



California State  
Board of Equalization

# FUEL TAXES

## Newsletter

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### All Tax and Fee Programs

#### Annual Taxpayers' Bill of Rights Hearings

Do you have suggestions for improving our services? Do you want us to look more closely at a tax or fee issue? If you do, come share your ideas and concerns with our Board Members at the annual Taxpayers' Bill of Rights hearings. You may present your proposal orally or in writing.

The annual hearings for business and property taxes will be held in Sacramento and in Culver City in the Spring of 2010. Check our website or contact the Taxpayers' Rights Advocate for details at [www.boe.ca.gov/meetings/heartra.htm](http://www.boe.ca.gov/meetings/heartra.htm).

Although you are not required to make advance arrangements to speak, it would help us to prepare if you contact the Taxpayers' Rights Advocate Office at 888-324-2798 beforehand to let us know your topic. If your proposal is complex or extensive, we encourage you to submit it in advance and then summarize it in your oral presentation.

For more details, please call the Taxpayers' Rights Advocate Office or visit us at [www.boe.ca.gov](http://www.boe.ca.gov) (click on the tab "Your Rights" and choose "Taxpayers' Rights Advocate"), where you can also view the Advocate Office's 2008-09 annual report.

#### New legislation takes effect January 1, 2010

The following information summarizes the changes in law that the Legislature enacted during the 2009 legislative session. These changes affect the fuel tax programs administered by the Board of Equalization (BOE). For copies of the bills referenced below, please write to the Legislative Bill Room, 1303 10th Street, Room B32, Sacramento, CA 95814, or you can visit their website, [www.leginfo.ca.gov/bilinfo.html](http://www.leginfo.ca.gov/bilinfo.html).

Assembly Bill 1547 (Stats. 2009, ch. 545) amends the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law to expand

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the definition of “terminal” to include a fuel production facility. “Fuel production facility” means a facility, other than a refinery, in which fuel is produced. This bill also amends the Diesel Fuel Tax Law to allow a supplier of diesel fuel to file a claim for refund or claim a credit on its supplier return on behalf of retailers for qualified sales to consulate officers or consulate employees, or to the United States and its agencies and instrumentalities. This bill also requires annual fee payers under programs administered pursuant to the Fee Collection Procedures Law to file a closing return when they close or sell their business.

Assembly Bill 1188 (Stats. 2009, ch. 649) amends the Underground Storage Tank Maintenance Fee Law to temporarily increase the underground storage tank maintenance fee by an additional \$0.006 per gallon of petroleum stored, beginning January 1, 2010, and ending December 31, 2011.

### Civil behavior in trying times

Some observers have noted that civility is decreasing in our society as our lives become more complex. We know that you may find yourself frustrated with the difficulties of the tax law or pressed for time when dealing with our staff. Still, we ask that you treat our employees just as you would like to be treated in a business situation. Any statement or gesture made to a BOE employee that seems remotely like a threat—even a statement made in jest—will be referred to our Internal Security and Audit Division for investigation.

### Ethics at work—“thank you” is enough

We’d like to remind you that BOE policy prevents our employees from accepting gifts of any type. So if you’re grateful to someone for going the extra mile to help you with a complicated issue, a simple “thank you” will do. You can also use our online Customer Service Survey form at [www.boe.ca.gov/sptaxprog/survey\\_pstd.htm](http://www.boe.ca.gov/sptaxprog/survey_pstd.htm) to express yourself.

### Know Your Rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law
- Be treated fairly and courteously, and receive prompt service
- Appeal a decision or claim a refund as allowed by law

Of course, along with those rights, you have certain responsibilities, including the responsibility to:

- Keep informed about tax laws and regulations
- Report and pay taxes and fees when due
- Maintain adequate records

For more information about your rights, you may wish to download a copy of [publication 70](#), *Understanding Your Rights as a California Taxpayer*, from our website at [www.boe.ca.gov/pdf/pub70.pdf](http://www.boe.ca.gov/pdf/pub70.pdf).

## Motor Vehicle Fuel and Diesel Fuel Tax Programs

### Supplier Reporting of Imports Below the Rack

Effective January 1, 2010, suppliers importing fuel products into California by truck or railcar will be required to report imports of all reportable, exempt, and taxable products. This includes imports of ethanol. Suppliers will need to segregate between products subject to tax, such as motor vehicle fuel, diesel fuel or biodiesel, and products that are not subject to tax upon import but are reportable, such as dyed diesel fuel, jet fuel, kerosene, ethanol, or butane. To facilitate this new requirement, Schedule 3X has been renamed *3X-Imports Below the Terminal Rack Subject to Tax*, and a new schedule has been added for reporting the products that are not subject to tax, entitled *Schedule 3Y-Imports Below the Terminal Rack Not Subject to Tax*. Refer to Product Code Table forms [BOE-810-FTA](#) and [BOE-810-FTB](#) to determine the reporting requirements for specific products.

