



**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092  
1-916-324-1825 • FAX 1-916-322-4530  
[www.boe.ca.gov](http://www.boe.ca.gov)

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State Controller

CYNTHIA BRIDGES  
Executive Director

April 3, 2015

Dear Interested Party:

Enclosed is the Initial Discussion Paper on Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle* and proposed Regulation 1316.1, *Use Fuel-Other Nontaxable Uses in a Motor Vehicle*. Before the issue is presented at the Board's September 15, 2015 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

**April 14, 2015**  
**Room 122 at 10:00 a.m.**  
**450 N Street, Sacramento, CA**

If you would like to participate by teleconference, call 1-888-808-6929 and enter access code 7495412. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at [Susanne.Buehler@boe.ca.gov](mailto:Susanne.Buehler@boe.ca.gov) by May 6, 2015. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Laurel Smith at 1-916-322-3211, who will be leading the meeting.

Sincerely,

Susanne Buehler, Chief  
Tax Policy Division  
Sales and Use Tax Department

SB:ls  
Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)  
Honorable Jerome E. Horton, Chairman, Third District  
Senator George Runner (Ret.), Vice Chair, First District  
Honorable Fiona Ma, CPA, Member, Second District  
Honorable Diane L. Harkey, Member, Fourth District  
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)  
Ms. Kari Hammond, Board Member's Office, Third District  
Mr. David Hunter, Board Member's Office, Third District  
Ms. Shellie Hughes, Board Member's Office, Third District  
Mr. Sean Wallentine, Board Member's Office, First District  
Mr. Lee Williams, Board Member's Office, First District  
Mr. Alan Giorgi, Board Member's Office, First District  
Mr. Brian Wiggins, Board Member's Office, First District  
Mr. Jim Kuhl, Board Member's Office, Second District  
Ms. Kathryn Asprey, Board Member's Office, Second District  
Mr. John Vigna, Board Member's Office, Second District  
Mr. Tim Morland, Board Member's Office, Second District  
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Mr. Ted Matthies, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Fourth District  
Ms. Lynne Kinst, Board Member's Office, Fourth District  
Ms. Cynthia Bridges (MIC 73)  
Mr. Randy Ferris (MIC 83)  
Mr. David Gau (MIC 101)  
Mr. Jeffrey L. McGuire (MIC 43)  
Ms. Lynn Bartolo (MIC 57)  
Mr. Todd Gilman (MIC 70)  
Mr. Wayne Mashihara (MIC 46)  
Mr. Kevin Hanks (MIC 49)  
Ms. Debra Kalfsbeek (MIC 62)  
Mr. Richard Parrott (MIC 57)  
Mr. Mark Durham (MIC 67)  
Mr. Robert Tucker (MIC 82)  
Mr. Jeff Vest (MIC 85)  
Mr. Jeff Angeja (MIC 85)  
Mr. David Levine (MIC 85)  
Mr. Bradley Heller (MIC 82)  
Mr. Lawrence Mendel (MIC 82)  
Mr. John Thiella (MIC 73)  
Mr. Kevin Smith (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Mr. Clifford Oakes (MIC 50)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Laureen Simpson (MIC 70)  
Ms. Karina Magana (MIC 46)  
Mr. Bradley Miller (MIC 92)  
Mr. Bill Benson (MIC 67)

Ms. Tracy McCrite (MIC 50)  
Ms. Laurel Smith (MIC 88)

## INITIAL DISCUSSION PAPER

### **Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle* Proposed Regulation 1316.1, *Use Fuel-Other Nontaxable Uses in a Motor Vehicle***

#### **ISSUE PRESENTED**

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, and amending Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle*, and approve proposed Regulation 1316.1 *Use Fuel-Other Nontaxable Uses in a Motor Vehicle* to remove ambiguous language, clarify the exemptions, and provide examples of and safe-harbor percentages for eligible diesel fuel and use fuel auxiliary equipment on motor vehicles.

