



STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

February 11, 2011

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for the February 23, 2011 Business Taxes Committee meeting. This meeting will address the proposed amendments to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*.

Action 1 on the Agenda concerns whether Regulation 1598 should be revised to incorporate the provisions of the “fuel tax swap” which provide for an additional tax on diesel fuel. Action 2 on the Agenda concerns whether Regulation 1533.2 should be revised to incorporate the provisions of the “fuel tax swap” in the partial exemption for diesel fuel.

If you are interested in other topics to be considered by the Business Taxes Committee, you may refer to the “Business Taxes Committee” page on the Board’s Internet web site (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of Committee discussion or issue papers, minutes, a procedures manual, and a materials preparation and review schedule arranged according to subject matter and meeting date.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **9:30 a.m.** on **February 23, 2011** in Room 121 at the address shown above.

Sincerely,

Jeffrey L. McGuire, Deputy Director
Sales and Use Tax Department

JLM: jmp

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)

(Via E-mail)

Mr. Robert Thomas, Board Member's Office Fourth District
Mr. Ken Maddox, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Mr. Jeff Vest
Mr. Randy Ferris
Mr. David Levine
Mr. Robert Tucker
Mr. Cary Huxsoll
Mr. Bradley Heller
Mr. Scott Claremon
Mr. Todd Gilman
Ms. Lauren Simpson
Mr. Robert Ingenito Jr.
Ms. Freda Orendt
Mr. Stephen Rudd
Mr. Kevin Hanks
Ms. Susanne Buehler
Mr. James Kuhl
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Ms. Judi Pierce
Ms. Lynn Whitaker

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Action 1 — Proposed Revisions to Regulation 1598, <i>Motor Vehicle and Aircraft Fuels</i></p> <p>Issue Paper Alternative 1 – Staff Recommendation See Agenda, pages 2 – 4, and Issue Paper Exhibit 2</p> <p>Issue Paper Alternative 2 – Do not amend Regulation 1598</p>	<p>Approve one of the following alternatives:</p> <p>Alternative 1 Approve and authorize publication of staff’s proposed revisions to Regulation 1598 which incorporate the additional tax imposed on sales of diesel fuel and the corresponding exemption certificate for sales exempt from the additional tax.</p> <p style="text-align: center;">OR</p> <p>Alternative 2 Do not approve proposed revisions.</p>
<p>Action 2 — Proposed Revisions to Regulation 1533.2, <i>Diesel Fuel Used in Farming Activities or Food Processing</i></p> <p>Issue Paper Alternative 1 - Staff Recommendation See Agenda, page 5, and Issue Paper Exhibit 3</p> <p>Issue Paper Alternative 2 – Do not amend Regulation 1533.2</p>	<p>Approve one of the following alternatives:</p> <p>Alternative 1 Approve and authorize publication of proposed revisions to Regulation 1533.2 which provide that the partial exemption from tax includes an exemption from the additional tax imposed on sales of diesel fuel.</p> <p style="text-align: center;">OR</p> <p>Alternative 2 Do not approve proposed revisions.</p>

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Action 1 — Staff Recommendation</p> <p>Proposed Revisions to subdivision (e) of Regulation 1598</p>	<p><u>(e) ADDITIONAL TAX ON SALES OF DIESEL FUEL.</u></p> <p><u>(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of “diesel fuel” as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.</u></p> <p><u>(2)(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.</u></p> <p><u>(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.</u></p> <p><u>(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate 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 by the purchaser.</u></p> <p align="center">Certificate for Exemption from the 1.75 Percent Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8</p> <p><u>This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.</u></p> <p><u>This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.</u></p> <p><u>This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.</u></p> <p align="center">I HEREBY CERTIFY: That the purchase of diesel from _____</p> <p align="center">_____ ,</p>
--	---

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, Motor Vehicle and Aircraft Fuels, and Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use.)

