

**CALIFORNIA ALTERNATIVE ENERGY AND
ADVANCED TRANSPORTATION FINANCING AUTHORITY**

*Request to Consider and Approve Regulations for the
Sales and Use Tax Exclusion Program*

Tuesday, November 14, 2017

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REQUEST

CAEATFA staff request approval of emergency regulations for the Sales and Use Tax Exclusion Program to incorporate program modifications to assist companies affected by emergency disasters, such as fire, flood, or earthquake.

SUMMARY

BACKGROUND

In March 2010, Senate Bill 71 (Padilla, Chapter 10, Statutes of 2010) directed CAEATFA to implement the Sales and Use Tax Exclusion (“STE”) Program (the “Program”). The legislation authorized CAEATFA to approve eligible projects for a sales and use tax exclusion (STE) on equipment and machinery (“Qualified Property”) used for the “design, manufacture, production, or assembly” of either advanced transportation technologies or alternative energy source products, components or systems, as defined. The purpose of this program is twofold: to promote the creation of California-based manufacturing jobs that will stimulate the California economy and to incentivize the manufacturing of green technologies that will help reduce greenhouse gases, as well as reductions in air and water pollution or energy consumption.

In September 2012, Senate Bill 1128 (Padilla, Chapter 677, Statutes of 2012) expanded the Program to include Advanced Manufacturing projects. The legislation also placed an annual limit of \$100 million in STE awards for each calendar year. In October 2015, AB 199 (Eggman, Chapter 768, Statutes of 2015) further expanded the scope of the Program to include projects that process or utilize recycled feedstock.

In 2015, the STE Program became oversubscribed by \$66.1 million in application requests for projects under the three pre-existing pathways to eligibility (Alternative Source, Advanced Transportation, and Advanced Manufacturing), and again was oversubscribed in 2016.

As the Program has expanded and grown in utilization, CAEATFA staff (“Staff”) has sought to address the issue of oversubscription by adopting programmatic changes that best advance CAEATFA and Program goals. Last year CAEATFA adopted regulations implementing a \$20 million project cap and instituting a competitive process whereby applications are ranked based on specific objective criteria to determine the order of priority for consideration if the Program became oversubscribed in a given month.

In light of the unprecedented destruction caused by several emergency disasters in California, including the recent Northern California wildfires, CAEATFA Staff identified ways the Program could assist companies rebuilding after such critical damage to help promote the Program's goals of retaining manufacturing facilities and manufacturing jobs in California. These include: (1) expedited application review, (2) application fee waiver, and (3) additional points under the Program's competitive criteria ranking process. Existing Program regulations allow the Authority consider a completed application sooner than the typical 60 day period upon a recommendation of the Executive Director. Although Staff is limited to an extent based on public notice requirements and the applicant's ability to timely respond to application questions and comments, Staff will seek to provide an expedited review process of affected applicants upon request. To implement the other strategies for assisting affected manufacturers, Staff is proposing amendments to the Program's regulations to incorporate an application fee waiver and a new competitive criterion.

PROPOSED MODIFICATIONS TO THE REGULATIONS

CAEATFA Staff is requesting approval of emergency regulations amending the Program's regulations to include a new competitive criterion and provide the ability to waive application fees for applicants rebuilding or relocated due to specific physical disasters.

Below is a summary of the recommended regulatory changes. The full text of the proposed amended regulations can be found in Attachment A.

Competitive Criteria - § 10032. Application Requirements.

Current regulations provide that, in the event that CAEATFA receives applications in excess of the statutory \$100 million cap for that calendar year, the order in which the applications shall be considered in the same month will be ranked based on four basic criteria: (1) unemployment rate in the county of the facility, (2) presence of corporate headquarters in California, (3) status as a small business, (4) and being new to the Program. These criteria were chosen for two purposes. First, each of the criteria prioritizes applicants which provide a benefit to the state. Secondly, the criteria are objective and verifiable by Staff at the time of application.

