



**STATE BOARD OF EQUALIZATION**

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State Controller

CYNTHIA BRIDGES  
Executive Director

June 5, 2015

Dear Interested Party:

Enclosed is the Second Discussion Paper on Regulation 1432, *Other Nontaxable Uses of Diesel Fuel 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, a second interested parties meeting is scheduled as follows:

**June 16, 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 July 1, 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  
Mr. Russell Lowery, Board Member's Office, Fourth District  
Mr. Ted Matthies, Board Member's Office, Fourth District  
Mr. Neil Shah, Board Member's Office, Fourth District  
Mr. Clifford Oakes, 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)  
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)  
Mr. Stephen Smith (MIC 82)  
Ms. Kirsten Stark (MIC 50)  
Mr. Richard Parrott (MIC 57)  
Ms. Debra Kalfsbeek (MIC 62)  
Mr. Marc Alviso (MIC 101)  
Mr. Chris Lee (MIC 101)  
Ms. Lauren Simpson (MIC 70)  
Ms. Karina Magana (MIC 46)  
Mr. Bradley Miller (MIC 92)

## SECOND DISCUSSION PAPER

### Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

#### ISSUE

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to remove ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and to provide safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel.

#### BACKGROUND

Prior to July 1995, all exemptions from tax for both diesel fuel and alternative fuels covered under the Use Fuel Tax Law 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.

#### Diesel Fuel

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.

#### 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, among other things, allows a claim for refund for excise tax paid on fuel used in power take-off (PTO) equipment and for off-highway uses. In the initial discussion paper for this topic, staff recommended revising Regulation 1316 *Exempt Uses of Fuel in a Motor Vehicle* and adding 1316.1 *Use Fuel—Other Nontaxable Uses in a Motor Vehicle* to make changes similar to those proposed for Regulation 1432 (Exhibit 1). Upon further review, BOE staff determined that currently no taxpayers are filing claims for refund under the Use Fuel Tax Law for fuel used in PTO equipment, likely as a result of the option to pay the Annual Flat Rate Tax in lieu of a per gallon charge. Due to the absence of refund claims, BOE staff does not have sufficient data to determine accurate safe harbor percentages. Changing technologies in both fuel composition and fuel efficiency may increase refund requests in the future, at which time amending Regulation

## SECOND DISCUSSION PAPER

### **Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***

1316 could be revisited. Therefore, staff is no longer recommending amending Regulation 1316 or adopting Regulation 1316.1.

#### **DISCUSSION**

This paper addresses suggestions that were raised at the first interested parties meeting on April 14, 2015, and in the submissions from interested parties.

Staff received a submission on April 10, 2015, from Mr. Jacob Bholat (Exhibit 2), suggesting the addition of equipment to the safe harbor list. Staff also received a submission May 6, 2015, from Mr. Leonard Finegold (Exhibit 3), addressing many areas including: equipment included in the safe harbor percentages; the percentages associated with types of equipment; refund calculations; and general clarifications.

The following topics have been reviewed and updated as a result of a combination of input from staff review, the interested parties meeting, and the correspondence received. Proposed changes to Regulation 1432 are shown in Exhibit 1. Please note, the text in underline and strikeout shows changes from the current published Regulation 1432, not the drafted revisions presented in staff's initial discussion paper.

#### *“Incidental off-highway use”*

The use of the term “incidental off-highway use” in the proposed revision of Regulation 1432, subdivision (a)(2), created some ambiguity and has been replaced with “[~~o~~ff-highway use, as defined in subdivision (b)” to provide better clarity and interpretation of the safe harbor percentages.

#### *Vehicles used off highway*

The previously stricken section 1432, subdivision (b), titled “Off-Highway Use” will be added back to Regulation 1432 in the same location. This change will make it clear that motor vehicles used off-highway are allowed a refund for the excise taxes paid on the diesel fuel used in a nontaxable manner.

#### *Safe Harbor Percentages - Idle Time*

It was suggested that the safe harbor percentages be expanded to allow for idle time. This recommendation was not incorporated, as under Regulation 1432, subdivision (d), the Board does not allow refunds for diesel fuel used while idling on a highway.

## SECOND DISCUSSION PAPER

### **Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***

#### Safe Harbor Percentages - Equipment

It was suggested that a category be added for “other” equipment that is not specifically identified under the safe harbor amounts in proposed subdivision (a)(2). Staff agreed with the recommendation and proposes to add the category titled “Other Auxiliary Equipment” to proposed subdivision (a)(2) at the suggested safe harbor percentage of ten percent (10%).

It was also suggested during the first Interested Parties Meeting that language should be added specifying that auxiliary equipment not on the list may be granted an exemption if a BOE-approved study is completed prior to taking the exemption. Staff agrees with this suggestion and has incorporated language into proposed subdivision (a)(3).

Interested parties also proposed additional equipment to be added to the list of auxiliary equipment with an approved safe harbor exemption. Some of the suggested vehicle types were already listed; others were specific pieces of equipment which can be defined in broader categories. To help add clarity, proposed subdivision (a)(1)(B) was modified to provide examples of specific equipment within the category. For example, the following types of equipment would qualify for the “garbage truck” safe harbor amount: automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc.

Some of the suggested items were of a type already listed in a more general category. For example, a port-o-let truck was not listed; however, it is materially the same as a super sucker, which is listed. Thus the port-o-let was added in parenthesis to proposed subdivision (a)(1)(B) after “super sucker” and similar additions were made to boom trucks, adding “block boom” for additional clarification.

Staff has adopted the recommendation to add “transfer trailers,” which are trailers with a walking floor, to the list of safe harbor equipment and has incorporated it into proposed subdivision (a)(2) with a twenty percent (20%) safe harbor. Many of the remaining items were not added because staff does not believe they contain auxiliary equipment. These items include: utility trailers, box trailers, flatbed trucks, service trucks, and heavy duty tractors. If additional information clarifying why these items should be considered auxiliary equipment is provided, their addition to the list will be considered. Police and sheriff vehicles as well as ambulances were excluded because most of these vehicles are not diesel powered. Further, staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway”, which as stated in subdivision (a)(1)(A) do not qualify as auxiliary equipment. If interested parties believe the equipment used in these vehicles meets the definition of auxiliary equipment, they are encouraged to provide specific examples of such equipment, as well as suggested safe harbor percentages.

