

Fuel Taxes Newsletter

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In This Issue . . .

Article Number

All Fuel Tax and Fee Programs

Bill of Rights Hearings	1
Let Us Know About Business Changes	2

Motor Vehicle Fuel Tax and Diesel Fuel Tax Programs

Both Tax Programs

Filing Tips	3
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Diesel Fuel Tax Program Only

Exempt Bus Operator Return Revised	4
Biodiesel—Feds vs. California	5
Ultimate Vendors and Exempt Sellers: Claims for Refunds	6
Electronic Filing and Refund Claims	7

Aircraft Jet Fuel Tax

Registration Requirements	8
---------------------------------	---

Underground Storage Tank Maintenance Fee

Owners Are Responsible for the Fee	9
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■ All Fuel Tax and Fee Programs

1. Annual Taxpayers' Bill of Rights hearings

Each year, the Members of the Board of Equalization hold public hearings to give taxpayers, tax professionals, and other interested parties the opportunity to comment on the tax and fee programs administered by the Board. If you would like to suggest ways to improve our service, or if you want us to look more closely at a tax or fee issue, you are encouraged to present your ideas before the Board.

Although you do not need to be scheduled in advance to speak at the hearing, it would help us to prepare if you would contact us at least three weeks in advance to let us know your topic. If your proposal is complex or extensive, we encourage you to submit written comments in advance and then summarize your comments in your oral presentation.

Culver City

September 22, 2004
Board of Equalization District Office
5901 Green Valley Circle, Suite 207

Sacramento

October 12, 2004
Capitol Square Building
450 N Street, 1st Floor Board Room

To notify us of a topic you wish to discuss or to send written material at least three weeks in advance, please contact the

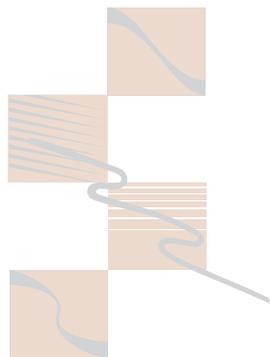
Taxpayers' Rights Advocate MIC:70

State Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0070

Call toll-free: 888-324-2798

Fax: 916-323-3319

E-mail: www.boe.ca.gov/info/email.html



2. Let us know if you move, close, or sell your business

We need to hear from you whenever you

- Change your business or mailing address
- Sell or close out your business.

Notifying the U.S. Postal Service of an address change isn't enough, as our returns may not be forwarded to you in time for you to file a timely return.

■ Motor Vehicle Fuel and Diesel Fuel Tax Programs

Both Programs

3. Filing tips

Unique document numbers

We need your help! Suppliers, please use the bill of lading number issued by your terminal operator for all rack removals reported on the schedules of your tax returns. This number should not be changed from what the terminal operator issues when reporting rack removals. If the load is split, obviously the document number will appear multiple times. But you should not be using the same document number repeatedly. Repeated use of one document number on a schedule will lead to delays in processing due to requirements that the repeated information be investigated for accuracy

Special rules for claiming exempt sales made by credit card at cardlock or retail locations

When reporting sales made to exempt entities for which you are claiming credits on Schedules 13B through 13E, if the exempt purchaser has purchased the fuel at a cardlock or retail service station using an automated key card or credit card, you may report a summary amount for *each* customer for all transactions claimed during the reporting period. The summary must be reported by individual customer—not a single total for all customers.

When reporting these transactions in summary (by customer), you should use Mode Code GS (Gas Station) in column 3, and complete the information for columns 5, 6 and 11 (Buyer Name, Buyer FEIN or BOE number, and billed gallons). *You do not need to report a document number when reporting these transactions in summary, but you may report the statement number as the document number.*

Need more information? Give us a call or go online. See the back page for telephone numbers and website addresses.

EFT Payments: Report whole dollars only

When making payments or prepayments of your diesel fuel and motor vehicle fuel tax via Electronic Funds Transfer (EFT), please pay in whole dollar amounts. Round your payment to the nearest whole dollar to match the whole dollar figure reported on your return.

Diesel Fuel Tax Only

4. The Exempt Bus Operator Diesel Fuel Tax Return has been revised

We have revised the Exempt Bus Operator Diesel Fuel Tax Return to clarify that the return can only be used to report your purchases of dyed and undyed diesel fuel made without payment of diesel fuel tax for use in exempt bus operations (purchases of diesel fuel for use in exempt bus operations *must* be made using an exemption certificate).

