

AMENDED IN SENATE JULY 5, 2001

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

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, 6480.4, 6480.6, 6480.7, 7320, 7326, 7330, 7337, 7343, 7344, 7364, 7404, 7405, 7453, 7653, 7657, 7727, 8101, 8126, 60015, 60022, 60027, 60034, 60052, 60056, 60057, 60058, 60101, 60105, 60106.2, 60106.3, 60107, 60161, 60163, 60181, 60206, 60211, 60360, 60401, 60501, 60503.1, 60503.2, 60521, and 60605 of, to add Sections 7345, 7372, 7373, 7659.93, 7659.94, 8106.8, 60025, 60047, 60047.1, 60048, 60048.1, 60049, 60049.1, 60063, 60064, 60135, 60204.5, 60253, 60254, 60361.5, and 60508.4 to, to repeal Sections 6480.5, 6480.8, 7652, 7654, and 60203 of, to repeal and add Sections 7486 and 7487 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: *fuel taxes*.

The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law impose specified taxes with respect to fuel. Both laws are administered by the State Board of Equalization.

This bill would allow the board to accept and authenticate any return, report, declaration, or statement filed under those laws using electronic media, and would also allow the board to be provided with returns filed with the Internal Revenue Service's Excise Summary Terminal Activity Reporting System (ExSTARS) if a terminal operator provides consent and authorization.

This bill would amend specified provisions of the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law to conform to comparable federal fuel tax laws and federal fuel regulations, including regulations authorizing one taxpayer to pay another taxpayer's tax liability on fuel removed from the terminal rack (2-party exchange agreements), operative only if authorized by the IRS.

This bill would reconcile provisions of the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law, revise and recast administrative provisions, incorporate additional definitions based on federal fuel regulations into the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law, and update specified definitions that were revised in federal fuel regulations. This bill would allow the board to recommend a refund of amounts overpaid by any person, rather than only a licensed supplier. This bill would require any person who is notified to file using electronic media files, but who instead files by paper, to pay the additional costs incurred by the board for processing the paper returns, reports, or other documents.

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 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) may not be required
5 to make additional prepayment pursuant to this article, provided
6 that more than 75 percent of the gross receipts of that person are
7 from the retail sale of motor vehicle fuel, diesel fuel, aircraft jet
8 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.
28 “Wholesaler” does not include anyone dealing in aircraft jet fuel
29 in the capacity of an aircraft jet fuel dealer.



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

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

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

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

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

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



1 of the prepayment amounts which shall be separately stated
2 thereon.

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

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

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

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

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

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

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



1 board any receipts, invoices, or other documents showing the
2 amount of sales tax prepaid to his or her supplier, together with the
3 evidence of payment.

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

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

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



1 average selling price of aircraft jet fuel as specified by industry
2 publications. Immediately upon making its determination and
3 setting of the rate, the board shall each year, no later than January
4 1, notify by mail every supplier, wholesaler, and retailer of aircraft
5 jet fuel. In the event the price of aircraft jet fuel decreases or
6 increases, and the established rate results in prepayments that
7 consistently exceed or are significantly lower than the retailers'
8 sales tax liability, the board may readjust the rate.

9 (h) On April 1 of each succeeding year, the prepayment rate per
10 gallon for diesel fuel rounded to the nearest one-half of one cent
11 (\$0.005), shall be established by the board based upon 80 percent
12 of the combined state and local sales tax rate established by
13 Sections 6051, 6051.2, 6051.3, 7202, and Section 35 of Article
14 XIII of the California Constitution on the arithmetic average
15 selling price (excluding sales and state excise tax) as determined
16 by the board. The board shall make its determination of the rate no
17 later than November 1 of the year prior to the effective date of the
18 new rate. The rate of the prepayment required to be collected for
19 diesel fuel shall be equal to 80 percent of the arithmetic average
20 selling price of diesel fuel as specified by industry publications.
21 Immediately upon making its determination and setting of the rate,
22 the board shall each year, no later than January 1, notify by mail
23 every supplier, wholesaler, and retailer of diesel fuel. In the event
24 the price of diesel fuel decreases or increases, and the established
25 rate results in prepayments that consistently exceed or are
26 significantly lower than the retailers' sales tax liability, the board
27 may readjust the rate.

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

34 (2) A qualified purchaser who acquires motor vehicle fuel for
35 subsequent resale to the State of California or its instrumentalities
36 pursuant to this subdivision shall furnish to the supplier or
37 wholesaler from whom the fuel is acquired an exemption
38 certificate, completed in accordance with any instructions or
39 regulations as the board may prescribe. The supplier or wholesaler
40 shall retain the certificate in his or her records in support of the



1 exemption. To qualify for the prepayment exemption, both of the
2 following conditions shall apply:

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

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

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

12 SEC. 4. Section 6480.2 of the Revenue and Taxation Code is
13 amended to read:

14 6480.2. (a) If the board determines that it is necessary for the
15 efficient administration of this part, the board may require a
16 supplier or wholesaler to provide the board with a list of purchasers
17 to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel was
18 sold.

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

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

27 SEC. 5. Section 6480.3 of the Revenue and Taxation Code is
28 amended to read:

29 6480.3. The supplier or wholesaler shall file his or her
30 prepayment form together with a remittance of the prepayment
31 amounts, if any, required to be collected pursuant to Section
32 6480.1 payable to the State Board of Equalization, on or before the
33 last day of the month following the monthly period to which the
34 prepayment form or each prepayment relates.

35 SEC. 6. Section 6480.4 of the Revenue and Taxation Code is
36 amended to read:

37 6480.4. (a) Any supplier or wholesaler who fails to make a
38 timely remittance to the board of the prepayment amounts, if any,
39 required pursuant to Sections 6480.1 and 6480.3 shall also pay a
40 penalty of 10 percent of the amount of the prepayment due but not



1 paid, plus interest at the modified adjusted rate per month, or
2 fraction thereof, established pursuant to Section 6591.5, from the
3 date the prepayment became due and payable to the state until the
4 date of payment.

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

8 SEC. 7. Section 6480.5 of the Revenue and Taxation Code is
9 repealed.

10 SEC. 8. Section 6480.6 of the Revenue and Taxation Code is
11 amended to read:

12 6480.6. (a) The following persons who have paid
13 prepayment amounts either directly to the board or to the person
14 from whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel
15 was purchased shall be refunded those amounts:

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

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

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

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

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



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

4 SEC. 9. Section 6480.7 of the Revenue and Taxation Code is
5 amended to read:

6 6480.7. (a) The board may require any supplier or wholesaler
7 subject to this article to place with the board any security that the
8 board determines is necessary to ensure compliance with this
9 article. The amount of the security shall be fixed by the board but
10 shall not be greater than three times the estimated average liability
11 of suppliers or wholesalers required to file returns for monthly
12 periods, determined in any manner that the board deems proper, or
13 five hundred thousand dollars (\$500,000), whichever amount is
14 less. These amounts apply regardless of the type of security placed
15 with the board. The amount of the security may be increased or
16 decreased by the board subject to the maximum amounts. The
17 security required pursuant to this section is in addition to the bond
18 or bonds required pursuant to Section 7486.

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

33 SEC. 10. Section 6480.8 of the Revenue and Taxation Code
34 is repealed.

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

38 SEC. 12. *Section 7320 of the Revenue and Taxation Code is*
39 *amended to read:*

40 7320. “Highway vehicle operator/fueler” includes :



1 (a) Any person that owns, operates, or otherwise controls a
2 motor vehicle fuel-powered highway vehicle and ~~places~~ *delivers*,
3 or causes to be ~~placed~~ *delivered*, motor vehicle fuel or any liquid
4 into the fuel tank of a motor vehicle fuel-powered highway
5 vehicle; or

6 (b) Any person who sells motor vehicle fuel on which a claim
7 for refund has been allowed, or *who sells and delivers or causes*
8 *to be delivered into the fuel tank of a motor vehicle fuel-powered*
9 *highway vehicle* any liquid on which tax has not been imposed.

10 *SEC. 13. Section 7326 of the Revenue and Taxation Code is*
11 *amended to read:*

12 7326. “Motor vehicle fuel” ~~includes means~~ *gasoline, and*
13 *aviation gasoline, and any inflammable liquid, by whatever name*
14 ~~the liquid may be known or sold, which is used or is usable in an~~
15 ~~explosion type of engine.~~ It does not include *jet fuel*, diesel fuel,
16 kerosene, liquefied petroleum gas, natural gas in liquid or gaseous
17 form, or alcohol.

18 *SEC. 14. Section 7330 of the Revenue and Taxation Code is*
19 *amended to read:*

20 7330. “Pipeline” ~~means any pipeline used at any time to~~
21 ~~transport motor vehicle fuel~~ *a fuel distribution system that moves*
22 *motor vehicle fuel, in bulk, through a pipe, from a refinery to a*
23 *terminal, from a terminal to another terminal, from a vessel to a*
24 *terminal, or from a refinery or terminal to a vessel.*

25 *SEC. 15. Section 7337 of the Revenue and Taxation Code is*
26 *amended to read:*

27 7337. “Sale” means:

28 (a) The transfer of title to, ~~or substantial incidents of ownership~~
29 ~~in,~~ motor vehicle fuel (other than motor vehicle fuel in a terminal)
30 to a buyer for consideration, which may consist of money,
31 services, or other property.