## **SECOND DISCUSSION PAPER**

### **Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***

#### *Refund Calculations*

Interested parties proposed that the BOE simplify the refund calculation process and allow a weighted average of all equipment used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel “used” not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel in each piece of equipment, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods can be adopted.

#### **SUMMARY**

Staff appreciates the input provided by the interested parties and looks forward to continuing to work with them to develop a revised version of Regulation 1432. Staff remains open to any other suggestions or options that might be presented by industry or other interested parties that would serve to clarify the suggestions or remove ambiguity. Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties meeting scheduled for June 16, 2015. The due date for interested parties to provide written responses regarding this issue is July 1, 2015.

Prepared by Special Taxes Policy and Compliance Division

Current as of June 5, 2015

## § 1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

### ~~(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, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, 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, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

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

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

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

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a 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, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered “auxiliary equipment.” Equipment powered from a separate

fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck ((automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck)), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer and wrecker.

(2) Safe Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), 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 trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</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 crane</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</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 sucker</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer Trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them 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. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the “other” category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

**(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 of vehicular travel, or any way or place used for vehicular travel

which is not a highway as defined in Regulation 1411. 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 off the highway or while idling, see (d) below.

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that 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 motor vehicle under the Vehicle Code.

**(c) REFUNDS.**

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment or ~~the diesel fuel in power take-off equipment~~ to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use ~~any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes~~ the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed.

**(d) 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 the diesel fuel tax paid on diesel fuel ~~which is used to~~ while idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while auxiliary 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~~ auxiliary 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. 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.

**From:** Jacob Bholat [<mailto:jbholat@equityrs.com>]  
**Sent:** Friday, April 10, 2015 11:06 AM  
**To:** Buehler, Susanne  
**Subject:** BOE- Business Taxes Committee Material - Other Nontaxable Uses of Diesel and Use Fuel

Hi Laurel,

We would like to propose that the committee consider an additional uses that may not fit the mold in the potential revision to Regulation 1432 for public safety vehicles. Fire vehicles have already been included, so our recommendation relate only to police, sheriff and ambulances

Currently, most city and county police and sheriff departments operate their vehicles in manner that raises some challenges to the application/interpretation of this Regulation. These governmental entities require that police officers continue to run their vehicle to operate mission critical equipment. Ambulance operators also are legally required to continue to run vehicles to operate mission critical equipment. It's common procedure for all emergency response personnel to keep their vehicles running, including the police, fire trucks and ambulances. It's based on both security, public safety concerns, the type of call, the weather, and specific needs and necessities of the moment to be prepared to respond quickly to the next assignment.

The police/sheriff vehicles are also the only the only work space available for the Officer, it has to be ready to be shared with all kinds of citizens including arrested persons, victims, K-9 or general citizens in need of assistance. Officers are instructed to keep public safety in mind, so they must be able to immediately respond to the next assigned call, without delay. The idle engines operate computers, communication devices and other safety equipment and allow officers the ability to perform their duties. Ambulances need power to operate onboard emergency equipment and provide a controlled temperature cabin environment for life-saving medicines and patient care. To provide this power, public safety vehicles have to idle their engines for extended periods of time.

Therefore we request that language be added to cover police and sheriff vehicles and also ambulances to the exemption list as the proposed language could be used to exclude their power take-off use. Since the BOE doesn't have established percentages, exempt usage will need to be computed by these users.

Thank you,

**Jacob**  
949.295.1899  
1215 N. Red Gum St. Suite B  
Anaheim, CA 92806

May 7, 2015

ATTN: Susanne Buehler  
Chief - Tax Policy Division  
Sales and Use Tax Department  
State Board of Equalization  
450 N Street  
Sacramento, California 94279-0080

**Re: Comments to the Board's 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***

Dear Ms. Buehler:

On behalf of Antelope Valley Recycling and Disposal Facility, Inc., Azusa Land Reclamation, Inc., Cal Sierra Disposal, Coast Waste Management, Inc., Feather River Disposal, Inc., G.I. Industries, Modesto Garbage Co., Inc., USA Waste of California, Inc., Valley Garbage and Rubbish Company, Inc., Waste Management Collection and Recycling, Inc., Waste Management of Alameda County, Inc., Waste Management of California, Inc., Waste Management Recycling and Disposal Services of California, Inc., Guadalupe Rubbish Disposal Co., Inc., Looney Bins, Inc., and WM Recycle America, L.L.C. (collectively "Waste Management"), Waste Management, Inc. respectfully submits comments to the State Board of Equalization's ("Board") 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* (collectively "Regulations").

Waste Management is a holding company with subsidiaries that conduct its business operations in the United States and Canada. These operations include waste collection, transfer, recycling, and disposal services, as well as the recovery of waste resources for use in renewable energy. Some vehicles in Waste Management's fleet are equipped with solid waste compactors and other units that consume diesel fuel and compressed natural gas ("CNG") (collectively "fuel")<sup>1</sup> to operate auxiliary equipment (as defined by the Board in the Regulations).

Waste Management requests that the Board make certain revisions to the April 3, 2015 amended/proposed draft Regulations.

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<sup>1</sup> Unless otherwise indicated, these comments will refer to both undyed diesel fuel and "use fuel" collectively as "fuel."

