



STATE OF CALIFORNIA

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January 9, 2015

To Interested Parties:

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

NOTICE IS HEREBY GIVEN that the State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. In 2002, the Board adopted Regulation 1533.2 to implement, interpret, and make specific the provisions of RTC section 6357.1, which provide a partial exemption from sales and use tax for sales and purchases of diesel fuel for use in farming activities or food processing. The proposed amendments will revise the definition for the term diesel fuel in Regulation 1533.2 so that the term is consistent with the definition for the term “diesel fuel” provided in the Diesel Fuel Tax Law (RTC § 60001 et seq.) that applies to diesel fuel transactions. The proposed amendments also add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, remove the reference to the “general fund” in the note section of Appendix A to Regulation 1533.2, and make other non-substantive grammatical and formatting changes.

PUBLIC HEARING

The Board will conduct a meeting in Room 207 at 5901 Green Valley Circle, Culver City, California on February 24-26, 2015. The Board will provide notice of the meeting to any person who requests that notice in writing and make the notice, including the specific agenda for the meeting, available on the Board’s Website at www.boe.ca.gov at least 10 days in advance of the meeting.

A public hearing regarding the proposed regulatory action will be held at 9:30 a.m. or as soon thereafter as the matter may be heard on February 24, 25, or 26, 2015. At the hearing, any

interested person may present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments to Regulation 1533.2.

AUTHORITY

RTC section 7051

REFERENCE

RTC section 6357.1,

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

RTC section 6357.1 provides a partial exemption from sales and use tax on the sale and purchase of diesel fuel for use in farming activities or food processing, but does not define the term “diesel fuel.” In 2002, the Board adopted Regulation 1533.2 to implement, interpret, and make specific the provisions of RTC section 6357.1. Regulation 1533.2 clarifies the conditions under which a sale or use of diesel fuel qualifies for the partial exemption provided by RTC section 6377.1. Also, as relevant here, Regulation 1533.2 provides a definition for the term diesel fuel solely for purposes of the partial exemption provided by RTC section 6357.1, which was based, in part, on the California Air Resources Board’s (ARB’s) definition of diesel fuel codified in California Code of Regulations, title 13, section (ARB Regulation) 2281, subdivision (b)(1), at the time the regulation was adopted. However, in 2004, the ARB amended its definition for the term diesel fuel, and the definition for diesel fuel in Regulation 1533.2 is no longer consistent with the ARB’s definition for diesel fuel in ARB Regulation 2281. In addition, the Diesel Fuel Tax Law (RTC § 60001 et seq.) also provides a definition for the term diesel fuel in RTC section 60022, which is applicable to diesel fuel transactions.

The exemption provided by RTC section 6357.1 is referred to as a partial exemption because section 6357.1, subdivision (c), provides that the exemption for diesel fuel used in farming activities and food processing does not apply to specified sales and use taxes included in the statewide sales and use tax rate. Also, Regulation 1533.2, subdivision (c), prescribes the content of the partial exemption certificate that purchasers are required to provide to retailers to claim the partial exemption provided by RTC section 6357.1. Subdivision (c) provides that any document satisfying the requirements may be used as an exemption certificate, and Appendix A to Regulation 1533.1 provides a partial exemption certificate form. And, as relevant here, the note section in Appendix A provides that the exemption provided by RTC section 6357.1 “is an exemption only from the state general fund portion of the sales and use tax rate” because that was the case when the Board adopted Regulation 1533.2. However, the partial exemption provided by RTC section 6357.1 now applies to state sales and use taxes that are not required to be deposited in the general fund, such as the sales and use tax imposed by section 36 of article

XIII of the California Constitution that goes to the state's Education Protection Account (as already provided in Regulation 1533.2, subdivision (a)).

