



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

450 N STREET, SACRAMENTO, CALIFORNIA  
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80  
916-445-2130 • FAX 916-324-3984  
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)  
First District, Lancaster

FIONA MA, CPA  
Second District, San Francisco

JEROME E. HORTON  
Third District, Los Angeles County

DIANE L. HARKEY  
Fourth District, Orange County

BETTY T. YEE  
State Controller

CYNTHIA BRIDGES  
Executive Director

**October 30, 2015**

**To Interested Parties:**

**Notice of Proposed Regulatory Action**

**The State Board of Equalization Proposes to Adopt  
Amendments to California Code of Regulations,  
Title 18,**

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

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

**PUBLIC HEARING**

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at [www.boe.ca.gov](http://www.boe.ca.gov) at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 2015. At the hearing, any interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1432.

## **AUTHORITY**

RTC section 60601.

## **REFERENCE**

RTC sections 60016, 60019, 60026, 60501 and 60502.

## **INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

### Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
  - Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
  - Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
  - Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

#### Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

##### *Interested Parties Process*

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined

that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

#### *PTO Equipment & Auxiliary Equipment*

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

*Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)*

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

*Safe-Harbor Percentages for Garbage Trucks*

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However,

Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

#### *Fuel Use Studies*

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

#### *Off-Highway Use*

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

*Refunds & Records*

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

*Idle Time*

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

*April 10, 2015, letter from Mr. Jacob Bholat*

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

*April 14, 2015, First Interested Parties Meeting*

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle

specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled “Other Auxiliary Equipment” to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle’s fuel is used to power “other” auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the “Other Auxiliary Equipment” category may be utilized and permitting the use of a greater percentage than 10 percent for “other” auxiliary equipment if a specific study is conducted to substantiate that percentage.

*May 6, 2015, letter from Mr. Leonard Finegold of Waste Management*

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term “incidental off-highway use” to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term “incidental off-highway use” in BTC staff’s draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase “[o]ff-highway use, as defined in subdivision (b)” in BTC staff’s revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled “Off-Highway Use,” were added back to staff’s revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of “off highway” and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of “auxiliary equipment” as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term “auxiliary equipment.” For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as “auxiliary equipment”: automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the “garbage truck” safe

harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after “super sucker” in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to “block boom” trucks after the references to “boom trucks,” in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add “transfer trailers,” which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle’s fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

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

*June 16, 2015, Second Interested Parties Meeting*

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

*July 1, 2015, letter from Mr. Leonard Finegold of Waste Management*

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management’s comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage

trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the “Frequently Asked Questions” section of the Diesel Users Fuel Tax page on the Board’s website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant’s completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

*September 16, 2015 BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board’s September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC’s staff’s draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant’s option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;

3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

#### **NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS**

The Board has determined that the adoption of the proposed amendments to Regulation 1432 will not impose a mandate on local agencies or school districts, including a mandate that is

required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

**NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT**

The Board has determined that the adoption of the proposed amendments to Regulation 1432 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

**NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS**

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1432 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1432 may affect small business.

**NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES**

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

**RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The Board has determined that the proposed amendments to Regulation 1432 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1432 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1432 will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.

## **NO SIGNIFICANT EFFECT ON HOUSING COSTS**

The adoption of the proposed amendments to Regulation 1432 will not have a significant effect on housing costs.

## **DETERMINATION REGARDING ALTERNATIVES**

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

## **CONTACT PERSONS**

Questions regarding the substance of the proposed amendments should be directed to Kevin B. Smith, Tax Counsel III, by telephone at (916) 323-3152, by e-mail at [Kevin.Smith@boe.ca.gov](mailto:Kevin.Smith@boe.ca.gov), or by mail at State Board of Equalization, Attn: Kevin B. Smith, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at [Richard.Bennion@boe.ca.gov](mailto:Richard.Bennion@boe.ca.gov), or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Smith.

## **WRITTEN COMMENT PERIOD**

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1432. The Board will only consider written comments received by that time.

**AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION**

The Board has prepared an underscored and strikeout version of the text of Regulation 1432 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1432, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed amendments and the initial statement of reasons are also available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

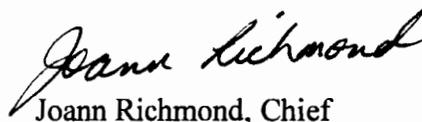
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8**

The Board may adopt the proposed amendments to Regulation 1432 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

If the Board adopts the proposed amendments to Regulation 1432, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,



Joann Richmond, Chief  
Board Proceedings Division

**STATE BOARD OF EQUALIZATION**

BOARD APPROVED

At the December 16, 2015 Board Meeting

Joann Richmond  
Joann Richmond, Chief  
Board Proceedings Division

JR:reb



**Initial Statement of Reasons for**  
**Proposed Amendments to California Code of Regulations,**  
**Title 18, Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor***  
***Vehicle.***

**SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS**

Current Law

On July 1, 1995, the authority to impose an excise tax on diesel fuel was removed from the Use Fuel Tax Law (Rev. & Tax. Code (RTC), § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law (RTC, § 60001 et seq.) (Stats. 1994, ch. 912). Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to an unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432,

subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of nontaxable diesel fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and, it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

