

Amend Sections 7342, 7470, and 60135 of the Revenue and Taxation Code to redefine a train operator and require a train operator transporting fuel products to be licensed. Add Sections 7652.8 and 60204.6 to the Revenue and Taxation Code to require train operators to file monthly information reports on fuel products entering, moving within, and departing the state.

Source: Fuel Taxes Division

Existing Law

Under existing Section 7403.1 of the Motor Vehicle Fuel Tax Law and Section 60106.1 of the Diesel Fuel Tax Law, train operators are required to obtain a license or permit from the Board of Equalization (Board) for the purpose of issuing exemption certificates for the fuel used in operating trains. Sections 7403.2 and 60107, respectively, require such train operators to provide information reports to the Board on the gallons of fuel purchased for use in their trains, or for other off-highway use, under an exemption certificate.

Currently, Sections 7652.7 and 60204.5 provide that only vessel and pipeline operators are required to file reports with the Board regarding motor vehicle fuel (gasoline) and diesel fuel carried by their vessels and pipelines, as these fuel movements are deemed “above the rack,” i.e., above the point of taxation.

In general, California’s reporting scheme for fuel taxes is based on the premise that all fuel products must be accounted for within the bulk transfer/terminal system in California, which consists of refineries, pipelines, vessels, and petroleum terminals. The reporting system presently includes information reports provided by vessel and pipeline operators (the carriers), receipt and disbursement reports filed by terminal operators, and tax returns recounting terminal removals and taxable imports filed by licensed suppliers. The reporting system allows for the cross-checking of transactions between carriers and terminals and between terminals and suppliers. This information is used by the Board for audit and compliance purposes to ensure the fuel gallons and taxes are properly reported and collected.

Background

In 1995 and again in 2002, the imposition of the diesel fuel and motor vehicle fuel taxes, respectively, were moved to the “rack.” At that time very little fuel moved by rail in California and almost all of that movement was fuel destined for export to neighboring states. Train operators are not required to report movements of fuel by rail, because such movements occurred below the point of taxation.

However since that time many significant changes have occurred in the California petroleum market. First, California gasoline was reformulated to use ethanol as an oxygenate. Because of its properties, ethanol, which is primarily produced in the Midwest, cannot be shipped by pipeline. Millions of gallons of ethanol are being shipped into the state each year, primarily by rail. Second, the California Legislature and the Governor have made the reduction of greenhouse gas emissions a priority with the signing in 2006 of both AB 32 (Ch. 488, Stats.

2006, The California Global Warming Solutions Act), and Executive Order S-01-07, which directed the establishment of a low carbon fuel standard for transportation fuels used in California. Additionally, biodiesel fuels continue to be popular alternatives to petroleum diesel fuel. Like ethanol, these fuel stocks are primarily produced in the Midwest and shipped by rail into California.

Board staff is concerned about the lack of accountability for rail imports since rail movements are not currently considered part of the bulk transfer system. Ethanol is a reportable product for motor fuels reporting, meaning that it is not a taxable product itself but becomes taxable when blended with motor vehicle fuel to produce California Reformulated Gasoline. This blending must occur within the petroleum terminal, and terminal operators report their receipt of ethanol into the terminals. But without reports from the rail carriers, the Board has no way of cross-checking to determine if all of the ethanol delivered by the rail carriers from out-of-state locations to in-state terminals is actually being reported by the in-state petroleum terminal operators. During 2006, California petroleum terminals reported receiving 1.2 billion gallons of ethanol.

Unlike ethanol, biodiesel and similar biofuels are considered taxable fuel products and are subject to tax when imported into the state. Additionally, biofuel imports generally bypass the terminal system and are delivered directly to distributors or end-users. Biofuel importers are required to be licensed as suppliers and remit tax on the fuel imported into the state. The Board makes every effort to identify and timely register biofuel importers but continues to come across taxpayers who are operating without the proper license and incurring unreported tax liabilities because they are importing biofuels by rail. Rail carrier reporting would assist in more timely identification of unlicensed biofuel importers and lead to a greater level of voluntary compliance and tax recovery. During 2006, 20.8 million gallons of biodiesel fuel were reported as having been received from out-of-state sources. In addition, using alternative means of identifying biodiesel importers who have not reported their biodiesel imports, the Board is investigating several audit leads with a potential for \$360,000 in additional tax assessments.

