

[Senate Bill 16](#) (Beall)

Date: 04/15/15

Program: Motor Vehicle Fuel and Diesel Fuel Tax

Sponsor: Author

Revenue and Taxation Code Sections 7360 and 60050

Effective: Immediately

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This analysis is limited to the provisions which impact the Board of Equalization (BOE).

Summary: Imposes a ten cents (\$0.10) per gallon surtax on motor vehicle fuel (gasoline), and twelve cents (\$0.12) per gallon surtax on diesel fuel, for five years.

Purpose: To create a temporary funding source for the state, counties, and cities to address road maintenance needs.

Fiscal Impact Summary: Total excise and sales tax revenues increase by \$1.945 billion in fiscal year (FY) 2015-16, and \$1.95 billion in FY 2016-17.

Existing Law: The existing Motor Vehicle Fuel Tax Law (MVFTL)¹ and the Diesel Fuel Tax Law² generally impose excise tax on gasoline and diesel fuel upon:

- The removal (except for aviation gasoline) at the refinery or terminal rack.
- The entry into the state; and
- The sale to an unlicensed person.

For FY 2015-16, the gasoline excise tax rate is set at \$0.30 per gallon, and at \$0.13 per gallon on diesel fuel.³

Currently, as part of the “fuel tax swap” measures, since July 1, 2010, retail sales of gasoline are exempt from the state’s 6% General Fund rate. These provisions also increased the sales and use tax rate on retail diesel fuel sales and purchases to offset the loss related to the diesel fuel excise tax rate reduction, resulting in the additional sales and use tax rates detailed below (fuel tax swap).

Under the MVFTL, the Metropolitan Transportation Commission (Commission) has the authority to levy a local tax on gasoline to fund transportation projects.⁴ The Commission is made up of nine Bay Area members that include the City and County of San Francisco, and the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma.

Additionally, the Local Motor Vehicle Fuel Taxation Law⁵ authorizes counties to impose countywide excise taxes on gasoline at increments of one cent per gallon, provided a majority of the voters approve the proposition. The funds collected must be used only for purposes authorized by Article XIX of the California Constitution, such as transportation planning and construction. To date, however, no county imposes a local fuel tax under this authority.

The sales and use tax law provides that the excise tax on gasoline is included in the computation of locally-imposed sales and use tax.⁶ The excise tax imposed on diesel fuel is *not* subject to sales or use tax.⁷

¹ Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code (RTC).

² Part 31 (commencing with Section 60001) of Division 2 of the RTC.

³ The rate was set, as required by statute, at the Board of Equalization (BOE) hearing on February 24, 2015: <http://www.boe.ca.gov/meetings/pdf/2015/022415-022615M.pdf>

⁴ Chapter 12 (commencing with Section 8500) of Part 2 of Division 2 of the RTC.

⁵ Part 4 (commencing with Section 9501) of Division 2 of the RTC.

⁶ Bradley-Burns Uniform Local Sales and Use Tax which is allocated to cities and counties (Part 1.5, commencing with Section 7200) and voter approved Transactions and Use Tax levied at varying rates by some cities, counties,

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In addition, federal law imposes additional per gallon taxes on gasoline and diesel fuel of \$0.184 and \$0.244, respectively.

The fuel tax swap: In 2010, the Legislature enacted two “fuel tax swap” measures⁸ that changed the imposition and rates of state taxes on gasoline and diesel fuel, and require the BOE to determine the appropriate excise tax rate adjustments to maintain revenue neutrality. The gasoline tax changes became operative on July 1, 2010, and the diesel fuel tax changes became operative July 1, 2011.

These provisions⁹ exempt sales and purchases of gasoline from the state General Fund sales and use tax rate. To offset the revenue loss related to this partial exemption, the law increased the gasoline excise tax rate from \$0.18 per gallon to \$0.353 per gallon.¹⁰ Conversely, the statute¹¹ reduced the diesel fuel excise tax rate from \$0.18 to \$0.13 per gallon but increased¹² the sales and use tax rate on diesel fuel sales and purchases to offset the loss related to the diesel fuel excise tax rate reduction, resulting in the following rates:

1.87% effective July 1, 2011

2.17% effective July 1, 2012

1.94% effective July 1, 2013

1.75% effective July 1, 2014, and thereafter.

