TITLE 18. CALIFORNIA DEPARTMENT OF TAX AND FEE ADMINISTRATION

PROPOSED ADOPTION OF CALIFORNIA CODE OF REGULATIONS, TITLE 18, DIVISION 2, CHAPTER 8.2, LEAD-ACID BATTERY FEES, SECTION 3210, DEFINITIONS, SECTION 3220, MANUFACTURER BATTERY FEE, SECTION 3230, CALIFORNIA BATTERY FEE, AND SECTION 3240, WRITTEN CERTIFICATION

NOTICE IS HEREBY GIVEN that the California Department of Tax and Fee Administration (Department), pursuant to the authority in Health and Safety Code (HSC) section 25215.74, proposes to adopt chapter 8.2, Lead-Acid Battery Fees, and sections (Regulations or Regs.) 3210, Definitions, 3220, Manufacturer Battery Fee, 3230, California Battery Fee, and 3240, Written Certification, in chapter 8.2 of division 2 of title 18 of the California Code of Regulations. The proposed chapter and regulations implement, interpret, and make specific the Lead-Acid Battery Recycling Act of 2016 (Battery Recycling Act) (HSC, § 25215 et seq.) enacted by Assembly Bill No. (AB) 2153 (Stats. 2016, ch. 666) and amended by AB 142 (Stats. 2019, ch. 860).

AUTHORITY

HSC section 25215.74

REFERENCE

Regulation 3210: HSC sections 25215.1, 25215.25, and 25215.35, and Revenue and Taxation Code (RTC) section 6043.1.

Regulation 3220: HSC sections 25215.1, 25215.3, 25215.35, 25215.45, and 25215.48, and RTC section 55302.

Regulation 3230: HSC sections 25215.1, 25215.25, and 25215.45, and RTC section 55302.

Regulation 3240: HSC sections 25215.25 and 25215.35

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

AB 2153 added the Battery Recycling Act to chapter 6.5 of division 20 of the HSC. As relevant here, AB 2153 added HSC section 25215.25 to impose a California battery fee (CBF) on persons purchasing replacement lead-acid batteries from a dealer, on and after April 1, 2017. AB 2153 also added HSC section 25215.35 to impose a manufacturer battery fee (MBF) on manufacturers of lead-acid batteries, on and after April 1, 2017. Also, AB 142 amended the Battery Recycling Act and made several changes to the CBF and MBF.

California Department of Tax and Fee Administration

The Governor approved AB 102 (Stats. 2017, ch. 16) on June 27, 2017. AB 102 established the Department and transferred the State Board of Equalization's (Board's) duties, powers, and responsibilities to administer and enforce the sales and use taxes and the taxes and fees collected pursuant to the Fee Collection Procedures Law (FCPL) (RTC, § 55001 et seq.), including the MBF and CBF, to the Department, effective July 1, 2017. (Gov. Code (GC), §§ 15570, 15570.22). Accordingly, any references to the Board in the Battery Recycling Act, the RTC sections, including the FCPL sections, and the regulations cited herein currently refer to and mean the Department pursuant to GC section 15570.24 and RTC section 20.5. Also, references to the Department's activities before July 1, 2017, herein refer to and mean the Board's activities.

Manufacturer Battery Fee

Until April 1, 2022, a MBF of one dollar ($1.00) is "imposed on a manufacturer of lead-acid batteries 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." (HSC, § 25215.35, subd. (a).) On and after April 1, 2022, the amount of the MBF is two dollars ($2.00). (HSC, § 25215.35, subd. (b).)

A lead-acid battery "manufacturer" is defined in the Battery Recycling Act to mean either of the following:

> (1) The person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state.
> (2)(A) If there is no person described in paragraph (1) that is subject to the jurisdiction of the state, the manufacturer is the person who imports the lead-acid battery into the state for sale or distribution.
> (HSC, § 25215.1, subd. (h).)

Also, the Battery Recycling Act provides that "a person is subject to the jurisdiction of this state with respect to a lead-acid battery if the person is engaged in business in this state" and "a person shall be considered to be engaged in business in this state if the person is a 'retailer engaged in business in this state,' as defined in subdivision (c) of [RTC section 6203], with respect to that lead-acid battery, or if the person has a substantial nexus with this state for purposes of the commerce clause of the United States Constitution." (HSC, § 25215.1, subd. (h)(2)(B).)