## Diesel Fuel Tax Program

### Required notice for sales of dyed diesel fuel

The Diesel Fuel Tax Law requires that a notice stating “*Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use*” be provided by any seller of dyed diesel fuel to its buyer and be posted by a seller on any retail pump dispensing dyed diesel fuel. A penalty is imposed for the failure to do so. For sales of dyed diesel fuel from a retail pump, the notice should be in a position on the pump that will ensure the purchaser of the fuel will see it prior to dispensing fuel from the pump into the fuel tank of its vehicle. The Internal Revenue Service (IRS) requires these notices to be affixed to the pump either on the face (on both sides if dyed fuel is dispensed from each side of the pump) or on the side of the pump just above the nozzle housing. For sales other than from a retail pump, the notice is required to be on shipping papers, bills of lading and invoices accompanying the sale or removal of dyed diesel fuel.

Any seller that fails to post or provide the required notice on any applicable retail pump or sales document is presumed to know that the fuel will be used for a taxable use and may be required to pay the \$0.18 diesel fuel tax and assessed a penalty on every gallon of fuel involved. The amount of the penalty is a minimum of \$1,000, increasing to \$10 per gallon when more than 100 gallons of dyed diesel fuel are involved.

If you have any questions about the sales of dyed diesel fuel please contact us at 916-322-9669.

### Exemption certificates for ultimate purchasers

In order to purchase clear diesel fuel without the diesel fuel tax, the Diesel Fuel Tax Law requires that an ultimate purchaser (a farmer who will use the fuel on a farm or a bus operator who will use the fuel in an exempt bus operation) submit a completed exemption certificate to its supplier (or vendor) of diesel fuel. The following certificates may be accepted by fuel suppliers from

ultimate purchasers:

- [BOE-231-DB](#), *Certificate of Exempt Bus Operation*
- [BOE-608](#), *Certificate of Farming Use*

The exemption certification must be in the form prescribed by the BOE and must be signed under penalty of perjury by a person with the authority to bind the buyer. A new certificate is required if any of the information on the current certificate changes prior to its expiration. An exemption certificate will expire on the earliest of the following dates:

- One year after the effective date of the exemption certificate
- The date that a new exemption certificate is provided to the seller

Effective January 1, 2010, sellers of undyed diesel fuel filing claims for refund or taking credit for fuel sold to an ultimate purchaser pursuant to an exemption certificate will be required to submit a copy of the exemption certificate to the BOE at the time of receipt or at the time a claim for refund is submitted, unless an unexpired exemption certificate has previously been provided to the BOE. Failure to provide a copy of the exemption certificate may result in delays in the processing of your claim or the potential disallowance of a claim for refund for an unsupported exempt sale.

### **Tax rate change for 2010 under International Fuel Tax Agreement (IFTA) and interstate user diesel fuel credentials**

The tax you report and pay with your quarterly fuel tax return for diesel fuel that you purchase outside California and use in the state has been decreased to 37.3 cents per gallon for the period January 1, 2010 through December 31, 2010. You may also claim a credit of 37.3 cents per gallon for the gallons of tax-paid diesel fuel you purchase in California and use both inside and outside the state.

The 37.3 cents per gallon reflects:

- 18 cents per gallon of diesel fuel tax, plus
- An additional excise tax of 19.3 cents per gallon. (This amount is equal to 8.25 percent of the average retail price per gallon of diesel fuel sold in California during the preceding 12 months. This amount is calculated each September for the subsequent calendar year.)

If you have any questions concerning the calculation of this tax, please call the Motor Carrier Section at 916-322-9669 or call the BOE's Taxpayer Information Section at 800-400-7115.

### **Renew your IFTA credentials to avoid penalty charges**

If you have not yet applied for your 2010 IFTA credentials, be sure to do so soon. Your current credentials will expire on December 31, 2009 (unless your credentials are revoked, canceled, or suspended before then). As explained below, you are subject to a penalty charge if you enter California on or after January 1, 2010, without proper IFTA credentials (see grace

period information) or a valid California Fuel Trip Permit.

### **Grace period for carriers who have applied and paid for their 2010 credentials**

You have until February 28, 2010, to display your 2010 decals if you have filed all of your IFTA returns, paid all amounts due, and filed and paid for your credential renewal on time. Many IFTA jurisdictions, including California, step up their IFTA credential enforcement beginning on March 1 each year.

### **Penalty charge**

If you're not covered by the grace period or otherwise do not have credentials, you will be assessed a penalty if you enter California without valid IFTA credentials or a valid California Fuel Trip Permit. The penalty may be calculated two different ways:

- If we determine at the time that you owe tax, the penalty will be 25 percent of the tax amount or \$500, whichever is more.
- If we do not determine at the time that you owe tax, the penalty is \$100. For each subsequent violation, \$100 will be added to the amount of the previous penalty until the penalty reaches the maximum of \$500 per violation. For example, the minimum penalty is \$200 for a second violation and \$300 for a third violation. In addition to paying a penalty, you will also be required to purchase a California Fuel Trip Permit to travel in California. The current cost of a permit is \$30 for a single vehicle for a consecutive four-day period.

All tax, interest and penalty amounts you are assessed upon entering California, the California Fuel Trip Permit fee, and any other outstanding amounts due must be paid before you will be allowed to proceed into the state. Failure to pay these amounts may result in your qualified motor vehicle being impounded, posted for sale and sold to pay the indebtedness.

