

AMENDED IN ASSEMBLY MARCH 26, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 309**

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**Introduced by Assembly Member Longville**

February 16, 2001

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An act to amend Sections 6480, 6480.1, 6480.2, 6480.3, 6480.4, 6480.6, and 6480.7 of, to repeal Sections 6480.5 and 6480.8 of, and to repeal Article 1.6 (commencing with Section 6480.10) of Chapter 5 of Part 1 of Division 2, of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 309, as amended, Longville. Sales and use taxes: fuel: prepayment.

Under existing law, any distributor or broker of motor vehicle fuel, any aircraft jet fuel dealer who sells aircraft jet fuel, or any producer, importer, or jobber who makes a sale of diesel fuel is required to collect prepayment of sales tax from the person to whom the fuel is sold. Existing law also provides that when these fuels are resold, the person is entitled to claim credit for the prepayment paid to the supplier on the return for the period in which the fuel is resold.

This bill would require the sales tax prepayment on fuel at the first point of distribution, known as the rack.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 6480 of the Revenue and Taxation Code  
2 is amended to read:

3 6480. (a) For purposes of the imposition of the prepayment  
4 of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this  
5 article, the terms “aircraft jet fuel,” “aircraft jet fuel dealer,”  
6 “aviation gasoline,” “entry,” “in this state,” “motor vehicle  
7 fuel,” “person,” “removal,” “sale,” and “supplier” are defined  
8 pursuant to Part 2 (commencing with Section 7301), except as  
9 provided in subdivision (b).

10 (b) For purposes of this article, “motor vehicle fuel” does not  
11 include aviation gasoline for use in propelling aircraft.

12 (c) For purposes of the imposition of the prepayment of sales  
13 tax on diesel fuel pursuant to this article, the terms “diesel fuel,”  
14 “entry,” “in this state,” “removal,” “person,” and “supplier,”  
15 are defined pursuant to Part 31 (commencing with Section 60001).

16 (d) ~~“Jobber”~~ “Wholesaler” includes every person other than  
17 a supplier, dealing in motor vehicle fuel, aircraft jet fuel, or diesel  
18 fuel. ~~“Jobber”~~ “Wholesaler” does not include anyone dealing in  
19 motor vehicle fuel or diesel fuel ~~only as in the capacity of an~~  
20 operator of a service station. ~~“Jobber”~~ “Wholesaler” does not  
21 include anyone dealing in aircraft jet fuel ~~only as in the capacity~~  
22 ~~of an aircraft jet fuel dealer.~~

23 (e) With respect to diesel fuel and aircraft jet fuel, “sale”  
24 means:

25 ~~(1) The transfer of title to, or substantial incidents of ownership~~  
26 ~~in, aircraft jet fuel or diesel fuel (other than aircraft jet fuel in a~~  
27 ~~terminal) to a purchaser for consideration, which may consist of~~  
28 ~~money, services, or other property.~~

29 *(1) The transfer of title or possession, exchange, or barter,*  
30 *conditional or otherwise, in any manner or by any means*  
31 *whatsoever, of aircraft jet fuel or diesel fuel (other than aircraft jet*  
32 *fuel or diesel fuel in a terminal) to a purchaser for a consideration.*

33 (2) The transfer of the inventory position in the aircraft jet fuel  
34 or diesel fuel in a terminal if the purchaser becomes the position  
35 holder with respect to the taxable fuel.

36 (f) For purposes of this article, aircraft jet fuel will be subject  
37 to the prepayment of sales tax at such time and in such manner as



1 if it were subject to diesel fuel tax under the Diesel Fuel Tax Law  
2 in Part 31 (commencing with Section 60001).

