

May 27, 2020

CAEATFA

Attn: Ashley Emery, Program Manager
915 Capitol Mall, Rm 538
Sacramento, CA 95814

RE: Invitation for Comments – CAEATFA Sales & Use Tax Exclusion Program

Without speaking on behalf of any of our current clients, please see below for our observations and suggestions based on our experience with this program as well as incentive programs across California and the U.S.

1) Per-Applicant Cap

We are strongly in favor of continuing the current \$10 million STE limit. To date, completed STE awards at or above \$10 million have a greater than 99 percent STE award utilization. Conversely, the same statistics show that as STE award sizes decrease, the award utilization percentage also decreases. We believe this to be true since smaller awards are typically in support of smaller projects that are more volatile and carry a higher risk of not occurring at all.

From a job creation perspective, STE awards at or above \$10 million have consistently led the way in retaining AND creating more jobs in comparison to smaller awards. Moreover, the jobs from larger awards have also been far more cost-efficient. **As such, in these unprecedented times, any further reductions to the per-applicant cap would strongly appear to be counter-productive to the alarming issue that is our state's current 15.5 percent unemployment rate.** In examining the program's larger historic awards, these projects had a much higher likelihood of occurring outside of California. Reducing the amount of CAEATFA STE support available to future/similar projects would seem to carry too much downside risk.

2) Application Review Cycle

We are in support of Staff's suggestion described in 2c of its 5/12/2020 Invitation for Comments Letter which we believe is a well thought out and balanced modification to the application cycles. Again, while funding has been exhausted prior the end of the calendar years in the last two years—two out of ten years represents an exception to the norm. While recent history should certainly be weighted differently than years prior, based on what we see in the market, this balanced modification discussed by Staff appears to be a good fit. We would also like the idea of blending Staff's 2a suggestion as the tail-end of 2c. After one-half of the STE for the year is granted, that there be two additional competitive rounds.

3) Competitive Criteria

Given the worldwide impact of COVID-19, we would suggest that there be an additional criterion awarding points to applicants that are going to manufacture products that combat COVID-19. Examples would include companies that are going to, in California, design/produce a vaccine, testing equipment or therapeutic treatment. This would also be in line with the program's recent response of granting additional points for those experiencing natural disasters.

4) CAEATFA STE Related Fees

In light of the recent tightening of our budget, we believe that CAEATFA should also be mindful of its costs.

- a. *Extension Fees* - In fairness to the cost of Staff's time, this fee should be equal to the Application Fee rate x the remaining amount of QP being pursued via extension. In our

experience, no matter how small the business, \$500 for every \$84,000 (approximately) to be saved is not an amount that would cause a business to not pursue an extension. Alternatively, increase the current \$500 flat rate by 3 or 4 times. Based on what we have seen, the current extension fees are the most lopsided relative to the amount of Staff's time and taxpayer dollars.

- b. *Application Fees* – Similar to extension fees, in addition to the fact that the program's application fees have not really been indexed since the program began, we believe that a modest increase to application fees (except for those requesting less than \$1 million in STE) is warranted.
- 5) 15% Rule
In our experience talking to many potential clients/applicants on a regular basis, the "15% Rule" is by far the program's strongest tool that creates accountability in keeping an applicant/awardee honest in their projections. We find that businesses are often overly zealous in terms of their projected growth and corresponding capital investments and rarely actually reach their projected milestones. The 15% Rule limits this issue, because the thought of losing 85 percent of their entire incentive is a real concern. If the 15% Rule was eliminated or modified to be greater than the current 18 months, our experience has shown us that **utilization** of awarded funds will likely decrease over time as the aforementioned concern will be drastically reduced. Businesses will seek more funding that will not actually be utilized. We've seen this in a number of other programs. Thus, we support keeping the current rule as is.
- 6) Implementation of AB 176
 - a. We support the continuation of how the application process currently captures the relevant employee data and information.

Please do not hesitate to reach out to us with any follow up questions or if you want to discuss any of our thoughts above—particularly #1 above. Thank you for your time and allowing us to share our experiences with your office.

Kind Regards,



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Subject: CalRecycle Comments On Proposed Rulemaking Under The Sales And Use Tax Exclusion Program
Date: Wednesday, May 27, 2020 11:08:50 AM

Potential Topics for Rulemaking

1. Implementation of AB 176

How might CAEATFA address the concerns over employee privacy regarding wages, particularly given that many Applicants are small businesses with fewer employees, but implement the statute, which specifies the wage information is for each classification of full-time employees proposed to be hired or not retained?

Response: We don't have a comment about this.

2. Application Review Cycle

Are there specific ideas on how CAEATFA could move from a rolling Application process to awarding Applicant in rounds, while also providing flexibility for stakeholders to navigate their business cycles?