32 (b) The transfer of the inventory position in the motor vehicle
33 fuel in a terminal if the buyer becomes the position holder with
34 respect to the ~~taxable~~ *motor vehicle* fuel.

35 *SEC. 16. Section 7343 of the Revenue and Taxation Code is*
36 *amended to read:*

37 7343. “Vessel” ~~includes a barge and every description of~~
38 ~~motor craft, other than a seaplane on the water, used or capable of~~
39 ~~being used as a means of transportation on water~~ *means a*
40 *waterborne vessel used for transporting motor vehicle fuel.*



1 SEC. 17. Section 7344 of the Revenue and Taxation Code is
2 amended to read:

3 7344. “Vessel operator” ~~includes~~ means any person that
4 ~~owns, operates, or otherwise controls~~ a vessel.

5 SEC. 18. Section 7345 is added to the Revenue and Taxation
6 Code, to read:

7 7345. “Tax-paid fuel” or “tax paid” means the gallons of
8 motor vehicle fuel acquired on either a temperature corrected or
9 volumetric basis on which the tax in Section 7360 has been
10 imposed at the time of or prior to the acquisition by the supplier
11 or person.

12 SEC. 19. Section 7364 of the Revenue and Taxation Code is
13 amended to read:

14 7364. The tax specified in Section 7360 is imposed as a
15 backup tax ~~on~~ as follows:

16 (a) On the delivery into the fuel tank of a motor vehicle
17 fuel-powered highway vehicle ~~or sale of any of the following~~:

18 ~~(a)~~

19 (1) Any motor vehicle fuel on which a claim for refund has
20 been allowed-

21 ~~(b)~~; or

22 (2) Any liquid on which tax has not been imposed by this part,
23 Part 3 (commencing with Section 8601), or Part 31 (commencing
24 with Section 60001).

25 (b) On the sale of any motor vehicle fuel on which a claim for
26 refund has been allowed.

27 (c) On the sale and delivery into the fuel tank of a motor vehicle
28 fuel-powered highway vehicle of any liquid on which tax has not
29 been imposed by this part, Part 3 (commencing with Section 8601),
30 or Part 31 (commencing with Section 60001).

31 SEC. 20. Section 7372 is added to the Revenue and Taxation
32 Code, to read:

33 7372. (a) The board may accept from the person who receives
34 motor vehicle fuel removed at a refinery or terminal rack an
35 amount equal to the tax due and required to be paid by the refiner
36 or position holder upon the removal of the motor vehicle fuel from
37 a refinery or terminal rack, as if the amount were payment of the
38 tax by the refiner or position holder under Section 7362 or 7363,
39 as the case may be, if the Internal Revenue Service authorizes



1 *payment of federal fuel taxes by the receiving party under a*
2 *two-party exchange agreement or similar arrangement.*

3 *(b) The refiner or position holder shall remain primarily liable*
4 *for payment of the tax imposed by Section 7362 or 7363 for motor*
5 *vehicle fuel removed at the refinery or terminal rack, as the case*
6 *may be, plus any penalty or interest, until the amount is finally paid*
7 *and credited to the account of the responsible refiner or position*
8 *holder; provided, however, that the board, at its discretion, may*
9 *relieve the refiner or position holder from primary liability for*
10 *payment of tax imposed by Section 7362 or 7363 and hold another*
11 *person primarily liable for the tax if (1) the Internal Revenue*
12 *Service authorizes payment of fuel taxes by the receiving party*
13 *under a two-party exchange agreement, and (2) under the Internal*
14 *Revenue Service approach to two-party exchange agreements,*
15 *another person is primarily liable for payment of the tax, and (3)*
16 *the board elects to follow the Internal Revenue Service approach.*

17 *(c) The board may adopt those regulations as it deems*
18 *appropriate to carry out this section.*

19 *SEC. 21. Section 7373 is added to the Revenue and Taxation*
20 *Code, to read:*

21 *7373. (a) For the purpose of the proper administration of this*
22 *part and to prevent evasion of the tax, unless the contrary is*
23 *established, it shall be presumed that all motor vehicle fuel*
24 *received at a terminal in this state, imported into this state, or*
25 *refined and placed into storage for removal at a refinery in this*
26 *state or blended motor vehicle fuel blended or converted in this*
27 *state and no longer in the possession of the supplier has been*
28 *removed or sold by the supplier.*

29 *(b) The presumption shall not apply if the supplier proves to the*
30 *satisfaction of the board that both:*

31 *(1) The supplier has exercised ordinary care in entrusting*
32 *control or possession of the motor vehicle fuel to another person.*

33 *(2) The person to whom the supplier has entrusted the control*
34 *or possession of the motor vehicle fuel as bailee, consignee,*
35 *employee, or agent, caused a removal or sale by the act of*
36 *converting to that person's own use the motor vehicle fuel so*
37 *entrusted to that person by the supplier.*

38 *(c) If the supplier proves to the satisfaction of the board, the*
39 *existence of both of the circumstances in paragraphs (1) and (2)*
40 *of subdivision (b), then the person who converted the motor vehicle*



1 *fuel to his or her own use, as well as any other person receiving that*
2 *motor vehicle fuel with the knowledge that it was so converted,*
3 *shall be liable for payment of the tax imposed upon that removal*
4 *or sale, and all of those persons shall be considered as suppliers*
5 *for the purpose of Chapter 5 (commencing with Section 7651) or*
6 *Chapter 6 (commencing with Section 7851) of this part.*

7 *SEC. 22. Section 7404 of the Revenue and Taxation Code is*
8 *amended to read:*

9 7404. If a purchaser gives an exemption certificate for motor
10 vehicle fuel pursuant to this chapter to the effect that the motor
11 vehicle fuel purchased will be used in an exempt manner, and sells
12 the motor vehicle fuel or uses the motor vehicle fuel in some other
13 manner or for some other purpose, the purchaser will be liable for
14 payment of the tax under Chapter 2 (commencing with Section
15 7360) of this part ~~as if the purchaser were a supplier of the motor~~
16 ~~vehicle fuel at the time of that sale or use.~~ *The tax, applicable*
17 *penalties, and interest shall become due and payable and shall be*
18 *ascertained and determined in the same manner as the backup tax*
19 *under Section 7727.*

20 *SEC. 23. Section 7405 of the Revenue and Taxation Code is*
21 *amended to read:*

22 7405. (a) Any person, including any officer or employee of
23 a corporation, who gives an exemption certificate pursuant to this
24 chapter for motor vehicle fuel that he or she knows at the time of
25 purchase is not to be used by him or her or the corporation in an
26 exempt manner, for the purpose of evading payment of the amount
27 of the tax applicable to the transaction, is guilty of a misdemeanor
28 punishable as provided in Section 8405.

29 (b) Any person, including any officer or employee of a
30 corporation, who gives an exemption certificate for motor vehicle
31 fuel pursuant to this chapter that he or she knows at the time of
32 purchase is not to be used by him or her or the corporation in an
33 exempt manner, is liable to the state for the amount of tax that
34 would be due if he or she had not given that certificate. In addition
35 to the tax, the person shall be liable to the state for a penalty of 25
36 percent of the tax ~~and~~ *or one thousand dollars (\$1,000), whichever*
37 *is greater, for each certificate issued for personal gain or to evade*
38 *the payment of taxes.*

39 *SEC. 24. Section 7453 of the Revenue and Taxation Code is*
40 *amended to read:*



1 7453. *Before granting a license authorizing a person to*
2 *engage in business as a supplier, the board may require the person*
3 *to file with the board security pursuant to Section 7486. The*
4 *license issued to any supplier is not transferable and is valid until*
5 *canceled or revoked.*

6 *SEC. 25. Section 7486 of the Revenue and Taxation Code is*
7 *repealed.*

8 ~~7486. Before granting a license authorizing a person to~~
9 ~~engage in business as a supplier, the board may require the person~~
10 ~~to file with the board security, in the form as it prescribes. Any~~
11 ~~security in the form of cash or insured deposits in banks or savings~~
12 ~~and loan institutions or a bond or bonds duly executed by an~~
13 ~~admitted surety insurer, payable to the state shall be held by the~~
14 ~~board in trust to be used solely in the manner provided by this~~
15 ~~section conditioned upon faithful performance of all the~~
16 ~~requirements of this part. Security is expressly provided for the~~
17 ~~payment of all taxes, penalties, and other obligations of the person~~
18 ~~arising out of this part.~~

19 *SEC. 26. Section 7486 is added to the Revenue and Taxation*
20 *Code, to read:*

21 *7486. The board, whenever it deems it necessary to ensure*
22 *compliance with this part or any rule or regulation adopted under*
23 *this part, may require any person to deposit with it any security as*
24 *it may determine appropriate. The amount of the security shall be*
25 *fixed by the board but shall not be more than three times the*
26 *estimated average monthly tax liability of the person. The total*
27 *amount of security shall not be in excess of one million dollars*
28 *(\$1,000,000) where the person has established to the satisfaction*
29 *of the board that this security, together with property to which the*
30 *lien imposed by Section 7872 attaches, is sufficient security to*
31 *ensure payment of taxes equivalent to three times the estimated*
32 *average monthly tax liability of the person. The amount of the*
33 *security may be increased or decreased by the board at any time.*
34 *Any security in the form of cash or insured deposits in banks and*
35 *savings and loan institutions shall be held by the board in trust to*
36 *be used solely in the manner provided for this section and Section*
37 *7487. Any security in the form of a bond or bonds shall be duly*
38 *executed by an admitted surety insurer, payable to the state,*
39 *conditioned upon faithful performance of all the requirements of*
40 *this part, and expressly providing for the payment of all taxes,*



1 penalties, and other obligations of the person arising out of this
2 part. Security held by the board shall be released after a three-year
3 period in which the person has filed all returns and paid all tax to
4 the state or any amount of tax required to be collected and paid to
5 the state within the time required.