### Proposed Amendments

#### *Interested Parties Process*

The Board’s Business Taxes Committee (BTC) staff determined that there were issues (or problems within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation’s definition of the term PTO equipment, the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation’s provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle’s diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied

to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

#### *PTO Equipment & Auxiliary Equipment*

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

#### *Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)*

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to

the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as “safe-harbor” percentages because they establish the minimum percentages of vehicles’ fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff’s draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

### *Safe-Harbor Percentages for Garbage Trucks*

The term “garbage truck” includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks’ fuel used to power their auxiliary equipment companies would not have to document their garbage trucks’ fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets’ fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck’s fuel used to power its auxiliary equipment varies depending on the density of the truck’s route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks’ or safe-harbor percentages for different types of garbage trucks’ fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff’s research found the average allowance in the 11 western states to be that 25 percent of a garbage truck’s fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

### *Fuel Use Studies*

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

### *Off-Highway Use*

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

### *Refunds & Records*

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

### *Idle Time*

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to

include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

*April 10, 2015, letter from Mr. Jacob Bholat*

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

*April 14, 2015, First Interested Parties Meeting*

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

*May 6, 2015, letter from Mr. Leonard Finegold of Waste Management*

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term “incidental off-highway use” in BTC staff’s draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase “[o]ff-highway use, as defined in subdivision (b)” in BTC staff’s revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled “Off-Highway Use,” were added back to staff’s revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of “off highway” and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of “auxiliary equipment” as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term “auxiliary equipment.” For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as “auxiliary equipment”: automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the “garbage truck” safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after “super sucker” in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to “block boom” trucks after the references to “boom trucks,” in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add “transfer trailers,” which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle’s fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

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

*June 16, 2015, Second Interested Parties Meeting*

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

*July 1, 2015, letter from Mr. Leonard Finegold of Waste Management*

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the

regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

*September 16, 2015 BTC Meeting*

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board propose to adopt BTC staff's revised draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary for the specific purpose of addressing the issues (or problems) referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for

nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

In addition, the Board has determined that the proposed amendments are not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1432 or the proposed amendments to Regulation 1432.

#### DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-010, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, BTC meeting in deciding to propose the amendments to Regulation 1432 described above.

#### ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1432 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1432 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1432 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

#### INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2, SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

As discussed in more detail above, the proposed amendments to Regulation 1432 address current issues (or problems) with the regulation by removing ambiguous language, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, including defining "equipment used to operate a motor vehicle on a highway" and "auxiliary equipment," and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which are based on data regarding diesel fuel used to power auxiliary equipment. As a result, the proposed amendments more clearly implement the provisions in RTC section 60501, subdivision

(a)(4)(A), providing for refunds of tax paid on diesel fuel “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” and the proposed amendments give claimants the “option” to use safe-harbor percentages when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which reflect the percentages of vehicles’ diesel fuel actually used to power auxiliary equipment.

In addition, RTC section 60501 already mandates that claims for refund be filed to obtain refunds of tax paid on diesel fuel used for nontaxable purposes. Regulation 1432 currently requires claimants to substantiate the amount of the tax paid on diesel fuel used in a nontaxable manner in order to obtain a refund of that tax and this currently requires claimants to perform fuel use studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner. The proposed amendments do not mandate that anyone claim a refund, or mandate that anyone use the safe-harbor percentages, as opposed to performing and using a fuel use study, when claiming a refund, or mandate that claimants use specific methods to perform fuel use studies, and the proposed amendments are fully consistent with and do not expand the scope of the refund provisions in RTC section 60501, subdivision (a)(4)(A). As a result, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Diesel Fuel Tax Law or Regulation 1432, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1432 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1432 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1432 does not regulate the health and welfare of California residents, worker safety, or the state’s environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1432 will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state’s environment.

The forgoing information also provides the factual basis for the Board’s initial determination that the adoption of the proposed amendments to Regulation 1432 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1432 may affect small businesses.

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1432**

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

~~(a) Power Take Off Equipment.~~

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

~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) Diesel Fuel Used for Purposes Other Than Operating Motor Vehicles Upon the Highways of This State.

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

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

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

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

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

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

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self-loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>

<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader (dump with spreader)</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet/vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the “other” category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) Off-Highway Use.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. “Off the highway” includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

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

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

(c) Refunds.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment in power take-off equipment or to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use ~~any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes.~~ the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) Idle Time.

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

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60016, 60019, 60026, 60501 and 60502, Revenue and Taxation Code.

## Regulation History

**Type of Regulation:** Diesel Fuel Tax

Regulation: 1432

Title: *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

**Preparation:** Kevin Smith

**Legal Contact:** Kevin Smith

The State Board of Equalization proposes to update the regulation, including defining “auxiliary equipment” and providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for diesel fuel used to power auxiliary equipment.

### History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 30, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 20, 2015	Notice to OAL
September 16, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA