Memorandum

To: Mr. Nicolas Maduros  
Director (MIC 104)

From: Aimee Olhisier, Acting Chief  
Tax Policy Bureau (MIC 92)

Date: October 19, 2020

Subject: Request for Approval to Begin the Rulemaking Process to Adopt Proposed Lead-Acid Battery Fee Regulations 3210, 3220, 3230, & 3240

We request your approval to commence with the formal rulemaking process to adopt proposed Regulations 3210, 3220, 3230, and 3240. The proposed regulations interpret and clarify the Lead-Acid Battery Recycling Act of 2016 (Act) enacted by Assembly Bill 2153 (AB 2153) and later amended by Assembly Bill 142 (AB 142). Further explanation of each proposed regulation is provided in this memorandum along with the proposed regulations in Exhibit 1.

General Background

AB 2153 (Statutes 2016, Ch. 666) added Article 10.5, commencing with section 25215 of Chapter 6.5 of Division 20 of the Health and Safety Code (HSC), and imposed the manufacturer battery fee (MBF) or the California battery fee (CBF) on transactions related to lead-acid batteries in California. Beginning on April 1, 2017, both fees were imposed on the sale or purchase of lead-acid batteries in this state.

We distributed discussion papers addressing the new lead-acid battery fees along with the proposed regulations on March 24, 2017 and again on May 26, 2017. We held interested parties’ meetings on April 13, 2017 and June 8, 2017, to discuss each paper and the proposed regulations. Industry representatives voiced their concerns at the meetings and submitted written comments suggesting alternative language. We received written submissions from the California Department of Toxic Substances Control and Battery Council International (BCI).

Upon your approval, the final drafts of the proposed regulations, based on AB 2153, were posted with the issue paper on the Business Taxes Committee webpage on June 21, 2018. Subsequently, we became aware of possible legislation which could affect our proposed regulations. Therefore, we delayed submitting the proposed regulations to the Office of Administrative Law (OAL).

In 2019, AB 142 (Statutes 2019, Ch. 860), commencing with section 25215.1 of Chapter 6.5 of Division 20 of the HSC, added and amended statutes to the Act which affected the previously approved regulations. Furthermore, when our Legal Division was preparing the initially proposed regulations for formal rulemaking with OAL, they recommended some clarifying revisions.

We distributed a third discussion paper on May 18, 2020, explaining the additional revisions made to the proposed regulations to account for AB 142 and the Legal Division’s clarifying amendments. We held an interested parties’ meeting on June 10, 2020. At the meeting, we discussed the proposed regulations and encouraged interested parties to submit written comments, including any alternate...
regulatory language, for us to consider for the final draft of the proposed regulations. We received written submissions from BCI and the California Automotive Wholesalers’ Association/Auto Care Association (CAWA), see Exhibits 2 and 3, respectively. After we reviewed and discussed the written comments, we determined that revisions based on the comments were not warranted. However, we made additional clarifying amendments to the proposed regulations as outlined in the following sections.

**Department Name Change**

References to the Board of Equalization (Board) are made throughout the Act. In 2017, the California Legislature passed Assembly Bill 102 (Statutes 2017, Ch. 16) which reorganized the Board and created the California Department of Tax and Fee Administration (CDTFA.) Although AB 142 was passed in 2019, it refers to the CDTFA as “Board” in the amended statutory language. To make the regulations consistent, Regulation 3210 defines the term “Department” to mean the CDTFA and replaced outdated references of “Board” with the term “Department” throughout all the proposed regulations.

**Regulation 3210, Definitions**

Regulation 3210 defines the many terms and phrases that are used throughout the four proposed regulations that pertain to the Act. Lead-acid batteries and replacement lead-acid batteries are defined in the regulation by their physical characteristics and describe the uses which are subject to lead-acid battery fees. Additionally, the regulation defines “retail sale,” a key point in determining whether the fees apply, along with examples.

In preparation for the formal rulemaking process, we revised the 2018 draft of Regulation 3210 to improve readability and to correct minor reference and grammatical errors. With the passage of AB 142, additional provisions were added to the Act. Prior to AB 142, the phrase “subject to the jurisdiction of the state” was undefined, now HSC section 25215.1(h)(2)(B) instructs that the phrase means a “retailer engaged in business in this state” as defined in Revenue and Taxation Code (RTC) section 6203(c) or a person with substantial nexus with this state for purposes of the commerce clause of the United States Constitution. Proposed subdivision (i) of Regulation 3210 was added to address this clarification and be consistent with the statute.

**Regulation 3220, Manufacturer Battery Fee**

Regulation 3220, *Manufacturer Battery Fee*, explains and clarifies the laws that pertain to the lead-acid battery fee that apply to manufacturers of lead-acid batteries. In addition, it addresses who is liable for and who pays the MBF, exclusions and required documentation, and the records to be maintained. Regulation 3220, as proposed, reflects the amendments made due to the passage of both AB 2153 and AB 142.