A lead-acid battery "importer" is defined in the Battery Recycling Act to mean "the person who imports the lead-acid battery into the state for sale or distribution." (HSC, § 25215.1, subds. (e) and (h)(2).) A person who manufactures a lead-acid battery but is not subject to California's jurisdiction "may agree in writing with the importer of that lead-acid battery to pay the MBF on behalf of the importer." (HSC, § 25215.3, subd. (a).) A person who pays the manufacturer battery fee on behalf of an importer pursuant to such an agreement shall be credited for that payment, pursuant to HSC section 25215.56, if the person:

1. Submits to California's jurisdiction and registers with the Department to pay and remit the MBF;

2. Provides to the importer a statement that includes the person's manufacturer account number with the Department, an identification of the lead-acid battery or batteries sold that will be subject to the MBF, and a "statement that the person will pay the [MBF] to the state on behalf of the importer"; and
3. Retains records sufficient to document that the lead-acid battery or batteries for which the person has agreed to pay the MBF were delivered for retail sale in California, the identity of the importer, and that the required statement was provided to the importer of the battery or batteries in a timely manner. (HSC, § 25215.3, subd. (b))

An importer that receives a timely statement from such a manufacturer will be relieved from any obligation for the MBF on the lead-acid battery or batteries, provided that the manufacturer remits the MBF on the sale of the battery or batteries to the Department. An importer that has paid the MBF for a lead-acid battery or batteries that subsequently receives an untimely statement from such a manufacturer may file a claim for a refund. A statement shall be considered timely if it is issued before the person paying the MBF on behalf of the importer bills the importer for the lead-acid battery or batteries, within the person's normal billing and payment cycle, before delivery of the battery or batteries to the importer, or before the date on which a return would be due pursuant to HSC section 25215.47. (HSC, § 25215.3, subd. (c).) Also, the Department is authorized to disclose to an importer the amount of the MBF paid or not paid on its behalf, and the Department is generally authorized to disclose specified information about persons registered with the Department to pay the MBF to the public. (HSC, § 25215.48.)

A "lead-acid battery" is defined in the Battery Recycling Act to mean "a battery weighing over five kilograms [(approximately 11 pounds)] that is primarily composed of both lead and sulfuric acid, whether [the] sulfuric acid is in a liquid, solid, or gel state, with a capacity of six volts or more that is used for any of the following purposes:

> (1) As a starting battery that is designed to deliver a high burst of energy to an internal combustion engine until it starts.
> (2) As a motive power battery that is designed to provide the source of power for propulsion or operation of a vehicle, including a watercraft.
> (3) 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.
> (4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Section 670 of the Vehicle Code, including an implement of husbandry, as defined in Section 36000 of the Vehicle Code, or an aircraft."
> (HSC, § 25215.1, subd. (f).)

Also, the Battery Recycling Act provides that the terms "retail sale" and "sale at retail" have the same meaning as defined in RTC section 6007 in the Sales and Use Tax Law (RTC, § 6001 et seq.). (HSC, § 25215.1, subd. (p)(1).) RTC section 6007, subdivision (a), provides that:

> (1) A "retail sale" or "sale at retail" means a sale for a purpose other than resale in the regular course of business in the form of tangible personal property.

> (2) When tangible personal property is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner, or factor to a consumer or to a person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this state, the person making the delivery shall be deemed the retailer of that property. He or she shall include the retail selling price of the property in his or her gross receipts or sales price.

In addition, the Battery Recycling Act provides that the term retail sale does not include any of the following:

> (A) The sale of a battery for which a CBF has previously been paid.
> (B) The sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state and that is subsequently transported outside the state and thereafter used solely outside of the state.
> (C) The sale of a battery for incorporation into new equipment for subsequent resale.
> (D) The replacement of a lead-acid battery pursuant to a warranty or a vehicle service contract described under Insurance Code section 12800.
> (E) The sale of any battery intended for use with or contained within a medical device, as defined in the federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) as that definition may be amended. (HSC, § 25215.1, subd. (p)(2).)

