

## Senate Bill No. 2231

### CHAPTER 350

An act to amend Section 25174.6 of the Health and Safety Code, and to amend Sections 41052.1, 43452, 43522, 50157, 60501, and 60503 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 21, 1998. Filed with Secretary of State August 24, 1998.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2231, Committee on Revenue and Taxation. Taxation: fuel taxes: hazardous waste.

Existing law requires the State Board of Equalization, upon the request of the Department of Toxic Substances Control, to adjust hazardous waste disposal fees to reflect changes in the cost of living during the prior calendar year.

This bill would instead require the State Board of Equalization to adjust the rates based on the cost of living for the prior fiscal year.

Existing law provides for refunds for overpayments of hazardous waste disposal fees.

This bill would revise the claims procedures for these overpayments by providing that any overpayment of the disposal fee by a person submitting hazardous waste for disposal to a facility operator will be credited or refunded by the State Board of Equalization to the person doing the submission and would permit the hazardous waste facility to receive the credit or refund if the facility has paid the amount to the board and meets specified conditions.

The Emergency Telephone Users Surcharge Act permits the State Board of Equalization, if it deems it necessary, to require returns and payments of tax under that act to be made for quarterly periods other than calendar quarters, or for multiples of quarterly periods.

This bill would permit the board to require the returns and payment of the amount of surcharges for a calendar quarter or calendar year period.

Under the Diesel Fuel Tax Law, persons who have paid a tax on diesel fuel that was used in a nontaxable manner may be entitled to a refund under specified conditions. Refunds under that law may also be claimed by an ultimate vendor who sold the diesel fuel without collecting tax to a farmer or exempt bus operator if the vendor receives an exemption certificate from the purchaser.

This bill would clarify the refund provisions for diesel fuel that is lost or sold under specified conditions, and would require the

exemption certificate for farmers or bus operators to be in the form prescribed by the State Board of Equalization.

The bill would also make various technical changes.

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

SECTION 1. Section 25174.6 of the Health and Safety Code is amended to read:

25174.6. (a) The fee provided in Section 25174.1 shall be calculated pursuant to the requirements of this section with regard to the manner in which the hazardous waste exists at the time of disposal in this state. The following procedures shall be used for determining these fees, if the hazardous waste is not otherwise exempt from the fees imposed pursuant to this article:

(1) For RCRA hazardous wastes generated in a remedial action, a removal action, or a corrective action taken pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), or generated in any other required or voluntary cleanup, removal, or remediation of a hazardous substance or RCRA hazardous waste, the following fees shall be paid for each ton, or fraction thereof, of hazardous waste disposed of in this state:

(A) Except as provided in subparagraph (B), for RCRA hazardous waste that is disposed of in compliance with land disposal restriction treatment standards adopted by the Environmental Protection Agency in Part 268 (commencing with Section 268.1) of Title 40 of the Code of Federal Regulations at the time of disposal, a fee of twenty-two dollars (\$22) per ton.

(B) For RCRA hazardous waste subject to this paragraph that is treated so that the waste is no longer a RCRA hazardous waste at the time of disposal, the following fees shall be paid:

(i) For waste that is a non-RCRA hazardous waste, a fee of four dollars (\$4) per ton.

(ii) For waste that is no longer a hazardous waste, a fee of one dollar and fifty cents (\$1.50) per ton.

(2) For all other RCRA hazardous waste not subject to paragraph (1), the following fees shall be paid for each ton, or fraction thereof, of hazardous waste, disposed of in this state:

(A) If the RCRA hazardous waste is disposed of in compliance with land disposal restriction treatment standards adopted by the Environmental Protection Agency in Part 268 (commencing with Section 268.1) of Title 40 of the Code of Federal Regulations at the time of disposal, a fee of thirty-two dollars (\$32) shall be paid per ton.

(B) If the RCRA hazardous waste is treated so that the waste is no longer a RCRA hazardous waste at the time of disposal, the following fees shall be paid:



(i) For waste that is a non-RCRA hazardous waste, a fee of twelve dollars and fifty cents (\$12.50) per ton.

(ii) For waste that is no longer a hazardous waste, a fee of one dollar and fifty cents (\$1.50) per ton.

(3) The following fees shall be paid for each ton, or fraction thereof, for up to the first 5,000 tons, of the following hazardous wastes disposed of, or submitted for disposal, in this state, at each specific offsite facility by each producer, or at each specific onsite facility per month, if the hazardous wastes are not otherwise subject to the fee specified in paragraph (5):

(A) For a hazardous waste that is a non-RCRA hazardous waste at the time of disposal, other than asbestos, that is generated in a remedial action, a removal action, or a corrective action taken pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), Chapter 6.75 (commencing with Section 25299.10), or Chapter 6.8 (commencing with Section 25300), or generated in any other required or voluntary cleanup, removal, or remediation of a hazardous substance or non-RCRA hazardous waste, a fee of one dollar (\$1) per ton.

(B) For all other hazardous wastes that are non-RCRA hazardous waste at the time of disposal, a fee of ten dollars and fifty cents (\$10.50) per ton.

(4) For each ton, or fraction thereof, for up to the first 5,000 tons of hazardous waste disposed of, or submitted for disposal, in this state, at each specific offsite facility by each producer, or at each specific onsite facility, per month, that results from the extraction, beneficiation, and processing of ores and minerals, including phosphate rock and the overburden from the mining of uranium ore, and which is not otherwise subject to the fee specified in paragraph (5), a fee of ten dollars and fifty cents (\$10.50) per ton.

