

Amends Revenue and Taxation Code Sections 60022 and 60023 to clarify that the definition of “diesel fuel” includes biodiesel, other biomass-based diesel fuel, and blends. Also adds Sections 60022.1, 60022.2, 60022.3, 60022.4 and 60023.1 to define biodiesel, biomass, biomass-based diesel, petroleum-based diesel, and raw vegetable oil, respectively.

Source: Fuel Taxes Division

Existing Law

Under the current Diesel Fuel Tax Law (Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code), Section 60022 defines “diesel fuel” as any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, which includes biodiesel. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. Additionally, Section 60023 defines “blended diesel fuel” to mean any mixture of diesel fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. “Blended diesel fuel” also means any conversion of a liquid into diesel fuel. “Conversion of a liquid into diesel fuel” occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel. This definition is purposely broad so that any fuel suitable to be used to power a diesel-powered highway vehicle is subject to the excise tax.

Under the Diesel Fuel Tax Law, the state imposes an excise tax of \$0.18 per gallon on diesel fuel. Biodiesel fuel is taxed at the same rate and in the same manner as traditional diesel. In that regard, the state imposes the excise tax at the first point at which the biodiesel fuel is either:

- Removed from a terminal or refinery rack in California,
- Imported into California for sale, use, or storage, or
- Blended with tax-paid diesel fuel,

Background

The collection point of the excise tax for the bulk of the diesel fuel sold in California is at the terminal rack level. The terminal rack level is a level in the distribution chain at a refinery or at a storage and distribution facility at the end of a pipeline where diesel fuel is delivered through a mechanism (the rack as it leaves the refinery or storage facility) into ground transportation, such as a truck, trailer, or railroad car.

However, unlike petroleum-based diesel fuel, biofuels are typically not dispensed at a terminal rack. Biofuels may be dispensed by small producers or produced by individuals, both of which fall outside the terminal rack system. As such, identifying and registering the supplier for compliance purposes is more difficult. Although the Board makes every effort to identify and timely register biofuel importers, producers, and

blenders, the Fuel Taxes Division continues to discover persons operating without the proper license and incurring unreported tax liabilities.

This Proposal

This proposal would amend the Diesel Fuel Tax Law to specifically include biofuels in the definition of diesel fuel and blended diesel fuel. Board staff believes that, by clarifying the diesel fuel tax law to expressly include biofuels in the definition of “diesel fuel” and to include specific definitions for biofuels, we would eliminate any question about the taxability of such fuels and the need for registration, which would result in better compliance.

Section 60022 of the Revenue and Taxation Code is amended to read:

60022. ~~(a)~~ “Diesel fuel” means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. “Diesel fuel” includes petroleum-based diesel fuel, biodiesel, other biomass-based diesel fuel, and blends thereof. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle.

However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

“Diesel fuel” does not include kerosene, gasoline, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

~~–(b) This section shall become operative on January 1, 2007.~~

Section 60022.1 of the Revenue and Taxation Code is added to read:

60022.1. “Biodiesel” means mono-alkyl esters of long-chain fatty acids derived from vegetable oils or animal fats.

Section 60022.2 of the Revenue and Taxation Code is added to read:

60022.2. “Biomass” means any organic material other than crude oil and natural gas and any product of such oil or natural gas.

Section 60022.3 of the Revenue and Taxation Code is added to read:

60022.3. “Biomass-based diesel fuel” means diesel fuel derived from biomass.

Section 60022.4 of the Revenue and Taxation Code is added to read:

60022.4. “Petroleum-based diesel fuel” means diesel fuel produced from crude oil or refined petroleum product.

Section 60023 of the Revenue and Taxation Code is amended to read:

60023. (a) “Blended diesel fuel” means any mixture of diesel fuel with respect to which tax has been imposed and any other liquid (such as kerosene) on which tax has not been imposed (other than diesel fuel dyed in accordance with United States Environmental Protection Agency or Internal Revenue Service rules). Blended diesel fuel also means any conversion of a liquid into diesel fuel, including raw vegetable oil and animal fats. “Conversion of a liquid into diesel fuel” occurs when any liquid that is not included in the definition of diesel fuel and that is outside the bulk transfer/terminal system is sold as diesel fuel, delivered as diesel fuel, or represented to be diesel fuel.

~~–(b) This section shall become operative on January 1, 2007.~~

Section 60023.1 of the Revenue and Taxation Code is added to read:

60023.1. “Raw vegetable oil” includes fresh uncooked virgin oil, waste vegetable oil, and used cooking oil.