If a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the MBF, "the manufacturer shall obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the manufacturer battery fee." (HSC, § 25215.35, subd. (d)(1).) If a purchaser provides such a written certification to a manufacturer and subsequently sells or uses the battery in a manner so that no exception to the MBF applies, the purchaser is liable for payment of the MBF on that battery to the Department. (HSC, § 25215.35, subd. (d)(2).)

California Battery Fee

Except as provided below, the CBF is imposed on a person for each replacement lead-acid battery purchased from a dealer on or after April 1, 2017. (HSC, § 25215.25, subd. (a)(1).) The CBF is one dollar ($1.00) until March 31, 2022, and two dollars ($2.00) on or after April 1, 2022. (*Ibid*.)

A "replacement lead-acid battery" is defined in the Battery Recycling Act to mean "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 is intended to be used" and "does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery." (HSC, § 25215.1, subd. (n).) A "used lead-acid battery" is defined to mean "a lead-acid battery no longer fully capable of providing the power for which it was designed or that a person no longer wants for any other reason." (HSC, § 25215.1, subd. (q).)

The CBF does not apply to a replacement lead-acid battery described in HSC section 25215.1, subdivision (f)(3), which is a lead-acid battery used 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. (HSC, § 25215.25, subd. (a)(1).) Also, on and after January 1, 2020, "if a new motor vehicle dealer sells or leases to a person a used vehicle into which the new motor vehicle dealer has incorporated a replacement lead-acid battery, the [CBF] . . . shall not apply to the person with regard to that replacement lead-acid battery." (HSC, § 25215.25, subd. (c).)

Dealers are required to collect the CBF from purchasers at the time of sale, dealers may retain 1.5 percent (0.015) of the fee collected as reimbursement for any costs associated with collecting the fee, and dealers are required to pay the remainder of the fee collected to the Department. (HSC, § 25215.25, subd. (a)(3).) "A person who purchases a replacement lead-acid battery in this state is liable for the [CBF] until that fee has been paid to the [Department], except that payment to a dealer registered under [the Battery Recycling Act] is sufficient to relieve the person from further liability" for the fee. (HSC, § 25215.25, subd. (a)(5).) The term "dealer" is defined in the Battery Recycling Act to mean "a person who engages in the retail sale of replacement lead-acid batteries directly to persons in California" and the term "includes a manufacturer of a new lead-acid battery that sells at retail that lead-acid battery directly to a person through any means, including, but not limited to, a transaction conducted through a sales outlet, catalog, or internet website or any other similar electronic means." (HSC, § 25215.1, subd. (d).)

"If a lead-acid battery is sold or will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF], the dealer shall obtain written documentation from the purchaser certifying that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the [CBF]." (HSC § 25215.25, subd. (d)(1).) If a purchaser provides such a written certification to a dealer and subsequently sells or uses the battery in a manner so that no exception to the CBF applies, the purchaser is liable for payment of the CBF to the Department. (HSC, § 25215.25, subd. (d)(2).)

Administration

The Battery Recycling Act provides that the MBF and CBF are to be collected by the Department in accordance with the FCPL. (HSC, § 25215.45, subd. (a)(1).) The Battery Recycling Act expressly authorizes the Department to adopt and enforce regulations relating to the administration and enforcement of the MBF and CBF. (HSC, § 25215.74, subd. (a).) Also, Regulation 4901, Records, currently prescribes the records that a feepayer must maintain and make available to determine its correct liability for fees collected in accordance with the FCPL.

Sales and Use Tax Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail in the state. (RTC, § 6051.) The sales tax applies to a retailer's gross receipts from the retail sale of tangible personal property in California, unless an exemption or exclusion applies. (RTC, §§ 6012, 6051.)

