



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	02/20/04	Bill No:	AB 2847
Tax:	Motor Vehicle Fuel and Diesel Fuel Fee	Author:	Oropeza
Board Position:		Related Bills:	SB 1614 (Torlakson)

BILL SUMMARY

This bill would impose a five cent fee on each gallon of gasoline and diesel fuel.

ANALYSIS

Current Law

Current federal law (Section 4081 of the Internal Revenue Code) imposes an excise tax on producers of \$0.184 per gallon on the removal of gasoline from a terminal or refinery, or upon importers for the entry of gasoline into the United States. This section also imposes an excise tax on undyed diesel fuel at a rate of \$0.244 per gallon.

Under the Motor Vehicle Fuel Tax Law (Part 2, Division 2 of the Revenue and Taxation Code, commencing with Section 7301), the state imposes an excise tax of \$.018 per gallon on the removal of motor vehicle fuel at the terminal rack level.

Under the Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001) the state imposes an excise tax of \$0.18 per gallon on the removal of diesel fuel at the terminal rack level.

The Sales and Use Tax Law imposes a sales or use tax on the gross receipts from the sale of, and on the sales price of, tangible personal property, unless specifically exempted by statute. Existing law expressly *includes* within the definition of "gross receipts" and "sales price" the amount of any tax imposed by the United States upon producers and importers and the amount of any tax imposed by the state under the Motor Vehicle Fuel Tax Law. The law expressly *excludes* from the definition of "gross receipts" and "sales price" the amount of any tax imposed upon diesel fuel pursuant to Part 31 (commencing with Section 60001).

Therefore, under the existing Sales and Use Tax Law, the computation of sales tax on the sale of gasoline includes the 18.4 cents per gallon imposed at the federal level and the 18 cents per gallon imposed by the State. With respect to sales of diesel fuel, the computation of sales and use tax includes only the 24.4 cents per gallon imposed at the federal level.

Proposed Law

This bill would add Division 19 (commencing with Section 40000) to the Streets and Highways Code to impose a fee in the amount of five cents per gallon on each gallon of gasoline subject to the state excise tax imposed on motor vehicle fuel and each gallon of diesel fuel subject to the state excise tax imposed on diesel fuel.

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.

Revenues generated from the proposed fee would be deposited in the Highway Fee Fund, which this bill would create and would be used only for the following:

- payment for refunds of overpayments,
- finance the maintenance, operation, improvement, and construction of the state highway and local street and road system, and
- finance environmental programs that mitigate the air impacts of motor vehicles.

The proposed fee would become operative January 1, 2005, and would be imposed until January 1, 2008.

Background

In 1990, voters approved Senate Constitutional Amendment 1 (Proposition 111) at the June direct primary election. Approval of this measure made operative Assembly Bill 471 (Ch. 106, Stats. 1989) and Senate Bill 300 (Ch. 105, Stats. 1989). These bills, among other things, increased the rate of tax imposed on most motor vehicle fuels from \$0.09 to \$0.14 per gallon, effective August 1, 1990. Further, on January 1, 1991, and each January 1 through 1994 thereafter, the excise tax increased by \$0.01 per gallon to the current \$0.18 per gallon.

Assembly Bill 653 (Papan), introduced during the 1997 Legislative Session, contained a proposal to index the per gallon tax on gasoline and diesel fuel according to the California Consumer Price Index (CCPI). AB 653 failed passage in the Assembly Committee on Transportation.

Assembly Bill 2114 (Longville), introduced during the 2000 Legislative Session, would have provided for an annually adjusted excise tax rate on gasoline and diesel fuel based on the percentage change in the CCPI. However, those provisions were removed from the May 17, 2000 version of the bill.

