



**STATE BOARD OF EQUALIZATION  
STAFF LEGISLATIVE ENROLLED BILL ANALYSIS**

**DRAFT**

Date:	<b>Enrolled</b>	Bill No:	<a href="#"><u>Senate Bill 1485</u></a>
Tax Program:	<b>Fuel Taxes</b>	Author:	<b>Kehoe</b>
Sponsor:	<b>CIOMA</b>	Code Sections:	<b>RTC 8101</b>
Related Bills:		Effective Date:	<b>Upon enactment</b>

**BILL SUMMARY**

This bill authorizes a person who uses tax-paid motor vehicle fuel (gasoline) as a blending component of a fuel taxed under the Use Fuel Tax Law to receive a refund of the excise tax that was paid on that gasoline.

**ANALYSIS**

**CURRENT LAW**

Under the Use Fuel Tax Law (UFTL) (Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code (RTC)), the state imposes an excise tax of \$0.18 per gallon for use of fuels. Section 8604 of the UFTL defines “Fuel” to include any combustible gas or liquid used in an internal combustion engine for propulsion on the highway except fuel that is subject to the tax imposed by Part 2 (commencing with Section 7301) or Part 31 (commencing with Section 60001) of Division 2 of the RTC, the Motor Vehicle Fuel Tax Law (MVFTL) or Diesel Fuel Tax Law (DFTL), respectively. For liquefied petroleum gas (LPG), liquid natural gas (LNG), and compressed natural gas (CNG), which are types of use fuels, the excise tax rates are \$0.06 and \$0.06 per gallon, and \$0.07 per 100 cubic feet, respectively.

The UFTL defines ethanol and methanol as containing not more than 15 percent gasoline and also sets the rate at one half the \$0.18 rate specified in Section 8651, or \$0.09. Ethanol and methanol containing more than 15 percent gasoline is defined as gasohol under the MVFTL. Although the use fuel tax is imposed on the use of the fuel, pursuant to Section 8732 of the UFTL, the vendor who sells or delivers such fuel is required to collect the tax from the user and give the user a receipt.

Under the MVFTL, the state imposes an excise tax of \$0.357 per gallon (\$0.18 excise tax and \$0.177 surtax) on the removal of gasoline (except for aviation gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person. Section 8101 of the MVFTL requires the refund of the excise tax paid on gasoline to certain persons under certain circumstances.

**PROPOSED LAW**

This bill amends Section 8101 to allow a refund of the gasoline excise tax to any person who buys gasoline for the purpose of producing a blended fuel that is used to operate a motor vehicle on the state’s highways, when that blended fuel is taxed as a use fuel, but only to the extent that a refund claim has been filed on or after January 1, 2011.

The bill also adds uncodified language to clarify the legislative intent.

**IN GENERAL**

With respect to California excise tax on gasoline, the Board of Equalization (BOE) is responsible for registration, licensing, return processing, auditing functions, and appeals, while the State Controller's office (SCO) is responsible for the collection of delinquent gas taxes and the refund of excise taxes on gasoline not used on highway.

Under the UFTL, vendors are required to be licensed with the BOE, but the blenders (producers of blended use fuel) are not. As such, vendors are required to file returns and report the collection of the tax to the BOE, but there are no reports or returns that are required of the blenders.

No special permit is required from the BOE for a person producing an alcohol fuel containing 15 percent or less gasoline or diesel fuel, whether the alcohol fuel is produced within a petroleum terminal or below the rack. E85 fuel, an ethanol and gasoline blend, is the most predominant blended fuel under the UFTL. A use fuel vendor is responsible for reporting and paying the use fuel tax on E85 delivered into a fuel tank of a motor vehicle. The vendor is required to collect and remit to the BOE the \$0.09 per gallon use fuel tax on the full volume of E85 sold or dispensed from a retail pump. A "vendor" includes every person who sells fuel in this state and places, or causes to be placed, the fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle.

The point of collection of the gasoline tax is different from the use fuel tax; the gasoline tax is generally collected high up the distribution chain at the terminal "rack" level. The terminal rack level is a level in the distribution chain at a refinery or a storage and distribution facility at the end of a pipeline where gasoline is delivered through a mechanism (the "rack" as it leaves the refinery or storage facility) into ground transportation, such as a truck, trailer, or railroad car.