Subject: Response to Initial Discussion Paper on Regulation 1432, Regulation 1316, and Proposed Regulation 1316.1

Date: May 7, 2015

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**“INCIDENTAL OFF-HIGHWAY USE”**

It is a longstanding public policy in California that the purpose of the state fuel tax is to “aid [in] the construction, maintenance and repair of [state] highways,” and as such, fuel used while the vehicle does not operate on a state highway is not subject to the state fuel tax.<sup>2</sup>

The current amendments to Regulation 1432 and proposed Regulation 1316.1 provide that “incidental off-highway use” is incorporated into the safe harbor percentages and thus a claim for “incidental off-highway use” cannot be claimed in addition to the safe harbor percentage. The term “incidental off-highway use” is ambiguous in both the context of the Regulations’ stricken language and the new language included in the Regulations.

“Incidental off-highway use” could be interpreted to encompass either all fuel used in a vehicle when the vehicle is not propelled on the “highway” (as defined in the diesel fuel and use fuel tax regulations)<sup>3</sup> or only some portion thereof. For instance, the term “incidentally operated on the highway” under the stricken version of Regulation 1432(b)(2) is used to reference only equipment/non-registered vehicles that are used in construction operations and used almost entirely in areas other than on public highways. Further, the term “incidentally operated” in Regulation 1316(c) & (d) is used to reference only equipment/non-registered vehicles that are used in construction and agricultural operations and used almost entirely in areas other than on public highways.

Finally, the term “off-highway” is used in Regulation 1432(b) and Regulation 1316.1(b) (i.e. the sections that provide the refund claimant the option to conduct a study) instead of “incidental off-highway use.” The interchangeable use of the terms “incidental off-highway use” and “off-highway” make both terms ambiguous.

In order to clarify the ambiguity, Waste Management suggests that safe harbor percentages only represent the portion of the fuel used in auxiliary equipment. To this end, Waste Management proposes redrafted language of Regulation 1432 and Regulation 1316 as provided in Appendix D.

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<sup>2</sup> *Oswald v. Johnson*, 210 Cal. 321, 322 (Cal. 1930); *See also, De Forest v. Flournoy*, 272 Cal. App. 2d 258, 260 (Cal. App. 3d Dist. 1969).

<sup>3</sup> *See*, Cal. Code Regs. tit. 18 § 1411(a) (defining “highway” under the diesel fuel tax regulations as “a way or place, of whatever nature, within the exterior boundaries of the State including a way or place within a Federal area, publicly maintained and open to the use of the public for purposes of vehicular travel, including, but not limited to, the shoulder and rest stops, notwithstanding private participation in the maintenance of the way or place. It shall be presumed that a way or place is dedicated and accepted as a highway when it is recognized as a part of a maintained highway system by a public authority”); *See also*, Cal. Code Regs. tit. 18 § 1303(a) (defining highway under use fuel tax regulations as “A highway includes a way or place, of whatever nature, within the exterior boundaries of the state including a way or place within a federal area, publicly maintained and open to the use of the public for purposes of vehicular travel, notwithstanding private participation in the maintenance of the way or place. It shall be presumed that a way or place is dedicated and accepted as a highway when it is recognized as a part of its maintained highway system by a proper public authority”).

Subject: Response to Initial Discussion Paper on Regulation 1432, Regulation 1316, and Proposed Regulation 1316.1

Date: May 7, 2015

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### **STATIONARY EQUIPMENT AND UNREGISTERED VEHICLES USED “OFF THE HIGHWAY”**

Waste Management’s fleet also comprises of stationary equipment and/or unregistered vehicles that use tax-paid diesel fuel and that are used wholly “off the highway” (e.g., in Waste Management’s landfill operations). A list of such stationary equipment and unregistered vehicles are included in Appendix B. The Regulations do not address that fuel used in wholly exempt unregistered vehicles and/or stationary equipment is subject to a refund. To this end, Waste Management proposes redrafted language of Regulation 1432 and Regulation 1316 as provided in Appendix D.

### **QUALIFYING EXEMPT AUXILIARY EQUIPMENT**

The Board mentions that the underlying rationale for including a list of qualifying exempt auxiliary equipment is to specifically indicate “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.” It is therefore critical that the list encompasses all auxiliary equipment in Waste Management’s fleet. A list of auxiliary equipment used by Waste Management in its business operations is listed in Appendix A.

Waste Management proposes that the Board revise the Regulations to clarify some ambiguity as to the categories of qualifying exempt auxiliary equipment and the categories’ corresponding definitions for two reasons. First, while Waste Management is in favor of a safe harbor list, the current qualifying exempt auxiliary equipment list does not include all of the various types of auxiliary equipment that Waste Management uses in its business operations.

Second, because the Board’s stated specific intent is to draft an exclusive qualifying exempt auxiliary equipment list, the Regulations, as currently proposed, would require the burdensome process of amending the Regulations, for any new auxiliary equipment developed or used in the future. Therefore, Waste Management proposes that the Board revise the Regulations to provide that either-

- 1) The term “Garbage Trucks” includes all auxiliary equipment that is used in the waste and sanitation industry,<sup>4</sup> or
- 2) Provide a category for “Other” auxiliary equipment not included in the qualifying exempt auxiliary equipment list, as well as a corresponding exemption percentage.<sup>5</sup>

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<sup>4</sup> See e.g., *Form PDR-1PTO Power Take-Off Worksheet*, Minnesota Department of Revenue, [http://www.revenue.state.mn.us/Forms\\_and\\_Instructions/pdr1pto.pdf](http://www.revenue.state.mn.us/Forms_and_Instructions/pdr1pto.pdf) (providing a single, encompassing exemption percentage for “Sanitation and garbage trucks (including transfer trailers, rolloff trucks, septic pumpers, recycling trucks, and container delivery trucks)”).

<sup>5</sup> There are several states that provide a “miscellaneous” or “other” category. See e.g., NAC 366.220(1)(c) (Nevada); WAC § 308-77-112(3) (Washington); Form DR-309369, *Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes*, Florida Department of Revenue, [http://dor.myflorida.com/Forms\\_library/current/dr309639.pdf](http://dor.myflorida.com/Forms_library/current/dr309639.pdf) (Florida); *Form PDR-1PTO Power Take-Off Worksheet*, Minnesota Department of Revenue,

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Waste Management has proposed the latter of these two scenarios by redrafting Regulation 1432 and Regulation 1316 (as provided in Appendix D). The proposed redrafting of Regulation 1432 and Regulation 1316 in Appendix D also supplements the list of qualifying exempt auxiliary equipment to include other items listed in Appendix A that were not previously included in the Board's list of qualifying exempt auxiliary equipment.

