



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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May 2, 2016

To Interested Parties:

**Notice of Documents Being Added to the Rulemaking File
for the State Board of Equalization’s Proposed Adoption of
Amendments to California Code of Regulations, Title 18, Section 1432,
*Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.***

NOTICE IS HEREBY GIVEN, in accordance with Government Code section 11347.1, that the State Board of Equalization (Board) is adding the documents described below to the rulemaking file for the proposed amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.*

Office of Administrative Law’s Issue

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the amendments “define and clarify the meaning of ‘equipment used to operate a motor vehicle upon a highway’ and ‘auxiliary equipment,’ provide examples of auxiliary equipment, [and] 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” (Initial statement of reasons, p. 9.) The initial statement of reasons also explains that the Board’s Business Taxes Committee (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” and that the safe-harbor percentages in the proposed amendments are “based on that data.” (Initial statement of reasons, p. 3, italics added.)

The Board conducted a public hearing regarding the adoption of the proposed amendments to Regulation 1432 on December 16, 2015, and during the hearing the Board unanimously voted to adopt the proposed amendments to Regulation 1432 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

The Board subsequently prepared the updated informative digest and final statement of reasons for the Board's adoption of the amendments to Regulation 1432 and submitted the rulemaking file for the adoption of the amendments to the Office of Administrative Law (OAL) for review. During their review of the rulemaking file, OAL staff concluded that there was an issue because, in OAL staff's opinion, the Board's references to "data from other states" and "internal data" in the initial statement of reasons did not provide a sufficient factual basis to support the safe-harbor percentages contained in the proposed amendments to the regulation.

The Board's staff discussed this issue with OAL's staff. The Board's staff agreed to address the issue by:

- Withdrawing the rulemaking file from OAL's review;
- Adding the data from other states and internal data to the rulemaking file to provide an additional factual basis for the safe-harbor percentages in the proposed amendments to Regulation 1432; and
- Making the data from other states and internal data available to the public and accepting public comments regarding the data from other states and internal data for at least 15 calendar days prior to the date the Board considers whether to readopt the proposed amendments to Regulation 1432, in accordance with Government Code section 11347.1.

Documents Being Added to the Rulemaking File

As a result, the Board has added a copy of a chart prepared by the Nevada Department of Motor Vehicles (DMV chart) and a copy of Washington State Department of Licensing Form FT-441-244 (R/10/14) WRA, *Washington Power Take-Off (PTO) Schedule* (Washington schedule), to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "data from other states" referred to above and in the initial statement of reasons. The Board has also added a document showing the results of a fuel use study conducted on transfer trailers (transfer trailer data) and a document showing the results of a fuel use study conducted on cement pumpers (cement pumper data) to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "internal data" referred to above and in the initial statement of reasons. The Board has also attached the DMV chart as Exhibit 1, the Washington schedule as Exhibits 2, the transfer trailer data as Exhibit 3, and the cement pumper data as Exhibit 4 to this notice.

The DMV chart includes data from Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Nevada regarding their power take off (or PTO) exemption allowances for fuel

used to power vehicles with PTO equipment.¹ The DMV chart shows that several states provide a PTO exemption allowance for the use of diesel fuel to power all of the vehicles with auxiliary equipment and all of the items of auxiliary equipment for which the Board is proposing to added safe-harbor percentage to Regulation 1432, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (which are not included in the DMV chart). The DMV chart also shows that at least one of the states provides a percentage PTO exemption allowance for each of the vehicles with auxiliary equipment and each of the items of auxiliary equipment that is the same as the Board's proposed safe-harbor percentage for the same vehicle or item, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (mentioned above). For example, the DMV chart shows that Washington provides the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for boom trucks, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, line trucks with diggers, derricks, or aerial lifts, log (or timber) trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, semi-wreckers, services trucks with jack hammers or drills, sewer cleaning trucks, snow plows, super suckers, sweeper trucks, tank trucks and tank transports, and trucks with hydraulic winches.

In addition, page 2 of the Washington schedule shows that Washington allows the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for bulk feed trucks, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, and wreckers (which are not included in the DMV chart). The transfer trailer data shows that the vehicles tested used 11.96 to 36.36 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' transfer trailers and that, on average, more than 19 percent of the vehicles' fuel was used for exempt purposes. The cement pumper data shows that the vehicles tested used more than 40 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' cement pumpers. And, the Board's proposed 20 percent safe-harbor percentage for transfer trailers and 40 percent safe-harbor percentage for cement pumpers are based upon the transfer trailer data and cement pumper data.

Additional Comments

The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being mailed to interested parties who testified or submitted written comments regarding the amendments at the public hearing, interested parties whose comments regarding the amendments were received during the original comment period, and interested parties who requested notification from the Board of changes to the text of the amendments. The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being posted on the Board's website at www.boe.ca.gov. And, the rulemaking file for the amendments to Regulation 1432, including the additional documents, is available for public inspection at the

¹ "Regulation 1432, subdivision (a), currently provides that [power take-off or] 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." (Initial statement of reasons, p. 2.)

