

AMENDED IN ASSEMBLY APRIL 16, 2001

AMENDED IN ASSEMBLY MARCH 22, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 345

Introduced by Assembly Member Matthews

(Principal coauthor: Senator Ortiz)

(Coauthors: Assembly Members Aanestad, Alquist, Bates, Cogdill, Florez, Hollingsworth, Leach, Nation, Oropeza, Robert Pacheco, Pavley, and Strickland)

(Coauthors: Senators Costa, Murray, and Oller)

February 16, 2001

An act to amend Sections 60100, 60101, 60108, 60146, 60205.5, and 60501 of, and to add Section 60043.5 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 345, as amended, Matthews. Diesel fuel tax.

The Diesel Fuel Tax Law imposes a tax, with specified exemptions, upon the specified removal, entry, sale, delivery, and specified use of diesel fuel, as provided, for each gallon of fuel subject to the tax.

This bill would exempt from that tax diesel fuel sold by a supplier to a public safety department, as defined, for use in an authorized emergency vehicle, as defined, and make other conforming and related changes, as provided.

This bill would take effect immediately as a tax levy.

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 60043.5 is added to the Revenue and
2 Taxation Code, to read:

3 60043.5. A ~~public~~ “Public safety department” means either
4 of the following:

5 (a) A fire department maintained by a city or town, a fire
6 company in an unincorporated town organized pursuant to Section
7 14825 of the Health and Safety Code, or a fire protection district
8 formed pursuant to the Fire Protection District Law of 1987.

9 (b) A police department or a sheriff department maintained by
10 a city, county, or city and county.

11 SEC. 2. Section 60100 of the Revenue and Taxation Code is
12 amended to read:

13 60100. (a) The provisions of this part requiring the payment
14 of taxes do not apply to any of the following:

15 (1) The removal from a terminal or refinery of, or the entry or
16 sale of, any diesel fuel if all of the following apply:

17 (A) The person otherwise liable for tax is a diesel fuel
18 registrant.

19 (B) In the case of a removal from a terminal, the terminal is an
20 approved terminal.

21 (C) The diesel fuel satisfies the dyeing and marking
22 requirements of Section 60101.

23 (2) Any entry or removal from a terminal or refinery of taxable
24 diesel fuel transferred in bulk to a refinery or terminal if the
25 persons involved (including the terminal operator) are registered.

26 (3) The removal of diesel fuel if all of the following apply:

27 (A) The diesel fuel is removed by railroad car from an
28 approved refinery and is received at an approved terminal.

29 (B) The refinery and the terminal are operated by the same
30 diesel fuel registrant.

31 (C) The refinery is not served by pipeline (other than a pipeline
32 for the receipt of crude oil) or vessel.

33 (4) Diesel fuel which, pursuant to the contract of sale, is
34 required to be shipped and is shipped to a point outside of this state
35 by a supplier by means of any of the following:

36 (A) Facilities operated by the supplier.



1 (B) Delivery by the supplier to a carrier, customs broker, or
2 forwarding agent, whether hired by the purchaser or not, for
3 shipment to the out-of-state point.

4 (C) Delivery by the supplier to any vessel clearing from a port
5 of this state for a port outside of this state and actually exported
6 from this state in the vessel.

7 (5) Backup tax does not apply to delivery of diesel fuel into the
8 fuel tank of a diesel-powered highway vehicle as provided in
9 Section 60058 for any of the following:

10 (A) Use on a farm for farming purposes.

11 (B) Use in an exempt bus operation.

12 (C) Use in a diesel-powered highway vehicle that is operated
13 off the highway.

14 (D) Use in a diesel-powered highway vehicle that is owned and
15 operated by a government entity.

16 (E) Use by the United States and its agencies and
17 instrumentalities.

18 (F) Use in an “authorized emergency vehicle,” as defined in
19 Section 165 of the Vehicle Code, by a public safety department, as
20 defined in Section 60043.5.

21 (6) Diesel fuel sold by credit card certified by the United States
22 Department of State to any consulate officer or consulate
23 employee of a foreign government who is not engaged in any
24 private occupation for gain within this state, who uses the diesel
25 fuel in a motor vehicle which is registered with the United States
26 Department of State, and whose government has done either of the
27 following:

28 (A) Entered into a treaty with the United States providing for
29 the exemption of its representatives from national, state, and
30 municipal taxes.

31 (B) Granted a similar exemption to representatives of the
32 United States.

33 (7) Diesel fuel sold by a supplier to a train operator for use in
34 a diesel-powered train or for other off-highway use and the
35 supplier has on hand an exemption certificate from the train
36 operator.

37 (8) Diesel fuel sold by a supplier to the United States and its
38 agencies and instrumentalities.



1 (9) Diesel fuel sold by a supplier to a public safety department,
2 as defined in Section 60043.5, for use in an authorized emergency
3 vehicle, as defined in Section 165 of the Vehicle Code.

4 (b) For purposes of this section:

5 (1) “Carrier” means a person or firm engaged in the business
6 of transporting for compensation property owned by other
7 persons, and includes both common and contract carriers.

8 (2) “Forwarding agent” means a person or firm engaged in the
9 business of preparing property for shipment or arranging for its
10 shipment.

11 SEC. 3. Section 60101 of the Revenue and Taxation Code is
12 amended to read:

13 60101. (a) Diesel fuel that is required to be dyed satisfies the
14 dyeing requirement of this part if it meets the dyeing requirements
15 of the United States Environmental Protection Agency and the
16 Internal Revenue Service, including, but not limited to,
17 requirements respecting type, dosage, and timing.

