

**Amend Sections 7670, 8127.5, 8776, 9151.5, 43201, 43451.5, 46201, 46501.5, 50113, 50139.5, 60310 and 60521.5 of the Revenue and Taxation Code to apply excess tax reimbursement to all persons in the fuel distribution chain that reimburse themselves by passing the tax on to their customers.**

**Source: Special Taxes Department - Fuel Taxes Division**

Under existing Sales and Use Tax law, when an amount represented by a person to a customer as constituting reimbursement for taxes due is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid is required to be returned by the person to the customer upon notification by the Board of Equalization (Board) or by the customer that such excess tax has been collected. In the event of his or her failure or refusal to do so, the amount so paid is required to be remitted to the state.

The Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Hazardous Substances Tax Law (Childhood Lead Poisoning Prevention Fee), Oil Spill Response, Prevention, and Administration Fees Law and Underground Storage Tax Maintenance Fee Law currently have similar provisions to the Sales and Use Tax Law, except the phrase "when an amount represented by a person to a customer" is replaced with "when an amount represented by a person *who is a taxpayer* to a customer." In effect, this differing language limits who is required to return the excess tax reimbursement to a customer, or if the person fails or refuses to do so, remit the excess tax reimbursement to the Board since it specifies the "person" must be a "taxpayer." Therefore, if any person other than a "taxpayer" collects excess tax reimbursement from a customer, that person is not obligated to return those amounts to the customer or remit those amounts to the state.

For example, the motor vehicle fuel tax and diesel fuel tax are collected high in the fuel distribution chain and remitted to the state by a licensed taxpayer. As the fuel flows through the distribution chain to the user, the wholesaler and retailer reimburse themselves by passing the fuel tax on to their customer. Accordingly, persons below the point of taxation in the distribution chain who are not considered a "taxpayer" could be unjustly enriched with excess fuel tax if that person computed the wrong amount of fuel tax or did not deliver the actual gallons on which the fuel tax was computed.

The Board has found retail stations that have under pumped fuel to customers, i.e. charging for ten gallons but delivering only eight gallons. The customer has therefore paid fuel tax on the ten gallons. If the retailer is not considered "a taxpayer" under the Motor Vehicle Fuel Tax Law or the Diesel Fuel Tax Law, they are not legally required to return the excess tax reimbursement to the customer or pay that amount to the state.

One major case involved ten companies that were using a computer chip in their pumps to illegally overcharge their customers. Because one of the companies was a “taxpayer” (because it possessed a fuel tax license), it was billed by the Board for \$400,000 in excess fuel tax reimbursement. However, the remaining nine companies were not considered a “taxpayer” under the law. Therefore, these nine companies were not required to return the \$205,000 in excess tax collected to their customers, nor were they required to remit those amounts to the state.

This proposal would simply conform the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law and Diesel Tax Law to the Sales and Use Tax Law thereby allowing the state to require any person in the fuel distribution chain who collects an amount represented by that person to a customer as constituting reimbursement for taxes due, computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, to either return the excess fuel tax to his or her customer or remit the excess fuel tax to the state. This proposal would also conform the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, and Diesel Tax Law to the Sales and Use Tax Law by requiring that any excess tax remitted to the state include interest from the date the customer paid the excess tax to the date the tax is remitted to the state since the person would have had use of the excess tax.

Excess tax or fee reimbursement could also be collected under the Hazardous Substance Tax Law (Childhood Poisoning Prevention Fee), Oil Spill Response, Prevention, and Administration Fees Law and Underground Storage Maintenance Fee Law, by a person other than a “taxpayer” or “feepayer.” Current law under these programs would not require this person to return the excess tax or fees to their customer or require those amounts to be paid to the state. Accordingly, this proposal would also extend the excess tax reimbursement provisions to the Hazardous Substance Tax Law (Childhood Poisoning Prevention Fee), Oil Spill Response, Prevention, and Administration Fees Law and Underground Storage Maintenance Fee Law.

Under current Sales and Use Tax Law, if the Board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns, or upon the basis of any information within its possession or that may come into its possession. Existing Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Hazardous Substance Tax Law, Oil Spill Response, Prevention, and Administration Fees Law and Underground Storage Maintenance Fee Law include similar provisions, however, it only applies to “taxpayers” or “feepayers” filing returns. Accordingly, if any person, other than a taxpayer or feepayer collects excess tax or fees and refuses to return that amount to his or her customer or to remit the excess tax to the state, the Board can not issue a deficiency determination for the excess tax.

This proposal would conform the Sales and Use Tax Law to the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, Diesel Fuel Tax Law, Hazardous Substance Tax Law, Oil Spill Response, Prevention, and Administration Fees Law and Underground Storage Maintenance Fee Law, to allow the state to issue a determination for excess taxes or fees when any person fails to return the excess taxes or fees to the customer or to remit the amounts to the state.

