

Amend Revenue and Taxation Code Sections 6480.1 and 60116 of the Sales and Use Tax Law and Diesel Fuel Tax Law, respectively, to make technical and administrative changes related to the fuel tax swap legislation. Both the prepayment rate of the sales tax and the Interstate User rate for diesel fuel have adjustment dates that would be changed to coincide with the annual diesel and gasoline fuel excise tax rate adjustment, as specified in the fuel tax swap bills.

Source: Sales and Use Tax and Property and Special Taxes Department

SALES AND USE TAX LAW. Amend Section 6480.1 to make technical and administrative changes related to the sales tax prepayment rate to coincide with the annual diesel and gasoline fuel excise tax rate adjustments, and allow the Board of Equalization (BOE) to notify fuel vendors of a new prepayment rate by means other than "mail."

Existing Law. Section 6480.1 of the Sales and Use Tax Law provides that a supplier of motor vehicle fuel (gasoline), diesel fuel, or aircraft jet fuel is required to collect a prepayment of retail sales tax from the person to whom the gasoline, aircraft jet fuel, or diesel fuel is sold or distributed. The BOE is required to determine and set the rates by November 1 of the year prior to the effective date of the rates and mail notification to every supplier, wholesaler, and retailer of gasoline, diesel fuel, and aircraft jet fuel by January 1. The adjusted prepayment rates are generally effective from April 1 through March 31 of the following year.

In late March 2010, two "fuel tax swap" measures were enacted (ABx8 6, Ch. 11, and SB 70, Ch. 9), that made several changes to the imposition and rates of state taxes on transactions involving transfers of motor vehicle fuel and diesel fuel. Minor revisions were made to the fuel tax swap provisions with the passage of AB 105 (Ch. 6, Stats. 2011). This fuel tax swap is intended to be revenue neutral, so that the state's tax revenues would not be increased or decreased, nor would taxpayers' share of the tax burden be affected. To maintain revenue neutrality, these "swap" provisions require the BOE, beginning on July 1, 2011 for gasoline, and July 1, 2012 for diesel, to adjust the excise tax rates – either upwards or downwards - so that the overall revenues derived from the imposition of state excise tax and sales and use tax on sales of motor vehicle and diesel fuel remain the same. The BOE is required to determine the adjusted excise tax rates by March 1, of the fiscal year immediately preceding the applicable fiscal year.

The current process of adjusting the sales tax prepayment rate in November, to be effective in April, could result in additional time and costs associated with adjusting the rates at two different times and sending multiple annual notices to approximately 8,400 fuel suppliers, wholesalers, and retailers. In addition, fuel suppliers would also be affected as they would have to reprogram or adapt their billing and reporting systems at different times, thereby resulting in additional costs or potential for errors.

Background. The prepayment of retail sales tax on gasoline was added by the passage of Senate Bill 1610 (Ch. 214, Stats. 1986), and by SB 1302 (Ch. 865, Stats. 1999) for diesel fuel. Prior to the passage of these bills, sales tax on gasoline and diesel fuel was only collected on the final retail sale. Before the requirement for prepayment of retail sales tax on the fuel, tax evasion by service stations was a problem. Due to the number of retail service stations in the state, and the nature of

operations, many service stations would either fail to obtain the necessary seller's permit, or they would obtain the permit but fail to report the entire tax liability from their retail sales. By requiring the prepayment of the retail sales tax on the fuel, 80 percent of the retail sales tax is collected in advance. Since the retailer is required to prepay a large portion of its sales tax liability, each retailer has an incentive to report the correct sales amount and recoup the tax already paid to its supplier. Also, information on how many gallons of fuel are sold to each vendor is documented. BOE staff uses this information to trace the flow of fuel from seller to seller and ultimately reconcile those numbers with the final retail sale.

This Proposal. This proposal is a housekeeping measure that would align the adjustment dates of the gasoline and diesel fuel sales tax prepayment rates with the excise tax rate adjustments for both gasoline and diesel fuel as required by the fuel tax swap. The dates would be changed so that, if and when there are adjustments to the gasoline and diesel fuel excise tax rates, they would also be accounted for in the sales tax prepayment rate.

This proposal would reduce the time and costs associated with adjusting the rates at two different times, for both the BOE and the affected industry.

Technical changes would also allow the BOE to notify fuel vendors of a new prepayment rate by means other than mail and would make a clarifying reference to the additional sales tax on diesel fuel set to take effect on July 1, 2011 (Section 6051.8).

DIESEL FUEL TAX LAW. Amend Section 60116 to make an administrative change related to the date the Interstate User component b rate is set and takes effect, to coincide with the annual diesel fuel excise tax rate adjustment.

