STATE BOARD OF EQUALIZATION
STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	**03/31/04**	Bill No:	**AB 3104**
Tax:	**Motor Vehicle Fuel and Diesel Fuel Fee**	Author:	**Firebaugh**
Board Position:		Related Bills:	**AB 2526 (Oropeza)** **AB 2847 (Oropeza)** **SB 1614 (Torlakson)**

BILL SUMMARY

This bill would impose a fee at an undetermined rate 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 (gasoline) at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

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 refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person.

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 29 (commencing with Section 38000) to the Public Resources Code to impose a fee at an undetermined rate on each gallon of gasoline and diesel fuel under the following circumstances:

- The removal of fuel in this state from a terminal rack.
- The removal of fuel in this state from a refinery rack.
- The importation of fuel into this state for sale, consumption, use, or warehousing.
- The removal or sale of blended fuel in this state by the blender of that blended fuel.

The Board would administer and collect the proposed fee in same manner as it administers and collects the diesel fuel tax pursuant to Chapter 6, 7, 9, and 11 of Part 31 of Division 2 of the Revenue and Taxation Code. The Board would be authorized to utilize any return, report or other form deemed appropriate in administering and collecting the fee. The fee and return would be due and payable to the Board on a monthly basis on or before the last day of the calendar month following the monthly period for which the fee is imposed. The Board would also be required to retain the records of the amount of the fee revenue derived from gasoline and from diesel fuel, and shall provide the aggregate ratio of revenues from gasoline and diesel fuel to the Controller.

Revenues generated from the proposed fee would be deposited in the California Environmental Health and Air Quality Fund. This bill would require the Controller to allocate money from the fund to each district in proportion to each districts share of the state emission inventory as determined by the State Air Resources Board.

This bill provides definitions for the following key terms: blended fuel, blended motor vehicle fuel, blended diesel fuel, district, fuel, diesel fuel, motor vehicle fuel, fund, gasoline, $NO_{X,}$ PM, hydrocarbon, and state board. This bill also provides that the terms blender, bulk transfer, carrier, entry, forwarding agent, gallon, in this state, rack, refinery, removal, sale, supplier and terminal are defined as provided in the Motor Vehicle Fuel Tax Law (Part 2, commencing with Section 7301 of the Revenue and Taxation Code) and the Diesel Fuel Tax Law (Part 31, commencing with Section 60001 of the Revenue and Taxation Code).

Other provisions within this bill that pertain to the allocation and valid expenditure of the revenue would be administered by the Controller and the State Air Resources Board.

This bill contains an urgency clause and would become effective and operative immediately.

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 CCPI. AB 653 failed to pass out of 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 California Consumer Price Index (CCPI). SB 541 failed to pass out of the Senate Committee on Transportation.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the Sierra Club. The purpose of this bill is to raise revenue to fund projects that would mitigate the harmful effects of gasoline and diesel pollution in this state.

2. **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 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.

3. **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 4).

4. **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 cannot add a new tax or fee program to its system until mid 2005. It is therefore suggested that the bill be amended to make the fee operative *no earlier* than July 1, 2005.

5. **This bill should contain a specific appropriation to the Board.** This bill proposes a fee that would become effective and operative immediately. If this bill were to pass, it is likely that the operative date would 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.

6. **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.

7. **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.

8. **Suggested technical amendments.** Subdivision (c) of Section 38050 in this bill provides that the proposed fee would be imposed on the "importation" of fuel into this state for sale, consumption, use, or warehousing. However, this bill does not define the term "importation." This bill does provide a definition for the term "entry" which is synonymous with importation. It is recommended that bill be amended either to add a definition for "importation" or replace "importation" with "entry."

   Subdivision (b) of Section 38056 in this bill provides that the Board shall provide the "aggregate ratio of revenues" from gasoline and diesel fuel to the Controller. It is recommended that this bill be amended to provide a definition of "aggregate ratio of revenues."

   On page 8, line 29 of the bill, the word "the" at the end of the line should be deleted.

   This bill provides for the imposition of a fee on gasoline and diesel fuel. However, the amount of the fee to be imposed is not listed. It is recommended that a fee amount be inserted.

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

9. **Related Legislation.** Assembly Bill 2847 (Oropeza) would impose an unspecified fee amount per gallon on gasoline and diesel fuel until January 1, 2008. Assembly Bill 2526 (Oropeza) would require the Board to transmit an amount equal to one-quarter of one cent ($0.0025) per gallon of diesel fuel tax into the Carl Moyer Memorial Air Quality Standards Attainment Trust Fund (Carl Moyer Fund). Senate Bill 1614 (Torlakson) would impose a fee of ten cents per gallon on gasoline and diesel fuel to fund environmental mitigation projects in addition to highway construction and maintenance.

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).

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	05/17/04
Revenue estimate by:	Dave Hayes	916-445-0840	
Contact:	Margaret S. Shedd	916-322-2376	

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