### **IFTA audits**

IFTA audits are conducted to verify that you have correctly reported the fuel used and mileage driven on your quarterly IFTA tax returns. The BOE audits the records of California IFTA licensees on behalf of all member jurisdictions.

You must maintain complete records for each of your qualified motor vehicles of the miles driven in California and out of California and all of your related fuel purchases. For more information about recordkeeping requirements, see [publication 50, California IFTA—Guide to the International Fuel Tax Agreement](#), at [www.boe.ca.gov/pdf/pub50.pdf](http://www.boe.ca.gov/pdf/pub50.pdf).

If your records are unacceptable for audit purposes, the audit staff will determine your liability.

The auditor may:

- Estimate the number of gallons you used based on your

driving history or by comparing your operations to similar operations

- Use a standard of 4.0 miles per gallon
- Not allow any claims for tax-paid fuel without supporting documentation. You have the burden of proving that your records and statements are correct

Generally, you must maintain records for a period of four years from the due date of your quarterly tax report or the date the report was filed, whichever is later.

For more information on the BOE's audit program, see [publication 76, Audits](#), at [www.boe.ca.gov/pdf/pub76.pdf](http://www.boe.ca.gov/pdf/pub76.pdf).

## Aircraft Jet Fuel Tax Program

### Aircraft jet fuel dealer reporting changes

Beginning in July 2010, the return format for Aircraft Jet Fuel Dealers will be changing to an electronic format consistent with forms currently filed by suppliers of diesel and motor vehicle fuel. The information captured on these returns will be combined with information provided by terminal operators, petroleum carriers, and motor vehicle/diesel fuel suppliers to ensure uniform compliance throughout the industry. Over the next few months, aircraft jet fuel dealers will receive additional information and support to ease you through this transition.

## Underground Storage Tank Maintenance Fee Program

### Ownership changes for underground storage tanks

The owner of the Underground Storage Tank (UST) is responsible for the Underground Storage Tank Maintenance Fee. If you have sold your UST, please notify us immediately so that we may close out your account. If you have purchased a UST, be sure to contact us and register for a new account. Ownership changes include sale of the UST, changes in a partnership, incorporation, and transfers to and from a trust. You should also contact us if you lease the real property on which the UST is located to an operator or make changes to the lease, because the party responsible for paying the UST fee to the BOE may be affected.

Many times, after an ownership change, the fees are reported under the old account. When this occurs, the new owner's account is designated delinquent and may be liable for penalty and interest charges. Any fees paid under an account not registered to the owner requires authorization from the owner of that account in order to transfer the fees paid to the current account. If your tenant is paying the fee on your behalf, both you and your tenant should contact us to complete *Statements of Underground Storage Tank Owner/Operator* forms which formally acknowledge that the tenant's payments are being made on behalf of the owner. See [Regulation 1213, Payment of Fee by Operator](#) for a sample of the forms. Contact us at 916-322-9669 for more information regarding ownership changes.

## Oil Spill Response, Prevention, and Administration Fees Law

### Blending/commingling of petroleum product and nonpetroleum product = 100 percent petroleum product

The oil spill response fee and administration fee are imposed on a person who owns petroleum products received at a marine terminal within this state by means of a vessel from a point of origin outside this state. Only the \$0.05 per barrel administration fee is currently being imposed and is typically collected by a registered marine terminal operator from the owner of the petroleum product. For purposes of this fee law, petroleum products means any liquid hydrocarbon at atmospheric temperature and pressure that is the product of the fractionation, distillation, or other refining or processing of crude oil and that is used as, usable as, or may be refined as, a fuel or fuel blendstock, including, but not limited to, gasoline, diesel fuel, aviation fuel, bunker fuel, and alcohol fuels containing petroleum products.

Any product resulting from the blending or commingling of a petroleum product with a nonpetroleum product and shipped to a marine terminal in this state is considered a petroleum product for purposes of the Oil Spill Response, Prevention, and Administration Fees. For example, if fuel-grade ethanol is commingled with pure ethanol which has not been denatured and is shipped to a marine terminal in this state, the full load is subject to the fee. Please see [Regulation 2240, Petroleum Products](#), on our website at <http://www.boe.ca.gov/sptaxprog/pdf/reg2240.pdf> for a listing of some hydrocarbon products that meet the definition of petroleum products. However, please note that this listing is not all-inclusive.

## Need More Information?

### Fuel Taxes Division

916-322-9669  
Board of Equalization, MIC:30  
PO Box 942879  
Sacramento, CA 94279-0030

### BOE Website and Member Contact Information:

[www.boe.ca.gov](http://www.boe.ca.gov)

### Internet Mail

[www.boe.ca.gov/info/email.html](http://www.boe.ca.gov/info/email.html)

### Tax Evasion Hotline

888-334-3300

### Legislation

[www.leginfo.ca.gov](http://www.leginfo.ca.gov)

### Taxpayers' Rights Advocate

888-324-2798  
[www.boe.ca.gov/traltra.htm](http://www.boe.ca.gov/traltra.htm)