When sales tax does not apply, use tax is imposed on the storage, use, or other consumption in California of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. (RTC, §§ 6201, 6401.) As relevant here, "storage" includes any keeping or retention of tangible personal property in this state for any purpose except sale in the regular course of business. (RTC, § 6008.) "Use" includes the exercise of any right or power over tangible personal property incident to the ownership of that property, except the sale of that property in the regular course of business. (RTC, § 6009.) Also, the person storing, using, or otherwise consuming the property is liable for the use tax, unless an exemption or exclusion applies. (RTC, §§ 6201, 6202.) However, every "retailer engaged in business in this state" as defined in RTC section 6203 and making sales of tangible personal property for storage, use, or other consumption in this state must collect the use tax from their customers, give the customers a receipt as prescribed, and then report and pay the amount required to be collected to the Department. (RTC, § 6203; Reg. 1684, Collection of Use Tax by Retailers.) And subdivision (c) of RTC section 6203 generally provides that "retailer engaged in business in this state" means "any retailer that has substantial nexus with this state for purposes of the commerce clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty."

The Sales and Use Tax Law presumes that a retailer's sales of tangible personal property are subject to sales or use tax until the contrary is established and places the burden of proving that a sale of tangible personal property is not a sale at retail upon the person who makes the sale, unless the seller takes from the purchaser a certificate to the effect that the property is purchased for resale. (RTC, §§ 6091, 6241.) The Sales and Use Tax Law provides that the certificate relieves the seller from liability for sales tax or the duty to collect use tax only if taken in good faith from a person engaged in the business of selling tangible personal property (RTC, §§ 6092, 6242) and requires a properly completed certificate to be signed by and bear the name and address of the purchaser, and indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. (RTC, §§ 6093, 6243.) Regulation 1668, Sales for Resale, prescribes all the requirements for a document to be regarded as a properly completed resale certificate, including the requirement that the certificate include the purchaser's seller's permit number or a sufficient explanation as to the reason the purchaser is not required to hold a seller's permit in lieu of a seller's permit number. Regulation 1668 requires a retailer to timely accept a properly completed resale certificate in good faith to satisfy its burden of proof. Regulation 1668 also permits purchasers to issue a "blanket" resale certificate containing a general description of the items to be purchased and covering those items, unless otherwise specified on the purchase order, or a "qualified" resale certificate that only covers items that are designated as purchased for resale on a purchase order.

The Sales and Use Tax Law also expressly provides for purchasers to issue certificates to retailers certifying that the property purchased will be used in a manner or for a purpose that is exempt from sales tax and that such an exemption certificate relieves the seller from liability for sales tax only if taken in good faith. (RTC, § 6421.) Also, Regulation 1667, Exemption Certificates, presumes, for purposes of the proper administration of the Sales and Use Tax Law, that a retailer's gross receipts are subject to tax until the contrary is established, and provides that a retailer may rebut the presumption and be relieved of liability for the tax by timely taking a properly completed exemption certificate from the purchaser in good faith, in accordance with the regulation.

In addition, subdivision (c)(4) of Regulation 1655, Returns, Defects and Replacements, provides that "[a] deductible paid by a customer under the terms of a mandatory or optional warranty contract is subject to [sales and use] tax measured by the amount of the deductible allocable to the sale of tangible personal property to the customer." Also, Regulation 1706, Drop Shipments, implements, interprets, and makes specific the provisions defining "retail sale" and "sale at retail" in RTC section 6007, subdivision (a)(2), for sales and use tax purposes. Subdivision (b) of Regulation 1706 explains that:

> A drop shipment generally involves two separate sales. The true retailer [who is not a retailer engaged in business in this state] contracts to sell tangible personal property to a consumer. The true retailer then contracts to purchase that property from a supplier and instructs that supplier to ship the property directly to the consumer. The supplier is a drop shipper. A drop shipper that is a retailer engaged in business in this state is reclassified as the retailer and is liable for tax [unless the sale is exempt]. When more than two separate sales are involved, the person liable for the applicable tax as the drop shipper is the first person who is a retailer engaged in business in this state in the series of transactions beginning with the purchase by the true retailer.

So, a retail sale, as defined by RTC section 6007, subdivision (a)(2), is commonly referred to as a "drop shipment" in accordance with Regulation 1706.

