



# STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE CHAPTERED BILL ANALYSIS

Date Amended:	<a href="#">Chapter 6</a>	Bill No:	<b>Assembly Bill 105</b>
Tax Program:	<b>Sales and Use Motor Vehicle Fuel Diesel Fuel</b>	Author:	<b>Committee on Budget</b>
Sponsor:	<b>Author</b>	Code Sections:	<b>RTC 6051.8, 6201.8, 6357.3, 6357.7, 6480.1, 7102.1, 7360, 7361.1, 7653.1, &amp; 60050</b>
Related Bills:	<b>SB 81 (Budget &amp; Fiscal Review)</b>	Effective Date:	<b>Immediately, but certain provisions operative July 1, 2010 or July 1, 2011.</b>

## BILL SUMMARY

Among other things, this bill would reenact provisions related to the fuel tax swap of 2010, with adjustments related to diesel fuel, as follows:

- On July 1, 2011, in place of the additional 1.75% sales and use tax rate imposed by the 2010 fuel tax swap legislation on sales of diesel fuel, the bill would instead impose a rate of 1.87%. In subsequent years, the bill would further change this rate as follows:
  - On July 1, 2012, increase the rate to 2.17%.
  - On July 1, 2013, decrease the rate to 1.94%.
  - On July 1, 2014, and thereafter, reinstate the 1.75% rate.
- Also on July 1, 2011, in place of the 2010 fuel tax swap's reduced excise tax rate on diesel fuel of 13.6 cents per gallon, this bill would decrease that rate further to 13 cents per gallon.

## ANALYSIS

### CURRENT 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 gasoline and diesel fuel. For gasoline, these changes became operative July 1, 2010, and for diesel fuel, the changes become operative on July 1, 2011. In short, in 2010, the "swap" reduced the sales and use tax imposed on sales of gasoline and replaced the lost revenues with an increase in the excise tax on gasoline, and would, in 2011, reduce the excise tax rate on diesel fuel and replace the lost revenues with an increase in the sales and use tax rate imposed on diesel fuel sales.

This "swap" was meant to maintain the status quo on fuels that have either full or partial exemptions from the sales and use tax, such as sales of aviation gasoline and diesel

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fuel used in farming activities, or full or partial excise tax exemptions, such as diesel fuel used in farming operations, or by train operators or certain bus operators.

This fuel tax swap was intended to be revenue neutral, so that the state’s tax revenues would not be increased or decreased, nor would the taxpayers’ share of the tax burden be affected. To maintain revenue neutrality, the provisions of this “swap” require the BOE to each year adjust the excise tax rates – either upwards or downwards, beginning on July 1, 2011, for gasoline, and July 1, 2012, for diesel, so that the overall revenues derived from the imposition of state excise tax and sales and use tax on sales of gasoline and diesel fuel remain the same.

The specific changes enacted in the 2010 fuel tax swap legislation are as follows:

<b>Gasoline</b>	07/01/10	07/01/11 and thereafter
Sales and use tax*	6% decrease	5% decrease <sup>1</sup>
Excise tax*	17.3 cent/gallon increase	To be determined by BOE <sup>2</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 continued to be completely exempt from state, local, and district sales and use tax).

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

<b>Diesel Fuel</b>	07/01/11	07/01/12 and thereafter
Sales and use tax*	1.75% increase	1.75% 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 BOE guidelines. This includes train operators, exempt bus operators, and others.

**PROPOSED LAW**

<sup>1</sup> Provided the temporary one-percent sales and use tax increase due to expire on July 1, 2011, is not extended by the Legislature and/or the voters.

<sup>2</sup> The BOE is responsible for balancing revenue losses against the revenue gains. For gasoline, the BOE has already determined that an additional \$0.004 per gallon increase in the excise tax rate is necessary for the period July 1, 2011 through June 30, 2012, so that the excise tax revenues equal the amount of General Fund revenue losses attributable to the sales and use tax exemption. Therefore, the total excise tax rate imposed on gasoline on July 1, 2011, will be 35.7 cents per gallon. For diesel fuel, the BOE 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 on sales of diesel fuel. The law requires rate adjustments to be determined by March 1, and those adjusted rates would be effective during the state’s next fiscal year, beginning July 1.

Also, the fuel tax swap provisions allow the BOE to adjust the sales tax prepayment rates on gasoline 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.

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This bill would repeal and add Sections 6051.8 and 6201.8 to the Sales and Use Tax Law to impose an additional 1.87 percent state sales and use tax (in place of the additional 1.75 percent imposed by the 2010 fuel tax swap provisions), operative July 1, 2011, on sales of diesel fuel, as defined in Section 60022 of the Diesel Fuel Tax Law. For subsequent years, the bill would adjust the rates as follows:

- On July 1, 2012, increase the rate to 2.17%.
- On July 1, 2013, decrease the rate to 1.94%.
- On July 1, 2014, and thereafter, reinstate the rate of 1.75%.

The bill would also repeal and add Section 6357.3, 6357.7, and 6480.1 of the Sales and Use Tax Law and Sections 7360, 7361.1, and 7653.1 of the Motor Vehicle Fuel Tax Law as those provisions read under the 2010 fuel tax swap.