#### **BACKGROUND**

Prior to July 1995, all exemptions from tax for both diesel fuel and use fuel were governed by Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle* (Regulation 1316). On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (commencing with Revenue and Taxation Code (RTC) section 8601), and placed into the newly created Diesel Fuel Tax Law (commencing with RTC section 60001). In 1998, the Board of Equalization (BOE) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

#### **USE FUEL**

RTC section 8652 (c) states no tax should be imposed on any user “[f]or a purpose other than the generation of power to propel a motor vehicle in this state.” Regulation 1316 allows a claim for refund for excise tax paid on use fuel used in specific Power Take-off (PTO) equipment and for specific off-highway uses.

#### **DIESEL FUEL**

RTC section 60100 (a)(5)(C) states that tax does not apply to the delivery of diesel fuel into the fuel tank of a diesel-powered highway vehicle that is operated off the highway. RTC section 60501 (a)(4)(A) provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. Regulation 1432 allows a claim for refund for excise tax paid on diesel fuel used in “power take- off” (PTO) equipment and for off-highway uses.

## INITIAL DISCUSSION PAPER

**Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***  
**Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle***  
**Proposed Regulation 1316.1, *Use Fuel-Other Nontaxable Uses in a Motor Vehicle***

### DISCUSSION

The language of Regulation 1432(a), pertaining to the use of diesel fuel to run PTO equipment, as fuel used for a purpose other than operating motor vehicles on a public highway, has been the subject of litigation. Regulation 1432(a) was intended to specifically define and describe equipment eligible for refund of the excise tax paid on diesel fuel. The words “generally” and “usually” were included in the text to permit exemption from the excise tax for diesel fuel used to run other equipment not specifically described, but similar in nature to equipment that was specifically designed to derive its power from an accessory mounted onto a transmission. However, the use of words “generally” and “usually” has created ambiguity in application of the regulation.

In addition, when Regulation 1432 was adopted in 1998 it only applied to exempt uses of diesel fuel not use fuel. The Use Fuel Law (Regulation 1316(e)) only provides an incomplete list of PTO equipment subject to the exemption, therefore clarification of the types of equipment subject to the exemption is necessary.

To help clarify the exemption, staff recommends deleting the term “PTO,” using the term “auxiliary equipment,” and providing examples of qualifying exempt auxiliary equipment. Staff proposes to amend Regulations 1432 and 1316, and adopt Regulation 1316.1 to clarify any existing ambiguities (See Exhibits 1, 2, and 3 respectively). This would also make specific the BOE’s intent that only equipment of the type and nature specifically defined and described constitutes auxiliary equipment for purposes of exemption from the excise tax on diesel fuel or use fuel. To assist taxpayers, BOE staff proposes to use a “safe harbor” percentage based on vehicle type that can be used as a presumed amount of diesel fuel and use fuel used for auxiliary equipment. Taxpayers can apply this percentage to their fuel consumption to determine the amount of fuel exempted from excise tax on diesel and use fuel. For any equipment not specifically identified or any amounts greater than the safe harbor percentages in the regulation, a study must be conducted by the claimant and approved by the Board in order for a refund to be granted. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. The updated study will verify whether technological and equipment improvements have affected the allowable percentage. Incidental off- highway use is included in the calculation of the safe harbor percentage; therefore, if the safe harbor percentage is used, a claim for refund for off- highway use in addition to the safe harbor percentage will not be accepted.

## INITIAL DISCUSSION PAPER

**Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***  
**Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle***  
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The Board previously requested participation from industry to develop test percentages; however the size of the test pool was inadequate. Instead, staff developed exemption percentages using a combination of accepted percentages derived from current Board-approved test methods and percentages gathered from other western states.

The proposed changes to the regulations also include a clarification in the language describing uses of fuel that would qualify for an exemption, and the responsibility of maintaining proper documentation and providing supporting documentation.

