

Amend Section 7326 of the Motor Vehicle Fuel Tax Law to exclude “racing fuel” from the definition of “motor vehicle fuel”.

Source: Legal Department

Under existing law, Section 7360 of the Revenue and Taxation Code (Motor Vehicle Fuel Tax Law) imposes the motor vehicle fuel tax on the removal of motor vehicle fuel in this state from a terminal if the motor vehicle fuel is removed at the rack. “Motor vehicle fuel” is defined pursuant to Section 7326 to mean gasoline and aviation gasoline. It does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol. Racing fuel, which is not specifically excluded from the definition of "motor vehicle fuel", is subject to the motor vehicle fuel tax upon its removal at the rack.

Racing fuel is specifically manufactured, distributed and used for racing motor vehicles at a racetrack. It is understood that racing fuel is not formulated for use on the public highways and therefore is not subject to tax in any event. Therefore, persons buying racing fuel must first pay the motor vehicle tax and subsequently apply for a refund pursuant to Section 8101 of the Motor Vehicle Fuel Tax Law. Section 8101 generally provides that a person who has paid a tax for motor vehicle fuel, either directly or to the vendor from whom it was purchased, or indirectly by the adding of the amount of the tax to the price of the fuel, shall be reimbursed and repaid the amount of the tax if that person buys and uses the motor vehicle fuel for purposes other than operating motor vehicles upon the public highways of the state.

Prior to January 1, 2002, racing fuel was excluded from the definition of motor vehicle fuel. Therefore, racing fuel was not at any time subject to the tax. However, when the Motor Vehicle Fuel Tax Law was revised to move the point of imposition of tax on motor vehicle fuel from the first distribution of the fuel to the removal from the rack pursuant to Assembly Bill 2114 (Stat. 2000, Ch. 1053, Longville), the longstanding exclusion for racing fuel was inadvertently omitted from the definition. As a result, racing fuel became subject to tax upon its removal from the rack as of January 1, 2002, the operative date of AB 2114.

This proposal would simply revise the definition of “motor vehicle fuel” to specifically exclude “racing fuel” as originally intended in AB 2114. Excluding racing fuel from the definition of motor vehicle fuel would be beneficial both for the taxpayer and for the state in that it would eliminate the need for filing a claim for refund for purchases of fuel that is not subject to tax.

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

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