

**BOARD OF EQUALIZATION****BUSINESS TAXES COMMITTEE MEETING MINUTES**

HONORABLE JOHN CHIANG, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: JULY 9, 2003, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1**

Title: Proposed Regulation to Implement SB 1901 (Statutes 2002) Regarding an Exemption from the Prepaid Sales Tax on Sales of Diesel Fuel to Certain Retailers for Resale Inventory (Proposed Regulation 1598.1, *Diesel Fuel Prepayment Exemption*)

Issue/Topic:

Should the Board adopt proposed Regulation 1598.1, *Diesel Fuel Prepayment Exemption*, to implement the provisions of Senate Bill 1901, which provides an exemption from the prepayment of sales tax on certain sales of diesel fuel?

Committee Discussion:Action 1 – Agreed Items

There was no discussion on this item.

Action 2 – Authorization to publish

There was no discussion on this item

Committee Action/Recommendation/Direction:Action 1, Agreed Items

The Committee approved all agreed items.

Action 2, Authorization to Publish

The Committee recommended that the Board authorize publication of proposed Regulation 1598.1 as adopted in the above action. The operative date is October 9, 2002. Implementation will take place 30 days after approval by the Office of Administrative Law. A copy of proposed Regulation 1598.1 is attached.

1598.1. DIESEL FUEL PREPAYMENT EXEMPTION

Reference: Section 6357.1, 6480, 6480.1, and 6480.3, Revenue and Taxation Code

(a) DEFINITIONS.

(1) "Bulk deliveries" mean transfers of diesel fuel into storage tanks holding 500 gallons or more.

(2) "Cardlock, keylock, or other unattended mechanism" means an unattended, completely automated fueling station at which a purchaser obtains diesel fuel through use of a coded card or key and an access code. Charges for sales of diesel fuel to customers are usually consolidated at a central location and periodically invoiced to the purchaser.

(3) A "diesel fuel consumer" or "diesel fuel consumers" mean a person or persons that use diesel fuel in a manner that qualifies for the partial sales and use tax exemption set forth in Revenue and Taxation Code section 6357.1 and Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing.

(4) "Diesel fuel," for purposes of the imposition of the prepayment of sales tax, is defined in Revenue and Taxation Code section 6480(c) (by reference to Revenue and Taxation Code section 60022) and means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the engine of a diesel-powered highway vehicle. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the engine of a diesel-powered highway vehicle.

Diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

Diesel fuel does not include the water in a diesel fuel and water emulsion of two immiscible liquids of diesel fuel and water, which emulsion contains an additive that causes the water droplets to remain suspended within the diesel fuel, provided the diesel fuel emulsion meets standards set by the California Air Resources Board.

(5) "Qualified retailer" means a person who meets the requirements of subdivisions (b)(1) through (b)(5).

(6) "Seller" means either the supplier or the wholesaler, as those terms are defined in Revenue and Taxation Code section 6480(c), that sells diesel fuel to a qualified retailer.

(7) "Total taxable sales" means the gross receipts from the sale of tangible personal property subject to tax, including sales of diesel fuel.

(b) APPLICATION OF TAX. Commencing on and after October 9, 2002, a seller of diesel fuel is not required to collect the prepayment of sales tax on that percentage of diesel fuel specified in the retailer's diesel fuel prepayment exemption certificate that is otherwise required by Revenue and Taxation Code section 6480.1, provided the diesel fuel is sold to a retailer who:

(1) Will resell the diesel fuel in the ordinary course of business,

(2) Issues a diesel fuel prepayment exemption certificate to the seller as set forth in subdivision (c),

(3) Sells diesel fuel to a diesel fuel consumer,

(4) During the calendar year immediately preceding any purchases of diesel fuel, sold diesel fuel to diesel fuel consumers in which the gross receipts from such sales exceeded 25 percent of that retailer's total taxable sales, and

(5) Sold more than 50% of its diesel fuel through bulk deliveries or through a cardlock, keylock, or other unattended mechanism, or both.

For purposes of calculating the percentage set forth in subdivision (b)(4) above, the numerator shall be the sum total of amounts entered on Form BOE 401GS line 10(e)(4) (*Amount Subject to the Diesel Fuel Used in Farming and Food Processing Exemption*) for each return filed during the preceding calendar year and the denominator shall be the sum total of amounts entered on line 14(a) (*Transactions Subject to County Tax*) for each return filed during the preceding calendar year.

(c) PREPAYMENT EXEMPTION CERTIFICATE.

(1) IN GENERAL. A seller of diesel fuel who takes a diesel fuel prepayment exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a qualified retailer, is relieved from the liability for the sales tax prepayment subject to the exemption under this regulation, or the duty of collecting the sales tax prepayment subject to exemption under this regulation. A diesel fuel prepayment exemption certificate will be considered timely if it is taken any time before the seller bills the qualified retailer for the diesel fuel, any time within the seller's normal billing or payment cycle, or any time at or prior to delivery of the diesel fuel to the qualified retailer. A diesel fuel prepayment exemption certificate which is not taken timely will not relieve the seller of the liability for the sales tax prepayment excluded by the exemption; however, the seller may present satisfactory evidence to the Board that the seller sold the diesel fuel to a qualified retailer. A diesel fuel prepayment exemption under this part shall not be allowed unless the seller claims the exemption on its sales and use tax return for the reporting period during which the transaction subject to the diesel fuel prepayment exemption occurred. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used to claim the diesel fuel prepayment exemption.

This proposed regulation may not be adopted. Any revisions that are adopted may differ from this text.

(2) BLANKET PREPAYMENT EXEMPTION CERTIFICATE. In lieu of requiring a diesel fuel prepayment exemption certificate for each transaction, a qualified retailer may issue a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate form set forth in the Appendix may be used as a blanket diesel fuel prepayment exemption certificate. The diesel fuel prepayment exemption certificate in the Appendix may also be used as a specific diesel fuel prepayment exemption certificate if the qualified retailer provides the purchase order or sales invoice number and a precise description of the property being purchased. A blanket diesel fuel prepayment exemption certificate is only valid during the calendar year in which it is provided to the seller.

(3) FORM OF PREPAYMENT EXEMPTION CERTIFICATE. Any document, such as a letter or purchase order, timely provided by the qualified retailer to the seller will be regarded as a diesel fuel prepayment exemption certificate with respect to the sale of diesel fuel if it contains all of the following essential elements:

(A) The signature of the qualified retailer, qualified retailer's employee, or authorized representative of the qualified retailer.

(B) The name, address and telephone number of the qualified retailer.

(C) The number of the seller's permit held by the qualified retailer.

(D) A statement setting forth the requirements of subdivisions (b)(1) through (b)(5).

(E) A statement of what percentage of total diesel fuel purchases will be resold to diesel fuel consumers.

(F) Date of execution of document.

(4) RETENTION AND AVAILABILITY OF PREPAYMENT EXEMPTION CERTIFICATES. A seller must retain each diesel fuel prepayment exemption certificate received from a qualified retailer who purchases diesel fuel for resale to diesel fuel consumers for a period of not less than four years from the date on which the qualified retailer claims an exemption for sales tax prepayment based on the diesel fuel prepayment exemption certificate. The Board may require, within 45 days of the Board's request, sellers to provide the Board access to any and all diesel fuel prepayment exemption certificates, or copies thereof, accepted for the purposes of supporting the diesel fuel prepayment exemption.

(5) GOOD FAITH. A seller will be presumed to have taken a diesel fuel prepayment exemption certificate in good faith in the absence of evidence to the contrary. However, a diesel fuel prepayment exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel will not be sold to a retailer who meets the requirements of subdivisions (b)(1) through (b)(5), will not otherwise be used by diesel fuel consumers, or that the percentage listed on the exemption certificate for sales tax prepayment is inaccurate. A blanket diesel fuel prepayment exemption certificate utilized for sales occurring in a subsequent calendar year in which the blanket diesel fuel prepayment exemption certificate was initially provided to the seller is not accepted in good faith for sales occurring in that subsequent calendar year.

(d) RETAILER'S LIABILITY FOR THE PAYMENT OF TAX.

(1) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for the taxes imposed by the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, and the tax that is imposed under Revenue and Taxation Code section 6051.2 or 6201.2, or under section 35 of article XIII of the California Constitution on the sale of diesel fuel to diesel fuel consumers.

(2) A qualified retailer providing a diesel fuel prepayment exemption certificate pursuant to subdivision (c) is liable for sales tax on any portion of the gross receipts derived from the sale of diesel fuel that is not sold to diesel fuel consumers.

(3) A qualified retailer that is liable for the tax under the provisions of subdivisions (d)(1) or (d)(2) shall report and pay that tax with the sales and use tax return filed for the reporting period during which the qualified retailer sells the diesel fuel.

(e) IMPROPER USE OF PREPAYMENT EXEMPTION CERTIFICATE. Any person who gives a diesel fuel prepayment exemption certificate pursuant to this regulation for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of sale do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in Revenue and Taxation Code section 7153. In addition, such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment of sales tax.

(f) RECORDS. Adequate and complete records must be maintained by the seller and qualified retailer as evidence that the diesel fuel qualifies for the diesel fuel prepayment exemption.

(g) OPERATIVE DATE. This regulation is operative as of October 9, 2002.

This proposed regulation may not be adopted. Any revisions that are adopted may differ from this text.

DIESEL FUEL PREPAYMENT EXEMPTION CERTIFICATE
SECTION 6480.3

Please Note: This is an exemption only from the prepayment of sales tax required by Revenue and Taxation Code (RTC) section 6480.1. This exemption applies only to the prepayment of the sales tax on sales of diesel fuel that you purchase for resale to persons qualifying for the partial exemption from sales and use tax on the sale or use of diesel fuel pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. You are not relieved of your obligation to report and pay sales tax on the non-exempt portion of your partially exempt diesel fuel sales or on other retail sales.

DIESEL FUEL SELLER'S NAME

DIESEL FUEL SELLER'S ADDRESS (Street, City, State, Zip Code)

I, the undersigned diesel fuel retailer, hereby certify that, of the diesel fuel purchased for resale from the above diesel fuel seller, I reasonably expect that _____ % will be sold to consumers engaged in farming activities or food processing who qualify for the diesel fuel partial exemption pursuant to RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further certify that:

1. During the calendar year immediately preceding my purchases of diesel fuel, I sold diesel fuel to consumers that qualified for the RTC section 6357.1 and Regulation 1533.2 partial sales and use tax exemption and that these sales were in excess of 25% of my total taxable sales; and,
2. More than 50% of my diesel fuel sales occur through deliveries into storage tanks of 500 gallons or more, **or** through a cardlock, keylock, or other unattended mechanism, **or** both.

By signing below, I acknowledge I am liable for the taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law or imposed by the Transactions and Use Tax Law, and for the taxes imposed under RTC section 6051.2 or 6201.2, or under section 35 of Article XIII of the California Constitution. I also acknowledge I am liable for all sales taxes on any portion of the gross receipts derived from the sale of diesel fuel not sold in a manner that qualifies for the partial exemption under RTC section 6357.1 and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. I further acknowledge that I am required to report and pay these taxes with the return for the reporting period in which I sell the diesel fuel.

I understand that any person who gives this diesel fuel prepayment exemption certificate for the purpose of evading the prepayment of sales tax on sales of diesel fuel that he or she knows at the time of purchase do not qualify for the diesel fuel prepayment exemption is guilty of a misdemeanor punishable as provided in RTC section 7153. I also understand that such person shall be liable to the state for a penalty of one thousand dollars (\$1,000) for each diesel fuel prepayment exemption certificate issued for personal gain or to evade the prepayment or payment of taxes.

Important: This diesel fuel prepayment exemption certificate constitutes a blanket diesel fuel prepayment exemption certificate for future purchases and is only valid during the calendar year in which it is provided to the diesel fuel seller unless the diesel fuel prepayment exemption certificate is otherwise specified as a specific diesel fuel prepayment exemption certificate. The diesel fuel seller shall require a retailer to provide a new blanket diesel fuel prepayment exemption certificate for any future purchases of diesel fuel in each subsequent calendar year. If this is a specific diesel fuel prepayment exemption certificate, provide the purchase order or sales invoice number in the following space:

RETAILER'S NAME OR COMPANY NAME		DATE
SIGNATURE (signature of the retailer, retailer's employee, or authorized representative of the retailer)		TELEPHONE NUMBER
TITLE	PERMIT NUMBER	
ADDRESS (STREET, CITY, STATE, ZIP CODE)		CUSTOMER ACCOUNT NUMBER

Appendix

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