

AMENDED IN ASSEMBLY MAY 21, 2001  
AMENDED IN ASSEMBLY MARCH 26, 2001  
CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 309**

**Introduced by Assembly Member Longville**

February 16, 2001

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An act to amend Sections 6471.4, 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 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~~ *wholesaler* 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.

*Existing law provides that a person who is required to make sales and use tax prepayment with respect to motor vehicle fuel distributions may not be required to also make prepayments under the general sales and*

use tax provisions, if at least 75% of the gross receipts of that person are derived from the retail sale of motor vehicle fuel.

This bill would include retail sales of diesel fuel and aircraft jet fuel in that percentage calculation, in addition to retail sales of motor vehicle fuel.

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 6471.4 of the Revenue and Taxation  
2 Code is amended to read:

3 6471.4. Any person required to make prepayment pursuant to  
4 Article 1.5 (commencing with Section 6480) ~~shall~~ may not be  
5 required to make additional prepayment pursuant to this article,  
6 provided that more than 75 percent of the gross receipts of that  
7 person are from the retail sale of motor vehicle fuel, *diesel fuel,*  
8 *aircraft jet fuel, or any combination of those fuels.*

9 SEC. 2. Section 6480 of the Revenue and Taxation Code is  
10 amended to read:

11 6480. (a) For purposes of the imposition of the prepayment  
12 of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this  
13 article, the terms “aircraft jet fuel,” “aircraft jet fuel dealer,”  
14 “aviation gasoline,” “entry,” “in this state,” “motor vehicle  
15 fuel,” “person,” “removal,” “sale,” and “supplier” are defined  
16 pursuant to Part 2 (commencing with Section 7301), except as  
17 provided in subdivision (b).

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

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

24 (d) “Wholesaler” includes every person other than a supplier,  
25 dealing in motor vehicle fuel, aircraft jet fuel, or diesel fuel.  
26 “Wholesaler” does not include anyone dealing in motor vehicle  
27 fuel or diesel fuel in the capacity of an operator of a service station.



1 “Wholesaler” does not include anyone dealing in aircraft jet fuel  
2 in the capacity of an aircraft jet fuel dealer.

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

5 (1) The transfer of title or possession, exchange, or barter,  
6 conditional or otherwise, in any manner or by any means  
7 whatsoever, of aircraft jet fuel or diesel fuel (other than aircraft jet  
8 fuel or diesel fuel in a terminal) to a purchaser for a consideration.

9 (2) The transfer of the inventory position in the aircraft jet fuel  
10 or diesel fuel in a terminal if the purchaser becomes the  
11 positionholder with respect to the taxable fuel.

12 (f) For purposes of this article, aircraft jet fuel will be subject  
13 to the prepayment of sales tax at such time and in such manner as  
14 if it were subject to diesel fuel tax under the Diesel Fuel Tax Law  
15 in Part 31 (commencing with Section 60001).

16 ~~SEC. 2.—~~

17 *SEC. 3.* Section 6480.1 of the Revenue and Taxation Code is  
18 amended to read:

19 6480.1. (a) At any time that motor vehicle fuel tax or diesel  
20 fuel tax is imposed or would be imposed, but for the dyed diesel  
21 fuel exemption in paragraph (1) of subdivision (a) of Section  
22 60100, or the train operator exemption in paragraph (7) of  
23 subdivision (a) of Section 60100 or paragraph (11) of subdivision  
24 (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480,  
25 would be deemed to be imposed, on any removal, entry, or sale in  
26 this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the  
27 supplier shall collect prepayment of retail sales tax from the person  
28 to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is  
29 sold. However, if no sale occurs at the time of imposition of motor  
30 vehicle fuel tax or diesel fuel tax, the supplier shall prepay the  
31 retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel  
32 fuel. The prepayment required to be collected by the supplier  
33 constitutes a debt owed by the supplier to this state until paid to the  
34 board, until satisfactory proof has been submitted to prove that the  
35 retailer of the fuel has paid the retail sales tax to the board, or until  
36 a supplier or wholesaler who has consumed the fuel has paid the  
37 use tax to the board. Each supplier shall report and pay the  
38 prepayment amounts to the board, in a form as prescribed by the  
39 board, in the period in which the fuel is sold. On each subsequent  
40 sale of that fuel, each seller, other than the retailer, shall collect



1 from his or her purchaser a prepayment computed using the rate  
2 applicable at the time of sale. Each supplier shall provide his or her  
3 purchaser with an invoice, ~~for~~ *for*, or other evidence of, the  
4 collection of the prepayment amounts which shall be separately  
5 stated thereon.

6 (b) (1) A wholesaler shall collect prepayment of the retail  
7 sales tax from the person to whom the motor vehicle fuel, aircraft  
8 jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or  
9 her purchaser with an invoice for or other evidence of the  
10 collection of the prepayment amounts, which shall be separately  
11 stated thereon.

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

16 (A) The number of gallons of fuel sold and the amount of sales  
17 tax prepayments collected by the wholesaler.

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

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

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

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



1 credit to the retailer, supplier, or wholesaler, either on a temporary  
2 or permanent basis or otherwise. To be entitled to the credit, the  
3 retailer, supplier, or wholesaler shall retain for inspection by the  
4 board any receipts, invoices, or other documents showing the  
5 amount of sales tax prepaid to his or her supplier, together with the  
6 evidence of payment.

