

Rulemaking File
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Title18. Public Revenue
Diesel Fuel Tax
Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

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**State of California
Office of Administrative Law**

In re:
Board of Equalization

Regulatory Action:

Title 18, California Code of Regulations

Adopt sections:

Amend sections: 1432

Repeal sections:

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Government Code Section 11349.3

OAL Matter Number: 2016-0608-01

OAL Matter Type: Regular Resubmittal (SR)

This resubmittal action, related to OAL Matter No. 2016-0112-03, amends regulations regarding nontaxable uses of diesel fuel in a motor vehicle. The action, *inter alia*, (1) clarifies language; (2) distinguishes between fuel used to operate a motor vehicle on the highway from fuel used to operate auxiliary equipment; (3) provides safe-harbor percentages that can be applied to diesel fuel used by certain vehicles with auxiliary equipment when claiming a refund for the portion of the fuel used to power auxiliary equipment.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 6/21/2016.

Date: June 21, 2016



Mark Storm
Senior Attorney

For: Debra M. Cornez
Director

Original: David J. Gau
Copy: Richard Bennion

RESUBMITTAL

STATE OF CALIFORNIA—OFFICE OF ADMINISTRATIVE LAW
NOTICE PUBLICATION/REGULATIONS SUBMISSION

See instructions on reverse

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1019-01	REGULATORY ACTION NUMBER 2016-0608-0ISR	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED - FILED
in the office of the Secretary of State
of the State of California

JUN 21 2016

1:51 PM

2016 JUN -8 A 9:24
OFFICE OF ADMINISTRATIVE LAW

AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
-----------------------------------------------------------------	-----------------------------

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER 2015, 44-2	PUBLICATION DATE 10/30/2015	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 2016-0112-035
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT</td> </tr> <tr> <td>AMEND 1432</td> </tr> <tr> <td>REPEAL</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND 1432	REPEAL
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT		
		AMEND 1432		
	REPEAL			
TITLE(S) 18				

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input checked="" type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
5/2/2016 - 5/25/2016

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a)) <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify) _____

7. CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984	E-MAIL ADDRESS (Optional) rbennion@boe.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Joann Richmond</i>	DATE June 7, 2016
TYPED NAME AND TITLE OF SIGNATORY Joann Richmond, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only
ENDORSED APPROVED
JUN 21 2016
Office of Administrative Law

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1432**

1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

(a) Power Take-Off Equipment.

(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.

(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

(a) Diesel Fuel Used for Purposes Other Than Operating Motor Vehicles Upon the Highways of This State.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered "auxiliary equipment." Equipment powered from a separate

fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck (automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self-loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self-loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>

<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader (dump with spreader)</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet/vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) Off-Highway Use.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) Refunds.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment in power take-off equipment or to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use ~~any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes~~ the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) Idle Time.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to idle while idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while power take-off auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the ~~power take-off auxiliary~~ equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60016, 60019, 60026, 60501 and 60502, Revenue and Taxation Code.

**SUMMARY OF REGULATORY
ACTIONS**

**REGULATIONS FILED WITH
SECRETARY OF STATE**

This Summary of Regulatory Actions lists regulations filed with the Secretary of State on the dates indicated. Copies of the regulations may be obtained by contacting the agency or from the Secretary of State, Archives, 1020 O Street, Sacramento, CA 95814, (916) 653-7715. Please have the agency name and the date filed (see below) when making a request.

File# 2016-0512-01
BOARD FOR PROFESSIONAL ENGINEERS,
LAND SURVEYORS AND GEOLOGISTS
Waiver of Fundamentals Examination

The Board of Professional Engineers, Land Surveyors, and Geologists (Board) in this action is amending title 16, section 438 of the California Code of Regulations. This rulemaking removes language that identifies an eight-hour written examination for the Fundamentals of Engineering examination (FE) and the Fundamentals of Surveying examination (FS) because individuals are no longer tested within an eight-hour time frame. FE and FS examinees are tested on the content of the exam and not the timeframe. Additionally, this rulemaking removes the ability of individuals who hold an Engineer-in-Training certificate (EIT) to waive the Land Surveyor-in-Training certificate (SIT). This change is necessary due to the passage of Senate Bill 1576 (Statutes of 2012, Chapter 661) which limits the exemption to persons who are registered as California civil engineers instead of simply an engineer-in-training.

Title 16
AMEND: 438
Filed 06/22/2016
Effective 10/01/2016
Agency Contact: Kara Williams (916) 263-5438

File# 2016-0513-01
BOARD OF EDUCATION
Gifted and Talented Pupil Program

This change without regulatory effect repeals Subchapters 3, 4, 5, and 6 of Chapter 4 of Division 1 of Title 5 of the California Code of Regulations, concerning gifted and talented pupils, as a result of the repeal of the underlying governing statutes (Education Code sections 52200 through 52212) by Senate Bill 971 (Chapter 923, Statutes of 2014).

Title 5
REPEAL: 3820, 3822, 3823, 3824, 3831, 3840,
3860, 3870
Filed 06/15/2016
Agency Contact: Hillary Wirick (916) 319-0644

File# 2016-0608-01
BOARD OF EQUALIZATION
Other Nontaxable Uses of Diesel fuel in a Motor Vehicle

This resubmittal action, related to OAL Matter No. 2016-0112-03, amends regulations regarding nontaxable uses of diesel fuel in a motor vehicle. The action, inter alia, (1) clarifies language; (2) distinguishes between fuel used to operate a motor vehicle on the highway from fuel used to operate auxiliary equipment; (3) provides safe-harbor percentages that can be applied to diesel fuel used by certain vehicles with auxiliary equipment when claiming a refund for the portion of the fuel used to power auxiliary equipment.

Title 18
AMEND: 1432
Filed 06/21/2016
Effective 06/21/2016
Agency Contact: Richard Bennion (916) 445-2130

File# 2016-0524-01
CALIFORNIA ARCHITECTS BOARD
Intern Development Program (IDP) Guidelines

This rulemaking action by the California Architects Board amends section 109 of title 16 of the California Code of Regulations to update the Intern Development Program (IDP) Guidelines of the National Council of Architectural Registration Boards (NCARB) incorporated by reference in the regulation from the July 2014 version to the current July 2015 version.

Title 16
AMEND: 109
Filed 06/16/2016
Effective 10/01/2016
Agency Contact: Timothy Rodda (916) 575-7217

File# 2016-0510-02
COMMISSION ON PEACE OFFICER STANDARDS
AND TRAINING
Field Training Program & Certificates (Forms)

This rulemaking by the Commission on Peace Officer Standards and Training (POST) amends sections in Title 11 of the California Code of Regulations regarding field training program and certificates. Post is incorporating three forms by reference: Post-Approved Field Training Program (FTP) Or Police Training Program (PTP) Application, POST 2-229; Request For Reissuance of Post Certificate, POST 2-250; and Certificate

Rulemaking File Index
Title 18. Public Revenue
Diesel Fuel Tax
Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

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3. [Business Tax Committee Minutes, September 16, 2015](#)
 - Minutes
 - Chief, Tax Policy Division memo dated September 4, 2015
 - BTC Agenda
 - Formal Issue Paper Number 15-010
 - Exhibit 1 Revenue Estimate
 - Exhibit 2 Text Regulation 1432
4. [Reporter's Transcript Business Taxes Committee, September 16, 2015](#)
5. [Estimate of Cost or Savings, December 21, 2015](#)
6. [Economic and Fiscal Impact Statements, October 19, 2015](#)
7. [Notice of Publications](#)
 - Form 400 and Notice, Publication Date October 30, 2015
 - Email sent to Interested Parties, October 30, 2015
 - CA Regulatory Notice Register 2015, Volume No. 27-Z
8. [Notice to Interested Parties, July 3, 2015](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulation 1505
 - Regulation History
9. [Statement of Compliance](#)
10. [Reporter's Transcript, Item F3, December 16, 2015](#)
11. [Draft Minutes, December 16, 2016, and Exhibits](#)
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulation 1432
 - Regulation History
12. [Email withdrawing the regulation dated 2/24/16](#)

