

**Introduced by Senator Florez**

January 17, 2007

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An act to add and repeal Sections 6377, 6377.5, 17052.3, and 23643 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 74, as amended, Florez. Sales and use tax: exemptions: equipment: fuel: income and corporation taxes: credits: biodiesel.

(1) The Sales and Use Tax Law imposes a tax on the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property and provides various exemptions from the taxes imposed by that law.

This bill would exempt from those taxes, from January 1, 2008, through January 1, ~~2013~~ 2014, the gross receipts from the sale of, and the storage, use, or other consumption of, tangible personal property purchased for use by a qualified person in the manufacturing, processing, or production of biodiesel fuel, as defined. This bill would also exempt from those taxes, from January 1, 2008, through January 1, ~~2013~~ 2014, the gross receipts from the sale of, and the storage, use, or other consumption of, biodiesel fuel, as defined.

Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

(2) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would authorize a credit for taxable years beginning on or after January 1, 2008, and ending on or before January 1, ~~2013~~ 2014, in an amount equal to ~~—%~~ 35% of the qualified costs paid or incurred with respect to the manufacturing, production, delivery, or sale of biodiesel fuel, as defined.

(3) This bill would take effect immediately as a tax levy.

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

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

1 SECTION 1. Section 6377 is added to the Revenue and  
2 Taxation Code, to read:

3 6377. (a) There are exempted from the taxes imposed by this  
4 part the gross receipts from the sale of, and the storage, use, or  
5 other consumption in this state of, by a qualified person any of the  
6 following:

7 (1) Tangible personal property directly used or consumed in or  
8 during the actual manufacturing, processing, or production of  
9 biodiesel fuel.

10 (2) Tangible personal property used or consumed in  
11 manufacturing, processing, or production of biodiesel fuel if the  
12 use or consumption of the property is necessary and essential to  
13 comply with federal, state, or local laws, or rules and regulations  
14 that establish requirements related to public health.

15 (b) For purposes of this section all of the following apply:

16 (1) "Biodiesel fuel" means any motor fuel or mixture of motor  
17 fuels that is:

18 (A) Derived wholly or partly from agricultural products,  
19 vegetable oils, recycled greases, or animal fats, or the wastes of  
20 those products or fats.

1 (B) Graded B20 or higher.

2 (C) Advertised, offered for sale, suitable for use, or used as a  
3 motor fuel in an internal combustion engine.

4 (D) *A renewable, biodegradable, mono-alkyl ester combustible*  
5 *liquid fuel, derived as described in paragraph (1), that meets the*  
6 *American Society for Testing and Materials specification D6751*  
7 *for biodiesel fuel (B100) blend stock for distillate fuels.*

8 (2) “Qualified person” means a person manufacturing,  
9 processing, or producing biodiesel fuel.

10 (3) “Manufacturing” means the activity of converting or  
11 conditioning property by changing the form, composition, quality,  
12 or character of the property for ultimate sale or use as biodiesel  
13 fuel.

14 (4) “Processing” means the physical application of the materials  
15 and labor necessary to manufacturing or producing biodiesel fuel.

16 (5) “Producing” means the extraction or extracting of  
17 agricultural products, vegetable oils, recycled greases, or animal  
18 fats, or the wastes of those products or fats, for use in the  
19 manufacturing of biodiesel fuel.

20 (c) No exemption shall be allowed under this section unless the  
21 purchaser furnishes the retailer with an exemption certificate,  
22 completed in accordance with any instructions or regulations as  
23 the board may prescribe, and the retailer subsequently furnishes  
24 the board with a copy of the exemption certificate. The exemption  
25 certificate shall contain the sales price of the machinery or  
26 equipment that is exempt pursuant to subdivision (a).

27 (d) Notwithstanding any provision of the Bradley-Burns  
28 Uniform Local Sales and Use Tax Law (Part 1.5 (commencing  
29 with Section 7200)) or the Transactions and Use Tax Law (Part  
30 1.6 (commencing with Section 7251)), the exemption established  
31 by this section shall apply with respect to any tax levied by a  
32 county, city, or district pursuant to, or in accordance with, either  
33 of those laws, unless the local government that would otherwise  
34 receive the sales tax votes for the exception not to apply.

35 (e) Notwithstanding subdivision (a), the exemption established  
36 by this section shall not apply with respect to any tax levied  
37 pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35  
38 of Article XIII of the California Constitution.

39 (f) This section shall remain in effect only from January 1, 2008,  
40 through January 1, ~~2013~~ 2014, and as of that date is repealed,

1 unless a later enacted statute, that is enacted before January 1,  
2 ~~2013~~ 2014, deletes or extends that date.

