

Amend Revenue and Taxation Code Sections 7360, 8651, and 60050 of the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, and Diesel Fuel Tax Law, respectively, to specify the effective dates related to state fuel tax rates when triggered by a reduction or elimination of the federal fuel taxes. (Housekeeping)

Source: Special Taxes and Fees Department

Existing Law. Under California’s three fuel tax programs (motor vehicle fuel, diesel fuel, and use fuel),¹ the statutes require the state excise tax rates to increase if the federal fuel tax is reduced below amounts cited in each statute. However, the statutes do not specify when the state excise tax rate adjustment becomes effective or when and under what circumstances the state excise rate adjustment would expire, causing the state rate to revert to the original, unadjusted rate.

Background. In the last few years, Congress has reauthorized the federal transportation program, including federal fuel taxes and federal financial allocations, several times.² In both March and June 2012, just before the expiration of the federal fuel taxes, the BOE issued Special Notices³ to advise certain stakeholders of the possible increase in state tax rates if Congress failed to reauthorize the federal transportation program.⁴ Congress authorized the federal transportation program in July 2012, but it is now set to expire on September 30, 2016. Even a temporary lapse in the federal fuel tax could result in a loss of millions in federal transportation funding to the state. The current “trigger” mechanism is not consistent among the three fuel tax statutes and none of the current statutes specifies when a potential rate increase would take effect. These statutes also fail to specify at which point, if any, the rates would revert back to the state rate in effect before the rate increase.

This Proposal. This proposal would amend Sections 7360, 8651, and 60050 of the Motor Vehicle Fuel Tax Law, Use Fuel Tax Law, and Diesel Fuel Tax Law, respectively, to specify when the state excise tax rates for gasoline, use fuel, and diesel fuel become effective upon a reduction or elimination of the federal fuel taxes. This proposal would also specify when and how the state tax rate would revert back to the unadjusted rate.

¹ The statutes are detailed later in this document.

² Center for Climate and Energy Solutions. 2014. “A Primer on Federal Surface Transportation Reauthorization and the Highway Trust Fund.” January 2014. Accessed October 15, 2014. <http://www.c2es.org/docUploads/a-primer-on-federal-surface-transportation-reauthorization.pdf>

³ BOE. 2012. “Special Notice: Increase in State Fuel Taxes Triggered if Congress Fails to Reauthorize Federal Tax,” and, “Special Notice: Increase in State Fuel Taxes Triggered if Congress Fails to Reauthorize Federal Tax by June 30, 2012.” March 2012, and June 2012. Accessed October 15, 2014. <http://www.boe.ca.gov/news/pdf/l310.pdf>
<http://www.boe.ca.gov/news/pdf/l318.pdf>

⁴ BOE staff was contacted by several state level stakeholders, including the Department of Finance, CalTrans, the State Transportation Commission, the Legislative Analyst Office, and the Senate Office of Research, to discuss how the BOE would implement a rate adjustment if the federal fuel tax expired. Several stakeholders, including industry representatives and legislative committee staff, observed that the current statutes do not specify the rate adjustment effective dates.

This proposal **does not alter** fuel tax rates. The proposal is intended to provide guidance to the BOE and taxpayers regarding the specific how and when the fuel tax rate increase provided for in existing law would increase and then revert back to the unadjusted rate.

Specifics of Current Law

Motor Vehicle Fuel Tax Law. Under existing law, a state excise tax of eighteen cents (\$0.18) and a surtax of eighteen cents (\$0.18) are imposed upon each gallon of gasoline.⁵ The surtax is subject to an annual adjustment, as specified, that seeks to balance the revenues from the additional excise taxes on gasoline against the state General Fund sales and use tax rate exemption on gasoline.⁶

If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal transportation-related funding to this state for is reduced or eliminated, the state excise tax rate of eighteen cents (\$0.18) is recalculated, so that the total combined state and federal tax rate per gallon equals twenty-seven cents (\$0.27). Upon the federal excise tax rate reduction, the surtax of eighteen cents (\$0.18) per gallon would be added onto this recalculated combined state and federal rate. However, the law does not specify when the state excise rate adjustment becomes effective or when and under what circumstances the state excise rate adjustment would expire so that the state rate would revert to the original, unadjusted rate.

Diesel Fuel Tax Law. Under existing law, a state excise tax of eleven cents (\$0.11) is imposed upon each gallon of diesel fuel.⁷ The state excise tax rate is also subject to an annual adjustment, as specified, that seeks to balance the revenues from the additional sales and use tax rate against the reduced excise tax rate on diesel.⁸

The state excise tax rate of eleven cents (\$0.11),⁹ including any annual adjustment, as specified, is recalculated if the federal fuel tax rate sinks below fifteen cents (\$0.15) per gallon and federal transportation-related funding is reduced or eliminated correspondingly, so that the combined state and federal tax rates per gallon equal what it would have been in the absence of the federal reduction.¹⁰

⁵ Subject to the tax in Sections 7362, 7363, and 7364.