Senate Bill 541 (Torlakson), introduced during the 2003 Legislative Session, would have provided for an annually adjusted excise tax rate on gasoline and alternative fuels based on the percentage change in the CCPI. SB 541 failed passage in the Senate Committee on Transportation.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the California State Building and Construction Trades Council. The purpose of this bill is to raise revenue to fund needed highway construction and maintenance projects in addition to environmental programs that mitigate the air impacts of motor vehicles.
2. **Floor stock provisions.** As currently written, this bill does not contain a floor stock tax provision. A floor stock tax serves to equalize the fee paid by a wholesaler or retailer on fuel inventory and those gallons purchased after the effective date of the new fee. Having a large gasoline or diesel fuel inventory before a new fee takes effect can bring a small windfall to a seller. The selling price of gasoline or diesel fuel can be raised and attributed to the new fee, but the additional funds collected are profit and not a fee paid to the state. A floor stock tax mitigates this windfall.

3. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed as of January 1, 2005, which is in the middle of the state's fiscal year. In order to begin to develop the fee payer base, reporting forms, and hire appropriate staff, an adequate appropriation would be required to cover the Board's administrative start-up costs that would not be identified in the Board's 2004-05 budget. Additionally, it is recommended that the bill be amended to allow revenue from the proposed fee to cover the Board's ongoing administration costs associated with the proposed fee program.
4. **Suggested technical amendments.** There are many technical concerns with this bill. Administration, definitions of key terms, and appropriation of sufficient resources are some of the issues that should be addressed. Board staff is willing to work with the author's office in drafting language to address the Board's technical concerns.
5. **State sales tax revenues.** The proposed fee would be imposed at the terminal rack level. Retail fuel vendors will pass this fee on to consumers. Sales and use tax is due based on the gross receipts or sales price of tangible personal property in this state. The proposed fee would not be specifically excluded from gross receipts or sales price, so it would be included in the amount on which sales or use tax is computed.
6. **Tax evasion.** With fuel prices at record high levels, an additional increase in retail prices due to the imposition of the proposed fee could lead to increased evasion of fuel taxes.
7. **Related Legislation.** Senate Bill 1614 (Torlakson) contains similar provisions that would impose a fee of ten cents per gallon on gasoline and diesel fuel.

COST ESTIMATE

A detailed cost estimate is pending. However, the Board would incur costs related to this measure for notifying taxpayers, developing returns, computer programming, developing and carrying out compliance and audit efforts to ensure proper reporting, and investigative efforts.

REVENUE ESTIMATE

Background, Methodology, and Assumptions

Based on statistics compiled from the Board’s fuel reports, total gasoline and diesel gallon consumption for the 2002 calendar year was 18.2 billion gallons (gasoline =15.5 billion gallons, diesel = 2.7 billion gallons). Fuel consumption during the last 5 years (1998-2002) indicates a continuous growth, on average of 2.5% per year. If we assume that this growth (2.5% per year) would continue and all factors to influence consumption would remain stable, then estimated consumption of gasoline and diesel fuel for 2005, 2006 and 2007 would be 19.6 billion gallons, 20.1 billion gallons and 20.6 billion gallons, respectively. Imposing a fee of five cents per gallon would result in the following revenue:

Year	Gallons (millions)	Revenue (\$ millions)
2005	19,600	980
2006	20,100	1,010
2007	20,600	1,030

Additionally, this fee would be subject to the sales and use tax. The additional annual sales and use tax revenue is estimated as follows:

	2005	2006	2007
Proposed fee revenue	\$ 980 million	\$ 1,010 million	\$ 1,030 million
State (5.25%)	51.5	53.0	54.1
Local (2.0%)	19.6	20.2	20.6
Special District (0.67%)	6.6	6.8	6.9
Total	\$ 77.7	\$ 80.0	\$ 81.6

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Revenue Summary

The total estimated revenue gain from imposing a five cent per gallon fee and the sales and use tax on the proposed fee would result in the following:

	2005 (millions)	2006 (millions)	2007 (millions)
Proposed fee revenue	\$ 980	\$ 1,010	\$ 1,030
State (5.25%)	51.5	53.0	54.1
Local (2.0%)	19.6	20.2	20.6
Special District (0.67%)	6.6	6.8	6.9
Total sales and use tax	77.7	80.0	81.6
Total	\$ 1,057.7	\$ 1,090.0	\$ 1,111.6

Analysis prepared by:	Bradley Miller	916-445-6662	04/06/04
Revenue estimate by:	Dave Hayes	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	

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