

Add Sections 7304.1, 7304.2 and 7360.1 to, amend Sections 7304, 7326 and 7402 of, and repeal Sections 8651.8 and 8657 of, the Revenue and Taxation Code to reclassify alcohol fuel, commonly know as E85, from the Use Fuel Tax Law to the Motor Vehicle Fuel Tax Law in order to conform the reporting requirements with those for gasoline and diesel fuel.

Source: Fuel Taxes Division

Existing Law

Under the Use Fuel Tax Law (UFTL) (Part 3 (commencing with Section 8601) of Division 2 of the Revenue and Taxation Code), the state imposes an excise tax of \$0.18 per gallon for use of fuels. For liquefied petroleum gas (LPG), liquid natural gas (LNG), compressed natural gas (CNG), ethanol, and methanol, which are types of use fuels, the excise tax rates are \$0.06, \$0.06, \$0.07, \$0.09, and \$0.09, respectively.

More specifically, Section 8604 of the UFTL defines “fuel” to include any combustible gas or liquid used in an internal combustion engine for propulsion on the highway except fuel that is subject to the tax imposed by Part 2 (commencing with Section 7301) or Part 31 (commencing with Section 60001), Motor Vehicle Fuel Tax Law (MVFTL) and Diesel Fuel Tax Law (DFTL) respectively. Section 8651.8 of the UFTL sets the rate at one half the \$0.18 rate specified in Section 8651, or at \$0.09. The UFTL also defines ethanol and methanol as containing not more than 15 percent gasoline. Ethanol and methanol containing more than 15 percent gasoline is defined as gasohol under the MVFTL. Although the use fuel tax is imposed on the use of the fuel, pursuant to Section 8732 of the UFTL, the vendor who sells or delivers such fuel is required to collect the tax from the user and give the user a receipt.

Under the MVFTL the state imposes an excise tax of \$0.18 per gallon on the removal of gasoline at the refinery or terminal rack, upon entry into the state, and upon sale to an unlicensed person. Additionally, the State Controller is responsible for the collection of final liabilities and the refunds on certain sales. Moving alcohol fuel to the MVFTL would have little impact on the collection of final liabilities, however, there could be an increase in the number of claims for refund being handled by the Controller’s office.

Generally, the tax on motor vehicle fuel (gasoline) is imposed upon the removal of the fuel in this state from a terminal if the motor vehicle fuel is removed at the rack. A supplier, as defined in Section 7338 of the MVFTL, is generally responsible for the MVF tax. Suppliers may be broadly defined as those who own the fuel at a terminal or import the fuel into California. Section 7339 of the MVFTL defines a terminal as a distribution facility that is supplied by pipeline or vessel, from which the motor vehicle fuel may be removed at a rack and also includes a stand alone fuel production facility where motor vehicle fuel is produced and stored. Section 7333 of the MVFTL defines 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.

Additionally, Parts 1, 1.5, and 1.6 of Division 2 of the Revenue and Taxation Code impose state, local, and transactions sales and use taxes on all tangible personal

property, including gasoline, sold at retail. The rates in the different cities and counties throughout the state range from 8.25% to 9.75% depending upon the jurisdiction in which the tangible personal property is purchased.

Lastly, the Sales and Use Tax Law (SUTL) Section 6480, subdivision (a) defines "motor vehicle fuel," for the purposes of imposition of the prepayment of sales tax, to be the definition contained within Section 7326 of the MVFTL. Therefore, barring application of any exclusion, moving alcohol fuel to the MVFTL would impose the prepayment requirements contained in Article 1.5 of the SUTL.

Background

The number of stations offering alcohol fuel in California has increased significantly over the past couple of years. Industry sources from early in 2007 identified four fuel stations offering alcohol fuel to the public. As of July 2009, the U.S. Department of Energy's website reports 40 stations in California. Gallons of alcohol fuel removed from California terminals have also increased significantly. For fiscal year 2006/07 there were 49,500 gallons reported, for fiscal year 2008/09 it was 571,000 gallons reported. The number of stations offering alcohol fuel for sale and the number of gallons sold are expected to increase.

As alcohol fuel becomes more popular, Fuel Taxes Division (FTD) staff will likely see further increases in the number of vendors offering it for sale and therefore an increase in the number of vendor permits. With an increase in the number of vendor permits comes an increase in both the compliance and audit activity in this area. Moving alcohol fuel to the MVFTL shifts the responsibility for collection and payment of the excise tax to the supplier. The taxpayers who provide the bulk of alcohol fuel to the market are already registered as suppliers under the MVFTL and therefore, with this proposal, FTD staff believes long-term workload costs resulting from the increase in the number of vendors selling alcohol fuel can be significantly reduced.