(5) A fee of two hundred dollars (\$200) per ton shall be paid for each ton, or fraction thereof, of the following types of hazardous wastes disposed of in this state:

(A) Hazardous waste that is extremely hazardous waste at the time of disposal.

(B) Hazardous waste that is a restricted hazardous waste listed in subdivision (b) of Section 25122.7 at the time of disposal.

(6) (A) Four dollars (\$4) shall be paid for each ton, or fraction thereof, of hazardous waste disposed of, or submitted for disposal, in this state, that is a solid hazardous waste residue resulting from incineration or dechlorination.

(B) No fees shall be imposed pursuant to this paragraph on a solid hazardous waste residue resulting from incineration or dechlorination that is disposed of, or submitted for disposal, outside this state.

(b) The amount of fees payable to the State Board of Equalization pursuant to this section shall be calculated using the total wet weight,



measured in tons or fractions thereof, of the hazardous waste in the form in which the hazardous waste exists at the time of disposal, or application to land using a land disposal method, as defined in Section 66260.10 of Title 22 of the California Code of Regulations, as that section read on January 1, 1998. However, the weight of any nonhazardous reagents or treatment additives added to the hazardous waste, after it has been submitted for disposal, for purposes of rendering the hazardous waste less hazardous, shall not be included in those calculations.

(c) All fees imposed pursuant to this section shall be paid in accordance with part 22 (commencing with Section 43001) of Division 2 of the Revenue and Taxation Code.

(d) The disposal fee rates specified in this section shall be the rates for the period of January 1, 1998, to December 31, 1998. Beginning with calendar year 1999, and for each year thereafter, the State Board of Equalization shall, at the request of the department, adjust those rates to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the Department of Industrial Relations or a successor agency.

(e) This section shall become operative on January 1, 1998, and shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2001, deletes or extends that date.

SEC. 2. Section 41052.1 of the Revenue and Taxation Code is amended to read:

41052.1. If the board deems it necessary in order to ensure payment or to facilitate the collection by the state of the amount of taxes, the board may require returns and payment of the amount of surcharges for a calendar quarter or calendar year period.

SEC. 3. Section 43452 of the Revenue and Taxation Code is amended to read:

43452. (a) Except as provided in subdivisions (b), (e), and (f), no refund shall be approved by the board after three years from the date the taxes were due and payable for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 43201) of Chapter 3, after six months from the date the determinations become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. Except as provided in subdivisions (e) and (f), no credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 43204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 43204 if a claim therefor is filed with the board before the expiration of the period agreed upon.



(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

(d) No claim for refund of taxes paid under this part shall be accepted, considered, or approved by the board if the claim is founded upon the grounds that the director has improperly or erroneously determined that any substance is a hazardous or extremely hazardous waste. Any appeal of a determination that a substance is a hazardous or extremely hazardous waste shall be made to the director.

(e) Notwithstanding subdivision (a), the board may within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.5 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.2 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.5 of the Health and Safety Code for the same period and site.

(f) Notwithstanding subdivision (a), the board may, within 90 days from the date of final board action or final judicial action, whichever is later, concerning liability for the fee imposed pursuant to Section 25205.2 of the Health and Safety Code, grant a refund or apply a credit pursuant to Section 43451 for any amount of tax, penalty, or interest that has been overpaid concerning a fee imposed pursuant to Section 25205.5 of the Health and Safety Code, if the taxpayer has paid or is being assessed a fee imposed pursuant to Section 25205.2 of the Health and Safety Code for the same period and site.

(g) Any overpayment of the fee imposed by Section 25174.1 of the Health and Safety Code by a person submitting hazardous waste for disposal to a hazardous waste facility at which hazardous wastes are disposed who is required to collect the fee shall be credited or refunded by the state to the person who submitted the hazardous waste for disposal. However, if the facility has paid the amount to the board and establishes to the satisfaction of the board that it has not collected the amount from the person submitting the hazardous waste for disposal or has refunded the amount to that person, the overpayment may be credited or refunded by the state to the facility.

SEC. 4. Section 43522 of the Revenue and Taxation Code is amended to read:

43522. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to civil tax matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.



(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any civil tax matter in dispute which arises under Section 105190 or 105310 of the Health and Safety Code.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of tax in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

(1) The name or names of the taxpayers who are parties to the settlement.

(2) The total amount in dispute.

(3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the taxpayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of tax matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board



disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement entered into pursuant to this section shall constitute confidential tax information for purposes of Section 43651.

(h) This section shall apply only to civil tax matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

SEC. 5. Section 50157 of the Revenue and Taxation Code is amended to read:

50157. All fees, interest, and penalties imposed, and all amounts of fees required to be paid to the state pursuant to Section 50108 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the Underground Storage Tank Cleanup Fund in the State Treasury.

SEC. 6. Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold 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) of subdivision (a).

(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 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 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. 7. Section 60503 of the Revenue and Taxation Code is amended to read:

60503. (a) The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate shall be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(1) The date one year after the effective date of the certificate.

(2) The date a new certificate is provided to the seller.

(b) An exemption certificate for diesel fuel used on a farm for farming purposes or for diesel fuel used in an exempt bus operation



shall contain that information and be in the form as the board may prescribe.

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