

**Add Section 6480.10 to the Revenue and Taxation Code to allow specified suppliers and wholesalers of motor vehicle and/or diesel fuel a credit for their costs in complying with the Sales and Use Tax and the Fuel Taxes Laws.**

**Source: Honorable Betty T. Yee**

**Existing Law**

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 (gasoline and aviation gasoline) and diesel fuel. For motor vehicle fuel, these changes became operative July 1, 2010, and for diesel fuel, the changes will become operative on July 1, 2011. The attached chart provides an overview of the specific changes, but in short, the “swap” reduces the sales and use tax imposed on sales of gasoline and replaces the lost revenues with an increase in the gasoline excise tax in 2010. In 2011, it reduces the excise tax rate on diesel fuel, and replaces the lost revenues with an increase in the sales and use tax rate imposed on diesel fuel sales. The “swap” maintained the status quo on fuels that have either full or partial exemptions from the sales and use tax such as aviation gasoline and diesel fuel used in farming activities, or full or partial excise tax exemptions, such as diesel used in farming operations, or by train operators or certain bus operators. 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 Board, 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.

**This Proposal**

This proposal would authorize a fuel supplier or fuel wholesaler to claim a credit of 2.5 percent, up to a maximum credit of \$75,000 annually, of the total excise tax and sales tax prepayments paid by that supplier or wholesaler – either to the Board or to the sellers from whom the supplier or wholesaler acquired the fuel – to compensate them for their compliance costs. The proposal would enable only those suppliers and wholesalers subject to the prepayment collection requirement to claim the credit, and the proposal would enable them to claim it on their sales tax prepayment forms (retail service stations, for example, would generally not be eligible for this credit). Any balance may be refunded by the Board, or applied as a credit on subsequent sales tax prepayment forms. This proposal would require the Board to allocate any credit claimed or refunded in a manner so that the credit amount or refunded amount is withdrawn from the state’s General Fund. These provisions would become operative on July 1, 2011.

According to the California Independent Oil Marketers Association (CIOMA), the complexities of the fuel tax swap that were not present in the previous tax structure require significant and expensive modification of marketers' and distributors' computer software. Preliminary results from a survey conducted by CIOMA indicate that one-time costs will range from \$5,000 - \$20,000 per company, with recurring programming costs of \$2,000 - \$3000 annually. Other costs may include the need for new invoicing forms and costs related to billing separately for fuels with unique tax treatments (such as sales to farmers and sales of aviation gasoline).

CIOMA indicates that this burden falls directly on small, family-owned businesses already struggling with the slower economy and substantial reductions in fuel volume business. Larger fuel suppliers avoid much of the cost since they collect excise taxes at only a few distribution locations in the state, and have little sales tax reporting obligations where tax changes can be accommodated easily, and are not responsible for determining the applicable sales tax on specially taxed products.

The Board has between 600 to 700 suppliers and wholesalers that are subject to the precollection of retail sales tax on motor vehicle fuel and diesel fuel that would be entitled to the proposed credit.

Of the various taxes and fees administered by the Board, a credit for a taxpayer's or feepayer's costs to comply with the law is allowed under three programs: the California Tire Fee Law, the Electronic Waste Act of 2003 (covered electronic waste recycling fee or eWaste fee), and the Cigarette and Tobacco Products Tax Law.

The California Tire Fee Law authorizes a retail seller to retain 1.5 percent of the fee as reimbursement for collection costs. The fee is imposed on the consumer, but required to be collected by the retail seller. Similar to the California Tire Fee Law, the Electronic Waste Act of 2003 imposes the eWaste fee on the consumer and is required to be collected by the retail seller. Under that program, a retail seller is authorized to retain 3 percent of the fee as reimbursement for collection costs. And lastly, the Cigarette and Tobacco Products Tax Law provides that cigarette tax stamps are to be sold to licensed distributors at a discount of 0.85 percent of their denominated value, which is intended to help defray the cost (leasing of equipment/labor cost) to the distributor for affixing the stamps.

