



STATE BOARD  
OF EQUALIZATION

# Fuel Taxes Newsletter

June 2001

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## All Fuel Tax and Fee Programs

### 1. Taxpayers' Bill of Rights Hearings

Each year, the Board holds public Taxpayers' Bill of Rights hearings to provide an opportunity for taxpayers to make suggestions and comments and to express concerns about the tax and fee programs administered by the Board. Hearings are scheduled for the dates and places listed below.

#### BUSINESS TAXES HEARINGS

##### Culver City

Board of Equalization District Office  
5901 Green Valley Circle, Suite 207  
1:30 p.m., Wednesday, November 7, 2001

##### Sacramento

Capitol Square Building  
450 N Street, 1st Floor Board Room  
2:00 p.m., Wednesday, November 28, 2001

#### PROPERTY TAXES HEARINGS

##### Culver City

Board of Equalization District Office  
5901 Green Valley Circle, Suite 207  
1:30 p.m., Wednesday, November 7, 2001

##### Sacramento

Capitol Square Building  
450 N Street, 1st Floor Board Room  
2:00 p.m., Thursday, December 20, 2001

For more information, please contact the Taxpayers' Rights Advocate Office at (916) 324-2798 or toll-free, 1-888-324-2798.

### 2. Electronic Filing for Fuel Taxpayers—A Coming Reality?

Terminal operators and pipeline and barge operators must report all fuel movements on the IRS reporting system called "the Excise Summary Terminal Activity Reporting System" (ExSTARS). This data will enable California to exchange information with other states and the federal government to reconcile transactions

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

between taxpayers and to verify reporting throughout the fuel distribution chain.

The Board hopes to build on the new reporting system to develop a way for fuel taxpayers to file electronically, starting with the January 2002 filing period. We are working with fuel industry representatives to ensure that the new system is compatible with the industry's reporting capabilities.

### 3. Preparing for the Upcoming Change in the Point of Taxation for Gasoline

The Fuel Industry Section is working on the implementation of a new law (effective January 1, 2002), which will move the point of taxation on gasoline to the terminal rack. (Assembly Bill 2114, Stats. 2000, ch. 1053).

We have notified taxpayers who will be affected by the change and have been working with fuel industry representatives to revise permit applications and tax returns. Persons who are affected by the law change will receive more information in the near future. If you would like to receive an implementation schedule, please call (916) 324-4692.

### 4. What Should You Do if the Auditor Asks You To Sign a *Waiver of Limitation*?

If you are being audited and you need to delay the start or completion of your audit, you may be asked by the auditor to sign a *Waiver of Limitation*. You may wonder whether you have to sign this form and what the impact of your signing will be. By signing the waiver, you agree to extend the three-year statute of limitations for the period indicated. This allows the Board to examine your records and issue an assessment or refund for periods that would otherwise expire.

Since the *Waiver of Limitation* is a voluntary agreement, you do not have to sign the form. However, it may be advantageous for you to do so in order to allow more time to work with audit staff to informally resolve audit issues before the institution of the formal billing and appeals process.

If you have any questions or concerns about the waiver, be sure to discuss them with your auditor.

### 5. Mailed Returns Should Be Postmarked by the Due Date

To avoid penalty and interest charges for late filing, mailed returns and payments must be postmarked on or before the specified due date. When mailing your return, please be sure to do so before the daily postal pickup to ensure a timely postmark. If the due date falls on a Saturday, Sunday, or State holiday, returns that are postmarked by the next business day will be considered timely. A return or payment postmarked after the due date may be considered timely if you provide satisfactory proof that it was mailed on time, with sufficient postage, to the proper address.

### Diesel Fuel Tax

#### 6. Minimum \$1,000 Penalty for Improper Sale or Use of Dyed Diesel Fuel

Dye is placed in some diesel fuel to indicate that no tax has been paid on the fuel. Except in limited circumstances, it is against the law to maintain or operate a motor vehicle on the highway in California with dyed diesel fuel in the supply tank.

A person who does any of the following is subject to a penalty of at least \$1,000.

- Sells or holds for sale dyed diesel fuel for any use that the person knows or has reason to know is a taxable use,
- Holds for use or uses dyed diesel fuel for a use other than a nontaxable use, and that person had reason to know or knew that the diesel fuel was dyed,
- Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in any dyed diesel fuel, or
- Fails to provide or post the required dyed diesel fuel notice with respect to any dyed diesel fuel.

Revenue and Taxation Code section 60105 provides that the amount of the penalty for each violation is \$10 for every gallon of diesel fuel involved or \$1,000, whichever is greater. The penalty for each subsequent violation will increase by multiplying the penalty amount by the number of prior violations.

