

Senate Bill No. 1302

CHAPTER 865

An act to amend Sections 6203, 6452, 6454, 6479.3, 6480.1, 6480.6, 6480.16, 6592, 7273, 7354, and 8101 of, and to add Sections 6479.31, 8106.7, and 8127.6 to, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor October 8, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1302, Committee on Revenue and Taxation. Sales and use taxes: fuel taxes.

The Sales and Use Tax Law requires the filing of sales and use tax returns by sellers and other persons, as specified.

This bill would authorize the board to accept the electronic filing of those returns, and would clarify that the maximum penalty with respect to certain electronic funds transfers shall be limited to 6%.

The Sales and Use Tax Law defines a retailer engaged in business in this state to include certain retailers soliciting orders for property by means of telecommunication or television shopping systems and certain retailers having a franchisee operating under its trade name if the franchisee is required to collect the tax.

This bill would eliminate those retailers from that definition.

The Sales and Use Tax Law limits the amount the board may charge for administering a local special taxing jurisdiction's transactions and use taxes and to submit a report to the Legislature in connection thereof.

This bill would correct technical errors in those provisions and extend the time to submit that report.

The Sales and Use Tax Law provides that the sales tax prepayment rate for jet and diesel fuel shall be determined based on the sales tax prepayment rate calculated for gasoline, less 1¹/₂¢ per gallon.

This bill would authorize an independent computation of the jet and diesel fuel sales tax prepayment rates.

The Motor Vehicle Fuel License Tax Law provides, among other things, specified exemptions from the license taxes imposed, and specified procedures regarding overpayments and refunds.

This bill would provide that a distributor who is licensed under the Motor Vehicle Fuel License Tax Law and is authorized by the board to acquire exempt motor vehicle fuel from a distributor who has furnished the requisite security, and who paid tax reimbursement to a distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to those security provisions, may not seek

tax reimbursement from another distributor who is authorized by the board to acquire exempt motor vehicle fuel pursuant to the security provisions, but would permit the distributor to seek a refund, pursuant to a specified provision, of the tax reimbursement it paid to the distributor who is not authorized by the board to acquire exempt motor vehicle fuel.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 6203 of the Revenue and Taxation Code is amended to read:

6203. (a) Except as provided by Sections 6292 and 6293, every retailer engaged in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state, not exempted under Chapter 3.5 (commencing with Section 6271) or Chapter 4 (commencing with Section 6351), shall, at the time of making the sales or, if the storage, use, or other consumption of the tangible personal property is not then taxable hereunder, at the time the storage, use, or other consumption becomes taxable, collect the tax from the purchaser and give to the purchaser a receipt therefor in the manner and form prescribed by the board.

(b) As respects leases constituting sales of tangible personal property, the tax shall be collected from the lessee at the time amounts are paid by the lessee under the lease.

(c) “Retailer engaged in business in this state” as used in this section and Section 6202 means and includes any of the following:

(1) Any retailer maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary, or agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business.

(2) Any retailer having any representative, agent, salesperson, canvasser, independent contractor, or solicitor operating in this state under the authority of the retailer or its subsidiary for the purpose of selling, delivering, installing, assembling, or the taking of orders for any tangible personal property.

(3) As respects a lease, any retailer deriving rentals from a lease of tangible personal property situated in this state.

(4) (A) Any retailer soliciting orders for tangible personal property by mail if the solicitations are substantial and recurring and if the retailer benefits from any banking, financing, debt collection,



telecommunication, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities.

(B) This paragraph shall become operative upon the enactment of any congressional act that authorizes states to compel the collection of state sales and use taxes by out-of-state retailers.

(5) Notwithstanding Section 7262, a retailer specified in paragraph (4) above, and not specified in paragraph (1), (2), or (3) above, is a “retailer engaged in business in this state” for the purposes of this part and Part 1.5 (commencing with Section 7200) only.

(d) (1) For purposes of this section, “engaged in business in this state” does not include the taking of orders from customers in this state through a computer telecommunications network located in this state which is not directly or indirectly owned by the retailer when the orders result from the electronic display of products on that same network. The exclusion provided by this subdivision shall apply only to a computer telecommunications network that consists substantially of online communications services other than the displaying and taking of orders for products.

(2) This subdivision shall become inoperative upon the operative date of provisions of a congressional act that authorize states to compel the collection of state sales and use taxes by out-of-state retailers.