#### **SAFE HARBOR EXEMPTION LIST**

The proposed 30% safe harbor percentage, as currently drafted, in the Regulations for Garbage Trucks is lower than exempt rate percentages for sanitation vehicles as demonstrated by industry and taxing authority studies, such as the exemption rate identified in the Internal Revenue Service's 2007 *SAFETEA-LU PTO Report*.<sup>6</sup> The congressionally mandated *SAFETEA-LU PTO Report* is still widely used by both industry and taxing authorities as a basis for fuel tax refunds. The *SAFETEA-LU PTO Report* obtained data for 96,043 "trash, garbage, or recycling" trucks. The data showed that 29.9% of the total fuel consumption for all 96,043 "trash, garbage, or recycling trucks" was used to power the trucks' auxiliary equipment.

Since the Board is incorporating fuel used while the vehicle is "idling," the safe harbor percentages should be adjusted to take this into consideration. A 2006 study indicated that 8% of the total fuel consumed in 77,520 "trash/garbage" trucks (all of which traveled less than 40,000 miles in a year) was consumed while the truck was "idling."<sup>7</sup> In sum, it is our position that a safe harbor percentage of 38% for Garbage Trucks (i.e. all auxiliary equipment used in the waste and sanitation industry) is a more accurate representation of the percentage of fuel used in Garbage Trucks than the currently drafted safe harbor percentage of 30%. To this end, Waste Management proposes redrafted language of Regulation 1432 and Regulation 1316 as provided in Appendix D.

#### **REFUNDS OF USE FUEL PAID UNDER THE "ANNUAL FLAT RATE TAX"**

In proposed Regulation 1316.1(2), the Board provides that the safe harbor percentages do not apply to the "Annual Flat Rate Tax." The Board should revise Regulation 1316.1(2) to allow for the safe harbor percentages to provide to the "Annual Flat Rate Tax."

Cal Rev & Tax Code § 8651.7(a) states that "the owner or operator...of a vehicle propelled by a system using liquefied petroleum gas, liquid natural gas, or compressed natural gas may pay the fuel tax for the use of those fuels by paying an annual flat rate fuel tax..."

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[http://www.revenue.state.mn.us/Forms\\_and\\_Instructions/pdr1pto.pdf](http://www.revenue.state.mn.us/Forms_and_Instructions/pdr1pto.pdf) (Minnesota); Mont. Admin. R. 18.9.306 (2) (Montana).

<sup>6</sup> *Safe, Accountable, Flexible, Efficient Transp. Equity Act: A Legacy for Users (SAFETEA-LU) – Section 11144 – PTO Report*, SB/SE Research – Phila. (July 2007).

<sup>7</sup> Linda Gaines et. al., *Estimation of Fuel Use by Idling Commercial Trucks*, Center for Transportation Research, Argonne National Laboratory (Jan. 2006) <http://www.transportation.anl.gov/pdfs/TA/373.pdf>.

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As the Board mentions in its Initial Discussion Paper, Cal Rev & Tax Code § 8652(c) states that “no tax shall be imposed upon any user with respect to that fuel which the user establishes to the satisfaction of the board is used...[f]or a purpose other than the generation of power to propel a motor vehicle in this state.” When an owner or operator of a vehicle “pay[s] the fuel tax...by paying an annual flat rate tax” the use fuel tax is paid. Since the tax is paid, the refund provision under Cal Rev & Tax Code § 8652(c) still applies and so should the safe harbor exemptions. To this end, Waste Management proposes redrafted language of Regulation 1316 as provided in Appendix D.

**MISCELLANEOUS - REFUND CALCULATION METHODOLOGY & INVENTORY RECONCILIATION**

To reduce administrative burden for both the Board and for taxpayers, Waste Management suggests that the Board revise the Regulations to include specific provisions to simplify the refund calculation methodology and inventory reconciliation process. To this end, Waste Management proposes several refund calculation methodologies and review/reconciliation options that cover various scenarios. These options are described in Appendix C.

Waste Management appreciates the opportunity to submit its comments, the outreach that the Board has demonstrated through the Regulation drafting process, and the consideration that the Board will give to our comments. Waste Management would be readily willing to have further discussions to clarify these comments or to provide additional information that could be of assistance the Board through this process.

Sincerely,

Leonard Finegold  
Senior Director  
State Transaction Tax  
Waste Management, Inc.

cc: Debbie Kalfsbeek, Chief, California Board of Equalization – Special Taxes Audit and Carrier Division

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**APPENDICES**

**Appendix A.–Non-Exhaustive List of “Auxiliary Equipment” used in Waste Management’s Business Operations that are Included or should be Included as “Qualifying Auxiliary Equipment” in Regulation 1432 and Regulation 1316**

AUTOMATED SIDE LOADERS
MANUAL SIDE LOADERS
SINGLE DRIVE FRONT END LOADERS
DUAL DRIVE FRONT END LOADERS
SINGLE DRIVE REAR END LOADERS
DUAL DRIVE REAR END LOADERS
ROLL-OFF TRUCKS <sup>8</sup>
LUGGER TRUCKS
RECYCLING TRUCKS (NON-COMPACTION)
RECYCLING TRUCKS (COMPACTION) <sup>9</sup>
ONE-PASS TRUCKS
CONTAINER DELIVERY TRUCKS
PORT-O-LET TRUCKS
HEAVY DUTY TRACTORS
SERVICE TRUCKS
FLATBED TRUCKS
TRANSFER TRAILER
BOX TRAILER
ROLL-OFF TRAILERS
UTILITY TRAILERS
SWEEPER TRUCKS
BROOM TRUCKS

<sup>8</sup> See *Rumpke Waste Inc. v. Wilkins*, Ohio Board of Tax Appeals, No. 2004-K-477 (March 30, 2007) (providing the following description of the auxiliary equipment used in roll-off trucks-

Roll-off trucks collect garbage from commercial customers or industrial customers who use a large, rectangular portable dumpster. The hoist, or flat bed portion of the truck, is capable of being raised to a forty-five degree angle until it touches the ground. A large steel roller is located in the middle of the bed in order to facilitate rolling the customer’s dumpster onto the hoist. A cable inside the hoist is attached to the container and, using a cylinder, pulls the dumpster onto the truck bed. The truck transports the container to a landfill, where it is again lifted on an angle, a rear door of the container is opened, and the trash is emptied.

