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TRANSPORTATION FINANCING AUTHORITY

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May 12, 2020

**INVITATION FOR COMMENTS ON PROPOSED RULEMAKING  
UNDER THE SALES AND USE TAX EXCLUSION PROGRAM**

The California Alternative Energy and Advanced Transportation Financing Authority (“CAEATFA”) is inviting stakeholders and interested parties to provide input and comments in advance of regulatory modifications to the Sales and Use Tax Exclusion (“STE”) Program (the “Program”).<sup>1</sup>

**LEGISLATIVE HISTORY AND PROGRAM BACKGROUND**

In March 2010, Senate Bill 71 (Padilla, Chapter 10, Statutes of 2010) directed CAEATFA to implement the STE Program. The legislation authorized CAEATFA to approve eligible projects for a sales and use tax exclusion 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 the Program is 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 and 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 for the first time by \$66.1 million in Application requests for projects under the three pre-existing pathways to eligibility (Alternative Source, Advanced

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<sup>1</sup> All capitalized terms not defined in this document are defined in the Program’s statute and regulations.

Transportation, and Advanced Manufacturing), and again was oversubscribed in 2016. In August 2016, CAEATFA adopted regulations to incorporate an evaluation process for recycling projects under AB 199, as well as a \$20 million per Applicant cap and 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. The Program continued to consider Applications on a rolling, first-come, first-served basis in an effort to provide flexibility for users to better accommodate business plans and cycles and challenges across a variety of industry sectors.

In 2018, regulations incorporating program modifications to assist companies affected by emergency disasters such as fires, floods, storms, or earthquakes were approved by the Board at the June Board meeting, and were approved by OAL and became July 1, 2019. These amendments provide affected Applicants an Application Fee waiver and priority when the Program becomes competitive.

Most recently, in October 2019 Governor Newsom signed into law AB 1583, The California Recycling Market Development Act (Eggman, Chapter 690, Statutes of 2019), which extends the sunset date of the Program from January 1, 2021 to January 1, 2026, and AB 176 (Cervantes, Chapter 672, Statutes of 2019), which adds to the Application evaluation criteria the extent to which a Project will 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.

#### **RECENT PROGRAM MODIFICATIONS TO ADDRESS OVERSUBSCRIPTION**

Since 2015, CAEATFA has awarded the full \$100 million of STE under its statutory cap each year, typically by the end of the year in December. In 2019, CAEATFA exhausted \$100 million in STE for the 2019 calendar year at the July 2019 Board meeting, the first time in Program history for it to be fully awarded prior to the December Board meeting, and the first time CAEATFA used the Program's Competitive Criteria to determine which Applicants would be considered first. Given the limited resources and competitive nature of the Program, the CAEATFA Board requested that CAEATFA staff ("Staff") evaluate the Program goals and priorities to determine how best to effectuate the purpose of the Program.

On November 19, 2019 the CAEATFA Board approved emergency regulations to address the early 2019 over-subscription and incorporate lessons learned to help improve Program efficiency and effectiveness. The regulations made incremental changes to address more immediate Program and Board priorities at the time, while reserving some of the more complex issues for the regular rulemaking process in 2020 after Staff could take more time to solicit input and thoughtfully consider the issues. Some of the substantive changes to the regulations include:

- Amending the Competitive Criteria by which Applicants are considered when the Program becomes oversubscribed;
- Lowering the annual per-Applicant cap from \$20 million in STE to \$10 million in STE; and
- Extending the timeframe by which approved Applicant must purchase at least 15% of the Qualified Property amount approved from one year to eighteen months.

The regulations were approved by the Office of Administrative Law and became effective upon filing with the Secretary of State on December 16, 2019. For more information, please visit the Program's website: <https://www.treasurer.ca.gov/caeatfa/ste/regulations/index.asp>.

Once the regulations went into effect, CAEATFA began accepting STE Applications for the 2020 calendar year. By the first Application deadline, the Program was oversubscribed for the 2020 calendar year. In March 2020, the CAEATFA Board approved 18 Applications, fully awarding the \$100 million in STE. Six Applicants requesting approximately \$10 million in STE remain on the waitlist.