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

20 (c) No person shall operate or maintain a motor vehicle on any
21 public highway in this state with dyed diesel fuel in the fuel supply
22 tank. This subdivision does not apply to uses of dyed diesel fuel
23 on the highway that are lawful under the Internal Revenue Code
24 or regulations promulgated thereunder, if the person is registered
25 as a highway vehicle operator, exempt bus operator, or
26 government entity, or if the person is an intercity bus operator, as
27 defined in Section 60046, who is registered as an interstate user
28 under this part, or if the person is a public safety department, as
29 defined in Section 60043.5.

30 SEC. 4. Section 60108 of the Revenue and Taxation Code is
31 amended to read:

32 60108. Notwithstanding the exemption provided for in
33 subparagraph (D) of paragraph (5) of subdivision (a) of Section
34 60100, any government entity, other than a public safety
35 department, as defined in Section 60043.5, using diesel fuel
36 exempt from tax under subparagraph (D) of paragraph (5) of
37 subdivision (a) of Section 60100 shall, for the privilege of
38 operating diesel-powered highway vehicles on highways in this
39 state, make a payment equal to the tax specified in Section 60050
40 for each gallon of exempt diesel fuel used. The payments required



1 by this subdivision shall be paid to the State Board of Equalization
2 in the manner prescribed by the board, and the payments shall be
3 treated as a tax for all purposes of this part.

4 SEC. 5. Section 60146 of the Revenue and Taxation Code is
5 amended to read:

6 60146. Each government entity, other than a public safety
7 department, as defined in Section 60043.5, operating a
8 diesel-powered highway vehicle upon this state's highways shall
9 apply for a diesel fuel tax license on forms prescribed by the board.
10 It is unlawful for any government entity to operate a
11 diesel-powered highway vehicle upon the state's highways
12 without first securing a diesel fuel tax license.

13 SEC. 6. Section 60205.5 of the Revenue and Taxation Code
14 is amended to read:

15 60205.5. (a) Each government entity, other than a public
16 safety department, as defined in Section 60043.5, shall prepare and
17 file with the board on forms prescribed by the board a return
18 showing the total number of gallons of dyed diesel fuel and undyed
19 diesel fuel used in a diesel-powered highway vehicle during each
20 calendar month, or the monthly period ending during the calendar
21 month covered by the return, and any other information as the
22 board deems necessary for the proper administration of this part.
23 The person shall file the return on or before the last day of the
24 calendar month following the monthly period to which it relates,
25 together with a remittance payable to the board for the amount of
26 tax due for that period. To facilitate the administration of this part,
27 the board may require the filing of the returns for other than
28 monthly periods.

29 (b) A government entity, other than a public safety department,
30 as defined in Section 60043.5, that has paid diesel fuel tax to a
31 retail vendor that sold the diesel fuel to the government entity shall
32 be allowed a credit on its tax return for the tax paid to the retail
33 vendor.

34 SEC. 7. Section 60501 of the Revenue and Taxation Code is
35 amended to read:

36 60501. Persons who have paid a tax for diesel fuel lost, sold,
37 or removed as provided in paragraph (4) of subdivision (a), or used
38 in a nontaxable use, other than on a farm for farming purposes or
39 in an exempt bus operation, shall, except as otherwise provided in
40 this part, be reimbursed and repaid the amount of the tax.



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

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

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

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

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

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

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

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

24 (D) Used in the operation of a motor vehicle on any highway
25 that is under the jurisdiction of the United States Department of
26 Agriculture and with respect to the use of the highway the claimant
27 pays, or contributes to, the cost of construction or maintenance
28 thereof pursuant to an agreement with, or permission of, the
29 United States Department of Agriculture.

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



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

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

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

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

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

22 (I) Sold by a person to a train operator for use in a
23 diesel-powered train or for other off-highway use under
24 circumstances that would have entitled that person to an
25 exemption from the payment of diesel fuel tax under Section
26 60100 had that person been the supplier of this diesel fuel.

27 (J) Sold by a person to a public safety department, as defined
28 in Section 60043.5, under circumstances that would have entitled
29 that person to an exemption from the payment of diesel fuel tax
30 under Section 60100 if that person had been the supplier of the
31 diesel fuel.

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

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

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



1 (3) A statement, which may appear on the invoice or similar
2 document, by the person that sold the diesel fuel to the claimant
3 that the diesel fuel sold did not contain visible evidence of dye.
4 (4) The total amount of diesel fuel covered by the claim.
5 (5) The use made of the diesel fuel covered by the claim
6 described by reference to specific categories listed in paragraph (4)
7 of subdivision (a).
8 (6) If the diesel fuel covered by the claim was exported, a
9 statement that the claimant has the proof of exportation.
10 (c) Each claim for refund under this section shall be made on
11 a form prescribed by the board and shall be filed for a calendar
12 year. If, at the close of any of the first three quarters of the calendar
13 year, more than seven hundred fifty dollars (\$750) is refundable
14 under this section with respect to diesel fuel used or exported
15 during that quarter or any prior quarter during the calendar year,
16 and for which no other claim has been filed, a claim may be filed
17 for the quarterly period. To facilitate the administration of this
18 section, the board may require the filing of claims for refund for
19 other than yearly periods.
20 SEC. 8. This act provides for a tax levy within the meaning of
21 Article IV of the Constitution and shall go into immediate effect.

