

# Memorandum

To : Mr. Ed King, Chief  
Fuel Taxes Division (MIC: 33)

Date: September 9, 2003

From : M. Judith Nelson *MJ Nelson*  
Senior Tax Counsel

Telephone: (916) 324-2641  
CalNet: 8-454-2641

Subject: Diesel Fuel Tax Law—Application of Penalty Under Section 60361(b)

This is in response to your memorandum to Ms. Janice L. Thurston dated July 21, 2003, in which you requested advice as to the correct application of Revenue and Taxation Code section 60361(b). In your memorandum you stated, in part:

“Section 60361(b) of the Diesel Fuel Tax Law allows the board to assess a penalty of \$100 to an unlicensed carrier entering California in those instances where we do not determine an amount of tax due. The section also provides that the penalty increases by \$100 for each subsequent violation up to a maximum penalty of \$500. ...

“At some point in the past, an informal policy was implemented that allowed staff to assess only one penalty per day against an unlicensed carrier that entered California. An example is a bus company carrying passengers from Las Vegas to Los Angeles. It is not uncommon for a bus company to carry three or four bus loads of passengers on a daily basis....

[W]e believe the correct application of Section 60361(b) is to assess a penalty of \$100 and sell a CFTP [California Fuel Trip Permit] to the first bus, assess a penalty of \$200 and sell a CFTP to the second bus, assess a penalty of \$300 and sell a trip permit to the third bus, etc.

“Please let us know if this is the correct application of Section 60361(b). ...”

This is to advise you that we concur in your interpretation of Revenue and Taxation Code section 60361(b) and in your plan to notify industry groups of the proper application of the penalty provision.

MJN: bb

cc: Mr. Doug Shepherd  
Mr. Tim Ford