

COUNTY OF EL DORADO

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November 13, 2012

Board of Forestry and Fire Protection
Attn: Eric Huff
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Subject: State Responsibility Area Fire Prevention Benefit Fee, 2012

Dear Mr. Huff:

The Board of Supervisors for the County of El Dorado opposes the imposition of the state fire fee and believes the Legislature has grievously erred by passing legislation imposing a new tax without the constitutionally required two-thirds majority. Recognizing however that the issue will ultimately be decided in court and that the Board of Forestry and Fire Protection remains under statutory obligation to adopt permanent regulations, the Board of Supervisors offers the following comments on the proposed rulemaking.

For purposes of fee assessment, Public Resources Code § 4211(a) defines structure as, "a building used or intended to be used for human habitation." The law does not appear to allow the Board of Forestry and Fire Protection to impose the fee on property that is not used or intended to be used for human habitation. Yet, the Notice of Proposed Rulemaking indicates that approximately 22,000 commercial, industrial and office structures are estimated to be eligible for the fee. Unnecessarily forcing rural business owners to pay an unauthorized fee and file a petition for redetermination is reckless. The discussion of the economic impact to businesses in the Notice of Preparation omits any acknowledgement of the time investment to pay and protest the fee, especially when supporting documentation is required to support the petition for redetermination. The Board of Forestry and Fire Protection should remain within the authority granted by the Legislature and adopt regulations which reflect the narrow definition of "structure" provided in statute.

Along these lines, the Board of Forestry and Fire Protection should allow 60 days rather than 30 to file a petition for redetermination. Thirty days is simply not enough time for a property owner to complete sufficient research, obtain supporting documentation, and complete the petition process. Moreover, the Board should adopt regulations which eliminate the necessity for a property owner to file a claim for a refund for money which was not owed in the first place. If a petition is successful and a refund is due, the burden to make the payment should belong to the state, not the property owner.

We know from firsthand experience dealing with constituent questions that the public is confused about where to file a petition for redetermination. The proposed regulations perpetuate this confusion. Public Resources Code § 4221 says that each petition for redetermination “shall be in writing and be sent to the department [Cal Fire], the board [Board of Forestry and Fire Protection], and the State Board of Equalization. The proposed regulations indicate that a property owner “may petition the Department [Cal Fire] for a redetermination...” This confusion is compounded by the fact the State Board of Equalization is the entity distributing the bills. The proposed regulation should clarify this confusion and perhaps include language which holds petitioners harmless against the timelines specified for filing, if a petition is erroneously sent to the wrong state entity.

The definition of property owner should be revised to exclude public agencies. The regulations transfer discretionary dollars from local agencies to Cal Fire. Any local agency providing any level of fire service is already funding fire prevention. The regulations envision the return of some funds to counties in the form of grants, so taking money away from counties in the first place makes little sense. Government should not have to pay fees to government.

The current regulatory scheme provides that the person responsible for the fee is the owner as of July 1. However, assessment roles reflect the owner as of the lien date which is January 1. Because the basis of the fire fee bill is the assessment role, the date should be changed and the conflict eliminated.

Finally, mobilehomes and manufactured homes in mobilehome parks should be exempted from the fee requirement. These structures are almost entirely inhabited by senior citizens on fixed incomes. Consequently, the fee poses an undue financial burden. Mobilehome parks do not receive much benefit from fire prevention services commensurate with other residences due to their high density and minimal amount of vegetation. In addition, the State Board of Equalization and Cal Fire and its third party administrator have generated a substantial number of double billings on mobilehomes. These billing errors are principally due to conflicts between the records of County Assessors and those of the California Department of Housing and Community Development. Mobilehomes can also be licensed through Department of Motor Vehicles, or assessed on the local property tax roll. Using multiple sources of information to generate bills ensures billing errors will continue to occur. If the State cannot bill accurately, it shouldn't bill at all, especially given the unique hardship this fee causes for many senior citizens.

Please contact Terri Daly, Chief Administrative Officer at (530) 621-5123 should you have any question about these comments.

Sincerely,
County of El Dorado

John R. Knight, Chair
Board of Supervisors
County of El Dorado