The fuel tax swap provisions require the BOE to maintain revenue neutrality so that the revenues derived from the increased gasoline excise tax and the increased diesel sales and use tax equals the revenues that would have been derived had the gasoline sales and use tax partial exemption and the diesel fuel excise tax reduction, respectively, not occurred.

RTC Sections 7360 and 60050 require the BOE to adjust the gasoline and diesel fuel excise tax rates, to maintain revenue neutrality. For gasoline, the BOE determines: (1) whether the sales and use tax revenue loss related to the partial exemption was fully offset by the adjusted rate, and (2) the projected sales and use tax revenue loss for the next fiscal year, considering forecasted gasoline prices and consumption.

For diesel fuel, the BOE determines: (1) whether the revenue gain from the increased sales and use tax rate on diesel fuel sales and purchases was fully offset by the adjusted diesel fuel excise tax rate, and (2) the projected sales and use tax revenue gain for the next fiscal year, considering forecasted diesel fuel prices and consumption.

By March 1 each year, the BOE must determine the rate adjustments that apply the following July 1.

Proposed Law: This bill amends RTC Section 7360 to impose a \$0.10 per gallon surtax on gasoline. The subparagraph is inoperative in any fiscal year in which the Road Maintenance and Rehabilitation Program (Road Program, which this bill creates) has not been authorized, pursuant to Streets and Highway Code Section 2030 (b).

The bill also amends RTC Section 60050 to impose a \$0.12 per gallon surtax on diesel fuel. The subdivision is also inoperative in any fiscal year in which the Road Program has not been authorized.

and special taxing jurisdictions in various cities and counties within the state and which are distributed to those local agencies (Parts 1.6 and 1.7, commencing with Section 7251).

⁷ Section 6011(b)(3), defines “sales price,” and Section 6012(a)(4) defines “gross receipts.”

⁸ [ABx8 6](#), (Ch. 11, Stats. 2010) and [SB 70](#) (Ch. 9, Stats. 2010). These provisions were re-enacted in 2011 by [AB 105](#) (Ch. 6, Statutes 2011).

⁹ RTC Section 6357.7.

¹⁰ RTC Section 7360.

¹¹ RTC Section 60050.

¹² RTC Sections 6051.8 and 6201.8.

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The bill adds Chapter 2 (commencing with Section 2030) to Division 3 of the Streets and Highway Code to among other things, authorize the Road Program for fiscal years 2015-16 to 2019-20. If the Legislature does not reauthorize the program beyond the 2019-20 fiscal year, the surcharge would terminate June 30, 2020. The temporary fuel tax surcharge funds would be used to address deferred maintenance on state highways and local streets and roads.

This bill contains an urgency clause and becomes effective immediately.

Background: In 1990, voters approved Proposition 111 which, among other things, increased the tax rate on most motor vehicle fuels from \$0.09 to \$0.14 per gallon, effective August 1, 1990. Further, on January 1, 1991, and each January 1 thereafter through 1994, the excise tax increased by \$0.01 per gallon to the current \$0.18 per gallon.¹³

In 2000, the California Legislature changed the point of taxation up the chain of distribution from the first distribution of the fuel to the removal of the fuel from the refinery or terminal rack. The legislation also provided for a floor stock tax and a backup tax, which applies to the sale and/or delivery of gasoline into the fuel tank of a motor vehicle on which the tax has not been paid or the tax on the fuel has been refunded.¹⁴

Upon enactment of the fuel tax swap in March 2010, the gasoline excise tax rate was increased and included a floor stock tax, which is a way to equalize the excise tax paid on fuel held in inventory by a supplier, wholesaler or retailer prior to the effective date of a tax increase and fuel purchased after the tax increase. Having a large fuel inventory before a tax rate increase takes effect can bring about a small windfall to a seller, who can raise the selling price of the fuel purchased prior to the increase and attribute the increase in price to the tax rate increase. Since the diesel fuel excise tax rate was decreased, there was no need for a floor stock tax.