3 SEC. 2. Section 6480.1 of the Revenue and Taxation Code is  
4 amended to read:

5 6480.1. (a) At any time that motor vehicle fuel tax or diesel  
6 fuel tax is imposed *or would be imposed, but for the dyed diesel*  
7 *fuel exemption in paragraph (1) of subdivision (a) of Section*  
8 *60100, or the train operator exemption in paragraph (7) of*  
9 *subdivision (a) of Section 60100 or paragraph (11) of subdivision*  
10 *(a) of Section 7401, or, pursuant to subdivision (f) of Section 6480,*  
11 *would be deemed to be imposed, on any removal, entry, or sale in*  
12 *this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the*  
13 *supplier shall collect prepayment of retail sales tax from the person*  
14 *to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is*  
15 *sold. However, if no sale occurs at the time of imposition of motor*  
16 *vehicle fuel tax or diesel fuel tax, the supplier shall prepay the*  
17 *retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel*  
18 *fuel. The prepayment required to be collected by the supplier*  
19 *constitutes a debt owed by the supplier to this state until paid to the*  
20 *board, until satisfactory proof has been submitted to prove that the*  
21 *retailer of the fuel has paid the retail sales tax to the board, or until*  
22 *a supplier or ~~jobber~~ wholesaler who has consumed the fuel has*  
23 *paid the use tax to the board. Each supplier shall report and pay the*  
24 *prepayment amounts to the board, ~~on a form~~ in a form as*  
25 *prescribed by the board, in the period in which the fuel is sold. On*  
26 *each subsequent sale of that fuel, each seller, other than the retailer,*  
27 *shall collect from his or her purchaser a prepayment computed*  
28 *using the rate applicable at the time of sale. Each supplier shall*  
29 *provide his or her purchaser with a ~~receipt or invoice for an~~*  
30 *invoice, for or other evidence of, the collection of the prepayment*  
31 *amounts which shall be separately stated thereon.*

32 (b) ~~A jobber (1) A wholesaler shall collect prepayment of the~~  
33 ~~retail sales tax from the person to whom the motor vehicle fuel,~~  
34 ~~aircraft jet fuel, or diesel fuel is sold. The prepayment required to~~  
35 ~~be collected by the jobber constitutes a debt owed by the jobber to~~  
36 ~~the state until paid to the board, or until satisfactory proof has been~~  
37 ~~submitted to prove that the retailer of the fuel has paid the tax to~~  
38 ~~the board. Each jobber shall provide his or her purchaser with a~~  
39 ~~receipt or invoice for the collection of the prepayment amounts~~  
40 ~~which shall be separately stated thereon.~~



1 Each jobber shall report and pay the prepayment amounts to the  
2 board, on a form prescribed by the board, in the period in which  
3 the fuel is sold. The amount of prepayment paid by the jobber to  
4 his or her vendor shall constitute a credit against the amount of  
5 prepayment required to be collected and remitted by the jobber to  
6 the board. *fuel is sold. Each wholesaler shall provide his or her*  
7 *purchaser with an invoice for or other evidence of the collection*  
8 *of the prepayment amounts, which shall be separately stated*  
9 *thereon.*

10 (2) Each wholesaler shall report to the board, in a form as  
11 prescribed by the board and for the period in which the motor  
12 vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the  
13 following:

14 (A) *The number of gallons of fuel sold and the amount of sales*  
15 *tax prepayments collected by the wholesaler.*

16 (B) *The number of tax-paid gallons purchased and the amount*  
17 *of sales tax prepayments made by the wholesaler.*

18 (C) *In the event that the amount of sales tax prepayments*  
19 *collected by the wholesaler is greater than the amount of sales tax*  
20 *prepayments made by the wholesaler, then the excess constitutes*  
21 *a debt owed by the wholesaler to the state until paid to the board,*  
22 *or until satisfactory proof has been submitted that the retailer of*  
23 *the fuel has paid the tax to the board.*

24 (c) A supplier or ~~jobber~~ wholesaler who pays the prepayment  
25 and issues a resale certificate to the seller, but subsequently  
26 consumes the motor vehicle fuel, aircraft jet fuel, or diesel fuel,  
27 shall be entitled to a credit against his or her sales and use taxes due  
28 and payable for the period in which the prepayment was made,  
29 provided that he or she reports and pays the use tax to the board on  
30 the consumption of that fuel.