3 SEC. 2. Section 6377.5 is added to the Revenue and Taxation  
4 Code, to read:

5 6377.5. (a) There are exempted from the taxes imposed by  
6 this part, the gross receipts from the sale in this state of, and the  
7 storage, use, or other consumption in this state of, biodiesel fuel.

8 (b) For purposes of this section, “biodiesel fuel” means any  
9 motor fuel or mixture of motor fuels that is:

10 (1) Derived wholly or partly from agricultural products,  
11 vegetable oils, recycled greases, or animal fats, or the wastes of  
12 those products or fats.

13 (2) Graded B20 or higher.

14 (3) Advertised, offered for sale, suitable for use, or used as a  
15 motor fuel in an internal combustion engine.

16 (4) *A renewable, biodegradable, mono-alkyl ester combustible*  
17 *liquid fuel, derived as described in paragraph (1), that meets the*  
18 *American Society for Testing and Materials specification D6751*  
19 *for biodiesel fuel (B100) blend stock for distillate fuels.*

20 (c) Notwithstanding any provision of the Bradley-Burns Uniform  
21 Local Sales and Use Tax Law (Part 1.5 (commencing with Section  
22 7200)) or the Transactions and Use Tax Law (Part 1.6  
23 (commencing with Section 7251)), the exemption established by  
24 this section shall apply with respect to any tax levied by a county,  
25 city, or district pursuant to, or in accordance with, either of those  
26 laws, unless the local government that would otherwise receive  
27 the sales tax votes for the exception not to apply.

28 (d) Notwithstanding subdivision (a), the exemption established  
29 by this section shall not apply with respect to any tax levied  
30 pursuant to Sections 6051.2 and 6201.2, or pursuant to Section 35  
31 of Article XIII of the California Constitution.

32 (e) This section shall remain in effect only from January 1, 2008,  
33 through January 1, ~~2013~~ 2014, and as of that date is repealed,  
34 unless a later enacted statute, that is enacted before January 1,  
35 ~~2013~~ 2014, deletes or extends that date.

36 SEC. 3. Section 17052.3 is added to the Revenue and Taxation  
37 Code, to read:

38 17052.3. (a) For each taxable year beginning on or after  
39 January 1, 2008, and before January 1, ~~2013~~ 2014, there shall be  
40 allowed as a credit against the “net tax,” as defined in Section

1 17039, an amount equal to ~~35~~ 35 percent of the qualified costs that  
2 are paid or incurred by a qualified taxpayer during the taxable  
3 year.

4 (b) For purposes of this section, the following apply:

5 ~~(1) “Biodiesel fuel” means any motor fuel or mixture of motor~~  
6 ~~fuels that is derived wholly or partly from agricultural products,~~  
7 ~~vegetable oils, recycled greases, or animal fats, or the wastes of~~  
8 ~~those products or fats and is advertised, offered for sale, suitable~~  
9 ~~for use, or used as a motor fuel in an internal combustion engine.~~

10 (1) *“Biodiesel fuel” means any motor fuel or mixture of motor*  
11 *fuels that is:*

12 (A) *Derived wholly or partly from agricultural products,*  
13 *vegetable oils, recycled greases, or animal fats, or the wastes of*  
14 *those products or fats.*

15 (B) *Graded B20 or higher.*

16 (C) *Advertised, offered for sale, suitable for use, or used as a*  
17 *motor fuel in an internal combustion engine.*

18 (D) *A renewable, biodegradable, mono-alkyl ester combustible*  
19 *liquid fuel, derived as described in paragraph (1), that meets the*  
20 *American Society for Testing and Materials specification D6751*  
21 *for biodiesel fuel (B100) blend stock for distillate fuels.*

22 (2) *“Delivery” or “delivering” means the output of biodiesel*  
23 *fuel that is directly used to serve end-use customers.*

24 (3) *“Manufacture” or “manufacturing” means the activity of*  
25 *converting or conditioning property by changing the form,*  
26 *composition, quality, or character of the property for ultimate sale*  
27 *or use as biodiesel fuel.*

28 (4) *“Process” or “processing” means the physical application*  
29 *of the materials and labor necessary for manufacturing or*  
30 *producing biodiesel fuel.*

31 (5) *“Producing” or “production” means the extraction or*  
32 *extracting of agricultural products, vegetable oils, recycled*  
33 *greases, or animal fats, or the wastes of those products or fats,*  
34 *for use in the manufacturing of biodiesel fuel.*

35 (6) *“Sale” or “selling” means the transfer of title or possession*  
36 *for a consideration, exchange, or barter, in any manner or by any*  
37 *means whatever.*

38 ~~(2)~~

39 (7) *“Qualified costs” means the total amount paid or incurred*  
40 *by the qualified taxpayer during the taxable year to acquire,*

1 purchase, construct, renovate, or equip property, buildings,  
2 structures, facilities, or related infrastructure *in this state* for the  
3 manufacturing, processing, production, delivery, or sale of  
4 biodiesel fuel.

5 (3)

6 (8) (A) “Qualified taxpayer” means a ~~person~~ *taxpayer*  
7 manufacturing, processing, producing, delivering, or selling  
8 biodiesel fuel.

9 (B) *In the case of any passthrough entity, the determination of*  
10 *whether a taxpayer is a qualified taxpayer under this section shall*  
11 *be made at the entity level and any credit under this section shall*  
12 *be allowed to the passthrough entity and passed through to the*  
13 *partners or shareholders in accordance with applicable provisions*  
14 *of Part 10 (commencing with Section 17001) or Part 11*  
15 *(commencing with Section 23001). For purposes of this paragraph,*  
16 *“passthrough entity” means any partnership or “S” corporation.*

17 (c) In the case where the credit allowed by this section exceeds  
18 the “net tax,” the excess may be carried over to reduce the “net  
19 tax” ~~in the following year, and succeeding years if necessary, until~~  
20 ~~the credit has been exhausted.~~ *tax” for the next eight years, or*  
21 *until the credit has been exhausted, whichever occurs first.*

22 (d) (1) In the case where property, buildings, structures,  
23 facilities, or related infrastructure qualify as part of the taxpayer’s  
24 “qualified costs” also qualify for a credit under any other section  
25 in this part, the taxpayer shall make an election on its original  
26 return as to which section applies to all costs allocable to that item.  
27 Any election made under this section, and any specification  
28 contained in that election, may not be revoked except with the  
29 consent of the Franchise Tax Board.

30 (2) *For purposes of this section, allocable costs are the direct*  
31 *costs to the qualified taxpayer to acquire, purchase, construct,*  
32 *renovate, or equip property, buildings, structures, facilities, or*  
33 *related infrastructure in this state for the manufacturing,*  
34 *processing, production, delivery, or sale of biodiesel fuel.*

35 (e) *If a qualified taxpayer that claims a credit under this section*  
36 *sells, transfers, or otherwise disposes of, either directly or*  
37 *indirectly, any property for which qualified costs were claimed*  
38 *within the first five years of the taxable year during which it first*  
39 *claimed the credit, there shall be added to the “net tax” or the*  
40 *qualified taxpayer during the taxable year of the sale, transfer, or*

1 *disposition an amount equal to the total credit claimed multiplied*  
2 *by a fraction, the numerator of which is the remaining term of five*  
3 *years and the denominator of which is five.*

4 (e)

5 (f) The Franchise Tax Board may prescribe any regulations  
6 necessary to carry out the purposes of this section.

7 (f)

8 (g) This section shall remain in effect only until January 1, ~~2013~~  
9 *2014*, and as of that date is repealed, unless a later enacted statute,  
10 that is enacted before January 1, ~~2013~~ *2014*, deletes or extends  
11 that date.

12 SEC. 4. Section 23643 is added to the Revenue and Taxation  
13 Code, to read:

14 23643. (a) For each taxable year beginning on or after January  
15 1, 2008, and before January 1, ~~2013~~ *2014*, there shall be allowed  
16 as a credit against the “tax,” as defined in Section 23036, an amount  
17 equal to ~~—~~ 35 percent of the qualified costs that are paid or  
18 incurred by a qualified taxpayer during the taxable year.

19 (b) For purposes of this section, the following apply:

20 (1) ~~“Biodiesel fuel” means any motor fuel or mixture of motor~~  
21 ~~fuels that is derived wholly or partly from agricultural products,~~  
22 ~~vegetable oils, recycled greases, or animal fats, or the wastes of~~  
23 ~~those products or fats and is advertised, offered for sale, suitable~~  
24 ~~for use, or used as a motor fuel in an internal combustion engine.~~

25 (1) *“Biodiesel fuel” means any motor fuel or mixture of motor*  
26 *fuels that is:*

27 (A) *Derived wholly or partly from agricultural products,*  
28 *vegetable oils, recycled greases, or animal fats, or the wastes of*  
29 *those products or fats.*