In General: The fuel tax swap requires the BOE to determine the excise tax rates for gasoline and diesel fuel on an annual basis. The legislation set the excise tax rate for the first year of the swap and required the BOE to adopt a “revenue-neutral” excise tax rate for each ensuing fiscal year. The calculation requires the BOE staff to develop a forecast of both consumption and price for both gasoline and diesel fuel. Staff works closely with Department of Finance (DOF) and adopts DOF’s consumption forecasts.

BOE’s rate calculation also takes into account the “true-up” portion, which is the one-year look-back period to determine the difference between what was estimated for the previous fiscal year and what was actually collected.

Since enactment of the “fuel tax swap,” the BOE has adjusted the gasoline excise tax rates to maintain the required revenue neutrality through incremental increases and decreases as follows:

July 1, 2011: Increase of \$0.004

July 1, 2012: Increase of \$0.003

July 1, 2013: Increase of \$0.035

July 1, 2014: Decrease of \$0.035

July 1, 2015: Decrease of \$0.060

The BOE adjusted the diesel fuel excise tax rate with both increases and decreases, as follows:

July 1, 2012: Decrease of \$0.03

July 1, 2013: Retain July 1, 2012 rate

July 1, 2014: Increase of \$0.01

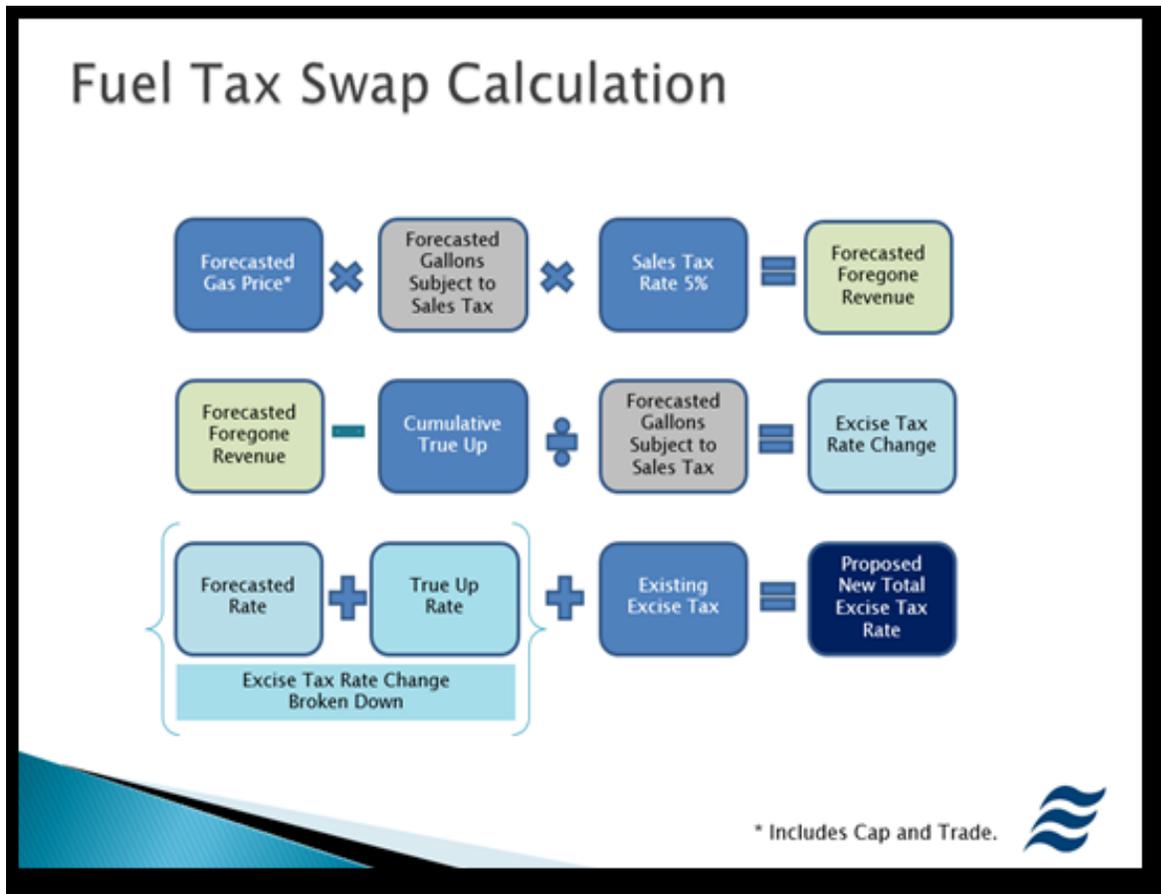
¹³ Senate Constitutional Amendment 1 (Proposition 111) in the June direct primary election, made operative Assembly Bill 471 (Ch. 106, Stats. 1989) and Senate Bill 300 (Ch. 105, St. ats. 1989).

