



STATE BOARD OF EQUALIZATION

Fuel Taxes Newsletter

December 1999

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New Legislation

The following summaries reflect legislative changes enacted during the 1999 legislative session affecting the fuel tax programs administered by the State Board of Equalization. The changes are effective January 1, 2000, unless otherwise indicated. For copies of bills, please write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814, or access the Internet at www.leginfo.ca.gov/bilinfo.html.

Expanded Taxpayers' Bill of Rights

Assembly Bill 1638 (Stats. 1999, ch. 929), sponsored by the Board, makes the changes listed below to all fuel tax programs with exceptions being noted.

- **Interest relief.** The Board can now relieve some or all interest if a taxpayer's failure to pay tax is due to an unreasonable error or

delay by a Board employee. This relief applies to interest imposed on tax liabilities arising during periods beginning on or after January 1, 2000.

- **Installment payment agreement.** The Board, at its discretion, can now enter into a formal written installment payment agreement with a taxpayer for the payment of any amounts due. If the Board terminates the agreement due to the failure of the taxpayer to comply with the terms of the agreement, it must mail a notice in advance, stating the reason for the termination and informing the taxpayer of his or her right to request an administrative review of the termination. (This does not apply to the Motor Vehicle Fuel License Tax.)
- **Interest waiver.** Beginning January 1, 2000, if the Board issues an erroneous refund to a taxpayer and seeks repayment, it can waive the imposition of interest on the repayment for a 30-day period, beginning from the date the Board mails a notice of determination (billing) for the repayment.
- **Reimbursement to taxpayers for fees and expenses.** In cases where a taxpayer alleges that the Board staff is unreasonable, and is seeking reimbursement of fees and expenses related to a hearing before the Board, Board staff must show that its position was substantially justified. Such a claim for reimbursement of fees and expenses must be filed within one year of the date that the Board's decision becomes final.
- **Return of levied property.** The Board can return levied property if the levy was not in accordance with the law, a taxpayer has entered into and is in compliance with an installment payment agreement, or the return of the property will facilitate collection of the tax liability or is in the best interest of the state and the taxpayer. (This does not apply to the Motor Vehicle Fuel License Tax.)

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- **Notice of pending lien.** The Board must provide at least 30 days notice prior to filing or recording of any liens. The Board must mail to the taxpayer a preliminary notice specifying their authority for filing or recording such liens, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to prevent the filing or recording of the lien. (This does not apply to the Motor Vehicle Fuel License Tax.)

Underground Storage Tank Maintenance Fee

Assembly Bill 1638 (Stats. 1999, ch. 929) and Senate Bill 1231 (Stats. 1999, ch. 941), both sponsored by the State Board of Equalization, and Senate Bill 989 (Stats. 1999, ch. 812) make the following changes to the Underground Storage Tank Maintenance Fee.

- **Relief from finality penalty.** You may be relieved of the penalty for failure to pay a determination (tax billing) by the date it becomes due and payable if the Board finds that the late payment was due to reasonable cause and circumstances beyond your control and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect. To request relief, you must file a statement with the Board, signed under penalty of perjury, and provide the facts on which your claim is based. For more information on this subject, please call the Fuel Taxes Division at 916-322-9669.
- **Release of confidential information.** The Board may release otherwise confidential information obtained from the person who sold or provided petroleum products to the lessee or operator of the underground storage tanks. This information may only be released to the fee payer and only to the extent that the information is necessary for assessment, administration, and verification of the underground storage tank fee.
- **Sunset date extended.** The Underground Storage Tank Maintenance Fee shall remain in effect until January 1, 2011, and as of that date is repealed. A later enacted statute may extend the sunset date, if enacted before January 1, 2011.

International Fuel Tax Agreement

Tax Rate Change for IFTA and DI Licensees

The tax you normally report and pay with your quarterly fuel tax report for diesel fuel that you purchase outside California and use in the state has been decreased to 25.0 cents per gallon for the period January 1, 2000 through December 31, 2000.

The 25 cents per gallon rate reflects

- The 18 cents per gallon diesel fuel tax and
- An additional excise tax rate of 7.0 cents per gallon. (This rate is equal to 7.25% of the average retail price of motor vehicle fuel sold in California. The amount is calculated annually for the period of January 1 through December 31.)

