

Assembly Bill No. 2756

Passed the Assembly August 27, 2014

Chief Clerk of the Assembly

Passed the Senate August 25, 2014

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2014, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 60501 and 60505.5 of, to amend and renumber Section 674 of, and to add Article 8.5 (commencing with Section 674) to Chapter 3 of Part 2 of Division 1 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL’S DIGEST

AB 2756, Committee on Revenue and Taxation. Tax administration: property taxes and diesel fuel taxes.

(1) Existing law provides for the annual assessment and collection of property taxes by each county, and provides for the state administration of the property tax by the State Board of Equalization.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, “full cash value” is defined as the assessor’s valuation of real property as shown on the 1975–76 tax bill under “full cash value” or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred.

Existing property tax law requires a transferee of real property or a manufactured home that is locally assessed to file a change in ownership statement with the assessor of the county in which the property or manufactured home is located, and also requires a corporation, partnership, limited liability company, or other legal entity to file a change in ownership statement with the board.

Existing property tax law also includes various property tax exemptions as authorized or established by the California Constitution.

This bill would prohibit a person from making decisions with regard to change in ownership, or with regard to property tax exemptions, except a homeowners’ exemption claim, as an employee of the state, a county, or a city and county, unless he or she is the holder of a valid assessment analyst certificate issued by the board. The bill would require the board to provide for the examination of applicants for a certificate and would authorize the board to contract with the Department of Human Resources to

give the examinations. The bill would provide for an advanced certificate, pursuant to a course of study prescribed by, and on examination prepared by, the board. The bill would require prescribed annual training for certification, including advanced certification. Failure to complete training as required would be grounds for revocation. The bill would also authorize the board to issue temporary certificates and interim certificates under prescribed circumstances. This bill would specify that its provisions are not to be construed to impede assessors from managing their staff resources efficiently regarding exemption applications and change in ownership documents, provided that noncertificated staff are not responsible for making exemption or change in ownership decisions.

(2) The Diesel Fuel Tax Law imposes a tax upon the removal, entry, sale, delivery, or specified use of diesel fuel, at a specified rate per gallon. That law provides for a reimbursement of the amount of that tax to persons who have used that tax-paid fuel in specified nontaxable uses, which is allowed through a claim for refund.

This bill would allow a claim for refund for amounts of tax paid on the biodiesel fuel portion of dyed blended biodiesel fuel removed from an approved terminal at the terminal rack, as provided, to the extent a supplier can show that the tax on that biodiesel fuel has been paid by the same supplier.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) County assessors are required to follow complex state laws in the performance of their duties.

(b) The application of those laws is intended to provide consistent and accurate assessment practices across the state.

(c) It is the intent of the Legislature that the interests of taxpayers be protected by ensuring that decisions regarding eligibility of a property for exemption, other than homeowners' exemptions, or whether a transaction is a change in ownership or qualifies for an exclusion from a change in ownership, or both, be made by staff who is certified to make those decisions.

(d) It is further the intent of the Legislature that implementation of education and certification requirements required by Section 3 of this act be undertaken in the most efficient and economical manner, utilizing existing resources of California county assessors with the advice and counsel of the State Board of Equalization.

(e) It is further the intent of the Legislature that Section 3 of this act be construed as an act necessary for the implementation of Article XIII A of the California Constitution and, as such, is not a program or higher level of service mandated by the state.

SEC. 2. Section 674 of the Revenue and Taxation Code is amended and renumbered to read:

680. (a) All contracts for the performance of appraisal work for assessors by any person who is not an employee of the state, any county, or any city shall be entered into only after at least two competitive bids and shall be entered into either on a fixed fee basis or on the basis of an hourly rate with a maximum dollar amount.

(b) In addition to any provision in the Real Estate Appraisers' Licensing and Certification Law (Part 3 (commencing with Section 11300) of Division 4 of the Business and Professions Code), a contractor shall maintain the confidentiality of assessee information and records as provided in Sections 408, 451, and 481 that is obtained in performance of the contract.

(1) A request for information and records from an assessee shall be made by the assessor. The assessor may authorize a contractor to request additional information or records, if needed. However, a contractor shall not request that information or records without the written authorization of the assessor.

(2) A contractor shall not provide appraisal data in his or her possession to the assessor or a contractor of another county who is not a party to the contract. An assessor may provide that data to the assessor of another county as provided in subdivision (b) of Section 408.

(c) A contractor may not retain information contained in, or derived from, an assessee's confidential information and records after the conclusion, termination, or nonrenewal of the contract. Within 90 days of the conclusion, termination, or nonrenewal of the contract, the contractor shall:

(1) Purge and return to the assessor any assessee records, whether originals, copies, or electronically stored, provided by the assessor or otherwise obtained from the assessee.

(2) Provide a written declaration to the assessor that the contractor has complied with this subdivision.

(d) All contracts entered into pursuant to subdivision (a) shall include a provision incorporating the requirements of subdivisions (b) and (c). This provision of the contract shall use language that is prescribed by the board.

(e) For purposes of this section, a “contractor” means any person who is not an employee of the state, any county, or any city who performs appraisal work pursuant to a contract with an assessor.

SEC. 3. Article 8.5 (commencing with Section 674) is added to Chapter 3 of Part 2 of Division 1 of the Revenue and Taxation Code, to read:

Article 8.5. Assessment Analyst Certificates

674. (a) A person shall not make decisions with regard to changes in ownership as an employee of the state, a county, or a city and county, unless he or she is the holder of a valid assessment analyst certificate issued by the board.

(b) A person shall not make decisions with regard to property tax exemptions, except for homeowners’ exemption claims, as an employee of the state, a county, or a city and county, unless he or she is the holder of a valid assessment analyst certificate issued by the board.

(c) The board shall provide for the examination of applicants for an assessment analyst certificate and may contract with the Department of Human Resources to give the examinations. Examinations shall be prepared by the board with the advice and assistance of a committee of five assessors selected by the California Assessors’ Association for this purpose. No certificate shall be issued to any person who has not attained a passing grade in the examination and demonstrated to the board that he or she is competent to make change in ownership or exemption decisions, or both, as that competency is defined in regulations duly adopted by the board. However, any applicant for a certificate who is denied a certificate pursuant to this section shall have a right to a review of that denial in accordance with the Administrative Procedure

Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(d) This section does not apply to a person holding a valid appraiser's or advanced appraiser's certificate issued by the board.

(e) The board shall not impose any charge upon a county or city and county or an applicant for an examination or certification under this section or for training conducted by the board under Section 675.

675. (a) (1) In order to retain a valid certificate, every certified assessment analyst shall complete at least 24 hours of training conducted or approved by the board in each one-year period.

(2) Any training time in excess of the 24-hour minimum that is accumulated in any one year shall be carried over as credit for future training requirements, with a limit of three years in which the carryover time may be credited.

(3) Failure to complete training in accordance with this subdivision shall constitute grounds for revocation of a certificate. A proceeding to revoke shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(4) Training shall include, but not be limited to, new developments in applicable case law, statutory law, and administrative rules.

(b) (1) The board shall issue an advanced assessment analyst certificate for an applicant that has held a certificate issued in accordance with Section 674 for at least three years and has done at least one of the following:

(A) Has successfully completed an advanced course of study prescribed pursuant to paragraph (2).

(B) Has passed an advanced level examination prepared pursuant to paragraph (2).

(2) The board, with the advice and assistance of five assessors selected by the California Assessors' Association, shall prescribe an advanced course of study and prepare the advanced level examination.

(3) In order to retain a valid advanced assessment analyst certificate, every holder shall complete at least 12 hours of training in each one-year period.

(4) Any training time for the advanced assessment analyst certificate that is in excess of the 12-hour minimum accumulated in any one year shall be carried over as a credit for future training requirements, with a limit of two years in which the carryover time may be credited.

(5) Failure to complete training in accordance with this subdivision shall constitute grounds for revocation of an advanced assessment analyst certificate. A proceeding to revoke shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(6) Training to retain the advanced assessment analyst certificate shall include, but not be limited to, new developments in applicable case law, statutory law, and administrative rules.

676. (a) At the time of certification, each applicant shall disclose, on forms provided by the board, his or her financial interest in any legal entity. Thereafter, the form shall be completed annually.

(b) If the applicant is also required to annually file with the Fair Political Practices Commission pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of Title 9 of the Government Code, a duplicate of that filing shall meet the requirements of this section.

677. The board may issue a temporary certificate to a person who is newly employed by the state, a county, or a city and county in order to afford the person the opportunity to apply for and take an examination, the successful passage of which would qualify the person for a certificate pursuant to this article. The board shall not issue a temporary certificate for a duration that exceeds one year, unless the person has been duly elected or appointed to the office of assessor. The board shall not renew a temporary certificate.

678. The board may issue an interim certificate to a person who is currently employed by the state, a county, or a city and county, and who is making change in ownership or exemption decisions in order to afford that person the opportunity to apply for and take an examination, the successful passage of which would qualify the person for a certificate pursuant to this article. The board shall not issue an interim certificate for a duration that exceeds four years, unless the person has been duly elected or

appointed to the office of assessor. The board shall not renew an interim certificate.

679. This article shall not be construed to impede an assessor from managing his or her staff resources efficiently, and in a manner that allows noncertificated staff to prepare and work with exemption applications and change in ownership documents, provided that the noncertificated staff are not responsible for making exemption or change in ownership decisions.

SEC. 4. 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) Except as otherwise provided in subdivision (b), 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) Where tax is not imposed on dyed blended biodiesel fuel upon removal from an approved terminal at the terminal rack, if tax was previously imposed on the biodiesel fuel portion of the dyed blended biodiesel fuel, then, pursuant to paragraph (1) of subdivision (a), a claim for refund is allowed for the tax that was paid on that biodiesel fuel, but only to the extent a supplier can show that the tax on that biodiesel fuel has been paid by the same supplier.

(c) 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.

(d) 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. 5. Section 60505.5 of the Revenue and Taxation Code is amended to read:

60505.5. The claim for refund forms prescribed in subdivision (d) of Section 60501 and subdivision (d) of Section 60502 may include, but not be limited to, electronic media. The claim for refund forms shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

Approved _____, 2014

Governor