### **INVITATION FOR COMMENTS**

CAEATFA seeks input from stakeholders in developing amended regulations under the STE Program to further address the Program's oversubscription and competitive nature and to implement AB 176. Below, CAEATFA staff have prepared topics and questions to assist interested parties in providing input on the rulemaking. However, stakeholders are not limited to providing comments in the areas identified by CAEATFA.

Written comments will be accepted until **5:00 p.m. on Wednesday, May 27, 2020**, and may be submitted to Ashley Emery at [aemery@sto.ca.gov](mailto:aemery@sto.ca.gov), or to the following address:

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

### **POTENTIAL TOPICS FOR RULEMAKING**

#### 1. Implementation of AB 176

AB 176 (Cervantes, Ch. 672, Statutes of 2019) amended the STE Program's statute to add additional criteria by which CAEATFA shall evaluate Applications. Specifically, the language amended Public Resources Code Section 26011.8(d) as follows:

(d) The authority shall evaluate *a project-applications application* based-~~upon~~ *on* all of the following criteria:

- (1) The extent to which the project develops manufacturing facilities, or purchases equipment for manufacturing facilities, located in California.
- (2) The extent to which the anticipated benefit to the state from the project equals or exceeds the projected benefit to the participating party from the sales and use tax exclusion.
- (3) The extent to which the project will create new, ~~permanent~~ *or result in the loss of, permanent, full-time jobs in-California- California, including the average and minimum wage for each classification of full-time employees proposed to be hired or not retained.*

- (4) To the extent feasible, the extent to which the project, or the product produced by the project, results in a reduction of greenhouse gases, a reduction in air or water pollution, an increase in energy efficiency, or a reduction in energy consumption, beyond what is required by federal or state law or regulation.
- (5) The extent of unemployment in the area in which the project is proposed to be located.
- (6) Any other factors the authority deems appropriate in accordance with this section.

STE Program regulations establish a point-based system incorporating the evaluation criteria set in statute and to determine if a project is anticipated to provide a net-benefit to the state. Applications receive a fiscal benefits score, environmental benefits score, and an “other benefits” score, and Applications that earn a total score of at least 1,000 points and an environmental benefits score of at least 20 may be recommended for approval.

To determine the extent to which the project will create new, permanent jobs in California in the Program’s evaluation criteria, the STE Program’s Application currently asks for the estimated average number of production-related employees (in annual fulltime equivalents) employed each year, averaged over the estimated useful lifespan of the Qualified Property, taking into account any ramp up periods. The Application also asks for the estimated per-unit labor costs, assuming the Qualified Property is used, to estimate the fiscal benefits of the project. The Program’s current evaluation criteria in regulation use this information (as well as other Application inputs) to calculate the estimated marginal increase in jobs (in full-time equivalents) as a result of the STE and quantify the resulting estimated fiscal benefits as part of the fiscal benefits score. Applicants also earn points (in both competitive and regular scoring) based on the number of FTEs per dollar of STE.

Previous comments CAEATFA received on the incorporation of AB 176 in the Program’s regulations included:

- Requests to add specificity as to what lost jobs must be included (for example, does it include downstream industry effects).
- Requests to allow Applicants to provide a narrative explanation as to why a position was eliminated and whether existing employees have been reassigned to new positions.
- Concerns over employee privacy with regard to wages, and requests to aggregate wage information.

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?

## 2. Application Review Cycle

CAEATFA currently accepts Applications on a first-come, first-served basis until requests reach or exceed the \$100 million statutory cap. The Program has been competitive for the last two years, with the 2020 allocation being awarded in the first Application cycle.