See also, <https://www.youtube.com/watch?v=Nlv8A6PbNo0> for a video of a Waste Management roll-off truck.

<sup>9</sup> Compactor trucks (e.g., Front-End Loaders, Rear-End Loaders, and Side-Loaders) are generally designed to engage in the daily collection of refuse or recyclables from homes or businesses and equipped with a mechanism by which the vehicle’s propulsion engine provides hydraulic power to operate a load compactor.

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**Appendix B.–Non-Exhaustive List of Wholly “Off the Highway” Unregistered Vehicles or Stationary Equipment used in Waste Management’s Business Operations**

DOZERS
LANDFILL COMPACTORS
OFF HIGHWAY TRUCKS
HYDRAULIC EXCAVATORS
WHEEL LOADERS
WHEEL TRACTOR-SCRAPERS
TRACKED LOADERS
BACKHOE LOADERS
MOTOR GRADERS
AGRICULTURE TRACTORS
SKID-STEER LOADERS
DRAGLINE EXCAVATORS
DIRT COMPACTORS
WATER TRUCKS
TIPPERS
FORKLIFTS
PUMPS
GENERATORS

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**Appendix C.–Proposed Refund Calculation & Inventory Reconciliation Methodologies for Various Scenarios**

**Definitions of Terms/Criteria:** For the purposes of the Appendix C, the following terms/criteria are used.

- **“Fuel Purchases”** means the total gallons of undyed diesel fuel or use fuel purchased by a claimant.
- **“Qualifying Vehicle Gallons”** means the total gallons of fuel used to operate the auxiliary equipment on vehicles considered as “qualifying exempt auxiliary equipment” and thus provided a “safe harbor percentage.”
- **“Non-Qualifying Vehicle Gallons”** means the total gallons of fuel used to operate the auxiliary equipment for “on the highway vehicles,” but are not considered as “qualifying exempt auxiliary equipment” and thus not provided a “safe harbor percentage.”
- **“Off the Highway Gallons”** means the total gallons used while a vehicle/equipment operates off the public highway. The term does not include any fuel used to propel a vehicle “on the highway” or fuel used to operate the auxiliary equipment on vehicles considered as “qualifying exempt auxiliary equipment.”
- **“Flat Safe Harbor Percentage”** means the single safe harbor exemption percentage applied to all qualifying auxiliary equipment in a fleet. For example, if all Waste Management’s qualifying auxiliary equipment is considered a “Garbage Truck” (i.e., a 35% safe harbor percentage), then the “flat safe harbor percentage” would applied.
- **“Wholly Exempt Gallons”** means the total gallons used in unregistered vehicles and stationary equipment used wholly “off the highway” and therefore subject to a 100% refund of fuel tax paid. Examples of these units are provided in Appendix B. Each of the scenarios would consider wholly exempt gallons before calculating refunds using the safe harbor percentage(s).
- **“Weighted Qualifying Vehicle Percentage”** means the proportionally weighted percentage for all qualifying exempt vehicles in fleet with variable safe harbor percentages. For example, if a claimant has 50 vehicles with qualifying auxiliary equipment in its fleet, and 30 of the vehicles have a 38% safe harbor percentage and 20 of the vehicles in the fleet have a 20% safe harbor percentage then “weighted qualifying vehicle percentage” would equal 31%.

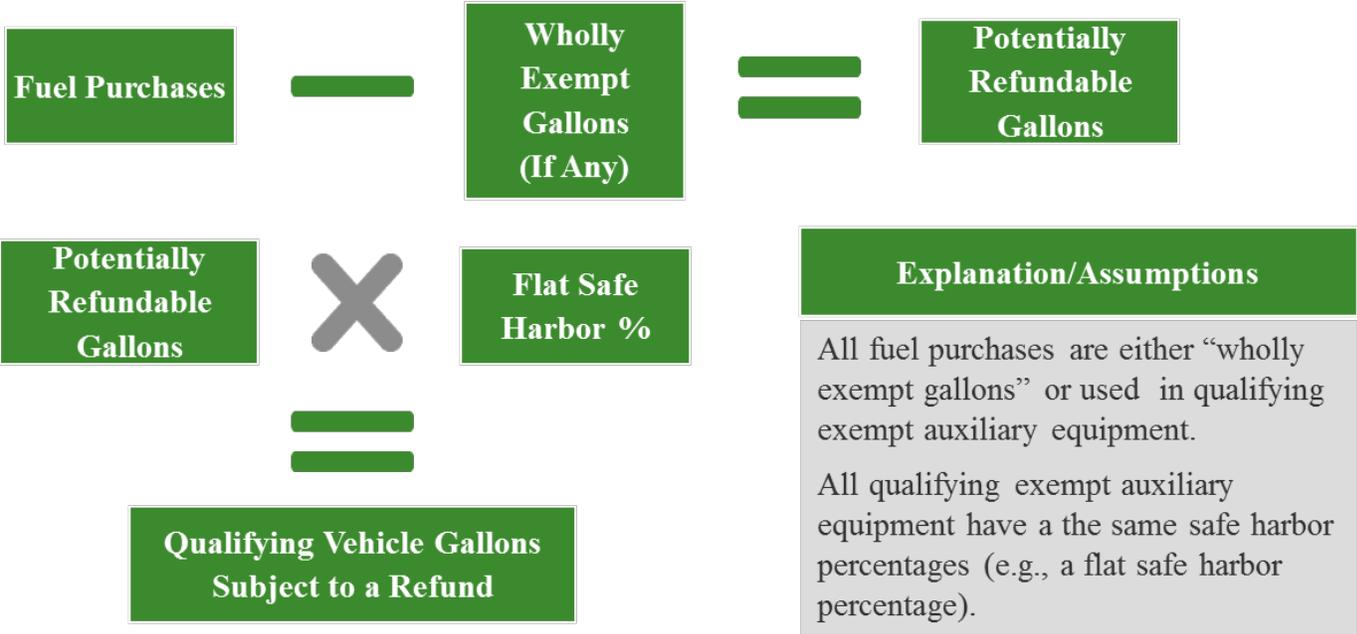
$$\left[\left(\frac{20}{50}\right) * 20\%\right] + \left[\left(\frac{30}{50}\right) * 38\%\right] = 31\%$$

