



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092
PHONE 1-916-324-1825 • FAX 1-916-322-4530
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

July 3, 2014

Dear Interested Party:

Enclosed is the Initial Discussion Paper on whether to amend Regulations 1533.2, *Diesel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*. Before the issue is presented at the Board's November 18, 2014 Business Taxes Committee meeting, staff would like to invite you to discuss the issue and present any additional suggestions or comments. Accordingly, an interested parties meeting is scheduled as follows:

July 15, 2014
Room 122 at 10:00 a.m.
450 N Street, Sacramento, CA

If you would like to participate by teleconference, call 1-888-636-3807 and enter access code 499201. You are also welcome to submit your comments to me at the address or fax number in this letterhead or via email at Susanne.Buehler@boe.ca.gov by August 1, 2014. Copies of the materials you submit may be provided to other interested parties, therefore, ensure your comments do not contain confidential information. Please feel free to publish this information on your website or distribute it to others that may be interested in attending the meeting or presenting their comments.

If you are interested in other Business Taxes Committee topics refer to our webpage at (<http://www.boe.ca.gov/meetings/btcommittee.htm>) for copies of discussion or issue papers, minutes, a procedures manual, and calendars arranged according to subject matter and by month.

Thank you for your consideration. We look forward to your comments and suggestions. Should you have any questions, please feel free to contact our Business Taxes Committee staff member Mr. Robert Wilke at 1-916-445-2137, who will be leading the meeting.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB:rsw

Enclosures

cc: (all with enclosures)

Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC:71)
Senator George Runner (Ret.), Member, Second District (via email)
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel

(via email)

Mr. David Hunter, Board Member's Office, Fourth District
Ms. Jaclyn Appleby, Board Member's Office, Fourth District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Tim Treichel, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Ramon Salazar, Board Member's Office, First District
Ms. Yvette Stowers, Board Member's Office, First District
Mr. Sean Wallentine, Board Member's Office, Second District
Mr. James Kuhl, Board Member's Office, Second District
Mr. Lee Williams, Board Member's Office, Second District
Mr. Alan Giorgi, Board Member's Office, Second District
Ms. Lynne Kinst, Board Member's Office, Second District
Ms. Tanya Vandrick, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Cynthia Bridges (MIC:73)
Mr. Randy Ferris (MIC:83)
Mr. David Gau (MIC:73)
Mr. Jeffrey L. McGuire (MIC:43)
Mr. Jeff Vest (MIC:85)
Mr. Jeff Angeja (MIC:85)
Mr. David Levine (MIC:85)
Mr. Robert Tucker (MIC:82)
Mr. Bradley Heller (MIC:82)
Mr. Lawrence Mendel (MIC:82)
Mr. Kevin Smith (MIC:82)
Mr. Todd Gilman (MIC:70)
Ms. Laureen Simpson (MIC:70)
Mr. Joe Fitz (MIC:67)
Mr. Bill Benson (MIC:67)
Mr. Wayne Mashihara (MIC:46)
Mr. Kevin Hanks (MIC:49)
Ms. Kirsten Stark (MIC:50)
Mr. Clifford Oakes (MIC:50)
Mr. Bradley Miller (MIC:92)
Ms. Karina Aguilar (MIC:46)
Mr. Michael Patno (MIC:50)
Mr. Robert Wilke (MIC:50)

INITIAL DISCUSSION PAPER

Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*

Issue

Whether Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*, should be amended to revise the definition of diesel fuel to be consistent with the definition in the Diesel Fuel Tax Law.

Background

The definitions of diesel fuel found in Regulations 1533.2 and 1598.1 took into consideration definitions used by the California Air Resources Board (ARB) and Revenue and Taxation Code (RTC) section 60022, respectively. In 2004, the ARB amended their definition of diesel fuel. Due to that change the definition of diesel fuel found in Regulation 1533.2 is no longer consistent with the ARB definition it was based upon. Similarly, RTC Section 60022(c) was repealed in 2007. Therefore, Regulation 1598.1, which includes language in its definition of diesel fuel based on the repealed sections of RTC section 60022, is no longer consistent with the definition of diesel fuel as found in RTC Section 60022.

