

## SECOND DISCUSSION PAPER

### **Proposed Regulatory Changes Regarding the Issuance of an Exemption Certificate to a Fuel Vendor for Sales/Use Tax Paid on Federal Excise Taxes**

#### **Regulation 1598, Motor Vehicle and Aircraft Fuels; Regulation 1617, Federal Taxes**

##### **I. Issue**

Should Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1617, *Federal Taxes*, be amended as a result of the passage of Assembly Bill 2894?

##### **II. Staff Recommendation**

Staff recommends amending Regulations 1598 and 1617, as illustrated in Exhibits 1 and 2, to incorporate the provisions of Revenue and Taxation Code (RTC) section 6245.5, "*Exemption certificates – fuel purchases.*" RTC section 6245.5 provides that, under specified circumstances, a qualified person may issue an exemption certificate to a fuel vendor for an amount equal to the sales or use tax on the federal excise tax imposed on the purchaser's entire fuel purchase even if the purchase includes both qualifying and nonqualifying uses of fuel. Staff's proposed amendment to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, provides a suggested exemption certificate that may be used by a qualified purchaser when the requirements of RTC section 6245.5 are met.

##### **III. Other Alternative Considered**

Make no changes to Regulations 1598 and 1617.

##### **IV. Background**

During the 2000 Legislative Session, the Legislature adopted AB 2894, Chapter 923, Statutes 2000, adding RTC section 6245.5 and amending RTC sections 6011 and 6012. RTC section 6245.5 allows a qualified purchaser to issue an exemption certificate to a fuel vendor for an amount equal to the sales or use tax on the federal (manufacturers' or importers') excise tax imposed on his or her qualifying and nonqualifying fuel purchases under specified circumstances.

The sales and use tax on federal excise taxes relating to fuel is explained in Regulations 1598 and 1617. Regulation 1598 (previously Ruling 1325, effective 1/15/71), interprets and makes specific various sales and use tax provisions relating to motor vehicle and aircraft fuels. Regulation 1617 (previously Ruling 57, effective 7/1/43), interprets and explains when certain taxes levied by the federal government are includable in gross receipts or the sales price of tangible personal property. Both regulations are interpretations of RTC sections 6011, "*Sales price,*" and 6012, "*Gross receipts.*"

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In 1988, AB 884 amended RTC sections 6011 and 6012 to provide that the sales price and gross receipts of diesel and jet fuel do not include the amount of federal excise tax imposed pursuant to Internal Revenue Code (IRC) section 4091 when the purchaser certifies in writing that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. A suggested exemption certificate was added to Regulation 1598(h) to provide guidance in the preparation of the required certificate by which the purchaser claims an exclusion from the sales or use tax on the amount of the federal excise tax. AB 884 also added RTC section 6423, which provides the consequences for improper certification.

In 1994, Senate Bill 840 (Ch. 912, Stats 1994) amended RTC sections 6011 and 6012 to add IRC section 4081 to the exclusion for federal excise taxes for which the purchaser certifies in writing that he or she is entitled to either a direct refund or credit against his or her income tax. This amendment was operative July 1, 1995.

#### Application of Tax Prior to Enactment of RTC Section 6245.5

Prior to the effective date of RTC section 6245.5, January 1, 2001, the amount of any federal excise tax imposed pursuant to IRC sections 4081 and 4091 for which the purchaser certified that he or she was entitled to either a direct refund or credit against his or her income tax, was excludable from the measure of sales and use tax. An exemption certificate could be issued only when purchasing qualifying fuel (fuel that the purchaser expected to use in a manner that exempted the fuel from the federal excise tax). Thus, the purchaser could not issue an exemption certificate when purchasing fuel in bulk if only a portion of the fuel would qualify for the exemption. Consequently, the purchaser was required to pay sales tax reimbursement or use tax on the entire purchase, including that portion consisting of the federal excise tax for which the purchaser expected to obtain a refund or credit from the Internal Revenue Service (IRS). Then, when the purchaser actually obtained the refund or credit, the purchaser could file a claim for refund (usually through the vendor) for the overpaid sales tax reimbursement or use tax on the amount of the refunded or credited federal excise tax.

#### Claims for Refund

The claim for refund of the overpaid sales or use tax must be supported by proof of the exempt use of the fuel (e.g., off-road use) and by the refund or credit of the federal excise tax by the IRS to the purchaser. When the applicable tax is sales tax, it is the vendor who must file the claim for refund. The vendor must then refund the amount of the excess sales tax reimbursement collected from the purchaser upon the Board's refund of the overpaid sales tax to the vendor.