Staff also proposes an amendment to Regulation 1432 relettered section (c); deleting language which allows a refund to be claimed for diesel fuel tax paid on the portion of fuel consumed while a vehicle is idling on the highway running auxiliary equipment. The California Air Resources Board enforces “Idling Requirements,” which greatly reduces the amount of legal idling time; in most cases it is limited to 5 minutes. Diesel fuel used in auxiliary equipment while idling on the highway is considered incidental off-highway use and, as noted previously, is accounted for in the proposed safe harbor percentages.

Under Revenue and Taxation Code section 7051, “[t]he board may prescribe the extent to which any ruling or regulation shall be applied without retroactive effect.” In other words, when the Board wishes to limit the retroactive effect of a regulation, or amendments thereto, it is authorized to do so, and would accomplish it by taking affirmative action in the regulatory process by means of specifying an operative date for the amendments. Due to the significant policy change regarding the introduction of safe harbor percentages, staff recommends that any amendments to Regulation 1432, Regulation 1316, and Regulation 1316.1 have a prospective application. Based on the estimated approval process for regulatory amendments, staff has identified an operative date of April 1, 2016.

### **SUMMARY**

Staff welcomes any comments, suggestions, and input from interested parties on this issue. Staff invites interested parties to participate in the April 14, 2015, interested parties meeting. The deadline for interested parties to provide written responses regarding this discussion paper is May 6, 2015.

Prepared by Special Taxes Policy and Compliance Division

Current as of April 3, 2015.

## REGULATION 1432. OTHER NONTAXABLE USES OF DIESEL FUEL IN A MOTOR VEHICLE.

Reference: Sections 60016, 60019, 60026, 60501, and 60502, Revenue and Taxation Code.

### ~~(a) POWER TAKE-OFF EQUIPMENT.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~

~~(2) Power take-off equipment may be found, for example,~~

### (a) DIESEL FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS OF THIS STATE.

(1) Diesel fuel that is not used to operate a motor vehicle upon a public highway in California is exempt from the Diesel Fuel Tax.

(A) For purposes of this regulation, equipment used to "operate a motor vehicle upon a public highway in California" are defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any accessories or amenities used for the safety or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a public highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, electric windows and locks, heated seats, radios, Bluetooth, cell phones, media players, and other similar equipment and amenities.

Additional examples of equipment that is used to operate a motor vehicle upon a public highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, and other similar equipment.

(B) Equipment other than equipment used to operate a motor vehicle upon a public highway in California is "auxiliary equipment."

"Auxiliary equipment" includes, but is not limited to, equipment found on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, cement pumpers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick),

aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers or pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

~~(b) OFF-HIGHWAY USE.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411.~~

~~(2) If the diesel fuel is used in the operation of construction which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.~~

~~(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the vehicle under the Vehicle Code.~~

(2) Safe Harbor Percentages.

For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel that are not used to operate a motor vehicle upon the public highway in California for specific and various types of vehicles. Incidental off-highway use is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Dump trailers</u>	<u>15%</u>
<u>Dump trucks</u>	<u>15%</u>

<u>Fire trucks (private)</u>	<u>25%</u>
<u>Garbage trucks</u>	<u>30%</u>
<u>Hot asphalt distribution truck</u>	<u>15%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger/derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile cranes</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration trucks</u>	<u>20%</u>
<u>Salt spreader on dump truck</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet /vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super suckers</u>	<u>25%</u>
<u>Sweeper trucks (must be motor vehicle)</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank trucks</u>	<u>15%</u>
<u>Truck with PTO hydraulic winch</u>	<u>15%</u>
<u>Wrecker</u>	<u>15%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for exempt diesel fuel consumption greater than the percentages provided in subdivision (2), a person must submit a specific study conducted by the claimant and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study.

(e)(b) REFUNDS. Persons who acquire diesel fuel tax paid and subsequently do not use the diesel fuel ~~in power take-off equipment~~ to operate the motor vehicle upon a public highway in California are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a

refund may ~~use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes~~ use the percentages listed in subdivision (a)(2), or prior to submission of the claim, must submit a specific study conducted by the claimant following Board-approved test methods demonstrating off-highway or auxiliary use, if claiming a refund in excess of the safe harbor percentages. It is the responsibility of the person claiming the refund to document and support the amount claimed.

~~(d)~~(c) IDLE TIME. Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling and no refunds will be allowed for diesel fuel tax paid on diesel fuel that is used to idle a vehicle on the highway. If the vehicle is idling on the highway while operating the equipment described in subdivision (a)(2), then a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel that is used to operate the equipment described in subdivision (a)(2); however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. ~~If the vehicle is idling on the highway while power take-off equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the power take-off equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling.~~

**REGULATION 1316. EXEMPT USES OF FUEL IN MOTOR VEHICLE.**

*Reference:* Sections 8605, 8651, 8652, 8653, and 8653.1, Revenue and Taxation Code.

The tax does not apply with respect to that fuel which the user establishes to the satisfaction of the board is used:

(a) In the operation of a motor vehicle off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1303.

A vehicle is operated upon a highway if it moves any distance in the general direction of the highway, whether upon the paved or unpaved portion thereof. An operation is not conducted upon a highway when a vehicle is operated thereon only for the purpose of crossing the highway from private property on one side to private property directly on the other and the vehicle is not operated for any distance in the general direction of the highway in making the crossing.

(b) In the operation of a motor vehicle on any highway which is under the jurisdiction of the United States Department of Agriculture and with respect to the use of such highway the user pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, that agency. "Highway which is under the jurisdiction of the United States Department of Agriculture" (hereafter referred to as U.S.D.A.) includes a way or place in the Forest Service road system within a National Forest, or partly within the National Forest and partly on private property, but does not include a state or county highway traversing the National Forest.

A user who "pays, or contributes to the cost of construction or maintenance" includes any user who shares in the cost of construction or maintenance of a highway with respect to the use of which the exemption is claimed, either directly as a party to a joint construction or maintenance agreement with U.S.D.A., or indirectly through any person who is a party to such an agreement. "Pays or contributes", in addition to monetary payments or contributions, includes: (1) the bearing in whole or in part of the cost of construction or maintenance by the user who performs the work himself or by his employment of others to perform the work; or (2) the sharing of the cost of construction or maintenance indirectly by any person who contracts with a party to such an agreement to perform transportation by motor vehicle upon such U.S.D.A. highway, or any subcontractor of such contractor who makes a like use of the highway, when the share amount of the contribution is specified in the contract between the respective contracting parties, notwithstanding that such amount may be reflected in a lump

sum rate of compensation for the transportation service or transportation and logging or other services.

Any user claiming exemption from tax with respect to fuel used on a highway which is under the jurisdiction of the U.S.D.A. shall also keep records to show a description of the highway and route traveled thereon, and the amounts paid or contributed directly or indirectly for the cost of construction or maintenance of the highway pursuant to an agreement with the U.S.D.A. When a motor vehicle is operated partly on such highway and partly on a highway of this state or any political subdivision thereof, the gallonage of fuel used in operations on the U.S.D.A. highway for which exemption is claimed may be determined: (1) in the proportion that the miles operated on such highway bears to the sum of the miles operated thereon and the miles operated upon any other highway; or (2) by computing the gallonage of fuel used on the U.S.D.A. highway by dividing a miles per gallon rate into the total miles operated on the U.S.D.A. highway. The miles per gallon rate shall be determined by a fuel consumption test made under typical operating conditions and subject to approval of the Board.

(c) In the operation of an implement of husbandry, truck or farm tractor which is used in agricultural operations off the highway and only incidentally operated upon a highway in moving between farms or parts of farms which are in close proximity and which vehicles are exempt from registration under the Vehicle Code.