Year 2000 IFTA License Renewals

You should have received an application in the mail to renew your license for the calendar year 2000. Applications were mailed to current IFTA registrants starting in September 1999. Please contact the Fuel Taxes Division at 916-322-9669, if you have not received your application.

If you completed and returned your application by November 19, 1999, you should receive your year 2000 IFTA credentials by mid-December (IFTA credentials include your IFTA license and decals). Year 2000 credentials will be valid from January 1, 2000 through December 31, 2000.

If your application is incomplete or insufficient funds were sent with the application, the year 2000 credentials will not be issued until all problems are resolved. In addition, credentials will be withheld if you are delinquent for any reporting period, have an outstanding liability with the Board's IFTA Section, or your 1999 credentials were revoked for any reason.

If you are an IFTA carrier in good standing and add qualified vehicles to your interstate fleet after you have received your current year credentials, you should complete and mail form BOE-400-D2, *Request for Additional IFTA Decals*. If you will be taking the vehicles out-of-state prior to the processing time required for the additional decal, you may request that we issue a temporary permit. For information on how to complete form BOE-400-D2, see publication 50, *Guide to the International Fuel Tax Agreement* (January 1999, page 31). To

order a copy, call our Information Center at 1-800-400-7115. You can also download a copy from our website: www.boe.ca.gov.

Grace Period

Subject to the conditions described below, IFTA carriers are allowed a two-month grace period—from January 1, 2000 through February 29, 2000, before being required to display their year 2000 license and decals. To qualify for the grace period, you must maintain the proper 1999 credentials and be in good standing (i.e., no delinquencies, monies due, or revocation). You also must have applied for year 2000 IFTA credentials by December 31, 1999.

IFTA Record Retention Period

As a reminder, IFTA carriers must maintain adequate records for a minimum of four years. Adequate records include distance records, fuel receipts, and bulk fuel storage information as outlined in publication 50, *Guide to the International Fuel Tax Agreement* (January 1999).

Diesel Fuel Tax Law

Sales to Farmers and Bus Operators Who Claim a Partial Exemption on Their Purchases

If you make an exempt sale of undyed diesel fuel to an ultimate purchaser (a farmer who will use the fuel on a farm or a bus operator who will use the fuel in exempt bus operation), you must obtain a valid exemption certificate to support the exempt sale. When you report the sale, you can claim a refund for the diesel fuel tax you paid on your purchase of the fuel. The exemption certificate supports your claim for an exempt sale. Without adequate documentation, you are not entitled to a refund.

The following exemption certificates can be accepted from ultimate purchasers:

- BOE-231-DB, *Diesel Fuel Tax Exemption Certificate for Exempt Bus Operator*
- BOE-608, *Certificate of Farming Use*

In some instances, an ultimate purchaser will purchase diesel fuel for both exempt and nonexempt uses. Generally, the exemption certificate submitted by the purchaser must show what percentage of the purchase is for fuel used for an exempt purpose. You must ensure that the exempt gallons you claim on

your *Ultimate Vendor Report/Claim for Refund* form (BOE-770-DV/DVW) represent the appropriate percentage.

If you have knowledge that the diesel fuel being purchased is to be used for nonexempt purposes, you cannot accept an exemption certificate for 100 percent of the diesel fuel purchased (see exception below). If you claim an exemption for all such sales, your refund will be too high and you are liable for any applicable tax, interest and penalty associated with the erroneous refund.

Exception: If an ultimate purchaser buys undyed diesel fuel and part of the purchase will be used for exempt purposes and part for nonexempt purposes, you can accept an exemption certificate for 100 percent of the fuel purchased if you issue *two invoices: one for the exempt purchase and one for the nonexempt purchase*. You must limit your claim for refund to the fuel purchased for an exempt use.

Tax liability of terminal “position holders”

If you are a terminal “position holder,” as explained below, you are liable for diesel fuel tax on the removal of undyed diesel fuel from the terminal.

Who is a position holder?