*Section 7670 of the Revenue and Taxation Code is amended to read:*

7670. ~~If the board is not satisfied with the return made by any supplier, it may make a deficiency determination of the tax required to be paid by the supplier based upon information contained in the return or upon any information in the possession of the board.~~ If the board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued a determination may be made at any time thereafter, within the period specified in Section 7675, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

*Section 7671 of the Revenue and Taxation Code is amended to read:*

7671. The board shall give the person ~~distributor~~ written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person ~~distributor~~ at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*Section 8127.5 of the Revenue and Taxation Code is amended to read:*

8127.5. When an amount represented by a person ~~who is a taxpayer under this part~~ to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the Controller on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*Section 8776 of the Revenue and Taxation Code is amended to read:*

8776. ~~If the board is dissatisfied with the return filed, it may compute and determine the amount to be paid upon the basis of any information available to it.~~ If the board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount of tax due for one or for more than one month. When a business is discontinued a determination may be made at any time thereafter, within the periods specified in Section 8782, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

*Section 8781 of the Revenue and Taxation Code is amended to read:*

8781. The board shall give the person ~~user~~ written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person ~~user~~ at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in the United States Post Office, or a mailbox, sub-post office, substation or mail chute or other facility maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be

served and service shall be deemed complete at the time of such delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*Section 9151.5 of the Revenue and Taxation Code is amended to read:*

9151.5. When an amount represented by a person ~~who is a taxpayer under this part~~ to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*Section 43201 of the Revenue and Taxation Code is amended to read:*

43201. (a) If the board is dissatisfied with the return or report filed or the amount of tax paid to the state by any taxpayer, or other amount required to be paid to the state by any person, or if no return or report has been filed or no payment or payments of the taxes have been made to the state by a taxpayer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of tax due for one, or for more than one, period. The amount of tax so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the tax, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or authorized regulations, a penalty of 10

percent of the amount of the determination shall be added, plus interest as provided above.

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the person written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, sub-post office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*Section 43451.5 of the Revenue and Taxation Code is amended to read:*

43451.5. When an amount represented by a person ~~who is a feepayer under this part~~ to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fees or is in excess of the fees due, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*Section 46201 of the Revenue and Taxation Code is amended to read:*

46201. (a) ~~If the board is dissatisfied with the return filed or the amount of fee paid to the state by any feepayer, the board may compute and determine the amount to be paid, based upon any information available to it. If the board is not satisfied with the return or returns of the fee or the amount of fee, or other~~

amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. One or more deficiency determinations may be made of the amount of fee due for one or for more than one period. When a business is discontinued, a determination may be made at any time thereafter, within the period specified in Section 46204, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) The amount of fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment.

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted pursuant thereto, a penalty of 10 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

(d) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or regulations adopted pursuant thereto, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (b).

*Section 46201 of the Revenue and Taxation Code is amended to read:*

46202. The board shall give to the person ~~feepayer~~ written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person ~~feepayer~~ at his or her address as it appears in the records of the board. The giving of notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation or mail chute, or other facility regularly maintained or provided by the United States Postal Service without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

*Section 46501.5 of the Revenue and Taxation Code is amended to read:*

46501.5. When an amount represented by a person ~~who is a feepayer under this part~~ to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 25<sup>th</sup> day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*Section 50113 of the Revenue and Taxation Code is amended to read:*

50113. (a) ~~If the board is dissatisfied with the report filed or the amount of fee paid to the board under this part by any fee payer. If the board is not satisfied with the return or returns of the fee or the amount of fee, or other amount, required to be paid to the state by any person, or if no report has been filed or no payment or payments of the fees have been made to the state by a fee payer, the board may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. to be paid, based upon any information available to it.~~ One or more additional determinations may be made of the amount of fee due for one, or for more than one, period. The amount of fee so determined shall bear interest at the modified rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted by the board pursuant to this part, a penalty of 10 percent of the amount of that determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade

this part or regulations adopted pursuant to this part, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the person ~~fee-payer~~ written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the person ~~fee-payer~~ at his or her ~~the fee-payer's~~ address as it appears in the records of the board. The giving of the notice shall be deemed complete at the time of the deposit in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, the board may serve notice personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. The board may make personal service to a corporation by delivering a notice to any person designated in the Code of Civil Procedure to be served for the corporation with a summons and complaint in a civil action.

*Section 50139.5 of the Revenue and Taxation Code is amended to read:*

50139.5. When an amount represented by a person ~~who is a fee-payer under this part~~ to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the 25<sup>th</sup> day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

*Section 60310 of the Revenue and Taxation Code is amended to read:*

60310. ~~If the board is not satisfied with the return made by any person, it may make a deficiency determination of the tax required to be paid by the person based upon information contained in the return or upon any information in the possession of the board.~~ If the board is not satisfied with the return or returns of the tax or the amount of tax, or other amount, required to be paid to the state by any person, it may compute and determine the amount required to be paid upon the basis of the facts contained in the return or returns or upon the basis of any

information within its possession or that may come into its possession. The board may make a determination for more than one period and may make one or more determinations for the same period. When a business is discontinued, a determination may be made at any time thereafter within the period specified in Section 60315, as to liability arising out of that business, irrespective of whether the determination is issued prior to the due date of the liability as otherwise specified in this part.

*Section 60521.5 of the Revenue and Taxation Code is amended to read:*

60521.5. When an amount represented by a person ~~who is a taxpayer under this part~~ to a customer as constituting reimbursement for taxes due under this part is computed upon an amount that is not taxable or is in excess of the taxable amount and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not taxable or is in excess of the taxable amount, shall be remitted by that person to this state. The amount remitted to the state shall include interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the last day of the month following the date the excess tax reimbursement was paid by the customer until the date of remittance to the state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same transaction from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.