

# Fuel Taxes Newsletter

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## In This Issue . . .

### Taxability of Fuel Grade Ethanol

Ethanol Tax and Fee Information . . . . . 1

### Motor Vehicle Fuel and Diesel Fuel Tax Programs

Document number reporting requirements for suppliers and terminal operators . . . . . 2

Terminal operator—reporting tips . . . . . 2

- Product reclassification . . . . . 2
- Transactions at airports . . . . . 2
  - Hydrant fueling systems . . . . . 2
  - IRS-secured terminals . . . . . 2

### Diesel Fuel Tax Program

Sales of dyed diesel fuel . . . . . 2

Using dyed diesel fuel on California roads or highways . . . . . 3

Blending of diesel fuel . . . . . 3

Contaminated diesel fuel . . . . . 3

Refunds are not allowed for tax-paid diesel fuel converted to dyed diesel fuel . . . . . 3

Dyed diesel fuel penalties . . . . . 3

Inspection of diesel fuel . . . . . 3

Reporting tips for biodiesel . . . . . 4

### All Fuel Tax and Fee Programs

Fuel taxes refund information on the web . . . . . 4

Excess tax collections . . . . . 4

Know your rights . . . . . 4

## Taxability of Fuel Grade Ethanol

### Ethanol Tax and Fee Information

Fuel grade ethanol is treated differently under the various tax and fee programs administered by the Fuel Taxes Division. Fuel grade ethanol must be rendered undrinkable for human consumption before it leaves the plant. This is done by adding a hydrocarbon denaturant (between 2%-5% concentration), usually gasoline. Please see below for information regarding ethanol tax and fee information for the various tax and fee programs.

### Oil Spill Response, Prevention, and Administration Fees Law:

*Fuel grade ethanol is subject to the Oil Spill Response Prevention and Administration Fees.* Revenue and Taxation Code section 46021 states that “petroleum products” includes alcohol fuels containing petroleum products. Regulation 2240 includes alcohol fuels containing petroleum products in the definition of petroleum products. There is no exclusion for blends that contain de minimis quantities of petroleum.

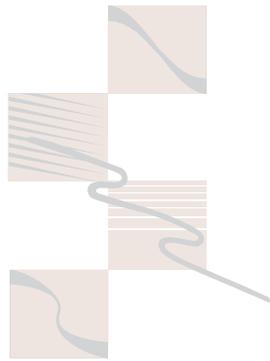
### Underground Storage Tank Maintenance Fee Law:

*Fuel grade ethanol is subject to the underground storage tank maintenance fee.* Pursuant to Underground Storage Tank Maintenance Fee Annotation, “Mixture of Petroleum Products,” the placement of a mixture of petroleum and other hazardous materials such as solvents, oil, and grease, into an underground storage tank is subject to the underground storage tank maintenance fee.

### Use Fuel Tax Law:

*Fuel grade ethanol is subject to the use fuel tax under Revenue and Taxation Code section 8657.* Regulation 1301 further defines “Alcohol fuel” to include blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline by volume measured at 60 degrees Fahrenheit. The denaturant is not counted in determining the gasoline content of a gas/ethanol blend for purposes of determining whether the motor vehicle fuel tax or use fuel tax applies.





**Motor Vehicle Fuel Tax Law:** *Fuel grade ethanol is not considered motor vehicle fuel and is not subject to the Motor Vehicle Fuel Tax until it is blended with gasoline.* Regulation 1101 defines “motor vehicle fuel” to include “gasohol” which is defined as all blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline. For reporting purposes, ethanol is listed as an “MVF-Other” product; therefore, motor vehicle fuel suppliers will report ethanol if it is blended with motor vehicle fuel. Terminal operators must report all removals of ethanol from the terminal.

## ■ Motor Vehicle Fuel and Diesel Fuel Tax Programs

### Document number reporting requirements for suppliers and terminal operators

A position holder who removes fuel at the rack must report that removal on the appropriate schedule (5 through 10) using the bill of lading number and date that the terminal operator issues for the transaction. The terminal operator must also use the same bill of lading number and date when reporting the transaction. Be sure that you do not alter this number or report a different internal document number on your return or report.

### Terminal operator—reporting tips

#### Product reclassifications

Terminal operators often receive products in a terminal and blend them with another product for distribution. For example, gasoline (product code 065) and ethanol (241) may be received by a terminal, blended, and distributed as gasohol (140). Or clear diesel fuel (167) may have dye added to it to be distributed as dyed diesel fuel (227). In both of these examples, the product received by the terminal and reported on the *Terminal Receipts Schedule (15A)* is different from the product distributed across the rack and reported on the *Terminal Disbursements Schedule (15B)*.