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1533.2

Due to the 2004 amendments to ARB Regulation 2281, subdivision (b), the definition of diesel fuel in Regulation 1533.2, which refers to the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, is no longer consistent with the provisions of ARB Regulation 2281, subdivision (b)(1), which no longer refer to the "ASTM Standard Specification for Diesel Fuel Oils D975-81." Therefore, Board staff considered whether it was necessary to amend the definition of diesel fuel in Regulation 1533.2 due to the 2004 amendments to the definition of diesel fuel in ARB Regulation 2281. And, staff found that, for purposes of the administering the partial exemption provided by RTC section 6357.1, it would be more effective to amend the definition of diesel fuel in Regulation 1533.2 so that the definition will no longer be based upon the ARB definition, but instead will be based upon the definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law. This is because staff determined that revising the definition of diesel fuel so that it is consistent in the sales and use tax regulations and the Diesel Fuel Tax Law will provide more clarity to taxpayers and staff.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to subdivision (b)(6) of Regulation 1533.2 to revise the definition of diesel fuel to be consistent with the definition of diesel fuel in RTC section 60022. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and its draft amendments to Regulation 1533.2 to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1533.2, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously scheduled to discuss staff's draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board's November 19, 2014, BTC meeting. Formal Issue Paper 14-009 recommended that the Board approve and authorize publication of the amendments to Regulation 1533.2 (discussed above) in order to revise the definition of the term diesel fuel in Regulation

1533.2, subdivision (b)(6), so that the term has the same meaning as defined in section 60022 of the Diesel Fuel Tax Law. Formal Issue Paper 14-009 recommended that the Board add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, and to remove the reference to the “general fund” in the note section of Appendix A to Regulation 1533.2. Formal Issue Paper 14-009 also recommended that the Board replace the capital “S” with a lower case “s” at the beginnings of the words “Section” throughout Appendix A to Regulation 1533.2 to make the words consistent with the references to “section” and “sections” in the body of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1533.2 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1533.2 are necessary to have the effect and accomplish the objective of making the definition for the term diesel fuel in Regulations 1533.2 consistent with the definition of the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions.

The Board also anticipates that the proposed amendments to Regulation 1533.2 will reduce confusion, promote fairness, and benefit retailers, consumers, Board staff, and the Board by making the definition for the term diesel fuel in Regulation 1533.2 consistent with the definition for the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions and clarifying that biodiesel is diesel fuel for purposes of the partial exemption from sales and use tax for diesel fuel used in farming activities or food processing.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1533.2 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1533.2 is the only state regulation providing a partial sales tax exemption for diesel fuel used in farming activities or food processing. The Board is aware that California Code of Regulations, title 18, section (Regulation) 1598.1, *Diesel Fuel Prepayment Exemption*, also defines the term “diesel fuel” and the Board is separately proposing to amend the definition for the term diesel fuel in Regulation 1598.1 so that it consistent with the current definition of the term diesel fuel in RTC section 60022 and the proposed amendments to the definition of the term diesel fuel in Regulation 1533.2. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1533.2 or the proposed amendments to Regulation 1533.2.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will not impose a mandate on local agencies or school districts, including a mandate that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code.

NO COST OR SAVINGS TO ANY STATE AGENCY, LOCAL AGENCY, OR SCHOOL DISTRICT

The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will result in no direct or indirect cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, no other non-discretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The Board has made an initial determination that the adoption of the proposed amendments to Regulation 1533.2 will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The adoption of the proposed amendments to Regulation 1533.2 may affect small business.

NO COST IMPACTS TO PRIVATE PERSONS OR BUSINESSES

The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

RESULTS OF THE ECONOMIC IMPACT ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the proposed amendments to Regulation 1533.2 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000. Therefore, the Board has prepared the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1), and included it in the initial statement of reasons. The Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California. Furthermore, the Board has determined that the adoption of the proposed amendments to Regulation 1533.2 will not affect the benefits of Regulation 1533.2 to the health and welfare of California residents, worker safety, or the state's environment.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

The adoption of the proposed amendments to Regulation 1533.2 will not have a significant effect on housing costs.