Existing Law. As described previously, the fuel tax swap bills affected taxes on diesel fuel in the following ways:

- Beginning July 1, 2011, increased the sales and use tax rate by 1.87%¹ on sales of diesel fuel and exempt from the sales and use tax rate increase purchases by diesel fuel users currently exempt from the excise tax on diesel fuel if they furnish the seller with an exemption certificate completed in accordance with BOE guidelines. This includes train operators, exempt bus operators, and other users who may file claims for refund of diesel fuel tax paid on fuel used off-highway or for any other exempt manner.
- Also beginning July 1, 2011, decreased the excise tax rate on diesel fuel by 5.0 cents per gallon.
- The BOE will be responsible for balancing revenue losses against the revenue gains. For diesel fuel, the BOE will adjust the excise tax rate, up or down, so that

¹ *The sales and use tax rate increase changes to 2.17% effective July 1, 2012; to 1.94% effective July 1, 2013; and to 1.75% effective July 1, 2014, and thereafter. (Legislation enacted in 2010 increased the sales and use tax rate on sales of diesel fuel by 1.75%, effective July 1, 2011, but AB 105 replaced that legislation and increased the rate further to 1.87%).

the revenue loss equals the amount of revenue gain from the sales and use tax increase of 1.87% on diesel fuel.

- Rate adjustments will be determined by March 1 and will be effective during the state's next fiscal year, beginning July 1.

Section 60115 of the Diesel Fuel Tax Law requires interstate users of diesel fuel in a qualified motor vehicle to pay a tax that is comprised of the existing excise tax imposed by Section 60050 and the tax prescribed by Section 60116, known as the component b rate. The component b rate is established by determining the average retail price of diesel fuel for a twelve month period, removing the state excise tax and the average overall sales and use tax included in that amount, and then multiplying the remainder by the current state and local sales and use tax rate. The interstate user tax rate is the total of the excise tax rate and the component b rate and is meant to be equivalent to the state's excise and sales and use tax on a gallon of diesel fuel purchased in this state. Interstate users report the interstate user tax rate on their net taxable gallons of diesel fuel consumed in California.

The component b rate is set once each year by October 1 and is effective on January 1 of the succeeding year.

Background. In general, interstate truckers must report all fuel used in California on either their quarterly International Fuel Tax Agreement return or their Interstate Diesel return and pay their tax liability at that time. The interstate user diesel fuel tax is comprised of the current \$0.13 per gallon tax stated under Section 60050 (component "a") and the rate prescribed by Section 60116 (component "b").

The component b rate is set annually by the BOE at a cents-per-gallon rate equivalent to the statewide sales tax imposed on the retail sale of diesel fuel in this state. The component b rate is a sales tax equivalency formula which is intended to level the playing field between California truck stops and out-of-state truck stops. Prior to the component b rate, the general premise was that California's imposition of a sales tax on diesel fuel provided an incentive for interstate truckers to "tank up" before entering California. While the interstate truckers still had to pay the excise tax, which is a per-gallon tax due on the use of diesel fuel on California highways, by purchasing their diesel fuel before entering California they were able to avoid the sales tax imposed on the retail purchase of diesel fuel in this state. The inclusion of the component b rate along with the excise tax rate to make up the interstate user diesel fuel tax was intended to impose a per-gallon surcharge, equivalent to the sales tax, which interstate truckers would only have to pay on diesel fuel purchased outside California.

AB 105 among other things, amended Section 60050 and added Sections 6051.8 and 6201.8 to the Revenue and Taxation Code, to reduce the excise tax rate to \$0.13 and increase the sales and use tax rate by 1.87 percent on diesel fuel effective July 1, 2011. Each year on March 1, the BOE will adjust the excise tax rate, either up or down, to account for any increases or decreases that may have occurred in the overall revenue associated with the sale of diesel fuel in the prior year. The new excise tax rate would take effect on July 1 and be in effect for the fiscal year.

The current process of adjusting the Interstate User component b rate in October, to be effective in January, will result in additional time and costs associated with adjusting the rates a second time and sending special notices to approximately 23,000 motor carriers who use diesel fuel in interstate operations. In addition, the motor carriers would also be affected as they would have to account for the rate change at different times, which could result in additional costs or errors.

This Proposal. Because of the annual adjustment to the excise tax rate on July 1, it would be administratively expedient for the BOE, and convenient for the interstate user, to also set the component b rate at the same time. The excise tax rate combined with the component b rate comprises the interstate user tax rate.

Summary Chart of Deadlines and Dates

Tax	Rate Setting Date		Effective Date of Rate Change	
	Current Law	Proposed Law	Current Law	Proposed Law
Sales Tax Prepayment	November 1st	March 1st	April 1st	July 1st
Interstate User component b Diesel Fuel Tax Rate	October 1st	March 1st	January 1st	July 1st
Fuel Tax Swap - Excise Tax	March 1st		July 1st	

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

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from

his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her purchaser with an invoice for or other evidence of the collection of the prepayment amounts, which shall be separately stated thereon.

