

Amend Revenue and Taxation Code Sections 60501 and 60508, and repeal Sections 60508.1, 60508.2, 60508.4, and 60509, to allow a supplier of diesel fuel to file a claim for refund or claim a credit on their 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.

Source: Fuel Taxes Division

Existing Law

In general, under the existing Diesel Fuel Tax Law (Part 31, Division 2 of the Revenue and Taxation Code, commencing with Section 60001), the state provides an excise tax exemption for diesel fuel that is (1) dyed, (2) exported out of state, (3) sold to the United States government and its agencies or instrumentalities, (4) sold to certain consulate officers and consulate employees, (5) used off-highway and (6) used for agricultural purposes.

Section 60501 allows a diesel fuel supplier to claim a refund of the tax on diesel fuel when the tax-paid diesel fuel is exported, removed, sold, or used by a supplier under certain conditions. Some of the conditions include, but are not limited to, sale of diesel fuel under specified circumstances by a supplier to any consulate officer or consulate employee, and sales to the United States and its agencies and instrumentalities.

Section 60508.1 allows a diesel fuel supplier to take a credit in lieu of refund on the supplier's tax return for sales of tax-paid diesel fuel to a consulate officer or consulate employee.

The current Motor Vehicle Fuel Tax Law provides that motor vehicle fuel (gasoline) suppliers are able to claim a refund, or take a credit in lieu of refund, for qualified tax-paid sales to the armed forces of the United States or to a consulate officer or consulate employee. The gasoline tax statutes were drafted to allow suppliers who did not sell directly to the consulate officer or consulate employee the ability to file a claim for refund on behalf of the retailer.

Sales of tax-paid diesel fuel to consulate officer or consulate employee.

Section 60501(a)(4)(F) provides that a claim for refund is allowed for diesel fuel sold by a supplier to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee. Generally, Section 60508.1 provides that the supplier may take a credit in lieu of a refund on the supplier's tax return. Under existing diesel fuel statutes, only a supplier who sells directly to a consulate officer or employee is entitled to claim the credit for the tax or file a claim for refund. No provision exists that allows a retailer to claim a refund for the sales it makes under these circumstances; therefore, the supplier is unable to claim a refund, or take a credit, when the sale is made by the retailer.

Sales of tax-paid diesel fuel to the United States and its agencies and instrumentalities. Under the existing Section 60501(a)(4)(H), a claim for refund is allowed for diesel fuel sold by a person (not just a supplier) to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of the diesel fuel. Under existing diesel fuel statutes, only the person who sells to the United States and its instrumentalities is entitled to claim the credit for the tax or file a claim for refund. No provision exists that allows a supplier to claim a refund, or take the in lieu credit, when the retailer made the direct sale to the United States and its instrumentalities.

This Proposal

This proposal would amend Sections 60501 and 60508, and repeal Sections 60508.1, 60508.2, 60508.4, and 60509 of the Diesel Fuel Tax Law to allow suppliers to file claims for refund, or take a credit in lieu of a refund, on their supplier returns on behalf of retailers for diesel fuel taxes on qualified retail sales to consulate officers or consulate employees or to the United States and its agencies and instrumentalities and to more closely conform the provisions of the Diesel Fuel Tax Law with the provisions of the gasoline tax law.

This proposal would allow the oil company, i.e., the supplier, to claim the credit on its supplier return and avoid the necessity of obtaining reimbursement for the tax from the franchisee and the necessity for the franchisee to file a claim for refund with the Board. This approach is supported by the industry and will reduce the number of claims for refund and potential controversies over claims that are submitted by the wrong person or that may be barred by the statute of limitations.

Background

The current diesel fuel refund statutes worked well when major oil companies owned and operated most service stations and the oil companies, who were licensed suppliers, could take credit for the tax included in the retail sale on their supplier return. However, the industry has evolved, and now most "branded" stations are franchised or leased to independent retailers.

In practice, oil companies have continued to use the accounting methods that were put into place prior to the franchising of the company-operated stations and have claimed credit for these taxes on their returns. However, in an audit situation, if the supplier had erroneously claimed credits for its franchisee's sales to a consulate officer or the U.S. Government, the audit staff disallows the credits. This results in the supplier having to obtain reimbursement for the taxes from the franchisee. The franchisee then, at least with respect to sales to the U.S. Government, needs to file a claim for refund for those periods and amounts that are still within the statute of limitations.

Section 60501 of the Revenue and Taxation Code is amended to read:

60501. Persons who have paid a tax for diesel fuel lost, sold, or removed as provided in paragraph (4) of subdivision (a), or used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall, except as otherwise provided in this part, be reimbursed and repaid the amount of the tax.

(a) A claim for refund with respect to diesel fuel is allowed under this section only if all of the following apply:

(1) Tax was imposed on the diesel fuel to which the claim relates.

(2) The claimant bought or produced the diesel fuel and did not sell or resell it in this state except as provided in paragraph (4) of subdivision (a).

(3) The claimant has filed a timely claim for refund that contains the information required under subdivision (b) and the claim is supported by the original invoice or original invoice facsimile retained in an alternative storage media showing the purchase. If no original invoice was created, electronic invoicing shall be accepted as reflected by a computerized facsimile when accompanied by an original copy of the bill of lading or fuel manifest that can be directly tied to the electronic invoice.