Marketplace Facilitators

Furthermore, AB 147 (Stats. 2019, ch. 5) added the Marketplace Facilitator Act (MFA) (RTC, § 6040 et seq.) to the Sales and Use Tax Law, operative October 1, 2019, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of tangible personal property by a marketplace seller the retailer selling or making the sale of the property for sales and use tax purposes. (RTC, § 6043.) Also, AB 1402 (Stats. 2021, ch. 421) added RTC section 6043.1 to the MFA, operative January 1, 2022, to generally make a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale.

<u>Effects, Objectives, and Benefits of the Proposed Chapter and Regulations</u>

The Department is proposing to adopt new chapter 8.2 and Regulations 3210, 3220, 3230, and 3240 through the regular rulemaking process to have the effects and accomplish the objectives of avoiding confusion and ensuring that the MBF is paid and the CBF is collected in accordance with the Legislature's intent. The Department is also proposing to adopt Regulations 3220, 3230, and 3240 through the regular rulemaking process to have the effect and accomplish the objective of providing procedures for purchasers to issue and businesses to obtain written certifications that lead-acid batteries will be used in a manner or for a purpose entitling the seller to regard their purchase as not subject to the fees imposed by the Battery Recycling Act. To have these effects and accomplish these objectives, the Department determined that it is reasonably necessary for proposed Regulation 3210 to:

- Define the term "dealer" in accordance with subdivision (d) of HSC section 25215.1 and clarify that the term includes a marketplace facilitator, as defined in RTC section 6041, that facilitates a retail sale of a replacement lead-acid battery by a marketplace seller and is the dealer for purposes of collecting and remitting the CBF imposed on the consumer in regard to that retail sale pursuant to RTC section 6043.1.
- Define "Department" to mean the California Department of Tax and Fee Administration.
- Define "equipment" to mean and include "any tangible personal property that is powered in whole or part by a lead-acid battery" and clarify that equipment is considered "new equipment" if it has never been sold to a person in a sale at retail.
- Define "importer" and the phrase "person who imports the lead-acid battery into this state" to mean the person who imports the lead-acid battery into this state for sale or distribution and is subject to the jurisdiction of this state, clarify that a person imports a lead-acid battery into this state "if they ship, deliver, transport, or otherwise bring the lead-acid battery into this state for sale or distribution," and clarify that an "importer does not include a common carrier, a contract carrier, or a California consumer who purchases the replacement lead-acid battery for their own use."
- Define "lead-acid battery" in accordance with subdivision (f) of HSC section 25215.1 and clarify that a lead-acid battery is used for any of the purposes included in the definition of lead-acid battery if the battery "is designed to be used" for such purpose.
- Define "manufacturer" in accordance with subdivision (h) of HSC section 25215.1, clarify that only one person shall be considered a "manufacturer" of a lead-acid battery for purposes of the MBF, and clarify that a drop shipper of a lead-acid battery is the manufacturer of that battery if they are subject to the jurisdiction of this state and no other person is the manufacturer.
- Define "replacement lead-acid battery" in accordance with subdivision (n) of HSC section 25215.1 and clarify that a lead-acid battery is new if it has not previously been purchased in a retail sale for which the CBF was imposed and paid.
- Define "retail sale" and "sale at retail" in accordance with subdivision (a)(1) of RTC section 6007, clarify that a "retail sale" includes a drop shipment of a lead-acid battery by a drop shipper in accordance with subdivision (a)(2) of RTC section 6007, and clarify that a "retail sale" does not include the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1.
- Establish a rebuttable presumption that a battery is not temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state if the battery remains in this state for more than 90 days after purchase, and clarify that a battery is not temporarily stored or used in California for the sole purpose of preparing the replacement lead-acid battery for use thereafter solely outside of the state if there is any functional use of the battery in California following its purchase.
- Clarify that the sale of a lead-acid battery will only qualify for the exclusion from the definition of retail sale provided by subdivision (p)(2)(C) of HSC section 25215.1 if the purchaser will incorporate it into new equipment for purposes of reselling the new equipment with the battery "such that the battery and the new equipment will be sold together as a single item to the consumer" and further clarify that "this includes multiple inter-changeable lead-acid batteries sold with a single piece of new equipment to allow continuous operation by exchanging depleted lead-acid batteries so long as the use of

multiple lead-acid batteries is required or customary for the usual operation of that new equipment."