Beginning April 1, 2017, the MBF of one dollar ($1.00) was 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. The MBF was to become inoperative on April 1, 2022; however, with the passage of AB 142, the MBF was extended indefinitely and will increase to two dollars ($2.00) on April 1, 2022.

In AB 2153, a lead-acid battery manufacturer is defined as a person who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in California. However, if the
person who manufactured the lead-acid battery is not subject to the jurisdiction of California, then the person subject to the fee is the person who imports the lead-acid battery into California for sale or distribution.

**Non-Jurisdiction Manufacturers**

With the passage of AB 142, a person who manufactures a lead-acid battery, but is not subject to California jurisdiction, may now enter into a written agreement with the importer to pay the MBF on the importer’s behalf and receive credit for that payment. The credit can be used by the manufacturer to offset potential future hazardous waste liabilities. However, to receive credit for their payment of the MBF, proposed subdivision (e)(1)(A) explains that the non-jurisdiction manufacturer must first submit to the jurisdiction of California by registering with CDTFA to pay and remit the MBF. Second, they must provide the importer a statement they will pay the MBF on the importer’s behalf. This statement is to be provided timely by invoice, contract or other record and must also include the non-jurisdiction manufacturer’s MBF account number, identify the type of lead-acid batteries, and the quantity. An importer who receives a timely statement from a non-jurisdiction manufacturer will be relieved from having to pay the MBF provided the non-jurisdiction manufacturer remits the fee to the CDTFA. (See Regulation 3240(c) for the definition of “timely.”) Conversely, if an importer pays the MBF but later receives a statement from the non-jurisdiction manufacturer that they paid the MBF, the importer may file a claim for refund. Subparagraphs (e)(5) and (e)(6) clarify the CDTFA may disclose to the importer the amount of MBF the non-jurisdiction manufacturer paid or not paid on its behalf by the person with whom the importer has entered into an agreement. In addition to the amount paid, the CDTFA may only disclose the name, address, account number and account status (i.e., active or closed-out) of the non-jurisdiction manufacturer with whom the importer has an agreement.

Subparagraph (e)(4) states the person who pays the manufacturer fee to the CDTFA and later receives a credit pursuant to HSC section 25215.56 may not separately charge their customers reimbursement for the fee. In their June 26, 2020 comments, BCI stated:

*BCI strenuously objects to draft section 3220(e)(4) which would prohibit manufacturers from seeking reimbursement from customers for the costs of the manufacturer fee, and the duplicative language in section 3220(b). No such prohibition or authorization for CDTFA to interfere with private business relationships appears in the authorizing statutory language.*

CAWA had a similar position as provided in their June 26, 2020 submission.

We determined that the CDTFA has the statutory authority for our proposed Regulation 3220(e)(4). The proposed subdivision does not directly interfere in the private business relationships of manufacturers and its customers.

New HSC section 25215.3(a) states that a “person who manufactures a lead-acid battery and is not subject to the jurisdiction of the state may agree in writing with the importer of that lead-acid battery to pay the manufacturer battery fee imposed pursuant to Section 25215.35 on behalf of the importer.” We note that the non-jurisdiction manufacturer voluntarily enters into an agreement with the importer and, therefore, chooses to pay the MBF in order to obtain the liability credit. The CDTFA is not privy to these agreements and does not interfere in the private business relationships of the parties who enter into
the agreement. The statute, however, provides that if a non-jurisdiction manufacturer chooses to voluntarily pay the MBF, they must identify on an invoice or contract the lead-acid batteries sold that will be subject to the MBF, and they must provide a “statement that the person will pay the [MBF] to the state on behalf of the importer.” (HSC section 25215.3(b)(2)(C).) The phrase “on behalf of,” is interpreted by the CDTFA to mean the importer is not subject to the fee if an agreement, as described in Regulation 3220, is involved and the fee is paid by the non-jurisdiction manufacturer. The non-jurisdiction manufacturer must pay the MBF, along with other actions, in order to receive credit for the payment. There is no language in the Act allowing the non-jurisdiction manufacturer to charge a separate fee reimbursement from the importer. We believe that to allow a non-jurisdiction manufacturer to pay the fee, in exchange for which they receive a liability credit, only to have customers of non-jurisdiction manufacturers later reimburse them for that fee does not represent the intention of the Act. In fact, we believe that such an allowance would benefit the non-jurisdiction manufacturer over a California-based manufacturer or importer.

Since the CDTFA determined there is no support for fee reimbursement, we added the term “separately” to subdivisions (b) and (e)(4) to clarify that fee reimbursement cannot be separately stated. If a non-jurisdiction manufacturer separately itemizes the fee reimbursement to their customers, the amount would be considered “excess fee reimbursement” and must be remitted to the CDTFA. We note that the non-jurisdiction manufacturer may recoup the MBF they elected to pay by incorporating it into the price of the lead-acid batteries they sell. The CDTFA would not consider this increase in price to be “excess fee reimbursement.”

