

Assembly Bill No. 309

CHAPTER 429

An act to amend Sections 6471.4, 6480, 6480.1, 6480.2, 6480.3, 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, 8106.8, 60025, 60047, 60047.1, 60048, 60048.1, 60049, 60049.1, 60063, 60064, 60135, 60204.5, 60253, 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.

[Approved by Governor October 2, 2001. Filed with
Secretary of State October 2, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 309, 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.

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 incorporate additional changes in Section 60022 of the Revenue and Taxation Code proposed by AB 86 of the 2nd Extraordinary Session of the Legislature, to be operative only if AB 86 and this bill are both enacted and become effective, as specified, and this bill is enacted last.

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

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

SECTION 1. Section 6471.4 of the Revenue and Taxation Code is amended to read:

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

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

6480. (a) For purposes of the imposition of the prepayment of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this article, the terms “aircraft jet fuel,” “aircraft jet fuel dealer,” “aviation gasoline,”



“entry,” “in this state,” “motor vehicle fuel,” “person,” “removal,” “sale,” and “supplier” are defined pursuant to Part 2 (commencing with Section 7301), except as provided in subdivision (b).

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

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

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

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

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

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

(f) For purposes of this article, aircraft jet fuel will be subject to the prepayment of sales tax at such time and in such manner as if it were subject to diesel fuel tax under the Diesel Fuel Tax Law in Part 31 (commencing with Section 60001), except that in the case of bulk transfers, aircraft jet fuel is not subject to the prepayment of sales tax as to the removal of diesel fuel in this state from any refinery as described in paragraph (1) of subdivision (a) of Section 60052, the entry of diesel fuel into this state as described in paragraph (1) of subdivision (b) of Section 60052, or the removal of diesel fuel in this state as described in subdivision (c) of Section 60052.

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

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax



from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

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

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

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

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

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

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

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall



constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices, or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

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

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

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



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

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

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

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

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

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or



wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

6480.7. (a) The board may require any supplier or wholesaler subject to this article to place with the board any security that the board determines is necessary to ensure compliance with this article. The amount of the security shall be fixed by the board but shall not be greater than three times the estimated average liability of suppliers or wholesalers required to file returns for monthly periods, determined in any manner that the board deems proper, or five hundred thousand dollars (\$500,000), whichever amount is less. These amounts apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the



maximum amounts. The security required pursuant to this section is in addition to the bond or bonds required pursuant to Section 7486.

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

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

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

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

7320. “Highway vehicle operator/fueler” includes:

(a) Any person that owns, operates, or otherwise controls a motor vehicle fuel-powered highway vehicle and delivers, or causes to be delivered, motor vehicle fuel or any liquid into the fuel tank of a motor vehicle fuel-powered highway vehicle; or

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

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

7326. “Motor vehicle fuel” means gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

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

7330. “Pipeline” means a fuel distribution system that moves motor vehicle fuel, in bulk, through a pipe, from a refinery to a terminal, from a terminal to another terminal, from a vessel to a terminal, or from a refinery or terminal to a vessel.

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



7337. “Sale” means:

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

(b) The transfer of the inventory position in the motor vehicle fuel in a terminal if the buyer becomes the position holder with respect to the motor vehicle fuel.

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

7343. “Vessel” means a waterborne vessel used for transporting motor vehicle fuel.

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

7344. “Vessel operator” means any person that operates or otherwise controls a vessel.

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

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

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

7364. The tax specified in Section 7360 is imposed as a backup tax as follows:

(a) On the delivery into the fuel tank of a motor vehicle fuel-powered highway vehicle of:

(1) Any motor vehicle fuel on which a claim for refund has been allowed; or

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

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

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

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

7372. (a) The board may accept from the person who receives motor vehicle fuel removed at a refinery or terminal rack an amount equal to the tax due and required to be paid by the refiner or



positionholder upon the removal of the motor vehicle fuel from a refinery or terminal rack, as if the amount were payment of the tax by the refiner or positionholder under Section 7362 or 7363, as the case may be, if the Internal Revenue Service authorizes payment of federal fuel taxes by the receiving party under a two-party exchange agreement or similar arrangement.

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

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

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

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

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

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

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

(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the motor vehicle fuel to his or her own use, as well as any other person receiving that motor vehicle fuel with the knowledge that it was so converted, shall be liable for payment of the



tax imposed upon that removal or sale, and all of those persons shall be considered as suppliers for the purpose of Chapter 5 (commencing with Section 7651) or Chapter 6 (commencing with Section 7851) of this part.

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

7404. If a purchaser gives an exemption certificate for motor vehicle fuel pursuant to this chapter to the effect that the motor vehicle fuel purchased will be used in an exempt manner, and sells the motor vehicle fuel or uses the motor vehicle fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 7360) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 7727.

