

[Assembly Bill 2127](#) (O'Donnell and Brough)

Program: Fuel Taxes

Sponsor: California Independent Oil Marketers
Association (CIOMA)

Revenue and Taxation Code Sections 7318 and 8651.8

Effective: Upon enactment

Michele Pielsticker (Chief) 916.322.2376

John Cortez (Analyst) 916.445.6662

Patrick Alessandri (Revenue) 916.445.0840

This analysis only addresses the provisions that impact the Board of Equalization (BOE).

Summary: Until January 1, 2022, increases the allowable percentage of gasoline blended into E85, from 15% to 18%, and makes corresponding changes to the definition of gasohol.

Purpose: According to the author, the purpose of this bill is to provide incentives to produce fuel products with lower emissions and carbon intensity.

Fiscal Impact Summary: Increased refunds and foregone gasoline tax revenues of \$98,000 annually.

Existing Law: Under current law the state imposes an excise tax of \$0.18 per gallon on use fuels.¹ The law defines “fuel”² to include any combustible gas or liquid used in an internal combustion engine for propulsion on the highway except fuel taxed as a motor vehicle fuel (gasoline) or diesel fuel.³

The Use Fuel Tax Law (UFTL) sets the excise tax rate for ethanol and methanol containing up to 15% gasoline at one half the \$0.18 rate specified in Section 8651 (\$0.09). Ethanol and methanol containing more than 15% gasoline is defined as gasohol under the Motor Vehicle Fuel Tax Law (MVFTL).⁴ Although the use fuel tax is imposed on the use of the fuel, the vendor who sells and delivers the fuel into a fuel tank is required to collect the tax from the user and provide a receipt.⁵

Under the MVFTL, the state imposes an excise tax of \$0.30 per gallon⁶ (\$0.18 excise tax and \$0.12 surtax) on the removal of gasoline (except for aviation gasoline) at the refinery or terminal rack when it enters the state and upon sale to an unlicensed person. Refund of the gasoline excise tax is allowed under certain circumstances to specified persons.⁷ For claims filed on and after January 1, 2011, a gasoline tax refund is allowed to any person who buys and uses gasoline for the purpose of producing a blended fuel that is used to operate a motor vehicle on the state’s highways when that blended fuel is taxed as a use fuel.⁸

Proposed Law: This bill amends, repeals, and adds RTC Section 7318 to change the definition of gasohol and also amends, repeals, and adds Section 8651.8 to increase the allowable percentage of gasoline blended into E85, from 15% to 18%. The allowable blending percentage of 18% reverts back to 15% as of January 1, 2022.

As a tax levy, this bill becomes effective immediately.

¹ Use Fuel Tax Law (UFTL), Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code (RTC).

² UFTL Section 8604.

³ Motor Vehicle Fuel Tax Law (MVFTL), Part 2 (commencing with Section 7301), and the Diesel Fuel Tax Law (DFTL), Part 31 (commencing with Section 60001), of Division 2 of the RTC.

⁴ MVFTL Section 7318.

⁵ UFTL Section 8732.

⁶ For FY 2015-16, the gasoline excise tax rate is set at \$0.30 per gallon.

⁷ MVFTL Section 8101.

⁸ SB 1485 (Ch. 493, Stats. 2012).

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

In General. Under the UFTL, vendors and users are required to have permits with the BOE and file returns.⁹ Use fuel Under vendors must report and pay the use fuel tax on alcohol fuels, including E85, delivered into motor vehicle fuel tanks.¹⁰ The vendor is required to collect and remit to the BOE the \$0.09 per gallon use fuel tax on the full volume of E85 sold or dispensed from a retail pump. In contrast, the blenders (producers of blended use fuel) are not required to have a use fuel tax permit from the BOE for a person producing an alcohol fuel containing 15% or less gasoline or diesel fuel, whether the alcohol fuel is produced within a petroleum terminal or below the rack. Users are required to file tax returns and pay taxes owed on fuel used in a taxable manner for purchases not previously taxed.