This Proposal

This proposal would move the imposition of the excise tax on alcohol fuels from the UFTL to the MVFTL. This proposal would also change the definition of "motor vehicle fuel" in the SUTL so that the alcohol fuels would not be subject to the prepayment of sales tax on motor vehicle fuels.

The intent of the proposal is to remain revenue neutral, however there are un-absorbable costs related to the movement of alcohol fuels; these costs are estimated to be moderate (over \$50,000 and under \$250,000). While FTD staff has not quantified the long-term cost savings that could result from this proposal, they believe it significantly outweighs the initial short-term costs.

In summary, reclassifying alcohol fuel from a use fuel to a motor vehicle fuel shifts the responsibility for collection and payment of the excise tax from the vendor to the supplier, thereby easing the compliance and reporting burden of the vendors and providing administrative efficiencies to the Board.

Section 6480 of the Revenue and Taxation Code is amended to read:

6480. (a) For purposes of the imposition of the prepayment of sales tax on motor vehicle fuel or aircraft jet fuel pursuant to this article, the terms “aircraft jet fuel,” “aircraft jet fuel dealer,” “alcohol fuel,” “aviation gasoline,” “entry,” “in this state,” “motor vehicle fuel,” “person,” “removal,” “sale,” and “supplier” are defined pursuant to Part 2 (commencing with Section 7301), except as provided in subdivision (b).

(b) For purposes of this article, “motor vehicle fuel” does not include aviation gasoline for use in propelling aircraft, or alcohol fuel used in motor vehicles.

(c) For purposes of the imposition of the prepayment of sales tax on diesel fuel pursuant to this article, the terms “diesel fuel,” “entry,” “in this state,” “removal,” “person,” and “supplier,” are defined pursuant to Part 31 (commencing with Section 60001).

(d) “Wholesaler” includes every person other than a supplier, dealing in motor vehicle fuel, aircraft jet fuel, or diesel fuel. “Wholesaler” does not include anyone dealing in motor vehicle fuel or diesel fuel in the capacity of an operator of a service station. “Wholesaler” does not include anyone dealing in aircraft jet fuel in the capacity of an aircraft jet fuel dealer.

(e) With respect to diesel fuel and aircraft jet fuel, “sale” means:

(1) The transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of aircraft jet fuel or diesel fuel (other than aircraft jet fuel or diesel fuel in a terminal) to a purchaser for a consideration.

(2) The transfer of the inventory position in the aircraft jet fuel or diesel fuel in a terminal if the purchaser becomes the position_holder with respect to the taxable fuel.

Section 7304 of the Revenue and Taxation Code is amended to read:

7304. “Alcohol” includes ethanol and methanol that has been denatured in accordance with the provisions of Section 7304.1 (b).

Section 7304.1 of the Revenue and Taxation Code is added to read:

7304.1. (a) Notwithstanding any provision of the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code) any alcohol produced for use in or as a fuel to propel a motor vehicle shall be taxed as fuel under this part and shall not be subject to taxes under the Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001)).

(b) The state requirements for determining whether alcohol is produced for use in or as a fuel to propel a motor vehicle and not for use as an alcoholic beverage shall be the same as the requirements of the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury under federal law.

Section 7304.2 of the Revenue and Taxation Code is added to read:

7304.2. "Alcohol fuel" means a motor vehicle fuel containing not more than 15 percent gasoline or diesel fuel.

Section 7326 of the Revenue and Taxation Code is amended to read:

7326. "Motor vehicle fuel" means gasoline, ~~and~~ aviation gasoline, and alcohol. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, ~~alcohol~~, or racing fuel.

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. "Terminal" includes an alcohol storage facility.

Section 7339.2 of the Revenue and Taxation Code is added to read:

7339.2. "Alcohol storage facility" means a storage and distribution facility, that is supplied by means other than pipeline or vessel, in which alcohol is stored and from which alcohol may be removed at a rack.

Section 7360.1 of the Revenue and Taxation Code is added to read:

7360.1. (a) Notwithstanding Section 7360, the excise tax imposed upon alcohol fuel shall be one-half the rate prescribed by Section 7360 for each gallon of fuel.

(b) All references in this code to Section 7360 shall be deemed, with respect to the rate imposed upon alcohol fuel, to also refer to this section.

Section 7401 of the Revenue and Taxation Code is amended to read:

7401. (a) The provisions of this part requiring the payment of motor vehicle fuel taxes do not apply to any of the following:

(1) Any entry or removal from a terminal or refinery of motor vehicle fuel transferred in bulk to a refinery or terminal if the persons involved (including the terminal operator) are licensed suppliers.