E85 fuel is a product of blending two components, ethanol fuel and gasoline. Where the blending takes place has an effect on the gasoline taxes paid. If the blended E85 is provided at the "rack" level, then the blended product is a use fuel and the total blended volume is subject to the use fuel tax, and the vendor is responsible for reporting and paying the tax. However, if the E85 is blended below-the-rack, where the two component fuels are purchased separately and blended elsewhere in the distribution chain, the gasoline tax has been paid and passed on by the supplier at the "rack" and, when the gasoline is blended with the ethanol, the resulting E85 fuel is then subject to the use fuel tax on the full volume.

In October 2011 the BOE issued a special notice for producers of E85 fuel,<sup>1</sup> which explained that below-the-rack blenders are not entitled to a refund of the MVF tax paid on the gasoline fuel component of E85.

**COMMENTS**

- 1. Sponsor and Purpose.** This bill is sponsored by the California Independent Oil Marketers Association (CIOMA) and is intended to provide that E85 blenders are entitled to a refund of the gasoline tax.

---

<sup>1</sup> State Board of Equalization, *Special Notice: Important Information for Producers of E85 Fuel*, October 2011. <http://www.boe.ca.gov/sptaxprog/pdf/1286.pdf>

2. **Amendments.** The **August 24, 2012 amendments** added uncodified legislative intent language. The **August 20, 2012 amendments** clarified that *tax-paid* gasoline must have been used to make the blended fuel, and that a person must *submit* or have submitted the refund application on or after January 1, 2011, as well as delete the requirement that the person seeking the refund can show the fuel tax was paid on the blended fuel. The **August 7, 2012 amendments** made technical, non-substantive corrections. The amendment is a technical correction to refer to the California fuel *tax*, and a grammatical correction to clarify that refund applications *must have* been submitted on or after January 1, 2011.
3. **The SCO administers the specific refund provisions of the MVFTL, including Section 8101.** The refund of the gasoline tax for purposes other than operating a motor vehicle on the public highway of the state and other exempt uses is administered by the SCO. The SCO has determined that below-the-rack E85 blenders are not entitled to a refund of the gasoline tax paid on the gasoline used in E85 because the blending of gasoline to create a different fuel product does not constitute a “use” for purposes other than operating motor vehicles upon the highways of the state within the meaning contained in the MVFTL.
4. **Below-the-rack blenders sell the E85 with the tax-paid gasoline included in the cost of the product.** As explained previously, the below-the-rack blenders may incorporate the cost of the gasoline component, including the gasoline tax, into the base selling price of the E85 fuel when it is sold to the vendor. The vendor that sells that E85 fuel must collect the use fuel tax on the full volume of the E85 fuel. The result is that the gasoline component has been taxed under both the MVFTL and the UFTL. The BOE has advised vendors that the gasoline tax should not be separately stated on an invoice to the customer since the gasoline tax is included in the cost of the E85 fuel and is not a tax on the use fuel that is the subject of the invoice.

#### **COST ESTIMATE**

The provisions of this bill does not result in any additional costs to the BOE.

#### **REVENUE ESTIMATE**

This bill provides for a refund of tax-paid gasoline that is used to produce a blended fuel that will be used to operate motor vehicles upon the highways of this state that is taxed under the UFTL.

Approximately 3,600,000 E85 gallons are blended below-the-rack in a year; based on that amount, we estimate 540,000 ( $3,600,000 \times 15\% = 540,000$ ) gallons of tax-paid gasoline are used to produce E85 fuel. The excise tax rate for gasoline will be thirty-six cents (\$0.36) for the fiscal year beginning July 1, 2012. Therefore, the ongoing fiscal year revenue loss amounts to approximately \$194,400 ( $540,000 \times \$0.36 = \$194,400$ ).

Analysis prepared by:	John Cortez	916-445-6662	09/04/12
Contact:	Robert Ingenito	916-445-0840	
Is			1485sbENR12jc.docx

*This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position*