For purposes of the Diesel Fuel Tax Law, you are a position holder if you hold an inventory position at a terminal, as reflected on the records of the terminal operator. A person holds an inventory position in diesel fuel when he or she has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the diesel fuel. You may qualify as a position holder even though you are the terminal operator if you own any of the diesel fuel in the terminal.

If you are a position holder, you must register as a “supplier” of diesel fuel and report all diesel fuel removed from the terminal rack, using form BOE-501-DD, *Supplier of Diesel Fuel Tax Return*. To register, please contact the Fuel Taxes Division at 916-322-9669.

Note:

- If you are a position holder and sublease storage to other diesel fuel wholesalers, you are still liable for the tax on all undyed diesel fuel removed from the terminal rack under your storage contract with the terminal operator.

- If you have a customer and do not have adequate fuel to complete the sale and send your customer to pick up the fuel from another position holder's inventory, the *position holder who actually makes the delivery is liable* for the tax on the removal of diesel fuel from his or her storage.

Records Requirement for Dyed Fuel Use

If you purchase, use, or store dyed diesel fuel in California, you are required to maintain records, receipts, invoices, and any other pertinent papers with respect to the dyed diesel as the Board may require. Failure to maintain records constitutes a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000), or imprisonment in a county jail not exceeding six months, or both as the court may deem.

Subject to presenting proper credentials and written notice to the owner, operator, or agent in charge, Board personnel are authorized to enter any place where taxable fuel is produced or stored and to conduct inspections at such places or at inspection sites in accordance with the law in regards to diesel fuel activity. If you refuse to allow an inspection, you may be assessed a penalty of one thousand dollars (\$1,000) for each refusal. This penalty is in addition to any other penalty or tax that may be imposed.

Use Fuel Tax Law

Do you use or sell kerosene?

You must register with the Board if

- You use kerosene to propel a motor vehicle upon the highways of this State. As a kerosene user, you must report and pay tax at the rate of eighteen cents per gallon, using form BOE-501-AU, *User Use Fuel Tax Return*.
- You are a kerosene vendor and place the fuel into the fuel tank of motor vehicles. As a vendor, you must report and pay tax at the rate of eighteen cents per gallon, using form BOE-501-AV, *Vendor Use Fuel Tax Return*.

To register as a vendor or user of kerosene, please contact the Fuel Taxes Division at 916-322-9669.

Do you blend kerosene with diesel fuel?

Kerosene is specifically exempted from the

definition of diesel fuel in the Diesel Fuel Tax Law. However, if you blend kerosene with diesel fuel, the resulting product is diesel fuel and you are liable for diesel fuel tax. In order to pay the tax, you are required to register under the Diesel Fuel Tax Law and file form BOE-501-DD, *Supplier of Diesel Fuel Tax Return*. The tax due is based on *the increased amount of fuel* resulting from the blending of nontaxed kerosene with diesel fuel.

Childhood Lead Poisoning Prevention Fee

Refund claims based on the constitutionality of the fee

We have received many claims for refund that argue the Childhood Lead Poisoning Prevention Fee is unconstitutional because it is a tax and was adopted without the two-thirds vote required under Article XIII of the California Constitution.

In June 1997, the State Supreme Court ruled that the fee imposed by the Childhood Lead Poisoning Prevention Act was not a tax. The Supreme Court's decision is final. Therefore, claims for refund based on this argument will be denied.

For More Information

Fuel Taxes Division. If you have questions or comments, call us at 916-322-9669, or write to: Fuel Taxes Division, MIC:30; Board of Equalization; P.O. Box 942879; Sacramento, CA 94279-0030.

Internet. Visit us at www.boe.ca.gov to obtain information on tax rates, publications, legislation, regulations, telephone numbers, education programs, public meetings, and so forth.

Tax Evasion Hotline. To report suspected tax evasion, please call toll-free, 1-888-334-3300.

Copies of Legislative Bills. Write to the Legislative Bill Room, State Capitol, Room B-32, Sacramento, CA 95814. Or visit the following website: www.leginfo.ca.gov. The Bill Room does not provide copies of Board forms or publications.

Taxpayers' Rights Advocate. If you need help with a problem you have been unable to resolve at other levels, please call the Advocate's office at 1-888-324-2798.