

Amend Article 1.5 (commencing with Section 6480) of, and repeal Article 1.6 (commencing with Section 6480.10) of, the Revenue and Taxation Code to move the prepayment of sales tax on gasoline and diesel fuel to the terminal rack.

Source: Sales And Use Tax Department

Under existing law, any distributor or broker (seller) of motor vehicle fuel, as defined in Part 2 (commencing with Section 7301) of the Revenue and Taxation Code, or of aircraft jet fuel as defined by Section 7372, or any producer, importer or jobber (seller) who makes a sale of fuel, as defined in Part 3 (commencing with Section 8601) or Part 31 (commencing with Section 60001) of the Revenue and Taxation Code, is required to collect prepayment of retail sales tax from the person to whom the fuel is sold. Generally, the types of fuel subject to the prepayment provisions include gasoline, aircraft jet fuel and diesel fuel. With the exception of the person making the retail sale of the fuel to the consumer, each seller of fuel is required to report and pay the prepayment amounts to the Board. Also, when the seller of fuel reports and pays their prepayment to the Board, the seller of fuel is allowed to claim a credit for the prepayment amount paid to their vendor. The person making the retail sale of the fuel to the consumer is allowed to claim a credit for the prepayment amount paid to their vendor when reporting the retail sales tax due on the retail sale of the fuel.

The prepayment of retail sales tax on motor vehicle fuel was added by the passage of Senate Bill 1610 (Ch. 214, Stats. 1986). Prior to the passage of SB 1610, sales tax on fuel was only collected on the final retail sale. Without the prepayment of retail sales tax on motor vehicle fuel requirement, tax evasion by gas stations was a problem. Due to the number of retail gas stations in the state, and the nature of operations, many gas stations would either fail to obtain the necessary seller's permit, or they would obtain the permit but fail to report the entire tax liability from their retail sales. By requiring the prepayment of the retail sales tax on motor vehicle fuel, 80 percent of the retail sales tax due is collected in advance. Since the retailer is required to prepay a large portion of their sales tax liability, each retailer has an incentive to report the correct sales amount and recoup the tax already paid to their supplier. Also, information on how many gallons of fuel are sold to each vendor is documented. Board staff uses this information to trace the flow of fuel from seller to seller and ultimately reconcile those numbers with the final retail sale.

Until January 1, 2002, the excise tax on gasoline is imposed upon distributors for the privilege of distributing gasoline in this state. Distribution includes refining, producing, blending, or compounding gasoline in this state coupled with the sale, donation, consignment for sale, barter, or use of the fuel in this state. Distribution also includes importing into this state, coupled with the sale, donation, consignment for sale, barter, or use of the fuel in this state. The first distribution of gasoline

generally occurs at the highest point in the distribution chain, before the gasoline leaves the refinery by way of a terminal rack or pipeline.

By contrast, the collection point of the excise tax on diesel fuel is at the terminal rack level. The terminal rack level is a level in the distribution chain at a refinery or at a storage and distribution facility at the end of a pipeline where diesel fuel 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.

Beginning January 1, 2002, Assembly Bill 2114 (Ch. 1053, Stats 2000) shifts the imposition of the excise tax on gasoline to the terminal rack level. Moving the point of taxation to the terminal rack level will have several benefits. First, the point of taxation will be consistent with the diesel fuel tax law and the federal excise tax law. Also, with the implementation of the Excise Fuel Information Reporting System (ExFIRS) by the Internal Revenue Service, there is a federal tracking system that will be a tremendous aid in deterring tax evasion for any state that taxes fuel at the rack.

This proposal would move the first point of retail sales tax prepayment on fuel to the terminal rack level to coincide with the imposition of the Motor Vehicle Fuel Tax Law. Imposing the retail sales tax prepayment on fuel at the same point of the motor vehicle fuel tax would have several advantages. First, reporting for fuel vendors would be simplified since the imposition of the prepayment of sales tax would coincide with the imposition of the state motor vehicle fuel tax and the federal excise tax imposed on motor vehicle fuel. Additionally, the Board would be able to utilize ExFIRS to track prepayment of retail sales tax on fuel to prevent tax evasion.

Article 1.5 (commencing with Section 6480) is amended to read:

~~6480. (a) For purposes of this article, the terms "distributor," "broker," "distribution," "motor vehicle fuel," "person," and "in this state" 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. For purposes of this subdivision, "aviation gasoline" means gasoline, natural gasoline, and any inflammable liquid intended for use in propelling aircraft operated by the explosion-type engine.~~

~~(c) This article does not apply to motor vehicle fuel exempt from license taxes pursuant to paragraph (3) of subdivision (a) of Section 7401.~~

6480. (a) For purposes of this article, the terms "person," "sale," and "in this state" are defined pursuant to Part 2 (commencing with Section 7301).