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

is purchased by an exempt bus operator

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code section 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Renumbering of subdivision (f) through subdivision (j) of Regulation 1598</p>	<p align="center"><u>(Owner, Partner, Purchasing Agent, etc.)</u></p> <p align="center">License/permit # (if any): _____ <u>(Exempt bus operator, train operator, fuel registration)</u></p>
	<p>(ef) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. ...</p> <p>(fg) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. ...</p> <p>(gh) REFUNDS OF EXCISE TAX ...</p> <p>(hi) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. ...</p> <p>(ij) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. ...</p> <p>(jk) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. ...</p>

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Action 2 — Staff Recommendation</p> <p>Proposed Revisions to subdivision (a) of Regulation 1533.2</p>	<p>(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.</p> <p>For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on April 1, 2009, and ending on June 30, 2011 and ending when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</p> <p><u>For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</u></p>
--	---

Issue Paper Number **11-002**



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

I. Issue

Should Regulation 1598, *Motor Vehicle and Aircraft Fuels*, be amended to incorporate the provisions related to a sales and use tax rate increase on the sale of diesel fuel found in sections 6051.8, 6201.8, and 6357.3 of the Revenue and Taxation Code (RTC), including prescribing an exemption certificate?

In addition, should Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, be amended at the same time as Regulation 1598 to reflect that the tax rate increase provided in RTC sections 6051.8 and 6201.8 does not apply to diesel fuel used in farming activities or food processing?

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*. Staff recommends adding subdivision (e) to reflect the additional 1.75 percent tax increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law, or subject to the payment requirement specified in RTC section 60502.2. Staff's proposed amendments are attached as Exhibit 2.

Staff also recommends the Board approve and authorize publication of proposed revisions to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. Staff recommends amending subdivision (a) to show that the partial exemption from sales or use tax includes the additional 1.75 percent tax on sales or purchases of diesel fuel. Staff's proposed amendments are attached as Exhibit 3.

III. Other Alternative(s) Considered

Do not amend Regulation 1598 or 1533.2.

Issue Paper Number 11-002

IV. Background

Assembly Bill (AB) X8 6 (stats. 2010, Ch. 11) created a “fuel tax swap,” which lowered the sales tax rate and simultaneously raised the excise tax rate on sales of motor vehicle fuel (MVF) operative July 1, 2010. These provisions were recently incorporated in Regulation 1598. In addition, the legislation added RTC sections 6051.8 and 6201.8 to impose an additional 1.75 percent tax rate on the sales and use of diesel fuel and amended RTC section 60050 to lower the diesel fuel tax rate beginning July 1, 2011. The additional tax rate is specific to sales and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use tax imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5. The legislation requires the Board of Equalization to annually adjust the MVF (gasoline) and diesel excise tax rates so that the amount of revenue generated is equal to what would have been generated had the sales and use tax rates remained unchanged.

The companion Senate Bill (SB) 70 (stats. 2010, Ch. 9) excluded aviation gasoline from the increase in the MVF excise taxes. It also added RTC section 6357.3 to provide an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by section 60058 or the payment requirement imposed by section 60108 of the Diesel Fuel Tax Law. Additionally, section 6357.3 provides an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2. No exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.

Recent Developments

On November 2, 2010, California voters passed Propositions 22 and 26. Briefly, Proposition 22 prohibits the State from borrowing or taking funds used for transportation, redevelopment, or local government projects and services. It does not appear that Proposition 22 impacts the BOE’s administration of the taxes and fees as enacted in (AB) X8 6.

Proposition 26 requires that certain state and local fees be approved by two-thirds vote. Proposition 26 voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless reenacted by a two-thirds vote of each house of the Legislature. The provisions of (AB) X8 6 are likely impacted by Proposition 26; however, the long term impact is not clear at this time. Staff is moving forward with the proposed revisions to the regulations because they are consistent with the current law.

Staff held meetings with interested parties on November 3, 2010 and December 28, 2010, to discuss the proposed revisions to Regulations 1598 and 1533.2. No written comments were received to date. The Business Taxes Committee is scheduled to discuss this matter on February 23, 2011.

V. Discussion

Regulation 1598 – Exhibit 2.

Subdivision (e). Add subdivision (e), *Additional Tax on Sales of Diesel Fuel*, to reflect the additional 1.75 percent tax rate increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law.

FORMAL ISSUE PAPER

The exemption also applies to the use of diesel fuel that is subject to the payment requirement specified in RTC section 60502.2.

