



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

|                 |   |                |                          |
|-----------------|---|----------------|--------------------------|
| Date Introduced | <b>02/21/02</b>                           | Bill No:       | <b>SB 1608</b>           |
| Tax:            | <b>Motor Vehicle Fuel<br/>Diesel Fuel</b> | Author:        | <b>Morrow</b>            |
| Board Position: |   | Related Bills: | <b>AB 345 (Matthews)</b> |

**BILL SUMMARY**

This bill would provide a refund for excise taxes paid on motor vehicle fuel (gasoline) and diesel fuel delivered into the fuel tank of a motor vehicle for use by a local emergency service provider.

**ANALYSIS**

**Current Law**

Under existing law, an excise tax of \$0.18 per gallon is imposed on each gallon of gasoline and diesel fuel, unless specifically exempted.

Generally, local governments are required to pay the state excise tax on gasoline and diesel fuel to the same extent as any other person in this state.

The excise tax on gasoline is paid to the Controller and deposited into the Motor Vehicle Fuel Fund. The diesel fuel tax is paid to the State Board of Equalization (Board) and deposited into the Transportation Tax Fund.

**Proposed Law**

This bill would allow a person who buys and uses gasoline in any highway vehicle owned and operated by a local emergency service provider to be refunded the amount of excise tax paid for such fuel. With respect to diesel fuel, a claim for refund would be allowed if the diesel fuel was delivered into the fuel tank of a motor vehicle for use by a local emergency service provider.

This bill also provides that the motor vehicle fuel backup tax and diesel fuel backup tax would not apply to fuel on which a claim for refund has been allowed when used by a local emergency service provider in a motor vehicle fuel-powered highway vehicle or a diesel-powered highway vehicle.

And this bill would allow a local emergency service provider to operate or maintain a motor vehicle on any public highway in this state with dyed (untaxed) diesel fuel in the fuel supply tank.

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## Background

In 1994, Senate Bill 840 (Chapter 912, Presley) enacted the Diesel Fuel Tax Law and moved the collection point of the excise tax on diesel fuel from the wholesaler level to the terminal rack level for purposes of conforming the state imposition of the tax to federal law.

During the 1995 Legislative Session, Senate Bill 1131 (Chapter 34, Costa) made a number of changes to the Diesel Fuel Tax Law. Among other things, SB 1131 defined state and local governments, required those agencies to obtain a fuel tax license, file a tax return, and pay their state excise tax liability, and allowed those agencies to use dyed diesel fuel on the highway.

## COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by the author and is intended to help local emergency service providers pay for increased operating costs resulting from the events of September 11<sup>th</sup>.
2. **Precedent for exemptions for other public services.** It could be argued that the provisions proposed by this bill, which is narrowly targeted to purchases of gasoline and diesel fuel by local emergency service providers, is warranted because of the high priority of those services. However, there may be many other worthy services provided at the state level or by private companies that may have equally persuasive arguments, such as ambulance companies, the California Highway Patrol, or the State Department of Forestry.
3. **This measure would not apply to aircraft and vessels used by local emergency service providers for the following reasons:**
  - This bill would allow any person who buys and uses gasoline in any *motor vehicle* owned and operated by a local emergency service provider to be refunded the amount of tax paid for such fuel. The Motor Vehicle Fuel Tax Law defines "motor vehicle" to include every self-propelled vehicle operated or suitable for operation on the highway, except a vehicle used exclusively upon exclusively upon stationary rails or tracks. Accordingly, persons who have paid tax on gasoline delivered into the fuel tank of an aircraft or vessel for use by a local emergency service provider would not qualify for a refund of the tax since aircraft and vessels do not qualify as a "motor vehicle".
  - Sections 8101.5 and 8101.7 provide that no refund of any tax shall be granted on gasoline used in propelling an aircraft or vessel in this state.

With respect to aircraft, there are two types of fuels used (including helicopters). The first, aviation gasoline, is generally used in propeller type aircraft. The second type of fuel, aircraft jet fuel, is used in jet or turbine type aircraft. Generally, the types of aircraft used by police and fire departments consist of smaller aircraft powered by aviation gasoline rather than aircraft jet fuel.

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Both gasoline and diesel fuel is used in vessels. Current diesel fuel tax law allows for the refund of tax paid on diesel fuel used for purposes other than operating motor vehicles upon public highways in this state.

4. **The provisions of this measure could apply to vehicles not owned by local emergency service providers.** To be eligible for a refund of fuel taxes paid, this measure simply provides that the fuel be delivered into the fuel tank of a motor vehicle for use by a local emergency service provider. This bill does not require that the motor vehicle be owned by a fire department, police department or any other public safety department, or that the motor vehicle qualify as an authorized emergency vehicle, as defined in Section 165 of the Vehicle Code.

Accordingly, a private individual who is a member of a volunteer fire department, and uses his or her private pick-up truck in fire prevention services could qualify for a refund of fuel taxes paid for fuel delivered into the fuel tank of his or her private truck.

5. **The Controller is responsible for refunds of the motor vehicle fuel tax.** Under the Motor Vehicle Fuel Tax Law, a refund of the motor vehicle fuel tax must be filed with the Controller. Generally, the Controller will refund the tax upon the presentation of a properly completed claim and the invoice. Credit interest, however, is not allowed on user refunds processed by the State Controller.