(b) For purposes of this article, the term "transfer" means any removal or sale of fuel in this state, or entry of fuel into this state as those terms are defined in Part 2 (commencing with Section 7301) and Part 31 (commencing with Section 60001).

(c) For purposes of this article, the term "fuel" is defined to include "motor vehicle fuel" as defined pursuant to Part 2 (commencing with Section 7301), "aircraft jet fuel" as defined in Section 7387, and "fuel" as defined pursuant to Part 31 (commencing with Section 60001), except as provided in subdivision (d) and (e).

(d) For purposes of this article, "fuel" does not include aviation gasoline for use in propelling aircraft. For purposes of this subdivision, "aviation gasoline" means gasoline, natural gasoline, and any inflammable liquid intended for use in propelling aircraft operated by the explosion-type engine.

(e) For purposes of this article, "fuel" does not include liquefied petroleum gas, compressed natural gas, liquid natural gas, and methanol and ethanol containing not more than 15 percent gasoline or diesel fuels.

(f) For purposes of this article, "broker" includes every person who is engaged in the redistribution of fuel, either as the owner or as the agent of another. "Broker" does not include anyone who is engaged in the redistribution of fuel only in quantities of less than 200 gallons or as an operator of a service station.

(g) For purposes of this article, the term "rack" means a mechanism for delivering fuel from a terminal rack into a truck, trailer, railroad car, or other means of non-bulk transfer.

6480.1. (a) After service of written notification by the board, on any transfer distribution in this state of ~~motor vehicle~~ fuel subject to either the motor vehicle fuel license tax or the diesel fuel tax, the transferor distributor shall collect prepayment of retail sales tax from the person to whom the ~~motor vehicle~~ fuel is transferred distributed. The prepayment of retail sales tax also applies to any transfer of aircraft jet fuel that is dispensed through the rack into a truck, trailer, or railroad car. The prepayment required to be collected by the transferor distributor constitutes a debt owed by the transferor distributor to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a retailer or broker distributor or broker who has consumed the fuel has paid the use tax to the board. Each transferor distributor shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is transferred distributed. On each subsequent transfer distribution of that ~~motor vehicle~~ fuel, each broker seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of transfer distribution. Each transferor and broker distributor shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon.

(b) After service of written notification by the board, the broker shall collect prepayment of the retail sales tax from the person to whom the ~~motor vehicle~~ fuel is transferred. The prepayment required to be collected by the broker

constitutes a debt owed by the broker to the state until paid to the board, or until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the tax to the board. Each broker shall provide his or her purchaser with a receipt or invoice for the collection of the prepayment amounts which shall be separately stated thereon. Each broker shall report and pay the prepayment amounts to the board, on a form prescribed by the board, in the period in which the fuel is sold ~~distributed~~. The amount of prepayment paid by the broker to his or her vendor shall constitute a credit against the amount of prepayment required to be collected and remitted by the broker to the board.

(c) A ~~distributor or broker~~ retailer who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a ~~distributor or broker~~ who has consumed the fuel to the transferor or broker ~~seller~~ from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale ~~distribution~~ was made. Failure of the transferor ~~distributor~~ or broker to report prepayments or the transferor's ~~distributor's~~ or broker's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, ~~distributor~~, or broker, either on a temporary or permanent basis or otherwise. The retailer, ~~distributor~~, or broker shall be entitled to the credit to the extent of the amount prepaid to his or her supplier as evidenced by purchase documents, invoices, or receipts stating separately the amount of tax prepayment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents (\$0.04) per gallon of motor vehicle fuel distributed, sold, or transferred.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent, of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every transferor ~~distributor~~, broker, and retailer of motor vehicle

fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(g) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic average selling price of jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(h) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, and 7202, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel and other qualifying fuels shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every producer, importer, jobber, and retailer of fuel. In the event the price of fuel decreases or increases, and the established rate results in prepayments that consistently exceed established rate results or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

6480.2. (a) If the board determines that it is necessary for the efficient administration of this part, the board may require a transferor distributor or broker to provide the board with a list of purchasers to whom the ~~motor vehicle~~ fuel was transferred or sold.

(b) In addition to any other reports required under this article, the board may, by rule and otherwise, require additional, other, or supplemental reports, in any

form which the board may require, from transferors ~~distributors~~ or brokers with respect to their sales of ~~motor-vehicle~~ fuel defined pursuant to Part 3 (commencing with Section 8601).

(c) Any transferor ~~distributor~~ or broker who fails to comply with this section is guilty of a misdemeanor punishable as provided in Section 7153.