Response: We favor option b since we get business requests year-round. This option would give our stakeholders more opportunities to apply for this vs. having businesses who come to us at the end of the year be unable to apply for this because there are no longer funds available.

3. Per-Applicant Cap

Which option should CAETFA consider for capping the fund because it is oversubscribed?

Response: We think that option b and c are better for our stakeholders because most of them use less than \$5M. This will spread the money to more applicants.

4. Competitive Criteria

What other Competitive Criteria do you suggest? How would you prioritize the

Competitive Criteria (including current criteria and any proposed criteria) and why?

Response: CAETFA should give the highest priority to recyclers using California discards.



May 27, 2020

CAEATFA
Attn: Ashley Emery
915 Capitol Mall, Rm 538
Sacramento, CA 95814
Email: aemery@sto.ca.gov

Subject: Invitation for Comments on Sales and Use Tax Exclusion (STE) Program

Dear Ashley Emery,

The Resource Recovery Coalition of California (Resource Coalition) is comprised of California-based collection and recycling companies operating throughout the State. Over decades, our members have worked in partnership with their cities and counties to reduce litter, pollution, and greenhouse gas (GHG) emissions, while bolstering the local economy by creating more jobs through recycling. We appreciate the opportunity to comment on potential amended regulations under the STE program.

The Resource Coalition strongly supports the STE program administered by the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA). Since the passage of AB 199 in 2015, this program has offered much needed investment in recycling infrastructure, encouraging green job development and helping us meet our critical waste diversion goals.

Unfortunately, the success of the STE program has resulted in growing oversubscription while the program remains at a \$100 million statutory cap. Last year we supported reducing the STE applicant cap to \$10 million to offer more applicants a financing opportunity in 2020. We also supported additional Competitive Criteria points when applicants were headquartered in California, safeguarding the likelihood that in-state program benefits are achieved. Despite these changes, the STE program was oversubscribed for the 2020 calendar year by the first application deadline.

Without a statutory increase in the STE program cap, we anticipate this program will continue to be challenged with oversubscription issues. This important challenge aside, we offer the following comments and recommendations.

The December 11, 2018 LAO Report Evaluation of a Sales Tax Exemption for Certain Manufacturers noted that certain applicants may be eligible for a partial exemption of sales and use tax on certain manufacturing and research and development equipment purchases and leases, administered by the California Department of Tax and Fee Administration (CDTFA). However, the waste and recycling industry does not have access to this exemption. The LAO report notes that "recyclers likely do not fall within the industry classifications that are eligible for the partial exemption." In fact, it was not until the passage of AB 199 (Eggman, Chapter 768, Statutes of 2015), that projects processing recycled feedstock were eligible for a tax exemption in California.



RESOURCE RECOVERY COALITION OF CALIFORNIA

Given this limitation, we recommend that projects ineligible for other tax exemption opportunities receive additional Competitive Criteria points. This will help support the recycling infrastructure growth needed for California's economic recovery and the expansion of our green economy.

Additionally, as a way to spread out the award and address oversubscription, we recommend removing the provision that applications not evaluated or awarded due to the statutory cap will be placed on a waiting list and considered in the subsequent calendar year.

We look forward to continued dialogue around additional topics for rulemaking consideration, including potential modifications to the Application review cycle.

Should you have any questions, please do not hesitate to reach out to Resource Coalition staff.

Sincerely,

Veronica Pardo
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Laura J. Ferrante
Government Affairs Advocate
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CAEATFA
Treasurer Fiona Ma, Board Members & Executive Director
915 Capitol Mall, Room 538
Sacramento, CA 95814

May 27, 2020

Dear Treasurer Ma, CAEATFA Board Members and Executive Director,

On behalf of the one million active and retired members of the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW) — and our tens of thousands of California members and retirees — we appreciate the opportunity to share our views on the Proposed Regulations for CAEATFA.

We appreciate that undertaking rulemaking in the midst of the coronavirus pandemic is challenging. But we hope that CAEATFA will consider how imperative workplace health and safety measures are, even as we see many essential workers risking infection while providing critical services. The economic crisis means public investment in job creation will play an important role in the recovery, and we urge CAEATFA to incorporate additional criteria to ensure high-quality jobs that protect workers in green technologies, including safe working conditions, free exercise of workers' rights, stable career paths and economic stability for families.

In this letter we discuss our recommendations on job quality and workplace safety which would help CAEATFA get closer to ensuring the State reaps net benefits.

AB 176

The proposed rulemaking incorporates AB 176, authored by Assemblymember Sabrina Cervantes in 2019, to add some initial program improvements related to job quality to the list of criteria CAEATFA shall evaluate in project applications.

