

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)

Regulation 3220. Manufacturer Battery Fee.

(a) In General. On and after April 1, 2017, a manufacturer battery fee is imposed on the manufacturer of a lead-acid battery, as defined in subdivision (f) of Regulation 3210, when the lead-acid battery is sold at retail to a person in California or sold to a dealer, wholesaler, distributor, or other person for retail sale in California. The fee is one dollar (\$1.00) for each battery sold from April 1, 2017, through March 31, 2022, and two dollars (\$2.00) for each battery sold on or after April 1, 2022.

(b) Liability for the fee. Only one person is the manufacturer of a lead-acid battery for purposes of liability for the manufacturer battery fee.

Liability for the manufacturer battery fee 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. Importing a lead-acid battery into California, by itself, does not trigger imposition of the fee.

It is rebuttably presumed that a manufacturer's sale of a lead-acid battery to a person in California is a retail sale. If a manufacturer sells a lead-acid battery to a dealer, wholesaler, distributor, or other person in California for purposes of resale in the regular course of business, it is rebuttably presumed that the lead-acid battery will be resold in California in a retail sale. 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.

(c) Exclusions. The manufacturer battery fee does not apply to the following transactions:

(1) 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 under subdivision (e)(1).

(2) A sale of a replacement lead-acid battery that is temporarily stored or used in California for the sole purpose of preparing the battery for use thereafter solely outside of California and that is subsequently transported outside the state and thereafter used solely outside of the state, as provided in subdivision (h)(2)(B) of Regulation 3210.

(3) A sale of a lead-acid battery to a person who will incorporate it into new equipment for purposes of reselling the equipment with the battery, as provided in subdivision (h)(2)(C) of Regulation 3210.

(4) A lead-acid battery provided as a replacement without charge under a vehicle or battery warranty or a vehicle service contract, as provided in subdivision (h)(2)(D) of Regulation 3210.

(5) A sale of a lead-acid battery intended for use with or contained within a medical device, as provided in subdivision (h)(2)(E) of Regulation 3210.

(d) If a lead-acid battery is sold or used in a manner or for a purpose described in subdivision (c)(2) through (5), a 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 them to regard the purchase as not subject to the manufacturer battery fee.

(e) Payment of the fee by a person not subject to California's jurisdiction.

(1) A person who manufactures a lead-acid battery and is not subject to the jurisdiction of this state may enter into a written agreement with an importer of that lead-acid battery to pay the manufacturer battery fee imposed on the importer due to the sale of that battery on behalf of the importer. The person shall be credited, pursuant to Health and Safety Code section 25215.56, for the payment of the manufacturer battery fees on behalf of the importer, provided they do the following:

(A) Submit to the jurisdiction of the state and register with the Department to report and remit the manufacturer battery fees on behalf of the importer.

(B) Provide to the importer a statement on the invoice, contract, or other record documenting the transaction that includes their manufacturer account number with the Department, identification of the lead-acid batteries sold to the importer that will be subject to the manufacturer battery fee, and a statement that the person will pay the manufacturer battery fees imposed on the importer due to the sale of those batteries to the Department on behalf of the importer.

(C) Retain records sufficient to document that the lead-acid batteries for which the person has agreed to pay the manufacturer battery fee were delivered for retail sale in California, the identity of the importer of the batteries, and that the statement required by subdivision (e)(1)(B) was provided to the importer of the batteries in a timely manner pursuant to subdivision (e)(2). The person shall retain these records for a period of no less than four years and shall make the records reasonably available to the Department upon request in the manner set forth in California Code of Regulations, title 18, section 4901, Records.

(2) An importer who receives a timely statement, as described in subdivision (e)(1)(B), shall be relieved from paying the manufacturer battery fee imposed on the importer due to a sale of a lead-acid battery identified in the statement, if the person that provided the statement remits the fee to the Department for the sale of that battery. A statement shall be considered timely if it is issued before the person that provided the statement bills the importer for the lead-acid

battery or within the person's normal billing and payment cycle, before delivery of the battery to the importer, or before the date on which a return would be due for the period in which the battery was sold by the importer.

(3) An importer who has paid a manufacturer battery fee imposed on the importer due to the sale of a lead-acid battery and who subsequently receives an untimely statement that the fee has been paid on that same battery may file a claim for a refund for the fee paid by the importer.

(4) The Department may disclose to an importer the amount of the manufacturer battery fees paid or not paid on its behalf by a person with whom the importer has entered into an agreement pursuant to subdivision (e)(1).

(5) The Department may disclose the name, address, account number, and account status of a person registered with the Department to pay the manufacturer battery fee. Except as described in subdivision (e)(4), the Department will not disclose the amount of the manufacturer battery fees paid by any person.

(f) Records.

(1) A manufacturer shall maintain and make available for examination on request by the Department all records necessary to determine the manufacturer's liability for the manufacturer battery fee and all records necessary for the proper completion of the manufacturer's returns in the manner set forth in California Code of Regulations, title 18, section 4901, Records. This includes, but is 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.

(2) All records required to be maintained by a manufacturer under this regulation must be preserved for a period of not less than four years unless the Department provides written authorization for their destruction within a lesser period.

Note: Authority cited: Section 25215.74, Health and Safety Code. Reference: Sections 25215.1, 25215.3, 25215.35, 25215.45 and 25215.48, Health and Safety Code; and Section 55302, Revenue and Taxation Code.