

Senate Bill No. 612

CHAPTER 76

An act to amend Sections 8102, 8103, 8105, 60041, 60201.2, 60201.3, 60472, 60501, 60502, 60505, and 60511 of, to add Sections 8108 and 8109 to, and to repeal Sections 7402, 7403, 7404, 7407, and 60510 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 16, 1997. Filed with
Secretary of State July 16, 1997.]

LEGISLATIVE COUNSEL'S DIGEST

SB 612, Costa. Fuel taxes.

The Motor Vehicle Fuel License Tax Law provides, among other things, that specified export certificates shall be executed and filed in support of specified exemptions from the license taxes imposed. That law also provides specified procedures regarding overpayments and refunds.

This bill would delete the provisions relating to export certificates. It would make specified changes relating to the amounts required to be withheld, claims for refunds, payments on the claims, and the payment of interest on refunds, as provided.

The Diesel Fuel Tax Law provides, until July 1, 1997, that a purchaser of diesel fuel from a supplier may elect to remit the fuel tax to the supplier on terms agreed upon between the purchaser and supplier, as provided.

This bill would delete the July 1, 1997, operative date.

The Diesel Fuel Tax Law provides, until July 1, 1997, that with respect to specified worthless accounts, a supplier is relieved from liability for diesel fuel tax, as provided.

This bill would delete the July 1, 1997, operative date.

The Diesel Fuel Tax Law provides that a specified claim for refund with respect to diesel fuel is allowed only if certain conditions apply.

This bill would also apply those refund provisions to diesel fuel that is sold by any person to a train operator, as provided, to diesel fuel that is lost, as specified, and to diesel fuel for which no original purchase invoice was created, but for which a proper electronic invoice is provided.

The Diesel Fuel Tax Law provides that no refunds of taxes shall be granted for losses in handling, transporting, or storing diesel fuel.

This bill would repeal those provisions.

The Diesel Fuel Tax Law provides that if a purchaser of a business or stock of goods fails to withhold certain purchase amounts and becomes liable for those amounts, the purchaser is relieved of that



liability if the State Board of Equalization fails to mail a specified notice within a prescribed period of time.

This bill would modify that prescribed period of time.

The Diesel Fuel Tax Law allows interest to be paid on refunds from the last day of the month following the day the diesel fuel was purchased.

This bill would allow that interest from the first day of the calendar month following the day a properly completed claim for refund is received, as specified.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 7402 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 7403 of the Revenue and Taxation Code is repealed.

SEC. 3. Section 7404 of the Revenue and Taxation Code is repealed.

SEC. 4. Section 7407 of the Revenue and Taxation Code is repealed.

SEC. 5. Section 8102 of the Revenue and Taxation Code is amended to read:

8102. (a) The claimant of a refund shall present to the Controller a claim supported by the original invoice showing the purchase. The claim shall state the total amount of the fuel purchased by the claimant and the manner and the equipment in which the claimant has used the fuel. The claim shall state the total amount of motor vehicle fuel covered by the claim and if the motor vehicle fuel was exported, a statement that the claimant has proof of exportation. The claim shall state that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim for refund. The claim shall not be under oath but shall contain, or be accompanied by, a written declaration that it is made under the penalties of perjury. 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.

(b) Each claim for refund under this section shall be made on a form prescribed by the Controller and shall be filed for a calendar year, except for claims relating to exportation of fuel. 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 any motor vehicle fuel used, sold, 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 Controller may require the filing of claims for refund for other than yearly periods. Export claims may be filed at any time.

SEC. 6. Section 8103 of the Revenue and Taxation Code is amended to read:

8103. The Controller, upon the presentation of the properly completed claim and the invoice, shall cause to be paid to the claimant from the license taxes collected under this part an amount equal to the license taxes collected on the motor vehicle fuel in respect to which the refund is claimed. 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.

SEC. 7. Section 8105 of the Revenue and Taxation Code is amended to read:

8105. All applications for refund provided under this article shall be filed within three years from the date of the purchase of the motor vehicle fuel. Any application filed after the time prescribed shall not be considered for any purpose by the Controller, the Treasurer, or the state.

SEC. 8. Section 8108 is added to the Revenue and Taxation Code, to read:

8108. If any claim for refund of tax is paid more than 20 calendar days from the date upon which the claim was received by the Controller, interest shall be computed, allowed, and paid upon that refund of tax at the Pooled Money Investment Account's Annual Yield Rate in effect on the date prior to the date that the interest on the refund of tax begins to accrue. Interest on the refund of tax shall begin to accrue on the 21st calendar day after the date that a properly completed claim for refund is received by the Controller. The interest shall accrue through the date the Controller refunds the tax. No interest shall be granted on credits taken on tax returns.

SEC. 9. Section 8109 is added to the Revenue and Taxation Code, to read:

8109. (a) A refund filed pursuant to subdivision (b) of Section 8101 shall be paid to the claimant within 20 calendar days of the receipt of a claim for refund by the Controller.

(b) Notwithstanding subdivision (a), the claim for refund shall be submitted on a properly completed form or in substantially similar format, as prescribed by the Controller.

SEC. 10. Section 60041 of the Revenue and Taxation Code is amended to read:

60041. "Train operator" includes any person that owns, operates, or controls a diesel-powered train and is licensed as a railroad by a state or federal agency.



SEC. 11. Section 60201.2 of the Revenue and Taxation Code is amended to read:

60201.2. A supplier who sells taxable diesel fuel shall collect from the purchaser the diesel fuel tax imposed under Section 60050. At the election of the purchaser, the payment of the diesel fuel tax owed on every gallon of diesel fuel purchased from a supplier shall be remitted to the supplier on terms agreed upon between the purchaser and the supplier or on or before five working days before the last day of the calendar month following the monthly period to which it relates. This election shall be subject to a condition that the purchaser's remittances of all amounts of tax due to the seller shall be paid by electronic funds transfer. The purchaser's election may be terminated by the seller if the purchaser does not make timely payments to the seller as required by this section. This section shall not apply where the purchaser is required by a supplier to pay cash or cash equivalent for diesel fuel purchases.

SEC. 12. Section 60201.3 of the Revenue and Taxation Code is amended to read:

60201.3. (a) A supplier is relieved from liability for diesel fuel tax insofar as the sales of the diesel fuel are represented by accounts which have been found worthless and charged off for income tax purposes. If the supplier has previously paid the amount of the tax, he or she may, under the rules and regulations prescribed by the board, take a credit in that amount. If those accounts are thereafter in whole or in part collected by the supplier, the gallons of diesel fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the tax thereon shall be paid with the return. The board may, at its option, require the supplier to submit periodic reports listing accounts delinquent for a 90-day period or more.

(b) Any customer of a supplier who has failed to pay for diesel fuel purchased and for which the supplier has been allowed a credit under subdivision (a) is liable to the state for the diesel fuel tax as an unlicensed supplier and the tax, applicable penalties, and interest become immediately due and payable under the unlicensed persons provisions contained in Article 6 (commencing with Section 60360) of Chapter 6.

SEC. 13. Section 60472 of the Revenue and Taxation Code is amended to read:

60472. (a) If the purchaser of a business or stock of goods fails to withhold the purchase price as required, he or she becomes personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price valued in money.

(b) (1) Within 60 days after the latest of the dates specified in paragraph (2), the board shall either issue the certificate or mail notice to the purchaser at his or her address as it appears on the



records of the board of the amount that is required to be paid as a condition of issuing the certificate.

(2) For purposes of paragraph (1), the latest of the following dates shall apply:

(A) The date the board receives a written request from the purchaser for a certificate.

(B) The date the former owner's records are made available for audit.

(c) Failure of the board to mail the notice referred to in subdivision (b) shall release the purchaser from any further obligation to withhold from the purchase price under this article. The last day upon which the obligation of the successor may be enforced shall be no later than three years after the date the board is notified of the purchase of the business or stock of goods.

SEC. 14. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel 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.

(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 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 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) 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.

(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.

(b) Each claim for refund under this section shall contain the following information with respect to all 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 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. 15. Section 60502 of the Revenue and Taxation Code is amended to read:

60502. (a) Any ultimate vendor who has paid a tax on diesel fuel sold to an ultimate purchaser for use on a farm for farming purposes or use in an exempt bus operation shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(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 sold the diesel fuel to the ultimate purchaser for use on a farm for farming purposes or for use in an exempt bus operation.

(3) The claimant is a registered ultimate vendor.

(4) The claimant has filed a timely claim for refund that contains the information required under subdivision (c) and the claim is supported by the original invoice 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.

(c) Each claim for refund under this section shall contain the following information with respect to all the diesel fuel covered by the claim:

(1) The claimant's permit number.

(2) The name, address, telephone number, and permit number of each person that sold the diesel fuel to the claimant and the date of the purchase.

(3) The name, address, telephone number, and federal taxpayer identification number of each farmer or the permit number of each exempt bus operator that bought the diesel fuel from the claimant and the number of gallons that the claimant sold to each.



(4) A statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(5) The total amount of diesel fuel covered by the claim.

(6) A statement that the claimant has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer.

(7) A statement that the claimant has in its possession an unexpired exemption certificate described in Section 60503 and the claimant has no reason to believe any information in the certificate is false.

(8) A statement that the amounts claimed have not been previously refunded to the claimant and that there are no other claims outstanding for the amounts included in the current claim.

(d) Each claim for refund under this section shall be made on a form prescribed by the board and shall be for an amount of not less than two hundred dollars (\$200) and for a period of not less than one week.

SEC. 16. Section 60505 of the Revenue and Taxation Code is amended to read:

60505. The board, upon the presentation of the claim and the invoice, shall cause to be paid to the claimant from the taxes collected under this part an amount equal to the taxes collected on the diesel fuel with respect to which the refund is claimed under this article. 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.

SEC. 17. Section 60510 of the Revenue and Taxation Code is repealed.

SEC. 18. Section 60511 of the Revenue and Taxation Code is amended to read:

60511. Interest shall be paid upon any refund of tax at the modified adjusted rate per month established pursuant to Section 6591.5 from the first day of the calendar month following the day a properly completed claim for refund was received by the board on any claim that has not been paid within 20 calendar days of the receipt of a properly completed claim form by the board.

The interest shall be paid to the last day of the month following the date upon which the claim is approved by the board.

No interest shall be granted on credits taken on tax returns.

SEC. 19. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid disruptions in the distribution of diesel fuel supplies that may occur if provisions of this act are not enacted to delete the July 1, 1997, date on which certain diesel fuel tax provisions



cease to be operative, it is necessary that this act take effect immediately.

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