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

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

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

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

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

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

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



7486. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars (\$1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 7872 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for in this section and Section 7487. Any security in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

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

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

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

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

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

7653. (a) Each person subject to the tax imposed under Section 7361, on or before February 28, 2002, shall prepare and file with the board, on forms prescribed by the board, a return showing the total number of gallons of motor vehicle fuel owned by the person on January 1, 2002, for which a tax has not been imposed under Part 2 (commencing with Section 7301) as in effect on December 31, 2001, the amount of the



tax imposed, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

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

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

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

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

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

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

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

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

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

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



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

SEC. 34. Section 7727 of the Revenue and Taxation Code is amended to read:

7727. (a) The backup tax imposed under Section 7364 and any applicable penalties and interest shall be immediately due and payable. The board shall forthwith ascertain as best it may the amount of motor vehicle fuel sold, or delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, or sold and delivered into the fuel tank of a motor vehicle fuel-powered highway vehicle, and shall determine immediately the tax on the amount and shall give the highway vehicle operator/fueler notice of this determination as prescribed by Section 7671. The determination shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the backup tax applies until the date of remittance to the state. The provisions of Sections 7699 and 7700 shall be applicable with respect to the finality of the determination and the right of the highway vehicle operator/fueler to petition for a redetermination.

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

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

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

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



SEC. 35. Section 8101 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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



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

SEC. 36. Section 8106.8 is added to the Revenue and Taxation Code, to read:

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

SEC. 37. Section 8126 of the Revenue and Taxation Code is amended to read:

8126. If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount collected in excess of the amount legally due and the person from whom it was collected and certify the amount to the Controller for credit or refund. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

SEC. 38. Section 60015 of the Revenue and Taxation Code is amended to read:

60015. "Diesel fuel registrant" includes any enterer, positionholder, refiner, throughputter, or terminal operator, that is licensed as a supplier pursuant to Section 60131.

SEC. 39. Section 60022 of the Revenue and Taxation Code is amended to read:

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

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



SEC. 39.5. Section 60022 of the Revenue and Taxation Code is amended to read:

60022. (a) “Diesel fuel” means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

(b) “Diesel fuel” does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(c) “Diesel fuel” does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

SEC. 40. Section 60025 is added to the Revenue and Taxation Code, to read:

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

SEC. 41. Section 60027 of the Revenue and Taxation Code is amended to read:

60027. “Qualified highway vehicle operator” means any person licensed as a qualified highway vehicle operator that owns, operates, or otherwise controls a diesel-powered highway vehicle and delivers, or causes to be delivered, diesel fuel or any liquid into the fuel tank of a diesel-powered highway vehicle and is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

SEC. 42. Section 60034 of the Revenue and Taxation Code is amended to read:

60034. “Highway vehicle operator/fueler” includes:

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

(b) Any person who sells diesel fuel on which a claim for refund has been allowed, or who sells and delivers or causes to be delivered in the fuel tank of a diesel-powered highway vehicle dyed diesel fuel or any liquid on which tax has not been imposed.



SEC. 43. Section 60047 is added to the Revenue and Taxation Code, to read:

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

SEC. 44. Section 60047.1 is added to the Revenue and Taxation Code, to read:

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

SEC. 45. Section 60048 is added to the Revenue and Taxation Code, to read:

60048. “Sale” means:

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

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

SEC. 46. Section 60048.1 is added to the Revenue and Taxation Code, to read:

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

SEC. 47. Section 60049 is added to the Revenue and Taxation Code, to read:

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

SEC. 48. Section 60049.1 is added to the Revenue and Taxation Code, to read:

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

SEC. 49. Section 60052 of the Revenue and Taxation Code is amended to read:

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

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

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

(2) The removal is at the refinery rack.



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

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

(2) The entry is not by bulk transfer.

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

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

SEC. 50. Section 60056 of the Revenue and Taxation Code is amended to read:

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

SEC. 51. Section 60057 of the Revenue and Taxation Code is amended to read:

60057. Every highway vehicle operator/fueler is liable for the backup tax imposed under Section 60058.

SEC. 52. Section 60058 of the Revenue and Taxation Code is amended to read:

60058. The tax specified in Section 60050 is imposed as a backup tax as follows:

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

(1) Any diesel fuel that contains a dye.

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

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

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

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

(d) For the purposes of this section, aircraft jet fuel on which tax has been imposed only pursuant to Part 2, Chapter 2.5 (commencing with Section 7385) shall be deemed to be a liquid on which tax has not been imposed by Part 2 (commencing with Section 7301).