To claim the exemption from the additional sales tax, the purchaser must furnish the seller with an exemption certificate and certify in writing that the fuel will be used in a manner exempt from the tax. If, after issuing an exemption certificate, the purchaser uses the fuel in a manner that is not exempt from the tax, the purchaser is liable for the additional tax. Subdivision (e) includes a sample exemption certificate. To be valid, the exemption certificate must be taken by the seller timely and in good faith. The certificate requires the name, address, phone number, and signature of the purchaser, in addition to any applicable BOE-issued license, certificate or permit number for purchasers exempt from the excise tax under the Diesel Fuel Tax Law, and for exempt bus operators subject to the payment requirement specified in RTC section 60502.2. The certificate also requires the purchaser to state the reason why its purchase or use of the diesel fuel is exempt from the additional tax.

Reference section. Remove RTC section 6385, since Regulation 1598 does not include any exemptions provided by this statute.

Regulation 1533.2 – Exhibit 3.

Regulation 1533.2 explains the application of RTC section 6357.1, which provides a partial exemption from the state portion of the sales and use tax rate for sales of diesel fuel used in farming or food processing. The proposed revisions would incorporate the exemption from the additional 1.75 percent tax rate increase on the sales of diesel used in farming activities or food processing. In other words, the sales and use tax rate that applies to sales of diesel fuel used in farming activities or food processing will not change on July 1, 2011, as a result of the new 1.75 percent tax rate increase on the sales of diesel.

VI. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, as proposed in Exhibits 2 and 3.

A. Description of Alternative 1

Proposed revisions to Regulation 1598 include:

- A provision for imposition of the additional tax due on sales of diesel fuel, operative July 1, 2011,
- An exemption from the additional tax for sales exempt from the diesel fuel tax and not subject to the diesel fuel back up tax or the payment requirement under RTC section 60108,
- An exemption from the additional tax for purchases used in an exempt bus operation,
- An explanation of the responsibilities of the seller who claims a sale is exempt from the additional tax,
- An explanation of the responsibilities of the buyer who issues an exemption certificate,
- A sample exemption certificate which the seller may obtain timely and in good faith from the purchaser to relieve the seller from the requirement to collect the additional tax,

FORMAL ISSUE PAPER

- A renumbering of the subsequent subdivisions, and
- An update of the references section.

The proposed revision to Regulation 1533.2 includes:

- An amendment to subdivision (a) to indicate that the additional 1.75 percent tax imposed on sales or purchases of diesel fuel is included in the partial exemption from tax, and
- A clarification that the taxes imposed by RTC sections 6051.7 and 6201.7 cease to be operative by their own terms on July 1, 2011.

B. Pros of Alternative 1

- Reflects the proper tax rates in the regulation,
- Reflects the exemptions from the tax rate increase provided in the statute, and
- Provides an exemption certificate that sellers and purchasers may use to support the exemption from the additional tax.

C. Cons of Alternative 1

As discussed earlier, the proposed revisions are potentially impacted by Propositions 22 and 26. The regulations may require further amendment depending on the actual effect of these propositions.

D. Statutory or Regulatory Change for Alternative 1

None.

E. Operational Impact of Alternative 1

Staff will notify taxpayers of the revised regulations through outreach efforts.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation and outreach efforts are considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Exhibit 1.

G. Taxpayer/Customer Impact of Alternative 1

Staff believes the proposed revisions to the regulations are necessary to keep the taxpayer informed of current law and provide the taxpayer with a certificate for claiming the exemption.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Alternative 2

A. Description of Alternative 2

Do not revise Regulation 1598 or 1533.2.

B. Pros of Alternative 2

The regulations will only be revised once, at the time it becomes clear whether or not the statutes will be reenacted.

C. Cons of Alternative 2

Taxpayers will not be aware of the additional tax imposed on the sales of diesel fuel or whether the additional tax is included in the partial exemption provided by Regulation 1533.2. In addition, sellers and purchasers will not have a sample exemption certificate for use in support of sales of diesel fuel exempt from the additional tax.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

If the regulations are not amended, the regulations will not reflect the proper tax rates or exemptions.

F. Administrative Impact of Alternative 2

1. Cost Impact

None

2. Revenue Impact

None. See Exhibit 1.

G. Taxpayer/Customer Impact of Alternative 2

If the regulations are not amended, taxpayers may not be aware of the statutory change because the regulation will not reflect the proper tax rates or exemptions. In addition, the taxpayer will not have a sample exemption certificate specific to the exemption.

H. Critical Time Frames of Alternative 2

None.

