



## STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Amended	<b>04/27/04</b>	Bill No:	<b>AB 2847</b>
Tax:	<b>Motor Vehicle Fuel Diesel Fuel Fee</b>	Author:	<b>Oropeza</b>
Board Position:		Related Bills:	<b>AB 3104 (Firebaugh) SB 1614 (Torlakson)</b>

### BILL SUMMARY

This bill would impose a fee at an unspecified rate on each gallon of gasoline and diesel fuel.

#### Summary of amendments

The April 27 amendments changed the fee amount from five cents per gallon to an unspecified rate. The April 21 amendments added an urgency clause so the provisions would become operative immediately.

### 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 \$.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

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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 at an unspecified rate 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.

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 immediately 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

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needed highway construction and maintenance projects in addition to environmental programs that mitigate the air impacts of motor vehicles.

2. **Summary of amendments.** The April 27 amendments changed the fee amount from five cents per gallon to an unspecified rate. The April 21 amendments added an urgency clause so the provisions would become operative immediately.
3. **Floor stock provisions.** As currently written, this bill does not contain a floor stock fee provision. A floor stock fee 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 fee mitigates this windfall. The Board has determined that it is not cost effective to impose a floor stock fee unless the fee imposed is greater than 5 cents per gallon.
4. **Immediate effective date could be problematic.** This bill contains an urgency clause providing that the proposed fee would become effective and operative immediately. An immediate operative date would not allow the Board sufficient lead time to identify, register and notify affected feepayers, develop returns, or conduct other administrative functions associated with the inception of a new fee program. In order to grant the Board sufficient time to properly administer the proposed fee, it is generally recommended the new fee program not become operative until the first day of the first calendar quarter commencing more than 90 days after the effective date. However, due to the Revenue Database Consolidation project, the Board would require additional time to implement the new fee program (see comment 5).
5. **The Board could not administer a new fee program with an effective date prior to July 1, 2005 without risk to its Revenue Database Consolidation (RDC) Project.** Since April 2004 and running through the remainder of the 2004 calendar year, the Board is implementing the RDC project. RDC involves extensive changes to the Integrated Revenue Information System (IRIS), the Board's primary tax administration system. RDC implementation and stabilization efforts will occupy significant Board staff resources for the rest of 2004.

The Board has already made significant modifications to the RDC project as a result of two major pieces of legislation signed into law\* in 2003. Making such modifications to the RDC code is a very challenging and cumbersome process.

This bill would create a new fee program with an immediate operative date. This would require programming to the Board's computer system at the end of 2004, which is during the final stages of the RDC project. Making modifications at the end of the system development, which this bill would require, would put the Board's RDC project at substantial risk. Because of this risk, the Board can not add a new tax or fee program to its system until early 2005. It is therefore suggested that the bill be amended to make the fee operative *no earlier* than July 1, 2005.

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\* AB 71 (Stats. 2003, Ch. 890) and SB 1049 (Stats. 2003, Ch. 741)

6. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee to be imposed immediately, which is likely to be 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.
7. **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.
8. **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.
9. **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.
10. **Related Legislation.** Senate Bill 1614 (Torlakson) contains similar provisions that would impose a fee of ten cents per gallon on gasoline and diesel fuel. Assembly Bill 3104 (Firebaugh) would impose a fee at an unspecified rate 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 State Board of Equalization fuel reports, total gasoline and diesel gallon consumption for the 2003 calendar year was about 18.1 billion gallons (gasoline =15.5 billion gallons, diesel = 2.6 billion gallons).

The bill does not define the rate of the proposed fee. However, a fee of \$0.01 per gallon would generate about \$181 million in revenues annually (18.1 billion gallons × \$0.01 = \$181 million).

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

	(\$ millions)
State (5.25%)	9.5
Local (2.0%)	3.6
Special District (0.67%)	1.2
Total	\$ 14.3

**Revenue Summary**

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

	(\$ millions)
Proposed fee revenue	\$ 181
State (5.25%)	9.5
Local (2.0%)	3.6
Special District (0.67%)	1.2
Total sales and use tax	14.3
Total	\$ 195.3

Analysis prepared by:	Bradley Miller	916-445-6662	05/25/04
Revenue estimate by:	Dave Hayes	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	
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