**Regulation 3230, California Battery Fee**

Regulation 3230, California Battery Fee, explains and clarifies the statutes that impose the lead-acid battery fee on the person who purchases a replacement battery from a dealer in a retail sale. It also addresses exclusions, certain new motor vehicle dealer transactions, and the records required to be maintained by dealers.

Beginning April 1, 2017, a CBF of one dollar ($1.00) was imposed on consumers purchasing a replacement lead-acid battery from a dealer. The passage of AB 142 increases the CBF to two dollars ($2.00) beginning on April 1, 2022.

Dealers are required to collect the CBF from their customers at the time of sale and may retain 1.5 percent (1.5%) of the fee for any costs associated with collecting it. Except for sales to businesses, the CBF shall be posted as a separate charge on the dealer’s invoice to their customer. If multiple batteries are purchased by a customer, the CBF for each battery may be combined into a single line item on the receipt. The Act requires that a dealer charge each person who purchases a replacement lead-acid battery, and who does not simultaneously provide the dealer a used lead-acid battery of the same type and size, a refundable deposit for each battery purchased. The dealer shall refund this deposit if, within 45 days of the sale, the person brings the dealer a used lead-acid battery of the same type and size.

BCI disagreed with the requirement of written certification for a certain type of lead-acid battery to be exempt from the CBF. They explain:

*BCI objects to the proposed language in sections 3230(d) and 3240(a)(2) which would require a California Battery Fee (CBF) exemption certificate for stationary storage and backup power batteries as defined in HSC 25215.1(f)(3) and proposed section 3230(b)(6). Stationary storage and*
backup power batteries, regardless of the type or purpose of transaction, are statutorily exempt from the requirements of the California Battery Fee (CBF) and the other requirements of HSC 25215.25.

While we agree that some batteries are statutorily exempt from the CBF pursuant to the Act, we also maintain that some batteries can be used for multiple purposes that are and are not subject to the CBF. Additionally, the battery descriptions on an invoice may not be enough, for audit purposes, to signify an exclusion exists. HSC section 25215.25(d)(1), expresses an explicit requirement for written certification from a purchaser that a dealer can regard a purchase as not subject to the CBF. The phrase “not subject to the CBF” is broad enough to include both exemptions and exclusions from retail sale. Obtaining a written certification from the customer relieves the dealer of the CBF, but also protects them. Since the customer is stating their usage is excluded from the CBF, the customer, not the dealer, would be liable for the CBF if the lead-acid battery is not used in an excluded manner. Accordingly, we did not incorporate BCI’s suggestion.

BCI also suggested deleting “storage” from 3230(a):

The inclusion of the word “storage” in §3230(a) will create unnecessary confusion by suggesting that the mere storage of a battery in the state of California will subject a battery to the CBF, when that outcome is neither intended nor authorized by the statute. To avoid creating confusion for fee payers and regulators, this word should be deleted from draft §3230(a).

The CDTFA did not agree with this conclusion and did not delete “storage.” In subdivision 3230(a), the word “storage” is a reference to transactions that are considered a “retail sale.” Subdivision 3230(b) explains the exclusions from the CBF, and in 3230(b)(3) the phrase used is “temporarily stored” to clarify that prepping a lead-acid battery for sole use outside of California is excluded from the fee. It also includes a reference to Regulation 3210, subdivision (h)(2), which goes into further detail regarding temporary storage and explains it is not considered a retail sale. The proposed language does not appear to be a source of any potential confusion to feepayers and therefore we are not recommending any changes.

**Regulation 3240, Written Certification**

Regulation 3240, Written Certification, clarifies the written certification required for transactions to be excluded or exempt from the MBF and CBF. This proposed regulation also provides an example of an exclusion and exemption certificate.

BCI felt Regulation 3240 to be duplicative and unnecessary and suggested it be deleted in its entirety. The CDTFA believes the proposed regulation is necessary for the administration of the Act as it clarifies who needs to get written certification and what that certification should look like. We purposely included the text from Regulations 3220 and 3230 that reference written certification so that Regulation 3240 was consistent with those regulations and could be understood when read on its own. This encourages compliance as it is not necessary to have to read the other regulations to get the information on written certification.

**Recommendation**

We recommend proceeding with the formal rulemaking process to adopt the following proposed
regulations:

- Regulation 3210, Definitions
- Regulation 3220, Manufacturer Battery Fee
- Regulation 3230, California Battery Fee
- Regulation 3240, Written Certification

Attached is the proposed text for the four regulations. If you have any questions regarding this request, please contact Mr. Michael Patno at 1-916-309-5303.