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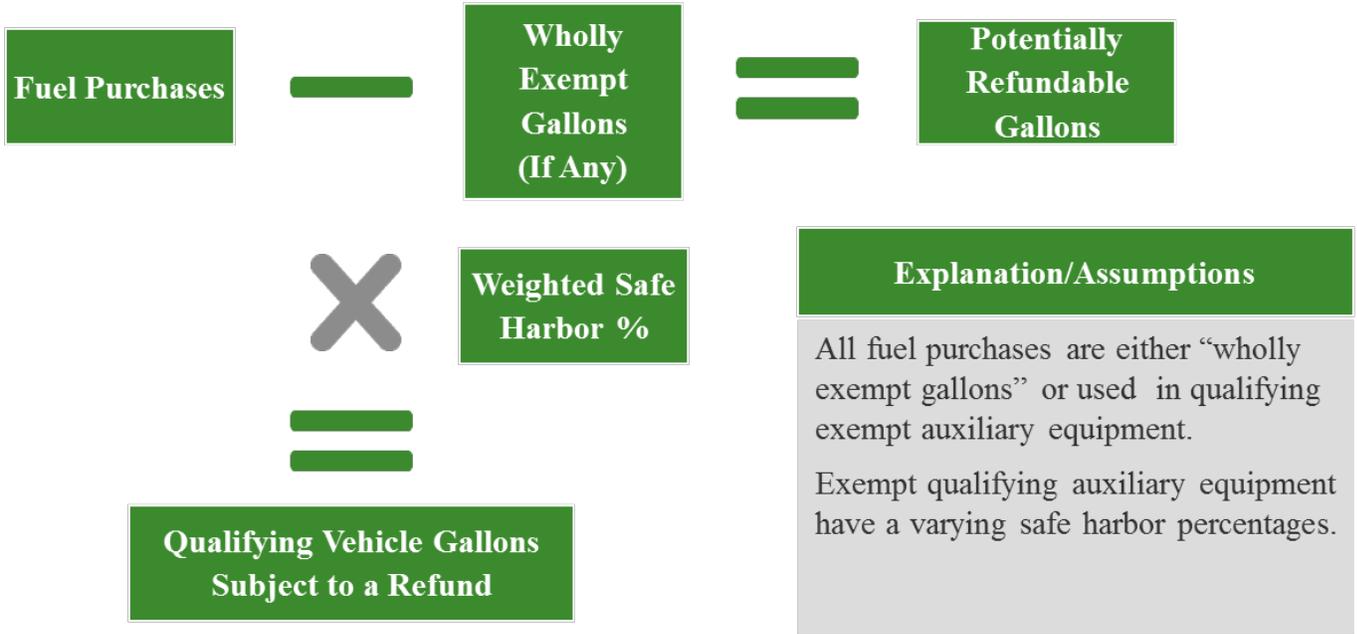
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**SCENARIO ONE**