FORMAL ISSUE PAPER

Prepared by: Tax Policy Division, Sales and Use Tax Division

Current as of: January 24, 2011

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATIONBOARD OF EQUALIZATION
REVENUE ESTIMATE

Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing***Alternative 1 – Staff Recommendation**

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*. Staff recommends adding subdivision (e) to reflect the additional 1.75 percent tax increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law, or subject to the payment requirement specified in RTC section 60502.2.

Staff also recommends the Board approve and authorize publication of proposed revisions to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. Staff recommends amending subdivision (a) to show that the partial exemption from sales or use tax includes the additional 1.75 percent tax on sales or purchases of diesel fuel.

Alternative 2 - Other Alternative Considered

Do not amend Regulations 1598 or 1533.2.

Background, Methodology, and Assumptions**Alternative 1 – Staff Recommendation**

There is nothing in the proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, which would impact revenue. Both of these proposed revisions will provide for the full implementation of Assembly Bill (AB) X8 6 (stats. 2010, Ch. 11), the "fuel tax swap," and its companion statute Senate Bill (SB) 70 (stats. 2010, Ch. 9) which excluded aviation gasoline from the increase in the MVF taxes and added RTC section 6357.3 to provide an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law. Additionally, section 6357.3 provides an exemption from the

Revenue Estimate

1.75 percent increase in the sales and use tax rate when the diesel fuel is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2. Since these two proposed revisions provide for the full implementation of current law, and nothing else, there is nothing in the staff recommendation that would have an impact on revenue.

Alternative 2 - Other Alternative – do not revise Regulation 1598 or 1533.2

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Summary

Alternative 1 –staff recommendation does not have a revenue impact.

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division and Ms. Susanne Buehler, Acting Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at 916-445-0840.

Current as of February 1, 2011.

Regulation 1598. Motor Vehicle and Aircraft Fuels.

Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~, and 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 subdivision (h)) 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),

(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.
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 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 subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 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 subdivision (j) 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 (k).

(d) PARTIAL EXEMPTION FOR MOTOR VEHICLE FUEL. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) ADDITIONAL TAX ON SALES OF DIESEL FUEL.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2)(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate 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 by the purchaser.

Certificate for Exemption from the 1.75 Percent Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from _____
_____ ,

is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use.)

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

is purchased by an exempt bus operator

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code section 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) 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."

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

(A) Sales price per gallon of gasoline net of all taxes.....	\$2.435
Federal excise tax *184
State excise tax*	<u>.353</u>
Total	\$2.972
* Sales tax reimbursement computed at 2 1/4%* of \$2.972... ..	<u>.067</u>
Total tax-included price per gallon.....	\$3.039
 (B) Sales price per gallon of diesel fuel net of all taxes.....	 \$2.355
Federal excise tax*244
Total	\$2.599
* Sales tax reimbursement computed at 9%* of \$2.599..	.234
State excise tax *	<u>.136</u>
Total tax-included price per gallon.....	\$2.969

* 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.

(fg) 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 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 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.

(gh) REFUNDS OF EXCISE TAX

(1) FEDERAL EXCISE TAXES.

The refund of the federal 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.

(hi) 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 subdivision (b)(1), 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 (hi)(2). 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 by the purchaser.

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 motor vehicle fuel which I shall purchase from _____,

will be used in propelling aircraft; 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 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 by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

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

_____	_____
_____	_____
_____	_____
_____	_____

(ij) CERTIFICATE FOR EXCLUSION OF 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 subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(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 by the purchaser.

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 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 by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ij)(1) 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.

(jk) 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 is qualified under subdivision (jk)(1) may issue a certificate in substantially the form set forth in subdivision (jk)(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 by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (jk) 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 all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to 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 that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(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 gasoline, diesel, and jet fuel on an aggregate basis.

(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:

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

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such 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 gasoline, diesel, and jet fuel on an aggregate basis 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 gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

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 by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Phone Number: _____

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.: _____

Regulation 1533.2. DIESEL FUEL USED IN FARMING ACTIVITIES OR FOOD PROCESSING.

Reference: Section 6357.1, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, ~~and ending on June 30, 2011 and ending when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative,~~ the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) “Farming activities” mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person’s own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In

determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery

stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **FORM OF PARTIAL EXEMPTION CERTIFICATE.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **GOOD FAITH.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Appendix A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (If applicable) ³
ADDRESS	CITY	STATE, ZIP

¹ If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
² Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
³ If you are not required to hold a seller's permit, please enter "Not Applicable."