

# 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 3240. Written Certification.

##### (a) In 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, as described in subdivision (c)(2) through (5) of Regulation 3220, 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 manufacturer battery fee. If a written certification is timely taken from the purchaser in proper form as set forth in subdivision (b) and in good faith, the manufacturer is not required to pay a manufacturer battery fee on the sale of that battery.

(2) If a replacement lead-acid battery is sold or will be used in a manner or for a purpose excluding or exempting it from the California battery fee, described in subdivision (b)(2) through (7) of Regulation 3230, 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. If a written certification is timely taken from the purchaser in the proper form as set forth in subdivision (b) and in good faith, the dealer is not required to collect the California battery fee from the purchaser on the sale of that battery.

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

##### (b) Form of Written Certification.

(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.

(2) The essential elements described in subdivision (b)(1) are the minimum requirements for a purchaser's written certification. However, in order to preclude potential controversy, a seller should timely obtain from a purchaser a General Exclusion and Exemption Certificate substantially in the form provided in Appendix A of this regulation to document sales of lead-acid batteries that are not subject to the lead-acid battery fees.

(3) A written certification will remain in effect until revoked in writing.

(c) Timely and Good Faith. 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. 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 as described in subdivision (b)(1) and otherwise appears to be valid on its face.

(d) Blanket General Exclusion and Exemption Certificate. A purchaser may issue a blanket General Exclusion and Exemption Certificate that applies to all of its purchases and provides a general description of the 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 that indicates that the transaction covered by the purchase order is subject to either the manufacturer battery fee or the California battery fee, the blanket General 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 General Exclusion and Exemption Certificate. If a purchaser wishes to designate on each purchase order whether the batteries being purchased from a seller are subject to an exclusion or exemption, the purchaser should issue a qualified General 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 designate whether the property covered by the order is subject to the fee. The use of the phrases 'not subject to the fee,' 'nontaxable,' or 'fee = no,' or similar phrases 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 General Exclusion and Exemption Certificate contain all the essential elements provided in subdivision (b)(1). 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 the other phrases described above to designate 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 (c), it will be rebuttably presumed that the property covered by that purchase order is subject to the fee. If a purchase order includes batteries subject to the fee or fees and batteries not subject to the fee or fees, the purchase order must specify which batteries or how many batteries, in the event they are identical, are excluded or exempt from which fee

and which batteries, or how many batteries in the event they are identical, are subject to which fee.

(f) Resale Certificates. 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 California Code of Regulations, title 18, section 1668, Sales for Resale, the certificate shall satisfy the written certification requirements of subdivision (a)(2) of this regulation with respect to the sale of that battery.

Note: Authority cited: Section 25215.74, Health and Safety Code. Reference: Sections 25215.25 and 25215.35, Health and Safety Code.

## 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:

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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:

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

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4. I am claiming an exclusion or exemption from the following fee(s) (check all that apply):

California Battery Fee

Manufacturer Battery Fee

5. Each battery purchased is not subject to the lead-acid battery fee(s) for one or more of the following reasons [check all that apply]

Purchased for resale. (Only applies to the California Battery Fee.)

A replacement lead-acid battery that will be temporarily stored or used in California for the sole purpose of preparing the battery for use solely outside of California and will be subsequently transported outside the state and thereafter used solely outside of the state.

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 motor vehicle dealer. (Only applies to the California Battery Fee)

A battery to be provided as a replacement, without charge, under a vehicle or battery warranty or a vehicle service contract described under Insurance Code section 12800.

A battery to be used with or contained within a medical device, as defined in 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;
- 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.

6. I certify that the batteries I am purchasing under this exclusion and exemption certificate are not subject to the lead-acid battery fee(s) due to the exclusion(s) and/or exemption marked above and that the lead-acid batteries will be used as certified. I understand that if any lead-acid batteries are sold or used in a manner or for a purpose not specified above, I am required to report and pay any applicable lead-acid battery fees, including interest and penalties (if applicable), directly to the California Department of Tax and Fee Administration.

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NAME OF PURCHASER

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SIGNATURE OF PURCHASER, PURCHASER'S EMPLOYEE OR AUTHORIZED REPRESENTATIVE

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PRINTED NAME OF PERSON SIGNING

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TITLE

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ADDRESS OF PURCHASER

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TELEPHONE NUMBER

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DATE

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