The BOE handles various gasoline tax administrative functions including, but not limited to: registration, licensing, return processing, auditing, and appeals. The State Controller's office (SCO) is responsible for the collection of delinquent gasoline taxes and issuance of excise tax refunds for gasoline not used on highway. The gasoline tax collection point is different from the use fuel tax; the gasoline tax is generally collected high up the distribution chain at the terminal "rack" level.¹¹

Alcohol fuel blends have two components, ethanol or methanol fuel and gasoline or diesel fuel. E85 fuel is derived from blending ethanol fuel and gasoline. The blending location affects the gasoline tax. If the blended E85 is produced at the "rack" level, then the blended product is a use fuel when removed from the rack and the total blended volume is subject to the use fuel tax, to be reported and paid by the vendor upon sale and delivery into a motor vehicle.

Thus, if the E85 is blended below-the-rack, where the two component fuels are purchased separately and blended elsewhere in the distribution chain, the gasoline tax has been paid and passed on by the supplier at the "rack." The gasoline blended with the untaxed ethanol (the resulting E85 fuel) is then subject to the use fuel tax on the full volume, which includes the tax-paid gasoline.

Background: Current California Air Resources Board regulations¹² specify that the minimum allowable percentage of ethanol for E85 is 79%. The current specifications for E85 according to the California Division of Measurement Standards¹³ reference the ASTM International (f.k.a. American Society for Testing and Materials), specification, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines D5798."¹⁴ That standard covers a fuel blend of denatured ethanol and 15 to 25 additional hydrocarbons for use in spark-ignition automobiles.

Legislative History: Last year's [AB 1442](#) (O'Donnell and Brough) proposed increasing the allowable percentage of gasoline blended into E85 from 15% to 21%, aligning the definition of gasohol, and imposing the \$0.09 excise tax on that newly established "blended ethanol fuel." The bill was never heard in a committee.

Commentary:

- 1. Effect of the bill.** By increasing the allowable percentage of gasoline blended into E85, from 15% to 18%, the resulting blend would be taxed at a lower rate than is currently imposed on the gasoline portion.

⁹ A "vendor" includes every person who sells fuel in this state and places, or causes to be placed, the fuel into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle.

¹⁰ E85 fuel, an ethanol and gasoline blend, is the most predominant blended fuel under the UFTL.

¹¹ The terminal rack level is a level in the distribution chain at a refinery or a storage and distribution facility at the end of a pipeline where gasoline is delivered through a mechanism (the "rack" as it leaves the refinery or storage facility) into ground transportation, such as a truck, trailer, or railroad car.

¹² Section 2292.4, Specifications for E-85 Fuel Ethanol, Article 3 of Chapter 5 of Division 3 of Title 13 of the California Code of Regulations.

[https://govt.westlaw.com/calregs/Document/ID7F07C10D46911DE8879F88E8B0DAAAE?viewType=FullText&originalContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Document/ID7F07C10D46911DE8879F88E8B0DAAAE?viewType=FullText&originalContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default))

¹³ Section 4146, Specifications – E85 Fuel Ethanol, Article 5 of Chapter 6 of Division 9 of Title 4 of the California Code of Regulations. http://www.cdfr.ca.gov/dms/programs/general/2015DMS_FldRefMan/122015FRMCh6-4100-4081Part12.pdf

¹⁴ ASTM D5798-14, Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines, ASTM International, West Conshohocken, PA, 2014, www.astm.org. See this link for an abstract: <http://www.astm.org/Standards/D5798.htm>

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE's formal position.

2. **The May 12, 2016 amendments** added the January 1, 2022 sunset date, after which the allowable percentage of gasoline blended into E85 reverts back to 15%.
3. **No administrative concerns with the increase of gasoline blended into E85 from 15% to 18%.** BOE’s UFTL duties include registration, returns, collection, audits, and refunds. The proposed change in the specified blending percentage of E85 and gasohol fuels does not complicate administration.
4. **The SCO administers the specific gasoline tax refund provisions.** The SCO administers gasoline tax refunds if the gasoline is used for purposes other than operating a vehicle on the state’s public highways and other exempt uses.
5. **Below-the-rack blenders sell the E85 with tax-paid gasoline and are authorized to obtain a refund.** Below-the-rack blenders already are authorized to obtain a refund of the tax-paid gasoline component of the E85, as provided by law and authorized by the SCO.