**SCENARIO TWO**

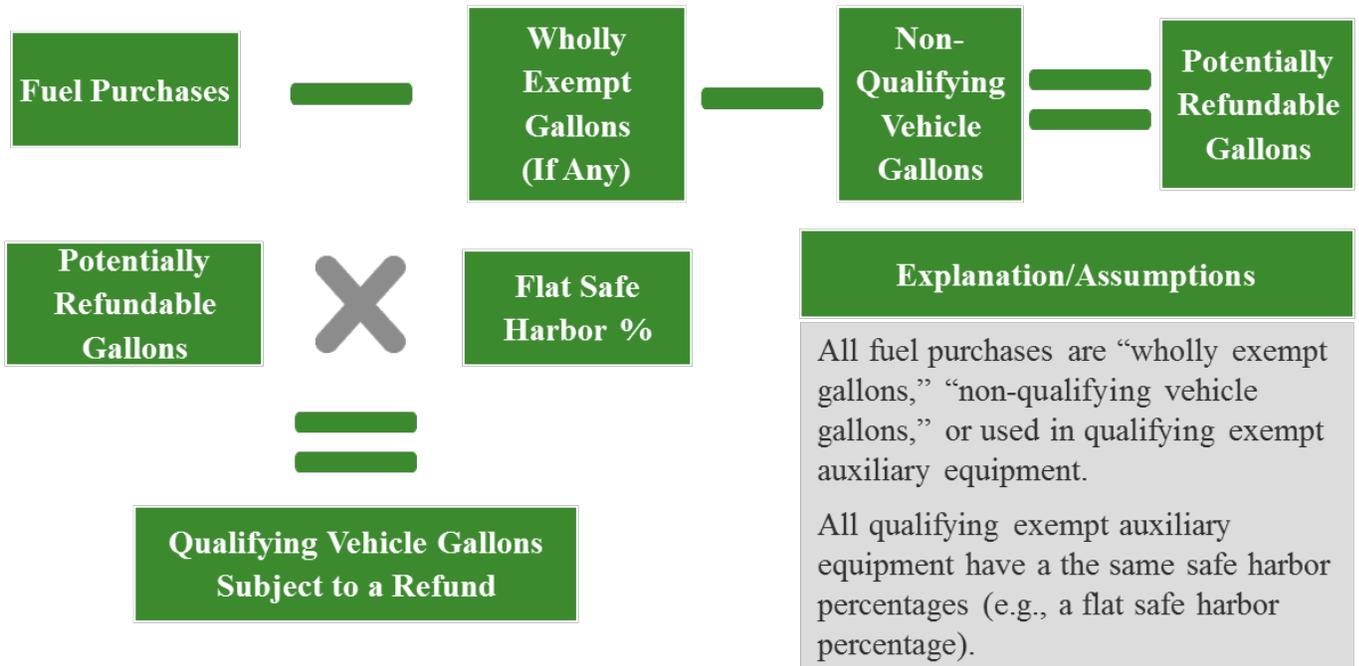


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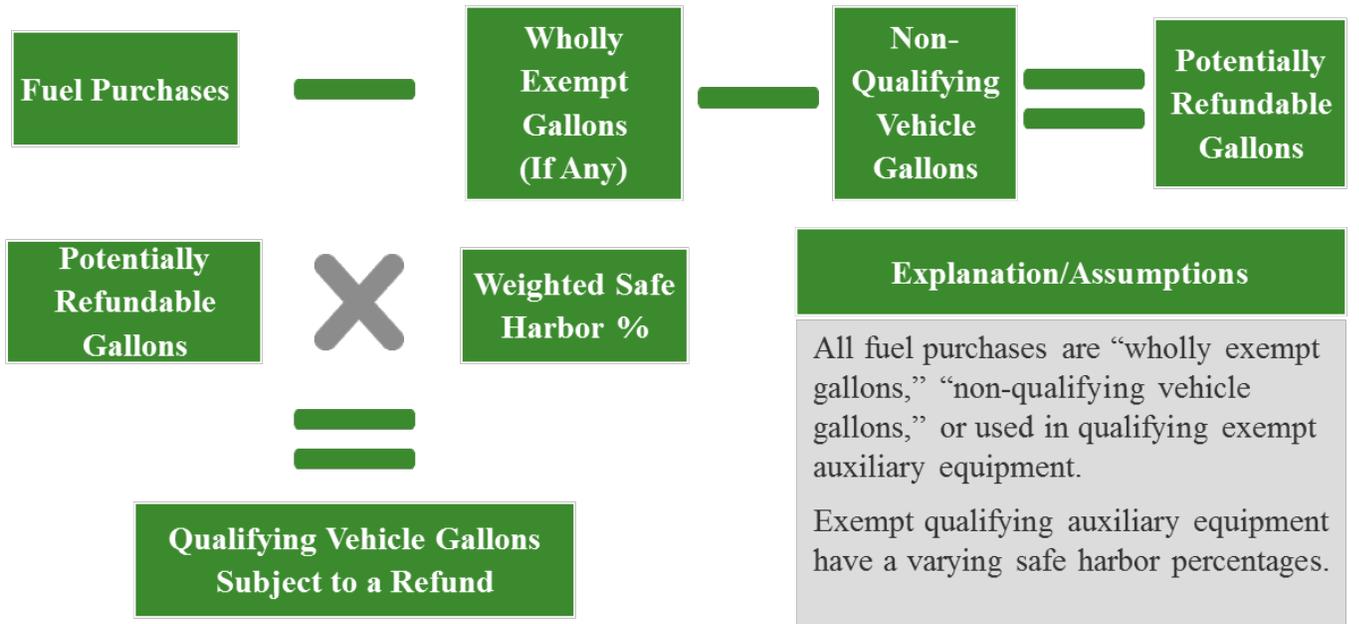
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**SCENARIO THREE**



**SCENARIO FOUR**



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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~~ Auxiliary Equipment.

(1) A person may claim a refund for tax paid on diesel fuel used to operate ~~auxiliary power take-off~~ equipment. ~~Auxiliary 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~~ Auxiliary equipment may be found, ~~for example includes, but is not limited to auxiliary equipment found on boom trucks (block boom), broom trucks, bulk feed trucks, car carriers or trucks with hydraulic winches, box trailers, carpet cleaning vans, cement mixers, cement pumpers, container delivery trucks, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, flat bed trucks, garbage trucks, heavy duty tractors, leaf trucks, lime spreaders, line trucks (digger/derrick), lugger trucks, aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, roll-off trucks or trailers, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with or without jackhammers, or pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, transfer trailers, tank transports and wreckers.~~

(3) Safe Harbor Percentages.<sup>10</sup> For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used in auxiliary equipment. Use of diesel fuel "off the highway" is not included in these percentages.

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Broom trucks (must be motor vehicle)</u>	<u>20%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Box Trailers</u>	<u>20%</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>38%</u>
<u>Hot asphalt distribution truck</u>	<u>15%</u>

<sup>10</sup> Note that *italicized* font indicates a modification or addition to the Board's proposed amendments to Regulation 1432.

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<u>Leaf truck</u>	15%
<u>Lime spreader</u>	15%
<u>Line truck with digger/derrick or aerial lift</u>	20%
<u>Log truck with self loader</u>	20%
<u>Mobile cranes</u>	25%
<u>Pneumatic tank truck</u>	15%
<u>Refrigeration trucks</u>	20%
<u>Salt spreader on dump truck</u>	15%
<u>Seeder truck</u>	15%
<u>Semi-wrecker</u>	15%
<u>Sewer cleaning truck/jet /vactor</u>	25%
<u>Snow plow</u>	15%
<u>Spray truck</u>	15%
<u>Super suckers</u>	25%
<u>Sweeper trucks (must be motor vehicle)</u>	20%
<u>Tank transport</u>	15%
<u>Tank trucks</u>	15%
<u>Truck with PTO hydraulic winch</u>	15%
<u>Wrecker</u>	15%
<u>Container delivery truck</u>	20%
<u>Flatbed truck</u>	20%
<u>Heavy duty tractor</u>	20%
<u>Lugger trucks</u>	20%
<u>Port-o-Let truck</u>	20%
<u>Roll-off trucks or trailers</u>	20%
<u>Service truck with or without jack hammer/drill</u>	15%
<u>Transfer trailers</u>	20%
<u>Utility trailers</u>	20%
<u>Other</u>	10%

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 this subdivision, 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.