Approved:

Nicolas Maduros, Director

TG:map

Attachments: Proposed Text of Regulations 3210, 3220, 3230 and 3240
Submissions from BCI and CAWA

cc: Ms. Trista Gonzalez (MIC 104)
    Ms. Susanne Buehler (MIC 43)
    Mr. Robert Tucker (MIC 83)
    Ms. Michele Linton (MIC 105)
    Mr. Jason Mallet (MIC 25)
    Mr. Wayne Mashihara (MIC 47)
    Mr. Bill Hain (MIC 70)
    Mr. James Dahlen (MIC 57)
    Mr. Jason Parker (MIC 49)
    Mr. Steven Mercer (MIC 25)
    Ms. Ester Cabrera (MIC 23)
    Ms. Pamela Bergin (MIC 82)
    Mr. Jeff Vest (MIC 85)
    Mr. Mike Loretta (MIC 42)
    Mr. Bradley Heller (MIC 82)
    Mr. Scott Claremon (MIC 82)
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Ms. Christine Castillo (MIC 104)
Mr. Marc Alviso (MIC 104)
Ms. Claudette Yang (MIC 104)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Ms. Carol Bailey (MIC 31)
Mr. Robert Prasad (MIC 50)
Mr. Michael Patno (MIC 50)
Chapter 8.2. Lead-Acid Battery Fees

§3210. Definitions.

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

(a) “Dealer” means every person who engages in the retail sale of replacement lead-acid batteries directly to persons in California and who is subject to the jurisdiction of this state. “Dealer” 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 web site or any other similar electronic means.

(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 dealer, wholesaler, distributor, or other person who sells lead-acid batteries, who is subject to the jurisdiction of this state and who ships, delivers, transports or otherwise brings the lead-acid battery into this state for sale or distribution. 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 importer of the lead-acid battery. 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” is 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 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, or
   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, or
   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.

A lead-acid battery includes any battery, as described above that is designed by the manufacturer to be used for one or more of the listed purposes.
(f) “Manufacturer” means either of the following:

1. A person subject to the jurisdiction of this state who manufactures the lead-acid battery and who sells, offers for sale, or distributes the lead-acid battery in the state, or

2. If there is no person described in subdivision (f)(1) that is subject to the jurisdiction of the state, then the person who is subject to the jurisdiction of this state and who imports the lead-acid battery into the state for sale or distribution is considered the manufacturer.

Only one person is considered a “manufacturer” of a lead-acid battery for purposes of liability for the manufacturer battery fee. The first person in the chain of distribution who meets the definition of a manufacturer is liable for the fee. For example, the manufacturer battery fee cannot be imposed on an importer or a dealer if the person who manufactures the battery is subject to the fee.

(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 considered new if it has not previously been purchased in a retail sale for which the California battery fee was imposed and paid. Regardless of whether it is considered new, a replacement lead-acid battery does not include a spent, discarded, refurbished, reconditioned, rebuilt, or reused lead-acid battery.

(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 a retail sale of the lead-acid battery.

   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.

   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, “temporarily stored or used in California” includes packaging or storage for purposes of shipment outside this state by a consumer, provided the battery does not remain in this state for more than 90 days after purchase. “Temporarily stored or used in California” does not include a functional use of a battery following its installation.

   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. For example, 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 pursuant to a vehicle service contract described under section 12800 of the Insurance Code without charge to the consumer. If there is a separate charge to the consumer 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 with respect to that separate charge.

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 and includes a 10-year warranty but 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 the dealer may provide a $10 credit for a replacement lead-acid battery, because the lead-acid battery failed with one year or 10 percent (10%) still remaining in the warranty period. In this scenario, 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 regulation, a person is “subject to the jurisdiction of this state” if the person has a substantial nexus with the state for purposes of the commerce clause of the United States Constitution. In addition:

1. For purposes of subdivision (a) of this regulation and for purposes of determining whether a sale is a drop shipment for purposes of the California battery fee, a person is “subject to the jurisdiction of this state” if federal law permits this state to impose a duty to collect the California battery fee on the person; and

2. For purposes of subdivisions (d) and (f) of this regulation and for purposes of determining whether a sale is a drop shipment for purposes of the manufacturer battery fee, a person is “subject to the jurisdiction of this state” if federal law permits this state to impose a manufacturer battery fee on the person.

(j) “Vehicle.” Except as defined otherwise, the term 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. 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.

§3220. Manufacturer Battery Fee.

(a) General. Effective April 1, 2017, through March 31, 2022, a manufacturer battery fee of one dollar ($1.00) is imposed on a manufacturer of lead-acid batteries for each lead-acid battery that 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. The manufacturer battery fee will increase to two dollars ($2.00) on April 1, 2022.

(b) Liability for the fee. If an out-of-state manufacturer, subject to the jurisdiction of California, sells and ships a battery to a purchaser in California, including a dealer, wholesaler, distributor, or other person, the out-of-state manufacturer is liable for the manufacturer battery fee on that sale. If an out-of-state manufacturer, not subject to the jurisdiction of California, sells and ships a battery to a purchaser in California, then the importer is regarded as the manufacturer and is liable for the manufacturer battery fee. Only one person is considered the “manufacturer” of the 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. A manufacturer who pays the manufacturer fee to the Department and thereby receives a credit pursuant to Health and Safety Code Section 25215.56 shall not separately charge its customer reimbursement for the fee. 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 consumer 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, it is rebuttably presumed that the lead-acid battery will 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 who manufacturers the battery, and who sold, offered for sale, or distributed the lead-acid battery in this state.