SEC. 53. Section 60063 is added to the Revenue and Taxation Code, to read:

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

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

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

SEC. 54. Section 60064 is added to the Revenue and Taxation Code, to read:

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

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

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

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



(c) If the supplier proves to the satisfaction of the board, the existence of both of the circumstances in paragraphs (1) and (2) of subdivision (b), then the person who converted the diesel fuel to his or her own use, as well as any other person receiving that diesel fuel with the knowledge that it was so converted, shall be liable for payment of the tax imposed upon the removal or sale, and all those persons shall be considered as suppliers for the purpose of Chapter 6 (commencing with Section 60201) or Chapter 7 (commencing with Section 60401) of this part.

SEC. 55. Section 60101 of the Revenue and Taxation Code is amended to read:

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

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

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

SEC. 56. Section 60105 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

(b) The amount of the penalty for each violation specified in subdivision (a) is the greater of:

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



(2) The product of one thousand dollars (\$1,000), and the total number of penalties, including the penalty currently being determined, imposed by this section on the person (or a related person or any predecessor of that person or related person).

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

SEC. 57. Section 60106.2 of the Revenue and Taxation Code is amended to read:

60106.2. If a purchaser gives a Section 60106 exemption certificate to a supplier that the diesel fuel purchased will be used in a manner or for a purpose entitling the supplier to regard the removal as exempt from the taxes as provided in paragraph (7) of subdivision (a) of Section 60100 and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser shall be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

SEC. 58. Section 60106.3 of the Revenue and Taxation Code is amended to read:

60106.3. (a) Any person, including any officer or employee of a corporation, who gives a Section 60106 exemption certificate for diesel fuel that he or she knows at the time of purchase is not to be used by him or her or the corporation in the manner or for the purpose entitling the exemption for the purpose of evading payment to the supplier of the amount of the tax applicable to the transaction is guilty of a misdemeanor punishable as provided in Section 60706 or a felony punishable as provided in Section 60707.

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

SEC. 59. Section 60107 of the Revenue and Taxation Code is amended to read:



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

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

(2) Any other information required by the board.

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

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

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

SEC. 60. Section 60135 is added to the Revenue and Taxation Code, to read:

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

SEC. 61. Section 60161 of the Revenue and Taxation Code is amended to read:

60161. (a) Every person before becoming a qualified highway vehicle operator shall apply to the board for a license authorizing the person to engage in business as a qualified highway vehicle operator. A license shall be issued only to a person who is qualified to use dyed diesel fuel on the highway by the Internal Revenue Service under Section 48.4082-4 of Title 26 of the Code of Federal Regulations.

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

SEC. 62. Section 60163 of the Revenue and Taxation Code is amended to read:

60163. Before granting a license authorizing a person to report the backup tax as a qualified highway vehicle operator, the board may require the person to file with the board security pursuant to Section



60401. The license issued to any qualified highway vehicle operator is not transferable and is valid until canceled or revoked.

SEC. 63. Section 60181 of the Revenue and Taxation Code is amended to read:

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

(a) Any supplier's license held by a person who does not engage in, or who discontinues, the removal, entry, or sale of diesel fuel, producing of blended diesel fuel, owning or holding inventory position of diesel fuel, or owning or operating a refinery or terminal as any of the following:

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

(b) Any interstate user's license held by a person who does not engage in, or who discontinues, using diesel fuel as an "interstate user" as defined in Section 60111.

(c) Any ultimate vendor's license held by a person who does not engage in, or who discontinues, selling undyed diesel fuel as an "ultimate vendor" as defined in Section 60036.

(d) Any exempt bus operator's license held by a person who does not engage in, or who discontinues, using diesel fuel as an "exempt bus operator" as defined in Section 60040.

(e) Any qualified highway vehicle operator's license held by a person who does not engage in, or who discontinues, the delivery of diesel fuel subject to the backup tax into fuel tanks of diesel-powered highway vehicles as a qualified highway vehicle operator as defined in Section 60027.

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

SEC. 64. Section 60203 of the Revenue and Taxation Code is repealed.

SEC. 65. Section 60204.5 is added to the Revenue and Taxation Code, to read:

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

- (1) The amount of diesel fuel delivered to each terminal or refinery.



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

(3) The date of delivery.

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

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

SEC. 66. Section 60206 of the Revenue and Taxation Code is amended to read:

60206. Each qualified highway vehicle operator shall prepare and file with the board a return in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of diesel fuel subject to the backup tax that was delivered into the fuel tank of a diesel-powered highway vehicle within this state during each calendar month, or the monthly period ended during that calendar month as the board may authorize, the amount of tax due for the month covered by the return, and any other information as the board deems necessary for the proper administration of this part. The person shall file the return on or before the last day of the calendar month following the monthly period to which it relates, together with a remittance payable to the board for the amount of tax due for that period. To facilitate the administration of this part, the board may require the filing of the returns for other than monthly periods. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

SEC. 67. Section 60211 of the Revenue and Taxation Code is amended to read:

60211. If the board finds that a person's failure to make a timely return or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the



person may be relieved of the interest provided by Sections 60207, 60208, 60250, 60302, and 60339.

