

Assembly Bill No. 1547

CHAPTER 545

An act to amend Sections 6069, 6248, 7339, 60003, 60501, and 60508 of, to add Sections 7339.1, 55041.1, and 60003.1 to, and to repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1547, Committee on Revenue and Taxation. State Board of Equalization: taxes and fees.

(1) The Sales and Use Tax Law requires a seller whose permit has been previously suspended or revoked to pay the State Board of Equalization a fee of \$50 for the renewal or issuance of a permit.

This bill would increase that fee to \$100.

(2) The Sales and Use Tax Law imposes a use tax 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. Under existing law, there is a presumption that a vehicle, vessel, or aircraft bought outside of this state that is brought into this state within 12 months from the date of its purchase, was purchased from a retailer for storage, use, or other consumption in this state, under specified circumstances, including the circumstance where the vehicle, vessel, or aircraft was purchased by a California resident. Existing law provides an exception if an aircraft or vessel is brought into this state for the purpose of repair, retrofit, or modification.

This bill would provide that a closely held corporation or a limited liability company is considered a California resident for purposes of this law if 50% or more of the shares or membership interests are held by shareholders or members who are California residents. This bill would also provide that an aircraft or vessel must be brought into this state exclusively for repair, retrofit, or modification, and in the case of a vessel, that work must be performed by a licensed repair facility, as specified, and in the case of an aircraft, that work must be performed by a certified repair station or a manufacturer's maintenance facility, as specified, for the exception to apply.

(3) The Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law define the term "terminal" for purposes of those laws.

This bill would expand the definition of "terminal" to include a fuel production facility, as provided, and would define "fuel production facility" for purposes of those laws.

(4) The Diesel Fuel Tax Law imposes a tax upon the removal, entry, sale, delivery, or specified use of diesel fuel, at the rate of \$0.18 per gallon, and provides for a refund of the amount of that tax for, among other things, diesel fuel sold to any consulate officer or consulate employee under specified circumstances, and fuel sold for use by the United States and its agencies and instrumentalities. That law allows a supplier to file a claim for refund to be reimbursed and repaid the amount of the tax paid on diesel fuel as if the supplier sold the fuel directly to the consulate officer or consulate employee under specified circumstances and further allows a supplier to take a credit on its return in lieu of a refund. That law also allows a person to file a claim for refund to be reimbursed and repaid the amount of tax paid on diesel fuel as if the person sold the fuel directly to the United States and its agencies and instrumentalities under specified circumstances.

This bill would allow a supplier to file a claim for refund, or take a credit on its return in lieu of a refund, even if the supplier did not make the direct sale of diesel fuel to the consulate officer or consulate employee, or to the United States and its agencies and instrumentalities, as provided. This bill would also make other changes to conform the Diesel Fuel Tax Law with the Motor Vehicle Fuel Tax Law.

(5) The Fee Collection Procedures Law provides for the administration and collection of various fee programs by the State Board of Equalization.

This bill would allow the board to require the payment of amount due and the filing of the returns for periods other than the period or periods set forth in the tax and fee laws administered under the Fee Collection Procedures Law.

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

SECTION 1. Section 6069 of the Revenue and Taxation Code is amended to read:

6069. A seller whose permit has been previously suspended or revoked shall pay the board a fee of one hundred dollars (\$100) for the renewal or issuance of a permit.

SEC. 2. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) There shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state on or after the effective date of this section, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occurs:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code. For purposes of this section, a closely held corporation or limited liability corporation shall also be considered a California resident if 50 percent or more of the shares or membership interests are held by shareholders or members who are residents of California as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) If purchased by a nonresident of California, the vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section shall not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision shall not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) Notwithstanding subdivision (a), any aircraft or vessel brought into this state exclusively for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state if the repair, retrofit, or modification is, in the case of a vessel, performed by a repair facility that holds an appropriate permit issued by the board and is licensed to do business by the county in which it is located, or, in the case of an aircraft, performed by a repair station certified by the Federal Aviation Administration or a manufacturer's maintenance facility.

(f) The presumption set forth in subdivision (a) may be controverted by documentary evidence that the vehicle was brought into this state for the exclusive purpose of warranty or repair service and was used or stored in this state for that purpose for 30 days or less. The 30-day period begins when the vehicle enters this state, includes any time of travel to and from the warranty or repair facility, and ends when the vehicle is returned to a point outside the state. The documentary evidence shall include a work order stating the dates that the vehicle is in the possession of the warranty or repair facility and a statement by the owner of the vehicle specifying dates of travel to and from the warranty or repair facility.

SEC. 3. Section 7339 of the Revenue and Taxation Code is amended to read:

7339. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. "Terminal" includes a fuel production facility where motor vehicle fuel is produced and stored and from which motor vehicle fuel may be removed at a rack.

SEC. 4. Section 7339.1 is added to the Revenue and Taxation Code, to read:

7339.1. “Fuel production facility” means a facility, other than a refinery, in which motor vehicle fuel is produced.

SEC. 5. Section 55041.1 is added to the Revenue and Taxation Code, to read:

55041.1. The board may require the payment of the amount due and the filing of returns for periods other than the period or periods set forth in the tax and fee laws administered under this part.

SEC. 6. Section 60003 of the Revenue and Taxation Code is amended to read:

60003. “Terminal” means a diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which diesel fuel may be removed at a rack. “Terminal” includes a fuel production facility where diesel fuel is produced and stored and from which diesel fuel may be removed at a rack.

SEC. 7. Section 60003.1 is added to the Revenue and Taxation Code, to read:

60003.1. “Fuel production facility” means a facility, other than a refinery, in which diesel fuel is produced.

SEC. 8. 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).

(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 or original invoice facsimile retained in an alternative storage media 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 and which was sold 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) (i) 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.

(ii) Sold by a supplier and which was sold by credit card to the United States and its agencies and instrumentalities under circumstances which would have entitled the supplier to an exemption under Section 60100 if the supplier had sold the diesel fuel directly to the United States and its agencies and instrumentalities.

(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, original invoice facsimile, 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. 9. Section 60508 of the Revenue and Taxation Code is amended to read:

60508. In lieu of the collection and refund of the tax on tax-paid diesel fuel exported, removed, sold, or used by a supplier in a manner that would entitle the supplier to claim a refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations the board may prescribe.

SEC. 10. Section 60508.1 of the Revenue and Taxation Code is repealed.

SEC. 11. Section 60508.2 of the Revenue and Taxation Code is repealed.

SEC. 12. Section 60508.4 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 60509 of the Revenue and Taxation Code is repealed.