#### Need for Statutory Change

Several construction and utility companies who purchased qualifying and nonqualifying fuel in bulk quantities expressed concern over the process required to receive a refund of the sales tax reimbursement remitted to their fuel vendors on their purchases of fuel qualifying for an exemption from the federal excise tax, as well as the length of time required to receive the

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refund. The refund process is delayed since, in order for a refund to be processed by the Board, the purchaser must first file for a refund or credit for the excise tax paid with the IRS and obtain the refund or credit. When the original sale was subject to sales tax, the purchaser must then show proof to his or her vendor of the credit or refund obtained, and then request the vendor to file a claim for refund with the Board. The vendor, in turn, must then file the claim for refund with the Board on behalf of the purchaser, provide proof to the Board that the purchaser obtained a credit or refund from the IRS, and provide proof that the fuel was used in an exempt manner. It can take several months from the time the purchaser remitted the tax reimbursement to his or her vendor until the time the claim can be filed with the Board. Although the Board has developed a procedure to rapidly process these claims, it still takes over a year on average from the time of payment of the sales tax reimbursement until that reimbursement is refunded to the purchaser.

#### V. Discussion of RTC section 6245.5

After meetings with industry, Board staff agreed that a more liberal use of exemption certificates would assist in the administration of the tax laws as well as help taxpayers. Staff therefore drafted language that would provide a statutory basis for such a procedure, and the Board sponsored the staff proposal. This was adopted by AB 2894, which created RTC section 6245.5. This provision enables the qualified purchaser to issue an exemption certificate to the fuel vendor for an amount equal to the sales or use tax on the federal excise tax imposed on his or her entire fuel purchase when purchasing both qualifying and nonqualifying fuel if the person is “qualified” under subdivision (b) of RTC section 6245.5. When a qualified person issues a certificate under RTC section 6245.5, the qualified person must self-report use tax measured by the federal excise tax paid with respect to fuel not used in a manner qualifying the purchaser for a refund or credit of that federal excise tax. This section eliminates the need for many fuel purchasers to go through the lengthy refund process and instead simply allows the qualified purchaser to purchase the fuel without payment of the sales or use taxes on the federal excise taxes included in the price of the fuel purchased. RTC section 6245.5, “Exemption certificate – fuel purchases,” states the following:

“(a) A person qualified under subdivision (b) may issue a certificate to a retailer with respect to the amount of manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 when purchasing fuel from the retailer.

“(b) A person is qualified for purposes of this section if all of the following conditions are met:

- (1) The person was entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel during the prior calendar year.

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(2) The person's business remains substantially the same as during the prior calendar year whereby the person expects to be entitled to either a direct refund or credit against his or her income tax for the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the person's purchases of fuel.

(3) The person holds a valid California seller's permit.

“(c) A person issuing a certificate for purposes of subparagraph (B) of paragraph (4) of subdivision (c) of Section 6011 or subparagraph (B) of paragraph (4) of subdivision (c) of Section 6012 is liable for use tax on the amount of the manufacturers' or importers' excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code if the person used fuel purchased under the certificate in a manner whereby the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.

“(d) A person liable for the use tax under subdivision (c) of this section shall report and pay that use tax with the return for the reporting period in which the person uses the fuel in such a manner that the person is not entitled to a direct refund or credit against his or her income tax of the federal excise tax.”

An interested parties meeting was held on December 29, 2000 to discuss the proposed amendments to both Regulations 1598 and 1617 as a result of the creation of RTC section 6245.5. Staff has received one submission from an interested party in support of the proposed regulatory changes.

A special notice was mailed on January 17, 2001, to affected taxpayers informing them of the provisions of RTC section 6245.5 along with a suggested sales and use tax fuel exemption certificate, which qualified purchasers can issue to their fuel suppliers. This special notice will also be made available on the Board's website at [www.boe.ca.gov](http://www.boe.ca.gov).

