

## Assembly Bill No. 6

### CHAPTER 11

An act to add Section 41204.2 to the Education Code, and to amend Sections 7360 and 60050 of, and to add Sections 6051.8, 6201.8, 6357.7, 7361.1, and 7653.1 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 22, 2010. Filed with  
Secretary of State March 22, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 6, Committee on Budget. Sales and use taxes: motor vehicle fuel tax: diesel fuel tax.

(1) Existing law requires the Director of Finance to make certain adjustments in one of the formulas used in computing the state's obligation under the California Constitution to provide funding for school districts and community college districts so as to ensure that the modifications in property tax revenue allocation requirements that were made by prior enactments do not have a net fiscal impact on school districts or community college districts, or upon the state's funding obligation to those districts.

This bill would additionally specify adjustments on the calculation of the state's constitutional funding obligations that are related to the change in taxes made by this bill.

(2) The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state. Tangible personal property includes motor vehicle fuel, commonly referred to as gasoline, and including aviation gasoline. Existing law, pursuant to Article XIX B of the California Constitution, requires a portion of the revenues from the sales and use tax on the sale of, and the storage, use, or other consumption of, motor vehicle fuel to be deposited in the Transportation Investment Fund to be used for specified highway, local street and road, and mass transportation purposes.

This bill would, on and after July 1, 2010, exempt from those taxes the gross receipts from the sale of, and the storage, use, or other consumption in this state of, motor vehicle fuel, thereby eliminating funding from this revenue source for those transportation programs. This exemption would not apply to local sales and use taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or transactions and use taxes imposed in accordance with the Transactions and Use Tax Law, and specified state sales and use taxes.

This bill, on or after July 1, 2011, would impose an additional 1.75% tax on the sale of, and the storage, use, or other consumption in this state of, diesel fuel.

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law each impose a tax at the rate of \$0.18 per gallon on the removal, entry, sale, delivery, or specified use of motor vehicle fuel, which is commonly referred to as gasoline, including aviation gasoline, and diesel fuel, respectively, and the Motor Vehicle Fuel Tax Law also imposes a tax at the rate of \$0.02 per gallon of aircraft jet fuel sold to a fuel user or used by a dealer. Article XIX of the California Constitution requires state-imposed excise tax revenues from fuel used in motor vehicles upon public streets and highways to be used solely for highway and mass transit guideway purposes.

This bill would increase the rate of tax on motor vehicle fuel of \$0.18 per gallon by an additional \$0.173 per gallon on and after July 1, 2010, as specified. The bill would impose a floor stock tax equal to \$0.173 per gallon for the privilege of storing motor vehicle fuel on July 1, 2010. Beginning with the 2011–12 fiscal year, and each fiscal year thereafter, the bill would require the State Board of Equalization to annually adjust the motor vehicle fuel tax rate consistent with the requirement that the estimated revenues from the motor vehicle fuel tax increase shall not exceed the estimated revenues attributable to the exemption from sales and use tax for the sale of, or the storage, use, or other consumption of, motor vehicle fuel, as provided.

This bill would, on July 1, 2011, reduce the rate of tax on diesel fuel from \$0.18 per gallon to \$0.136 per gallon, subject to adjustment, as specified.

(4) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on January 8, 2010.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on January 8, 2010, pursuant to the California Constitution.

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

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

SECTION 1. Section 41204.2 is added to the Education Code, to read:

41204.2. The Director of Finance shall adjust “the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in fiscal year 1986–87” for purposes of applying paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution in a manner that ensures that the shift in General Fund revenues pursuant to Sections 6051.8, 6201.8, 6357.7, and 7361.1, subdivision (b) of Section 7360, and subdivision (b) of Section 60050 of the Revenue and Taxation Code, as those provisions were enacted in the 2009–10 Eighth Extraordinary Session, shall have no net fiscal impact upon the amounts

that are otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 6051.8 is added to the Revenue and Taxation Code, to read:

6051.8. (a) In addition to the taxes imposed by this part, for the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1.75 percent of the gross receipts of any retailer from the sale of all diesel fuel, as defined in Section 60022, sold at retail in this state on and after the operative date of this subdivision.

(b) Subdivision (a) shall become operative on July 1, 2011.

SEC. 3. Section 6201.8 is added to the Revenue and Taxation Code, to read:

6201.8. (a) In addition to the taxes imposed by this part, an excise tax is hereby imposed on the storage, use, or other consumption in the state of diesel fuel, as defined in Section 60022, at the rate of 1.75 percent of the sales price of the diesel fuel on and after the operative date of this subdivision.

(b) Subdivision (a) shall become operative on July 1, 2011.

SEC. 4. Section 6357.7 is added to the Revenue and Taxation Code, to read:

6357.7. (a) On and after July 1, 2010, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, motor vehicle fuel, as defined in Section 7326.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) On and after July 1, 2010, the State Board of Equalization and the Department of Finance shall recognize that the state no longer receives state sales and use tax revenues from the sale of, and the storage, use, or other consumption of, motor vehicle fuel for purposes of any estimates required to be performed under paragraphs (1) and (2) of subdivision (a) of Section 7102, and Section 7104.2.

SEC. 5. Section 7360 of the Revenue and Taxation Code is amended to read:

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated

correspondingly, the tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal twenty-seven cents (\$0.27).

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

(b) (1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to  $17\frac{3}{10}$  cents (\$0.173) per gallon.

(2) For the 2011–12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

SEC. 6. Section 7361.1 is added to the Revenue and Taxation Code, to read:

7361.1. (a) For the privilege of storing, for the purpose of sale, each supplier, wholesaler, and retailer owning 1,000 or more gallons of tax-paid motor vehicle fuel on July 1, 2010, shall pay a storage tax of  $17\frac{3}{10}$  cents (\$0.173) per gallon of tax-paid motor vehicle fuel in storage according to the volumetric measure thereof.

(b) For purposes of this section:

(1) “Owning” means having title to the motor vehicle fuel.

(2) “Retailer” means any person who sells motor vehicle fuel in this state to a person who subsequently uses the motor vehicle fuel.

(3) “Storing” includes the ownership or possession of tax-paid motor vehicle fuel outside of the bulk transfer/terminal system, including the holding of tax-paid motor vehicle fuel for sale at wholesale or retail locations stored in a container of any kind, including railroad tank cars and trucks or trailer cargo tanks. “Storing” also includes tax-paid motor vehicle fuel purchased from and invoiced by the seller, and tax-paid motor vehicle fuel removed from a terminal or entered into by a supplier, prior to the date specified in subdivision (a) and in transit on that date.

(4) “Wholesaler” means any person who sells motor vehicle fuel in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the motor vehicle fuel.

SEC. 7. Section 7653.1 is added to the Revenue and Taxation Code, to read:

7653.1. On or before August 31, 2010, each person subject to the storage tax imposed under Section 7361.1 shall prepare and file with the board, in a form prescribed by the board, a return showing the total number of gallons of tax-paid motor vehicle fuel owned by the person on July 1, 2010, the amount of the storage tax, 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.

SEC. 8. Section 60050 of the Revenue and Taxation Code is amended to read:

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), including any reduction or adjustment pursuant to subdivision (b), on and after the date of the reduction, shall be increased by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal what it would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

(b) (1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to 13.6 cents (\$0.136) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012–13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate reduction in paragraph (1) in that manner as to result in a revenue loss attributable to paragraph (1) that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Sections 6051.8 and 6201.8 does not produce a net revenue gain in state taxes.

SEC. 9. This act addresses the fiscal emergency declared by the Governor by proclamation on January 8, 2010, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 10. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

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