For example, if the terminal receives gasoline (065) and ethanol (241), blends them, and distributes the resulting product as gasohol (140), you would report the transaction as follows:

1. Report all terminal receipts (Schedule 15A) of 065 and 241

2. Report a terminal disbursement (Schedule 15B) book adjustment (BA) for the total gallons of 065 blended into 140
3. Report a terminal disbursement (Schedule 15B) book adjustment (BA) for the total gallons of 241 blended into 140
4. Report a terminal receipt (Schedule 15A) book adjustment (BA) for the total gallons of 140
5. Report all terminal disbursements (Schedule 15B) of 140

You may use this method to summarize all such transactions during a reporting period or report them on a transaction-by-transaction basis for each disbursement of the reclassified product.

### Transactions at airports

Terminal operator transactions at airports have some unique reporting circumstances, including hydrant fueling systems and IRS-identified secured terminals.

#### Hydrant fueling systems

Hydrant fueling systems consist of aboveground or underground fuel storage tanks; a pump house containing pumps, control valves, and filters; fuel distribution pipe; and refueling stands near the aircraft. The refueling stand is a loading arm or an underground metal or fiberglass “hydrant” fuel pit. You may summarize your hydrant fueling system distributions each day by position holder. Report the summarized transactions on the *Terminal Disbursements Schedule (15B)* and use the GS or RT mode code.

#### IRS-secured terminals

California airports that include a secured area are Oakland International, Ontario International, San Diego International, and San Francisco International. These terminals may summarize qualifying truck removals each day by position holder. Report the summarized transactions on the *Terminal Disbursements Schedule (15B)* and use the GS or RT mode code.

## ■ Diesel Fuel Tax Program

### Sales of dyed diesel fuel

Sales of dyed diesel fuel are exempt from the diesel fuel tax if the fuel meets the dyeing requirements of the United States Environmental Protection Agency (EPA) and the Internal Revenue Service (IRS). These sales include fuel that

is indelibly dyed by mechanical injection. If you sell dyed diesel fuel, you must post a notice on any retail pump where the fuel is sold, stating that the fuel is dyed and is for nontaxable use only. If the fuel is sold from other than a retail pump, you must provide your customer with a sales invoice that states the fuel is dyed and for nontaxable use only.

### **Using dyed diesel fuel on California roads or highways**

Using dyed diesel fuel to power vehicles on California roads and highways is not permitted unless you are authorized to do so by federal and state law **and** licensed by the BOE. The penalty for unauthorized use of dyed diesel fuel on California roads and highways is generally imposed against the vehicle owner. See the next column for more information on penalties.

### **Blending of diesel fuel**

If you produce blended diesel fuel outside of a refinery or bulk transfer/terminal system, you are required to register as a supplier and pay the diesel fuel tax on all gallons of blended diesel fuel you produce. Blended diesel fuel is considered to be a mixture of tax-paid diesel fuel and any liquid on which the tax has not been paid (such as vegetable oils or animal fats, kerosene, jet fuel, transmix, used oil, or other petroleum products). If you are required to register and do not, you are subject to penalties as provided by law.

### **Contaminated diesel fuel**

“Contaminated diesel fuel” is tax-paid diesel fuel that is lost through the conversion of undyed diesel fuel to dyed diesel fuel.

Diesel Fuel Tax Regulation 1433 allows for a refund of tax on diesel fuel that is lost in the course of handling, transportation, or storage in limited situations. The BOE will refund the tax paid provided that:

1. The tax-paid diesel fuel was lost through the accidental conversion of undyed diesel fuel to dyed diesel fuel; or
2. The tax-paid diesel fuel was lost through the intentional conversion of undyed diesel fuel to dyed diesel fuel in the ordinary course of handling (such as purging hoses).

Tax-paid diesel fuel will qualify as lost under these conditions only if the fuel that was converted from undyed fuel to dyed fuel is sold as dyed diesel fuel. No refund will be made based on losses

of diesel fuel which occur due to evaporation or shrinkage. Contaminated diesel fuel does not include the accidental mixing of gasoline and diesel.

### **Refunds are not allowed for tax-paid diesel fuel converted to dyed diesel fuel**

The law does not allow for refunds of tax paid on diesel fuel (including biodiesel) converted to dyed diesel fuel. Wholesalers who voluntarily convert tax-paid diesel and biodiesel to dyed diesel fuel may not claim a credit or refund of the taxes paid on the clear diesel fuel.

### **Dyed diesel fuel penalties**

A penalty applies to any person who:

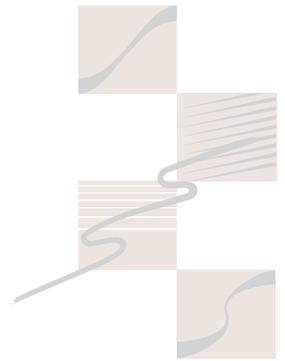
- Sells dyed diesel fuel for any use that is considered a taxable use of the diesel fuel.
- Uses dyed diesel fuel for a taxable use with the knowledge that the diesel fuel was so dyed.
- Knowingly alters, or attempts to alter, the strength or composition of any dye or marker in dyed diesel fuel.
- Fails to provide or post the required notice with respect to dyed diesel fuel. The failure to provide or post the required notice creates a presumption that the diesel fuel will be used for a taxable use.

The penalty for each violation is \$10 for every gallon of dyed diesel fuel involved, or \$1,000, whichever is greater. If you were previously penalized for using dyed diesel fuel in a highway vehicle, the penalty will be multiplied by the total number of violations including the current one.

In addition, we will notify the IRS if we find dyed diesel fuel in your tanks. The IRS may assess you additional penalties under federal law.

### **Inspection of diesel fuel**

BOE representatives may enter and inspect any premises where diesel fuel is produced, stored, sold, or used. BOE employees may also examine any books and records related to the production, storage, transportation, sale, or use of diesel fuel. State law requires you to allow us or employees of any other government agency acting on our behalf, to inspect your vehicle fuel tanks and/or bulk storage tanks or remove fuel samples. You may be subject to a \$1,000 penalty if you refuse to comply with an inspection of your premises, your fuel tanks, or your books and records.

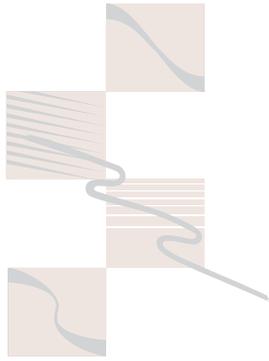


June 2008  
Fuel Taxes Newsletter

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

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## Reporting tips for biodiesel

For California diesel fuel tax purposes, biodiesel is treated the same as petroleum diesel. Unlike the federal definition of diesel fuel, California law does not contain an “Excluded Liquids” provision. A person who produces, imports, or blends biodiesel must be licensed as a supplier.

- **Importing** – You must be a licensed supplier to import biodiesel into California. If you import biodiesel by truck or rail, you are liable for the diesel fuel tax at the time of importation. You must report the tax on your Diesel Fuel Supplier Tax Return for the month in which you imported the fuel. (Report on Schedule 3X, *Imports below the Rack*.)
- **Blending** – Regardless of the blend, tax is due on the removal, sale, or use of any fuel or portion of fuel acquired without payment of the 18 cents-per gallon California excise tax. If you blend or manufacture biodiesel for your own use, the tax is due when you put the biodiesel in the fuel tank of your vehicle. If you blend or manufacture biodiesel for retail sale, the tax is due when the product is blended. (Report on Schedule 5W, *Untaxed Products Blended With, or Added to Fuel, Resulting in a Product Which is Used as, or is Usable as a Taxable Fuel*.)
- **Production of B100** – Production and sales of B100 at a production facility without a rack must be reported on Schedule 5W, *Untaxed Products Blended With, or Added to Fuel, Resulting in a Product Which is Used as, or is Usable as a Taxable Fuel*. Tax is due at the time that the B100 is sold.

## ■ All Fuel Tax and Fee Programs

### Fuel taxes refund information on the Web

Please visit [www.boe.ca.gov/sptaxprog/refund](http://www.boe.ca.gov/sptaxprog/refund) for information regarding filing claims for refund. The Refund page includes information for filing claims for refund under the various Fuel Taxes Division tax and fee programs. You can review what types of exemption or credits may be claimed, what is required to support the claim, and what is required to timely file your claim.

## Excess tax collections

If you collect more taxes or fees than are due on a transaction, you must return the excess amount to your customer.

If you have paid the excess to the BOE on a return, you can claim a refund of your overpayment; however, you must provide evidence showing that you have reimbursed your customer. Otherwise, the excess amount cannot be refunded to you and will be retained by the state.

## Know your rights

As a taxpayer, you have many rights under the law, including the right to:

- Receive information and assistance to help you comply with the law
- Be treated fairly and courteously, and receive prompt service
- Appeal a decision or claim a refund as allowed by law

Accompanying those rights, you have certain responsibilities, including:

- Keeping informed about tax laws and regulations
- Reporting and paying taxes and fees when due
- Maintaining adequate records

For more information order publication 70, *Understanding Your Rights as a California Taxpayer*.

## Changes to Fuel Tax Newsletter

In an effort to save paper and taxpayer money, the Fuel Taxes Newsletter is going to become an annual December newsletter. This is your final June issue. If you have any questions about the fuel taxes program, please visit us on the web at [www.boe.ca.gov/sptaxprog/spfuel.htm](http://www.boe.ca.gov/sptaxprog/spfuel.htm).

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### Board website and Member contact information:

[www.boe.ca.gov](http://www.boe.ca.gov)

### Internet E-Mail

[www.boe.ca.gov/info/email.html](http://www.boe.ca.gov/info/email.html)

### Tax Evasion Hotline

888-334-3300

### Legislation

[www.leginfo.ca.gov](http://www.leginfo.ca.gov)

### Taxpayers' Rights Advocate

888-324-2798

[www.boe.ca.gov/tra/tra.htm](http://www.boe.ca.gov/tra/tra.htm)