6480.3. The transferor ~~distributor~~ or broker shall file his or her prepayment form together with a remittance of the prepayment amounts required to be collected pursuant to Section 6480.1 payable to the State Board of Equalization, on or before the last day of the month ~~25th day of the calendar month~~ following the monthly period to which the prepayment form or each prepayment relates.

6480.4. Any transferor ~~distributor~~ or broker who fails to make a timely remittance to the board of the prepayment required pursuant to Sections 6480.1 and 6480.3 shall also pay a penalty of 25 percent of the amount of the prepayment due but not paid, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the prepayment became due and payable to the state until the date of payment.

6480.5. Notification by the board provided for in Section 6480.1 may be served personally or by mail upon each transferor ~~distributor~~ or broker in the manner prescribed in Section 6486 for service of notice of a deficiency determination, or by mailing with blank tax return forms.

6480.6. (a) The following persons who have paid prepayment amounts either directly to the board or to the person from whom it was purchased, on the transfer ~~distribution~~ of ~~motor-vehicle~~ fuel which was subject to either the motor vehicle fuel license tax or the diesel fuel tax shall be refunded those amounts:

(1) Any person who exports the ~~motor-vehicle~~ fuel for subsequent sale outside this state.

(2) Any person who sells the ~~motor-vehicle~~ fuel which is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6357.5, 6381, and 6396.

(3) Any person who has lost the ~~motor-vehicle~~ fuel through fire, flood, theft, leakage, evaporation, shrinkage, spillage, or accident, prior to any retail sale.

(4) Any person who is unable to collect the prepayment from the purchaser insofar as the sales of the fuel are represented by accounts which have been found to be worthless and charged off for income tax purposes. If partial payments have been made, the payments shall be prorated between amounts

due for fuel and amounts due for the related prepayment. If any of those accounts are thereafter in whole or in part collected by the seller, the gallons of fuel represented by the amounts collected shall be included in the first return filed after that collection and the amount of the prepayment thereon paid with the return. As a condition for eligibility for refund, the board may require the seller to submit periodical reports listing accounts delinquent for a 90-day period or over.

~~(5) Any person who is licensed under Section 7451 and is authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401, who purchases the motor vehicle fuel from a person who is not authorized by the board to acquire exempt motor vehicle fuel pursuant to paragraph (3) of subdivision (a) of Section 7401.~~

(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.

6480.7. (a) The board may require any transferor distributor or broker subject to this article to place with the board any security that the board determines is necessary to ensure compliance with this article. The amount of the security shall be fixed by the board but shall not be greater than three times the estimated average liability of transferors distributors or brokers required to file returns for monthly periods, determined in any manner that the board deems proper, or five hundred thousand dollars (\$500,000), whichever amount is less. These amounts apply regardless of the type of security placed with the board. The amount of the security may be increased or decreased by the board subject to the maximum amounts. The security required pursuant to this section is in addition to the bond or bonds required pursuant to Section 7486.

(b) The board may sell the security at public auction if it becomes necessary to so do in order to recover any tax or any amount required to be collected or penalty due. Notice of the sale may be served upon the person who placed the security personally or by mail. If service is by mail, service shall be made in the manner prescribed for service of a notice of a deficiency determination and shall be addressed to the person at his or her address as it appears in the records of the board. However, security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may be sold by the board at a private sale at a price not lower than the prevailing market price thereof. Upon any sale, any surplus above the amounts due shall be returned to the transferor distributor or broker who placed the security.

6480.8. (a) Any retailer required to make prepayment to the seller from whom he or she acquired the ~~motor vehicle~~ fuel, shall be allowed to credit against the tax liability due for the monthly or quarterly period preceding the effective date

of this article, an amount of tax equal to the tax liability imposed at the rate established pursuant to Section 6480.16 for four cents (\$0.04) per gallon of motor vehicle fuel sold by that retailer during the month in which the retailer sold the highest number of gallons of motor fuel during the 12-month period immediately preceding the effective date of this article. However, nothing in this section shall entitle the retailer to any refund to which he or she would not otherwise be entitled to receive.

(b) Any excess of credit over the amount of tax liability due for that monthly or quarterly period shall be taken as a credit against the tax liability due for the following monthly or quarterly period.

(c) The amount of credit allowed by this section shall be remitted to the board, without interest on a return in such form as the board may prescribe, at a rate of 25 percent per quarter on or before the end of the month following each of the four calendar quarters following the quarter or month in which the credit was allowed. Any balance is due and payable on the return required to be filed for the period in which the taxpayer ceases to be engaged in business. Any retailer who fails to make a timely remittance to the board of the amount of credit required to be paid under this section, shall also pay a penalty of 10 percent of the amount of the credit due but not paid, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the prepayment became due and payable to the state until the date of payment.

Article 1.6 (commencing with Section 6480.10) is repealed.