(e) Except as provided in this subdivision, a retailer is not a “retailer engaged in business in this state” under paragraph (2) of subdivision (c) if that retailer’s sole physical presence in this state is to engage in convention and trade show activities as described in Section 513(d)(3)(A) of the Internal Revenue Code, and if the retailer, including any of his or her representatives, agents, salespersons, canvassers, independent contractors, or solicitors, does not engage in those convention and trade show activities for more than seven days, in whole or in part, in this state during any 12-month period and did not derive more than ten thousand dollars (\$10,000) of gross income from those activities in this state during the prior calendar year. Notwithstanding the preceding sentence, a retailer engaging in convention and trade show activities, as described in Section 513(d)(3)(A) of the Internal Revenue Code, is a “retailer engaged in business in this state,” and is liable for collection of the applicable use tax, with respect to any sale of tangible personal property occurring at the convention and trade show activities and with respect to any sale of tangible personal property made pursuant to an order taken at or during those convention and trade show activities.

(f) The Legislature finds and declares that the deletion of language by the act adding this subdivision that was contained in paragraphs (5) and (8) of subdivision (c) is intended to codify the holdings of recent court cases.



SEC. 1.5. Section 6452 of the Revenue and Taxation Code is amended to read:

6452. (a) On or before the last day of the month following each quarterly period of three months, a return for the preceding quarterly period shall be filed with the board in the form as prescribed by the board, which may include, but not be limited to, electronic media.

(b) (1) For purposes of the sales tax, a return shall be filed by every seller and also by every person who is liable for the sales tax under this part. For purposes of the use tax, a return shall be filed by every retailer engaged in business in this state and by every person purchasing tangible personal property, the storage, use, or other consumption of which is subject to the use tax, who has not paid the use tax due to a retailer required to collect the tax. Returns shall be signed by the person required to file the return or by his or her duly authorized agent but need not be verified by oath. If a return is prepared by a paid preparer, that preparer shall enter his or her name, social security number or federal employee identification number, and business name and address in the space provided on the return. Any paid preparer who fails to provide the information specified by the preceding sentence shall be subject to a fifty dollar (\$50) fine for each failure to provide that information.

(2) For purposes of paragraph (1), “paid preparer” means any person who for compensation prepares, or employs one or more persons to prepare, any sales and use tax return required to be filed under this part. For purposes of this paragraph, the preparation of a substantial portion of any sales and use tax return required to be filed under this part shall be considered the equivalent of preparing that return in its entirety. A person is not a “paid preparer” as defined in this paragraph solely by reason of doing any of the following:

(A) Furnishing typing, reproduction, or other mechanical assistance.

(B) Preparing in a fiduciary capacity a return for any other person.

(c) Any retailer or other person who fails or refuses to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor punishable as provided in Section 7153.

SEC. 2. Section 6454 of the Revenue and Taxation Code is amended to read:

6454. Except as provided in Sections 6479.3 and 6479.31, a person required to file the return shall deliver the return together with a remittance of the amount of the tax due to the office of the board.

SEC. 3. Section 6479.3 of the Revenue and Taxation Code is amended to read:

6479.3. (a) Any person whose estimated tax liability under this part averages twenty thousand dollars (\$20,000) or more per month,



as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board. Any person who collects use tax on a voluntary basis is not required to remit amounts due by electronic funds transfer.

(b) Any person whose estimated tax liability under this part averages less than twenty thousand dollars (\$20,000) per month or any person who voluntarily collects use tax may elect to remit amounts due by electronic funds transfer with the approval of the board. The election shall be operative for a minimum of one year.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 6451) and Article 1.1 (commencing with Section 6470). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting taxes by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of taxes, exclusive of prepayments, with respect to the period for which the return is required.

(e) (1) Except as provided in paragraph (2), any person required to remit taxes pursuant to this article who remits those taxes by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the taxes incorrectly remitted.

(2) A person required to remit prepayments pursuant to this article who remits a prepayment by means other than an appropriate electronic funds transfer shall pay a penalty of 6 percent of the prepayment amount incorrectly remitted.

(f) Except as provided in Sections 6476 and 6477, any person who fails to pay any tax to the state or any amount of tax required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511), within the time required shall pay a penalty of 10 percent of the tax or amount of tax, in addition to the tax or amount of tax, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the tax or the amount of tax required to be collected became due and payable to the state until the date of payment.



(g) In determining whether a person's estimated tax liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider tax returns filed pursuant to this part and any other information in the board's possession.

(h) Except as provided in subdivision (i), the penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the taxes due, exclusive of prepayments, for any one return. Any person remitting taxes by electronic funds transfer shall be subject to the penalties under this section and not Section 6591.

(i) The penalties imposed with respect to paragraph (2) of subdivision (e) and Sections 6476 and 6477 shall be limited to a maximum of 6 percent of the prepayment amount.

(j) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

SEC. 3.5. Section 6479.31 is added to the Revenue and Taxation Code, to read:

6479.31. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be in a form as the board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer. The board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the board upon request.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

(d) Unless remittance is made pursuant to Section 6479.3, a person filing any return under this section shall deliver remittance of the amount of the tax due to the office of the board, along with a voucher in a form prescribed by the board, on or before the date the return is required to be filed.

