

## Senate Bill No. 70

### CHAPTER 9

An act to amend Sections 6051.8, 6201.8, 6480.1, 7360, 7361.1, 7653.1, and 60050 of, and to add Section 6357.3 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor March 23, 2010. Filed with  
Secretary of State March 23, 2010.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 70, Committee on Budget and Fiscal Review. Sales and use taxes: fuel taxes.

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.

Assembly Bill 6 of the 2009–10 8th Extraordinary Session would, if enacted, impose an additional 1.75% tax on the sale of, and the storage, use, or other consumption in this state of, diesel fuel on or after July 1, 2011.

This bill would exempt the sale of, and the storage, use, or other consumption of, specified diesel fuel from that tax that would be imposed by AB 6 of the 2009–10 8th Extraordinary Session.

Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session would both increase and decrease the rates of specified taxes and require adjustments to the rates on an annual basis to achieve revenue neutrality. Assembly Bill 6 would increase the rate of tax under the Motor Vehicle Fuel Tax Law on the removal, entry, sale, delivering or specified use of motor vehicle fuel, including aviation gasoline.

This bill would clarify that the rate changes to achieve revenue neutrality would be effective for the next fiscal year. This bill would exclude aviation gasoline from the increase in the rate of motor vehicle fuel taxes.

The Sales and Use Tax Law requires a collection of prepayment of retail sales tax at the time that motor vehicle fuel tax or diesel fuel tax is imposed, and on each subsequent sale other than the retail sale. This law requires the State Board of Equalization to establish the prepayment rate based on 80% of the combined state and local sales tax rate, as prescribed. This law authorizes the board to readjust the rate if 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.

This bill would also authorize the State Board of Equalization to readjust the rate if an exemption from sales tax for sales of fuel, as specified, is enacted and the established rate results in or could result in prepayments

which consistently exceed or are significantly lower than the retailers' sales tax liability.

This bill would become operative only if both this bill and AB 6 of the 2009–10 8th Extraordinary Session are chaptered and this bill is chaptered last.

This bill would take effect immediately as a tax levy.

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

SECTION 1. Section 6051.8 of the Revenue and Taxation Code, as added by Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session, is amended to read:

6051.8. (a) Except as provided by Section 6357.3, 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 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. 2. Section 6201.8 of the Revenue and Taxation Code, as added by Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session, is amended to read:

6201.8. (a) Except as provided by Section 6357.3, 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. 3. Section 6357.3 is added to the Revenue and Taxation Code, to read:

6357.3. (a) On and after July 1, 2011, there are exempted from the taxes imposed by Sections 6051.8 and 6201.8, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of both of the following:

(1) Diesel fuel purchased for use or used in a manner that is exempt from the tax imposed pursuant to Part 31 (commencing with Section 60001) of Division 2 and not subject to the backup tax imposed by Section 60058 or the payment requirement specified in Section 60108.

(2) Diesel fuel subject to the payment requirement specified in Section 60502.2.

(b) No exemption from the tax imposed pursuant to Sections 6051.8 and 6201.8 shall be allowed under this section unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe.

(c) If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8

or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

SEC. 4. 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, 6051.5, 7202, and 7203.1, 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 or an exemption from sales tax for sales of fuel is enacted, and the established rate results in or could result 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, 6051.5, 7202, and 7203.1, 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 (\$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, 6051.5, 7202, and 7203.1, 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 rate of sales tax imposed on sales of diesel fuel increases or decreases or the price of diesel fuel decreases or increases, and the established rate results in or could result 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. 5. Section 7360 of the Revenue and Taxation Code, as amended by Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session, 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 motor vehicle fuel, other than aviation gasoline, 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, and that rate shall be effective during the state’s next fiscal year.

(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 of the Revenue and Taxation Code, as added by Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session, is amended 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, other than aviation gasoline, 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, other than aviation gasoline, in storage according to the volumetric measure thereof.

(b) For purposes of this section:

(1) “Owning” means having title to the motor vehicle fuel, other than aviation gasoline.

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

(3) “Storing” includes the ownership or possession of tax-paid motor vehicle fuel, other than aviation gasoline, outside of the bulk transfer/terminal system, including the holding of tax-paid motor vehicle fuel, other than aviation gasoline, 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, other than aviation gasoline, purchased from and invoiced by the seller, and tax-paid motor vehicle fuel, other than aviation gasoline 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, other than aviation gasoline, in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the motor vehicle fuel, other than aviation gasoline.

SEC. 7. Section 7653.1 of the Revenue and Taxation Code, as added by Assembly Bill 6 of the 2009-10 Eighth Extraordinary Session, is amended 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, other than aviation gasoline, 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, as amended by Assembly Bill 6 of the 2009-10 Eighth Extraordinary Session, 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, and that rate shall be effective during the state's next fiscal year.

(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 shall become operative only if Assembly Bill 6 of the 2009–10 Eight Extraordinary Session adds Sections 6051.8 and 6201.8 to the Revenue and Taxation Code, both this bill and Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session are chaptered, and this bill is chaptered last.

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