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, 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 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 as described in subdivision (c), a manufacturer must obtain written certification from a purchaser 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 manufacturing battery fee. The purchaser, by certifying an exclusion in writing to
the manufacturer, is liable for the payment of the lead-acid battery fee, if the purchaser sells or uses the lead-acid battery in a manner or for a purpose not described in subdivision (c). The purchaser’s written certification must conform to the requirements of Regulation 3240.

(e) Payment of the fee by a manufacturer not subject to jurisdiction in California.

(1) A person who manufactures a lead-acid battery and is not subject to the jurisdiction of the state may enter into a written agreement with the importer of that lead-acid battery to pay the manufacturer battery fee on behalf of the importer. This person shall be credited for the manufacturer battery fee payment, provided they do the following:

(A) Submit to the jurisdiction of the state and register with the Department to pay and remit the manufacturer battery fee.

(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 subject to the manufacturer battery fee, and a statement that the person will pay the manufacturer battery fee to the state on behalf of the importer.

(2) An importer of a lead-acid battery who receives a timely statement from a manufacturer, as described in subdivision (e)(1), shall be relieved from paying the manufacturer battery fee, provided that the manufacturer pays the fee to the state for the sale of that battery. A statement shall be considered timely if it is issued before the manufacturer bills the importer for the lead-acid battery, within the manufacturer’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.

(3) An importer who has paid the manufacturer battery fee for 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 any overpaid fees.

(4) A person who pays the manufacturer fee to the Department and thereby receives a credit pursuant to Health and Safety Code Section 25215.56 shall not separately charge its customer reimbursement for the fee.

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

(6) The Department may disclose the name, address, account number, and account status of a person registered with the Department to pay the manufacturing battery fee. Except as described in subdivision (e)(4), the Department will not disclose the amount of the manufacturing battery fee 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 certification, and other relevant documents.

(2) A manufacturer shall maintain records sufficient to document that the lead-acid battery for which the person has agreed to pay the manufacturer battery fee was delivered for retail sale in California, the identity of the importer of that battery, and that the statement required by subdivision (d)(2) was provided to the importer of the battery in a timely manner pursuant to Health and Safety Code Section 25215.3(c).

(3) All records required to be retained 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.

§3230. California Battery Fee.

(a) General. Effective April 1, 2017, a California battery fee is imposed on a person for each replacement lead-acid battery purchased from a dealer in a retail sale for storage, use, or other consumption in California, except as provided in subdivision (b). The dealer shall collect the California battery fee from the consumer at the time of the retail sale and may retain 1.5 percent (.015) of the fees collected as reimbursement for any costs associated with the collection of the fee. From April 1, 2017, through March 31, 2022, the California battery fee imposed will be one dollar ($1.00). The California battery fee will increase to two dollars ($2.00) on April 1, 2022.

(b) Exclusions. The California battery fee does not apply to the following transactions:

1. Sales for resale in the regular course of business. If the purchaser issues a certificate to the effect that the property is purchased for resale, including a California resale certificate issued pursuant to the Sales and Use Tax Law to document that the sale is not a retail sale, then it is rebuttably presumed that the sale of the replacement lead-acid battery is not a retail sale for the purposes of the California battery fee.

2. A sale of a replacement lead-acid battery for which the California battery fee has previously been imposed and paid.

3. 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, as provided in subdivision (h)(2)(B) of Regulation 3210.

4. 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.

5. 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.

6. A sale of a replacement lead-acid battery described in subdivision (e)(3) of Regulation 3210 used as a stationary storage or standby battery that is designed to be used in systems where the battery acts as either:

   A. Electrical storage for electricity generation equipment, or

   B. A source of emergency power, or

   C. Otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.

7. 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.

(c) Exemption for New Motor Vehicle Dealers. Effective 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 California battery fee shall not apply. The terms “new motor vehicle dealer” and “used vehicle” have the same meaning as are specified in Vehicle Code Sections 426 and 665, respectively.

(d) Written Certification. The written certification from a purchaser must conform to the requirements of Regulation 3240.
(1) If a lead-acid battery is sold or used in a manner described in subdivision (b), a dealer must obtain written certification from a purchaser 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 California battery fee. The purchaser, by certifying an exclusion in writing to the dealer, is liable for the payment of the lead-acid battery fee, if the purchaser sells or uses the lead-acid battery not described in subdivision (b).

(2) If a lead acid battery is sold or leased in a manner described in subdivision (c), the new motor vehicle dealer may obtain written certification in addition to other documentation that shall be maintained, such as the Report of Sale or the Motor Vehicle Contract and Security Agreement.

(e) Records.

(1) A dealer shall maintain and make available for examination on request by the Department all records necessary to determine the dealer’s liability for the California battery fee and all records necessary for the proper completion of the dealer’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 certification, and other relevant documents.

(2) All records required to be retained 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.

§ 3240. Written Certification.

(a) General.

(1) If a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the manufacturer battery fee, the manufacturer must obtain written certification from the purchaser 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 manufacturing battery fee.