SEC. 4. Section 6480.1 of the Revenue and Taxation Code is amended to read:

6480.1. (a) After service of written notification by the board, on any distribution in this state of motor vehicle fuel subject to the motor vehicle fuel license tax, the distributor shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel is distributed. The prepayment required to be collected by the distributor constitutes a debt owed by the distributor 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 distributor or broker who has consumed the fuel has paid the use tax to the board. Each distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. On each subsequent distribution of that motor vehicle 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 distribution. Each distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel is transferred. The prepayment required to be collected by the broker constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is distributed. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A distributor or broker who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the 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 distributor or broker who has consumed the 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 distribution was made. Failure of the distributor or broker to report prepayments or the distributor's or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, distributor, or broker, either on a temporary or permanent basis or otherwise. The retailer, distributor, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(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 rate per gallon, rounded to the nearest one-half of one cent, 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, and 7202, 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 distributor, broker, and retailer of motor vehicle fuel. In the event 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, the board may readjust the rate.

SEC. 4.2. Section 6480.6 of the Revenue and Taxation Code is amended to read:

6480.6. (a) The following persons who have paid prepayment amounts either directly to the board or to the person from whom it was purchased, on the distribution of motor vehicle fuel which was subject to the motor vehicle fuel license tax, shall be refunded those amounts:

(1) Any person who exports the motor vehicle fuel for subsequent sale outside this state.

(2) Any person who sells the motor vehicle fuel which is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

(3) Any person who has lost the motor vehicle fuel through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident, prior to any retail sale.

(4) Any person who is unable to collect the prepayment from the purchaser insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes. If partial payments have been made, the payments shall be prorated between amounts due for fuel and amounts due for the related prepayment. If any of those accounts are thereafter in whole or in part collected by the seller, the gallons of fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the prepayment thereon paid with



the return. As a condition for eligibility for refund, the board may require the seller to submit periodical reports listing accounts delinquent for a 90-day period or over.

(5) Any person who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who purchases the motor vehicle fuel from a person who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.

SEC. 4.4. Section 6480.16 of the Revenue and Taxation Code is amended to read:

6480.16. (a) After service of written notification by the board, the producer or importer shall collect prepayment of retail sales tax from the person to whom fuel is first sold in this state. The prepayment required to be collected by the producer or importer constitutes a debt owed by the producer or importer to the 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 producer or importer who has consumed the fuel has paid the use tax to the board. Each producer or importer shall report and pay the prepayment amounts to the board on a form 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 seller shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts that shall be separately stated thereon.

(b) After service of written notification by the board, the jobber shall collect prepayment of the retail sales tax from the person to whom the fuel is sold. The prepayment required to be collected by the jobber constitutes a debt owed by the jobber to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each jobber shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts, and the amounts shall be separately stated thereon.

Each jobber shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is sold. The amount of prepayment paid by the jobber to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the jobber to the board.

(c) A producer, importer, or jobber who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the



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 producer, importer, or jobber who has consumed the 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 sales were made. Failure of the producer, importer, or jobber to report prepayments or the producer's, importer's, or jobber's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, producer, importer, or jobber, either on a temporary or permanent basis or otherwise. The retailer, producer, importer, or jobber shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) 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 (\$.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, and 7202, 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 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 producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel rounded to the nearest one-half of one cent (\$.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, and 7202, 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 and other qualifying fuels 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 producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate. Notwithstanding any other provision of this section, sales or exchanges of fuel between those persons exempt from license taxes pursuant to paragraph (3) of subdivision (a) of Section 7401 shall be exempt from prepayment of sales tax.

SEC. 5. Section 6592 of the Revenue and Taxation Code is amended to read:

6592. If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, and 7051.2.

Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

SEC. 6. Section 7273 of the Revenue and Taxation Code is amended to read:

7273. In addition to the amounts otherwise provided for preparatory costs, the board shall charge an amount for its services in administering the transactions and use tax determined by the board, with the concurrence of the Department of Finance, as follows:

(a) Beginning with the 1993-94 fiscal year, the amount charged shall be based on the total special taxing jurisdiction costs reflected in the annual Budget Act. This amount comprises the categories of direct, shared, and central agency costs incurred by the board and shall include the following:

(1) The amount charged to each entity shall be based on the recommendations incorporated in the March 1992, report by the Auditor General entitled "The Board of Equalization Needs To Adjust Its Model For Setting Reimbursement Rates For Special Tax Jurisdictions."

(2) The amount charged may be adjusted in the current fiscal year to reflect the difference between the board's budgeted costs and any significant revised estimate of costs. Any adjustment shall be subject to budgetary controls included in the Budget Act. Prior to any adjustment, the Department of Finance shall notify the Chairperson of the Joint Legislative Budget Committee not later than 30 days prior to the effective date of the adjustment.



(3) For the 1995–96 fiscal year and each fiscal year thereafter, the amount charged shall be adjusted to reflect the difference between the board's recovered costs and the actual costs incurred by the board during the fiscal year two years prior.

(b) The board shall, by June 1 of each year, notify districts of the amount that it anticipates will be assessed for the next fiscal year. The districts shall be notified of the actual amounts that will be assessed within 30 days after enactment of the Budget Act for that fiscal year.

(c) The amount charged a transactions and use tax district that becomes operative during the fiscal year shall be estimated for that fiscal year based on that district's proportionate share of direct, indirect, and shared costs.

(d) The amounts determined by subdivision (a) shall be deducted in equal amounts from the quarterly allocation of taxes collected by the board for a given district.

(e) For the 1998–99 fiscal year and each fiscal year thereafter, the amount charged to a district by the board shall not exceed the lesser of the amount as a percentage of revenue the board would have charged for the 1998–99 fiscal year, or the first full year of a new district's operations under this section as it read prior to the amendments made by the act adding this subdivision, or the following percentages:

(1) For districts imposing a transactions and use tax of one-half of 1 percent or greater, the amount charged by the board shall not exceed 1.5 percent, for the 1998–99 fiscal year and each fiscal year thereafter.

(2) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax ranging from one-quarter of 1 percent up to but less than one-half of 1 percent shall not exceed 3 percent.

(3) Beginning with the 1998–99 fiscal year and in each fiscal year thereafter, the amount charged to a district imposing a transactions and use tax below one-quarter of 1 percent shall not exceed 5 percent.

(f) The board shall report to the Chairperson of the Senate Committee on Budget and Fiscal Review and the Chairperson of the Assembly Committee on Budget by March 1, 1999, and January 1, 2000, on the actions the board will take to adjust its costs commensurate with the changes in reimbursements effected by this bill. The report shall analyze the impact of the reduced reimbursements on the board's budget and how the board's actions may impact its revenue-producing activities. The board may not reduce positions that are responsible for the generation or receipt of revenues, including, but not limited to, positions in the audits and compliance programs.

SEC. 7. Section 7354 of the Revenue and Taxation Code is amended to read:



7354. The license tax shall be imposed upon only one distribution of the same motor vehicle fuel, except where a refund or credit has been allowed pursuant to subdivision (f) of Section 8101 or Section 8106.7, and except as may otherwise be provided in this part.

In determining the value of the motor vehicle fuel for any and all taxes according to value, there shall be excluded from the value the amount of motor vehicle fuel tax imposed.

SEC. 8. Section 8101 of the Revenue and Taxation Code is amended to read:

8101. The following persons who have paid a license tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax:

(a) Any person who buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state, except vehicles subject to identification under Division 16.5 (commencing with Section 38000) of the Vehicle Code, which are used for recreational purposes or are rented or leased for recreational purposes, and, on and after July 1, 1974, except motor vehicles subject to registration under Division 3 (commencing with Section 4000) of the Vehicle Code while engaged in off-highway recreational use.

(b) Any person who exports the motor vehicle fuel for use outside of this state. Motor vehicle fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the motor vehicle fuel becomes subject to tax as an "import" under the laws of the destination state.

(c) Any person who sells the motor vehicle fuel to the armed forces of the United States for use in ships or aircraft or for use outside this state, under circumstances that would have entitled him or her to an exemption from the payment of the license tax under Section 7401 had he or she been the distributor of this fuel.

(d) Any person who buys and uses the motor vehicle fuel in any construction equipment which is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(e) Any distributor who sells motor vehicle fuel which is sold to any consulate officer or consulate employee under circumstances which would have entitled the distributor to an exemption under paragraph (6) of subdivision (a) of Section 7401 if the distributor had sold the motor vehicle fuel directly to the consulate officer or consulate employee.

(f) Any distributor who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who acquires the motor vehicle fuel from a distributor who is not



authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

SEC. 9. Section 8106.7 is added to the Revenue and Taxation Code, to read:

8106.7. In lieu of the collection and refund of the tax on motor vehicle fuel purchased by a licensed distributor who is entitled to claim a refund of tax under subdivision (f) of Section 8101, credit may be given the distributor upon his or her tax return and the determination of the amount of his or her tax in accordance with those rules and regulations as the board may prescribe.

SEC. 10. Section 8127.6 is added to the Revenue and Taxation Code, to read:

8127.6. A distributor who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, and who paid tax reimbursement to a distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, may not seek tax reimbursement from another distributor who is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401. However, the distributor may seek a refund, pursuant to subdivision (f) of Section 8101, of the tax reimbursement it paid to the distributor who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.

SEC. 11. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