(4) The diesel fuel was any of the following:

(A) Used for purposes other than operating motor vehicles upon the public highways of the state.

(B) Exported for use outside of this state. Diesel fuel carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state unless the diesel fuel becomes subject to tax as an import under the laws of the destination state.

(C) Used in any construction equipment that is exempt from vehicle registration pursuant to the Vehicle Code, while operated within the confines and limits of a construction project.

(D) Used in the operation of a motor vehicle on any highway that is under the jurisdiction of the United States Department of Agriculture and with respect to the use of the highway the claimant pays, or contributes to, the cost of construction or maintenance thereof pursuant to an agreement with, or permission of, the United States Department of Agriculture.

(E) Used in any motor vehicle owned by any county, city and county, city, district, or other political subdivision or public agency when operated by it over any highway constructed and maintained by the United States or any department or agency thereof within a military reservation in this state. If the motor vehicle is operated both over the highway and over a public highway outside the military reservation in a continuous trip the tax shall not be refunded as to that portion of the diesel fuel used to operate the vehicle over the public highway outside the military reservation.

Nothing contained in this section shall be construed as a refund of the tax for the use of diesel fuel in any motor vehicle operated upon a public highway within a military reservation, which highway is constructed or maintained by this state or any political subdivision thereof. As used in this

section, "military reservation" includes any establishment of the United States Government or any agency thereof used by the armed forces of the United States for military, air, or naval operations, including research projects.

(F) Sold by a supplier and which was sold to any consulate officer or consulate employee under circumstances which would have entitled the supplier to an exemption under paragraph (6) of subdivision (a) of Section 60100 if the supplier had sold the diesel fuel directly to the consulate officer or consulate employee.

(G) Lost in the ordinary course of handling, transportation, or storage.

(H) (i) Sold by a person to the United States and its agencies and instrumentalities under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(ii) Sold by a supplier and which was sold by credit card to the United States and its agencies and instrumentalities under circumstances which would have entitled the supplier to an exemption under Section 60100 if the supplier had sold the diesel fuel directly to the United States and its agencies and instrumentalities.

(I) Sold by a person to a train operator for use in a diesel-powered train or for other off-highway use under circumstances that would have entitled that person to an exemption from the payment of diesel fuel tax under Section 60100 had that person been the supplier of this diesel fuel.

(J) Removed from an approved terminal at the terminal rack, but only to the extent that the supplier can show that the tax on the same amount of diesel fuel has been paid more than one time by the same supplier.

(b) Each claim for refund under this section shall contain the following information with respect to all of the diesel fuel covered by the claim:

(1) The name, address, telephone number, and permit number of the person that sold the diesel fuel to the claimant and the date of the purchase.

(2) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

(5) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (4) of subdivision (a).

(6) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation.

(c) Each claim for refund under this section shall be made on a form prescribed by the board and shall be filed for a calendar year. If, at the close of any of the first three quarters of the calendar year, more than seven hundred fifty dollars (\$750) is refundable under this section with respect to diesel fuel used or exported during that quarter or any prior quarter during

the calendar year, and for which no other claim has been filed, a claim may be filed for the quarterly period. To facilitate the administration of this section, the board may require the filing of claims for refund for other than yearly periods.

Section 60508 of the Revenue and Taxation Code is amended to read:

60508. In lieu of the collection and refund of the tax on tax-paid diesel fuel exported, removed, sold, or used by a supplier in ~~the~~ a manner as that would entitle ~~a purchaser~~ the supplier to claim a refund under this article, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations the board may prescribe.

Section 60508.1 of the Revenue and Taxation Code is repealed:

~~60508.1. In lieu of the collection and refund of the tax on diesel fuel sold to a consulate officer or consulate employee of a foreign government by a supplier who would be entitled to claim a refund under subdivision (a) of Section 60501, a credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations that the board may prescribe.~~

Section 60508.2 of the Revenue and Taxation Code is repealed:

~~60508.2. In lieu of the collection and refund of the tax on diesel fuel sold to an ultimate purchaser for use on a farm for farming purposes or for use in an exempt bus operation by a supplier who would be entitled to a claim for refund under Section 60502, a credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with any rules and regulations that the board may prescribe.~~

Section 60508.4 of the Revenue and Taxation Code is repealed:

~~60508.4. In lieu of the collection and refund of the tax on tax-paid diesel fuel removed at a terminal rack by a supplier who is entitled to claim a refund of tax under subparagraph (J) of paragraph (4) of subdivision (a) of Section 60501, credit may be given the supplier upon the supplier's tax return. The amount of tax and refund shall be determined in accordance with such rules and regulations as the board may prescribe.~~

Section 60509 of the Revenue and Taxation Code is repealed:

~~60509. In lieu of the collection and refund of the tax on diesel fuel exported by a supplier for use outside the state in the manner as would entitle a supplier to claim a refund under subdivision (a) of Section 60501, credit may be given the supplier upon the supplier's tax return and the determination of the amount of the supplier's tax shall be in accordance with the rules and regulations that the board may prescribe.~~