The Internal Revenue Service and the California Air Resources Board pull samples from tanks of fuel retailers and users to test the composition of diesel fuel and to check for dye in the fuel. The test

results are provided to the Board, which, in turn, actively pursues any documented violations for using dyed diesel fuel on the highway.

## 7. The “Backup Tax” on Diesel Fuel

If you purchase untaxed fuel for an exempt use and subsequently use the fuel in a taxable manner, you will owe an 18¢ per gallon “backup tax.” The tax is due if you

- Purchase diesel fuel without payment of fuel tax (for example, you purchase dyed diesel fuel for a nontaxable purpose), **or**
- Pay diesel fuel tax on your purchase but are given a tax refund (based on a claim for refund), **and**
- You use the diesel fuel to operate a vehicle on a public highway in this state.

For example, if you purchased clear diesel fuel for use on a farm without paying tax and subsequently used the untaxed diesel fuel in your car on the highway, the backup tax is due. Or, if you purchased dyed diesel fuel for use in off-highway construction equipment but subsequently used the dyed fuel in your construction trucks on the highway, then the backup tax is due. (Generally, vehicles not required to be registered with the Department of Motor Vehicles may lawfully use dyed fuel at the construction site, but must pay backup tax on gallons of untaxed fuel used on the highway when moving from one construction site to another.)

If you have questions about whether the backup tax applies or about how to pay the backup tax, please contact the Fuel Industry Section at (916) 322-9669.

*Note:* The backup tax does not apply if another California fuel tax applies to the purchase (for example, a fuel tax imposed by the Motor Vehicle Fuel License Tax Law or the Use Fuel Tax Law).

### FOCUS ON EXEMPT BUS OPERATIONS

- ⊖ Eligibility
- ⊖ Status of charter-party carriers
- ⊖ Use of the exemption certificate
- ⊖ Exemption certificate updated

## 8. Exempt Bus Operations

If you own, operate, or control an exempt bus operation, you are considered an exempt bus operator. Exempt bus operators are exempt from all but one cent of the diesel fuel tax for diesel

fuel used for their exempt bus operations.

All exempt bus operators must

- Obtain an exempt bus operator license from the Board and
- File an Exempt Bus Operator Diesel Fuel Tax Return

### *Do I qualify as an exempt bus operator?*

You are an exempt bus operator if you

- Are not a charter-party carrier of passengers (see next question and answer, below),
- Have registered as an exempt bus operator with the Board, and
- Own, operate, or control any of the following:
  1. A transit district, transit authority, or local city transit system.
  2. A private company transporting people under contract with a public agency authorized to provide public transportation services.
  3. A passenger stage corporation licensed by the Public Utilities Commission (PUC) to operate exclusively in urban or suburban areas or between cities in close proximity for transportation of people for hire, compensation, or profit. The exemption does not apply to one-way routes that exceed 50 miles.
  4. A common carrier of passengers operating within the limits of a single city over a regular route, 98 percent of whose operations are exclusively within the limits of a single city, and, who does not qualify as a passenger stage corporation due to the 98 percent operation limitation.
  5. A school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including field trips.
  6. A private entity providing transportation services for the purposes of (5) above.

### *Am I a charter-party carrier of passengers?*

As explained above, charter-party carriers of passengers do not qualify for exempt status. Charter-party carriers of passengers are persons engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage, over any public highway in

California. Bus operations that are licensed as charter-party carriers by the PUC do not qualify for exempt bus operator status.

It should be noted, however, that the PUC Code specifies that certain transportation services do not come under the definition of a charter-party carrier of passengers. If you are not a charter-party carrier of passengers because you provide specified transportation services, as described below, and if you meet one of the six conditions listed on page 3, then you may qualify for the reduced tax rate on diesel fuel.

The following transportation services are outside the definition of charter-party carriers of passengers.

*Note:* The following list is not all-inclusive. For some of the services, there are additional conditions that must be met to remove you from the definition of a charter-party carrier of passengers. Please call the Fuel Industry Section at (916) 322-9669 for advice.