(d) In the operation of any construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits and which equipment is exempt from registration under the Vehicle Code. As used in this subsection and subsection (c) above, "incidentally operated" does not include the use of agricultural vehicles or special construction equipment for the transportation of persons or property upon the highways in an operation which would require registration of the vehicle under the Vehicle Code.

~~(e) For a purpose other than the generation of power to propel a motor vehicle on a highway, including fuel used to drive power take-off equipment to turn a rotary cement mixer, or to operate an air conditioner or garbage compressor.~~

(e) Any user claiming exemption from tax under this regulation shall accurately maintain adequate records to show the operations claimed to be exempt including the miles traveled and fuel used in order to establish to the satisfaction of the Board that the user is entitled to the exemption.

**REGULATION 1316.1. USE FUEL—OTHER NONTAXABLE USES IN A MOTOR VEHICLE.**

Reference: Section 8652 Revenue and Taxation Code.

(a) USE FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE PUBLIC HIGHWAYS OF THIS STATE.

(1) Use fuel that is not used to operate a motor vehicle upon a public highway in California is exempt from the Use Fuel Tax.

(A) For purposes of this regulation, equipment used to “operate a motor vehicle upon a public highway in California” are defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any accessories or amenities used for the safety or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a public highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, electric windows and locks, heated seats, radios, Bluetooth, cell phones, media players, and other similar equipment and amenities.

Additional examples of equipment that is used to operate a motor vehicle upon a public highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, and other similar equipment.

(B) Equipment other than equipment used to operate a motor vehicle upon a public highway in California is “auxiliary equipment.”

“Auxiliary equipment” includes, but is not limited to, equipment found on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, cement pumers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers or pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

(2) Safe Harbor Percentages.

For transactions occurring on and after April 1, 2016, the following are presumed amounts of use fuel that are not used to operate a motor vehicle upon the public highway in California for specific and various types of vehicles. These percentages do not apply to the “Annual Flat Rate Tax.” Incidental off-highway use is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Dump trailers</u>	<u>15%</u>
<u>Dump trucks</u>	<u>15%</u>
<u>Fire trucks (private)</u>	<u>25%</u>
<u>Garbage trucks</u>	<u>30%</u>
<u>Hot asphalt distribution truck</u>	<u>15%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger/derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile cranes</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration trucks</u>	<u>20%</u>
<u>Salt spreader on dump truck</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet /vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super suckers</u>	<u>25%</u>
<u>Sweeper trucks (must be motor vehicle)</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank trucks</u>	<u>15%</u>
<u>Truck with PTO hydraulic winch</u>	<u>15%</u>

Wrecker

15%

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for exempt use fuel consumption greater than the percentages provided in subdivision (2), a person must submit a specific study conducted by the claimant and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt use fuel consumption in the percentages indicated above without conducting a study.

(b) REFUNDS. Persons who paid use fuel tax and subsequently do not use the fuel to operate the motor vehicle upon a public highway in California or off the highway are entitled to a refund of the use fuel tax paid for that fuel. Persons claiming a refund may use the percentages listed in subdivision (a)(2), or prior to submission of the claim must submit a specific study conducted by the claimant following Board approved test methods demonstrating off-highway or auxiliary use, if claiming a refund in excess of the safe harbor percentages. It is the responsibility of the person claiming the refund to document and support the amount claimed.

(c) IDLE TIME. Use fuel consumed in motor vehicles on the highway is subject to the use fuel tax whether the motor vehicle is moving or idling and no refunds will be allowed for use fuel tax paid on use fuel that is used to idle a vehicle on the highway. If the vehicle is idling on the highway while operating the equipment described in subdivision(a)(2), then a refund will be allowed for the use fuel tax paid on that portion of the use fuel that is used to operate the equipment described in subdivision (a)(2); however, no refund will be allowed for the use fuel tax paid on that portion of the use fuel which is used for idling. If the safe harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for use fuel used to operate auxiliary equipment while idling.