(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 of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. For the purposes of this Regulation, diesel fuel used to operate "equipment" is used "off the highway."

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~~(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that 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.~~

(2) For the purposes of this subsection, "equipment" means any stationary apparatus or motor vehicle which is exempt from registration under the Vehicle Code. "Equipment" includes, but is not limited to dozers, landfill compactors, off highway trucks, hydraulic excavator, wheel loaders, wheel tractor-scrappers, tracked loaders, backhoe loaders, motor graders, agriculture tractors, skid-steer loaders, dragline excavators, dirt compactors, water trucks, tippers, forklifts, and pumps.

~~(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.~~

(c) Refunds. Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel in power take-off auxiliary equipment or off the highway 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)(3), or prior to submission of the claim, must submit a specific study conducted by the claimant following Board-approved test methods demonstrating off the highway or auxiliary equipment 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) 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 which is used to idle a vehicle on the highway. ~~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.~~ If the safe harbor percentages in subdivision (a)(3) are used to calculate the amount of refund, no additional refund per the procedures prescribed in subsection (c) will be allowed for diesel fuel used to operate auxiliary equipment while idling. If a person claims a refund in excess of the safe harbor percentages provided in subdivision (a)(3), that person must, prior to submission of the claim, submit a specific study conducted by the claimant and approved by the Board, demonstrating diesel fuel used to operate auxiliary equipment as described by subdivision (a)(2) while idling.

(e) Nonrefundable Uses of Diesel Fuel in a Motor Vehicle.

(1) A person may not claim a refund for tax pain on diesel fuel used to operate 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

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seats, radios, Bluetooth, cell phones, media players, 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.

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REGULATION 1316. ~~EXEMPT~~ USE FUEL – NONTAXABLE USES OF FUEL IN A MOTOR VEHICLE.

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

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

(a)(1) In the operation of a motor vehicle off the highway. For the purposes of this subsection, "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)(2) 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

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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.

(e)(3) 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)(4) 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.~~

(f)(5) 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.

(b) Auxiliary Equipment.

(1) A person may claim a refund for tax paid on use fuel used to operate auxiliary equipment.

(2) Auxiliary equipment includes, but is not limited to auxiliary equipment found on boom trucks (block boom), broom trucks, bulk feed trucks, car carriers or trucks with hydraulic winches, box trailers, carpet cleaning vans, cement mixers, cement pumpers, container delivery trucks, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, flat bed trucks, garbage trucks, heavy duty tractors, leaf trucks, lime spreaders, line trucks (digger/derrick), lugger trucks, aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, roll-off trucks or trailers, salt spreaders (dump with spreader), seeder trucks, semi-wreckers, service trucks with or without jackhammers; or pneumatic drills, sewer cleaning

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trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, transfer trailers, tank transports and wreckers.

(3) Safe Harbor Percentages.<sup>11</sup> For transactions occurring on and after April 1, 2016, the following are presumed amounts of use fuel used in auxiliary equipment. These percentages apply to the “Annual Flat Rate Tax.” Use of use fuel “off the highway” is not included in these percentages.

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Broom trucks (must be motor vehicle)</u>	<u>20%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Box Trailers</u>	<u>20%</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>38%</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>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>
<u>Container delivery truck</u>	<u>20%</u>

<sup>11</sup> Note that *italicized* font indicates a modification or addition to the Board’s proposed amendments to Regulation 1316 and Regulation 1316.1.

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<u>Flatbed truck</u>	<u>20%</u>
<u>Heavy duty tractor</u>	<u>20%</u>
<u>Lugger trucks</u>	<u>20%</u>
<u>Port-o-Let truck</u>	<u>20%</u>
<u>Roll-off trucks or trailers</u>	<u>20%</u>
<u>Service truck with or without jack hammer/drill</u>	<u>15%</u>
<u>Transfer trailers</u>	<u>20%</u>
<u>Utility trailers</u>	<u>20%</u>
<u>Other</u>	<u>10%</u>

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 this subdivision, 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.

(c) Off-Highway Use.

(1) A person may claim a refund for tax paid on use fuel used off the highway. For the purposes of this subsection, "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. For the purposes of this Regulation, use fuel used to operate "equipment" is used "off the highway."

(2) For the purposes of this subsection, "equipment" means any stationary apparatus or motor vehicle which is exempt from registration under the Vehicle Code. "Equipment" includes, but is not limited to dozers, landfill compactors, off highway trucks, hydraulic excavator, wheel loaders, wheel tractor-scraper, tracked loaders, backhoe loaders, motor graders, agriculture tractors, skid-steer loaders, dragline excavators, dirt compactors, water trucks, tippers, forklifts, and pumps.

(d) Refunds. Persons who acquire use fuel tax paid and subsequently use the use fuel in auxiliary equipment 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 (b)(2), or prior to submission of the claim, must submit a specific study conducted by the claimant following Board-approved test methods demonstrating off the highway or auxiliary equipment 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.

(e) 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 which is used to idle a vehicle on the highway. If the safe harbor percentages in subdivision (b)(3) are used to calculate the amount of refund, no additional refund per the procedures prescribed in subsection (d) will be allowed for use fuel used to operate auxiliary equipment while idling. If a person claims a refund in excess of the safe harbor percentages provided in subdivision (b)(3), that person must, prior to submission of the claim, submit a

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specific study conducted by the claimant and approved by the Board, demonstrating use fuel used to operate auxiliary equipment as described by subdivision (b)(2) while idling.

(f) Nonrefundable Uses of Use Fuel in a Motor Vehicle.

(1) A person may not claim a refund for tax paid on use fuel used to operate 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, 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.