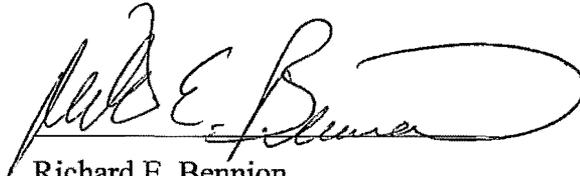
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 - [15 Day Letter](#)
19. [Amended Final Statement of Reasons](#)
20. [Amended Updated Informative Digest](#)

VERIFICATION

I, Richard E. Bennion, Regulations Coordinator of the State Board of Equalization, state that the rulemaking file of which the contents as listed in the index is complete, and that the record was closed on June 6, 2016 and that the attached copy is complete.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

June 6, 2016

A handwritten signature in black ink, appearing to read "Richard E. Bennion", written over a horizontal line.

Richard E. Bennion
Regulations Coordinator
State Board of Equalization

**Final Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor
Vehicle.***

Update of Information in the Initial Statement of Reasons

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, on December 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1432 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

The factual basis, specific purpose, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulation 1432 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The adoption of the proposed amendments to Regulation 1432 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1432 or the proposed amendments to Regulation 1432.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulation 1432 that was not identified in the initial statement of reasons, or which was otherwise not identified or made available for public review prior to the close of the public comment period.

In addition, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- 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; and

- Will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 1432 may affect small business.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulation 1432 does not impose a mandate on local agencies or school districts.

No Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

Determinations Regarding Alternatives

By its motion on December 16, 2015, the Board determined that no alternative to the proposed amendments to Regulation 1432 would be more effective in carrying out the purpose for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulation 1432 that would lessen any adverse impact the proposed amendments may have on small business.

No reasonable alternatives have 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.

**Updated Informative Digest for the State Board of Equalization's
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor
Vehicle***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, on December 16, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1432 without making any changes.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1432 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058). In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subds. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to

calculate the amount of fuel used to operate the PTO equipment and calculate the business's refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment,

and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would

receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because,

under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and

5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE DIANE L. HARKEY, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: SEPTEMBER 16, 2015, TIME: 10:00 A.M.

Action Items & Status Report Items

Agenda Item No.: 1

Title: Proposed Amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

Issue:

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to remove ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and to provide safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel.

Committee Discussion:

Staff introduced the issue. There was no discussion of this item.

Committee Action:

Upon motion by Mr. Runner and seconded by Ms. Stowers, without objection, the Committee approved and authorized for publication the proposed amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. A copy of the proposed amendments to Regulation 1432 is attached.

Agenda Item No.: 2

Title: Proposed Prepaid Mobile Telephony Services Regulations 2460, 2461, and 2462; and, Proposed Amendments to Emergency Telephone Users Surcharge Regulations 2401, 2422, and 2413

Issue:

Whether the Board should initiate rulemaking to interpret, clarify, and make specific the statutes regarding the application of the prepaid mobile telephony services (prepaid MTS) surcharge and local charges to the purchase of prepaid MTS.

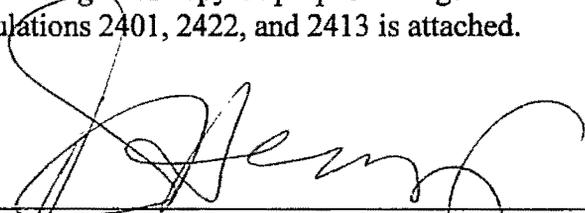
Committee Discussion:

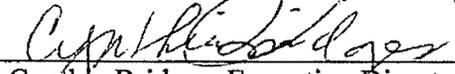
Staff introduced the issue. Mr. Fran Mancina, on behalf of MuniServices, LLC and 60 local agencies and jurisdictions, expressed support for the proposed and amended regulations. He also explained that MuniServices, LLC has been working collaboratively with staff to meet the

jurisdictions' contractual requirements. Mr. Horton encouraged the ongoing efforts. He noted that those jurisdictions that had not contracted with the Board by September 1, 2015, have another opportunity to contract with the Board by December 1. Mr. Horton directed staff to advise direct carriers and retailers of those jurisdictions that have not contracted with the Board so they may avoid a potential issue with Business and Professions Code section 17200.

Committee Action:

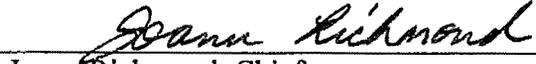
Upon motion by Mr. Runner and seconded by Mr. Horton, without objection, the Committee approved and authorized for publication the proposed Prepaid Mobile Telephony Services Regulations 2460, *Administration*; 2461, *Exemptions, Deductions, Credits, and Specific Applications of Tax*; 2462, *Refunds of Excess Charges Collected*; and proposed amendments to Emergency Telephone Users Surcharge Regulations 2401, *Definitions*; 2422, *Returns and Payment*; and 2413, *Exemptions from Surcharge*. A copy of proposed Regulations 2460, 2461, 2462, and proposed amendments to Regulations 2401, 2422, and 2413 is attached.



Honorable Diane L. Harkey, Committee Chair

Cynthia Bridges, Executive Director

BOARD APPROVED

at the 9-16-15 Board Meeting

Joann Richmond, Chief
Board Proceedings Division

§ 1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

(a) Power Take-Off Equipment.

(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off (2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.

(a) DIESEL FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE HIGHWAYS OF THIS STATE.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California” is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered “auxiliary equipment.” Equipment powered from a separate fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

The proposed regulation contained in this document may not be adopted. Any version that is adopted may differ from this text.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck ((automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck)), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer and wrecker.

(2) Safe Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Hot asphalt distribution truck</u>	<u>15%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>

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<u>Line truck with digger/derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader on dump truck</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet /vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer Trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without

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conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) OFF-HIGHWAY USE.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling, see (d) below.

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) REFUNDS.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment or the diesel fuel in power take-off equipment to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe harbor percentages cannot be claimed for periods prior to April 1, 2016.

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(d) IDLE TIME.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to ~~while idle~~ idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the ~~power take-off~~ auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

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Regulation 2460, Administration

Reference: Sections 42004, 42010, 42014, 42020, 42021, 42022, 42101, 42101.5, 42102, 42102.5, and 42103, Revenue and Taxation Code.

(a) Definitions. For purposes of this chapter (Prepaid Mobile Telephony Services Regulations, commencing with Regulation 2460), the following terms shall have the following meanings:

(1) “Board” means the State Board of Equalization.

(2) “Direct seller” means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

(A) A telephone corporation, as defined by section 234 of the Public Utilities Code.

(B) A person that provides “interconnected Voice over Internet Protocol (VoIP) service,” as that term is defined in section 285 of the Public Utilities Code.

(C) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in subparagraph (A) or (B).

(3) “Emergency telephone users surcharge” means surcharges authorized pursuant to the Emergency Telephone Users Surcharge Act (commencing with Revenue and Taxation Code section 41001) to be collected from prepaid consumers of mobile telephony services.

(4) “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

(5) “Local charge” or “local charges” means the utility user taxes as described in Revenue and Taxation Code section 42102, and charges for access to communication services or to local “911” emergency telephone systems, as described in Revenue and Taxation Code section 42102.5.

(6) “Local jurisdiction” or “local agency” means a city, county, or city and county, which includes a charter city, county, or city and county.

(7) “Mobile data service” has the same meaning as defined in section 224.4 of the Public Utilities Code.

(8) “Mobile telephony service” or “MTS” has the same meaning as defined in section 224.4 of the Public Utilities Code.

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(9) “Ordinance” refers to an ordinance of a local jurisdiction or local agency imposing a local charge, including any local enactment relating to the filing of a refund or a claim arising under the ordinance.

(10) “Person” includes any individual, firm, partnership, joint venture, limited liability company, association, social club, fraternal organization, corporation, estate, trust, business trust, receiver, assignee for the benefit of creditors, trustee, trustee in bankruptcy, syndicate, the United States, this state, any city, county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit.

(11) “Prepaid consumer” means a person who purchases prepaid MTS in a retail transaction.

(12) “Prepaid mobile telephony services” or “prepaid MTS” means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device.

For these purposes, “telecommunications service” and “information service” have the same meanings as defined in section 153 of title 47 of the United States Code.

(13) “Prepaid MTS provider” means a telephone corporation, as defined in section 234 of the Public Utilities Code, that provides prepaid MTS.

(14) “Prepaid MTS surcharge” means the surcharge that consists of the emergency telephone users surcharge and the Public Utilities Commission surcharges, as calculated pursuant to subdivision (b) of Revenue and Taxation Code section 42010, that is required to be collected by a seller from a prepaid consumer.

(15) “Public Utilities Commission” or “Commission” means the Public Utilities Commission created by section 1 of article XII of the California Constitution.

(16) “Public Utilities Commission surcharges” means surcharges authorized by the Public Utilities Commission to be billed and collected from end-use consumers of wireless communications services, and of which the Commission provides the Board with notice pursuant to section 319 of the Public Utilities Code, including:

(A) The California High-Cost Fund-A Administrative Committee Fund program surcharge (Section 275.6 of the Public Utilities Code).

(B) The California High-Cost Fund-B Administrative Committee Fund program surcharge (Section 739.3 of the Public Utilities Code).

(C) The Deaf and Disabled Telecommunications Program Administrative Committee Fund surcharge (Section 2881 of the Public Utilities Code).

(D) The California Teleconnect Fund Administrative Committee Fund program surcharge (Section 280 of the Public Utilities Code).

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(E) The California Advanced Services Fund program surcharge (Section 281 of the Public Utilities Code).

(F) The Moore Universal Telephone Service Act (Article 8 (commencing with section 871) of chapter 4 of part 1 of division 1 of the Public Utilities Code).

(G) Public Utilities Commission reimbursement fees imposed pursuant to chapter 2.5 (commencing with section 401) of part 1 of division 1 of the Public Utilities Code.

(17) "Retail transaction" means the purchase of prepaid MTS, either alone or in combination with mobile data or other services, from a seller for any purpose other than resale in the regular course of business. For these purposes, a "purchase" means any transfer of title or possession, exchange, or barter, conditional or otherwise of prepaid MTS for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when purchased with prepaid MTS for a single, nonitemized price, and for other than a minimal amount of prepaid MTS.

(18) "Sale" means any transfer of title, possession, exchange, or barter, conditional or otherwise of prepaid MTS for a consideration, including such a transfer of a mobile telephone service communication device (commonly termed a cell phone) when sold with prepaid MTS for a single, nonitemized price, and for other than a minimal amount of prepaid MTS.

(19) "Seller" means a person that sells prepaid MTS to a person in a retail transaction.

(b) Registration. Every person that sells prepaid MTS to a person in a retail transaction is required to register with the Board pursuant to Revenue and Taxation Code section 42022. Direct sellers are required to be registered with the Board under the Emergency Telephone Users Surcharge Law (commencing with Revenue and Taxation Code section 41001). Direct sellers are not required to register as a seller of prepaid MTS. A seller, other than a direct seller, shall register for a Prepaid MTS Account.

Every application for registration shall be made in a form prescribed by the Board and shall set forth the name under which the applicant transacts or intends to transact business, the location of his or her place or places of business, and such other information as the Board may require. An application for registration shall be authenticated in a form or pursuant to methods as may be prescribed by the Board.

(c) Payment of Prepaid MTS Surcharge and Local Charges by Purchasers. Every consumer of prepaid MTS in this state is liable for the prepaid MTS surcharge and any local charges until those amounts are paid to the Board, unless a receipt, as provided by subdivision (d), is obtained from a registered seller.

(d) Receipts. Each seller required to collect the prepaid MTS surcharge and local charges from a prepaid consumer must give a receipt to each prepaid consumer at the time of the retail transaction with a separate statement of the combined prepaid MTS surcharge and local charges, even if the prepaid MTS is sold for a price that includes all applicable taxes and fees. For purposes of this subdivision, prepaid MTS are sold on a tax-included basis if the seller discloses

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to the consumer in the receipt that the price of the prepaid MTS includes applicable taxes and fees.

For the purposes of this regulation, a receipt need not be in any particular form and may consist of an invoice, receipt, or other similar document provided to the prepaid consumer, or otherwise disclosed electronically to the prepaid consumer, but must show the following:

(1) The name and place of business of the seller.

(2) The date on which the service was sold.

(3) A combined amount of the prepaid MTS surcharge and local charges collected from the prepaid consumer. If the prepaid MTS were not sold to the prepaid consumer on a tax-included basis, the receipt must also separately state the sales price subject to the prepaid MTS surcharge and local charges.

(e) Payment and Returns.

(1) Payment. Except as otherwise provided in subdivision (e)(4) and (e)(6), the prepaid MTS surcharge and local charges are due and payable to the Board quarterly on or before the last day of the next month following each calendar quarter.

(2) Returns. Notwithstanding Revenue and Taxation Code section 55040, and except as otherwise provided in subdivision (e)(6), every person liable for the prepaid MTS surcharge and local charges must file a return online with the Board through the Board's website quarterly, on or before the last day of the next month following each calendar quarter.

(3) Reporting Periods. Notwithstanding subdivisions (e)(1) or (e)(2), the Board may require returns and payment of the prepaid MTS surcharge and local charges required to be reported to the Board pursuant to the Prepaid Mobile Telephony Services Surcharge Collection Act, for quarterly periods other than calendar quarters, or for reporting periods other than quarterly periods.

(4) Seller Reimbursement Retention. A seller, that is not a direct seller, may deduct and retain a reimbursement amount equal to two percent of the amounts it collects from prepaid consumers for the prepaid MTS surcharge and local charges, on a pro rata basis, according to that portion of the revenues collected for each of the following:

(A) The emergency telephone users surcharge.

(B) The Public Utilities Commission surcharges.

(C) The local charges.

Such reimbursement is to be taken on the return for the corresponding reporting period in which the sale of the prepaid MTS occurs. If a seller claims only some or none of the reimbursement amount during the corresponding reporting period in which the sale occurred, the seller is not allowed to claim a credit for the remaining unclaimed reimbursement on a subsequent return. Rather, the seller must file a claim for refund.

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(5) Electronic Funds Transfer. Notwithstanding Revenue and Taxation Code section 55050, any person required, or that elects, to remit its sales and use tax liabilities due by electronic funds transfer (pursuant to Revenue and taxation Code section 6479.3), must also remit the prepaid MTS surcharge and local charges by electronic funds transfer.

For purposes of this section, "electronic funds transfer" shall have the same meaning as defined in California Code of Regulations, title 18, section 1707, *Electronic Funds Transfer*.

(6) Direct Sellers. A direct seller shall remit the prepaid MTS surcharge and local charges as follows:

(A) That portion of the prepaid MTS surcharge that consists of the Public Utilities Commission surcharges shall be remitted to the Public Utilities Commission, and not to the Board, for those retail transactions with a prepaid consumer in the state, along with any reports required by the Public Utilities Commission.

(B) That portion of the prepaid MTS surcharge that consists of the emergency telephone users surcharge shall be remitted to the Board pursuant to the Emergency Telephone Users Surcharge Act (Part 20 (commencing with Revenue and Taxation Code section 41001)) with a return filed online with the Board through the Board's website for those retail transactions with a prepaid consumer in the state.

(C) Local charges, if applicable, shall be remitted to the local jurisdiction or local agency imposing the local charge, and not to the Board. Remittance of the local charges shall be separately identified from any other local taxes or other charges that are remitted to the local jurisdiction or local entity imposing the local tax or other charge.

For direct sellers, the prepaid MTS surcharge is due and payable to the Board under the same reporting and payment period as their emergency telephone users (911) surcharge account, as provided by California Code of Regulations, title 18, section 2422, *Returns, Reporting and Payment*.

(f) Records. A seller of prepaid MTS shall maintain and make available for examination on request by the Board or its authorized representatives, records in the manner set forth in California Code of Regulations, title 18, section 4901, *Records*.

(g) Relief from Liability. In addition to the provisions set forth in California Code of Regulations, title 18, section 4902, *Relief from Liability*, a seller may be relieved of the liability for the prepaid MTS surcharge and local charges as set forth in (g)(1) and (g)(2):

(1) Point-of-Sale Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith on the information provided by the Board to match the location of the point-of-sale transaction to the applicable prepaid MTS charge or local charge, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

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(2) Known-Address Transaction. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer when all of the following apply:

(A) A seller relies in good faith with due diligence on credible information to match the five-digit postal zip code of the prepaid consumer's address to the applicable prepaid MTS surcharge and local charges, and

(B) A seller collects such amounts from the prepaid consumer and remits such amounts to the Board.

The provisions of subdivision (g)(2) apply even if the five-digit postal zip code of the prepaid consumer's address corresponds to more than one local charge.

(h) Innocent Spouse Relief. A spouse or registered domestic partner claiming relief from liability for any prepaid MTS surcharge or local charge, interest, and penalties shall be relieved from such liability where all the requirements set forth in California Code of Regulations, title 18, section 4903, *Innocent Spouse or Registered Domestic Partner Relief from Liability*, are met.

(i) Local Charges

(1) Ordinances in effect as of September 1, 2015. On and after January 1, 2016, a local charge imposed by a local agency on prepaid mobile telephony services shall be collected from the prepaid consumer by a seller at the same time and in the same manner as the prepaid MTS surcharge is collected under Part 21 (commencing with Revenue and Taxation Code section 42001) provided that, on or before September 1, 2015, the local agency enters into a contract with the Board pursuant to Revenue and Taxation Code section 42101.5.

In the event a local agency or local jurisdiction does not enter into a contract with the Board by September 1, 2015, the local agency may enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year. Thereafter, all subsequently enacted local charges, increases to local charges, or other changes thereto, shall become operative pursuant to paragraphs (2), (3), (4) and (5) of this subdivision.

(2) New Local Charges. When a local agency or local jurisdiction adopts a new local charge, after September 1, 2015, the local agency shall enter into a contract with the Board, pursuant to Revenue and Taxation Code section 42101.5, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(3) Increases in Local Charges. When a local agency or local jurisdiction increases an existing local charge, after September 1, 2015, the local agency shall provide the Board written notice of the increase, on or before December 1, with collection of the local charge to commence April 1 of the next calendar year.

(4) Advance Written Notification. When a local charge is about to expire or decrease in rate, the local agency or local jurisdiction imposing the local charge shall notify the Board in writing of the upcoming change, not less than 110 days prior to the date the local charge is scheduled to expire or decrease. The change shall become operative on the first day of the calendar quarter commencing after the specified date of expiration or decrease in rate.

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If advance written notice is provided less than 110 days prior to the specified date of expiration or decrease in rate, the change shall become operative on the first day of the calendar quarter commencing more than 60 days after the specified date of expiration or decrease.

(5) Inaccurate Rate Posted on Board's Website. When a local agency or local jurisdiction notifies the Board in writing that the rate posted on the Board's website (posted rate) for a local charge imposed by that local agency or local jurisdiction is inaccurate, including scenarios where the local charge was reduced or eliminated and the local agency or jurisdiction failed to provide advance written notice pursuant to subdivision (i)(4), the recalculated rate applicable to the local agency or local jurisdiction shall become operative on the first day of the calendar quarter commencing more than 60 days from the date the Board receives the local agency or local jurisdiction's written notification that the posted rate is inaccurate. The local agency or local jurisdiction shall promptly notify the Board in writing of any such discrepancies with the posted rate that are known or discovered by the local agency or local jurisdiction.

(j) Posting and Calculation of Combined Rates

(1) Calculation of Prepaid MTS Surcharge Rate. The prepaid MTS surcharge rate shall be annually calculated by the Board by no later than November 1 of each year commencing November 1, 2015, by adding the following:

(A) The surcharge rate reported pursuant to subdivision (d) of Revenue and Taxation Code section 41030; and

(B) The Public Utilities Commission's reimbursement fee and telecommunications universal service surcharges, established by the Public Utilities Commission pursuant to subdivisions (a) and (b) of Section 319 of the Public Utilities Code.

The prepaid MTS surcharge rate calculated pursuant to this subdivision shall be the prepaid MTS surcharge rate, exclusive of any applicable local charges, that applies to all retail transactions during the calendar year beginning January 1 following the calculation.

(2) Calculation of Combined Rate. The combined total of the prepaid MTS surcharge rate calculated pursuant to subdivision (j)(1), and the rate(s) of local charges imposed as of September 1, 2015, that are required to be collected by a seller from a prepaid consumer on and after January 1, 2016, shall be posted on the Board's Web site by December 1, 2015. The posted combined rate shall be the rate that applies to all retail transactions during the calendar year beginning January 1, 2016, unless there is a later change in the combined rate.

(3) New Local Charges and Increases to Existing Local Charges. After September 1, 2015, the Board shall post on its website, for each local jurisdiction, the combined total of the rates of the prepaid MTS surcharge and the rate(s) of local charges, as calculated pursuant to Sections 42102 and 42102.5, that each local jurisdiction has adopted and provided written notice to the Board of, on or before December 1 of each year, as provided in subdivision (i). The Board shall post the combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges on its website by March 1, of each year. The posted combined total of the rates of the prepaid MTS surcharge and rate(s) of local charges shall be the rate that applies

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to all retail transactions during the calendar year beginning April 1 following the posting, unless there is a later change in the combined rate.

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Regulation 2461. Exemptions, Deductions, Credits, and Specific Applications of Tax.

Reference: Sections 42010, 42012, 42018, and 42020, Revenue and Taxation Code.

(a) In General. This regulation explains the exemptions, deductions, credits, and specific applications of the prepaid MTS surcharge and local charges to the following types of transactions:

- (1) Sales for resale
- (2) Bad debts
- (3) Bundled transactions
- (4) Lifeline transactions
- (5) Transactions in which a surcharge or local charge was paid to another state

(b) Sales for Resale.

The burden of proving that a sale of prepaid MTS is not at retail is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS are purchased for resale. If timely taken in proper form as set forth in subdivision (b)(1)(A) and in good faith from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS Account as required by Regulation 2460, Administration, the certificate relieves the seller from the duty of collecting the prepaid MTS surcharge and local charges. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the prepaid MTS, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of the prepaid MTS to the purchaser. A resale certificate remains in effect until revoked in writing.

(1) Form of Certificate.

(A) Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a resale certificate with respect to the sale of the prepaid MTS described in the document if it contains all of the following essential elements:

1. The signature of the purchaser, purchaser's employee or authorized representative of the purchaser.
2. The name and address of the purchaser.
3. The number of the Prepaid MTS Account held by the purchaser. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid MTS 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 Prepaid MTS Account in lieu of a Prepaid MTS Account number.
4. A statement that the prepaid MTS described in the document is purchased for resale. The document must contain the phrase "for resale." The use of phrases such as "nontaxable," "not subject to surcharge," "exempt," or similar terminology is not acceptable.

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5. Date of execution of document. (An otherwise valid resale certificate will not be considered invalid solely on the grounds that it is undated.)

(B) A document containing the essential elements described in subdivision (b)(1)(A) is the minimum form which will be regarded as a resale certificate. However, in order to preclude potential controversy, the seller should timely obtain from the purchaser a certificate substantially in the form shown in Appendix A of this regulation.

(C) Blanket Resale Certificate. If a purchaser issues a general (blanket) resale certificate which provides a general description of the items to be purchased, and subsequently issues a purchase order which indicates that the transaction covered by the purchase order is subject to the prepaid MTS surcharge or local charges, the resale certificate does not apply with respect to that transaction. However, the purchaser will bear the burden of establishing either that the purchase order was sent to and received by the seller within the seller's billing cycle or prior to delivery of the prepaid MTS to the purchaser (whichever is the later), or that the prepaid MTS surcharge or local charges were paid to the seller. The purchaser may avoid this burden by using the procedures described in subdivision (b)(1)(D) below.

(D) Qualified Resale Certificate. If a purchaser wishes to designate on each purchase order whether the prepaid MTS being purchased are for resale, the seller should obtain a qualified resale certificate, i.e., one that states "see purchase order" in the space provided for a description of the property to be purchased. Each purchase order must then specify whether or not the prepaid MTS covered by the order is purchased for resale. The use of the phrases "for resale," "resale = yes," "not subject to surcharge," "surcharge = no," or similar terminology on a purchase order, indicating that the prepaid MTS surcharge or local charges should not be added to the sales invoice will be regarded as designating that the prepaid MTS described is purchased for resale provided the combination of the purchase order and the qualified resale certificate contains all the essential elements provided in subdivision (b)(1)(A). However, a purchase order where the applicable amount of the prepaid MTS surcharge or local charges is shown as \$0 or is left blank will not be accepted as designating that the prepaid MTS is purchased for resale, unless the purchase order also includes the phrase "for resale" or other terminology described above to specify that the prepaid MTS is purchased for resale. If each purchase order does not so specify, or is not issued timely within the meaning of subdivision (b), it will be presumed that the prepaid MTS covered by that purchase order was not purchased for resale and that sale or purchase is subject to the prepaid mobile telephony services surcharge or local charges. If the purchase order includes both prepaid MTS to be resold and prepaid MTS to be used, the purchase order must specify which prepaid MTS are purchased for resale and which prepaid MTS are purchased for use.

The seller shall retain copies of the purchase orders along with the qualified resale certificates in order to support the sales for resale.

(E) If the seller does not timely obtain a resale certificate, the fact that the purchaser deletes the prepaid MTS surcharge or local charges from the seller's billing, provides a Prepaid MTS Account to the seller, or informs the seller that the transaction is "not subject to the surcharge" does not relieve the seller from the liability for the prepaid MTS surcharge or local charges nor from the burden of proving the sale was for resale.

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(2) Good Faith.

In absence of evidence to the contrary, a seller will be presumed to have taken a resale certificate in good faith if the resale certificate contains the essential elements as described in subdivision (b)(1)(A) and otherwise appears to be valid on its face. If the purchaser insists that the purchaser is buying for resale prepaid MTS of a kind not normally resold in the purchaser's business, the seller should require a resale certificate containing a statement that the specific prepaid MTS is being purchased for resale in the regular course of business.

(3) Improper Use of Certificate.

Any person, including any officer or employee of a corporation, who gives a resale certificate for prepaid MTS which he or she knows at the time of purchase is not to be resold by him or her or the corporation in the regular course of business is liable for the amount of prepaid MTS surcharge or local charges that would be due if he or she had not given such resale certificate.

(4) Other Evidence to Rebut Presumption of Imposition of the Prepaid MTS Surcharge or Local Charges.

A sale for resale is not subject to the prepaid MTS surcharge or local charges. A person who purchases prepaid MTS for resale and who subsequently uses the prepaid MTS owes the prepaid MTS surcharge on that use. A resale certificate which is not timely taken is not retroactive and will not relieve the seller of the liability for the prepaid MTS surcharge. Consequently, if the seller does not timely obtain a resale certificate containing the essential elements as described in subdivision (b)(1)(A), the seller will be relieved of liability for the prepaid MTS surcharge or local charges only where the seller shows that the prepaid MTS or local charges:

(A) Were in fact resold by the purchaser and was not used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or

(B) Are being held for resale by the purchaser and has not been used by the purchaser for any purpose other than retention, demonstration, or display while holding them for sale in the regular course of business, or

(C) Were consumed by the purchaser and the prepaid MTS surcharge or local charges were reported directly to the Board by the purchaser on the purchaser's return, or

(D) Were consumed by the purchaser and the prepaid MTS surcharge or local charges were paid to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.

(5) Use of XYZ Letters.

A seller who does not timely obtain a resale certificate may use any verifiable method of establishing that it should be relieved of liability for the surcharge under subdivision (b)(4). One method that the Board authorizes to assist a seller in satisfying its burden that the sale was for resale or that the prepaid MTS surcharge was paid, is the use of "XYZ letters." XYZ letters are letters in a form approved by the Board which are sent to some or all of the seller's purchasers inquiring as to the purchaser's disposition of the prepaid MTS purchased from the seller. An XYZ letter will include certain information and request responses to certain

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questions, set forth below. The XYZ letter may also be further customized by agreement between the Board's staff and the seller to reflect the seller's particular circumstances.

(A) An XYZ letter may include the following information: seller's name and Prepaid MTS Account number, date of invoice(s), invoice number(s), purchase order number(s), amount of purchase(s), and a description of the prepaid MTS purchased or other identifying information. A copy of the actual invoice(s) may be attached to the XYZ letter. The XYZ letter will request the purchaser to complete the statement and include the purchaser's name, seller's Prepaid MTS Account number and nature of the purchaser's business. The statement shall be signed by the purchaser, purchaser's employee or authorized representative, and include the printed name of person signing the certificate, title, date, telephone number and city.

(B) An XYZ letter will request that the purchaser, purchaser's employee or authorized representative check one of the boxes provided inquiring as to whether the prepaid MTS in question were:

1. Purchased for resale and resold, without any use other than retention, demonstration, or display while being held for sale in the regular course of business;
2. Purchased for resale and presently in resale inventory, without having been used for any purpose other than retention, demonstration, or display while being held for sale in the regular course of business;
3. Purchased for resale but consumed or used; or
4. Purchased for use.
5. When the purchaser answers either (3) or (4) affirmatively (box checked), the XYZ letter will inquire further whether:
 - A. The prepaid MTS surcharge or local charges were paid directly to the Board on the purchaser's return, and if so, in what amount;
 - B. The prepaid MTS surcharge or local charges were added to the billing of the seller and remitted to the seller, and if so, in what amount;
 - C. The prepaid MTS surcharge or local charges were paid directly to the Board by the purchaser pursuant to an assessment against or audit of the purchaser developed either on an actual basis or test basis.
 - D. The purchaser confirms that the purchase is subject to the prepaid MTS surcharge or local charges.

(C) A response to an XYZ letter is not equivalent to a timely and valid resale certificate. A purchaser responding affirmatively to questions reflected in subparagraphs 1, 2, or 3 of subdivision (b)(5)(B) will be regarded as confirming the seller's belief that a sale was for resale for purposes of subdivision (b)(6). However, the Board is not required to relieve a seller from liability for the collection of the prepaid MTS surcharge or local charges based on a response to an XYZ letter. The Board may, in its discretion, verify the information provided in the response to the XYZ letter, including making additional contact with the purchaser or other persons to determine whether the purchase was for resale or for use or whether the prepaid MTS surcharge or local charges was paid by the

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purchaser. When the Board accepts the purchaser's response to an XYZ letter as a valid response, the Board shall relieve the seller of liability for collection of the prepaid MTS surcharge or local charges.

(D) When there is no response to an XYZ letter, the Board staff should consider whether it is appropriate to use an alternative method to ascertain whether the seller should be relieved of the prepaid MTS surcharge or local charges under subdivision (b)(4) with respect to the questioned or unsupported transaction(s).

(6) Purchaser's Liability for the Prepaid MTS Surcharge or Local Charges.

A purchaser who issues a resale certificate containing the essential elements as described in subdivision (b)(1)(A) and that otherwise appears valid on its face, or who otherwise purchases prepaid MTS that is accepted by the Board as purchased for resale pursuant to subdivision (b)(5) and who thereafter makes any storage or use of the property other than retention, demonstration, or display while holding it for sale in the regular course of business is liable for the prepaid MTS surcharge or local charges on the purchase price of the prepaid MTS. The prepaid MTS surcharge or local charges is due at the time the prepaid MTS is first stored or used and must be reported and paid by the purchaser with the purchaser's return for the period in which the prepaid MTS is first so stored or used.

(c) Bad Debts.

A seller of prepaid MTS is relieved from liability to collect the prepaid MTS surcharge insofar as the measure of the surcharge is represented by accounts found worthless and charged off for income tax purposes (which include circumstances where the seller's income is reported on a related person's income tax return and the bad debt is charged off on that return) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles. A seller may claim a bad debt deduction provided that the prepaid MTS surcharge was actually paid to the state.

This deduction should be taken on the return filed for the period in which the amount was found worthless and charged off for income tax purposes or, if the seller is not required to file income tax returns, charged off in accordance with generally accepted accounting principles.

Failure to take the deduction on the proper return will not in itself prevent the allowance of a refund measured by an amount for which a seller could have taken a timely deduction provided a claim for refund is filed with the Board within the limitation periods specified in section 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(1) Amount Subject to Deduction.

(A) Receipts Subject to the Prepaid MTS Surcharge. If the amount of an account found to be worthless and charged off is comprised in part of receipts not subject to the prepaid MTS surcharge such as sales for resale or sales subject to a Lifeline exemption and in part of receipts subject to the prepaid MTS surcharge, a bad debt deduction may be claimed only with respect to the unpaid amount upon which the prepaid MTS surcharge has been paid. The allowable amount of deduction shall be adjusted for amounts claimed as retailer reimbursement. It shall be presumed that retailer reimbursement was claimed on all previously reported amounts subject to the prepaid MTS surcharge. In determining that amount, all payments and credits to the account may be applied: (1) ratably against

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the various elements comprising the amount the purchaser contracted to pay (pro rata method); (2) may be applied as provided in the contract of sale (contract method); or (3) may be applied by another method which reasonably determines the amount subject to the prepaid MTS surcharge (alternative method). When claiming a bad debt deduction or refund using an alternative method, the seller must include a clear explanation of that method. After having applied payments and credits using one method and claiming a deduction or refund based on such method, a seller shall not thereafter reapply the payments or credits using another method with respect to such losses previously claimed.

(B) Expenses of Collection. No deduction is allowable for expenses incurred by the seller in attempting to enforce collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

(2) Worthless Account Subsequently Collected. If any account found worthless and charged off is thereafter collected by the seller, in whole or in part, the amount subject to the prepaid MTS surcharge so collected shall be included in the first return filed after such collection and tax shall be paid on such amount with the return. The same percentage of the account which the seller claimed as an allowable bad debt deduction or refund shall be used to determine the percentage of the recovery subject to the prepaid MTS surcharge. The percentage subject to the prepaid MTS surcharge of any amounts received from a third party for the sale of an account after the seller has found them to be worthless and has claimed a bad debt deduction or refund are regarded as amounts subsequently collected for purposes of this provision, and the seller must include such amounts in the first return filed after receipt of such amounts and pay the prepaid MTS surcharge thereon.

(3) Records. In support of deductions or claims for refund for bad debts, sellers must maintain adequate and complete records showing:

(A) Date of original sale.

(B) Name and address of purchaser.

(C) Amount purchaser contracted to pay.

(D) Amount on which seller paid the prepaid MTS surcharge.

(E) The jurisdiction(s) where the local prepaid MTS surcharge, when applicable, were allocated.

(F) All payments or other credits applied to the account of the purchaser.

(G) Evidence that the uncollectible portion of gross receipts on which the prepaid MTS surcharge was paid actually has been legally charged off as a bad debt for income tax purposes (whether or not the income tax return has yet been filed) or, if the seller is not required to file income tax returns and the seller's income is not reported on another person's return, charged off in accordance with generally accepted accounting principles.

(H) The percentage subject to the prepaid MTS surcharge of the amount charged off as a bad debt properly allocable to the amount on which the seller reported and paid the prepaid MTS surcharge.

(d) Bundled Transactions.

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(1) The prepaid MTS surcharge and local charges apply to the entire selling price when there is a sale of prepaid MTS in combination with mobile data services or any other services or products for a single price.

(2) The prepaid MTS surcharge and local charges apply to the entire selling price when there is a sale of prepaid MTS in combination with a mobile telephone communication device for a single nonitemized price, except as provided in subparagraphs (A) or (B).

(A) The purchase price of the mobile telephone communication device in the bundled transaction is disclosed to the customer on a receipt, invoice, or other documentation provided to the customer. In such an instance, the prepaid MTS surcharge and local charges shall only apply to the remaining charge after excluding the selling price of the mobile telephone communication device; or

(B) The amount of the prepaid MTS sold with the mobile telephone communication device is a minimal amount. In such an instance, the prepaid MTS surcharge and local charges do not apply to the entire selling price.

For the purposes of this subdivision, the amount of prepaid MTS will be deemed as minimal if the service allotment is for 10 minutes or less or is five dollars or less.

(e) Lifeline Transactions.

A lifeline transaction is a transaction in which a person purchases prepaid MTS from a seller authorized to provide lifeline service under the state or federal lifeline programs. The state lifeline program means the program furnishing lifeline voice communication service pursuant to the Moore Universal Telephone Service Act. The purchase in a retail transaction in this state of prepaid MTS, either alone or in combination with mobile data or other services, by a consumer is exempt from the prepaid MTS surcharge if all of the following apply:

(1) The prepaid consumer is certified as eligible for the state or federal lifeline programs. The seller must retain sufficient documentation supporting amounts claimed as subject to the lifeline program.

(2) The seller is authorized to provide lifeline service under the state or federal lifeline programs. If the seller is not an authorized provider of lifeline service, the exemption does not apply.

(3) The exemption is applied only to the amount paid for the portion of the prepaid MTS that the lifeline program specifies is exempt from the prepaid MTS surcharge.

(f) Transactions in Which a Surcharge or Local Charge was Paid to Another State.

A credit shall be allowed against, but shall not exceed, the prepaid MTS surcharge and local charges imposed on any prepaid consumer of prepaid MTS to the extent that the prepaid consumer has paid emergency telephone users charges, state utility regulatory commission fees, state universal service charges, or local charges on the purchase to any other state, political subdivision thereof, or the District of Columbia. The credit shall be apportioned to the charges against which it is allowed in proportion to the amounts of those charges.

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APPENDIX A

California Resale Certificate - Prepaid Mobile Telephony Services

The burden of proving that a sale of prepaid MTS is not a retail transaction is upon the seller unless the seller timely takes in good faith a certificate from the purchaser that the prepaid MTS are purchased for resale. If timely taken in proper form and in good faith from a person who is engaged in the business of selling prepaid MTS and who holds a Prepaid MTS account as required by Regulation 2460, Administration, this certificate relieves the seller from the duty of collecting the prepaid MTS surcharge and local charges. If the purchaser is not required to hold a Prepaid MTS Account because the purchaser makes no sales of prepaid MTS 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 Prepaid MTS Account in lieu of a Prepaid MTS Account number.

I HEREBY CERTIFY:

1. I hold valid California prepaid MTS Account Number: _____.

2. This certificate is for the purchase from _____ of the property described below.
[Vendor's name]

3. I will resell the item(s) described in paragraph 4, which I am purchasing for resale in the regular course of my business operations, and I will do so prior to making any storage, use, or other consumption of the item(s) other than retention, demonstration, and display while holding the item(s) for sale in the regular course of my business. I understand that if I use the item(s) purchased under this certificate in any manner other than as just described, I will owe the prepaid MTS surcharge and local charges, based on the sales price of the prepaid MTS, or as otherwise provided by law.

I further understand that if any tangible personal property is involved, the transaction might also be subject to sales or use tax in this state, and this certificate does not relieve me of any obligations imposed pursuant to California's Sales and Use Tax Law.

4. Description of property to be purchased:

<u>Name of Purchaser</u>	
<u>Signature of Purchaser, Purchaser's Employee or Authorized Representative</u>	
<u>Printed Name of Person Signing</u>	<u>Title</u>

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<u>Address of Purchaser</u>	
<u>Telephone Number</u>	<u>Date</u>

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Regulation 2462, Refunds of Excess Charges Collected

Reference: Sections 42010, and 42105, Revenue and Taxation Code.

(a) Excess Charges Collected. Except as otherwise provided in subdivision (c), when an amount represented by a seller to a prepaid consumer of prepaid MTS as constituting charges for the prepaid MTS surcharge or local charges is in excess of the prepaid MTS surcharge or local charges imposed, or is otherwise erroneously or illegally charged or computed under the representation that it was owed as part of the prepaid MTS surcharge or local charges when it is not owed as part of the prepaid MTS surcharge or local charges and is actually paid by the consumer to the seller, the amount so paid constitutes excess charges collected. The seller may refund the excess charges collected to the prepaid consumer who paid the amount to the seller even if the seller has not yet secured a credit or refund from the Board. Any excess charges collected and not refunded to the customer constitute a debt owed to the State, or jointly to the State, for purposes of collection on behalf of, and payment to, the local jurisdiction and to the local jurisdiction imposing the local charges.

(b) Claim for Refund. Except as otherwise provided in subdivision (c), every person required to pay the prepaid MTS surcharge or local charges, including the seller, may apply to the Board for a claim for refund of any amount that has been erroneously or illegally collected or computed and paid to the Board. In order to be timely, the claim for refund must be filed with the Board within the limitation period specified in sections 55222, 55222.1, and 55222.2 of the Revenue and Taxation Code.

(c) Filing a Claim for Refund with the Local Jurisdiction or Local Agency. A prepaid consumer must file a claim for refund for the local charges with the local jurisdiction or local agency, and not the Board, in the following circumstances:

- (1) When a prepaid consumer chooses to rebut the presumed location of a retail transaction, as provided in subdivision (b) of section 42014 of the Revenue and Taxation Code, the prepaid consumer shall file a claim and declaration under penalty of perjury on a form established by the city or county clerk of the local jurisdiction or local agency indicating the actual location of the retail sale. The claim shall be processed in accordance with the provisions of the local enactment that allows the claim to be filed.
- (2) A prepaid consumer that is exempt from the local charges under the local enactment may file a claim for a refund with the local jurisdiction or local agency in accordance with the refund provisions of the local enactment that allows the claim to be filed.
- (3) In connection with any actions or claims relating to or arising from the invalidity of a local tax ordinance, in whole or in part.

(d) Relief from Liability. A seller is not liable for any additional prepaid MTS surcharges or local charges, and is not required to refund any amounts collected from the prepaid consumer under the conditions set forth in subdivision (g)(1) and (g)(2) of Regulation 2460, Administration.

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Regulation 2401. Definitions.

Reference: Sections 41007, 41011, 41015, 41046, ~~and 41021~~, and 42004 Revenue and Taxation Code.

(a) Service Supplier.

(1) "Service Supplier" means both of the following:

(A) Any person supplying intrastate telephone communication services to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1; and

(B) Any person supplying Voice over Internet Protocol (VoIP) service to any service user in this state and providing access to the "911" emergency system by utilizing the digits 9-1-1.

(2) Notwithstanding paragraph (1):

(A) Where intrastate telephone communication services are supplied through a prepaid telephone calling card, the "service supplier" means the person that provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(B) A wholesaler or retailer of prepaid telephone calling cards is not a service supplier unless it provides access to its lines and switches for telephone services and is responsible for deducting the amounts charged for telephone services used from amounts of service available on the prepaid telephone calling card.

(b) Intrastate Telephone Communication Services. "Intrastate telephone communication services" means all local or toll telephone services where the point or points of origin and the point or points of destination of the services are all located in this state. It includes the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radiotelephone stations constituting a part of a local telephone system and any facility or service provided in connection with local telephone service. It also includes either:

(1) A telephonic quality communication for which there is a toll charge for the service that varies in amount with either the distance or elapsed transmission time, or the distance and elapsed transmission time, of each individual communication; or

(2) A service which entitles the subscriber, upon payment of a periodic charge (whether a flat charge or a charge based upon total elapsed transmission time), to the privilege of a predetermined amount of units or dollars of telephonic communications or an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radiotelephone stations in a specified area which is outside the local telephone system area in which the station provided with the service is located.

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(c) Billing Agent. "Billing Agent" shall mean any person that submits a bill to a service user on behalf of another person who is a service supplier, reseller or billing aggregator. A billing agent is not considered to be a service supplier for intrastate telephone communication services provided by or billed on behalf of that person.

(d) Billing Aggregator. "Billing Aggregator" shall mean any person engaged in the business of facilitating the billing and collection of charges for intrastate telephone communication services by aggregating the information about telephone communication services provided by one or more service suppliers and submitting the combined information to one or more local exchange carriers for billing and collection. The billing aggregator may contract with service suppliers to:

- (1) receive call information detail from one or more service suppliers and submit that call information detail to one or more local exchange carriers acting as billing agents;
- (2) receive payments from local exchange carriers acting as billing agents for disbursement as directed by service suppliers; and
- (3) prepare and file returns and remit the surcharge to the Board in the manner provided in the applicable contract.

A billing aggregator shall identify all service suppliers on whose behalf it will prepare and file returns at such time and in such form as the Board requests.

(e) Prepaid Telephone Calling Card. "Prepaid telephone calling card" means any card, or other identifier such as an authorization number or access code, which is purchased in advance of use of telephone services, and entitles the holder of the card or user of the authorization number or access code to a specified dollar amount or number of minutes of telephone service, where dollar amounts or minutes for telephone services used are deducted from the amount of prepaid service available on the prepaid telephone calling card as local and long distance telephone services are provided to the user of the prepaid telephone calling card.