DETERMINATION REGARDING ALTERNATIVES

The Board must determine that no reasonable alternative considered by it or that has been otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Kevin B. Smith, Tax Counsel III, by telephone at (916) 323-3152, by e-mail at Kevin.Smith@boe.ca.gov, or by mail at State Board of Equalization, Attn: Kevin B. Smith, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the public hearing, and inquiries concerning the proposed administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on February 24, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1533.2 during the February 24-26, 2015, Board meeting. Written comments received by Mr. Rick Bennion at the postal address, email address, or fax number provided above, prior to the close of the written comment period, will be presented to the Board and the Board will consider the statements, arguments, and/or contentions contained in those written comments before the Board decides whether to adopt the proposed amendments to Regulation 1533.2. The Board will only consider written comments received by that time.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATION

The Board has prepared an underscored and strikeout version of the text of Regulation 1533.2 illustrating the express terms of the proposed amendments. The Board has also prepared an initial statement of reasons for the adoption of the proposed amendments to Regulation 1533.2, which includes the economic impact assessment required by Government Code section 11346.3, subdivision (b)(1). These documents and all the information on which the proposed amendments are based are available to the public upon request. The rulemaking file is available for public inspection at 450 N Street, Sacramento, California. The express terms of the proposed

amendments and the initial statement of reasons are also available on the Board's Website at www.boe.ca.gov.

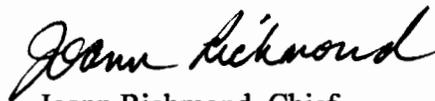
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulation 1533.2 with changes that are nonsubstantial or solely grammatical in nature, or sufficiently related to the original proposed text that the public was adequately placed on notice that the changes could result from the originally proposed regulatory action. If a sufficiently related change is made, the Board will make the full text of the proposed regulation, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting regulation will be mailed to those interested parties who commented on the original proposed regulation orally or in writing or who asked to be informed of such changes. The text of the resulting regulation will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting regulation that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulation 1533.2, the Board will prepare a final statement of reasons, which will be made available for inspection at 450 N Street, Sacramento, California, and available on the Board's Website at www.boe.ca.gov.

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the February 24, 2015 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food*
Processing

SPECIFIC PURPOSE, PROBLEM INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFIT

Current Law

California imposes sales tax on retailers for the privilege of selling tangible personal property at retail. (Rev. & Tax. Code (RTC), § 6051.) Unless an exemption or exclusion applies, the tax is measured by a retailer's gross receipts from the retail sale of tangible personal property in California. (RTC, §§ 6012, 6051.) Although sales tax is imposed on retailers, retailers may collect sales tax reimbursement from their customers if their contracts of sale so provide. (Civ. Code, § 1656.1; Cal. Code Regs., tit. 18, § 1700, subd. (a)(1).)

When sales tax does not apply, California use tax generally applies to the use of tangible personal property purchased from a retailer for storage, use or other consumption in California. (RTC, §§ 6011, 6201.) Unless an exemption or exclusion applies, the use tax is measured by the sales price of tangible personal property and the person actually storing, using, or otherwise consuming the tangible personal property is liable for the tax. (RTC, §§ 6011, 6201, 6202, 6401; Cal. Code Regs., tit. 18, § 1685.) However, every retailer "engaged in business" in California that makes sales subject to California use tax is required to collect the use tax from its customers and remit it to the State Board of Equalization (Board), and such retailers are liable for California use tax that they fail to collect from their customers and remit to the Board. (RTC, § 6203; Cal. Code Regs., tit. 18, § 1684.)

In 2002, the Board adopted California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities and Food Processing*, to implement, interpret, and make specific the provisions of RTC section 6357.1, which provides a partial exemption from sales and use tax for sales and purchases of "diesel fuel" for use in farming activities or food processing, but does not define the term "diesel fuel." Regulation 1533.2 clarifies the conditions under which a sale or use of diesel fuel qualifies for the partial exemption provided by RTC section 6357.1. Also, as relevant here, Regulation 1533.2 provides a definition for the term "diesel fuel" solely for purposes of the partial exemption provided by RTC section 6357.1, which is based in part on the definition of "diesel fuel" adopted by the California Air Resources Board (ARB) and codified in California Code of Regulations, title 13, section (ARB Regulation) 2281, *Sulfur Content of Diesel Fuel*, at the time Regulation 1533.2 was adopted. Regulation 1533.2, subdivision (b)(6), currently 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.

In 2004, the ARB made substantive amendments to the definition of “diesel fuel” in ARB Regulation 2281, subdivision (b)(1), and the following text reflects the 2004 amendments using “strikeout” and “underline” format:

“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.