CAEATFA is considering moving to Application rounds to spread STE award availability throughout the year. Below are examples of how Application rounds could be implemented for comment:

- a. Applications will be accepted twice a year, with one-half of the STE available to award on a competitive basis for the first application round and the remaining available to award on a competitive basis in the second application round. If any Applicant does not receive STE during the first application round, it may be considered during the second application round.
- b. Applications will be accepted three-times a year, with one-third of the STE available to award on a competitive basis in the first application round, one-third available to award on a competitive basis in the second application round, and any remaining STE available to award on a competitive basis in the third application round. If any Applicant does not receive STE in its initial application round, it may be considered in a subsequent application round.
- c. Applications will be considered on a first-come, first-served basis until one-half of the STE available is awarded, at which time CAEATFA may either continue the first-come-first-served basis or begin to consider Applicants on a competitive basis in one or two application rounds, depending on the month in which CAEATFA awards the first-half of the STE allocation. For example, if CAEATFA awards the first one-half in March, the remaining will be awarded in two competitive rounds in July and December. If CAEATFA awards the first one-half in July, the remaining will be awarded in a single competitive round in December. If CAEATFA awards the first one-half in September, CAEATA will continue to accept and consider Applications on a first-come-first-served basis until oversubscribed.

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?

### 3. Per-Applicant Cap

The emergency regulations adopted in 2019 limit Applicants to receiving up to \$10 million in STE each calendar year, which was reduced from the previous per-Applicant cap of \$20 million adopted in 2016 after the Program first became oversubscribed. Under the current regulations, if any STE remains at the end of the year, capped Applicants may receive additional STE. Although CAEATFA lowered the cap to \$10 million in STE to help maximize the number of eligible Applicants receiving an award, the \$100 million was fully awarded after one Application round. Some stakeholders have expressed concern that the \$10 million annual cap is not enough to help manufacturers with large-scale production.

Below are example proposals submitted for comment:

- a. Keep the \$10 million cap.
- b. Lower the cap to \$5 million.
- c. Allocate \$40 million in STE for projects under \$5 million, and \$60 million for projects \$5 million and over, up to \$20 million in STE. If any STE remains from either bucket at the end of the year, it can be awarded to any Applicant on a competitive basis.

- d. Cap projects at \$10 million and set aside \$20 million of the \$100 million allocation to be awarded once a year on a competitive basis to Applicants requesting more than \$10 million in STE.

#### 4. Competitive Criteria

Pursuant to Program regulations, when the total amount of STE requested exceeds the \$100 million annual Program limit, Applications submitted for consideration shall be reviewed by the Board in order of ranking based on Competitive Criteria points earned by each Applicant until CAEATFA reaches the \$100 million annual Program limit. In addition, the regulations provide that if the STE amount requested in the last Application to be considered exceeds the STE available in the calendar year, the Board shall split the award between the 2020 and 2021 \$100 million allocations.

The Program's current Competitive Criteria are:

- a. Environmental Benefits: 100 points for Applicants with quantifiable environmental benefits (Alternative Source, Advanced Transportation, and recycling projects).
- b. Unemployment: Up to 50 points based on how much greater the local unemployment rate is in comparison to the annual average statewide unemployment rate.
- c. Job Creation: Up to 75 points based on the cost of the sales tax exclusion per job created as a result of the estimated marginal increase in equipment purchased from the STE.
- d. Natural Disaster Relief: 50 points for Applicants that 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.
- e. California Headquarters: 15 points for Applicants with a California Corporate Headquarters.

What other Competitive Criteria do you suggest? How would you prioritize the Competitive Criteria (including current criteria and any proposed criteria) and why?

#### **CONTACT PERSON**

Questions regarding this invitation for comments may be directed to Ashley Emery at [Aemery@sto.ca.gov](mailto:Aemery@sto.ca.gov).

#### **ADDITIONAL BACKGROUND AND RESOURCES**

- [Current STE Program Regulations](#)
- [September 9, 2019 Staff Presentation on Program Activity and Policy Issues](#)
- [Minutes from September 9, 2019 Board Meeting Discussing Program Activity and Policy Issues](#)
- [November 19, 2019 Staff Report on Request to Approve Regulation Modifications](#)
- [Minutes from November 19, 2019 Board Meeting Approving Regulation Modifications](#)

- [December 2019 Proposed Emergency Rulemaking - Finding of Emergency](#)
- [CAEATFA 2019 Annual Report to the Legislature](#)