#### VI. Summary

The proposed amendments to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1617, *Federal Taxes*, incorporate the new provisions of RTC section 6245.5, “*Exemption certificates – fuel purchases.*” The amendments explain that, under specified circumstances, the qualified purchaser is entitled to issue an exemption certificate to a fuel vendor for an amount equal to the sales or use tax on the federal excise tax imposed on the purchaser's entire fuel purchase when the purchase includes both qualifying and nonqualifying uses of fuel. This provision will eliminate the need to file a claim for refund for the overpaid sales or use tax on the amount of federal excise tax paid to the vendor, when an exemption certificate is used in accordance with the requirements of the statute and regulations.

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Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 1/26/2001

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**Regulation 1598. Motor Vehicle and Aircraft Fuels.**

*Reference:* Sections 6011, 6012, 6245.5, 6357, 6357.5, 6385, 6423, Revenue and Taxation Code.

**(a) IN GENERAL.** Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

**(b) EXCEPTIONS.**

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See ~~subparagraph~~ subdivision (g) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

**(c) MEASURE OF TAX.**

(1) The measure of tax includes:

**(A)** The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E) below,

**(B)** The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

**(C)** The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

**(A)** The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

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4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

**(B)** The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

**(C)** The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.
4. Special motor fuels.

**(D)** ~~Prior to July 1, 1995, the federal importer's or producer's excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subparagraph subdivision (h) for requirements for supporting claimed exclusions.)~~

**(E)** ~~Beginning July 1, 1995, the federal importer's or producer's excise tax imposed pursuant to Sections 4081 and or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subparagraph subdivision (h) for requirements for supporting claimed exclusions.)~~

**(F)** Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (i).

**(d) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS.** Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

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Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes.....	\$1.153
	Federal excise tax *.....	.184
	State excise tax*.....	.180
	Total	\$1.517
	* Sales tax reimbursement computed at 7 1/4%* of \$1.517...	.110
	Total tax-included price per gallon.....	\$1.627
(B)	Sales price per gallon of diesel fuel net of all taxes.....	\$1.103
	Federal excise tax*.....	.244
	Total	\$1.347
	* Sales tax reimbursement computed at 7 1/4%* of \$1.347...	.098
	State excise tax *.....	.180
	Total tax-included price per gallon.....	\$1.625

\* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

**(e) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT.** The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and Regulation 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and regulation-1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

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**(f) REFUNDS OF EXCISE TAX.**

**(1) FEDERAL EXCISE TAXES.**

The refund of the federal ~~importer's or producer's~~ excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

**(2) SALES OR USE TAX REFUNDS.** If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

**(g) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS.** Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under ~~subparagraph subdivision (b)(1), above,~~ shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in ~~subdivision (g)(2) below.~~ If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing.

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**Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft**

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the ~~aircraft fuel (gasoline)~~ motor vehicle fuel which I shall purchase from \_\_\_\_\_

\_\_\_\_\_ will be used in propelling aircraft; and, at the time of the purchase, is exempt from tax pursuant to ~~Section 6357 of the Sales and Use Tax Law~~ and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel (gasoline) is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing.

~~Dated  
Purchaser  
.....(Signature of Purchaser).....  
Address  
Seller's Permit No. (if any)~~

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): \_\_\_\_\_

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

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**(h) CERTIFICATE FOR EXCLUSION OF IMPORTER'S OR PRODUCER'S FEDERAL EXCISE TAXES FROM MEASURE OF TAX.** Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under ~~subparagraph subdivision (c)(2)(D) or (c)(2)(E) above~~ shall secure from the purchaser and retain a certificate in substantially the form prescribed in ~~subparagraph subdivision (h)(1) below~~.

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing.

**Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes**

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 ~~by the importer or producer of~~ for the gasoline/diesel/jet fuel I shall purchase from \_\_\_\_\_

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing.

~~Dated~~  
~~Purchaser~~  
~~(Signature of Purchaser)~~  
~~Address~~

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

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Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): \_\_\_\_\_

Type of Fuel Purchased: \_\_\_\_\_

Identification Numbers of Vehicles/Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (h)(1) above and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

**(i) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX.** On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who satisfies the requirements of subdivision (i)(1) may issue a certificate in substantially the form set forth in subdivision (i)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing.

(1) A purchaser may issue a certificate under this subdivision if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of fuel during the prior calendar year.

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(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of fuel.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

**Section 6245.5 Certificate for the Exclusion of Sales and Use Tax  
on Federal Excise Taxes**

This certificate may be issued by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of fuel during the prior calendar year.

2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of fuel.

3. I hold a valid California seller's permit, the number for which is set forth below.

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With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing.