31 (d) The amount of a prepayment paid by the retailer or a  
32 supplier or ~~jobber~~ wholesaler who has consumed the motor vehicle  
33 fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or  
34 she acquired the fuel shall constitute a credit against his or her sales  
35 and use taxes due and payable for the period in which the sale was  
36 made. Failure of the supplier or ~~jobber~~ wholesaler to report  
37 prepayments or the supplier's or ~~jobber's~~ wholesaler's failure to  
38 comply with any other duty under this article shall not constitute  
39 grounds for denial of the credit to the retailer, supplier, or ~~jobber~~  
40 *wholesaler, either on a temporary or permanent basis or otherwise.*



1 To be entitled to the credit, the retailer, supplier, or ~~jobber~~  
2 *wholesaler* shall retain for inspection by the board any receipts,  
3 invoices, or other documents showing the amount of sales tax  
4 prepaid to his or her supplier, together with the evidence of  
5 payment.

6 (e) The rate of the prepayment required to be collected during  
7 the period from July 1, 1986, through March 31, 1987, shall be  
8 four cents (\$0.04) per gallon of motor vehicle fuel distributed or  
9 transferred.

10 (f) On April 1 of each succeeding year, the prepayment rate per  
11 gallon for motor vehicle fuel, rounded to the nearest one-half of  
12 one cent (\$0.005), of the required prepayment shall be established  
13 by the board based upon 80 percent of the combined state and local  
14 sales tax rate established by Sections 6051, 6051.2, 6051.3, and  
15 7202, and Section 35 of Article XIII of the California Constitution  
16 on the arithmetic average selling price (excluding sales tax) as  
17 determined by the State Energy Resources Conservation and  
18 Development Commission, in its latest publication of the  
19 “Quarterly Oil Report,” of all grades of gasoline sold through a  
20 self-service gasoline station. In the event the “Quarterly Oil  
21 Report” is delayed or discontinued, the board may base its  
22 determination on other sources of the arithmetic average selling  
23 price of gasoline. The board shall make its determination of the  
24 rate no later than November 1 of the year prior to the effective date  
25 of the new rate. Immediately upon making its determination and  
26 setting of the rate, the board shall each year, no later than January  
27 1, notify by mail every supplier, ~~jobber~~ *wholesaler*, and retailer of  
28 motor vehicle fuel. In the event the price of fuel decreases or  
29 increases, and the established rate results in prepayments which  
30 consistently exceed or are significantly lower than the retailers’  
31 sales tax liability, the board may readjust the rate.

32 (g) On April 1 of each succeeding year, the prepayment rate per  
33 gallon for aircraft jet fuel rounded to the nearest one-half of one  
34 cent (\$0.005), shall be established by the board based upon 80  
35 percent of the combined state and local sales tax rate established  
36 by Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article  
37 XIII of the California Constitution on the arithmetic average  
38 selling price (excluding sales and state excise tax) as determined  
39 by the board. The board shall make its determination of the rate no  
40 later than November 1 of the year prior to the effective date of the



1 new rate. The rate of the prepayment required to be collected for  
2 aircraft jet fuel shall be equal to 80 percent of the arithmetic  
3 average selling price of aircraft jet fuel as specified by industry  
4 publications. Immediately upon making its determination and  
5 setting of the rate, the board shall each year, no later than January  
6 1, notify by mail every supplier, ~~jobber~~ *wholesaler*, and retailer of  
7 aircraft jet fuel. In the event the price of aircraft jet fuel decreases  
8 or increases, and the established rate results in prepayments that  
9 consistently exceed or are significantly lower than the retailers'  
10 sales tax liability, the board may readjust the rate.

11 (h) On April 1 of each succeeding year, the prepayment rate per  
12 gallon for diesel fuel rounded to the nearest one-half of one cent  
13 (\$.005), shall be established by the board based upon 80 percent  
14 of the combined state and local sales tax rate established by  
15 Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article  
16 XIII of the California Constitution on the arithmetic average  
17 selling price (excluding sales and state excise tax) as determined  
18 by the board. The board shall make its determination of the rate no  
19 later than November 1 of the year prior to the effective date of the  
20 new rate. The rate of the prepayment required to be collected for  
21 diesel fuel shall be equal to 80 percent of the arithmetic average  
22 selling price of diesel fuel as specified by industry publications.  
23 Immediately upon making its determination and setting of the rate,  
24 the board shall each year, no later than January 1, notify by mail  
25 every supplier, ~~jobber~~ *wholesaler*, and retailer of diesel fuel. In the  
26 event the price of diesel fuel decreases or increases, and the  
27 established rate results in prepayments that consistently exceed or  
28 are significantly lower than the retailers' sales tax liability, the  
29 board may readjust the rate.