Partial Exemption on Sales and Purchases of Diesel Fuel

In 2002, the Board adopted Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, to implement, interpret, and make specific the provisions of RTC section 6357.1, which provides a partial sales and use tax exemption on the sale and purchase of diesel fuel for use in farming activities or food processing. Regulation 1533.2 clarifies the conditions under which a sale or use of diesel fuel qualifies for a partial exemption from the sales and use tax and, as relevant to this issue, provides a definition of diesel fuel. Regulation 1533.2, subdivision (b)(6) specifies that:

“Diesel fuel” means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as “federal fuel” sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. “Diesel fuel” does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

Prepayment of Sales Tax on Diesel Fuel / Exemption

Regulation 1598.1 specifies the conditions under which the exemption, provided in RTC section

INITIAL DISCUSSION PAPER

Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*

6480.9, applies with respect to the prepayment of sales tax on diesel fuel. As found in RTC section 6480, Regulation 1598.1 makes reference to the Diesel Fuel Tax Law for purposes of defining diesel fuel.

RTC section 6480.1 provides, in part, that at any time that diesel fuel tax is imposed or would be imposed on any removal, entry, or sale in this state of diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the diesel fuel is sold. RTC section 6480.9 provides an exemption from the sales tax prepayment requirement on certain sales of diesel fuel for agricultural purposes. For purposes of the imposition of the prepayment of sales tax on diesel fuel, RTC section 6480 provides that the term "diesel fuel" is defined pursuant to the Diesel Fuel Tax Law (commencing with RTC section 60001).

Regulation 1598.1, subdivision (a)(4), provides the following:

"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.

By contrast, the current provisions of RTC section 60022, subdivision (a), only provide that:

"Diesel fuel" 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.

INITIAL DISCUSSION PAPER

Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*

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

Discussion

Regulation 1533.2

The Sales and Use Tax Department's regulation files indicate that when Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, was adopted in 2002, the definition of diesel fuel was based, in part, on the ARB's definition of diesel fuel. (California Code of Regulations, Title 13, [Section 2281\(b\)\(1\)](#).) In 2004, section 2281(b)(1) was amended and the following text illustrates the 2004 amendments using "strikethrough" and "underline" font:

"Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel ~~No. 1-D or No. 2-D, pursuant to the specifications in ASTM Standard Specification for Diesel Fuel Oils D975-81, which is incorporated herein by reference, including any mixture of primarily liquid hydrocarbons – organic compounds consisting exclusively of the elements carbon and hydrogen – that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.~~

Per the ARB's *Proposed Amendments to the Diesel Fuel Regulations*, [Final Statement of Reasons](#) (June 2004):

“[t]he amendments to the definitions of diesel fuel [were] intended to clarify the broad applicability of the sulfur and aromatic hydrocarbon standards to fuels that are burned in diesel engines and are primarily hydrocarbons. Under the amendments, a fuel that is sold or represented as suitable for use in internal combustion, compression-ignition (diesel) engines, and is a blend of more than 50 percent by volume hydrocarbon fuel with some other non-hydrocarbon component or components, is subject to the sulfur and aromatic hydrocarbon standards.

[sentence omitted] There have been instances where parties have marketed products characterized as kerosene or “Jet A” to consumers of diesel fuel for use in vehicular diesel engines, and have claimed that the fuel is not subject to the sulfur and aromatic hydrocarbon content standards because the fuel does not – or has not been represented as – meeting the ASTM D 975-81 specifications. It has been the position of ARB counsel that the sale or supply of a fuel in these circumstances *is* subject to the standards as long as the fuel is a petroleum distillate that is suitable for use in the vehicular diesel engines for which the common grades No. 1-D or 2-D are specified. Similarly, if a vendor is explicitly or implicitly offering a fuel as suitable for use in those engines, it meets the definition of diesel fuel. This includes circumstances in which the vendor of a petroleum distillate knows or reasonably should know that the fuel being provided

INITIAL DISCUSSION PAPER

Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*

will be used by the customer as a fuel for diesel engines in motor vehicles. The amendments remove any ambiguity that might exist regarding the applicability of the sulfur and aromatics regulations.”