Board's headquarters located at 450 N Street, Sacramento, CA 95814, from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding state holidays.

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on May 24-26, 2016, and 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 at least 10 days in advance of the meeting. The Board will consider whether to readopt the amendments to Regulation 1432 at 9:00 a.m. or as soon thereafter as the matter may be heard on May 24, 25, or 26, 2016.

Any interested person may submit written comments and any interested person may appear at the May 24-26, 2016, Board meeting to present or submit oral or written statements, arguments, or contentions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432. The written comment period ends at 9:00 a.m. on May 24, 2016, or as soon thereafter as the Board considers the readoption of the amendments to Regulation 1432 during its May 24-26, meeting. Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to readopt the amendments to Regulation 1432. Furthermore, if the Board readopts the proposed amendments, any written comments received prior to the end of the written comment period and any oral comments made during the Board's consideration of the amendments to Regulation 1432 during the May 24-26, 2016, meeting will be summarized and responded to in a revised final statement of reasons, as required by Government Code section 11347.1.

Questions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432 should be directed to Mr. Kevin B. Smith, Tax Counsel III (Specialist), by telephone at (916) 323-3152, by e-mail at 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 May 24-26, 2016, Board meeting, 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, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:81 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Smith.

Effective Date

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the express language of the amendments provides for claimants to be able to utilize the safe-harbor percentages being added to Regulation 1432 beginning April 1, 2016. (Initial statement of reasons, p. 9.) Also, the Board originally anticipated that the proposed amendments would be

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approved by OAL and filed with the Secretary of State prior to March 1, 2016, and would become effective on April 1, 2016, under Government Code section 11343.4, subdivision (a)(2). However, the need to address the issue discussed above has prevented the proposed amendments from becoming effective on April 1, 2016, as anticipated. Therefore, the Board has determined that the delay establishes good cause to request an early effective date for the proposed amendments to ensure that they are effective as soon as possible after April 1, 2016, and the Board may request an early effective date pursuant to Government Code section 11343.4, subdivision (b)(3).

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the May 25, 2016 Board Meeting

Joann Richmond
Joann Richmond, Chief
Board Proceedings Division

Exhibit 1



MOTOR CARRIER DIVISION POWER TAKE OFF (PTO) EXEMPTION ALLOWANCE WESTERN REGION JURISDICTIONAL COMPARISON

JURISDICTION	PTO EXEMPTION ALLOWANCES	Boom Truck	Car Carrier	Dump Truck	Garbage Truck	Line Truck with Digger/Derrick	Mobile Crane	Refrigeration Truck	Sanitation Truck
1 ARIZONA	Restricted - See comments								
2 CALIFORNIA	Restricted - See comments								
3 COLORADO*	Restricted - See comments				35%			7%	35%
4 IDAHO	Restricted - See comments				25%				25%
5 MONTANA	Yes	20%	10%	20%	30%	25%	30%	25%	30%
6 NEW MEXICO	Yes	15%	10%	15%	20%	20%	15%	15%	20%
7 OREGON	Restricted - See comments				25%				25%
8 TEXAS	No								
9 UTAH	Restricted - See comments				20%				20%
10 WASHINGTON	Yes	15%	0%	15%	25%	20%	25%	20%	25%
11 WYOMING	No								
AVERAGE (Excluding Nevada)	N/A	5%	2%	5%	16%	6%	6%	6%	16%
NEVADA	Yes	10%	10%	23%	20%	20%	42%	15%	15%
% Inc/Dec compared with western US jurisdictions	N/A	55%	82%	80%	18%	70%	85%	59%	-9%

Exhibit 1

Semi-Wrecker	Service Truck with a jack hammer or pneumatic drill	Snow Plow	Sweeper Truck	Tank truck other than a truck with a milk or pneumatic tank	Truck for distributing hot asphalt	Truck with Cement Mixer	Truck with a Dump Trailer	Truck with a milk tank	Truck with a pneumatic tank
						39%			
						30%			
20%	20%	20%	25%	20%	20%	30%	20%	20%	20%
15%	15%	0%	0%	15%	10%	20%	15%	15%	15%
						25%			
						25%			
15%	15%	15%	20%	15%	15%	25%	15%	15%	15%
5%	5%	3%	4%	5%	4%	18%	5%	5%	5%
35%	15%	10%	20%	24%	10%	30%	15%	30%	15%
87%	70%	68%	80%	81%	59%	41%	70%	85%	70%

Exhibit 1

Truck with a pump for cleaning a sewer or cesspool	Truck with an aerial lift	equipment to move a dumpster or cargo container	Carpet Cleaning	Concrete Pumpers	Document Shredders	Fire Trucks	Super Suckers	Timber Trucks	Truck with Hydraulic Winch
		35%							
		25%							
30%	25%	30%	10%	0%	0%	30%	30%	20%	20%
15%	20%	20%	0%	0%	0%	0%	15%	0%	15%
		25%							
		20%							
25%	20%	25%	10%	0%	0%	25%	25%	20%	15%
6%	6%	16%	2%	0%	0%	5%	6%	4%	5%
90%	20%	23%	0%	0%	0%	0%	0%	0%	0%
93%	70%	29%	0%	0%	0%	0%	0%	0%	0%

Exhibit 2



Washington Power Take-Off (PTO) Schedule

Use this schedule when claiming a PTO credit on your dyed diesel tax return or Washington fuel tax refund claim. We will accept computer generated schedules as long as the format is identical to ours. You must keep daily mileage records for each vehicle. See next page for instructions and credit percentage factor.