(2) If a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the California battery fee, the dealer must obtain written certification from the purchaser 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 California battery fee.

(3) If a purchaser makes a written certification pursuant to subdivision (a)(1) or (a)(2) of this section and subsequently sells or uses the battery such that no exclusion to the requirement to pay the applicable fee(s) applies, the purchaser is liable for payment of the fee(s) to the Department.

(4) On and after January 1, 2020, a lead-acid battery installed into a used vehicle sold or leased by a new motor vehicle dealer shall be exempt from the California battery fee provided the new motor vehicle dealer has documentation to support the exemption.

(b) Form of Written Certification.

(1) The General Exclusion and Exemption Certificate provided in Appendix A of this regulation should be used to document sales of lead-acid batteries that are not subject to the lead-acid battery fees.

(2) Alternate to the form prescribed in subdivision (b)(1), a purchaser may use any written document to certify 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. The purchaser’s written document must include the purchaser’s certification that the 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 fee(s), the purchaser’s name and address, the signature of the purchaser, the purchaser’s agent, or the purchaser’s employee, and the date signed.

(3) An exclusion and exemption certificate or written certification remain in effect until revoked in writing.

(c) Timely. Written certification will be considered timely if it is given at any time before the seller bills the purchaser for the lead-acid battery, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the lead-acid battery to the purchaser.

(d) Blanket Exclusion and Exemption Certificate. A purchaser may issue an exclusion and exemption certificate which provides a general description of the type of lead-acid batteries to be purchased from a seller that are not subject to the manufacturer battery fee and/or the California battery fee. If such a purchaser subsequently issues a purchase order which indicates that the transaction covered by the purchase order is subject to either the manufacturer battery fee or the California battery fee, the exclusion and exemption certificate does not apply with respect to that transaction. If a purchaser wishes to designate that all lead-acid batteries purchased from a seller are not subject to the lead-acid battery fee(s), the purchaser may state “all batteries purchased from [name of seller]” in the general description field and then check the appropriate box(es) for the
applicable fee(s) covered on the General Exclusion and Exemption Certificate provided in Appendix A.

(e) Qualified Exclusion and Exemption Certificate. If a purchaser wishes to designate on each purchase order whether the batteries being purchased are subject to an exclusion or exemption, the seller should obtain a qualified exclusion and exemption certificate, i.e., one that states "see purchase order" in the space provided for a general description of the property to be purchased on the General Exclusion and Exemption Certificate provided in Appendix A. Each purchase order must then specify whether the property covered by the order is subject to the fee. The use of the phrases "not subject to the fee," "nontaxable," "fee = no," or similar terminology on a purchase order indicating that the fee is not applicable will be regarded as designating that the property described is not subject to the fee provided the combination of the purchase order and the qualified exclusion and exemption certificate contains all the essential elements provided in subdivision (b). However, a purchase order where the applicable amount of fee is shown as $0 or is left blank will not be accepted as designating that the property is not subject to the fee, unless the purchase order also includes the phrase "not subject to the fee" or other terminology described above to specify that the property is not subject to the fee. If each purchase order does not specify or is not issued timely within the meaning of subdivision (e), it will be presumed that the property covered by that purchase order is subject to the fee. If the purchase order includes both batteries subject to the fee or fees and batteries not subject to the fee or fees, the purchase order must specify which (or how many in the event they are identical) batteries are exempt from which fee and which (or how many in the event they are identical) batteries are subject to which fee.

APPENDIX A

GENERAL EXCLUSION AND EXEMPTION CERTIFICATE
California Exclusion and Exemption Certificate for Lead-Acid Batteries
Not Subject to the Lead-Acid Battery Fees

I HEREBY CERTIFY:

1. I hold a valid Seller’s Permit or Certificate of Registration - Use Tax
   [ ] Yes. Seller’s Permit or Certificate of Registration. – Use Tax number:
   [ ] No.
   If you responded “No” to item number one, please complete item number two.

2. Reason for not holding a Seller’s Permit or Certificate of Registration – Use Tax:

3. General description of the types of batteries covered by this certificate:

4. I am claiming an exclusion or exemption from the following fee(s) (check all that apply):
   [ ] California Battery Fee [ ] Manufacturer Battery Fee

5. The batteries purchased are not subject to the lead-acid battery fee(s) for the following reason(s)
   [check all that apply]
   [ ] A sale for resale. (Only applies to the California Battery Fee.)
   [ ] A replacement lead-acid battery to be temporarily stored or used in California for the sole purpose of preparing the battery for use solely outside of California.
   [ ] A battery to be incorporated into new equipment to be resold with the battery.
   [ ] A battery to be incorporated into a used vehicle sold or leased by a new car dealer. (Only applies to the California Battery Fee)
   [ ] A battery to be provided as a replacement, for no charge, under a vehicle or battery warranty or a vehicle service contract (Insurance Code Section 12800).
   [ ] A battery to be used with or contained within a medical device (21 U.S.C. 321(h)).
   [ ] A battery to be used as a stationary storage or standby battery that is designed to be used in systems where the battery acts as either: (Only applies to the California Battery Fee)
     - Electrical storage for electricity generation equipment, or
     - A source for emergency power, or
     - Otherwise serves as a backup in case of failure or interruption in the flow of power from the primary source.