Due to the 2004 amendments to section 2281(b), the definition of diesel fuel in Regulation 1533.2 and its reference to ASTM standards is no longer consistent with the provision of section 2281(b)(1).

Regulation 1598.1

To the extent that Regulation 1598.1 includes the repealed language from RTC section 60022 repealed on January 1, 2007, the definition of diesel fuel in Regulation 1598.1 is no longer consistent with RTC section 60022.

Staff’s Proposed Amendments

Defining Diesel Fuel (including Biodiesel)

While staff remains open to the input and suggestions from interested parties, staff suggests that the definition of diesel fuel within Regulation 1533.2 be revised to eliminate the reference to diesel fuel No. 1-D or No. 2-D and the ASTM standard. Staff further suggests revisions to include language that is consistent with the definition of diesel fuel as specified in RTC section 60022.

Staff would like to note that biodiesel is included in the definition of diesel fuel pursuant to RTC section 60022. Staff also understands that there may be confusion as to whether biodiesel is considered diesel fuel for purposes of applying the partial exemption provided by RTC section 6357.1. As defined under Regulation 1533.2, diesel fuel qualifies if it meets a specified ASTM standard. While staff recognizes that biodiesel may not meet the ASTM standard, staff has historically considered biodiesel a qualifying fuel for the partial sales and use tax exemption for diesel fuel used in farming activities and food processing. To that extent, staff believes the proposed amendments will clarify that biodiesel is considered diesel fuel for purposes of the partial exemption for farming activities and food processing.

With respect to Regulation 1598.1, staff proposes to delete the third paragraph in subdivision (a)(4) to be consistent with the operative provisions of the RTC section 60022. (See Exhibits 1 and 2 for staff’s proposed amendments.)

Other Amendments

Regulation 1598.1, subdivision (b), includes guidance in the second paragraph for calculating percentages set forth in subdivision (b)(4). The guidance makes reference to amounts entered on specific lines of a sales and use tax return for purposes of making the calculation. When a taxpayer files its return via the Board of Equalization’s online services, specific line numbers are not included. As such, staff proposes revising the guidance in subdivision (b) to reference general descriptions of the amounts so that a taxpayer filing a return online will have an appropriate reference to make the calculation. (See Exhibit 2.)

INITIAL DISCUSSION PAPER

Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598.1, *Diesel Fuel Prepayment Exemption*

Summary

Staff welcomes any comments, suggestions, and input from interested parties on the issues discussed in this paper. Staff also invites interested parties to participate in the interested parties meeting scheduled for July 15, 2014. The deadline for interested parties to provide written responses regarding this discussion paper is August 1, 2014.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of July 2, 2014

Sales and Use Tax Regulation 1533.2. *Diesel Fuel Used in Farming Activities or Food Processing.*

- (a) General. Commencing on and after September 1, 2001, section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, and ending on December 31, 2012, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2013, the partial exemption applies to the taxes imposed by section 36 of article XIII of the California Constitution and sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and

Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

- (1) 7.12 percent for the period July 1, 2011, through June 30, 2012;
- (2) 7.42 percent for the period July 1, 2012, through December 31, 2012;
- (3) 7.67 percent for the period January 1, 2013 through June 30, 2013;
- (4) 7.44 percent for the period July 1, 2013, through June 30, 2014; and
- (5) 7.25 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated,

raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any liquid fuel that is commonly or commercially known, or sold or represented as a diesel-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 vehicle.

~~No. 1 D or No. 2 D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference.~~ Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities.

"Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

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

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

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the

Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

Appendix A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (If applicable) ³
ADDRESS	CITY	STATE, ZIP

¹ If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.

² Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.

³ If you are not required to hold a seller's permit, please enter "Not Applicable."

Sales and Use Tax Regulation 1598.1. *Diesel Fuel Prepayment Exemption.*

(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 percentages 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 Ssubject to the partial state tax exemption for Ddiesel Ffuel Uused in Ffarming and Ffood Pprocessing-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 Ssubject to Ccounty Ttax)~~ 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.

(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.

**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