Company name _____ License number _____ Reporting period _____

A	B	C	D	E	F	G	H	I
License plate number	PTO type	Total miles	Total fuel used in vehicle	Average miles per gallon (column C divided by column D)*	Washington taxable miles	Taxable gallons (column F divided by column E)	Credit factor % (see instructions)	Creditable gallons (column G times column H)
Total								Total

*Use two decimal points for column E only, all other columns round to whole numbers.

Signature required

Name of person signing		Contact name (if different from person signing)
(Area code) Contact phone number	(Area code) Contact fax number	Contact email address

I certify under penalty of perjury under the laws of the state of Washington that the foregoing and any supporting documents and information is true and correct.

Date and place

X

Signature

Exhibit 2

Instructions

- Column A: Enter the vehicle license plate number.
- Column B: Describe the PTO unit, see chart below. Leave section blank for vehicles without PTO units.
- Column C: Enter the total miles operated for each vehicle.
- Column D: Enter the total fuel used in each vehicle.
- Column E: For each line, divide column C by column D to get your average miles per gallon (AMG).
- Column F: Enter the total miles operated on Washington public roadways during the reporting period.
- Column G: For each line, divide column F by column E to get Washington taxable gallons.
- Column H: Enter the credit percentage factor from the chart below that matches the vehicle indicated in column B.
- Column I: For each line, multiply column G by column H.

Total columns C, D, F, G, and I. If using multiple pages, subtotal each page.

Enter the total of column I on line 12 of your Fuel Tax Refund Claim form.

PTO type and credit percentage factor

25% <ul style="list-style-type: none"> • Cement mixer • Fire trucks (private) • Mobile cranes • Garbage trucks w/load compactor • Sewer cleaning truck/jet vactor • Super suckers 	20% <ul style="list-style-type: none"> • Line truck w/digger/derrick/aerial lift • Log truck w/self-loader • Refrigeration trucks • Sweeper trucks (must be motor vehicle) 	15% <ul style="list-style-type: none"> • Boom truck/block boom • Bulk feed truck • Dump trailers • Dump trucks • Hot asphalt distribution truck • Leaf truck • Lime spreader • Wrecker • Pneumatic tank truck • Salt spreader on dump truck 	<ul style="list-style-type: none"> • Seeder truck • Semi wrecker • Service truck w/jackhammer/drill • Snow plow • Spray truck • Tank transport • Tank trucks • Truck w/PTO hydraulic winch 	10% <ul style="list-style-type: none"> • Car carrier w/hydraulic winch • Carpet cleaning van 	7.5% Others
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As defined in WAC 308-72-905, 308-77-112

If payment is enclosed, send this completed form and supporting documents to:

Prorate and Fuel Tax, Department of Licensing, PO Box 3777, Seattle, WA 98124-3777

If payment is not enclosed, send this completed form and supporting documents to:

Fuel Tax Unit, Department of Licensing, PO Box 9228, Olympia, WA 98507-9228 or fax to (360) 570-7842

Questions: Contact us at (360) 664-1838.

Exhibit 3

Transfer Trailer Fuel Test Results									
Company Name	DU Account No.	Route Gallons	Shadow/Mimic Gallons	PTO/Off-Hwy Gallons	Combined PTO/Off-Hwy %	Route Miles	Shadow/Mimic Miles	Off-Hwy Miles	Total Loads
		11.00	7.00	4.00	36.36%	37.50	26.80	10.70	2
		62.50	52.50	10.00	16.00%	259.90	244.30	15.60	3
		27.00	20.00	7.00	25.93%	104.60	94.90	9.70	2
		79.96	70.40	9.56	11.96%	322.60	311.80	10.80	3
		63.00	48.00	15.00	23.81%	247.30	233.10	14.20	4
		38.21	32.11	6.10	15.96%	200.20	179.20	21.00	4
		42.10	32.00	10.10	23.99%	207.00	181.00	26.00	4
		39.50	31.50	8.00	20.25%	202.30	179.00	23.30	4
		363.27	293.51	69.76	19.20%	1,581.40	1,450.10	131.30	26

Exhibit 4 -

Cemet Pumper Fuel Test Results		
Company Name	DU Account No.	Combined PTO/ Off-Hwy %
		46.10
		51.13
		51.13
		53.00
		49.80