6 SEC. 27. Section 7487 of the Revenue and Taxation Code is
7 repealed.

8 7487. — Subject to the limitations provided in this section, the
9 board shall fix the total amount of the security required of any
10 supplier and may increase or reduce the amount at any time. The
11 total amount of the security required of any supplier shall never be
12 more than three times the estimated average monthly tax liability
13 of the supplier but not in excess of one million dollars
14 (\$1,000,000).

15 SEC. 28. Section 7487 is added to the Revenue and Taxation
16 Code, to read:

17 7487. If, at the time a person ceases to operate under this part,
18 the board holds a security pursuant to Section 7486 in the form of
19 cash, or insured deposits in banks or savings and loan institutions,
20 the security when applied to the account of the taxpayer shall be
21 deemed to be a payment on account of any liability of the taxpayer
22 to the Controller on the date the person ceases to operate under
23 this part.

24 SEC. 29. Section 7652 of the Revenue and Taxation Code is
25 repealed.

26 7652. — (a) Each throughputter shall prepare and make a report
27 showing the following:

28 (1) The name and license number of the operator of each
29 terminal at which it holds an inventory position in motor vehicle
30 fuel.

31 (2) Any other information required by the board.

32 (b) Each throughputter shall prepare and file with the board on
33 forms prescribed by the board a report showing the information in
34 subdivision (a) during each calendar month, or the monthly period
35 ended during that calendar month as the board may authorize. The
36 person shall file the report on or before the last day of the month
37 following the monthly period to which it relates. To facilitate the
38 administration of this part, the board may require the filing of the
39 reports for other than monthly periods.



1 SEC. 30. Section 7653 of the Revenue and Taxation Code is
2 amended to read:

3 7653. (a) Each person subject to the tax imposed under
4 Section 7361, on or before February 28, 2002, shall prepare and
5 file with the board, on forms prescribed by the board, a return
6 showing the total number of gallons of motor vehicle fuel owned
7 by the person on January 1, 2002, for which a tax has not been
8 imposed under Part 2 (commencing with Section 7301) as in effect
9 on December 31, 2001, the amount of the tax imposed, and any
10 other information that the board deems necessary for the proper
11 administration of this part. The return shall be accompanied by a
12 remittance payable to the Controller in the amount of tax due.

13 (b) Any distributor, as defined in paragraph (3) of subdivision
14 (b) of Section 7361, who has tax-paid motor vehicle fuel in the bulk
15 transfer/terminal system on January 1, 2002, which was
16 purchased prior to January 1, 2002, shall report the tax-paid
17 gallons on the subdivision (a) return. The amount of taxes paid on
18 the tax-paid gallons shall constitute a credit against the amount of
19 taxes due and payable on the subdivision (a) return, or on the
20 supplier's January 2002 return required under Section 7651, and
21 for each succeeding return until the credit is fully utilized.

22 SEC. 31. Section 7654 of the Revenue and Taxation Code is
23 repealed.

24 ~~7654. (a) Any person who fails to file an information report
25 on or before the required filing date or to include all the
26 information required to be shown on the information report shall
27 pay a penalty of fifty dollars (\$50) for each report.~~

28 ~~(b) Any person who files an inaccurate or improper
29 information report shall pay a penalty of fifty dollars (\$50) for
30 each report.~~

31 SEC. 32. Section 7657 of the Revenue and Taxation Code is
32 amended to read:

33 7657. (a) If the board finds that a person's failure to make a
34 timely report, return, or payment is due to reasonable cause and
35 circumstances beyond the person's control, and occurred
36 notwithstanding the exercise of ordinary care and the absence of
37 willful neglect, the person may be relieved of the penalty provided
38 by Sections ~~7654, 7655, 7659.5, 7659.6, 7659.9~~ 7660, 7705, and
39 7713. ~~Any person seeking to be relieved of the penalty shall file~~



1 ~~with the board a statement under penalty of perjury setting forth~~
2 ~~the facts upon which the person bases his or her claim for relief.~~

3 (b) Except as provided in subdivision (c), any person seeking
4 to be relieved of the penalty shall file with the board a statement
5 under penalty of perjury setting forth the facts upon which he or
6 she bases his or her claim for relief.

7 (c) The board shall establish criteria that provide for efficient
8 resolution of requests for relief pursuant to this section.

9 SEC. 33. Section 7659.93 is added to the Revenue and
10 Taxation Code, to read:

11 7659.93. (a) Any return, report, declaration statement, or
12 other document required to be made under this part that is filed
13 using electronic media shall be filed and authenticated pursuant
14 to any method or form the board may prescribe.

15 (b) Notwithstanding any other law, any return, report,
16 declaration, statement, or other document otherwise required to be
17 signed that is filed by the taxpayer using electronic media in a form
18 as required by the board shall be deemed to be a signed, valid
19 original document, including upon reproduction paper form by the
20 board.

21 (c) Electronic media includes, but is not limited to, computer
22 modem, magnetic media, optical disk, facsimile machine, or
23 telephone.

24 (d) Upon written approval of the board, a person may satisfy
25 the requirements of subdivision (a) by executing and providing to
26 the board a consent and authorization for the Internal Revenue
27 Service to provide to the board under Section 6103 of the Internal
28 Revenue Code, the return filed by the person under Section
29 48.4101-2 of Title 26 of the Code of Federal Regulations. The
30 board, in its sole discretion, may rescind its approval and require
31 a person to file reports as specified in subdivision (a).

32 SEC. 34. Section 7659.94 is added to the Revenue and
33 Taxation Code, to read:

34 7659.94. Any person who has been notified that they are
35 required to file returns, reports or other documents using
36 electronic media and files the returns, reports or other documents
37 by means other than the required electronic media shall pay the
38 board for the costs of processing the returns, reports or other
39 documents. The costs will be established by those rules and
40 regulations as the board may prescribe. The board for good cause



1 *may extend for a period not to exceed 90 days, the time for filing*
2 *the electronic media return, report or other documents. Any person*
3 *to whom an extension is granted shall not pay the costs of*
4 *processing the return, report or other document.*

5 *SEC. 35. Section 7727 of the Revenue and Taxation Code is*
6 *amended to read:*

7 ~~7727. (a) Any person who becomes liable for the~~ *The backup*
8 *tax imposed under Section 7364 as a highway vehicle*
9 *operator/fueler and uses untaxed motor vehicle fuel, causes to be*
10 *delivered untaxed motor vehicle fuel into the fuel tank of a motor*
11 *vehicle fuel-powered highway vehicle, or sells untaxed motor*
12 *vehicle fuel, the tax, and any applicable penalties and interest, if*
13 *any, become shall be immediately due and payable on account of*
14 *all motor vehicle fuel used, delivered, or sold.*

15 ~~(b)~~ *The board shall forthwith ascertain as best it may the*
16 *amount of motor vehicle fuel used, delivered, or sold and sold, or*
17 *delivered into the fuel tank of a motor vehicle fuel-powered*
18 *highway vehicle, or sold and delivered into the fuel tank of a motor*
19 *vehicle fuel-powered highway vehicle, and shall determine*
20 *immediately the tax on the amount, adding to the tax a penalty of*
21 *25 percent of the amount of tax or five hundred dollars (\$500),*
22 *whichever is greater, and shall give the highway vehicle*
23 *operator/fueler notice of this determination as prescribed by*
24 *Section 7671. The determination shall include interest at the*
25 *modified adjusted rate per month, or fraction thereof, established*
26 *pursuant to Section 6591.5, from the last day of the month*
27 *following the date the backup tax applies until the date of*
28 *remittance to the state. The provisions of Sections 7699 and 7700*
29 *shall be applicable with respect to the finality of the determination*
30 *and the right of the highway vehicle operator/fueler to petition for*
31 *a redetermination.*

32 ~~(c)~~

33 *(b) A penalty of 25 percent of the amount of tax or five hundred*
34 *dollars (\$500), whichever is greater, shall be added to the tax.*

35 *(c) If both the penalty specified in this section and in Section*
36 *7405 are otherwise applicable, only the penalty totaling the*
37 *greatest amount shall be imposed, and, the penalty specified in this*
38 *section shall be imposed only if the amount of penalty exceeds any*
39 *other applicable penalty.*



1 (d) Where the board determines that the sale, delivery into the
2 fuel tank of a motor vehicle fuel-powered highway vehicle, or sale
3 and delivery into the fuel tank of a motor vehicle fuel-powered
4 highway vehicle of untaxed motor vehicle fuel was due to
5 reasonable cause and circumstances beyond the person's control,
6 and occurred notwithstanding the exercise of ordinary care and the
7 absence of willful neglect, the person may be relieved of the
8 penalty. A person seeking to be relieved of the penalty shall file
9 with the board a statement under penalty of perjury setting forth
10 the facts upon which the request for relief is based.

11 (e) All administrative provisions contained in this part that
12 apply to a supplier shall also be applicable to a highway vehicle
13 operator/fueler.

14 SEC. 36. Section 8101 of the Revenue and Taxation Code is
15 amended to read:

16 8101. The following persons who have paid a tax for motor
17 vehicle fuel, either directly or to the vendor from whom it was
18 purchased, or indirectly by the adding of the amount of the tax to
19 the price of the fuel, shall, except as otherwise provided in this part,
20 be reimbursed and repaid the amount of the tax:

21 (a) Any person who buys and uses the motor vehicle fuel for
22 purposes other than operating motor vehicles upon the public
23 highways of the state, except vehicles subject to identification
24 under Division 16.5 (commencing with Section 38000) of the
25 Vehicle Code, which are used for recreational purposes or are
26 rented or leased for recreational purposes, and, on and after July
27 1, 1974, except motor vehicles subject to registration under
28 Division 3 (commencing with Section 4000) of the Vehicle Code
29 while engaged in off-highway recreational use.

30 (b) Any person who exports the motor vehicle fuel for use
31 outside of this state. Motor vehicle fuel carried from this state in
32 the fuel tank of a motor vehicle or aircraft is not deemed to be
33 exported from this state unless the motor vehicle fuel becomes
34 subject to tax as an "import" under the laws of the destination
35 state.

36 (c) Any person who sells the motor vehicle fuel to the armed
37 forces of the United States for use in ships or aircraft or for use
38 outside this state, under circumstances that would have entitled
39 him or her to an exemption from the payment of the tax under
40 Section 7401 had he or she been the supplier of this fuel.



1 (d) Any person who buys and uses the motor vehicle fuel in any
2 construction equipment which is exempt from vehicle registration
3 pursuant to the Vehicle Code, while operated within the confines
4 and limits of a construction project.

5 (e) Any supplier who sells motor vehicle fuel which is sold to
6 any consulate officer or consulate employee under circumstances
7 which would have entitled the supplier to an exemption under
8 paragraph (4) of subdivision (a) of Section 7401 if the supplier had
9 sold the motor vehicle fuel directly to the consulate officer or
10 consulate employee.

11 (f) *Any supplier who removes motor vehicle fuel at a rack and*
12 *pays tax on that removal or who purchases tax-paid motor vehicle*
13 *fuel outside the bulk transfer/terminal system and then delivers the*
14 *tax-paid motor vehicle fuel to another approved terminal from*
15 *which that supplier subsequently removes the tax-paid motor*
16 *vehicle fuel at the terminal rack, but only to the extent that the*
17 *supplier can show that tax on the same amount of motor vehicle*
18 *fuel has been paid more than one time by the same supplier.*

19 (g) *Any supplier who purchases tax-paid motor vehicle fuel in*
20 *the bulk transfer/terminal system and subsequently removes the*
21 *tax-paid motor vehicle fuel at the terminal rack, but only to the*
22 *extent that the supplier can show that tax on the same amount of*
23 *motor vehicle fuel has been paid more than one time by the same*
24 *supplier. This subdivision applies only to those purchases made on*
25 *or after January 1, 2002.*

26 SEC. 37. *Section 8106.8 is added to the Revenue and Taxation*
27 *Code, to read:*

28 *8106.8. In lieu of the collection and refund of the tax on*
29 *tax-paid motor vehicle fuel removed at a terminal rack by a*
30 *supplier who is entitled to claim a refund of tax under subdivision*
31 *(f) or (g) of Section 8101, credit may be given the supplier upon the*
32 *supplier's tax return. The amount of tax and refund shall be*
33 *determined in accordance with such rules and regulations as the*
34 *board may prescribe.*

35 SEC. 38. *Section 8126 of the Revenue and Taxation Code is*
36 *amended to read:*

37 *8126. If the board determines that any amount not required to*
38 *be paid under this part has been paid by any person ~~that is licensed~~*
39 *as a supplier to the state, the board shall set forth that fact in its*
40 *records and certify the amount collected in excess of the amount*



1 legally due and the person from whom it was collected and certify
2 the amount to the Controller for credit or refund. Any proposed
3 determination by the board pursuant to this section with respect to
4 an amount in excess of fifty thousand dollars (\$50,000) shall be
5 available as a public record for at least 10 days prior to the effective
6 date of that determination.

7 *SEC. 39. Section 60015 of the Revenue and Taxation Code is*
8 *amended to read:*

9 60015. “Diesel fuel registrant” includes any enterer, position
10 holder, refiner, *throughputter*, or terminal operator, that is licensed
11 as a supplier pursuant to Section 60131.

12 *SEC. 40. Section 60022 of the Revenue and Taxation Code is*
13 *amended to read:*

14 60022. “Diesel fuel” means any liquid that is commonly or
15 commercially known or sold as a fuel that is suitable for use in a
16 diesel-powered highway vehicle. A liquid meets this requirement
17 if, without further processing or blending, the liquid has practical
18 and commercial fitness for use in the engine of a diesel-powered
19 highway vehicle.

20 However, a liquid does not possess this practical and
21 commercial fitness solely by reason of its possible or rare use as
22 a fuel in the engine of a diesel-powered highway vehicle. “Diesel
23 fuel” does not include *gasoline*, kerosene, *liquefied petroleum*
24 *gas*, natural gas in liquid or gaseous form, or alcohol.

25 ~~“Diesel fuel” includes any combustible liquid, by whatever~~
26 ~~name the liquid may be known or sold, when the liquid is used in~~
27 ~~an internal combustion engine for the generation of power to~~
28 ~~operate a motor vehicle licensed to operate on the highway, except~~
29 ~~fuel that is subject to the tax imposed in Part 2 (commencing with~~
30 ~~Section 7301) or Part 3 (commencing with Section 8601).~~

31 *SEC. 41. Section 60025 is added to the Revenue and Taxation*
32 *Code, to read:*

33 60025. “Gallon” means the United States gallon of 231 cubic
34 inches or the volumetric gallon adjusted to 60 degrees Fahrenheit
35 when the invoice and settlement is made on the temperature
36 corrected gallonage.

37 *SEC. 42. Section 60027 of the Revenue and Taxation Code is*
38 *amended to read:*

39 60027. ~~“Highway”~~ “Qualified highway vehicle operator”
40 ~~includes~~ means any person licensed as a qualified highway vehicle



1 operator that owns, operates, or otherwise controls a
2 diesel-powered highway vehicle and ~~places~~ delivers, or causes to
3 be ~~placed~~ delivered, diesel fuel or any liquid into the fuel tank of
4 a diesel-powered highway vehicle and is qualified to use dyed
5 diesel fuel on the highway by the Internal Revenue Service under
6 Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

7 SEC. 43. Section 60034 of the Revenue and Taxation Code is
8 amended to read:

9 60034. ~~“End seller” means any “Highway vehicle~~
10 ~~operator/fueler” includes:~~

11 (a) Any person, other than a qualified highway vehicle
12 operator, that owns, operates, or otherwise controls a
13 diesel-powered highway vehicle and delivers, or causes to be
14 delivered, diesel fuel or any liquid into the fuel tank of a
15 diesel-powered highway vehicle; or

16 (b) Any person who sells ~~to a highway vehicle operator, dyed~~
17 ~~diesel fuel,~~ diesel fuel on which a claim for refund has been
18 allowed, or who sells and delivers or causes to be delivered in the
19 fuel tank of a diesel-powered highway vehicle or any liquid on
20 which tax has not been imposed ~~and the diesel fuel or liquid is used~~
21 ~~in the operation of the diesel-powered highway vehicle.~~

22 SEC. 44. Section 60047 is added to the Revenue and Taxation
23 Code, to read:

24 60047. “Pipeline” means a fuel distribution system that
25 moves diesel fuel, in the bulk, through a pipe, from a refinery to a
26 terminal, from a terminal to another terminal, from a vessel to a
27 terminal, or from a refinery or terminal to a vessel.

28 SEC. 45. Section 60047.1 is added to the Revenue and
29 Taxation Code, to read:

30 60047.1. “Pipeline operator” includes any person that owns,
31 operates, or otherwise controls a pipeline.

32 SEC. 46. Section 60048 is added to the Revenue and Taxation
33 Code, to read:

34 60048. “Sale” means:

35 (a) The transfer of title to diesel fuel (other than diesel fuel in
36 a terminal) to a buyer for consideration, which may consist of
37 money, services, or other property.

38 (b) The transfer of the inventory position in the diesel fuel in a
39 terminal if the buyer becomes the position holder with respect to
40 the diesel fuel.



1 SEC. 47. Section 60048.1 is added to the Revenue and
2 Taxation Code, to read:

3 60048.1. “Tax-paid fuel” or “tax paid” means the gallons of
4 diesel fuel acquired on either a temperature corrected or
5 volumetric basis on which the tax in Section 60050 has been
6 imposed at the time of or prior to the acquisition by the supplier
7 or person.

8 SEC. 48. Section 60049 is added to the Revenue and Taxation
9 Code, to read:

10 60049. “Vessel” means a waterborne vessel used for
11 transporting diesel fuel.

12 SEC. 49. Section 60049.1 is added to the Revenue and
13 Taxation Code, to read:

14 60049.1. “Vessel operator” means any person that operates
15 or otherwise controls a vessel.

16 SEC. 50. Section 60052 of the Revenue and Taxation Code is
17 amended to read:

18 60052. The tax specified in Section 60050 is also imposed on
19 all of the following:

20 (a) The removal of diesel fuel in this state from any refinery if
21 either of the following applies:

22 (1) The removal is by bulk transfer and the refiner or the owner
23 of the diesel fuel immediately before the removal is not a diesel
24 fuel registrant.

25 (2) The removal is at the refinery rack.

26 (b) The entry of diesel fuel into this state for sale, consumption,
27 use, or warehousing if either of the following applies:

28 (1) The entry is by bulk transfer and the enterer is not a diesel
29 fuel registrant.

30 (2) The entry is not by bulk transfer.

31 (c) The removal *or sale* of diesel fuel in this state to an
32 unregistered person unless there was a prior taxable removal,
33 entry, or sale of the diesel fuel.

34 (d) The removal or sale of blended diesel fuel in this state by
35 the blender thereof. The number of gallons of blended diesel fuel
36 subject to tax is the difference between the total number of gallons
37 of blended diesel fuel removed or sold and the number of gallons
38 of previously taxed diesel fuel used to produce the blended diesel
39 fuel.



1 SEC. 51. Section 60056 of the Revenue and Taxation Code is
2 amended to read:

3 60056. ~~The~~ Every qualified highway vehicle operator is liable
4 for the backup tax imposed under subdivision (a) of Section 60058.

5 SEC. 52. Section 60057 of the Revenue and Taxation Code is
6 amended to read:

7 60057. ~~The end seller of diesel fuel generally is jointly and~~
8 ~~severally~~ Every highway vehicle operator/fueler is liable for the
9 backup tax imposed under Section 60058 ~~if the end seller knows~~
10 ~~or has reason to know that the diesel fuel will be used in a~~
11 ~~diesel-powered highway vehicle.~~

12 SEC. 53. Section 60058 of the Revenue and Taxation Code is
13 amended to read:

14 60058. The tax specified in Section 60050 is imposed as a
15 backup tax ~~on~~ as follows:

16 (a) On the delivery into the fuel tank of a diesel-powered
17 highway vehicle of any of the following:

18 ~~(a)~~

19 (1) Any diesel fuel that contains a dye.

20 ~~(b)~~

21 (2) Any diesel fuel on which a claim for refund has been
22 allowed.

23 ~~(c)~~

24 (3) Any liquid on which tax has not been imposed by this part,
25 Part 2 (commencing with Section 7301), or Part 3 (commencing
26 with Section 8601).

27 (b) On the sale of any diesel fuel on which a claim for refund
28 has been allowed.

29 (c) On the sale and delivery into the fuel tank of a
30 diesel-powered highway vehicle of any diesel fuel that contains a
31 dye or any liquid on which tax has not been imposed by this part,
32 Part 2 (commencing with Section 7301), or Part 3 (commencing
33 with Section 8601).

34 (d) For the purposes of this section, aircraft jet fuel on which
35 tax has been imposed only pursuant to Part 2, Chapter 2.2
36 (commencing with Section 7385) shall be deemed to be a liquid on
37 which tax has not been imposed by Part 2 (commencing with
38 Section 7301).

39 SEC. 54. Section 60063 is added to the Revenue and Taxation
40 Code, to read:



1 60063. (a) *The board may accept from the person who*
2 *receives diesel fuel removed at a refinery or terminal rack an*
3 *amount equal to the tax due and required to be paid by the refiner*
4 *or position holder upon the removal of the diesel fuel from a*
5 *refinery or terminal rack, as if the amount were payment of the tax*
6 *by the refiner or position holder under Section 60051 or 60052, as*
7 *the case may be, if the Internal Revenue Service authorizes*
8 *payment of federal fuel taxes by the receiving party under a*
9 *two-party exchange agreement or similar arrangement.*

10 (b) *The refiner or position holder shall remain primarily liable*
11 *for payment of the tax imposed by Section 60051 or 60052 for*
12 *diesel fuel removed at the refinery or terminal rack, as the case may*
13 *be, plus any penalty or interest, until the amount is finally paid and*
14 *credited to the account of the responsible refiner or position*
15 *holder; provided, however, that the board, at its discretion, may*
16 *relieve the refiner or position holder from primary liability for*
17 *payment of tax imposed by Section 7362 or 7363 and hold another*
18 *person primary liable for the tax if (i) the Internal Revenue Service*
19 *authorizes payment of fuel taxes by the receiving party under a*
20 *two-party exchange agreement, and (ii) under the Internal*
21 *Revenue Service approach to two-party exchange agreement,*
22 *another person is primarily liable for payment of the tax, and (iii)*
23 *the board elects to follow the Internal Revenue Service approach.*

24 (c) *The board may adopt those regulations as it deems*
25 *appropriate to carry out this section.*

26 SEC. 55. *Section 60064 is added to the Revenue and Taxation*
27 *Code, to read:*

28 60064. (a) *For the purpose of the proper administrator of this*
29 *part and to prevent evasion of the tax, unless the contrary is*
30 *established, it shall be presumed that all diesel fuel received at a*
31 *terminal in this state, imported into this state, or refined and*
32 *placed into storage for removal at a refinery in this state or blended*
33 *diesel fuel blended or converted in this state and no longer in the*
34 *possession of the supplier has been removed or sold by the supplier.*

35 (b) *The presumption shall not apply if the supplier proves to the*
36 *satisfaction of the board that both:*

37 (1) *The supplier has exercised ordinary care in entrusting*
38 *control or possession of the diesel fuel to another person.*

39 (2) *The person whom the supplier has entrusted the control or*
40 *possession of the diesel fuel as bailee, consignee, employee, or*



1 agent, caused a removal or sale by the act of converting to that
2 person's own use the diesel fuel so entrusted to that person by the
3 supplier.

4 (c) If the supplier proves to the satisfaction of the board, the
5 existence of both of the circumstances in paragraphs (1) and (2)
6 of subdivision (b), then the person who converted the diesel fuel to
7 his or her own use, as well as any other person receiving that diesel
8 fuel with the knowledge that it was so converted, shall be liable for
9 payment of the tax imposed upon the removal or sale, and all those
10 persons shall be considered as suppliers for the purpose of Chapter
11 5 (commencing with Section 7651) or Chapter 6 (commencing
12 with Section 7851) of this part.

13 SEC. 56. Section 60101 of the Revenue and Taxation Code is
14 amended to read:

15 60101. (a) Diesel fuel that is required to be dyed satisfies the
16 dyeing requirement of this part if it meets the dyeing requirements
17 of the United States Environmental Protection Agency and the
18 Internal Revenue Service, including, but not limited to,
19 requirements respecting type, dosage, and timing.

20 (b) Marking shall meet the marking requirements of the
21 Internal Revenue Service.

22 (c) No person shall operate or maintain a motor vehicle on any
23 public highway in this state with dyed diesel fuel in the fuel supply
24 tank. This subdivision does not apply to uses of dyed diesel fuel
25 on the highway that are lawful under the Internal Revenue Code
26 or regulations promulgated thereunder, if the person is registered
27 as a *qualified* highway vehicle operator, exempt bus operator, or
28 government entity, or if the person is an intercity bus operator, as
29 defined in Section 60046, who is registered as an interstate user
30 under this part.

31 SEC. 57. Section 60105 of the Revenue and Taxation Code is
32 amended to read:

33 60105. (a) A penalty applies to any person who does any of
34 the following:

35 (1) Sells or holds for sale dyed diesel fuel for any use that the
36 person knows or has reason to know is a taxable use of the diesel
37 fuel.

38 (2) Holds for use or uses dyed diesel fuel for a use other than
39 a nontaxable use and that person knew, or had reason to know, that
40 the diesel fuel was so dyed.



1 (3) Knowingly alters, or attempts to alter, the strength or
2 composition of any dye or marker in any dyed diesel fuel.

3 (4) Fails to provide or post the required notice with respect to
4 any dyed diesel fuel. The failure to provide or post the required
5 notice creates a presumption that the person so failing knows the
6 diesel fuel will be used for a taxable use.

7 (b) The amount of the penalty for each violation specified in
8 subdivision (a) is ~~ten~~ *the greater of:*

9 (1) *Ten dollars (\$10) for every gallon of diesel fuel involved,*
10 *or*

11 (2) *The product of one thousand dollars (\$1,000), whichever is*
12 *greater. The penalty shall be increased for subsequent violations*
13 *by multiplying the penalty amount by the number of prior*
14 *violations and the total number of penalties, including the penalty*
15 *currently being determined, imposed by this section on the person*
16 *(or a related person or any predecessor of that person or related*
17 *person).*

18 (c) If a penalty is imposed under this section on any business
19 entity, each officer, employee, or agent of the entity, who
20 participated in any act giving rise to the penalty shall be jointly and
21 severally liable with the entity for the penalty.

22 *SEC. 58. Section 60106.2 of the Revenue and Taxation Code*
23 *is amended to read:*

24 60106.2. If a purchaser gives a Section 60106 exemption
25 certificate to a supplier that the diesel fuel purchased will be used
26 in a manner or for a purpose entitling the supplier to regard the
27 removal as exempt from the taxes as provided in paragraph (7) of
28 subdivision (a) of Section 60100 and sells the diesel fuel or uses
29 the diesel fuel in some other manner or for some other purpose, the
30 purchaser shall be liable for payment of the tax under Chapter 2
31 (commencing with Section 60050) of this part ~~as if the purchaser~~
32 ~~were a supplier of the diesel fuel at the time of that sale or use. The~~
33 *tax, applicable penalties and interest shall become due and*
34 *payable and shall be ascertained and determined in the same*
35 *manner as the backup tax under Section 60361.5.*

36 *SEC. 59. Section 60106.3 of the Revenue and Taxation Code*
37 *is amended to read:*

38 60106.3. (a) Any person, including any officer or employee
39 of a corporation, who gives a Section 60106 exemption certificate
40 for diesel fuel that he or she knows at the time of purchase is not



1 to be used by him or her or the corporation in the manner or for the
2 purpose entitling the exemption for the purpose of evading
3 payment to the supplier of the amount of the tax applicable to the
4 transaction is guilty of a misdemeanor punishable as provided in
5 Section 60706 or a felony punishable as provided in Section
6 60707.

7 (b) Any person, including any officer or employee of a
8 corporation, who gives a certificate for diesel fuel pursuant to
9 Section 60106 that he or she knows at the time of purchase is not
10 to be used by him or her or the corporation in the manner or for the
11 purpose entitling the exemption is liable to the state for the amount
12 of tax that would be due if he or she had not given that certificate.
13 In addition to the tax, the person shall be liable to the state for a
14 penalty of 25 percent of the tax or ~~five hundred dollars (\$500)~~, *one*
15 *thousand dollars (\$1,000)*, whichever is greater, for each ~~purchase~~
16 ~~made~~ *certificate issued* for personal gain or to evade the payment
17 of taxes.

18 *SEC. 60. Section 60107 of the Revenue and Taxation Code is*
19 *amended to read:*

20 60107. (a) For the privilege of purchasing diesel fuel exempt
21 from taxes under paragraph (7) of subdivision (a) of Section
22 60100, each train operator must make a report to the board
23 showing:

24 (1) The name and permit number of the supplier from whom it
25 purchased undyed diesel fuel and the number of gallons of undyed
26 diesel fuel purchased that is exempt from the tax.

27 (2) Any other information required by the board.

28 (b) Each train operator shall prepare and file with the board on
29 forms prescribed by the board a report showing the information in
30 subdivision (a) during each quarterly reporting period. The report
31 shall be filed with the board on or before the last day of the calendar
32 month following the close of the quarterly period to which it
33 relates. To facilitate the administration of this part, the board may
34 require the filing of these reports for other than quarterly periods.

35 (c) The board may revoke the train operator's permit provided
36 for in Section 60106.1 due to the filing of inaccurate or improper
37 reports.

38 (d) *All of the administrative provisions of this part relating to*
39 *a supplier shall be applicable to a train operator.*



1 SEC. 61. Section 60135 is added to the Revenue and Taxation
2 Code, to read:

3 60135. Every person before becoming a pipeline operator or
4 a vessel operator shall apply to the board for a license on forms
5 prescribed by the board. A pipeline operator license or a vessel
6 operator license shall be issued only to a person who is a pipeline
7 operator or a vessel operator as defined in Sections 60047.1 and
8 60049.1. It is unlawful for a person to act as a pipeline operator
9 or a vessel operator without first securing a license.

10 SEC. 62. Section 60161 of the Revenue and Taxation Code is
11 amended to read:

12 60161. (a) Every person before becoming a qualified
13 highway vehicle operator ~~and every end seller is required to be~~
14 ~~licensed at any time they incur liability for the backup tax under~~
15 ~~Section 60058. The highway vehicle operator and end seller shall~~
16 apply to the board for a license authorizing the person to ~~report the~~
17 ~~backup tax~~ engage in business as a qualified highway vehicle
18 operator. A license shall be issued only to a ~~highway vehicle~~
19 ~~operator~~ person who is ~~subject to the backup tax in Section 60056~~
20 ~~or to an end seller who is subject to the backup tax in Section 60057~~
21 qualified to use dyed diesel fuel on the highway by the Internal
22 Revenue Service under Section 48.4082-4 of Title 26 of the Code
23 of Federal Regulations.

24 (b) If the person is already licensed as an exempt bus operator,
25 government entity or interstate user, the person does not need a
26 separate qualified highway vehicle operator's license.

27 SEC. 63. Section 60163 of the Revenue and Taxation Code is
28 amended to read:

29 60163. Before granting a license authorizing a person to
30 report the backup tax as a qualified highway vehicle operator ~~or an~~
31 ~~end seller~~, the board may require the person to file with the board
32 security pursuant to Section 60401. The license issued to any
33 qualified highway vehicle operator ~~or end seller~~ is not transferable
34 and is valid until canceled or revoked.

35 SEC. 64. Section 60181 of the Revenue and Taxation Code is
36 amended to read:

37 60181. The board may revoke any of the following licenses:

38 (a) Any supplier's license held by a person who does not
39 engage in, or who discontinues, the removal, entry, or sale of diesel
40 fuel, producing of blended diesel fuel, owning or holding



1 inventory position of diesel fuel, or owning or operating a refinery
2 or terminal as any of the following:

- 3 (1) A blender, as defined in Section 60012.
- 4 (2) An enterer, as defined in Section 60013.
- 5 (3) A positionholder, as defined in Section 60010.
- 6 (4) A refiner, as defined in Section 60011.
- 7 (5) A terminal operator, as defined in Section 60009.
- 8 (6) A throughputter, as defined in Section 60035.

9 (b) Any interstate user’s license held by a person who does not
10 engage in, or who discontinues, using diesel fuel as an “interstate
11 user” as defined in Section 60111.

12 (c) Any ultimate vendor’s license held by a person who does
13 not engage in, or who discontinues, selling undyed diesel fuel as
14 an “ultimate vendor” as defined in Section 60036.

15 (d) Any exempt bus operator’s license held by a person who
16 does not engage in, or who discontinues, using diesel fuel as an
17 “exempt bus operator” as defined in Section 60040.

18 (e) Any *qualified* highway vehicle operator’s ~~or end-seller’s~~
19 license held by a person who does not engage in, or who
20 discontinues, the delivery of diesel fuel subject to the backup tax
21 into fuel tanks of diesel-powered highway vehicles as a *qualified*
22 highway vehicle operator as defined in Section 60027 ~~or as an end~~
23 ~~seller as defined in Section 60034.~~

24 (f) Any government entity’s license held by a government
25 entity that does not engage in, or that discontinues using diesel fuel
26 in, the operation of a diesel-powered highway vehicle upon the
27 state’s highways.

28 *SEC. 65. Section 60203 of the Revenue and Taxation Code is*
29 *repealed.*

30 ~~60203. (a) Each throughputter shall prepare and make a~~
31 ~~return showing the following:~~

32 ~~(1) The name and permit number of the operator of each~~
33 ~~terminal at which it holds an inventory position in taxable diesel~~
34 ~~fuel.~~

35 ~~(2) Any other information required by the board.~~

36 ~~(b) Each throughputter shall prepare and file with the board on~~
37 ~~forms prescribed by the board a return showing the information in~~
38 ~~subdivision (a) during each calendar month, or the monthly period~~
39 ~~ended during that calendar month as the board may authorize. The~~
40 ~~person shall file the return on or before the last day of the calendar~~



1 ~~month following the monthly period to which it relates. To~~
2 ~~facilitate the administration of this part, the board may require the~~
3 ~~filing of the returns for other than monthly periods.~~

4 *SEC. 66. Section 60204.5 is added to the Revenue and*
5 *Taxation Code, to read:*

6 *60204.5. (a) Each pipeline operator and vessel operator*
7 *shall prepare and file with the board a report in the form as*
8 *prescribed by the board, which may include, but not be limited to,*
9 *electronic media showing, for the calendar month, or that monthly*
10 *period ended during the calendar month as the board may*
11 *authorize, all of the following:*

12 *(1) The amount of diesel fuel delivered to each terminal or*
13 *refinery.*

14 *(2) The location of the terminal or refinery where the diesel fuel*
15 *was delivered.*

16 *(3) The date of delivery.*

17 *(4) Any other information required by the board for the proper*
18 *administration of this part. The pipeline operator and vessel*
19 *operator shall file the report on or before the last day of the month*
20 *following the monthly period to which it relates. To facilitate the*
21 *administration of this part, the board may require the filing of the*
22 *reports for other than monthly periods. Reports shall be*
23 *authenticated in a form or pursuant to methods as may be*
24 *prescribed by the board.*

25 *(b) Upon written approval of the board, a pipeline operate and*
26 *vessel operator may satisfy the requirements of subdivision (a) by*
27 *executing and providing to the board a consent and authorization*
28 *for the Internal Revenue Service to provide to the board under*
29 *Section 6103 of the Internal Revenue Code, the return filed by the*
30 *pipeline operator and vessel operator under Section 48.4101-2 of*
31 *Title 26 of the Code of Federal Regulations. The board may, in its*
32 *sole discretion, rescind its approval and require a pipeline*
33 *operator and vessel operator to file reports as specified in*
34 *subdivision (a).*

35 *SEC. 67. Section 60206 of the Revenue and Taxation Code is*
36 *amended to read:*

37 *60206. Each qualified highway vehicle operator and end*
38 ~~*seller shall prepare and file with the board on forms prescribed by*~~
39 ~~*the board a return in the form as prescribed by the board, which*~~
40 *may include, but not be limited to, electronic media showing the*



1 total number of gallons of diesel fuel subject to the backup tax that
2 was delivered into the fuel tank of a diesel-powered highway
3 vehicle ~~or sold by him or her~~ within this state during each calendar
4 month, or the monthly period ended during that calendar month as
5 the board may authorize, the amount of tax due for the month
6 covered by the return, and any other information as the board
7 deems necessary for the proper administration of this part. The
8 person shall file the return on or before the last day of the calendar
9 month following the monthly period to which it relates, together
10 with a remittance payable to the board for the amount of tax due
11 for that period. To facilitate the administration of this part, the
12 board may require the filing of the returns for other than monthly
13 periods. *Returns shall be authenticated in a form or pursuant to*
14 *methods as may be prescribed by the board.*

15 *SEC. 68. Section 60211 of the Revenue and Taxation Code is*
16 *amended to read:*

17 60211. If the board finds that a person's failure to make a
18 timely return or payment was due to a disaster, and occurred
19 notwithstanding the exercise of ordinary care and the absence of
20 willful neglect, the person may be relieved of the interest provided
21 by Sections 60207, 60208, 60250, ~~and~~ 60302, *and 60339.*

22 Any person seeking to be relieved of the interest shall file with
23 the board a statement under penalty of perjury setting forth the
24 facts upon which he or she bases the claim for relief.

25 *SEC. 69. Section 60253 is added to the Revenue and Taxation*
26 *Code, to read:*

27 60253. (a) *Any return, report, declaration, statement, or*
28 *other document required to be made under this part that is filed*
29 *using electronic media shall be filed and authenticated pursuant*
30 *to any method or form the board may prescribe.*

31 (b) *Notwithstanding any other law, any return, declaration,*
32 *statement, or other document otherwise required to be signed that*
33 *is filed by the taxpayer using electronic media in a form as required*
34 *by the board shall be deemed to be a signed, valid original*
35 *document, including upon reproduction to paper form by the*
36 *board.*

37 (c) *Electronic media includes, but is not limited to, computer*
38 *modem, magnetic media, optical disk, facsimile machine, or*
39 *telephone.*



1 (d) Upon written approval of the board, a person may satisfy
2 the requirements of subdivision (a) by executing and providing to
3 the board a consent and authorization for the Internal Revenue
4 Service to provide to the board under Section 6103 of the Internal
5 Revenue Code, the return filed by the person under Section
6 48.4101-2 of Title 26 of the Code of Federal Regulations. The
7 board, in its sole discretion, may rescind its approval and require
8 a person to file reports as specified in subdivision (a).

9 SEC. 70. Section 60254 is added to the Revenue and Taxation
10 Code, to read:

11 60254. Any person who has been notified that they are
12 required to file returns, reports, or other documents using
13 electronic media and files the returns, reports, or other documents
14 by means other than the required electronic media shall pay the
15 board for the costs of processing the returns, reports, or other
16 documents. The costs will be established by those rules and
17 regulations as the board may prescribe. The board for good cause
18 may extend for a period not to exceed 90 days, the time for filing
19 the electronic media return, report, or other document. Any person
20 to whom an extension is granted shall not pay the costs of
21 processing the return, report, or other document.

22 SEC. 71. Section 60360 of the Revenue and Taxation Code is
23 amended to read:

24 60360. If any person becomes a supplier, exempt bus
25 operator, government entity, *qualified* highway vehicle operator,
26 ~~end-seller~~, or interstate user without first securing a license, the tax,
27 and applicable penalties and interest, if any, become immediately
28 due and payable on account of all diesel fuel removed, entered,
29 sold, delivered, or used by him or her.

30 SEC. 72. Section 60361.5 is added to the Revenue and
31 Taxation Code, to read:

32 60361.5. (a) Except in the case of a *qualified* highway vehicle
33 operator, the backup tax imposed under Section 60058 and any
34 applicable penalties and interest shall be immediately due and
35 payable. The board shall forthwith ascertain as best it may the
36 amount of diesel fuel sold, or delivered into the fuel tank of a diesel
37 fuel-powered highway vehicle, or sold and delivered into the fuel
38 tank of a diesel fuel-powered highway vehicle, and shall determine
39 immediately the tax on the amount and shall give the highway
40 vehicle operator/fueler notice of this determination as prescribed



1 by Section 60340. The determination shall include interest at the
2 modified adjusted rate per month, or fraction thereof, established
3 pursuant to Section 6591.5, from the last day of the month
4 following the date the backup tax applies until the date of
5 remittance to the state. The provisions of Section 60331 and 60332
6 shall be applicable with respect to the finality of the determination
7 and the right of the highway vehicle operator/fueler to petition for
8 a redetermination.

9 (b) A penalty of 25 percent of the amount of tax or five hundred
10 dollars (\$500), whichever is greater, shall be added to the tax.

11 (c) If more than one of the penalties specified in this section and
12 Sections 60105, 60106.3, or 60503.2 is otherwise applicable, only
13 the penalty totaling the greatest amount shall be imposed, and, the
14 penalty specified in this section shall be imposed only if the amount
15 of penalty exceeds any other applicable penalty.

16 (d) Where the board determines that the sale, delivery into the
17 fuel tank of a diesel fuel-powered highway vehicle, or sale and
18 delivery into the fuel tank of a diesel fuel-powered highway vehicle
19 of untaxed diesel fuel was due to reasonable cause and
20 circumstances beyond the person's control, and occurred
21 notwithstanding the exercise of ordinary care and the absence of
22 willful neglect, the person may be relieved of the penalty. A person
23 seeking to be relieved of the penalty shall file with the board a
24 statement under penalty of perjury setting forth the facts upon
25 which the request for relief is based.

26 (e) All administrative provisions contained in this part that
27 apply to a supplier shall also be applicable to a highway vehicle
28 operator/fueler.

29 SEC. 73. Section 60401 of the Revenue and Taxation Code is
30 amended to read:

31 60401. The board, whenever it deems it necessary to ensure
32 compliance with this part or any rule or regulation adopted under
33 this part, may require any person to deposit with it any security as
34 it may determine appropriate. The amount of the security shall be
35 fixed by the board but shall not be more than ~~four~~ three times the
36 estimated average monthly tax liability of the person. ~~For any~~
37 ~~license issued pursuant to Sections 60120, 60131, 60141, and~~
38 ~~60161, the~~ The total amount of security shall not be in excess of
39 one million dollars (\$1,000,000) where ~~the person has established~~
40 ~~to the satisfaction of the board that all taxes due under this part for~~



1 ~~the three-year period preceding the time the security is fixed were~~
2 ~~paid when due, when the person has established to the satisfaction~~
3 of the board that this security, together with property to which the
4 lien imposed by Section 60445 attaches, is sufficient security to
5 ensure payment of taxes equivalent to ~~four~~ *three* times the
6 estimated average monthly tax liability of the person. The amount
7 of the security may be increased or decreased by the board at any
8 time. Any security in the form of cash or insured deposits in banks
9 and savings and loan institutions shall be held by the board in trust
10 to be used solely in the manner provided for this section and
11 Section 60406. Any security in the form of a bond or bonds shall
12 be duly executed by an admitted surety insurer, payable to the
13 state, conditioned upon faithful performance of all the
14 requirements of this part, and expressly providing for the payment
15 of all taxes, penalties, and other obligations of the person arising
16 out of this part. *Security held by the board shall be released after*
17 *a three-year period in which the person has filed all returns and*
18 *paid all tax to the state or any amount of tax required to be*
19 *collected and paid to the state within the time required.*

20 *SEC. 74. Section 60501 of the Revenue and Taxation Code is*
21 *amended to read:*

22 60501. Persons who have paid a tax for diesel fuel lost, sold,
23 *or removed* as provided in paragraph (4) of subdivision (a), or used
24 in a nontaxable use, other than on a farm for farming purposes or
25 in an exempt bus operation, shall, except as otherwise provided in
26 this part, be reimbursed and repaid the amount of the tax.

27 (a) A claim for refund with respect to diesel fuel is allowed
28 under this section only if all of the following apply:

29 (1) Tax was imposed on the diesel fuel to which the claim
30 relates.

31 (2) The claimant bought or produced the diesel fuel and did not
32 sell or resell it in this state except as provided in paragraph (4) of
33 subdivision (a).

34 (3) The claimant has filed a timely claim for refund that
35 contains the information required under subdivision (b) and the
36 claim is supported by the original invoice showing the purchase.
37 If no original invoice was created, electronic invoicing shall be
38 accepted as reflected by a computerized facsimile when
39 accompanied by an original copy of the bill of lading or fuel
40 manifest that can be directly tied to the electronic invoice.