⁶In 2010, two “fuel tax swap” measures ([ABx8 6](#), (Ch. 11, Stats. 2010) and [SB 70](#) (Ch. 9, Stats. 2010), reenacted in 2011 by [AB 105](#) (Ch. 6, Statutes 2011)). These measures increased the excise tax rate and reduced the sales tax on motor vehicle fuel. Under the law, BOE annually must adjust the excise tax rate on motor vehicle fuel to ensure that the state collects no more under the increased excise tax than it would have collected under the prior sales tax rate. Conversely, the fuel tax swap measures lowered the excise tax rate on diesel fuel and increased the sales and use tax rate. The BOE also must adjust the diesel fuel tax rate annually to maintain revenue neutrality. The gasoline tax changes became operative on July 1, 2010, and the diesel fuel tax changes became operative July 1, 2011.

⁷ Subject to the tax in Revenue and Taxation Code Sections 60051, 60052, and 60058.

⁸ See note 6 describing the “fuel tax swap.”

⁹Effective date of July 1, 2014 to June 30, 2015.

¹⁰ The diesel fuel “trigger” provision was structured differently than the gasoline “trigger” provision since the state diesel fuel tax rate was reduced and the “cap” amount was eliminated.

Like the gasoline tax statutes, the diesel fuel tax statutes do not address the timing or circumstances of any rate increase and subsequent rate reduction.

Use Fuel Tax Law. These fuels are defined as all other combustible liquid besides gasoline and diesel fuel.¹¹ A state excise tax of eighteen cents (\$0.18) is imposed on each gallon for the use of fuel. If the federal diesel fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal transportation-related funding correspondingly is reduced or eliminated, the tax rate is recalculated so that the combined state and federal tax rates per gallon equal thirty-three cents (\$0.33).

Section 7360 of the Revenue and Taxation Code is amended to read:

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the rate of federal fuel tax imposed on motor vehicle fuel is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state tax rate under paragraph (1) and the federal fuel tax rate per gallon equals twenty-seven cents (\$0.27).

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt from the increase in the state rate calculated under this section paragraph (2).

(4) The state tax rate calculated under paragraph (2) shall become effective:

(A) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(B) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(C) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

¹¹ By whatever name the gas or liquid may be known or sold, of a kind used in an internal combustion engine for the generation of power to propel a motor vehicle on the highways, except fuel that is subject to the diesel fuel tax and motor vehicle fuel tax.

(b) (1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of motor vehicle fuel, other than aviation gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to seventeen and three-tenths cents (\$0.173) per gallon.

(2) For the 2011-12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

Section 8651 of the Revenue and Taxation Code is amended to read:

8651. (a) An excise tax of eighteen cents (\$0.18) is hereby imposed on each gallon of fuel for the use of such fuel as defined in section 8604.~~at the following rate per gallon:~~

- ~~(1) Fourteen cents (\$0.14) during 1990, on and after August 1.~~
- ~~(2) Fifteen cents (\$0.15) during 1991.~~
- ~~(3) Sixteen cents (\$0.16) during 1992.~~
- ~~(4) Seventeen cents (\$0.17) during 1993.~~
- ~~(5) Eighteen cents (\$0.18) on and after January 1, 1994.~~

(b) If the rate of federal fuel tax imposed on diesel and kerosene is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by this section,~~on and after the date of the reduction,~~ shall be ~~increased~~ recalculated by an amount so that the combined state tax rate and the federal fuel tax rate per gallon equals the following: thirty-three cents (\$0.33).

- ~~(1) Twenty-nine cents (\$0.29) during 1990, on and after August 1.~~
- ~~(2) Thirty cents (\$0.30) during 1991.~~
- ~~(3) Thirty-one cents (\$0.31) during 1992.~~
- ~~(4) Thirty-two cents (\$0.32) during 1993.~~
- ~~(5) Thirty-three cents (\$0.33) on and after January 1, 1994.~~

(c) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt from the increase in the state rate calculated under this section subdivision (b).

(d) The state tax rate calculated under subdivision (b) shall become effective:

(1) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(2) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(3) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

Section 60050 of the Revenue and Taxation Code is amended to read:

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) If the rate of federal fuel tax imposed on diesel fuel is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the state tax rate imposed by paragraph (1), including any reduction or adjustment to the state tax rate pursuant to subdivision (b), ~~on and after the date of the reduction,~~ shall be ~~increased~~ recalculated by an amount so that the ~~combined~~ state tax rate under paragraph (1) and combined with the federal fuel tax rate per gallon equals what it would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt from the increase in the state rate calculated under this section paragraph (2).

(4) The state tax rate calculated under paragraph (2) shall become effective:

(A) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes wholly or in part expire, the first day of the month commencing not less than thirty (30) days after the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(B) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively repealed or reduced by an act of Congress, immediately upon the date the federal fuel tax rate is reduced.

(C) In the event that the federal fuel tax and federal allocations for state highway and exclusive public mass transit guideway purposes are affirmatively suspended, either wholly or in part, by an act of Congress, immediately upon the date the federal fuel tax rate is reduced, and the increase shall remain in effect through the last day of the month in which the federal fuel tax is reinstated.

(b)(1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to thirteen cents (\$0.13) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012-13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate reduction in paragraph (1) in that manner as to result in a revenue loss attributable to paragraph (1) that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Sections 6051.8 and 6201.8 does not produce a net revenue gain in state taxes.