If you pay tax on a purchase of diesel fuel and use the fuel for an exempt purpose other than for exempt bus operations, you can file a claim for a refund. You will need to register and file a form BOE-770-DU, *Diesel Fuel Claim for Refund on Nontaxable Uses*.

5. Biodiesel—how California differs from the federal government

The National Biodiesel Board website states that “biodiesel” is defined as mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, which conform to ASTM D6751 specifications for use in diesel engines. Mono-alkyl esters are considered a fuel suitable for use in a diesel powered highway vehicle without further processing. Therefore, under California Diesel Fuel Tax Law, biodiesel, including products identified as B100, methyl ester, or any other name meeting the specifications of ASTM D6751, is considered diesel fuel.

The IRS does not treat methyl ester/pure biodiesel/B100 as taxable diesel fuel. This is because the federal definition of diesel fuel excludes a category of liquids called “Excluded Liquids,” which includes liquids with less than 4% natural paraffins. Even though methyl ester is a liquid suitable for use in a diesel powered highway vehicle, it does not contain natural paraffins and therefore is not considered taxable diesel by the IRS.

California law does not contain an excluded liquid provision. Therefore, methyl ester meeting the ASTM D6751 standard is diesel fuel for

California tax purposes. Therefore, if you are selling this product, you need to register as a diesel fuel supplier.

6. Claims for refund filed by ultimate vendors

This article applies to claims for refunds that are filed using the following forms:

- BOE-770-DVW, *Diesel Fuel Tax Claim for Refund—Sale to Ultimate Purchasers*, and
- BOE-770-DV, *Diesel Fuel Ultimate Vendor Report/Claim for Refund*.

■ How to expedite your refund claims

Your claim will be processed quicker if . . .

- You file claims only for the period indicated on the claim form and as allowed by statute:
 - Annually (for a calendar year) if your refund claim is less than \$200;
 - Weekly, monthly or quarterly if your refund claim is \$200 or more.
- You make sure the dates of the documents supporting the claimed exempt diesel fuel falls within the claim period. Out-of-period invoices will be disallowed.

■ Claims for out-of-period transactions

Claims filed on paper

If you file your claims on paper, you cannot use a standard claim-for-refund form (weekly filers—see “Exception” below). You must submit your request in the form of a letter and provide the same information requested on the claim-for-refund form. Send your request to

Board of Equalization
Fuel Taxes Division
P.O. Box 942879
Sacramento, CA 94279-2050

Exception: If you file claims for refund on a weekly basis, you may claim any transaction within the monthly period on your BOE-770-DV form.

Claims filed electronically

If you file your claim electronically, you may claim out-of-period transactions on the current reporting period.

■ Information that must be provided with refund claims

Claims filed on paper

If you file your claim on paper, include the following with your claim:

- Copies of invoices for sales to ultimate purchasers (farmers and exempt bus operators). The invoices must be backed up by valid exemption certificates, which must state the percentage of the exempt purchases

to be used on farm for farming purposes or in an exempt bus operation.

- Copies of invoices for exempt sales of diesel fuel that exceeds 10,000 gallons per transaction.
- A valid *Certificate of Farming Use* (form BOE-608) or *Certificate of Exempt Bus Operation* (form BOE-231) for any new farmer or exempt bus operator listed on the disbursements schedules.

Claims filed electronically

If you file your claim electronically, no documentation is required other than to provide new exemption certificates for farmers and exempt bus operators. You should fax new certificates to us when you receive them, and we can process them before the claims are filed.

Although you are not required to submit copies of invoices for sales to ultimate purchasers, you must maintain copies of those invoices to support your claim and must supply them to the Fuel Industry Section upon request.

■ Benefits of filing refund claims electronically

There are many advantages to filing your claims electronically. See article 7 for more information.

■ Misuse of Exemption Certificates for Farming Use

Diesel fuel ultimate vendors are expected to exercise reasonable judgment and good faith when accepting exemption certificates for farming use. If you accept a certificate and have reason to believe the fuel will not be used in an exempt purpose, your good faith acceptance of a certificate may be questioned. Examples of nonexempt farming activities include: operating a garden plot, orchard, or farm to grow plants for a person's own use or to feed animals that are grown for personal use (for example, for personal consumption).

