

State of California
BOARD OF EQUALIZATION

DIESEL FUEL TAX REGULATIONS

Regulation 1431. DIESEL FUEL USED ON A FARM FOR FARMING PURPOSES.

Reference: Revenue and Taxation Code Sections 60036, 60037, 60038, 60058, 60100, 60151, 60501, 60502, and 60512.

The following provisions and definitions apply for purposes of the exemption from the backup tax pursuant to Revenue and Taxation Code Section 60100(a)(5)(A), and the refund of tax to the ultimate vendor pursuant to Revenue and Taxation Code Section 60502.

(a) The term “used on a farm for farming purposes” applies only to diesel fuel which is used (i) in carrying on a trade or business of farming, (ii) on a farm in California, and (iii) for farming purposes.

(b) A person will be considered to be engaged in the “trade or business of farming” if the person cultivates, operates, or manages a farm for gain or profit, either as an owner or a tenant. A person engaged in forestry or the growing of timber is not thereby engaged in the trade or business of farming. A person who operates a garden plot, orchard, or farm for the primary purpose of growing produce for the person’s own use is not considered to be engaged in the trade or business of farming. Generally, the operation of a farm does not constitute the carrying on of a trade or business if the farm is occupied by a person primarily for residential purposes or is used primarily for pleasure, such as for the entertainment of guests or as a hobby.

(c) The term “farm” is used in its ordinary and accepted sense, and generally means land used for the production of crops, fruits, or other agricultural products or for the sustenance of livestock or poultry. The term “livestock” includes cattle, hogs, horses, mules, donkeys, sheep, goats, and captive fur-bearing animals. The term “poultry” includes chickens, turkeys, geese, ducks, and pigeons. Thus, a farm includes livestock, dairy, poultry, fish, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, orchards, feed yards for fattening cattle, and greenhouses and other similar structures used primarily for the raising of agricultural or horticultural commodities. Greenhouses and other similar structures that are used primarily for purposes other than the raising of agricultural or horticultural commodities do not constitute farms, as for example, structures that are used primarily for the display, storage, fabrication, or sale of wreaths, corsages, and bouquets. A fish farm is an area where fish are grown or raised, as opposed to merely caught or harvested.

(d) Diesel fuel will be considered to be used for “farming purposes” when it is used on a farm by the owner, tenant, or operator of the farm in connection with the activities described in this subdivision. Diesel fuel will be considered to be used for “farming purposes” when it is used on a farm by a person other than the owner, tenant, or operator of the farm for any of the purposes described in subdivision (d)(1).

(1) Cultivating the soil, raising or harvesting any agricultural or horticultural commodity, or raising, shearing, feeding, caring for, training, or managing livestock, poultry, bees, or wildlife. Examples of operations which are considered to be operations for “farming purposes” within the meaning of this paragraph include plowing, seeding, fertilizing, weed killing, corn or cotton picking, threshing, combining, baling, silo filling, and chopping silage.

(2) Handling, drying, packing, grading, or storing any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator produced more than one-half of the commodity which was so treated during the year covered by the exemption certificate described in Revenue and Taxation Code Section 60503 which supports the claim for refund.

(3) Planting, cultivating, caring for, or cutting of trees that is incidental to the farming operations of the farm on which it is performed or incidental to the farming operations of the owner, tenant, or operator of the farm, or in connection with the preparation (other than milling) of trees for market that is incidental to these farming operations. These operations include the felling of trees and cutting them into logs or firewood but do not include sawing logs into lumber, chipping, or other milling operations. Operations of the prescribed character will be considered incidental to farming operations only if they are of a minor nature in comparison with the total farming operations involved. Therefore, a tree farmer or timber grower may not claim a refund under Revenue and

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Taxation Code Section 60502 with respect to diesel fuel used in connection with the trade or business of tree farming or timber growing.

(4) Operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment. The activities included are those which contribute in any way to the conduct of the farm as such, as distinguished from any other enterprise in which the owner, tenant, or operator may be engaged. Examples of included operations are clearing land, repairing fences and farm buildings, building terraces or irrigation ditches, cleaning tools or farm machinery, and painting farm buildings. Since the diesel fuel must be used by the owner, tenant, or operator of the farm to which the operations relate, diesel fuel used by an organization which contracts with a farmer to renovate his farm properties is not used for farming purposes. Diesel fuel used in a lawn mower for maintaining a lawn is not used for farming purposes.

(e) Diesel fuel used in connection with the following operations which may occur on a farm will not be considered to be used for farming purposes:

(1) Canning, freezing, packaging, or processing operations. Thus, for example, although diesel fuel used on a farm in connection with the production or harvesting of maple sap or oleoresin from a living tree is considered to be used for farming purposes under paragraph (d)(1) above, diesel fuel used in the processing of maple sap into maple syrup or maple sugar or used in the processing of oleoresin into gum spirits of turpentine or gum resin is not used for farming purposes, even though these processing operations are conducted on a farm.

(2) Processing operations which change a commodity from its raw or natural state, or operations performed with respect to a commodity after its character has been changed from its raw or natural state by a processing operation. For example, diesel fuel used for the extraction of juices from fruits or vegetables is used in a processing operation which changes the character of the fruits or vegetables from their raw or natural state and will not be considered to be used for "farming purposes."

(f) The diesel fuel tax does not apply to diesel fuel used in the operation of an implement of husbandry, truck or farm tractor which does not require registration under the Vehicle Code, which is used on a farm for farming purposes and which only incidentally is operated upon a highway in moving between farms or parts of farms which are in close proximity. For purposes of this subdivision, "incidentally operated" does not include the use of agricultural vehicles for the transportation of persons or property upon the highways in an operation which requires registration of the vehicle under the Vehicle Code.

History: Adopted December 9, 1998, effective March 31, 1999.