subdivision (b). Any changes in the fee rates approved by the Legislature in the annual Budget Act pursuant to this subdivision shall have effect only on the fee payment that is due and payable by the end of February in the fiscal year for which that annual Budget Act is enacted.

~~—(g) This section does not apply to nonprofit corporations primarily engaged in the provision of residential social and personal care for children, the aged, and special categories of persons with some limits on their ability for self care, as described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.~~

(g) This section does not apply to nonprofit corporations that are exempt from taxation pursuant to Section 23701 of the Revenue and Taxation Code; however, this section shall continue to apply to corporations exempt from taxation pursuant to Section 23701(g) and to corporations primarily engaged in activities as described in SIC Major Group 80 published by the United States Office of Management and Budget, 1987 edition or equivalent North American Industry Classification System Code.