



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

DRAFT

Date Amended:	08/19/08	Bill No:	<u>AB 2558</u>
Tax:	Local Motor Vehicle Fuel	Author:	Feuer, et al
Related Bills:			

This analysis only addresses the provisions that impact the Board.

BILL SUMMARY

This bill would allow regional transportation agencies, as defined, to impose a local fee on motor vehicle fuels to fund environmental and transportation programs. This bill also repeals existing authority for the Metropolitan Transportation Commission to impose a local motor vehicle fuel tax to fund transportation projects.

ANALYSIS

CURRENT LAW

Under the **Motor Vehicle Fuel Tax Law** (Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of \$0.18 per gallon on the removal of gasoline at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under this same law (Chapter 12 (commencing with Section 8500)) the Metropolitan Transportation Commission (Commission) has the authority to levy a local tax on motor vehicle fuel to fund transportation projects. The Commission is made up of nine Bay Area members that include the City and County of San Francisco, and the counties of Alameda, Contra Costa, Marin, Napa, San Mateo, Santa Clara, Solano, and Sonoma. .

Under the **Diesel Fuel Tax Law** (Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of \$0.18 per gallon on the removal of diesel fuel at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

Under the **Use Fuel Tax Law** (Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of \$0.18 per gallon for use of fuels. For liquefied petroleum gas (LPG), liquid natural gas (LNG), compressed natural gas (CNG), ethanol, and methanol, which are types of use fuels, the excise tax rates are \$0.06, \$0.06, \$0.07, \$0.09, and \$0.09, respectively. In lieu of the specified tax rates, an annual flat rate fuel tax may be paid by the owner or operator of vehicles powered by LPG, LNG, or CNG. The flat rate is based on the vehicles weight.

Additionally, Parts 1, 1.5, and 1.6 of Division 2 of the Revenue and Taxation Code impose state, local, and transactions **sales and use taxes** on all tangible personal property, including gasoline, sold at retail. The rates in the different cities and counties throughout the state range from 7.25% to 8.75%, depending upon the jurisdiction in which the tangible personal property is purchased.

Lastly, the **Local Motor Vehicle Fuel Tax Law**, as contained in Part 4 (commencing with Section 9501) of Division 2 of the Revenue and Taxation Code, authorizes counties to impose countywide excise taxes on motor vehicle fuel at increments of one cent per

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 Board's formal position.

gallon, provided a majority of the voters approve the proposition. The funds collected must be used only for purposes authorized by Article XIX of the California Constitution, such as transportation planning and construction. To date, however, no county imposes a local fuel tax under this authority.

PROPOSED LAW

This bill would add Chapter 2 (commencing with Section 55830) to Part 3 of Division 2 of Title 7.1 of the Government Code to allow a regional transportation agency (RTA) to impose a fee on all motor vehicle fuels,¹ including gasoline and other transportation fuels, sold in the jurisdiction of the RTA, at a rate to be established by the RTA, but not to exceed three percent (3%) of the retail sales price of the motor vehicle fuel at the time the RTA adopts an expenditure plan.

A RTA is defined as any of the following:

- A transportation planning agency as defined in Section 29532 or 29532.1 of the Government Code.
- A county transportation commission pursuant to Division 12 (commencing with Section 130000) of the Public Utilities Code.
- A regional transportation agency as defined in Section 66502 of the Government Code.
- An agency designated to submit a county transportation plan pursuant to Section 66531 of the Government Code.
- Any other local or regional transportation entity that is designated by statute as a regional transportation agency.
- A joint exercise of powers authority as defined in Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, with the consent of a transportation planning agency or a county transportation commission for the jurisdiction.

If approved by the voters of each county and city and county in the jurisdiction of the RTA, as specified, the RTA may impose a climate protection and system preservation fee on all motor vehicle fuels sold in its jurisdiction.

The RTA would be required to contract with the Board for the administration of the fee, and the Board would be reimbursed for the actual costs to implement and administer collection of the fee. Reimbursement of actual costs will be based upon the results of an independent audit.

This bill would become effective January 1, 2009, but the operative date of the fee would be dependent on the local election approving the fee. Once commenced, the fee may not be imposed longer than 30 years.

This bill also repeals Chapter 12 (commencing with Section 8500) of Part 2 of Division 2 of the Revenue and Taxation Code, the provisions that currently authorize the Commission to impose a local gasoline tax.

¹ A RTA may, alternatively, choose to impose a fee on each vehicle registered in its jurisdiction, which would be collected by the Department of Motor Vehicles.

BACKGROUND

Assembly Bill 595 (Ch. 878, 1997) authorized the Commission to place before the voters in the nine-county region a local excise tax on motor vehicle fuel to fund specified transportation projects. AB 2744 (Huffman, 2007) would have allowed the Bay Area Commission to impose a local fee on motor vehicle fuel to fund greenhouse gas mitigation programs. AB 2744 failed passage in Assembly Transportation. SB 445 (Torlakson, 2007) would also have allowed the Commission to impose a greenhouse gas mitigation and funding fee on motor vehicle fuels sold in the Bay Area region. SB 445 was held in the Assembly Transportation Committee.