30 (i) (1) Notwithstanding any other provision of this section,  
31 motor vehicle fuel sold by a supplier or ~~jobber~~ *wholesaler* to a  
32 qualified purchaser who, pursuant to a contract with the State of  
33 California or its instrumentalities, resells that fuel to the State of  
34 California or its instrumentalities shall be exempt from the  
35 prepayment requirements.

36 (2) A qualified purchaser who acquires motor vehicle fuel for  
37 subsequent resale to the State of California or its instrumentalities  
38 pursuant to this subdivision shall furnish to the supplier or ~~jobber~~  
39 *wholesaler* from whom the fuel is acquired an exemption  
40 certificate, completed in accordance with any instructions or



1 regulations as the board may prescribe. The supplier or ~~jobber~~  
2 *wholesaler* shall retain the certificate in his or her records in  
3 support of the exemption. To qualify for the prepayment  
4 exemption, both of the following conditions shall apply:

5 (A) The qualified purchaser does not take possession of the fuel  
6 at any time.

7 (B) The fuel is delivered into storage tanks owned or leased by  
8 the State of California or its instrumentalities via facilities of the  
9 supplier or ~~jobber~~ *wholesaler*, or by common or contract carriers  
10 under contract with the supplier or ~~jobber~~ *wholesaler*.

11 (3) For purposes of this subdivision, “qualified purchaser”  
12 means a ~~jobber~~ *wholesaler* who does not have or maintain a storage  
13 facility or facilities for the purpose of selling motor vehicle fuel.

14 SEC. 3. Section 6480.2 of the Revenue and Taxation Code is  
15 amended to read:

16 6480.2. (a) If the board determines that it is necessary for the  
17 efficient administration of this part, the board may require a  
18 supplier or ~~jobber~~ *wholesaler* to provide the board with a list of  
19 purchasers to whom the motor vehicle fuel, aircraft jet fuel, or  
20 diesel fuel was sold.

21 (b) In addition to any other reports required under this article,  
22 the board may, by rule and otherwise, require additional, other, or  
23 supplemental reports, in any form which the board may require,  
24 from ~~supplier or jobber~~ *suppliers or wholesalers* with respect to  
25 their sales of motor vehicle fuel, aircraft jet fuel, or diesel fuel.

26 (c) Any supplier or ~~jobber~~ *wholesaler* who fails to comply with  
27 this section is guilty of a misdemeanor punishable as provided in  
28 Section 7153.

29 SEC. 4. Section 6480.3 of the Revenue and Taxation Code is  
30 amended to read:

31 6480.3. The supplier or ~~jobber~~ *wholesaler* shall file his or her  
32 prepayment form together with a remittance of the prepayment  
33 amounts, *if any*, required to be collected pursuant to Section  
34 6480.1 payable to the State Board of Equalization, on or before the  
35 last day of the month following the monthly period to which the  
36 prepayment form or each prepayment relates.

37 SEC. 5. Section 6480.4 of the Revenue and Taxation Code is  
38 amended to read:

39 6480.4. (a) Any supplier or ~~jobber~~ *wholesaler* who fails to  
40 make a timely remittance to the board of the prepayment *amounts*,



1 *if any*, required pursuant to Sections 6480.1 and 6480.3 shall also  
2 pay a penalty of 10 percent of the amount of the prepayment due  
3 but not paid, plus interest at the modified adjusted rate per month,  
4 or fraction thereof, established pursuant to Section 6591.5, from  
5 the date the prepayment became due and payable to the state until  
6 the date of payment.

7 (b) The penalty amount specified in subdivision (a) shall be 25  
8 percent if the supplier or ~~jobber~~ *wholesaler* knowingly or  
9 intentionally fails to make a timely remittance.

