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### Headline Summary

- Patent Trolls Target Printers
- Minimum Wage Bill
- Sweetened Beverage Tax
- Safety & Environmental compliance
- New Sales Tax Rate
- Environmental Advertising
- Software Tax

## Minimum Wage Bill

AB 10 (Alejo, D-Salinas) Automatic Minimum Wage Increase. Raises the minimum wage \$1.25 over the next three years and thereafter indexes the minimum wage based on inflation. This fails to take into account the current economic status of the state or other fees and costs employers are required to pay.

The automatically adjusted minimum wage would be calculated using the California Consumer Price Index and would prohibit the Industrial Welfare Commission from adjusting the minimum wage downward and from adjusting the minimum wage upward if the average percentage of inflation for the previous year was negative. AB 10 has passed the Assembly and now waits to be scheduled for Senate policy committee hearings.

# WatchDog

Guarding the Business of Print

June 2013

## Patent Trolls Target Printers

Printers in Southern California have been receiving letters from the law firm of Farney Daniels on behalf of BetNam, LLC—a patent assertion entity (PAE)—for alleged patent infringement.

PAEs, more frequently called “patent trolls,” are patent-owning companies whose business model is demanding license fees instead of making products. In 2012, PAEs filed more than 2,500 lawsuits, about 60 percent of all patent lawsuits in the U.S.

The patent supposedly cover “a system having a digital copier/scanner/multifunction device with an interface to office equipment (or to the web) for scanning and transmitting images electronically to a destination such as email applications, or local files.” The firm wants \$1,000 per employee for past infringement and future license.

Another law firm, *Baker, Donelson et al*, has been working the East Coast and Southwest for CTP Innovations on, of all things, providing a plate ready file to a networked printer. Settlement is \$75,000 for past, and future use of the technology.

The shakedowns have become so prevalent that on June 4 President Obama directed his administration to craft new regulations and urged Congress to pass new laws to address patent trolls.

Congress already is working on legislation. One measure would improve access to information about who owns patents, reduce discovery burdens in lawsuits and make other changes to make it easier for judges to identify abusive cases early in the process and, presumably, dismiss them.

If you have received a letter from Farney Daniels, please contact Gerry Bonetto at (323) 728-9500, Ext. 248 or [gerry@piasc.org](mailto:gerry@piasc.org).

## Sweetened Beverage Tax

SB 622 (William Monning, D-Carmel), which puts a penny per ounce tax on sugar-sweetened beverages, was held in the Senate Appropriations Suspense File. As a tax levy, it requires a two-thirds vote of the legislature to pass. This exempts the bill from usual deadlines and allows the legislation to be taken up again any time in the session.

The tax would impact soda, but it also ensnares juice drinks, sports drinks, iced teas and even enhanced waters, resulting in higher prices on hundreds of products sold at restaurants, convenience and grocery stores.

The author’s ostensible purpose is to reduce obesity. While obesity is a serious concern in California, it’s a problem that is the result of multiple factors. Since SB 622 does not recognize this basic fact, it is ill-equipped to have much of an impact on the health of Californians.

## Environmental Advertising

In late 2012, The Federal Trade Commission issued revised “Green Guides” that are designed to help marketers ensure that the claims they make about the environmental attributes of their products are truthful and non-deceptive.

Among other modifications, the Guides caution marketers not to make broad, unqualified claims that a product is “environmentally friendly” or “eco-friendly” because the FTC’s consumer perception study confirms that such claims are likely to suggest that the product has specific and far-reaching environmental benefits. Very few products, if any, have all the attributes consumers seem to perceive from such claims, making these claims nearly impossible to substantiate.

The Guides also:

- advise marketers not to make an unqualified degradable claim for a solid waste product unless they can prove that the entire product or package will completely break down and return to nature within one year after customary disposal;
- caution that items destined for landfills, incinerators, or recycling facilities will not degrade within a year, so marketers should not make unqualified degradable claims for these items; and
- clarify guidance on compostable, ozone, recyclable, recycled content, and source reduction claims.

**New Sections.** The Guides contain new sections on: 1) certifications and seals of approval; 2) carbon offsets, 3) free-of claims, 4) non-toxic claims, 5) made with renewable energy claims, and 6) made with renewable materials claims.

<http://www.ftc.gov/opa/2012/10/greenguides.shtm>

## Safety and Environmental Compliance

PIC has just uploaded its comprehensive Safety and Environment Resource Center to the PIASC website. The program will be available to San Diego members within the next month. The program includes Cal/OSHA Inspection Process, Cal/OSHA compliance programs, programs, CUPA programs, and Air Quality Management Recordkeeping video.

We have used the appendix of the Illness and Injury Prevention program to address other Cal/OSHA Safety provisions—for example, lockout/blockout, hazardous communication, back injury prevention, and machine guard. Thus while you’re complying with one program, you can incorporate other necessary programs so as to meet all of your Cal/OSHA obligations.

To view the material, go to [piasc.org](http://piasc.org) under Government Relations. Click on Safety and Environmental Resource Center. Enter your email address, and password, then scroll down and click on the file name one more time.

## New Sales Tax Rate

Voters in the City of Atwater in Merced County have approved a new district tax that takes effect July 1, 2013. The new rate applies only within the city’s incorporated limits. The tax rate outside the incorporated city limit—or within the rest of Merced County—will remain the same.

Tax Area	County	Prior Rate	New Rate
City of Atwater	Merced	7.50%	8.00%

The Board of Equalization (BOE) also includes a link to a free sales and use tax rate locator ([www.geotax.com](http://www.geotax.com)) that allows you to determine a tax rate for any address within the state. The GeoTax link is provided as a public service.

## Software Tax

The California Department of Finance (DOF) proposal to “clarify” existing law regarding sales tax on computer software delivered on storage media like a disk actually raised complex legal and policy issues, according to testimony before the budget conference committee.

The budget conference committee agreed and voted for the issues to receive full vetting via the legislative policy committee process.

The DOF proposal would have overturned an appellate court decision in *Nortel Networks Inc. v. Board of Equalization*. In that decision, the court determined that amounts charged for intangible personal property (licensing the right to use software subject to Nortel’s patent and copyright interests) transferred with tangible personal property (storage media) pursuant to Technology Transfer Agreements (TTAs) were not subject to sales tax.

The DOF proposal not only would change California law, but also support the Board of Equalization (BOE) litigation position in another case (Lucent Consolidated Case) that is expected to go to trial this fall.

This case again involves the issue of whether the amounts charged for intangible personal property transferred with tangible personal property pursuant to TTAs are subject to sales tax.