The ARB’s Final Statement of Reasons (June 2004) for the amendments to Regulation 2281, subdivision (b)(1), explains that:

The 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.

The current regulations define “diesel fuel” as “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 D 975-81.” 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 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.

RTC section 60022 defines the term “diesel fuel” for purposes of the Diesel Fuel Tax Law (RTC, § 60001 et seq.), which is also administered by the Board. RTC section 60022, subdivision (a), currently provides 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.

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

Biodiesel is expressly included in the definition of diesel fuel in RTC section 60022 and Board staff has historically considered biodiesel to be diesel fuel that can qualify for the partial sales and use tax exemption for diesel fuel used in farming activities and food processing under RTC section 6357.1.

Furthermore, the exemption provided by RTC section 6357.1 is referred to as a partial exemption because section 6357.1, subdivision (c), provides that the exemption for diesel fuel used in farming activities and food processing does not apply to specified sales and use taxes included in the statewide sales and use tax rate. Also, Regulation 1533.2, subdivision (c), prescribes the content of the partial exemption certificate that purchasers are required to provide to retailers to claim the partial exemption provided by RTC section 6357.1. Subdivision (c) provides that any document satisfying the requirements may be used as an exemption certificate, and Appendix A to Regulation 1533.1 provides a partial exemption certificate form. And, as relevant here, the note section in Appendix A provides that the exemption provided by RTC section 6357.1 “is an exemption only from the state general fund portion of the sales and use tax rate” because that was the case when the Board adopted Regulation 1533.2. However, the partial exemption provided by RTC section 6357.1 now applies to state sales and use taxes that are not required to be deposited in the general fund, such as the sales and use tax imposed by section 36 of article XIII of the California Constitution that goes to the state’s Education Protection Account (as already provided in Regulation 1533.2, subdivision (a)).

Proposed Amendments

Need for Consistency

The 2004 amendments to ARB Regulation 2281, subdivision (b), created an issue (or problem within the meaning of Gov. Code, § 11346.2, subdivision (b)(1)). This is because the definition of diesel fuel in Regulation 1533.2, which refers to the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, is no longer consistent with the provisions of ARB Regulation 2281, subdivision (b)(1), which no longer refer to the “ASTM Standard Specification for Diesel Fuel Oils D975-81.” Therefore, Board staff considered whether it was necessary to amend the definition of diesel fuel in Regulation 1533.2 due to the 2004 amendments to the definition of diesel fuel in ARB Regulation 2281. And, staff found that, for purposes of the administering the partial exemption provided by RTC section 6357.1, it would be more effective to amend the definition of diesel fuel in Regulation 1533.2 so that the definition will no longer be based upon the ARB definition, but instead will be based upon the definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law. This is because staff determined that revising the definition of diesel fuel so that it is consistent in the sales and use tax regulations and the Diesel Fuel Tax Law will provide more clarity to taxpayers and staff.

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff prepared draft amendments to subdivision (b)(6) of Regulation 1533.2 to revise the definition of diesel fuel to be consistent with the definition of diesel fuel in RTC section 60022. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and proposed amendments to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1533.2, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously scheduled to discuss staff’s draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014, BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board’s November 19, 2014, BTC meeting. Formal Issue Paper 14-009 recommended that the Board approve and authorize publication of the amendments to Regulation 1533.2 (discussed above) in order to revise the definition of the term diesel fuel in Regulation 1533.2, subdivision (b)(6), so that the term has the same meaning as defined in section 60022 of

the Diesel Fuel Tax Law. Formal Issue Paper 14-009 recommended that the Board add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, and to remove the reference to the “general fund” in the note section of Appendix A to Regulation 1533.2. Formal Issue Paper 14-009 also recommended that the Board replace the capital “S” with a lower case “s” at the beginnings of the words “Section” throughout Appendix A to Regulation 1533.2 to make the words consistent with the references to “section” and “sections” in the body of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1533.2 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1533.2 are reasonably necessary for the specific purpose of addressing the issue (or problem) created by the 2004 amendments to ARB Regulation 2281 by making the definition of diesel fuel in Regulations 1533.2 consistent with the definition of the diesel fuel in the Diesel Fuel Tax Law because making the definition of diesel fuel consistent in the sales and use tax regulations and the Diesel Fuel Tax Law will provide more clarity to taxpayers and staff.¹

The Board anticipates that the proposed amendments to Regulation 1533.2 will reduce confusion, promote fairness, and benefit retailers, consumers, Board staff, and the Board by making the definition for the term diesel fuel in Regulation 1533.2 consistent with the definition for the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions, and clarifying that biodiesel is diesel fuel for purposes of the partial exemption from sales and use tax for diesel fuel used in farming activities or food processing.

