



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

DRAFT

Date:	04/04/13	Bill No:	Senate Bill 791
Tax Program:	Motor Vehicle Fuel	Author:	Wyland
Sponsor:	Author	Code Sections:	RTC 7360
Related Bills:		Effective Date:	Upon enactment

BILL SUMMARY

This bill requires the Department of Finance (DOF), instead of the Board of Equalization (BOE), to determine the excise tax rate adjustment for motor vehicle fuel (gasoline) under the “fuel tax swap” provisions. Under this bill, any calculated rate increase resulting from the adjustment would require two-thirds Legislative approval.

ANALYSIS

CURRENT LAW

Under existing law, the BOE determines and sets rates for various tax and fee programs it administers, such as the tobacco products tax rate,¹ diesel interstate users tax rate,² hazardous substances program fees,³ and the occupational lead poisoning prevention fee.⁴ These rates are calculated by BOE staff based on prescribed methodologies and the BOE Members approve these rates annually in a public meeting.

In 2010, two “fuel tax swap” measures⁵ were enacted that changed the imposition and rates of state taxes on gasoline and diesel fuel, and required 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 provisions⁶ exempted sales and purchases of gasoline from the state General Fund sales and use tax rate (currently, a 5% exemption). 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.⁷ The law⁸ reduced the diesel fuel excise tax rate from \$0.18 to \$0.13 per gallon. The law⁹ increased 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 Revenue and Taxation Code (RTC) Section 30126.

² RTC Section 60115.

³ Health and Safety Code Sections 25174.2, 25205.4-25205.7, 25205.14.

⁴ Health and Safety Code Section 105190.

⁵ [ABx8 6](#), (Ch. 11, Statutes XXXX) and [SB 70](#) (Ch. 9, Statutes XXX). These provisions were reenacted in 2011 by [AB 105](#) (Ch. 6, Statutes 2011).

⁶ RTC Section 6357.7.

⁷ RTC Section 7360.

⁸ RTC Section 60050.

⁹ RTC Sections 6051.8 and 6201.8.

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.

- 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, respectively, either upward or downward, 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.

The BOE must determine the rate adjustments by March 1 each year, and the adjusted rate applies on the following July 1.

PROPOSED LAW

Beginning March 1, 2014, and each March 1 thereafter, this bill eliminates the requirement that the BOE adjust the gasoline excise tax rate. Instead, the bill requires the DOF annually to calculate that rate.

The bill requires the DOF to report the calculated rate to the Joint Legislative Budget Committee. The bill specifies that if the calculated rate is equal to or less than the current fiscal year's rate, the state's next fiscal year rate remains the same or decreases.

The bill further specifies if the DOF finds that the calculated rate is greater than the current fiscal year rate, the state's next fiscal year effective rate shall continue to be the current fiscal year rate, unless the Legislature increases the rate by a 2/3 vote.

BACKGROUND

Since the fuel tax swap enactment, the BOE has adjusted the gasoline excise tax rates to maintain the required revenue neutrality through three incremental increases totaling \$0.0357 per gallon of gasoline, as follows:

July 1, 2011	Increase of \$0.0004
July 1, 2012	Increase of \$0.0003
July 1, 2013	Increase of \$0.035

The BOE adjusted the diesel fuel excise tax rate with one \$.03 per gallon decrease, as follows:

July 1, 2012	Decrease of \$.03
July 1, 2013	Retain July 1, 2012 rate

COMMENTS

1. **Sponsor and Purpose.** As the sponsor, the author provided the following statement: “While the BOE has historically collected gasoline tax revenue, the Legislature set the tax rates paid by California motorists for gasoline. By allowing the BOE to singlehandedly raise or lower the excise tax on gasoline, the Legislature is left out of the conversation of an issue that affects almost every California family. In order to provide for greater constituent input and transparency into this important question that affects all areas of our economy, as well as provide Legislators the opportunity to weigh in on increases in the excise tax on gasoline, it is only proper that the Legislature be the final deciders on increases or decreases in the excise tax.”
2. **The DOF currently provides pertinent information.** As the Governor's chief fiscal policy advisor, the DOF ensures financial integrity of the state. It prepares economic forecasts and analyses of various economic developments, and uses the most widely accepted forecasting methodology. Since enactment of the “fuel tax swap,” the BOE staff relies heavily upon the DOF’s fuel consumption estimates and forecasted prices to determine the necessary rate adjustment for revenue neutrality purposes. Accordingly, it seems appropriate that the DOF, rather than the BOE, calculate the adjusted rate.
3. **BOE must still adjust the diesel fuel excise tax rate.** The bill does not require the DOF to adjust the diesel fuel excise tax rates – only gasoline. Although the adjusted diesel excise tax rate has not increased, for consistency, DOF, instead of the BOE, also should determine the diesel fuel excise tax rate adjustment.
4. **Bill should specify a deadline for DOF to notify the BOE.** The bill requires DOF to notify the BOE of the effective rate for the state’s next fiscal year; however, the bill does not have a specific deadline. The BOE must notify affected fuel sellers of the applicable adjusted rate, and affected sellers may need to make necessary programmatic changes. Accordingly, we recommend that the bill specify March 10 as the date by which DOF must notify the BOE. The suggested amendment is shown on page 4.

COST ESTIMATE

Enactment of this bill reduces the BOE’s staff time devoted to determining, reviewing, and adopting the appropriate gasoline excise tax rate adjustment. An estimate of this savings is pending.

REVENUE ESTIMATE

If enacted, the Legislature must approve any DOF-calculated gasoline excise tax rate increase. Assuming the Legislature approves any recommended increases, there would be no revenue impact. However, the Legislature’s failure to approve a proposed rate increase could impact the State’s General Fund to an unknown extent.

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STATE BOARD OF EQUALIZATION
PROPOSED AMENDMENT TO SB 791

On page 3, line 14, add “On or before March 10, the” after “(iii)” and strike “The” before “Department of Finance”