California could realize a direct tax benefit from rail carrier reporting because these reports would provide valuable information to the Board that can be used in improving motor fuel tax collection and enforcement efforts. The Board is aware of at least eight states that require rail carriers to report fuel movements into and out of their states.

Under the Motor Vehicle Fuel Tax Law, a train operator is currently defined as a person that owns, operates, or controls a motor vehicle fuel-powered train. Freight trains that transport fuel products are typically pulled by diesel-powered locomotives. Therefore, in order to be able to require a train operator to obtain a license and report motor vehicle fuel, alcohol, and aircraft jet fuel carried by a diesel-powered train, the definition of a train operator under the Motor Vehicle

Tax Law needs to be amended to remove the “motor vehicle fuel-powered”, requirement.

The current license and permit requirements for train operators pertain to the issuing of exemption certificates for the purchase of motor vehicle and diesel fuel products without tax and not to the transporting of fuel products (motor vehicle fuel, alcohol, aircraft jet fuel and diesel fuel) by rail into, out of, and within the state. The Motor Vehicle Fuel Tax Law needs a provision that requires a train operator to obtain a license to transport these fuels into, out of, and within the state. The Diesel Fuel Tax law needs a provision that requires a train operator to obtain a license to transport diesel fuel into, out of, and within the state.

This Proposal

This proposal would amend the Motor Vehicle Fuel Tax Law to include in the definition of a train operator a person who owns, operates, or controls a diesel-powered train. It would also amend the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to require that train operators transporting fuel products be licensed.

In addition, this proposal would add to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law a requirement that train operators file monthly information reports of fuel products entering, moving within, and departing the state on their trains.

Section 7342 of the Revenue and Taxation Code is amended to read:

7342. “Train operator” includes any person that owns, operates, or controls a ~~motor vehicle fuel-powered~~ train and is licensed as a railroad by a state or federal agency.

Article 3. of the Revenue and Taxation Coded is amended to read:

Article 3. License for Pipeline Operator, Train Operator and Vessel Operator

Section 7470 of the Revenue and Taxation Code is amended to read:

7470. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports motor vehicle fuel, alcohol, and aircraft jet fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A pipeline operator license, a train operator license, or a vessel operator license shall be issued only to a person who is a pipeline operator, a train operator, or a vessel operator as defined in Sections 7331, 7342, and 7344. It is unlawful for a person to act as a pipeline operator or as a vessel operator without first securing a license. It is unlawful for a train operator to transport motor vehicle fuel, alcohol, and aircraft jet fuel into, out of, or

within this state after January 1, 2009, without first securing a license under this Section or Section 7403.1.

Section 7652.8 is added to the Revenue and Taxation Code to read:

7652.8. (a) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

(1) The amount of motor vehicle fuel, alcohol, and aircraft jet fuel delivered into, out of, or within this state.

(2) The location where the motor vehicle fuel, alcohol, or aircraft jet fuel was delivered.

(3) The date of delivery.

(4) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

Section 60135 of the Revenue and Taxation Code is amended to read:

60135. Every person before becoming a pipeline operator or a vessel operator shall apply to the board for a license on forms prescribed by the board. In addition, every train operator that transports diesel fuel into, out of, or within this state shall obtain a license from the board on forms prescribed by the board. A train operator license, a pipeline operator license, or a vessel operator license shall be issued only to a person who is a train operator, a pipeline operator, or a vessel operator as defined in Sections 60041, 60047.1, and 60049.1. It is unlawful for a person to act as a pipeline operator or as a vessel operator without first securing a license. It is unlawful for a train operator to transport diesel fuel into, out of, or within this state after January 1, 2009, without first securing a license under this Section or a permit under Section 60106.1.

Section 60204.6 is added to the Revenue and Taxation Code to read:

60204.6. (a) Each train operator shall prepare and file with the board a report in the form as prescribed by the board, which may include, but not be limited to, electronic media showing, for the calendar month, or that monthly period ended during the calendar month as the board may authorize, all of the following:

- (1) The amount of diesel fuel delivered into, out of, or within this state.
- (2) The location where the diesel fuel was delivered.
- (3) The date of delivery.
- (4) Any other information required by the board for the proper administration of this part. The train operator shall file the report on or before the last day of the month following the monthly period to which it relates. To facilitate the administration of this part, the board may require the filing of the reports for other than monthly periods. Reports shall be authenticated in a form or pursuant to methods as may be prescribed by the board.