1 (4) The diesel fuel was any of the following:

2 (A) Used for purposes other than operating motor vehicles
3 upon the public highways of the state.

4 (B) Exported for use outside of this state. Diesel fuel carried
5 from this state in the fuel tank of a motor vehicle is not deemed to
6 be exported from this state unless the diesel fuel becomes subject
7 to tax as an import under the laws of the destination state.

8 (C) Used in any construction equipment that is exempt from
9 vehicle registration pursuant to the Vehicle Code, while operated
10 within the confines and limits of a construction project.

11 (D) Used in the operation of a motor vehicle on any highway
12 that is under the jurisdiction of the United States Department of
13 Agriculture and with respect to the use of the highway the claimant
14 pays, or contributes to, the cost of construction or maintenance
15 thereof pursuant to an agreement with, or permission of, the
16 United States Department of Agriculture.

17 (E) Used in any motor vehicle owned by any county, city and
18 county, city, district, or other political subdivision or public
19 agency when operated by it over any highway constructed and
20 maintained by the United States or any department or agency
21 thereof within a military reservation in this state. If the motor
22 vehicle is operated both over the highway and over a public
23 highway outside the military reservation in a continuous trip the
24 tax shall not be refunded as to that portion of the diesel fuel used
25 to operate the vehicle over the public highway outside the military
26 reservation.

27 Nothing contained in this section shall be construed as a refund
28 of the tax for the use of diesel fuel in any motor vehicle operated
29 upon a public highway within a military reservation, which
30 highway is constructed or maintained by this state or any political
31 subdivision thereof.

32 As used in this section, “military reservation” includes any
33 establishment of the United States government or any agency
34 thereof used by the armed forces of the United States for military,
35 air, or naval operations, including research projects.

36 (F) Sold by a supplier to any consulate officer or consulate
37 employee under circumstances which would have entitled the
38 supplier to an exemption under paragraph (6) of subdivision (a) of
39 Section 60100 if the supplier had sold the diesel fuel directly to the
40 consulate officer or consulate employee.



1 (G) Lost in the ordinary course of handling, transportation, or
2 storage.

3 (H) Sold by a person to the United States and its agencies and
4 instrumentalities under circumstances that would have entitled
5 that person to an exemption from the payment of diesel fuel tax
6 under Section 60100 had that person been the supplier of this
7 diesel fuel.

8 (I) Sold by a person to a train operator for use in a
9 diesel-powered train or for other off-highway use under
10 circumstances that would have entitled that person to an
11 exemption from the payment of diesel fuel tax under Section
12 60100 had that person been the supplier of this diesel fuel.

13 (J) *Removed from an approved terminal at the terminal rack,*
14 *but only to the extent that the supplier can show that tax on the*
15 *same amount of diesel fuel has been paid more than one time by*
16 *the same supplier.*

17 (b) Each claim for refund under this section shall contain the
18 following information with respect to all of the diesel fuel covered
19 by the claim:

20 (1) The name, address, telephone number, and permit number
21 of the person that sold the diesel fuel to the claimant and the date
22 of the purchase.

23 (2) A statement by the claimant that the diesel fuel covered by
24 the claim did not contain visible evidence of dye.

25 (3) A statement, which may appear on the invoice or similar
26 document, by the person that sold the diesel fuel to the claimant
27 that the diesel fuel sold did not contain visible evidence of dye.

28 (4) The total amount of diesel fuel covered by the claim.

29 (5) The use made of the diesel fuel covered by the claim
30 described by reference to specific categories listed in paragraph (4)
31 of subdivision (a).

32 (6) If the diesel fuel covered by the claim was exported, a
33 statement that the claimant has the proof of exportation.

34 (c) Each claim for refund under this section shall be made on
35 a form prescribed by the board and shall be filed for a calendar
36 year. If, at the close of any of the first three quarters of the calendar
37 year, more than seven hundred fifty dollars (\$750) is refundable
38 under this section with respect to diesel fuel used or exported
39 during that quarter or any prior quarter during the calendar year,
40 and for which no other claim has been filed, a claim may be filed



1 for the quarterly period. To facilitate the administration of this
2 section, the board may require the filing of claims for refund for
3 other than yearly periods.

4 *SEC. 75. Section 60503.1 of the Revenue and Taxation Code*
5 *is amended to read:*

6 60503.1. If a purchaser gives a Section 60503 exemption
7 certificate to an ultimate vendor to the effect that the diesel fuel
8 purchased will be used on a farm for farming purposes or in an
9 exempt bus operation, and sells the diesel fuel or uses the diesel
10 fuel in some other manner or for some other purpose, the purchaser
11 will be liable for payment of the tax under Chapter 2 (commencing
12 with Section 60050) of this part ~~as if the purchaser were a supplier~~
13 ~~of the diesel fuel at the time of that sale or use.~~ *The tax, applicable*
14 *penalties, and interest shall become due and payable and shall be*
15 *ascertained and determined in the same manner as the backup tax*
16 *under Section 60361.5.*

17 *SEC. 76. Section 60503.2 of the Revenue and Taxation Code*
18 *is amended to read:*

19 60503.2. (a) Any person, including any officer or employee
20 of a corporation, who gives a Section 60503 exemption certificate
21 for diesel fuel that he or she knows at the time of purchase is not
22 to be used by him or her or the corporation on a farm for farming
23 purposes or in an exempt bus operation, for the purpose of evading
24 payment to the ultimate vendor of the amount of the tax applicable
25 to the transaction, is guilty of either a misdemeanor punishable as
26 provided in Section 60706 or a felony punishable as provided in
27 Section 60707.

28 (b) Any person, including any officer or employee of a
29 corporation, who gives an exemption certificate for diesel fuel
30 pursuant to Section 60503 that he or she knows at the time of
31 purchase is not to be used by him or her or the corporation on a
32 farm for farming purposes or in an exempt bus operation, is liable
33 to the state for the amount of tax that would be due if he or she had
34 not given that certificate. In addition to the tax, the person shall be
35 liable to the state for a penalty of 25 percent of the tax or ~~five~~
36 ~~hundred dollars (\$500)~~ *one thousand dollars (\$1,000)*, whichever
37 is greater, for each ~~purchase made~~ *certificate issued* for personal
38 gain or to evade the payment of taxes.

39 *SEC. 77. Section 60508.4 is added to the Revenue and*
40 *Taxation Code, to read:*



1 60508.4. *In lieu of the collection and refund of the tax on*
2 *tax-paid diesel fuel removed at a terminal rack by a supplier who*
3 *is entitled to claim a refund of tax under subparagraph (J) of*
4 *paragraph (4) of subdivision (a) of Section 60501, credit may be*
5 *given the supplier upon the supplier's tax return. The amount of tax*
6 *and refund shall be determined in accordance with such rules and*
7 *regulations as the board may prescribe.*

8 *SEC. 78. Section 60521 of the Revenue and Taxation Code is*
9 *amended to read:*

10 60521. If the board determines that any amount not required
11 to be paid under this part has been paid by any person ~~that is a~~
12 ~~licensed supplier, interstate user, exempt bus operator to the state,~~
13 ~~government entity, highway vehicle operator, or end seller,~~ the
14 board shall set forth that fact in its records and certify the amount
15 paid in excess of the amount legally due and the person by whom
16 the excess was paid to the board or from whom it was collected.
17 The excess amount paid or collected shall be credited on any
18 amounts then due and payable from the person from whom the
19 excess amount was collected or by whom it was paid under this
20 part, and the balance shall either be refunded to the person, or his
21 or her successors, administrators, executors, or assigns, or, if
22 authorized by the board, deducted by the person from any amounts
23 to become due from him or her under this part.

24 For any amount exceeding fifty thousand dollars (\$50,000), the
25 board's proposed determination under this section shall be
26 available as a public record for at least 10 days prior to the effective
27 date of the determination.

28 *SEC. 79. Section 60605 of the Revenue and Taxation Code is*
29 *amended to read:*

30 60605. (a) Each terminal operator shall keep the following
31 information with respect to each rack removal of diesel fuel at each
32 terminal it operates:

33 (1) The bill of lading or other shipping document.

34 (2) The record of whether the diesel fuel was dyed in
35 accordance with the United States Environmental Protection
36 Agency or Internal Revenue Service requirements.

37 (3) The volume and date of the removal.

38 (4) The identity of the position holder or position holder's
39 customer.



1 (5) *The identity of the person, such as a common carrier, that*
2 *physically received the fuel.*

3 (6) Any other information required by the Internal Revenue
4 Service pursuant to Section ~~48.4101-3~~ 48.4101-1 of Title 26 of
5 the Code of Federal Regulations.

6 (b) The terminal operator shall maintain the information
7 described in this section at the terminal from which the removal
8 occurred for at least three months after the removal to which it
9 relates. *Thereafter, the terminal operator shall retain the*
10 *information at a location controlled by the terminal operator for*
11 *at least four more years.*

12 SEC. 80. This act provides for a tax levy within the meaning
13 of Article IV of the Constitution and shall go into immediate
14 effect. However, the provisions of this act shall become operative
15 on the first day of the first calendar quarter commencing more than
16 90 days after the effective date of this act.