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

SEC. 68. Section 60253 is added to the Revenue and Taxation Code, to read:

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

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

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

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

SEC. 69. Section 60360 of the Revenue and Taxation Code is amended to read:

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

SEC. 70. Section 60361.5 is added to the Revenue and Taxation Code, to read:

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



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

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

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

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

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

SEC. 71. Section 60401 of the Revenue and Taxation Code is amended to read:

60401. The board, whenever it deems it necessary to ensure compliance with this part or any rule or regulation adopted under this part, may require any person to deposit with it any security as it may determine appropriate. The amount of the security shall be fixed by the board but shall not be more than three times the estimated average monthly tax liability of the person. The total amount of security shall not be in excess of one million dollars (\$1,000,000) where the person has established to the satisfaction of the board that this security, together with property to which the lien imposed by Section 60445 attaches, is sufficient security to ensure payment of taxes equivalent to three times the estimated average monthly tax liability of the person. The amount of the security may be increased or decreased by the board at any time. Any security in the form of cash or insured deposits in banks and savings and loan institutions shall be held by the board in trust to be used solely in the manner provided for this section and Section 60406. Any security



in the form of a bond or bonds shall be duly executed by an admitted surety insurer, payable to the state, conditioned upon faithful performance of all the requirements of this part, and expressly providing for the payment of all taxes, penalties, and other obligations of the person arising out of this part. Security held by the board shall be released after a three-year period in which the person has filed all returns and paid all tax to the state or any amount of tax required to be collected and paid to the state within the time required.

SEC. 72. Section 60501 of the Revenue and Taxation Code is amended to read:

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

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

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

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

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

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

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

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

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

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant



to an agreement with, or permission of, the United States Department of Agriculture.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

SEC. 73. Section 60503.1 of the Revenue and Taxation Code is amended to read:

60503.1. If a purchaser gives a Section 60503 exemption certificate to an ultimate vendor to the effect that the diesel fuel purchased will be used on a farm for farming purposes or in an exempt bus operation, and sells the diesel fuel or uses the diesel fuel in some other manner or for some other purpose, the purchaser will be liable for payment of the tax under Chapter 2 (commencing with Section 60050) of this part. The tax, applicable penalties, and interest shall become due and payable and shall be ascertained and determined in the same manner as the backup tax under Section 60361.5.

SEC. 74. Section 60503.2 of the Revenue and Taxation Code is amended to read:

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

(b) Any person, including any officer or employee of a corporation, who gives an exemption certificate for diesel fuel pursuant to Section 60503 that he or she knows at the time of purchase is not to be used by



him or her or the corporation on a farm for farming purposes or in an exempt bus operation, is liable to the state for the amount of tax that would be due if he or she had not given that certificate. In addition to the tax, the person shall be liable to the state for a penalty of 25 percent of the tax or one thousand dollars (\$1,000), whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

SEC. 75. Section 60508.4 is added to the Revenue and Taxation Code, to read:

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

SEC. 76. Section 60521 of the Revenue and Taxation Code is amended to read:

60521. If the board determines that any amount not required to be paid under this part has been paid by any person to the state, the board shall set forth that fact in its records and certify the amount paid in excess of the amount legally due and the person by whom the excess was paid to the board or from whom it was collected. The excess amount paid or collected shall be credited on any amounts then due and payable from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall either be refunded to the person, or his or her successors, administrators, executors, or assigns, or, if authorized by the board, deducted by the person from any amounts to become due from him or her under this part.

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

SEC. 77. Section 60605 of the Revenue and Taxation Code is amended to read:

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

- (1) The bill of lading or other shipping document.
- (2) The record of whether the diesel fuel was dyed in accordance with the United States Environmental Protection Agency or Internal Revenue Service requirements.
- (3) The volume and date of the removal.
- (4) The identity of the position holder or position holder's customer.



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

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

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

SEC. 77.5. Section 39.5 of this bill incorporates amendments to Section 60022 of the Revenue and Taxation Code proposed by this bill and AB 86 of the Second Extraordinary Session. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 60022 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 86 of the Second Extraordinary Session, in which case Section 60022 of the Revenue and Taxation Code, as amended by AB 86 of the Second Extraordinary Session, shall remain operative only until the operative date of this bill, at which time Section 39.5 of this bill shall become operative, and Section 39 of this bill shall not become operative.

SEC. 78. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date of this act.