COMMENTS

1. **Sponsor and Purpose.** This bill is sponsored by the Metropolitan Transportation Commission and the Metropolitan Transportation Authority and is intended to provide a dedicated source of funds to reduce climate emissions from transportation sources and to provide funding for transportation projects.
2. **The fee would be imposed on “all motor vehicle fuels” sold in the jurisdiction of the RTA, as defined.** The bill does not define motor vehicle fuel, but does specify that a motor vehicle does not include an aircraft. The current statute that authorizes the Commission to impose a tax on motor vehicle fuel limits the tax to “motor vehicle fuel, as defined by Section 7326” – except that motor vehicle fuel used to power aircraft was exempt. For purposes of the Motor Vehicle Fuel Tax Law, “motor vehicle fuel” is currently defined in Section 7326 to mean “gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel.”

Since the term “motor vehicle fuel” is not defined in this bill, the plain language of the bill would suggest that “all motor vehicle fuels” would include gasoline, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, and all other fuels used by motor vehicles and sold in the RTA jurisdiction. It appears that only fuels sold for use in an aircraft, such as jet fuel and aviation gasoline, would not be subject to the fee.

Additionally, the term “sold in the jurisdiction” should be defined as it is a very broad term. Does “sold in the jurisdiction” include all motor vehicle fuel sold where title passes in the jurisdiction, or is it based upon delivery of the fuel in the jurisdiction? Does “sold in the jurisdiction” mean that the fuel needs to be used in the jurisdiction? Does this term refer to a sale at the retail level or higher up the supply chain?

3. **Are all counties affected?** According to the author’s office the amendments were intended to include all counties in the state. Additionally, the California Department of Transportation’s website appears to show that every county is included in a RTA jurisdiction (<http://www.dot.ca.gov/hq/tpp/offices/orip/list/agencies.html>).
4. **Would each RTA have to separately contract with the Board for collection?** As amended, this bill would allow the local voters to decide if a local fee on motor vehicle fuels should be imposed in their area. This would require each RTA to separately contract with the Board, but would seem to place a large cost burden on the first RTA that actually imposes the fee.

The bill provides that the Board would be reimbursed for its actual costs to implement and administer the fee based on an independent audit. Much, if not all, of the implementation costs would be attributable to the first RTA that contracts with the Board. Once the “system” is established then subsequent administrative costs should level out.

5. **The Board has the following administrative concerns.** There are many technical concerns with this bill, including the following:

- **Is the fee imposed on a “gallon,” or some other measurement?** The standard measurement by which gasoline, diesel fuel, and most other fuels are sold and subject to tax is by the gallon. If there is some other measurement by which this fee is to be imposed by the RTA upon these fuels, then the author should specify that method.
- **The fee is established by the RTA.** The RTA will also determine the rate of the fee, with a cap of no more than 3 percent (3%) of the retail sales price of motor vehicle fuel at the time the RTA adopts the expenditure plan. Does that mean the fee will be set at a percent range, from 0% to 3% of the selling price of the fuel? Or, will the RTA set the fee at a specified amount, not to exceed the 3% cap? This would be an important distinction for the computation of the fee.

If the fee rate is based on a percentage of the retail price, then the retailer would most likely be the collector of the fee and the fee amount could change as often as the price of fuel changes. This would be similar to the calculation and collection of the sales tax. However, if the fee rate is actually a specified amount, for example twelve cents (\$0.12), then the point of collection could be at a higher level of the distribution process and would be similar to the collection of the excise tax on fuels.

- **The fee rate is not to exceed 3% of the “retail sales price” of the motor vehicle fuel at the time the RTA adopts the expenditure plan.** Does “retail sales price” include all other taxes and fees that may be included in the price paid for the fuel? Who determines the “retail sales price” of motor vehicle fuel and how is it determined? For example, a bulk user’s price may be lower than the price of fuel at the pump, and depending on the user may exclude certain federal and state taxes. Since the fee can not exceed 3% of the “retail sales price” this term should be well defined.
- **This bill does not specify the level of imposition of the fee.** The current language allows the possibility of imposing a fee at any level at which motor vehicle fuels are sold within the RTA jurisdiction. This presents the possibility that the fuel could be assessed at the refinery, supplier, or retail sales level. Given that the fee would be imposed on all motor vehicle fuels sold in the RTA jurisdiction, except that a “motor vehicle” does not include an aircraft, then the fuel delivered into something other than an aircraft, but not a motor vehicle, could be subject to the fee.
- **What is exempt from the fee?** Is it the author’s intent that motor vehicle fuel used to supply off-road vehicles, generators, recreational watercraft, lawnmowers, etc. would be exempt from the fee? If so, then the incidence of where the fee falls will dictate the method for claiming a deduction or claiming a

refund. In general, the further up the supply chain the fee is imposed the fewer the deductions or exemptions. Each level of the supply chain would have their own concerns regarding the following: claims for exemptions; claims for refund; claims for tax-paid refunds as a deduction; bulk delivery sales outside the region; sales to the U.S. government; and increased complexity and documentation of fuel reporting.