1. Transportation service within a single city or city and county and licensed or regulated by ordinance
2. Transportation of school pupils by or under contracts with a school district
3. Common carrier transportation services between fixed termini or over a regular route which are subject to authorization by the Public Utilities Commission as passenger stage corporations
4. Transportation services occasionally afforded for farm employees moving to and from farms on which employed when provided by the employer
5. Transportation service rendered by a publicly owned transit system
6. Passenger vehicles carrying passengers on a noncommercial enterprise basis
7. Taxicab transportation
8. Specified van pools
9. Medical transportation vehicles
10. Specified transportation services rendered within Lake Tahoe Basin
11. Specified rental car transportation services
12. Specified hotel shuttle transportation services
13. Specified transportation of hot air balloon ride passengers in a balloon chase vehicle
14. Specified transportation services incidental to operation of a youth camp

### *I think I qualify. What do I do now?*

If you believe that your bus operations qualify for exempt bus operations status, contact the Fuel Industry Section at (916) 322-9669 for advice.

*Note:* Even if a portion of your operations qualify as exempt bus operations, some of your operations may not be exempt. *Only the fuel actually delivered into the supply tank of the buses used in the exempt operations qualifies for the exemption.*

### ❑ *How do I use my exempt bus operator exemption certificate?*

When you purchase diesel fuel to use for an exempt purpose, you must provide your supplier with a *Diesel Fuel Tax Exemption Certificate for Exempt Bus Operator* (form BOE-231-DB). Your supplier will not charge diesel fuel tax on your purchase, in accordance with the instructions on the certificate.

You must report and pay tax on the fuel when you file your Exempt Bus Operator Diesel Fuel Tax Return. You will pay one cent per gallon diesel fuel tax for diesel fuel used for exempt bus operations. If you use diesel fuel for a taxable purpose, you must report and pay tax at the 18¢ per gallon rate.

### ❑ *Exemption certificate has been revised*

Form BOE-231-DB, *Diesel Fuel Tax Exemption Certificate for Exempt Bus Operator*, has been revised. An example of the updated exemption certificate is provided on the next page.

Exemption certificates must be renewed annually with your vendor. If you need a copy of the new certificate, please contact the Fuel Industry Section at (916) 322-9669, or visit our website, [www.boe.ca.gov](http://www.boe.ca.gov).

## **9. New Class of Exempt Sellers**

The Fuel Industry Section is adding a new class of registrants to account for exempt sales of tax-paid diesel fuel. The new class of exempt sellers will include people who make exempt sales of tax-paid diesel fuel

- For export
- To the US Government
- To licensed train operators

The new class of exempt sellers will be provided with new refund claim forms, which they can also use to claim refunds for tax-paid undyed diesel fuel used off-highway in their operations. The new form should be available January 2002.

**CERTIFICATE OF EXEMPT BUS OPERATION**

To support ultimate vendor's claim for a credit, payment, or refund of Diesel Fuel Tax, Revenue and Taxation Code Section 60502 for fuel sold to an exempt bus operation, Revenue and Taxation Code Section 60039

**NEW CERTIFICATE**

**RENEWAL CERTIFICATE**

SELLER'S NAME

SELLER'S ADDRESS *(street, city, state, zip code)*

SELLER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN)

SELLER'S BOARD OF EQUALIZATION DIESEL FUEL TAX NUMBER

The undersigned buyer (Buyer) hereby certifies the following under penalty of perjury. **Buyer is not a charter party carrier of passengers** *(see definition of charter party carrier on back of form)*. Buyer will use the undyed diesel fuel to which this certificate relates in the capacity of an exempt bus operation as indicated below.

- A transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.
- A private entity providing transportation services for the transportation of people under contract with a public agency authorized to provide public transportation services.
- A passenger stage corporation licensed by the Public Utilities Commission when the motor vehicles of the passenger stage corporation are exclusively operated in urban or suburban areas or between cities in close proximity for the transportation of persons for hire, compensation or profit, where one way route mileage does not exceed 50 miles.
- A common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.
- A school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including, but not limited to, field trips and athletic contests; or a private entity providing such transportation services to a school district, community college district or county superintendent of schools under contract.

**THIS CERTIFICATE APPLIES TO THE FOLLOWING** *(check applicable box and complete as necessary):*

BUYER EXEMPT BUS OPERATOR LICENSE NUMBER

This is a certificate covering all purchases to be used in an exempt bus operation.

EFFECTIVE DATE

EXPIRATION DATE *(not more than 1 year after effective date)*

This is a single purchase certificate: Invoice or delivery ticket number \_\_\_\_\_ Number of gallons \_\_\_\_\_

This is a certificate for \_\_\_\_\_ percent of all purchases to be used in an exempt bus operation.

EFFECTIVE DATE

EXPIRATION DATE *(not more than 1 year after effective date)*

**NOTE:** Buyer must provide a new certificate to the seller one year from the effective date, or if any information in this certificate changes.