(2) Each wholesaler shall report to the board, in a form as prescribed by the board and for the period in which the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the following:

(A) The number of gallons of fuel sold and the amount of sales tax prepayments collected by the wholesaler.

(B) The number of tax-paid gallons purchased and the amount of sales tax prepayments made by the wholesaler.

(C) In the event that the amount of sales tax prepayments collected by the wholesaler is greater than the amount of sales tax prepayments made by the wholesaler, then the excess constitutes a debt owed by the wholesaler to the state until paid to the board, or until satisfactory proof has been submitted that the retailer of the fuel has paid the tax to the board.

(c) A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices, or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents (\$0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) The rate of prepayment required to be collected for motor vehicle fuel, aircraft jet fuel, and diesel fuel as established by the board in effect January 1, 2013, shall remain in effect through June 30, 2013.

(g) ~~(f)~~ On ~~April~~July 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent (\$0.005), of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as ~~determined~~reported by the ~~State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report,"~~ industry publications 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~~March 1 of the same year as ~~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~~May 1, notify ~~by mail~~ every supplier, wholesaler, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases or an exemption from sales tax for sales of fuel is enacted, and the established rate results in or could result in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

~~(h)~~(g) On ~~April~~July 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than ~~November~~March 1 of the same year as ~~prior to~~ the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of aircraft jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than ~~January~~May 1, notify ~~by mail~~ every supplier, wholesaler, and retailer of aircraft jet fuel. In the event the price of aircraft jet fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

~~(i)~~ ~~(h)~~ On ~~April~~July 1 of each succeeding year, the prepayment rate per gallon for diesel fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 6051.8, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no

later than ~~November~~ March 1 of the same year ~~as prior to~~ the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than ~~January~~ May 1, notify ~~by mail~~ every supplier, wholesaler, and retailer of diesel fuel. In the event the rate of sales tax imposed on sales of diesel fuel increases or decreases or the price of diesel fuel decreases or increases, and the established rate results in or could result in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

~~(j)~~ (i) (1) Notwithstanding any other provision of this section, motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser who, pursuant to a contract with the State of California or its instrumentalities, resells that fuel to the State of California or its instrumentalities shall be exempt from the prepayment requirements.

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

(A) The qualified purchaser does not take possession of the fuel at any time.

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

(3) For purposes of this subdivision, "qualified purchaser" means a wholesaler who does not have or maintain a storage facility or facilities for the purpose of selling motor vehicle fuel.

Section 60116 of the Revenue and Taxation and Code is amended to read:

60116. (a) Commencing on January 1, 1998, and on each January 1 up to and including January 1, 2013 ~~thereafter~~, the board shall establish a tax rate per gallon, rounded to the nearest tenth of a cent, by multiplying the average retail price per gallon (including the federal excise tax and excluding the state excise tax and the sales and use tax) of diesel fuel sold in this state by a percentage equal to the combined state and local sales tax rate established by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution. The average retail price per gallon shall be the average of weekly retail prices for the 12-month period ending August 31 of the year prior to the effective date of the new rate. In determining the average retail price per gallon, the board shall use the weekly average retail price published by the State Energy Resources Conservation and Development Commission, in its publication "Fuel Price And Supply Update." In the event the "Fuel Price And

Supply Update" is delayed or discontinued, the board may base its determination on other sources of the average retail price of diesel fuel. The board shall make its determination of the rate no later than October 1 of the year prior to the effective date of the new rate.

(b) The tax rate established by the board on January 1, 2013, shall remain in effect only through June 30, 2013.

(c) Commencing on July 1, 2013, and on each July 1 thereafter, the board shall establish a tax rate per gallon, rounded to the nearest tenth of a cent, by multiplying the average retail price per gallon (including the federal excise tax and excluding the state excise tax and the sales and use tax) of diesel fuel sold in this state by a percentage equal to the combined state and local sales tax rate established by Part 1 (commencing with Section 6001) and Part 1.5 (commencing with Section 7200) of Division 2 of the Revenue and Taxation Code and Section 35 of Article XIII of the California Constitution. The average retail price per gallon shall be the average of weekly retail prices for the 12-month period ending on the last day of January prior to the effective date of the new rate. In determining the average retail price per gallon, the board shall use the weekly average retail price as reported by the United States Energy Information Administration (EIA). In the event the EIA information is delayed or discontinued, the board may base its determination on other sources of the average retail price of diesel fuel. The board shall make its determination of the rate no later than March 1 of the same year as the effective date of the new rate.