In addition, the Board has determined that the proposed amendments are not mandated by federal law or regulations, and there are no federal regulations or statutes that are identical to Regulation 1533.2 or the proposed amendments to Regulation 1533.2.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 14-009, the exhibits to the issue paper, and the comments made during the Board’s discussion of the issue paper during its November 19, 2014, BTC meeting in deciding to propose the amendments to Regulation 1533.2 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1533.2 at this time or, alternatively, whether to take no action at this time. The Board decided to begin the formal rulemaking process to adopt the proposed

¹ After the November 19, 2014, BTC meeting, Board staff noticed that a comma should have been inserted after the first reference to “2013” in the current text of Regulation 1533.2, subdivision (a)(3), and the inadvertently omitted comma is now included in the text of the proposed amendments to Regulation 1533.2, to make subdivision (a)(3) grammatically correct.

amendments to Regulation 1533.2 at this time because the Board determined that the proposed amendments are reasonably necessary for the reasons set forth above.

The Board did not reject any reasonable alternative to the proposed amendments to Regulation 1533.2 that would lessen any adverse impact the proposed action may have on small business or that would be less burdensome and equally effective in achieving the purposes of the proposed action. No reasonable alternative has been identified and brought to the Board's attention that would lessen any adverse impact the proposed action may have on small business, be more effective in carrying out the purposes for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law than the proposed action.

**INFORMATION REQUIRED BY GOVERNMENT CODE SECTION 11346.2,
SUBDIVISION (b)(5) AND ECONOMIC IMPACT ASSESSMENT REQUIRED BY
GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)**

The proposed amendments make the definition for the term diesel fuel in Regulation 1533.2 consistent with the definition for the term diesel fuel in the Diesel Fuel Tax Law, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Sales and Use Tax Law, and there is nothing in the proposed amendments that would significantly change how individuals and businesses would generally behave, in the absence of the proposed regulatory action, or that would impact revenue. Therefore, the Board estimates that the proposed amendments will not have a measurable economic impact on individuals and businesses. And, the Board has determined that the proposed amendments to Regulation 1533.2 are not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, because the Board has estimated that the proposed amendments will not have an economic impact on California business enterprises and individuals in an amount exceeding fifty million dollars (\$50,000,000) during any 12-month period.

Further, based on these facts and all of the information in the rulemaking file, the Board has also determined that the adoption of the proposed amendments to Regulation 1533.2 will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses nor create or expand business in the State of California.

Furthermore, Regulation 1533.2 does not regulate the health and welfare of California residents, worker safety, or the state's environment. Therefore, the Board has also determined that the adoption of the proposed amendments to Regulation 1533.2 will not affect the benefits of Regulation 1533.2 to the health and welfare of California residents, worker safety, or the state's environment.

The forgoing information also provides the factual basis for the Board's initial determination that the adoption of the proposed amendments to Regulation 1533.2 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1533.2 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1533.2**

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 to the field and from the field 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, or 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.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6357.1, Revenue and Taxation Code.

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."

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1533.2

Title: *Diesel Fuel Used in Farming Activities or Food Processing*

Preparation: Kevin Smith

Legal Contact: Kevin Smith

The State Board of Equalization proposes to adopt amendments to revise the definition of diesel fuel in Sales and Use Tax Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, to be consistent with the definition of diesel fuel in the Diesel Fuel Tax Law.

History of Proposed Regulation:

February 24-26, 2015	Public Hearing
January 9, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
December 24, 2014	Notice to OAL
November 19, 2014	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA
Support: NA
Oppose: NA