



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	07/12/05	Bill No:	AB 1232
Tax:	Environmental Fee	Author:	J. Horton
Related Bills:			

BILL SUMMARY

This bill would expand the imposition of the environmental fee from corporations to also include limited liability companies, limited partnerships, general partnerships, and sole proprietorships.

Summary of Amendments

Since the previous analysis, this bill was amended to revise the definition of “organization,” and to key the bill as a two-thirds vote. The voting requirement was revised since this bill would impose the environmental fee (which was held to be a tax by the Third Appellate District Court of Appeal) upon organizations that are not subject to the fee under existing law.

ANALYSIS

Current Law

Under existing law, Section 25205.6 of the Health and Safety Code requires the Department of Toxic Substances Control (DTSC) to provide to the Board of Equalization (Board) a schedule of codes that consist of the types of corporations in industry groups that use, generate, store, or conduct activities in this state related to hazardous materials. Each corporation of a type identified in the schedule adopted by the DTSC is required to pay an annual fee to the Board.

The environmental fee is adjusted annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the California Consumer Price Index (CCPI). The fee rates for the 2005 calendar year are as follows:

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Number of Employees	Annual Fee Rate
1 – 49	\$0
50 – 74	\$243
75 – 99	\$429
100 – 249	\$856
250 – 499	\$1,834
500 – 999	\$3,425
1,000 or more	\$11,625

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 are not subject to the annual fee. Such nonprofit corporations are described in SIC Code 8361 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

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

Proposed Law

This bill would amend Section 25205.6 to require the DTSC to provide the Board with a schedule of codes that consists of the types of organizations that use, generate, store, or conduct activities in this state related to hazardous materials. Each organization of a type identified in the schedule adopted by the DTSC would pay an annual fee if that organization employs 50 or more employees in this state for more than 500 hours during the calendar year.

An “organization” would include a corporation, limited liability company, limited partnership, general partnership, or sole proprietorship.

This bill would also require the DTSC, on or before February 1 of each year, to report to the Governor and the Legislature on the prior fiscal year’s expenditure of funds within the Toxic Substances Control Account, as specified.

The bill would become effective January 1, 2006.

Background

In 1989, Senate Bill 475 (Ch. 269, Stats. 1989) added and Assembly Bill 41 (Ch. 1032, Stats. 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.

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Senate Bill 1469 (Ch. 852, Stats. 1992) amended 25205.6 to revise the categories for reporting the number of employees within corporations which use, generate, store, or conduct activities in this state related to hazardous materials for computing the environmental fee.

In enacting Senate Bill 1222 (Ch. 638, Stats. 1995), the Legislature required the Secretary for Environmental Protection to convene a task force to review the existing hazardous waste fee structure and provide recommendations to the Legislature no later than January 1, 1997. The task force was directed to propose a new fee system for providing financial support to California's hazardous waste and hazardous substance regulatory programs which would 1) provide protection for public health and safety and the environment; 2) provide adequate funding to ensure remediation of contaminated sites; 3) not impose a disproportionate burden on any sector of California's economy; 4) provide a level of funding that enables the DTSC to appropriately implement programs authorized by the Legislature in a manner consistent with the objectives of those programs; and 5) provide a means of funding consistent with the objectives of the DTSC's programs.

With respect to the environmental fee, the task force recommended that the fee be expanded to all business with 50 or more employees, adjusting the rate categories to make per employee costs more equitable, and that a new rate category be established for businesses with 1,000 or more employees.

Senate Bill 660 (Ch. 870, Stats. 1997), the Environmental Cleanup and Reform Act of 1997, enacted many of the recommendations of the Fee Reform Task Force by amending various sections of the Health and Safety Code. That bill amended Section 20205.6 to flatten the environmental fee rate structure to make the fee more equitable by equalizing the average rate per employee paid by corporations in each range. Additionally, that bill established a new rate category for corporations with 1,000 or more employees, decreased the Generator Fee, repealed the Generator Surcharge and various hazardous waste fees, and changed several fees-for-services. For the most part, the revenue losses from the repealed fees, the changed fees-for-services, and the decreased Generator Fee were estimated to offset the resulting increase in the Environmental Fee.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the DTSC and is intended to address the erosion in the annual environmental fee base resulting from fewer businesses being classified as "corporations" and some corporations reclassifying themselves as limited liability companies and other classifications.
2. **Summary of amendments.** The **July 12, 2005**, version of the bill revised the definition of "organization," and keyed the bill as a two-thirds vote.

The introduced version of the bill did not impact the Board. As introduced, the bill simply expanded, from corporations to all organizations, the annual information the DTSC would provide to the Board to enable the Board to identify entities that are subject to the environmental fee imposed on corporations that handle hazardous

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materials. The **May 27, 2005, amendments** expand, from corporations to all organizations, the imposition of the environmental fee.