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

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

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



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

12 (h) On April 1 of each succeeding year, the prepayment rate per  
13 gallon for diesel fuel rounded to the nearest one-half of one cent  
14 (\$0.005), shall be established by the board based upon 80 percent  
15 of the combined state and local sales tax rate established by  
16 Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article  
17 XIII of the California Constitution on the arithmetic average  
18 selling price (excluding sales and state excise tax) as determined  
19 by the board. The board shall make its determination of the rate no  
20 later than November 1 of the year prior to the effective date of the  
21 new rate. The rate of the prepayment required to be collected for  
22 diesel fuel shall be equal to 80 percent of the arithmetic average  
23 selling price of diesel fuel as specified by industry publications.  
24 Immediately upon making its determination and setting of the rate,  
25 the board shall each year, no later than January 1, notify by mail  
26 every supplier, wholesaler, and retailer of diesel fuel. In the event  
27 the price of diesel fuel decreases or increases, and the established  
28 rate results in prepayments that consistently exceed or are  
29 significantly lower than the retailers' sales tax liability, the board  
30 may readjust the rate.

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

37 (2) A qualified purchaser who acquires motor vehicle fuel for  
38 subsequent resale to the State of California or its instrumentalities  
39 pursuant to this subdivision shall furnish to the supplier or  
40 wholesaler from whom the fuel is acquired an exemption



1 certificate, completed in accordance with any instructions or  
2 regulations as the board may prescribe. The supplier or wholesaler  
3 shall retain the certificate in his or her records in support of the  
4 exemption. To qualify for the prepayment exemption, both of the  
5 following conditions shall apply:

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

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

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

15 ~~SEC. 3.—~~

16 *SEC. 4.* Section 6480.2 of the Revenue and Taxation Code is  
17 amended to read:

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

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

28 (c) Any supplier or wholesaler who fails to comply with this  
29 section is guilty of a misdemeanor punishable as provided in  
30 Section 7153.

31 ~~SEC. 4.—~~

32 *SEC. 5.* Section 6480.3 of the Revenue and Taxation Code is  
33 amended to read:

34 6480.3. The supplier or wholesaler shall file his or her  
35 prepayment form together with a remittance of the prepayment  
36 amounts, if any, required to be collected pursuant to Section  
37 6480.1 payable to the State Board of Equalization, on or before the  
38 last day of the month following the monthly period to which the  
39 prepayment form or each prepayment relates.

40 ~~SEC. 5.—~~



1     *SEC. 6.* Section 6480.4 of the Revenue and Taxation Code is  
2 amended to read:

3     6480.4. (a) Any supplier or wholesaler who fails to make a  
4 timely remittance to the board of the prepayment amounts, if any,  
5 required pursuant to Sections 6480.1 and 6480.3 shall also pay a  
6 penalty of 10 percent of the amount of the prepayment due but not  
7 paid, plus interest at the modified adjusted rate per month, or  
8 fraction thereof, established pursuant to Section 6591.5, from the  
9 date the prepayment became due and payable to the state until the  
10 date of payment.

11     (b) The penalty amount specified in subdivision (a) shall be 25  
12 percent if the supplier or wholesaler knowingly or intentionally  
13 fails to make a timely remittance.

14     ~~*SEC. 6.*~~

15     *SEC. 7.* Section 6480.5 of the Revenue and Taxation Code is  
16 repealed.

17     ~~*SEC. 7.*~~

18     *SEC. 8.* Section 6480.6 of the Revenue and Taxation Code is  
19 amended to read:

20     6480.6. (a) The following persons who have paid  
21 prepayment amounts either directly to the board or to the person  
22 from whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel  
23 was purchased shall be refunded those amounts:

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

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

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

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

35     (5) Any person who is unable to collect the prepayment from  
36 the purchaser insofar as the sales of the fuel are represented by  
37 accounts which have been found to be worthless and charged off  
38 for income tax purposes, or, if the person is not required to file  
39 income tax returns, accounts which have been charged off in  
40 accordance with generally accepted accounting principles. If



1 partial payments have been made, the payments shall be prorated  
2 between amounts due for fuel and amounts due for the related  
3 prepayment. If any of those accounts are thereafter in whole or in  
4 part collected by the seller, the gallons of fuel represented by the  
5 amounts collected shall be included in the first return filed after  
6 that collection and the amount of the prepayment thereon paid with  
7 the return.

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

11 ~~SEC. 8.~~

12 *SEC. 9.* Section 6480.7 of the Revenue and Taxation Code is  
13 amended to read:

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

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



1 ~~SEC. 9.~~

2 *SEC. 10.* Section 6480.8 of the Revenue and Taxation Code  
3 is repealed.

4 ~~SEC. 10.~~

5 *SEC. 11.* Article 1.6 (commencing with Section 6480.10) of  
6 Chapter 5 of Part 1 of Division 2 of the Revenue and Taxation Code  
7 is repealed.

8 ~~SEC. 11.~~

9 *SEC. 12.* This act provides for a tax levy within the meaning  
10 of Article IV of the Constitution and shall go into immediate  
11 effect. However, the provisions of this act shall become operative  
12 on the first day of the first calendar quarter commencing more than  
13 90 days after the effective date of this act.