30 (B) *Graded B20 or higher.*

31 (C) *Advertised, offered for sale, suitable for use, or used as a*  
32 *motor fuel in an internal combustion engine.*

33 (D) *A renewable, biodegradable, mono-alkyl ester combustible*  
34 *liquid fuel, derived as described in paragraph (1), that meets the*  
35 *American Society for Testing and Materials specification D6751*  
36 *for biodiesel fuel (B100) blend stock for distillate fuels.*

37 (2) *“Delivery” or “delivering” means the output of biodiesel*  
38 *fuel that is directly used to serve end-use customers.*

39 (3) *“Manufacture” or “manufacturing” means the activity of*  
40 *converting or conditioning property by changing the form,*

1 *composition, quality, or character of the property for ultimate sale*  
2 *or use as biodiesel fuel.*

3 (4) *“Process” or “processing” means the physical application*  
4 *of the materials and labor necessary for manufacturing or*  
5 *producing biodiesel fuel.*

6 (5) *“Producing” or “production” means the extraction or*  
7 *extracting of agricultural products, vegetable oils, recycled*  
8 *greases, or animal fats, or the wastes of those products or fats,*  
9 *for use in the manufacturing of biodiesel fuel.*

10 (6) *“Sale” or “selling” means the transfer of title or possession*  
11 *for a consideration, exchange, or barter, in any manner or by any*  
12 *means whatever.*

13 ~~(2)~~

14 (7) *“Qualified costs” means the total amount paid or incurred*  
15 *by the qualified taxpayer during the taxable year to acquire,*  
16 *purchase, construct, renovate, or equip property, buildings,*  
17 *structures, facilities, or related infrastructure in this state for the*  
18 *manufacturing, processing, production, delivery, or sale of*  
19 *biodiesel fuel.*

20 ~~(3)~~

21 (8) *“Qualified taxpayer” means a ~~person~~ taxpayer*  
22 *manufacturing, processing, producing, delivering, or selling*  
23 *biodiesel fuel.*

24 (c) *In the case where the credit allowed by this section exceeds*  
25 *the ~~“net tax,” “tax,”~~ the excess may be carried over to reduce the*  
26 *“tax” in the following year, and succeeding years if necessary,*  
27 *~~until the credit has been exhausted.~~ for the next eight years, or*  
28 *until the credit has been exhausted, whichever occurs first.*

29 (d) (1) *In the case where property, buildings, structures,*  
30 *facilities, or related infrastructure qualify as part of the taxpayer’s*  
31 *“qualified costs” also qualify for a credit under any other section*  
32 *in this part, the taxpayer shall make an election on its original*  
33 *return as to which section applies to all costs allocable to that item.*  
34 *Any election made under this section, and any specification*  
35 *contained in that election, may not be revoked except with the*  
36 *consent of the Franchise Tax Board.*

37 (2) *For purposes of this section, allocable costs are the direct*  
38 *costs to the qualified taxpayer to acquire, purchase, construct,*  
39 *renovate, or equip property, buildings, structures, facilities, or*



1 *related infrastructure in this state for the manufacturing,*  
2 *processing, production, delivery, or sale of biodiesel fuel.*

3 *(e) If a qualified taxpayer that claims a credit under this section*  
4 *sells, transfers, or otherwise disposes of, either directly or*  
5 *indirectly, any property for which qualified costs were claimed*  
6 *within the first five years of the taxable year during which it first*  
7 *claimed the credit, there shall be added to the “net tax” or the*  
8 *qualified taxpayer during the taxable year of the sale, transfer, or*  
9 *disposition an amount equal to the total credit claimed multiplied*  
10 *by a fraction, the numerator of which is the remaining term of five*  
11 *years and the denominator of which is five.*

12 ~~(e)~~

13 *(f) The Franchise Tax Board may prescribe any regulations*  
14 *necessary to carry out the purposes of this section.*

15 ~~(f)~~

16 *(g) This section shall remain in effect only until January 1, ~~2013~~*  
17 *2014, and as of that date is repealed, unless a later enacted statute,*  
18 *that is enacted before January 1, ~~2013~~ 2014, deletes or extends*  
19 *that date.*

20 SEC. 5. Notwithstanding Section 2230 of the Revenue and  
21 Taxation Code, no appropriation is made by this act and the state  
22 shall not reimburse any local agency for any sales and use tax  
23 revenues lost by it under this act.

24 SEC. 6. This act provides for a tax levy within the meaning of  
25 Article IV of the Constitution and shall go into immediate effect.