¹⁴ Assembly Bill 2114 (Ch. 1053, Longville).

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July 1, 2015: Increase of \$0.02

The following chart depicts the fuel tax swap calculation:



Commentary:

- 1. Effect of the bill.** This bill creates a temporary funding source for state and local government to address road maintenance through a \$0.10 per gallon surtax on gasoline and \$0.12 per gallon surtax on diesel fuel.
- 2. Delayed operative date.** The bill currently contains an urgency clause, and would be effective immediately. BOE needs at least 90 days for programming modifications, special notice mailings to industry, return revisions, and public outreach. A delayed operative date, to be effective on the first day of the calendar quarter following 90 days after passage is needed.
- 3. Floor stock tax should be considered.** As explained previously, a floor stock tax equalizes the excise tax paid on those fuel gallons held in inventory by a supplier, wholesaler or retailer prior to the effective date of a tax increase and those gallons purchased after the tax increase. Having a large fuel inventory before a tax rate increase takes effect can bring about a small windfall to a seller, who can raise the selling price of the fuel purchased prior to the increase and attribute the price increase to the tax rate increase. Since this bill contains a sizeable gasoline and diesel fuel excise tax rate increase, a floor stock tax increase should be considered for both tax laws. However, a floor stock tax requires six month's lead time to allow BOE adequate time to notice the different parties in the supply chain that they must pay the one-time lump-sum tax increase on their fuel inventories. BOE staff can assist the author's office regarding specific language.
- 4. Temporary language may need amending.** The gasoline and diesel fuel surcharges shall be inoperative in any fiscal year in which the Road Program has not been reauthorized pursuant to Streets and Highway Code Section 2030(b). However 2030 (c) specifies that the increased excise tax

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rates “associated with the revenues referenced in subdivision (a) of Section 2031” are terminated at the end of the 2019-20 FY if the Legislature does not reauthorize the Road Program. Section 2031 (a) specifies that the “revenues” from the \$0.10 of the gasoline and diesel fuel surcharges are deposited in the Road Account, without reference to the remaining \$0.02 from the diesel fuel tax surcharge, which is deposited in the Trade Corridors Improvement Fund. As worded, it implies the \$0.02 is permanent.