Costs: Any costs to BOE would be absorbable.

Revenue Impact:

Background, Methodology, and Assumptions. This bill changes the definition of gasohol and increases the allowable percentage of gasoline blended into E85, from 15% to 18%. Current law allows reimbursement of that portion of the gasoline that was taxed prior to blending. Blending occurs by different processes, referred to as “above-the-rack” and “below-the-rack.” This variation requires different computations to calculate the proper revenue impact, which we have identified as a “refund” impact for below-the-rack blenders, and a “foregone revenue” impact for above-the-rack blenders. To determine the “below-the-rack” revenue impact, the amount of ethanol reported is subtracted from the amount of E85 fuel reported. Multiplying the “below-the-rack” blend by either 15% or 18% yields the amount of gasoline eligible for refund. The difference between the two types of fuel blend for the corresponding fiscal years yields the difference in tax refund.

Blended fuel contains anywhere from 15% (E85) to 18% (E82) gasoline. Thus, as the amount of gasoline blended into E85 increases, the state experiences “foregone” revenue from the decreased ethanol revenues. Although the data indicates that most of the E85 blending occurs below the rack, not at the rack, for revenue estimate purposes we have attempted to quantify the above-the-rack impact. To the extent the industry changes production methods and volumes and blends more E85 at the rack, the revenue difference could grow.

Based on BOE data, the refund is estimated as follows:

E-82									
<i>fy</i>	<i>Blended Fuel E-85</i>	<i>Blend Fuel Above Rack</i>	<i>Blend Fuel Below Rack</i>	<i>Prop. 18% gasoline</i>	<i>Gasoline Rate</i>	<i>Refund</i>	<i>Ethanol Content</i>	<i>Ethanol Rate</i>	<i>Ethanol Revenue</i>
2012-13	6,128,219	242,607	5,885,612	1,059,410	0.360	\$ 381,388	4,826,202	0.09	\$ 434,358
2013-14	7,958,169	132,869	7,825,300	1,408,554	0.395	\$ 556,379	6,416,746	0.09	\$ 577,507
2014-15	7,646,210	83,773	7,562,437	1,361,239	0.360	\$ 490,046	6,201,199	0.09	\$ 558,108
E-85									
<i>fy</i>	<i>Blended Fuel E-85</i>	<i>Blend Fuel Above Rack</i>	<i>Blend Fuel Below Rack</i>	<i>Exist. 15% gasoline</i>	<i>Gasoline Rate</i>	<i>Refund</i>	<i>Ethanol Content</i>	<i>Ethanol Rate</i>	<i>Ethanol Revenue</i>
2012-13	6,128,219	242,607	5,885,612	882,842	0.360	\$ 317,823	5,002,770	0.09	\$ 450,249
2013-14	7,958,169	132,869	7,825,300	1,173,795	0.395	\$ 463,649	6,651,505	0.09	\$ 598,635
2014-15	7,646,210	83,773	7,562,437	1,134,366	0.360	\$ 408,372	6,428,072	0.09	\$ 578,526

This staff analysis is provided to address various administrative, cost, revenue and policy issues; it is not to be construed to reflect or suggest the BOE’s formal position.

Subtracting the decrease in ethanol tax revenue from the increase in gasoline tax refund yields a net refund as follows:

<i>fy</i>	<i>Refund Diff, Gasoline E82-E85</i>	<i>Revenue Diff, Ethanol</i>		<i>Net Refund Change E82-E85</i>
2012-13	\$ 63,565	\$ (15,891)		\$ 79,456
2013-14	\$ 92,730	\$ (21,128)		\$ 113,858
2014-15	\$ 81,674	\$ (20,419)		\$ 102,093
				\$ 98,469

Revenue Summary. Accounting for both the “foregone” gasoline tax revenue and the increase in gasoline tax refunds, the total revenue loss would be \$98,000 annually.

This revenue estimate does not account for any changes in economic activity that may or may not result from enactment of the proposed law.