

Proposed Text of California Code of Regulations

Title 18. Public Revenues

Division 2. California Department of Tax and Fee Administration –

Business Taxes

Chapter 8.2. Lead-Acid Battery Fees

(A new chapter and regulations to be added to the California Code of Regulations)

Chapter 8.2. Lead-Acid Battery Fees

Regulation 3210. Definitions.

For purposes of this chapter (Lead-Acid Battery Fees, commencing with Regulation 3210), the definitions of terms in Health and Safety Code section 25215.1 and the definitions of terms in this regulation shall apply.

(a) “Dealer” means every person who engages in the retail sale of replacement lead-acid batteries directly to persons in California.

(1) “Dealer” includes, but is not limited to, a manufacturer of new lead-acid batteries, as defined in subdivision (f), that makes retail sales of lead-acid batteries directly to persons in California through any means, including, but not limited to, transactions conducted through a sales outlet, catalog, or internet website or any other similar electronic means.

(2) “Dealer” also includes, but is not limited to, a marketplace facilitator, as defined in Revenue and Taxation Code 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 California battery fee imposed on the consumer in regard to that retail sale pursuant to Revenue and Taxation Code section 6043.1.

(b) “Department” means the California Department of Tax and Fee Administration.

(c) “Equipment” means and includes any tangible personal property that is powered in whole or part by a lead-acid battery. Equipment is considered “new equipment” if it has never been sold to a person in a sale at retail.

(d) “Importer” and “person who imports the lead-acid battery into this state” mean a manufacturer of a lead-acid battery as defined in subdivision (f)(2). For purposes of subdivision (f)(2), a dealer, wholesaler, distributor, or other 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, including delivery to a consumer. 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.

(e) “Lead-acid battery” means any battery weighing over five kilograms that is primarily composed of both lead and sulfuric acid, whether the acid is in liquid, solid, or gel state, with a capacity of six volts or more that is designed to be 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; or

(4) As a source of auxiliary power to support the electrical systems in a vehicle, as defined in Vehicle Code section 670, or an implement of husbandry, as defined in Vehicle Code section 36000, or an aircraft.

(f) Manufacturer.

(1) A person who manufactures a lead-acid battery and sells, offers for sale, or distributes the lead-acid battery in the state is the manufacturer of the battery for purposes of the manufacturer battery fee if that person is subject to the jurisdiction of this state.

(2) If no person is the manufacturer of a lead-acid battery under subdivision (f)(1), then the manufacturer of the battery for purposes of the manufacturer battery fee is the person who imports the lead-acid battery into the state for sale or distribution, including delivery to a consumer, and is subject to the jurisdiction of this state.

(3) The first person in the chain of distribution of a lead-acid battery that meets the definition of a manufacturer is the manufacturer of that battery and only one person is the manufacturer of a lead-acid battery for purposes of the manufacturer battery fee. When a lead-acid battery is delivered by an owner or former owner thereof, or by a factor or agent of that owner, former owner, or a factor to a purchaser in California or to a person for redelivery to a purchaser in California, pursuant to a sale made by a person not subject to the jurisdiction of this state, the person making the delivery is the manufacturer of the lead-acid battery if the person is subject to the jurisdiction of this state and no other person is the manufacturer.

(g) “Replacement lead-acid battery” means 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 new lead-acid battery is intended or designed to be used. A lead-acid battery is new if it has not previously been purchased in a retail sale for which the California battery fee was imposed and paid. A replacement lead-acid battery does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery, regardless of whether it is new.

(h) “Retail sale” or “sale at retail” means a sale for a purpose other than resale in the regular course of business.

(1) A retail sale includes a drop shipment of a lead-acid battery by a drop shipper. When there is a drop shipment of a lead-acid battery to a consumer in California, the drop shipper shall be deemed to be the person making the retail sale of the lead-acid battery to the consumer if the drop shipper is subject to the jurisdiction of this state.

(A) A drop shipment means the delivery of a lead-acid battery 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 delivery to a consumer pursuant to a retail sale of the lead-acid battery made by a person not subject to the jurisdiction of this state.

(B) A drop shipper means an owner or former owner thereof, or factor or agent of that owner or former owner, who makes a drop shipment of a lead-acid battery.

(2) Notwithstanding the above, a “retail sale” does not include any of the following:

(A) The sale of a replacement lead-acid battery for which a California battery fee has previously been imposed and 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. For purposes of this subdivision, it is rebuttably presumed 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. Also, 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.

(C) The sale of a lead-acid battery to a person who 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. 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.

(D) The replacement of a lead-acid battery pursuant to a vehicle or battery warranty or a vehicle service contract described under Insurance Code section 12800 without charge to the consumer. If a consumer is required to pay a separate charge for the replacement lead-acid battery, then the person selling or otherwise replacing the lead-acid battery for a separate charge is making a retail sale of the lead-acid battery to the consumer.

Lead-acid battery manufacturers generally offer a warranty that covers a free replacement period, followed by a pro-rated replacement period during which the consumer may receive a new lead-acid battery for a pro-rated price or receive a pro-rated credit for a new lead-acid battery made by the same manufacturer.

For example, if a lead-acid battery costs \$100, includes a 10-year warranty, and fails after nine years, the dealer may charge the consumer \$90 for an identical \$100 replacement lead-acid battery because the battery failed after nine years or 90 percent (90%) of the warranty period expired or provide a \$10 credit for a replacement lead-acid battery because the lead-acid battery failed with one year or 10 percent (10%) of the warranty period remaining. In these scenarios, there is a retail sale of a replacement lead-acid battery for \$90 or the amount that exceeds the \$10 credit.

(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)).

(i) For purposes of this chapter, a person is “subject to the jurisdiction of this state” if the person is engaged in business in this state.

(1) A person is engaged in business in this state if the person is a “retailer engaged in business in this state,” as defined in subdivision (c) of Revenue and Taxation Code section 6203 or if the person has a substantial nexus with this state for purposes of the Commerce Clause of the United States Constitution.

(2) A person who manufactures a lead-acid battery is not engaged in business in this state for purposes of subdivision (f)(1) solely because the person submitted to the jurisdiction of the state to pay and remit the manufacturer battery fee on behalf of an importer under subdivision (e)(1)(A) of Regulation 3220.

(j) “Vehicle” means any device or machine which can be used to move persons or property, including but not limited to, watercraft, aircraft, a vehicle as defined in Vehicle Code section 670, or an implement of husbandry as defined in Vehicle Code section 36000, unless otherwise specified. The term “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.

Note: Authority cited: Section 25215.74, Health and Safety Code. Reference: Sections 25215.1, 25215.25 and 25215.35, Health and Safety Code; and Section 6043.1, Revenue and Taxation Code.