With respect to diesel fuel, claims for refund are filed with the Board. The Board will refund the tax, including interest, upon the presentation of the claim and the invoice.

6. **The backup tax.** Both the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law contain a backup tax. In general, the backup tax is a "catch-all" tax intended to impose the tax on fuel purchased ex-tax, or on fuel on which a claim for refund has been allowed, when such fuel has been used in a motor vehicle operated on the highway.

This bill provides that the backup tax would not apply to gasoline and diesel fuel on which a claim for refund has been allowed. Without this exemption, local emergency service providers would still be required to pay the tax under the backup provisions if the fuel upon which a refund has been allowed was used in a motor vehicle operated on the highway.

7. **Definition of "local emergency service provider".** This bill does not provide a definition for the term "local emergency service provider." In order to avoid any ambiguity in administering the provisions of this measure, it is recommended that this bill be amended to add Section 7346 and Section 60049.5 to the Revenue and Taxation Code to provide a precise definition for "local emergency service provider."
8. **Suggested technical amendments.** In order to achieve the author's intent and for purposes of consistency, the following amendments are suggested:
  - 7401(a)(12). Backup tax does not apply to delivery of motor vehicle fuel into the fuel tank of a motor vehicle fuel-powered highway vehicle as provided in Section

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7364 for use in a motor vehicle fuel-powered highway vehicle that is owned and operated by a local emergency service provider.

- Strike Section 7403.5 from the bill. Section 7403.5 relates to exemption certificates for motor vehicle fuel used by a local emergency service provider. Since this measure allows a person to claim a refund of the taxes paid, as provided, rather than exemption for motor vehicle fuel sold, Section 7403.5 is unnecessary.
  - 8101(h). Any person who buys and uses the motor vehicle fuel in any motor vehicle fuel-powered highway vehicle owned and operated by a local emergency service provider.
  - 60100(a)(5)(F). Use in a diesel-powered highway vehicle that is owned and operated by a local emergency service provider.
  - 60101(c). No person shall operate or maintain a motor vehicle on any public highway in this state with dyed diesel fuel in the fuel supply tank. This subdivision does not apply to uses of dyed diesel fuel on the highway that are lawful under the Internal Revenue Code or regulations promulgated thereunder, if the person is registered as a qualified highway vehicle operator, exempt bus operator, or government entity, or if the person is an intercity bus operator, as defined in Section 60046, who is registered as an interstate user under this part, or if the person is ~~to~~ a local emergency service provider.
  - 60108(b). This section, Section 60146 and Section 60205.5 ~~do~~ does not apply to a local emergency service provider.
  - 60501(a)(4)(K). ~~Delivered into the fuel tank of a motor vehicle for use~~ Used in a diesel-powered highway vehicle owned or operated by a local emergency service provider.
9. **Related legislation.** Assembly Bill 345 (Matthews), which was introduced in 2001, would have exempted from the excise tax diesel fuel sold by a supplier to a public safety department, as defined, for use in an authorized emergency vehicle. That bill died in the Assembly Appropriations Committee. The Board voted to support that measure.

## **COST ESTIMATE**

The administrative workload associated with this bill would include advising and answering inquiries from the public, informing Board staff, revising forms and processing additional claims for refund. A cost estimate of this workload is pending.

## **REVENUE ESTIMATE**

### **Background, Methodology, and Assumptions**

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The bill does not provide a definition of the term 'local emergency service providers'. It is assumed that the bill is referring to public safety organizations and these would include fire and police protection departments.

Analyzing fuel expenditure figures of the police and fire department's of Los Angeles and San Diego, two of the largest city department's in the state, it is seen that fuel expenditures, in relation to overall department expenditures is not very significant statistically (less than 1%).

The State Controller's Cities Annual Report, for the fiscal year ended June 30, 1999, indicated the following as public safety expenditures: Police \$5,513,634,000, Fire \$2,109,204,000. Based on the Los Angeles and San Diego ratios, the following is estimated:

Estimated Gasoline Fuel Expenditure Incurred by Police Departments: \$37.0 million  
 Estimated Diesel Fuel Expenditure Incurred by Fire Departments: \$11.0 million

The average gasoline price in 2001 was \$1.664 per gallon. Based on this average, it is estimated that police vehicles consumed 22.2 million gallons (\$37 million / \$1.664 = 22.2 million gallons). An exemption from the Motor Vehicle Fuel Tax would amount to an estimated loss of around \$4.0 million (\$0.18 x 22.2 million gallons = \$3,960,000).

The average diesel price in 2001 was \$1.542 per gallon. Based on this average, it is estimated that fire vehicles consumed 7.1 million gallons (\$11 million / \$1.542 = 7,133,592 million gallons). An exemption from the Diesel Fuel Tax would amount to an estimated loss of \$1.3 million (\$0.18 x 7.1 million gallons = \$1,260,000).

**Revenue Summary**

The revenue loss from exempting fire and police department vehicles from the Motor Vehicle Fuel and Diesel Fuel Tax is estimated to be \$5.3 million.

|                              | <u>Revenue Loss</u> |
|------------------------------|---------------------|
| Motor vehicle fuel tax loss: | \$4.0 million       |
| Diesel fuel tax loss:        | \$1.3 million       |
| Total Loss:                  | \$5.3 million       |

|                       |                   |          |              |
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