In addition, this bill would add and repeal Section 60050 of the Diesel Fuel Tax Law to impose a reduced excise tax rate of 13 cents per gallon on diesel fuel (in place of the reduced rate of 13.6 cents imposed by the 2010 fuel tax swap provisions).

Lastly, this bill would repeal Section 7102.1 (added by the third of the 2010 “fuel tax swap” bills, ABx8 9, Ch. 12, § 5) and would add the substance of this statute as subdivision (e) to Sections 6051.8 6201.8. These provisions would require the BOE, with the concurrence of the Department of Finance, to estimate the revenues, less refunds, that are collected pursuant to each of these sections and to transfer these revenues each quarter to the Public Transportation Account in the State Transportation Fund.

As an urgency statute, the bill would become effective immediately, but certain provisions would be operative on the specified dates.

#### **BACKGROUND**

Proposition 26, approved by voters in the November 2, 2010, statewide election, among other provisions, amended Section 3 of Article XIII A of the California Constitution. This section now specifies that any change in state statute which results in any taxpayer paying a higher tax must be imposed by an act passed by not less than two-thirds of all members elected to each of the two houses of the Legislature. The section now further specifies that any tax adopted after January 1, 2010, but prior to the effective date of this proposition, that was not adopted in compliance with the requirements of this section is void 12 months after the effective date of the proposition, unless the tax is reenacted by the Legislature and signed into law by the Governor in compliance with the requirements of this provision.

The 2010 fuel tax swap provisions were enacted in March 2010 and were enacted with a majority vote of the Legislature.

#### **COMMENTS**

1. **Sponsor and Purpose.** This is a budget trailer bill intended to re-enact the 2010 Fuel Tax Swap so that the state will be in compliance with the two-thirds vote requirement of last year’s Propositions 26.

- 2. Issue.** Without legislation to reenact the fuel tax swap, Proposition 26 could be interpreted to mean that (1) the 17.3 cents per gallon additional excise tax imposed on gasoline under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the exemption for the state General Fund portion of the sales and use tax rate on sales of gasoline would remain, and (2) the 1.75% additional sales and use tax rate imposed on sales of diesel fuel under the 2010 fuel tax swap would no longer be in effect as of November 3, 2010, but the reduced excise tax rate of 13.6 cents per gallon would remain. If this were to occur, the state's General Fund could be severely negatively impacted.
- 3. The re-enactment of the fuel tax swap isn't exactly the same for diesel fuel as the 2010 swap.** The fuel tax swap provisions enacted in 2010 would have imposed an additional sales and use tax rate of 1.75% on the sales of diesel fuel, beginning July 1, 2011. To offset the initial sales and use tax rate increase of 1.87% proposed in this bill, effective July 1, 2011, this bill would lower the diesel fuel excise tax rate to 13 cents (from 13.6 cents) per gallon, which would take effect at the same time. Additional changes in the sales and use tax rate on diesel fuel for fiscal years 2012-13 (2.17%), 2013-14 (1.94%), and 2014-15 and thereafter (1.75%) would continue to be balanced by the annual adjustment, by the BOE, to the excise tax rate for diesel fuel, as specified.
- 4. Exemption for purchases of diesel fuel for qualifying farming activities would not be affected.** Section 6357.1 of the Sales and Use Tax Law currently contains an exemption from the state's current General Fund rate of 6 percent and the Fiscal Recovery Fund rate of 0.25 percent for sales and purchases of diesel fuel used in farming activities, as defined. As Section 6357.1 is written, sales of diesel fuel qualifying for the exemption under Section 6357.1 will *not* be subjected to this additional 1.87 percent sales and use tax, or the additional rates thereafter.
- 5. Exemption for purchases of aviation gasoline would not be affected.** Section 6357 of the Sales and Use Tax Law currently contains an exemption from the taxes imposed under the Sales and Use Tax Law for sales of motor vehicle fuel used to propel aircraft (other than aircraft jet fuel). Neither the reduced sales and use tax nor the increased excise tax on motor vehicle fuel applies to aviation gasoline.
- 6. Related legislation.** The Senate Committee on Budget and Fiscal Review has a similar measure, SB 81.

## **COST ESTIMATE**

The 2010 fuel tax swap imposed a rate change on diesel fuel sales beginning on July 1, 2011, and the BOE has received funding to prepare and distribute notices to those affected sellers. As such, enactment of this bill would not increase the BOE's costs for 2011-12 related to that notification effort, provided this bill is enacted prior to mid-June. However, some costs related to revising proposed regulatory changes and publications would be incurred with the proposed changes in the rates associated with diesel fuel, as well as additional costs related to programming and notification to sellers related to the sales and use tax rate changes on diesel fuel sales for 2012-13 through 2014-15.

**REVENUE ESTIMATE**

The adjustments to the excise tax rate and sales and use tax rate associated with diesel fuel in this bill address changes in the forecast of the quantity and price of diesel fuel. As before, the tax swap is expected to be revenue neutral and out-year adjustments contained in the bill are intended to maintain the tax-neutrality.

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