The proposed regulations add the new language, "The extent to which the project will create new, or result in the loss of, permanent, full-time jobs in California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained."¹

Wage disclosure for a project benefiting from public subsidy is a baseline transparency requirement common across other California policies. It provides agencies a basic metric to gauge the impact of a project in a community, and whether awardees of public dollars are creating jobs that generate broader economic benefits and support workers' ability to cover the cost of living in the relevant area.

For examples of other wage disclosure requirements, CAEATFA could look to existing California program policies such as CalCompetes, Los Angeles Metro, Employment Training Panel, or High Speed Rail Authority.

¹ http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB176

Health & Safety

We urge the Board to adopt a rule that considers citations by CalOSHA or federal OSHA for “serious” violations of occupational health & safety rules.

We further recommend that CAEATFA assign meaningful weight to the evaluation of an applicant’s track record on workplace safety, based on disclosures of the established metrics on quantitative and qualitative safety information:

- All OSHA citations, violations and penalties from past five years, including serious and/or repeat violations
- Past 5 years of OSHA 300 injury and illness logs and OSHA 300A Summary of Work-Related Injuries and Illnesses (or comparable data if the manufacturer is not otherwise required to keep OSHA 300 logs), and injury rates compared to industry average (based on 300A)
- The applicant’s health and safety plan based on California’s Injury and Illness Prevention Program template

Job Quality

CAEATFA should require an affirmative finding that proposed projects will create “high-quality jobs” as part of the evaluation of whether a proposal will produce net benefits for the state, with meaningful weight on job quality in the scoring.

High quality jobs should be evaluated based on specified criteria, including, among others:

- The extent to which the project will create new, permanent, direct-hire jobs in the State
- Wages, including the minimum and average wage for each classification of employees
- Description and average value of benefit and fringe benefit for each classification of full-time employee proposed to be hired or retained, including the type of, and amount contributed to, any employee retirement plan and the amount of health care benefit premium employees are required to pay and the average costs employees pay versus the amount paid by the health care plan²
- A requirement that Projects not rely on workers employed through temporary agencies or subcontractors, or if a portion of the work is expected on a limited basis to be done by temporary workers, applicants should disclose the number, percent and expected duration of workers expected to be employed through temporary agencies
- Whether applicants have a history of compliance with applicable labor, employment, health and safety laws, and environmental laws or whether the applicant has a history of serious, repeated, willful, and/or pervasive violations of such laws with inadequate remediation
- A narrative description of the manufacturer’s efforts to provide job access and training to workers from disadvantaged communities including women, racial minorities, formerly incarcerated, and veterans
- A disclosure of Health & Safety violations, injury rates and the entity’s OSHA 300 and 300A logs (or comparable data if the company is not otherwise required to keep OSHA 300 logs)

² For example, see CalCompetes:

[https://govt.westlaw.com/calregs/Document/IF162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)&bhcp=1&ignorebhwarn=IgnoreWarns](https://govt.westlaw.com/calregs/Document/IF162D06EBA6D48ADA91BD982FA5675B5?viewType=FullText&originContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)&bhcp=1&ignorebhwarn=IgnoreWarns)

- Absence of any requirement that employees sign pre-dispute arbitration agreements

Post-Award Tools for Failure to Comply with Law

To ensure that CAEATFA is benefiting law-abiding companies, we reiterate our recommendation that the Authority adopt additional tools to suspend Master Agreements or claw back awards in the event an STE recipient commits legal violations subsequent to the award.

CAEATFA rules should be amended to require that if an STE recipient is found to have violated applicable labor, employment, health and safety, or environmental laws, the Qualifying Property will be deemed not to have been “installed, maintained and operated in accordance with all applicable local, state and federal laws and regulations,” as required by the Regulatory Agreement.

Regulation should require the Executive Director to determine that the recipient has violated the terms of the Agreement in the case of a citation for a “serious” health and safety violation, or a failure to comply with other applicable labor, employment, and environmental laws, and that the Executive Director may therefore either suspend the Agreement until the Executive Director certifies that the Applicant is once again in compliance or begin processes to terminate the Agreement and recover the financial benefit awarded to the applicant.

Conclusion

We encourage CAEATFA to use the rulemaking authority it is granted under Public Resources Code Sections 26009 and 26011.8 and Revenue and Taxation Code Section 6010.8 to enhance job quality standards and meaningful health & safety criteria. CAEATFA could ensure that the State’s investment in environmental innovations supports the creation of high-quality jobs that in turn generate long-term benefits for workers, their families and California communities.

Thank you for considering our comments, we look forward to further engagement.

Sincerely,

Josh Nassar
Legislative Director
UAW