

**Amend Revenue and Taxation Code Sections 7339 and 60003 of the Motor Vehicle Fuel and Diesel Fuel Tax Laws, respectively, to redefine a terminal to include a fuel production facility with storage so that facilities outside the bulk transfer system have the same licensing and reporting requirements as terminals supplied by pipeline or vessel. And add Sections 7339.1 and 60003.1 to define a “fuel production facility” to include a facility, other than a refinery.**

**Source: Fuel Taxes Division**

**Existing Law**

Under existing Section 7339 of the Motor Vehicle Fuel Tax Law (gasoline) and Section 60003 of the Diesel Fuel Tax Law (diesel), a terminal is defined as a distribution facility that is supplied by pipeline or vessel, and from which the gasoline or diesel fuel may be removed at a rack.

Section 7333 and Section 60006 define a rack as a mechanism for delivering fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer. Bulk transfer means any transfer of fuel by pipeline or vessel.

Both the gasoline and diesel fuel tax laws define a terminal operator as a supplier of the respective fuel (Sections 7338 and 60033). As a supplier, the terminal operator is required to be licensed with the Board (Sections 7451 and 60131) and is required to file a monthly information report detailing, among other things, the amount of fuel received, removed, and stored at each terminal it operates (Sections 7652.5 and 60204).

In general, both the gasoline and diesel fuel tax is imposed upon the removal of the fuel in this state from a terminal, if the fuel is removed at the rack. A supplier is generally responsible for the tax.

Under existing law, for a facility to be licensed as a terminal, it must be able to receive fuel by pipeline or vessel and be able to remove fuel over a rack.

However, over the past few years, Board staff has noted an emerging trend in the fuel industry where fuel products are produced and enter the market from outside the traditional bulk transfer system. This trend coincides with the push towards alternative and renewable fuel products, such as biodiesel. These production sites typically have storage facilities that store the fuels produced and have loading racks to ship the fuel products to customers. However, because they are not supplied by a pipeline or vessel, these production facilities are not currently licensed as terminals and, therefore, do not file terminal reports on their fuel storage and removal activities.

Because existing laws did not envision that there would be large scale production of fuel products outside the bulk transfer system, there is a deficiency in the Board's ability to account for this fuel as it enters the marketplace. Without terminal reporting of this fuel, Board staff cannot match all the fuel transactions reported by licensed

suppliers, and therefore cannot verify that all taxable fuel entering the market in California is properly reported and tax remitted.

### **Background**

In 1995 and again in 2002, the imposition of the diesel fuel and gasoline taxes, respectively, were moved to the rack. At that time virtually all fuel sold in the state was produced from petroleum stocks at refineries and moved into the marketplace through the pipeline and terminal network throughout the state. The fuel taxes laws and the tax/transaction reporting system was developed around the traditional bulk transfer (refinery-pipeline-terminal) model of fuel movements. California's fuel tax/transaction reporting system includes monthly tax returns filed by licensed fuel suppliers, and monthly reports submitted by terminal operators and bulk (pipeline, vessel) carriers. A non-bulk carrier, train operators, will be required to file monthly information reports beginning in 2009 (AB 3079, Ch. 306, Stats. 2008). All parties report load-by-load transaction details. The Board then compares the terminal and carrier report data to the data provided on supplier tax returns to verify that all taxable fuel products removed from the terminals in this state are properly reported and the appropriate tax remitted.

### **This Proposal**

This proposal would amend the gasoline and diesel fuel tax laws to include in the definition of a terminal, a gasoline or diesel fuel production facility with storage that is not supplied by pipeline or vessel and from which the fuel produced may be removed at a rack. It would also add a definition of "fuel production facility" to the gasoline and diesel fuel tax laws. These proposed changes would place the same licensing and reporting requirements on fuel production facilities supplied outside the bulk transfer system, as those facilities currently supplied by pipeline or vessel.

Besides biodiesel production facilities, this proposal would also cover other stand-alone fuel production facilities, such as transmix refractionation plants. Transmix is a fuel mixture of dissimilar fuels (usually gasoline and diesel fuels) that results when one fuel type is run through a pipeline after another type of fuel is run through the same pipeline. Transmix is captured at terminals and either returned to refineries to be re-refined or sent to transmix plants where the mixture is broken down (refractionated) into its component gasoline and diesel fuel parts. Based on analysis of supplier reporting and discussions with the California Air Resources Board, it is estimated that in-state production of biodiesel during 2007 totaled 6 million gallons. Transmix movements from terminals during the same period totaled 194 million gallons.

*Section 7339 of the Revenue and Taxation Code is amended to read:*

7339. "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by pipeline or vessel, and from which motor vehicle fuel may be removed at a rack. "Terminal" includes a fuel production facility where motor vehicle fuel is produced and stored and from which motor vehicle fuel may be removed at a rack.

*Section 7339.1 of the Revenue and Taxation Code is added to read:*

7339.1. "Fuel production facility" means a facility, other than a refinery, in which motor vehicle fuel is produced.

*Section 60003 of the Revenue and Taxation code is amended to read:*

60003. "Terminal" means a diesel fuel storage and distribution facility that is supplied by pipeline or vessel, and from which diesel fuel may be removed at a rack. "Terminal" includes a fuel production facility where diesel fuel is produced and stored and from which diesel fuel may be removed at a rack.

*Section 60003.1 of the Revenue and Taxation Code is added to read:*

60003.1. "Fuel production facility" means a facility, other than a refinery, in which diesel fuel is produced.