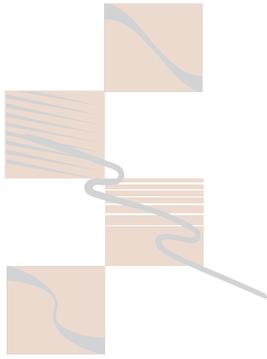
The following penalties apply to the misuse of an exemption certificate:

- **Ultimate vendor.** It is a misdemeanor for an ultimate vendor to knowingly make a false or fraudulent claim for refund based on an exemption certificate that contains false information or that they have not accepted in good faith. Each offense may be punished by a fine ranging from \$1,000 to \$5,000, or by imprisonment in a county jail not exceeding six months, or by both fine and imprisonment.
- **Purchaser.** A purchaser who gives an exemption certificate for diesel fuel that he or she knows at the time of purchase will not be



June 2004
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Need more
information?
Give us a call or go
online. See the back
page for telephone
numbers and website
addresses.



used by him or her in an exempt manner, is liable to the state for the amount of tax that would be due if he or she had not given the certificate. The purchaser is also subject to a penalty of 25 percent of the tax or \$1,000, whichever is greater, for each certificate issued for personal gain or to evade the payment of taxes.

7. Would you like to have your refund claims or tax credits processed quicker?

If so, electronic filing is the way to go.

Ultimate vendors, diesel fuel users, and exempt sellers (sellers who make nontaxable sales and exports of diesel fuel) can speed up the time it takes to get a tax refund if they sign up to file their claims electronically. The same is true is for credit Diesel Fuel Supplier Tax Returns.

Time is saved when processing an e-filed form rather than a paper-filed one. For example, a paper-filed claim or credit Diesel Fuel Supplier Tax Return can take up to five weeks longer just to get into our system so staff can review it. From the minute an e-filed form is successfully filed, it is in our system going through the initial processing steps. Our system can handle the automated processes many times faster than what must be done manually for paper-filed forms.

Now, with our new flat file format, it's easier than ever to e-file. So, sign up today by downloading the Trading Partner Agreement (application) if you want to start receiving your refunds more quickly!

If you are interested in participating in e-filing, please visit us online at www.boe.ca.gov/elecsrv/efiling/efilefueltaxp.htm. Or contact the Fuel Taxes Division at (916) 322-9669. Or e-mail us at efile@boe.ca.gov.

■ Aircraft Jet Fuel Tax

8. Who must have a jet fuel dealer permit?

Any person who sells to an aircraft jet fuel user, or delivers jet fuel in California into the fuel tanks of an aircraft or into a storage facility from which the fuel is withdrawn for use in aircraft, must have a permit to operate as an Aircraft Jet Fuel Dealer.

An "aircraft jet fuel user" is any person who uses aircraft jet fuel for the propulsion of an aircraft in California *except* for the following:

1. A common carrier by air engaged in the business of transporting persons or property

for hire under a certificate of public conveyance and necessity issued pursuant to the authority of the laws of this state, of the United States or of any foreign government.

2. A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft or modifying, overhauling, repairing, maintaining or servicing of aircraft.
3. The armed forces of the United States.

■ Underground Storage Tank Maintenance Fee

9. It is important to determine the "owner" of an underground storage tank

Owners of underground storage tanks are responsible for filing returns and paying the underground storage tank maintenance fee, based on the number of gallons of petroleum products placed into their tanks.

Since the inception of the Underground Storage Tank Maintenance Fee, we have had difficulty identifying the owners of underground storage tanks. To eliminate confusion in identifying who is responsible for paying the fee, owners and operators should maintain clear documentation regarding ownership. For example, useful records could include tank installation contracts, lease contracts, Underground Storage Tank Permit Applications (forms A, B, and C) filed with the Water Resources Control Board, or any other documentation indicating ownership. Without documentation to the contrary, the Board will generally presume that the owner of the real property on which the tank is located is the owner of the underground storage tank.

Fuel Taxes Division

916-322-9669

Board of Equalization, MIC:30
P.O. Box 942879
Sacramento, CA 94279-0030

Internet

www.boe.ca.gov

Tax Evasion Hotline

888-334-3300

Legislation

www.leginfo.ca.gov

Taxpayers' Rights Advocate

888-324-2798

www.boe.ca.gov/tra/tra.htm