**If Buyer uses the diesel fuel to which this certificate relates for a purpose other than stated in the certificate, Buyer will be liable for state excise tax. California Diesel Fuel Tax is payable immediately upon use to the State of California, Board of Equalization, PO Box 942879, Sacramento, CA 94279-0030.**

**Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the cost of prosecution.**

BUYER TYPE OF BUSINESS (check one)

- Sole Owner  
  Husband/wife co-owners  
  Partnership  
  Corporation  
  Limited Liability Company  
 Other (please specify):

LIST PARTNERS (if partnership)

NAME OF BUYER/BUSINESS OWNER (print or type)	BUYER/OWNER FEIN
DBA	

BUYER/OWNER SSN (husband/wife co-ownership or partnerships-list SSN for each partner)	CORPORATION OR LLC ID (list number from Secretary of State)
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PHYSICAL ADDRESS OF BUYER/BUSINESS (street, city, state, zip code)

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MAILING ADDRESS OF BUYER/BUSINESS (if different from physical address)

BULK DELIVERY ADDRESS (if different from physical address)

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TELEPHONE NUMBER OF BUYER/BUSINESS

(      )	FAX NUMBER (      )
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LIST ALL CURRENT PERMITS OR CERTIFICATES BY TYPE AND NUMBER ISSUED TO BUYER BY THE PUBLIC UTILITIES COMMISSION:

**CERTIFICATION**

*To the best of my knowledge all of the information on this certificate is accurate, and is signed under penalty of perjury. If signed by other than the Buyer, I certify that I have authority to bind the Buyer.*

AUTHORIZED SIGNATURE	DATE

PRINT NAME AND TITLE OF PERSON SIGNING

For purposes of the exemption from diesel fuel tax under Revenue and Taxation Code section 60039, "CHARTER PARTY CARRIER OF PASSENGERS" means every person engaged in the transportation of persons by motor vehicle for compensation, whether in common or contract carriage over any public highway in this state except the activities listed in Public Utilities Code section 5353, which include:

- Transportation service rendered wholly within the corporate limits of a single city or city and county and licensed or regulated by ordinance\*
- Transportation of school pupils conducted by or under contract with the governing board of any school district
- Common carrier transportation services between fixed termini or over a regular route which are subject to authorization as a passenger stage corporation\*\*
- Transportation services afforded for farm employees moving to and from farms in specified circumstances
- Transportation service rendered by a publicly owned transit system
- Passenger vehicles carrying passengers on a noncommercial enterprise basis
- Taxicab transportation service
- Carpools or vanpools for transportation to and from work
- Medical transportation vehicles
- Specified transportation services within the Lake Tahoe Basin
- Specified rental car shuttle services
- Specified hotel shuttle services
- Specified hot air balloon ride shuttle services
- Specified transportation to youth camp

\*A company that provides transportation service within the corporate limits of a single city or city and county under contract, as opposed to common carriage, is a charter party carrier of passengers under section 60039 and does not qualify as an exempt bus operator.

\*\*A publicly owned transit system that provides transportation services under contract, as opposed to common carriage, is a charter party carrier of passengers under section 60039 and does not qualify as an exempt bus operator.

Persons who are currently registered as ultimate vendors making sales to farmers and exempt bus operators (ultimate purchasers) and registered suppliers will continue to hold their ultimate vendor and supplier licenses. Persons currently registered as ultimate vendors who make no sales to ultimate purchasers will be reregistered as exempt sellers.

### 10. Do You Need to File Your First Diesel Fuel Tax Refund Claim?

If you are filing your first claim for refund of diesel fuel tax paid for diesel fuel used in a nontaxable manner, you must file using form BOE-770-DU2, *Claim for Refund of Diesel Fuel Tax on Nontaxable Uses*. This form is now available on our website. To obtain a copy:

- Go to [www.boe.ca.gov](http://www.boe.ca.gov)
- Click on Forms and Publications
- Click on Special Taxes
- Click on Forms
- Open BOE-770-DU2

The law allows for claims to be filed once a year. However, if your claim exceeds \$750 for any calendar quarter, you may request to file your claims on a quarterly basis. If your refund claim covers more than one calendar year, you must submit a separate claim form for each calendar year.

You can fill out the form online, but you will need to print a copy to mail. Complete the entire form, including schedules, and attach any worksheets or logs you used to calculate the gallons of diesel fuel being claimed. You cannot save a copy of the completed form to your computer.

After you have filed form BOE-770-DU2, we will mail you a standard refund claim form to use for subsequent claims.

## Underground Storage Tank Maintenance Fee Law

### 11. Are You an Operator and *Not the Owner* of an Underground Storage Tank?

We continue to have problems identifying and registering owners of underground storage tanks who should be registered in the Underground Storage Tank Fee (UST fee) program.