SECTION 1. *Section 6480.10 is added to the Revenue and Taxation Code to read:*

6480.10. (a)(1) A supplier or wholesaler subject to this article shall be allowed a credit of 2.5 percent, up to a maximum of seventy-five thousand dollars (\$75,000) annually, of the supplier's or wholesaler's fuel tax obligations for the costs associated with compliance with this part, Part 2 (commencing with Section 7301) and Part 31 (commencing with Section 60001).

(2) For purposes of this section, "fuel tax obligations" means the following:

(A) The amount of prepayment of retail sales tax imposed pursuant to Section 6480.1 due for the period, whether collected by the supplier or wholesaler or paid to a seller from whom the supplier or wholesaler acquired the fuel during the period, and

(B) The amount of motor vehicle fuel tax imposed pursuant Part 2 (commencing with Section 7301) or diesel fuel tax imposed pursuant to Part 31 (commencing with Section 60001) due for the period, whether due from the supplier or wholesaler to the Board or paid to the seller from whom the supplier or wholesaler acquired the fuel during the period.

(b)(1) The supplier or wholesaler may claim the credit upon his or her prepayment form for the period in which the fuel tax obligations are due by the supplier or wholesaler, or for the period in which the fuel tax obligations are paid to the seller. The balance, if any, may be refunded by the board to the supplier or wholesaler, or applied as a credit on subsequent prepayment forms until that credit is exhausted.

(2) Notwithstanding paragraph (1), any credit claimed by a supplier or wholesaler or any amount refunded by the board pursuant to this section shall be allocated by the board in a manner so that the amount credited or refunded is withdrawn only from the General Fund.

(c) This section shall become operative on and after July 1, 2011.

SEC.2. (a) The Director of Finance shall transfer up to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) from the General Fund to the State Board of Equalization to implement this act.

### Fuel Tax Swap

#### Motor Vehicle Fuel

	7/1/2010	7/1/2011 and thereafter
Sales and use tax*	6% GF decrease	5% GF decrease
Excise tax*	17.3 cent/gallon increase	To be determined by BOE <sup>1</sup>
Floor stock tax	17.3 cent/gallon**	

\*Aviation gasoline is exempt from the excise tax increase and floor stock tax (sales of aviation gasoline continue to be completely exempt from state, local and district sales and use tax)

\*\*Each supplier, wholesaler, and retailer is required to file a return and pay a floor stock tax of 17.3 cents per gallon on tax-paid gasoline (except aviation gasoline) in storage of 1,000 gallons or more by August 31, 2010, payable to the State Controller.

#### Diesel Fuel

	7/1/2011	7/1/2012 and thereafter
Sales and use tax*	1.75% GF increase	1.75% GF increase
Excise tax	4.4 cent/gallon decrease	To be determined by BOE

\*Those persons that currently qualify for the sales and use tax exemption for sales of diesel fuel used in farming activities are exempt from the increase. Also, those purchases by diesel fuel users currently exempt from the excise tax on diesel fuel are exempt from the sales and use tax rate increase if they furnish the seller with an exemption certificate completed in accordance with Board 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.

---

<sup>1</sup> The Board is responsible for balancing revenue losses against the revenue gains. For gasoline, the Board will adjust the excise tax rate, up or down, so that the revenues equal the amount of General Fund revenue losses attributable to the state General Fund sales and use tax exemption on gasoline. For diesel fuel, the Board will adjust the excise tax rate, up or down, so that the revenue loss equals the amount of revenue gain from the sales and use rate increase of 1.75% on sales of diesel fuel.

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

*Note- The fuel swap provisions also allow the Board to adjust the sales tax prepayment rates on motor vehicle fuel and diesel fuel if the established rate could result in prepayments that consistently exceed or are significantly lower than the retailer's sales tax liability.*