- **When would the fee go into effect?** If enacted, this bill would go into effect January 1, 2009, but the operative date of the fee would be dependent on the local election results. The bill specifies that the county or city and county board of supervisors in the jurisdiction of the RTA would submit a measure to the voters at a local election consolidated with a statewide primary or general election. If the voters in the county approve a measure to impose a fee on a November General Election day, then, subject to a contract between the RTA and the Board, the fee could be imposed immediately.

Eight weeks does not provide sufficient time for the Board, retailers, fuel industry suppliers, and other affected parties to be prepared. For the first election that would impose the fee, whether in June or November, the bill should require that the measure stipulate a longer lead time, such as six months, from the date the RTA imposes the fee, or provide a delayed operative date following the election approving the fee.

- **Due dates and reimbursements.** The bill should also be amended to specify a due date for the fee and return, and authorize the payment of refunds on overpayments of the fee.
- **Reimbursement to the Board is based on an independent audit. How does that work?** The bill provides that the Board will be reimbursed for its actual costs to implement and administer the fee. The actual costs are to be determined by an independent audit. Who would contract or pay for the independent audit? Perhaps the RTA should be subject to audit, including the contract with the Board, to evaluate overall performance and fiscal responsibility for the program? Just how does the reimbursement – based on an audit – work?

In the last few years the Board has implemented and administered other fee and tax programs, including the electronic waste recycling fee, the water rights fee, the marine invasive species fee, and the cigarette and tobacco products licensing program. The Board has had extensive experience in preparing cost estimates and budget change proposals and has had previous audits conducted by the Bureau of State Audits. The reimbursement provision could be revised so that the Bureau of State Audits would be responsible for conducting an audit of the Board's implementation and administration of the fee program.

- **Board staff has additional administrative concerns in collecting a local fee for a special district on a commodity already subject to an excise tax.** In addition to collecting excise taxes on motor vehicle fuels, the Board also collects excise taxes that are generally imposed on alcoholic beverages, cigarettes and tobacco products, natural gas, electrical energy, and certain telephone communication services.

To the general public it would appear the Board would have the resources, expertise, and ability to seamlessly implement a fee on already taxed commodities. However, as discussed in this analysis, there's a lot to consider with these types of proposed fees. In addition to those previously mentioned, the Board may have additional comments including, but not limited to, the following issues: co-administration of a fee program with a RTA; unconstitutional or invalid fees and the refund of such fees; contract specifications; sales tax computation; prepayment of retail sales tax on fuels; possible separation of certain administrative functions (e.g. appeals/refunds); reimbursement of expenses; and technical definitions.

- 6. A substantial fee increase could increase methods to evade the fee.** Current law requires the prepayment of approximately 80% of the sales tax that would be collected on the retail sales of fuels. Retailers are thereby required to report their sales of gasoline and diesel fuel in order to recoup those prepaid taxes. The prepayment statute was added in 1986 to curb the increasing incidences of sales tax evasion on gasoline sales.

Since the current excise tax on gasoline is generally collected at the refineries terminal rack, the tax is built into the fuel's retail purchase price. This process has curbed evasion of the excise tax at the retail sales level. This proposed fee, of up to three percent of the retail sales price of the fuel, combined with the possible imposition of the fee at the retail level, may provide sufficient incentive or opportunity for evasion of the fee.

COST ESTIMATE

The Board would incur non-absorbable costs to adequately develop and administer a new fee program. These costs would be substantially dependent on the level of the imposition of the fee. Generally, the higher up the supply chain the fee is imposed, the more closely it would mirror current collections of gasoline and diesel excise taxes – meaning fewer registrants in the new fee program. The lower the fee is imposed, the more it becomes similar to the Board's collection of sales taxes – larger number of fuel retailers and purchasers. Costs could be related to registering fuel retailers, developing related computer programs, processing returns, payments, claims for refunds, exemption forms, and carrying out compliance and audit efforts to ensure proper reporting, along with developing regulations, training staff, and answering inquiries from the public.

REVENUE ESTIMATE

This proposal would authorize the RTA to impose a fee on motor vehicle fuels, including gasoline, diesel, and other transportation fuels used by motor vehicles, sold in the RTA jurisdiction, at a rate to be established by the RTA, but not to exceed three percent (3%) of the retail sales price of the motor vehicle fuel at the time the RTA adopts an expenditure plan. Prior to imposing a regional fee, a measure would have to be approved by the voters within the affected county at an election.

At this time a revenue estimate would be difficult to compute for the following reasons:

- This proposal does not specify the amount of the fee and only indicates a maximum fee of 3% of the retail sales price of the motor vehicle fuel.
- The measure upon which the fee is to be imposed is not specified. Assuming a per-gallon fee structure may not be what the author intended.
- A fee rate as opposed to a specified amount could provide significantly different revenue amounts. Additionally, if a rate or percent is used, then the revenues would be based on the retail sales price of the fuel at the time the RTA adopts the expenditure plan. As California has experienced recently, fuel prices can rise dramatically within a relatively short period of time (one to five years).

For these reasons the revenue estimate can not be prepared at this time.

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