6. I certify that the batteries which I am purchasing under this exclusion and exemption certificate are not subject to the lead-acid battery fee(s) due to the exclusion or exemption marked above and that the batteries will be used as certified.
<table>
<thead>
<tr>
<th>NAME OF PURCHASER</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE OR AUTHORIZED REPRESENTATIVE</td>
</tr>
<tr>
<td>PRINTED NAME OF PERSON SIGNING</td>
</tr>
<tr>
<td>ADDRESS OF PURCHASER</td>
</tr>
<tr>
<td>TELEPHONE NUMBER</td>
</tr>
<tr>
<td>( )</td>
</tr>
</tbody>
</table>
June 26, 2019

Trista Gonzalez  
Chief, Tax Policy Bureau  
Business Tax and Fee Division  
California Department of Tax and Fee Administration  
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RE: Business Taxes Committee - Third Discussion Paper - Lead-Acid Batteries

Dear Ms. Gonzalez,

Battery Council International (BCI) is pleased to provide comments and feedback on the Third Discussion Paper regarding the Department’s draft implementing regulations to address the imposition of the fees on lead-acid batteries pursuant to Article 10.5, Chapter 6.5 of Division 20 of the Health and Safety Code, as adopted by AB 2153 (2016) and amended by AB 142 (2019).

BCI appreciates CDTFA’s engagement with stakeholders, and believes the discussion process has resulted in a constructive conversation. However, BCI has certain significant concerns with the discussion draft which BCI believes must be resolved to align the draft regulations with the authorizing statute and legislative intent.

As described below in Section I and II, BCI is particularly concerned that two provisions of CDTFA’s proposal run contrary to both the statutory language and the legislative intent. BCI also has two other technical concerns related to fee qualifications and duplicative provisions.

I. Section 3220(e)(4) is Not Authorized by Statute

BCI strenuously objects to draft section 3220(e)(4) which would prohibit manufacturers from seeking reimbursement from customers for the costs of the manufacturer fee, and the duplicative language in section 3220(b). No such prohibition or authorization for CDTFA to interfere with private business relationships appears in the authorizing statutory language.

At the June 10 stakeholder meeting, staff suggested that the provisions were included because CDTFA staff believed, based on unrelated tax laws, that such reimbursement agreements should be barred even though they are allowed under the authorizing legislation. However, the discussion paper does not provide a statutory basis within Article 10.5 of Chapter 6.5 of Division 20 of the HSC for including such a prohibition, and staff could not provide any citations to other relevant statutes during the meeting.
Whether or not manufacturers can enter into private business arrangements to respond to their increased tax liabilities is a significant policy decision because it directly interferes in the business relationships between manufacturers and their private labelers, distributors, and other customers. For example, manufacturers may produce batteries wholly at the request and on behalf of other manufacturers to supplement production capacity, or on behalf of other brand-owners under private-labeling agreements. CDTFA’s proposal would interfere with the ability for contract producers to profitably engage in such manufacturing arrangements.

Such significant policy decisions should not be taken lightly and must be left to the legislature. Here, the legislature, with the benefit of knowledge of California’s other tax laws, declined to prohibit such reimbursement transactions. CDTFA’s proposal would inappropriately interfere in the private business arrangements between manufacturers and distributors or other customers without legislative authorization. These provisions must be deleted.

The following changes need be made to the draft regulations correct this issue: (BCI Changes Shown in Red)

§3220 * * *

(b) Liability for the fee. If an out-of-state manufacturer, subject to the jurisdiction of California, sells and ships a battery to a purchaser in California, including a dealer, wholesaler, distributor, or other person, the out-of-state manufacturer is liable for the manufacturer battery fee on that sale is due from the manufacturer. If an out-of-state manufacturer, not subject to the jurisdiction of California, sells and ships a battery to a purchaser in California, then the importer is regarded as the manufacturer and is liable for responsible to pay the manufacturer battery fee. Only one person is considered the “manufacturer” of the 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 in California 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. A manufacturer shall not charge its customer for the fee or charge its customer reimbursement for the fee. Importing a lead-acid battery into California, by itself, does not trigger imposition of the fee.

* * *

(e) * * *

(4) A person who pays the manufacturer fee to the Department and thereby receives a credit pursuant to Health and Safety Code Section 25215.56 may not charge its customer reimbursement for the fee.

* * *
II. CDTFA Cannot Require CBF Exemption Certificates for Stationary Storage and Backup Storage Batteries

BCI objects to the proposed language in sections 3230(d) and 3240(a)(2) which would require a California Battery Fee (CBF) exemption certificate for stationary storage and backup power batteries as defined in HSC 25215.1(f)(3) and proposed section 3230(b)(6). Stationary storage and backup power batteries, regardless of the type or purpose of transaction, are statutorily exempt from the requirements of the California Battery Fee (CBF)¹ and the other requirements of HSC 25215.25.