Purchaser: \_\_\_\_\_  
(Company Name)

Address: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
(Signature of Authorized Agent)

Title: \_\_\_\_\_  
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.: \_\_\_\_\_

Type of Fuel Purchased: \_\_\_\_\_

Identification Numbers of Vehicles/Aircraft Owned or Operated  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Regulation 1617. Federal Taxes.**

*Reference:* Sections 6011, 6012, ~~6245.5~~, 6423, Revenue and Taxation Code. 19 U.S.C. Section 1505(a), 19 CFR Section 141.1(b).

(a) **RETAILERS' FEDERAL EXCISE TAXES ON RETAIL SALES.** Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge.

Retailers must retain records to show that the amounts deducted as federal tax have been returned to the United States or will be returned to the United States.

(b) **MANUFACTURERS' OR IMPORTERS' OTHER FEDERAL EXCISE TAXES.**

(1) Except as indicated in subdivisions (b)(2) and (b)(3), ~~below~~ gross receipts subject to sales tax and the sales price subject to use tax include the amount of any ~~manufacturers' or importers'~~ federal excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.

(2) Prior to July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of ~~manufacturers' or importers'~~ the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel ~~and or~~ jet fuel for which the purchaser ~~certifies that he or she is entitled to~~ obtains either a direct refund or credit against his or her income tax ~~for the federal excise tax paid. Certification must be in substantially the form prescribed in Regulation 1598(h)(1).~~

(3) Beginning July 1, 1995, gross receipts subject to sales tax and the sales price subject to use tax do not include the federal ~~importers' or producers'~~ excise tax imposed pursuant to Sections 4081 ~~and or~~ 4091 of the Internal Revenue Code with respect to gasoline, diesel, ~~and or~~ jet fuels for which the purchaser ~~certifies that he or she is entitled to~~ obtains either a direct refund or credit against his or her income tax ~~for the federal excise tax paid. Certification must be in substantially the form prescribed in Regulation 1598(h)(1).~~

(c) **IMPORT DUTIES.** Import duties are imposed by federal statute (19 U.S.C. Section 1505(a)) on the importer of record. If the importer of record is a consignee and the consignee is the seller, import duties included in the price of the property sold are subject to sales and use tax. If the importer of record is a consignee and the consignee is the buyer, such duties are excludable from the sales price subject to use tax.

(d) **REPEAL OR REDUCTION OF FEDERAL TAXES.**

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Federal Taxes.

dhl:12/5/00; 1/19/01

(1) **IN GENERAL--INSTALLMENT PAYMENTS.** When an article subject to a federal excise tax prior to the date such tax is repealed or reduced is sold under an agreement calling for payment of the sales price in installments, payments made on or after the repeal or reduction date will be considered as if they were made with respect to an article sold on or after the repeal or reduction date if the vendor establishes that the amount of payments due on or after such date were reduced by an amount equal to the tax reduction.

(2) **RETAILERS' EXCISE TAXES COLLECTED AFTER REPEAL.** Amounts collected by a retailer as federal retailers' excise tax after the tax has been repealed, but neither paid by the retailer to the Internal Revenue Service nor refunded to its customers, constitute gross receipts subject to sales tax.

**(e) REFUNDS OF FEDERAL TAXES.**

(1) **REPAYMENT BY MANUFACTURER TO RETAILER.** When a manufacturer receives a refund of federal excise tax and repays the amount of the tax to the retailer pursuant to requirements of federal law, the repayment to the retailer will be regarded for sales and use tax purposes as a reduction of the retailer's cost of goods sold.

(2) **REPAYMENT TO CONSUMER.** When a manufacturer receives a refund of federal manufacturers' excise tax and repays the amount of the tax to the consumer either directly or through the retailer pursuant to requirements of federal law, the repayment to the consumer will be regarded for sales and use tax purposes as a price adjustment. Taxable gross receipts of the retailer for the period in which the repayment is made to the consumer will be reduced accordingly, and sales tax previously paid by the retailer on the amount will be refunded to the retailer, provided the amount collected from the consumer as sales tax reimbursement is also refunded to him or her.

(3) **REFUNDS ON GASOLINE, DIESEL OR JET FUEL.** The refund of the federal ~~importer's or manufacturer's~~ excise tax imposed by Section 4081 or 4091 of the Internal Revenue Code with respect to ~~on~~ gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel may file with the board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel or jet fuel and of the refund or credit of the federal excise tax to the purchaser.