3. **This bill would require that the Board's contract with the DTSC be renegotiated.** This bill proposes to expand the imposition of the environmental fee from corporations to organizations, commencing on January 1, 2006, which would occur during the middle of the Board's current contract with the DTSC to administer the fee for fiscal year 2005-06. In order to begin to rewrite computer programs, notify feepayers, revise publications, and answer inquiries from the public, the Board would need to renegotiate its contract with the DTSC to cover the Board's start-up costs that would not already be identified in the 2005-06 contract.
4. **"Organizations" defined.** This bill would define an "organization" to include a corporation, limited liability company, limited partnership, general partnership, or sole proprietorship. Staff notes that some organizations, such as trusts and joint ventures, would not be subject to the environmental fee as the definition is presently worded. If the author intends to impose the fee upon "trusts", "joint ventures" or "any other commercial entity," it is suggested that the definition of "organization" be amended to specifically include such entities. Board staff is available to work with the author's office in developing language that reflects the author's intent.
5. **Organizations would be subject to the annual fee beginning with the 2006 calendar year.** The environmental fee is an annual fee that is due and payable to the Board on the last day of the second month following the end of the calendar year. Therefore, if this bill expands the fee payer base for the environmental fee effective January 1, 2006, the first return and payment of the fee from such fee payers would be due to the Board on or before February 28, 2007.
6. **The environmental fee was held to be a tax.** In February 2004, the Third Appellate District Court of Appeal upheld the validity of the environmental fee in *Morning Star Co. v. State Board of Equalization* (2004), Cal.App.4th. The court also held that the environmental "fee" is a tax, and not a regulatory fee, because its main purpose is to raise revenue to pay for a wide range of governmental services and programs relating to hazardous waste control.
7. **This bill would become effective January 1, 2006.** This measure was re-keyed as a 2/3rds vote since it would impose the environmental fee (tax) upon organizations that are not subject to the tax under existing law. The bill is still keyed as a non-tax levy. The provisions of the bill would therefore become effective January 1, 2006, which was confirmed by the author's office with the Legislative Counsel's office.

COST ESTIMATE

The Board would incur non-absorbable costs to identify and register additional fee payers, develop computer programs, revising publications, mailing and processing additional returns and payments, carrying out compliance and audit efforts to ensure proper reporting, developing regulations, training staff, and answering inquiries from the public. These costs are estimated to be \$374,000 for fiscal year 2005-06, \$308,000 for fiscal year 2006-07, and \$367,000 for fiscal year 2007-08, and each fiscal year thereafter.

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REVENUE ESTIMATE

Background, Methodology, and Assumptions

Currently, corporations doing business in the state including nonprofit corporations, “S” corporations, and out of state corporations must register with the Board and pay an annual environmental fee. The annual fee is based on the number of employees who each worked more than 500 hours in California during the year. For 2005, the fee rate is structured as follows: (a) 50-74 employees = \$243 (b) 75-99 employees = \$429 (c) 100-249 employees = \$856 (d) 250-499 employees = \$1,834 (e) 500-999 employees = \$3,425 (f) 1,000 or more = \$11,625.

The Board’s Annual Report indicates that as of June 30, 2004, 42,487 corporations were registered and subject to the environmental fee. However, the Board’s Environmental Fees Division indicates that, in 2004, approximately 25,477 corporations (60%) paid the fee. Also, the 2003 data indicated there were approximately 2,547 corporation delinquencies and 897 billings. Assuming that there would be a similar scenario for 2004, we accordingly applied the 897 billings to the 2004 data, and this addition is reflected in the number of corporations in the table below (26,374). Over 17,000 corporations (42,487 corporations – 25,477 corporations = 17,010) did not pay the fee because, although they may have employed 50 or more people, on average their seasonal and part-time employees worked less than the 500 hour threshold. In fiscal year 2003-04 the environmental fee generated was \$30.4 million in revenue.

The Employment Development Department provided the DTSC with 2004 data on businesses that are subject to the fee by this bill. The data includes corporations, sole proprietors, general partnerships, limited partnerships, and limited liability companies, which would become subject to the fee by this bill. The data was compiled based on the different types of business and the number of employees. The DTSC confirmed that the data excluded government entities. The following table depicts a breakdown of currently registered corporations and ‘other organizations’ by the number of employees and the corresponding fee amount.

AB 1232: 2004 Revenue					
Number of Employees	Corporations	Other Organizations	Total Organizations	Fee Due	Revenue
50-74	9,078	1,810	10,888	243	\$2,645,784
75-99	4,779	864	5,643	429	\$2,420,847
100-249	8,072	1,421	9,493	856	\$8,126,008
250-499	2,368	441	2,809	1,834	\$5,151,706
500-999	1,181	190	1,371	3,425	\$4,695,675
1000+	896	133	1,029	11,625	\$11,962,125
Total	26,374	4,859	31,233		\$35,002,145

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Revenue Summary

This bill would generate an estimated \$4.6 million increase in environmental fee revenue (\$35.0 million minus \$30.4 million).

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