HSC 25215.25(a)(1) provides that the “California battery fee shall be imposed on a person for each replacement lead-acid battery of a type listed in paragraph (1), (2), or (4) of subdivision (f) of Section 25215.1….” Notably, by exclusion, the CBF is not imposed on those batteries defined at HSC 25215.1(f)(3), which includes batteries used for the following purposes: “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.” Stationary storage and backup storage batteries therefore are exempt from the requirements of HSC 25215.25, including the requirement to provide an exemption certificate imposed on sales of otherwise covered batteries by HSC 25215.25(d)(1).

CDTFA cannot *sua sponte* require a CBF exemption certificate for batteries which are not subject to the statutory provisions imposing the CBF and the CBF exemption certificate requirement. In this situation, there is little risk that a backup power battery will be sold for uses subject to the CBF. Stationary storage and backup storage batteries use different designs that are not compatible with covered battery applications and are sold and marketed only for those uses. Even if it were statutorily authorized, CDTFA’s proposal is unnecessary; it would merely serve to require large volumes of paperwork for products which are never subject to the CBF. This proposed requirement is not authorized and is overly-burdensome for fee payers and purchasers.

The following changes should be made to the draft regulations to correct this issue: (BCI Changes Shown in Red)

§3230 * * *
(d) * * *

¹ HSC 25215.1(c): “California battery fee” means the fee imposed pursuant to Section 25215.25.
(1) Except for sales of batteries described in subdivision (c)(3) of Regulation 3210, if a lead-acid battery is sold or used in a manner described in subdivision (b), a dealer must obtain written certification from a purchaser 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 California battery fee. The purchaser, by certifying an exclusion in writing to the dealer, is liable for the payment of the lead-acid battery fee, if the purchaser sells or uses the lead-acid battery not described in subdivision (b).

* * *

§3240 * * *

(a) * * *

(2) Except for sales of batteries described in subdivision (c)(3) of Regulation 3210, if a lead-acid battery is sold or will be used in a manner or for a purpose excluding it from the California battery fee, the dealer must obtain written certification from the purchaser 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 California battery fee.

III. “Storage” of a Battery in California is Not Itself Qualifying for Purposes of the CBF

The word “storage” should be deleted from the proposed new text in section 3230(a). HSC 25215.1(p)(2)(B) provides that a battery stored in California prior to use in another state is exempt from the California Battery Fee. By implication, this exemption—properly recognized elsewhere in the draft rules—clarifies that it is the location of actual “use” that determines the applicability of the fees.

The inclusion of the word “storage” in §3230(a) will create unnecessary confusion by suggesting that the mere storage of a battery in the state of California will subject a battery to the CBF, when that outcome is neither intended nor authorized by the statute. To avoid creating confusion for fee payers and regulators, this word should be deleted from draft §3230(a).

IV. Draft Section 3240(a) is Duplicative and Unnecessary

Proposed section 3240(a) is duplicative of sections 3220(d) and 3230(d). 3240(a) is unnecessary, and should be deleted entirely to avoid creating confusion. If it is retained, section 3240(a)(2) should be modified as noted above to clarify that stationary storage and backup power batteries are exempt from the requirements of 3240(a) with regard to the CBF.

* * *
BCI greatly appreciates CDTFA’s commitment to this issue. If you have any questions about BCI’s comments, please contact me at rmiksad@batterycouncil.org.

Respectfully submitted,

/s/ Roger H. Miksad
Executive Vice President and General Counsel
Battery Council International
June 26, 2019

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RE: Business Taxes Committee - Third Discussion Paper - Lead-Acid Batteries

Dear Ms. Gonzalez,

The California Automotive Wholesalers’ Association (CAWA – Representing the Automotive Parts Industry) and the Auto Care Association support by reference the summital letter (see attached) you have received from Battery Council International (BCI), dated June 26, 2020. Both our trade association’s members have a strong, beneficial relationship with BCI and its manufacturing membership.

In particular, within BCI’s letter, comments made by Roger Miksad, Executive Vice President and General Counsel for BCI, states in I. Section 3220(e)(4) is Not Authorized by Statute cannot be overstated by our memberships. As participants in the legislative efforts enacting both AB2153 (Garcia) and AB142 (Garcia), the statutes do not provide authoritative language as proposed by the California Department of Tax and Fee Administration (CDTFA) regulations within Section 3220(e)(4). We feel this is an extreme overreach to have an administration of the State insert such language without proper legislative and statutory authority. We respectfully ask the proposal to be removed.

We do wish to express our gratitude for all the hours and guidance provided by you and your staff, not only during regulatory presentations, but as well as working with the industry to procure legislative understanding during the legislative process.

Thank you.

Sincerely,
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On behalf of Aaron Lowe, Auto Care Association and Rodney Perini, CAWA – Representing the Automotive Parts Industry

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