(2) The removal of motor vehicle fuel, if all of the following apply:

(A) The motor vehicle fuel is removed by railroad car from an approved refinery and is received at an approved terminal.

(B) The refinery and the terminal are operated by the same licensed supplier.

(C) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) Motor vehicle fuel which, pursuant to the contract of sale, is required to be shipped and is shipped to a point outside of this state by a supplier by means of any of the following:

(A) Facilities operated by the supplier.

(B) Delivery by the supplier to a carrier, customs broker, or forwarding agency, whether hired by the purchaser or not, for shipment to the out-of-state point.

(C) Delivery by the supplier to any vessel clearing from a port of this state for a port outside of this state and actually exported from this state in the vessel.

(4) Motor vehicle fuel sold by credit card certified by the United States Department of State to any consulate officer or consulate employee of a foreign government who is not engaged in any private occupation for gain within this state, who uses the motor vehicle fuel in a motor vehicle that is registered with the United States Department of State, and whose government has done either of the following:

(A) Entered into a treaty with the United States providing for the exemption of its representatives from national, state, and municipal taxes.

(B) Granted a similar exemption to representatives of the United States.

(5) Motor vehicle fuel sold to the United States armed forces for use in ships or aircraft, or for use outside this state.

(6) Gasoline blendstocks or alcohol removed from a pipeline or vessel, when the gasoline blendstocks or alcohol are received by a licensed industrial user.

(7) Any entry or removal from a terminal or refinery of gasoline blendstocks that are received at an approved terminal or refinery if the person otherwise liable for the tax is a licensed supplier.

(8) Any entry or removal from a terminal or refinery of gasoline blendstocks or alcohol not in connection with a sale if the person otherwise liable for the tax is a licensed supplier and the person does not use the gasoline blendstocks or alcohol to produce finished gasoline.

(9) Any entry or removal from a terminal or refinery of gasoline blendstocks or alcohol in connection with a sale if the person otherwise liable for the tax is a licensed supplier and at the time of sale, such person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(10) If paragraph (8) or (9) applied to the removal or entry of gasoline blendstocks or alcohol, any resale made of gasoline blendstocks or alcohol, when the person has an unexpired exemption certificate described in Section 7402 from the buyer and has no reason to believe any information in the certificate is false.

(11) Motor vehicle fuel sold by a supplier to a train operator for use in a motor vehicle fuel-powered train or for other off-highway use and the supplier has on hand an exemption certificate described in Section 7403 from the train operator.

(12) Any entry by railcar of alcohol received at an approved terminal located in this state.

(13) Any removal within this state of alcohol from an approved terminal that is received at an approved terminal or refinery.

(b) For purposes of this section:

(1) "Carrier" means a person or firm engaged in the business of transporting for compensation property owned by other persons, and includes both common and contract carriers.

(2) "Forwarding agent" means a person or firm engaged in the business of preparing property for shipment or arranging for its shipment.

Section 7402 of the Revenue and Taxation Code is amended to read:

7402. (a) The certificate to be provided by a buyer of gasoline blendstocks or alcohol consists of a statement that is signed under penalty of perjury by a person with authority to bind the buyer. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(1) The date one year after the effective date of the current certificate.

(2) The date a new certificate is provided by the buyer to the seller.

(b) An exemption certificate for gasoline blendstocks or alcohol that states that the blendstocks or alcohol will not be used to produce finished gasoline shall contain that information and be in the form as the board may prescribe.

Section 8651.8 of the Revenue and Taxation Code is repealed:

~~8651.8. (a) Notwithstanding Section 8651, the excise tax imposed upon ethanol or methanol containing not more than 15 percent gasoline or diesel fuels shall be one-half the rate prescribed by Section 8651 for each gallon of fuel used.~~

~~(b) All references in this code to Section 8651 shall be deemed, with respect to the rate imposed upon ethanol or methanol, to also refer to this section.~~

Section 8657 of the Revenue and Taxation Code is repealed:

~~8657. (a) Notwithstanding any provision of the Alcoholic Beverage Control Act (Division 9 (commencing with Section 23000) of the Business and Professions Code) any alcohol produced for use in or as a fuel to propel a motor vehicle shall be taxed as fuel under this part and shall not be subject to taxes under the Alcoholic Beverage Tax Law (Part 14 (commencing with Section 32001)).~~

~~(b) The state requirements for determining whether alcohol is produced for use in or as a fuel to propel a motor vehicle and not for use as an alcoholic beverage shall be the same as the requirements of the Bureau of Alcohol, Tobacco and Firearms of the United States Department of Treasury under federal law.~~