10 SEC. 6. Section 6480.5 of the Revenue and Taxation Code is  
11 repealed.

12 SEC. 7. Section 6480.6 of the Revenue and Taxation Code is  
13 amended to read:

14 6480.6. (a) The following persons who have paid  
15 prepayment amounts either directly to the board or to the person  
16 from whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel  
17 was purchased shall be refunded those amounts:

18 (1) Any person who exports the fuel for subsequent sale outside  
19 this state.

20 (2) Any person who sells the fuel which is exempt from the  
21 sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

22 (3) Any person who has lost the fuel through fire, flood, theft,  
23 leakage, evaporation, shrinkage, spillage, or accident, prior to any  
24 retail sale.

25 (4) *Any supplier who has removed fuel from an approved*  
26 *terminal at the terminal rack, but only to the extent that the*  
27 *supplier can show that tax on the same amount of fuel has been*  
28 *paid more than one time by the same supplier.*

29 (5) Any person who is unable to collect the prepayment from  
30 the purchaser insofar as the sales of the fuel are represented by  
31 accounts which have been found to be worthless and charged off  
32 for income tax purposes, *or, if the person is not required to file*  
33 *income tax returns, accounts which have been charged off in*  
34 *accordance with generally accepted accounting principles.* If  
35 partial payments have been made, the payments shall be prorated  
36 between amounts due for fuel and amounts due for the related  
37 prepayment. If any of those accounts are thereafter in whole or in  
38 part collected by the seller, the gallons of fuel represented by the  
39 amounts collected shall be included in the first return filed after  
40 that collection and the amount of the prepayment thereon paid with



1 the return. ~~As a condition of eligibility for refund, the board may~~  
2 ~~require the seller to submit periodical reports listing accounts~~  
3 ~~delinquent for a 90-day period or over.~~

4 (b) In lieu of a refund, the board may authorize a credit to be  
5 taken by the person to whom the refund is due upon his or her  
6 prepayment form or sales and use tax return.

7 SEC. 8. Section 6480.7 of the Revenue and Taxation Code is  
8 amended to read:

9 6480.7. (a) The board may require any supplier or ~~jobber~~  
10 ~~wholesaler~~ subject to this article to place with the board any  
11 security that the board determines is necessary to ensure  
12 compliance with this article. The amount of the security shall be  
13 fixed by the board but shall not be greater than three times the  
14 estimated average liability of suppliers or ~~jobbers~~ ~~wholesalers~~  
15 required to file returns for monthly periods, determined in any  
16 manner that the board deems proper, or five hundred thousand  
17 dollars (\$500,000), whichever amount is less. These amounts  
18 apply regardless of the type of security placed with the board. The  
19 amount of the security may be increased or decreased by the board  
20 subject to the maximum amounts. The security required pursuant  
21 to this section is in addition to the bond or bonds required pursuant  
22 to Section 7486.

23 (b) The board may sell the security at public auction if it  
24 becomes necessary to so do in order to recover any tax or any  
25 amount required to be collected or penalty due. Notice of the sale  
26 may be served upon the person who placed the security personally  
27 or by mail. If service is by mail, service shall be made in the  
28 manner prescribed for service of a notice of a deficiency  
29 determination and shall be addressed to the person at his or her  
30 address as it appears in the records of the board. However, security  
31 in the form of a bearer bond issued by the United States or the State  
32 of California which has a prevailing market price may be sold by  
33 the board at a private sale at a price not lower than the prevailing  
34 market price thereof. Upon any sale, any surplus above the  
35 amounts due shall be returned to the supplier or ~~jobber~~ ~~wholesaler~~  
36 who placed the security.

37 SEC. 9. Section 6480.8 of the Revenue and Taxation Code is  
38 repealed.



1 SEC. 10. Article 1.6 (commencing with Section 6480.10) of  
2 Chapter 5 of Part 1 of Division 2 of the Revenue and Taxation Code  
3 is repealed.

4 SEC. 11. This act provides for a tax levy within the meaning  
5 of Article IV of the Constitution and shall go into immediate  
6 effect. However, the provisions of this act shall become operative  
7 on the first day of the first calendar quarter commencing more than  
8 90 days after the effective date of this act.

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