Many underground storage tank operators do not own the tanks they operate. Such operators can

help the owners by contacting them and letting them know that they must register with the Board and report and pay the UST fee due on the petroleum products placed in the tanks.

Because penalty and interest charges apply to unpaid fees, it is important that owners register as soon as possible. In some cases, tank operators who are not owners have become involved in lawsuits involving the owners and the Board.

### 12. New Regulation Clarifies Who Is an "Owner" for Purposes of the Fee

The Board has recently adopted Regulation 1205 (effective Feb. 8, 2001) to clarify who owns an underground storage tank for purposes of the UST fee.

The new regulation provides that, unless proven otherwise, the owner of the real property is presumed to be the owner of the underground storage tanks located on the property, even if the property is leased to another person.

If you are the owner of the real property and need to establish that someone else is the *owner* of the underground storage tank, you must provide evidence to support your claim. Examples of evidence include:

- The lessee installed the underground storage tanks at the location and the lease agreement gives the lessee the right to remove the tanks at the termination of the lease, regardless of whether the lessor's approval of the removal is required,
- The lessee installed the underground storage tanks at the location and the lease agreement states that any improvements installed by the lessee are the property of the lessee during the term of the lease,
- Documentation, such as a bill of sale, specifically shows the transfer of ownership of the tanks to a person other than the real property owner,
- The underground storage tanks are depreciated on the state or federal income tax returns of a person other than the real property owner,
- The underground storage tanks existed at the premises at the time the lease agreement was signed, and the lease agreement specifies that the underground storage tanks are owned and title is vested to the lessee during the term of the lease.

## International Fuel Tax Agreement

### 13. Keep Your Account Up-to-Date

Have you filed all of your IFTA Quarterly Fuel Use Tax Reports? Has your license been revoked? Do you owe any outstanding accounts receivables on your account? If you answered yes to any of the above, you should contact the Motor Carrier Section immediately and talk to a representative and bring your account up-to-date. Call (916) 322-9669.

### 14. Participating IFTA Jurisdictions Will Soon Have an Online Communication System To Check the Status of Licenses

All of the jurisdictions that participate in IFTA are in the process of implementing an online communication system that allows any jurisdiction to verify the status of your license. Each jurisdiction will be able to check the status of your account as you pass through scale facilities or during a roadside stop in any of the IFTA jurisdictions.

What does this mean to you? If a jurisdiction checks the status of your license and finds any of the conditions mentioned above, your vehicle may be stopped and detained until you contact us and clear the cause shown on the system. This could occur in any jurisdiction at any time of the day.

To clear these causes, you must contact us, file a return, or pay any amounts due before we can change the system and notify the jurisdiction to release your vehicle. Unfortunately, if you are stopped and detained during hours when our office is not open, you may incur significant delays.

Our office hours are 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding holidays recognized by the State of California. As an example, if you are stopped on a Friday evening after 5:00 p.m., Pacific time, you will not be able to contact us until the following business day, which is generally a Monday. Should Monday be a holiday, contact would be delayed until Tuesday. Some jurisdictions may not allow your vehicle to leave their facility until they are notified that the cause for the stop has been cleared.

Please check your records to see if you have filed and paid all returns and amounts due. You may avoid lengthy and costly delays by resolving any outstanding issues before your vehicle is stopped. You may contact the Motor Carrier Section at

(916) 322-9669 and follow the prompts for IFTA. You may also dial 1-800-400-7115. Follow the prompts to "Fuel Taxes" and select IFTA.

### 15. IFTA Information Available in Spanish

To help Spanish-speaking persons, we have translated the following pamphlets into Spanish:

- Publication 50, *Guide to the International Fuel Tax Agreement*
- Publication 50-A, *Introduction to the International Fuel Tax Agreement*

We expect to publish four more fuel tax related documents into Spanish later this year.

### For More Information

**Fuel Taxes Division.** If you have questions or comments, call us at **916-322-9669**. Or write to the following address: Fuel Taxes Division, MIC:30; State Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0030.

**Internet.** Visit us at **www.boe.ca.gov** to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

**Tax Evasion Hotline.** To report suspected tax evasion, please call toll-free, **1-888-334-3300**.

**Copies of Legislative Bills.** Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: **www.leginfo.ca.gov**. The Bill Room does not provide copies of Board forms or publications.

**Taxpayers' Rights Advocate.** If you need help with a problem you have been unable to resolve at other levels, please contact the Advocate's office for assistance. Call **1-888-324-2798**.