In recognition of the benefit to the state to retain manufacturing facilities and manufacturing jobs impacted by certain emergency disasters, the proposed amendments would add a new competitive criterion that provides five points for a Project if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application.

Waiver of Fees - § 10036. Fees.

Applicants currently must pay an application fee of 0.05% of the requested Qualified Property amount at the time of application. The proposed amendments would allow the Executive Director to waive the application fee if the applicant can demonstrate the Project is to relocate or rebuild the applicant's facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of

application to reduce the burden of applying for the Program and help encourage affected manufacturers to rebuild and continue operations in California. CAEATFA Staff has determined such a fee waiver will not substantially impact the revenue necessary to implement the Program.

EMERGENCY RULEMAKING PROCESS

CAEATFA is granted emergency rulemaking authority under Public Resources Code Section 26009. This authority provides CAEATFA with the ability to make modifications or changes to the regulations in an expedited manner.

The emergency rulemaking process requires CAEATFA to provide notice of the emergency rulemaking action five days prior to submitting the modifications to the Office of Administrative Law (“OAL”) for approval, and provides a five day public comment period. OAL has ten calendar days to review the regulations. Emergency regulations remain in effect for 180 days while Staff completes the regular rulemaking process. The emergency regulations may be readopted for up to two 90-day periods if necessary to complete the regular rulemaking process. Staff must file a certificate of compliance and complete rulemaking file with OAL certifying CAEATFA complied with the regular rulemaking procedures within the required timeframe to prevent the emergency regulations from being repealed.

TENTATIVE TIMELINE

All of the dates below are tentative and subject to change.

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| November 14, 2017 | Board considers proposed emergency regulations. |
| November 15, 2017 | Staff issues 5-day Notice of Emergency Regulations. |
| November 27, 2017 | Emergency regulations are submitted to OAL for review. |
| December 7, 2017 | OAL decision deadline, emergency regulations in effect upon filing with the Secretary of State for 180 days. |

RECOMMENDATION

Staff recommends adoption of a resolution to approve the proposed amendments to the regulations for the Sales and Use Tax Exclusion Program and to authorize Staff to undertake regular and emergency rulemaking proceedings and other actions related to promulgation of the regulations.

Attachments:

- Attachment A Text of Proposed Regulations - Amendments for consideration are in underline and strikethrough red text.

RESOLUTION OF THE CALIFORNIA ALTERNATIVE ENERGY AND ADVANCED TRANSPORTATION FINANCING AUTHORITY APPROVING REGULATIONS AND AUTHORIZING EMERGENCY AND REGULAR RULEMAKING PROCEEDINGS AND OTHER ACTIONS RELATED THERETO, INCLUDING THE PUBLIC NOTICE AND COMMENT PROCEDURES TO IMPLEMENT THE SALES AND USE TAX EXCLUSION PROGRAM

November 14, 2017

WHEREAS, the California Alternative Energy and Advanced Transportation Financing Authority ("Authority") is authorized by California Public Resources Code Section 26009 to adopt regulations to further implement and make specific the statutory provisions governing the Authority; and

WHEREAS, the Authority has determined that amendments to the Authority's regulations relating to its implementation of the Sales and Use Tax Exclusion Program (the "Program"), as authorized in Section 26011.8 of the Public Resources Code, are necessary to be adopted at this time to implement the Program.

NOW, THEREFORE, BE IT RESOLVED by the California Alternative Energy and Advanced Transportation Financing Authority as follows:

Section 1. The proposed form of Regulations, on file with the Authority, is hereby approved. The Chair, Executive Director and Deputy Executive Director are hereby authorized to file the Regulations, with the supporting documentation required by law, with the Office of Administrative Law as emergency regulations in the form currently on file with the Authority.

Section 2. The Chair, Executive Director and Deputy Executive Director are hereby authorized to proceed with the public notice and comment procedures required by California Rulemaking Law prior to submitting emergency and regular regulations to the Office of Administrative Law.

Section 3. The Chair, Executive Director and Deputy Executive Director of the Authority are hereby authorized to take necessary actions, including making any necessary changes to the Regulations to secure approval by the Office of Administrative Law, and to execute and deliver any and all documents necessary or advisable in order to effectuate the purposes of this resolution.

Section 4. This resolution shall take effect immediately upon its approval.

ATTACHMENT A

**SALES AND USE TAX EXCLUSION
PROGRAM REGULATIONS**

CALIFORNIA CODE OF REGULATIONS

Title 4. Business Regulations

**Division 13. California Alternative Energy and Advanced Transportation
Financing Authority**

Article 2. MANUFACTURING SALES AND USE TAX EXCLUSION PROGRAM

§ 10032. Application Requirements.

(a) Timing of Application submissions.

(1) Except as otherwise provided by the Authority pursuant to subparagraph (3) below, Applications may be submitted for consideration at any time. Applications will be presented at the first meeting at which Applications will be considered occurring at least 60 calendar days after the receipt of the Complete Application, except as noted in paragraphs (3), (8), and (9) below.

(2) Applications must be submitted via e-mail to CAEATFA@treasurer.ca.gov as well as in person or via regular mail or commercial delivery service. CAEATFA must receive the original paper Application within five (5) business days of submission of the electronic version of the Application.

(3) The Authority may limit the number of meetings each year at which Applications will be considered.

(4) Except as provided in subparagraph (A) below, Applications shall be capped at \$20 million of sales and use tax exclusions (STEs) per Applicant, per calendar year, based on the average statewide sales tax rate at time of Application. For any Applicant which has a parent company with an ownership interest greater than 50%, the \$20 million cap also applies to the Applicant's parent company and the parent company's subsidiaries or affiliates.

(A) If STE will be available at the last Authority board meeting of the calendar year, the Authority may provide additional STE to Applicants that qualified for additional STE but were capped at \$20 million of STE. Applicants wishing to exceed the \$20

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million cap shall bring a revised Project Application or a new Application before the Authority for consideration in December of the same calendar year in which the original Application was approved. The revised or new Application shall include updated information requested in Section 10032 and will be evaluated pursuant to Section 10033. The Authority will announce end of the year availability no later than 28 days prior to the December Authority meeting.

i. The amount of additional STE available to each Applicant shall be determined by the Executive Director, and shall be the amount of the Applicant's approved award, plus an amount calculated by taking the unawarded STE for that calendar year and dividing it evenly between all Applicants that wish to exceed the \$20 million Project cap, but not to exceed the requested STE for any Applicant. Applicants seeking additional STE beyond the Project cap shall not be eligible to receive STE from the subsequent calendar year pursuant to the provisions of Section 10032(a)(7)(A).

(5) To the extent that total sales and use tax exclusions awarded during the calendar year reach \$100 million (the statutory cap), no additional Applications will be reviewed during that calendar year. Applications that are received but not awarded due to the statutory cap will be placed on a waiting list. To the extent that additional STEs become available during the calendar year, Applications on the waiting list will be reviewed and presented to the CAEATFA Board for approval in the order in which they are ranked, based on Competitive Criteria. Applications that are on the waiting list but are not evaluated by staff due to the statutory cap will be considered in the subsequent calendar year.

(6) Complete Applications will be reviewed in the order in which they are received, except as noted in paragraph (7) below.

(A) The order in which they are received will be determined by the time and date stamp of the electronic submission of the Application via e-mail.

(7) In the event that Applications received by CAEATFA represent STEs in excess of the statutory cap for that calendar year, the order in which the Applications shall be considered by the Authority will be based on a ranking of Competitive Criteria of all Projects moving forward before the board within the same month, as established in subparagraphs (A) and (B) below.

(A) Each criterion that the Application meets shall be worth between one and five points. The Projects with the greatest point score will be reviewed and presented to the CAEATFA Board. In the event of a tie, the Application representing the smaller STE award will move forward to consideration before the Authority. If the STE amounts are identical, the Application that was received by CAEATFA first shall be heard first. When the amount requested in the Application exceeds the STE available in the calendar year, the Authority shall award the remaining STE request

using STE from the following calendar year. Any remaining Applications shall be placed on the waiting list.

(B) Competitive Criteria.

(i) If the Project is located in a county with an unemployment rate greater than 110% of the statewide average, the Project shall receive points based on the ratio of the local unemployment rate (Local Rate) to the Highest Unemployment Rate In the State (HUIS), pursuant to the following equation:

$$1 + ((\text{Local Rate} / \text{HUIS}) * 4)$$

a. If a Project receives points for the unemployment rate of the proposed Project location and, after approval by the Authority, the Applicant changes its intended location to a county with a lower unemployment rate, such that the ranking of the Applicants would have been affected, the award shall be rescinded and automatically awarded to the next awardee in line.

b. If an award is rescinded due to changes in the proposed Project location, the Applicant may submit a revised Application with an updated Project location.

c. The local unemployment rate means the rate within the county in which the Facility is located as reported by the California Employment Development Department. The highest unemployment rate in the state is unemployment rate for the county with the highest countywide rate reported. The most current annual average unemployment rate information available at the time of the Application submission shall be used.

(ii) If the Applicant has its Corporate Headquarters located in California, the Project shall receive one point, provided that:

a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also have its Corporate Headquarters in California.

(iii) If the Applicant is classified as small businesses under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and has fewer than 500 employees, the Project shall receive one point, provided that:

a. if the Applicant has a parent company with an ownership interest greater than 50%, the parent company must also be classified as small business under U.S. Small Business Administration guidelines (Title 13 of the Code of Federal Regulations) and have fewer than 500 employees.

(iv) If the Applicant has not previously been approved for an award by the Authority, the Project shall receive five points, provided that:

a. If the Applicant has a parent company with an ownership interest greater than 50%, neither the parent company, nor its subsidiaries or affiliates may have been previously approved for an award by the Authority.

(v) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, the Project shall receive five points.

(8) Upon a recommendation of the Executive Director, the Authority may consider an Application at a meeting occurring less than 60 calendar days after the receipt of the complete Application.

(9) The Authority may, upon a finding that it is in the public interest and advances the purposes of the Program, at any time announce that it is not accepting further Applications.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.

§ 10036. Fees.

(a) Application Fee.

(1) Except as provided in paragraph (5) below, Every every Applicant shall be required to pay an Application Fee.

(2) The Application Fee shall be equal to .0005 (one twentieth of one percent) of the total amount of Qualified Property identified in the Application as originally submitted. If, during the Application process, the Applicant reduces the amount of Qualified Property listed in the Application as submitted, the Applicant will not be entitled to a refund of the excess Application Fees paid. If the Applicant makes a request to CAEATFA to increase the amount of Qualified Property listed in a revised or amended Application, CAEATFA will require additional Application Fees to be submitted. The minimum Application Fee shall be \$250 and shall not exceed \$10,000.

(3) This fee shall be paid in a check payable to the Authority, and shall be submitted with the Application.

(4) This fee is not refundable, except in the event an Application is not reviewed by staff due to oversubscription of the \$100 million annual program cap.

(5) If the Applicant can demonstrate the Project is to relocate or rebuild the Applicant's Facility due to a fire, flood, storm, or earthquake identified in a state of emergency proclamation made by the California State Governor within two years of the time of application, the Executive Director may waive the Application Fee.

Note: Authority cited: Section 26011.8, Public Resources Code. Reference: Section 26011.8, Public Resources Code; and Section 6010.8, Revenue and Taxation Code.