- Clarify that there is no retail sale under subdivision (p)(2)(D) of HSC section 25215.1 when a lead-acid battery is replaced without charge to the consumer under a warranty or vehicle service contract, but there is a retail sale if a consumer is required to pay a separate charge for the lead-acid battery, including a pro-rated price.
- Explain when a person is "subject to the jurisdiction of this state" in accordance with subdivision (h)(2)(B) of HSC section 25215.1 and clarify that a person who manufactures a lead-acid battery is not engaged in business in this state solely because the person submitted to the jurisdiction of the state to pay and remit the MBF on behalf of an importer under Regulation 3220.
- Define "vehicle" to mean "any device or machine which can be used to move persons or property, including but not limited to, a watercraft, aircraft, vehicle as defined in Vehicle Code section 670, or an implement of husbandry as defined in Vehicle Code section 36000," and clarify that "vehicle" does not include a device moved exclusively by human power (e.g., a bicycle) or a device used exclusively upon stationary rails or tracks, as provided in Vehicle Code section 670.

The Department determined that it is reasonably necessary for proposed Regulation 3220 to:

- Prescribe the application of the MBF.
- Clarify that only one person is the manufacturer of a lead-acid battery for purposes of liability for the MBF, that liability for the MBF is imposed at the time of the manufacturer's retail sale of a lead-acid battery to a consumer in California or at the time of the manufacturer's sale of a lead-acid battery to a dealer, wholesaler, distributor or other person for retail sale in California, and that importing a lead-acid battery into California, by itself, does not trigger imposition of the MBF.
- Establish rebuttable presumptions, for purposes of the proper administration of the MBF, that a manufacturer's sale of a lead-acid battery to a person in California is a retail sale and that a lead-acid battery sold to a person in California for purposes of resale in the regular course of business will be resold in California in a retail sale, and clarify that a "manufacturer has the burden of proving that a sale of a lead-acid battery is for resale and that a lead-acid battery purchased for resale will not be resold in California in a retail sale."
- Clarify that the MBF does not apply to a sale of a lead-acid battery for which the manufacturer battery fee has previously been paid by a person subject to the jurisdiction of this state or a person that registered with the Department to report and pay the fee, and does not apply to the four types of transactions expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarify that when the MBF does not apply to a lead-acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1, the manufacturer must obtain written certification from the purchaser, in accordance with Regulation 3240, stating that the lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF, in accordance with subdivision (d)(1) of HSC section 25215.35.

- Incorporate the provisions of subdivision (a) of HSC section 25215.3 permitting a person who manufactures a lead-acid battery and is not subject to the jurisdiction of this state to enter into a written agreement with an importer of that lead-acid battery to pay the MBF imposed on the importer due to the sale of that battery on behalf of the importer.
- Incorporate the requirements from subdivision (b) of HSC section 25215.3 for a person who pays the MBF on behalf of an importer to receive a credit for that payment pursuant to HSC section 25215.56, and clarify that such a person shall make the records required to be maintained to claim the credit reasonably available to the Department upon request in the manner set forth in Regulation 4901.
- Incorporate the provisions of subdivision (c) of HSC section 25215.3 relieving an importer of liability for the MBF paid on its behalf and permitting an importer to claim a refund if they paid the MBF before they received notice that it was paid on their behalf.
- Incorporate the provisions of HSC section 25215.48 permitting the Department to disclose to an importer the amount of the MBF paid or not paid on its behalf, and generally permitting the Department to disclose specified information about persons registered with the Department to pay the MBF to the public.
- Provide notice to manufacturers required to pay the MBF that they are required to maintain and make available all records necessary to determine their liabilities for the MBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarify that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers' exclusion and exemption certificates (see Regulation 3240) or alternate written certifications, and other relevant documents.