5. **The BOE currently co-administers the state’s excise tax on gasoline with the Controller.** The BOE handles various gasoline tax administrative functions including, but not limited to: identifying and notifying taxpayers, developing floor stock tax returns, revising existing returns, modifying computer programming, carrying out compliance and audit efforts to ensure proper reporting, revising publications, and increasing investigative activities. However, the Controller processes gasoline tax payments and refunds.
6. **Local jurisdictions should see an increase in sales and use tax revenues.** Existing Sales and Use Tax Law expressly includes within the definition of “gross receipts” and “sales price” the amount of any tax imposed by the state under the MVFTL.¹⁵ Accordingly, retailers are required to include within their computation of sales or use tax on their sales or purchases of gasoline, any state excise tax. Therefore an increase in gasoline tax results in an increase in sales and use tax revenues. Although the fuel tax swap provides a state General Fund sales and use tax exemption on gasoline sales, a statewide base sales and use tax rate of 2.25% that is dedicated to local governments will continue to apply (with higher tax rates in certain districts with voter-approved district tax rates).

Accordingly, under this bill, the proposed \$0.10 excise tax increase on each gallon of gasoline generates additional local sales and use tax revenue, with additional amounts for those districts imposing district taxes.
7. **Fuel tax swap impact is unclear.** The fuel tax swap calculation would be even more complex as the BOE would need to balance the fuel tax swap revenues, exclusive of any excise or sales and use tax derived revenues attributable to the surtaxes added by this bill. BOE staff is still evaluating this impact.
8. **Related bills.** [SB 321](#) (Beall) would authorize the BOE to make specified adjustments to the gasoline tax swap using a five-year average fuel price estimate, and more frequent rate adjustments on an annual basis or at a six-month interval, under specified conditions. [SB 433](#) (Berryhill) would require the DOF, instead of the BOE, to determine the annual excise tax rate adjustment for gasoline and diesel fuel under the “fuel tax swap” provisions.

Administrative Costs: This bill requires the BOE to immediately modify computer programming, revise publications, process additional returns and payments, carry out compliance and audit efforts to ensure proper reporting, and increase investigative activities. Additionally, if the bill adds a floor stock tax, the BOE would need to identify and register additional taxpayers. On an ongoing basis, the BOE would be responsible for an even more complicated fuel tax swap calculation, thus requiring new and continuous expenses to communicate and administer the rate changes. A detailed cost estimate is pending.

Revenue Impact:

Background, Methodology, and Assumptions. *Excise Tax Impact.* While this bill is effective immediately, for revenue estimation purposes, staff assumes a July 1, 2015 implementation date. DOF forecasts 14.742 billion gallons of gasoline to be consumed on roads in each of the next two fiscal years, and forecasts 2.624 billion gallons of diesel fuel to be consumed on roads in FY 2015-16 and 2.679 billion gallons in FY 2016-17.

¹⁵ RTC Sections 6011 (sales price) and 6012 (gross receipts).

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Sales and Use Tax Impacts. Gasoline and diesel sales and use taxes are affected differently because each are subject to their respective revenue neutrality swaps (see Existing Law section of this analysis).

Summary. This bill will increase gasoline and diesel excise tax revenues by \$1.789 billion in FY 2015-16 and \$1.795 billion in FY 2016-17. Total associated state and local sales and use tax revenues will rise by \$77 million in FY 2015-16 and \$75 million in FY 2016-17. Total excise and sales tax revenues rise by \$1.945 billion in FY 2015-16 and \$1.950 billion in FY 2016-17. Details are shown in the following table.

	FY 2015-16	FY 2016-17
	(Millions)	
Excise Tax Revenues	\$1,789	\$1,795
Gasoline	1,474	1,474
Diesel	315	321
State and Local Sales and Use Tax Revenues	77	75
General Fund and 2011 Local Revenue Fund (5.0%)	16	16
Education Protection (0.25%, 0.125% in FY 2016-17)	4	2
Uniform State and Local Taxes, Includes Fiscal Recovery Fund in 2015-16 (2.25%)	40	40
Special District Tax (*0.92%)	16	17
Gas Tax Surcharge (Gas Tax Swap)	74	74
Diesel Tax Surcharge (Diesel Tax Swap)	6	6
Total Excise and Sales Taxes	\$1,945	\$1,950

Qualifying Remarks. This analysis only considers revenue impacts for taxes and fees administered by the BOE. This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.