The Department determined that it is reasonably necessary for proposed Regulation 3230 to:

- Prescribe the general application of the CBF.
- Clarify that a dealer subject to the jurisdiction of this state is required to collect the CBF.
- Clarify that the CBF only applies to replacement lead-acid batteries purchased in a retail sale and does not apply to sales of replacement lead-acid batteries for resale in the regular course of business.
- Clarify that the CBF does not apply to the five types of transactions expressly excluded from the definition of retail sale by subdivision (p)(2) of HSC section 25215.1 or a sale of a replacement lead-acid battery described in subdivision (f)(3) of HSC section 25215.1.
- Incorporate the new motor vehicle dealer exemption in subdivision (c) of HSC section 25215.25 and clarify that a new motor vehicle dealer must maintain and make available documentation to support the new motor vehicle dealer exemption.
- Establish a rebuttable presumption, for purposes of the proper administration of the CBF, that a dealer's sale of a lead-acid battery to a person in California is a retail sale;
- Clarify that when the CBF does not apply to a lead-acid battery because it is sold or used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1 or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1, the dealer must

obtain written certification from the purchaser, in accordance with Regulation 3240, stating that the lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF.

- Clarify that a dealer is not required to obtain a written certification from the purchaser for a sale of a replacement lead-acid battery for which the CBF has previously been paid or a sale that qualifies for the new motor vehicle dealer exemption.
- Provide notice to dealers required to collect the CBF that they are required to maintain and make available all records necessary to determine their liabilities for the CBF and all records necessary for the proper completion of their returns in the manner set forth in Regulation 4901.
- Clarify that the records necessary include, but are not limited to, purchase orders, bills of lading, receipts, invoices, shipping documents, job orders, contracts, customers' exclusion and exemption certificates (see Regulation 3240) or alternate written certifications, and other relevant documents.

The Department determined that it is reasonably necessary for proposed Regulation 3240 to:

- Require a manufacturer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the manufacturer to regard the purchase as not subject to the MBF if a lead-acid battery is sold or will be used in a manner or for a purpose that is expressly excluded from the definition of retail sale by subdivisions (p)(2)(B) through (E) of HSC section 25215.1.
- Clarify that if a written certification is timely taken from the purchaser in proper form as set forth in the regulation and in good faith, the manufacturer is not required to pay a MBF on the sale of that battery.
- Require a dealer to obtain written certification from the purchaser that a lead-acid battery will be used in a manner or for a purpose entitling the dealer to regard the purchase as not subject to the CBF if a replacement lead-acid battery is sold or will be used in a manner or for a purpose excluded from the definition of retail sale by subdivision (a)(1) of RTC section 6007 or subdivisions (p)(2)(B) through (E) of HSC section 25215.1, or not subject to the CBF pursuant to subdivision (a) of HSC section 25215.25 because it is described in subdivision (f)(3) of HSC section 25215.1.
- Clarify that if a written certification is timely taken from the purchaser in the proper form as set forth in the regulation and in good faith, the dealer is not required to collect the CBF from the purchaser on the sale of that battery.
- Prescribe the minimum requirements for a purchaser's written certification that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-acid battery fees, allow a purchaser to use any written document to make such a certification, but recommend that a seller obtain a General Exclusion and Exemption Certificate substantially in the form provided in Appendix A to preclude potential controversy, and provide that such a certification remains in effect until revoked in writing.
- Clarify when a written certification is considered timely taken in accordance with subdivision (b)(1) of Regulation 1667, and that, in absence of evidence to the contrary, a seller will be presumed to have taken a written certification in good faith if the

certification contains the essential elements required by the regulation and otherwise appears to be valid on its face in accordance with subdivision (c) of Regulation 1668.

- Allow a purchaser to issue a blanket General Exclusion and Exemption Certificate that applies to all its purchases, unless otherwise indicated on its purchase orders, or a qualified General Exclusion and Exemption Certificate that only applies to purchases that are properly designated on purchase orders and provide procedures for issuing both types of certificates.
- Clarify that, if a dealer timely takes a resale certificate from a purchaser for the purchase of a replacement lead-acid battery in good faith that contains all the essential elements required by Regulation 1668, the certificate shall satisfy the written certification requirements with respect to the sale of that battery.

The Department anticipates that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will promote fairness and benefit businesses that manufacture, import, buy, or sell lead-acid batteries, individual consumers that purchase lead-acid batteries, and the Department by defining and further clarifying terms and phrases used in the Battery Recycling Act, clarifying the application of the MBF and CBF, providing notice about the records manufacturers and dealers are required to maintain and make available to determine their liabilities for the MBF and CBF, establishing rebuttable presumptions for the proper administration of the fees, prescribing the minimum requirements for a purchaser's written certification that a lead-acid battery will be used in a manner or for a purpose entitling the seller to regard the purchase as not subject to the lead-acid battery fees, and providing a General Exclusion and Exemption Certificate form that purchasers can use to make their written certifications.

The Department has performed an evaluation of whether Regulations 3210, 3220, 3230, and 3240 are inconsistent or incompatible with existing state regulations and determined that the proposed regulations are not inconsistent or incompatible with existing state regulations because they are the only regulations that implement, interpret, or make specific the fees imposed by the Battery Recycling Act and many of their provisions are consistent with similar provisions in sales and use tax regulations. Also, the Department has determined that there is no existing federal regulation or statute that is comparable to Regulation 3210, 3220, 3230, or 3240.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not impose a mandate on local agencies or school districts, including a mandate that requires state reimbursement under part 7 (commencing with section 17500) of division 4 of title 2 of the GC.

ONE-TIME COST TO THE DEPARTMENT, BUT NO OTHER COST OR SAVINGS TO STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will result in an absorbable $484 one-time cost for the Department to update its website after the proposed regulatory action is completed. The Department has determined that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not result in any other direct or indirect cost or savings to any state agency, no cost to

any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the GC, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Department has made an initial determination that the adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GC SECTION 11346.3, SUBDIVISION (b)

The Department assessed the economic impact of adopting proposed Regulations 3210, 3220, 3230, and 3240 on California businesses and individuals and determined that the proposed regulatory action is not a major regulation, as defined in GC section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Department prepared the economic impact assessment required by GC section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. In the economic impact assessment, the Department determined that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will neither create nor eliminate jobs in the State of California nor result in the creation of new businesses or the elimination of existing businesses within the state and will not affect the expansion of businesses currently doing business within the State of California. Furthermore, the Department determined that the adoption of proposed Regulations 3210, 3220, 3230, and 3240 will not affect the benefits of the regulations to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Department must determine that no reasonable alternative considered by it or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private

persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed regulations should be directed to Michael Patno, by telephone at (916) 309-5303, by e-mail at Michael.Patno@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Michael Patno, MIC:50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050.

Written comments for the Department's consideration, written requests to hold a public hearing, notices of intent to present testimony or witnesses at the public hearing, and other inquiries concerning the proposed regulatory action should be directed to Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail to: California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC:50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050. Kim DeArte is the designated backup contact person to Michael Patno.

WRITTEN COMMENT PERIOD

The written comment period ends at 11:59 pm (PDT) on September 11, 2023. The Department will consider the statements, arguments, and/or contentions contained in written comments received by Kim DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240. The Department will only consider written comments received by that time.

However, if a public hearing is held, written comments may also be submitted during the day of and at the public hearing and the Department will consider the statements, arguments, and/or contentions contained in written comments submitted during the day of or at the public hearing before the Department decides whether to adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Department has prepared copies of the text of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 illustrating the express terms of the proposed action. The Department has also prepared an initial statement of reasons for the proposed adoption of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240, which includes the economic impact assessment required by GC section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed regulatory action is based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 and the initial statement of reasons are also available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.

PUBLIC HEARING

The Department has not scheduled a public hearing to discuss the proposed adoption of new chapter 8.2 and Regulations 3210, 3220, 3230, and 3240. However, any interested person or his or her authorized representative may submit a written request for a public hearing no later than 15 days before the close of the written comment period, and the Department will hold a public hearing if it receives a timely written request.

SUBSTANTIALLY RELATED CHANGES PURSUANT TO GC SECTION 11346.8

The Department may adopt new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240 with changes that are non-substantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Department will make the full text of the resulting regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Kim DeArte. The Department will consider timely written comments it receives regarding a sufficiently related change.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Department adopts new chapter 8.2 and proposed Regulations 3210, 3220, 3230, and 3240, the Department will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Department's website at www.cdtfa.ca.gov/taxes-and-fees/regscont.htm.