(f) Mobile Telephony Service. "Mobile telephony service" has the same meaning as defined in section 224.4 of the Public Utilities Code.

(g) Prepaid Mobile Telephony Services. "Prepaid mobile telephony services" or "prepaid MTS" means the right to utilize and/or access mobile telecommunications services or information services, including the download of digital products delivered electronically, content, and ancillary services, or both telecommunications services and information services, that must be purchased in advance of usage in predetermined units or dollars and are utilized by means of a mobile device. For these purposes, "telecommunications service" and "information service" have the same meanings as defined in section 153 of title 47 of the United States Code.

(h) Direct Seller. "Direct seller" means a prepaid MTS provider or service supplier, as defined in Revenue and Taxation Code section 41007, that makes a sale of prepaid MTS directly to a prepaid consumer for any purpose other than for resale in the regular course of business.

A direct seller includes, but is not limited, to any of the following:

- (1) A telephone corporation, as defined by section 234 of the Public Utilities Code.

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(2) A person that provides “interconnected Voice over Internet Protocol (VoIP) service,” as that term is defined in section 285 of the Public Utilities Code.

(3) A “retailer engaged in business in this state,” as defined by Revenue and Taxation Code section 6203, that is a member of the same commonly controlled group, as defined in Revenue and Taxation Code section 25105, or that is a member of the same combined reporting group, as defined in paragraph (3) of subdivision (b) of section 25106.5 of title 18 of the California Code of Regulations, as an entity described in paragraph (1) or (2).

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Regulation 2422. Returns, Reporting and Payment.

Reference: Sections 41033, 41051, 41052, and 41053, 42010, and 42021, Revenue and Taxation Code.

Returns filed under the Emergency Telephone User Surcharge law must comply with the four requirements listed below:

(a) On or before the last day of the second month of following each reporting period, as assigned by the Board, calendar quarter every service supplier shall file an emergency telephone users surcharge return on a form prescribed by the Board for the preceding calendar month, quarter or calendar year. The return shall be signed by a responsible officer or agent of the service supplier and shall be accompanied by a payment for the surcharge due. All remittances shall be payable to the State Board of Equalization.

(b) A direct seller of prepaid MTS is required to file a return online with the Board through the Board's website on or before the due date prescribed above.

(c) A direct seller is required to report to the Board the amount of the prepaid MTS surcharge collected for the prior fiscal year by September 1 of each year starting with fiscal year 2016-17.

(d) At the time of filing each surcharge return the service supplier or direct seller shall provide the Board with a list containing the names and addresses of any service users or prepaid consumers who have refused to pay the surcharge, the date the surcharge was billed to each customer, the amount of each unpaid surcharge, and the reasons, if any, given by the users for refusing to make such payment. On and after January 1, 1982, such information shall be provided for a service user or prepaid consumer only if the cumulative uncollected amount for that user totals \$3.00 or more.

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Regulation 2413. Exemptions from Surcharge.

Reference: Sections 41019 and 41027, Revenue and Taxation Code.

The surcharge does not apply to:

(a) Charges for service or equipment furnished by a service supplier subject to public utilities regulation during any period when the same or similar service or equipment is also available for sale or lease from other than a service supplier subject to public utility regulation.

(b) Charges for service when imposition of such surcharge would be in violation of the Constitution of the United States, the United States Code, or the laws of the State of California.

These include charges for service to:

(1) The United States, its unincorporated agencies and instrumentalities, or any state of the United States.

(2) Any incorporated agency or instrumentality of the United States wholly owned by either the United States, or by a corporation wholly owned by the United States.

(3) The American National Red Cross, its chapters and branches.

(4) Insurance companies, including title insurance companies, subject to taxation under California Constitution, Article XIII, Section 28.

(5) Banks, including national banking associations, located within the limits of this state. The exemption for state banks and national banking associations has been repealed beginning with the bank's income year for Bank and Corporation Tax purposes commencing on or after January 1, 1981. The service supplier shall collect the surcharge from each state bank and each national banking association beginning with the first regular billing period applicable to that bank which commences on or after the date the bank becomes subject to the surcharge.

(6) Enrolled Indians who are service users subscribing for service from within the limits of an Indian reservation.

~~(7) Foreign governments and career consular officers and employees of certain foreign governments who are exempt from tax by treaties and other diplomatic agreements with the United States.~~

~~(7)~~ Federal credit unions organized in accordance with the provisions of the Federal Credit Union Act.

(c) Toll charges used in the collection and dissemination of news for public press.

(d) Charges for wide-area telephone service used by common carriers in the conduct of their business.

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(e) Charges for intrastate telephone communication services which are exempt from the federal communication services tax pursuant to Section 4253 of the Internal Revenue Code of 1954.

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STATE BOARD OF EQUALIZATION

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BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

September 4, 2015

Dear Interested Party:

Enclosed are the Agenda, Issue Paper, and Revenue Estimate for proposed amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, which will be presented at the Board's September 16, 2015 Business Taxes Committee meeting. The proposed amendments clarify the definition of highway use and provide examples when diesel fuel is not used to operate vehicles upon the public highway.

Please feel free to publish this information on your website or otherwise distribute it to your associates, members, or other persons that may be interested in this issue.

Thank you for your input on these issues and I look forward to seeing you at the Business Taxes Committee meeting at **10:00 a.m. on September 16, 2015** in Room 121 at the address shown above.

Sincerely,

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

SB:ls

Enclosures

cc: (all with enclosures, via email and/or hardcopy as requested)
Honorable Jerome E. Horton, Chairman, Third District
Senator George Runner (Ret.), Vice Chair, First District
Honorable Fiona Ma, CPA, Member, Second District
Honorable Diane L. Harkey, Member, Fourth District
Honorable Betty T. Yee, State Controller, c/o Ms. Yvette Stowers (MIC 73)

Ms. Kari Hammond, Board Member's Office, Third District
Mr. David Hunter, Board Member's Office, Third District
Ms. Shellie Hughes, Board Member's Office, Third District
Mr. Sean Wallentine, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, First District
Mr. Alan Giorgi, Board Member's Office, First District
Mr. Brian Wiggins, Board Member's Office, First District
Mr. Jim Kuhl, Board Member's Office, Second District
Ms. Kathryn Asprey, Board Member's Office, Second District
Mr. John Vigna, Board Member's Office, Second District
Mr. Tim Morland, Board Member's Office, Second District
Ms. Lizette Mata, Board Member's Office, Second District
Mr. Russell Lowery, Board Member's Office, Fourth District
Mr. Ted Matthies, Board Member's Office, Fourth District
Ms. Lisa Renati, Board Member's Office, Fourth District
Mr. Clifford Oakes, Board Member's Office, Fourth District
Ms. Lynne Kinst, Board Member's Office, Fourth District
Mr. Ramon Salazar, State Controller's Office (MIC 73)
Ms. Cynthia Bridges (MIC 73)
Mr. Randy Ferris (MIC 83)
Mr. David Gau (MIC 101)
Ms. Lynn Bartolo (MIC 43)
Mr. Todd Gilman (MIC 70)
Mr. Wayne Mashihara (MIC 47)
Mr. Kevin Hanks (MIC 49)
Mr. Mark Durham (MIC 67)
Mr. Robert Tucker (MIC 82)
Mr. Jeff Vest (MIC 85)
Mr. Jeff Angeja (MIC 85)
Mr. David Levine (MIC 85)
Mr. Bradley Heller (MIC 82)
Mr. Lawrence Mendel (MIC 82)
Mr. John Thiella (MIC 73)
Mr. Kevin Smith (MIC 82)
Ms. Kirsten Stark (MIC 50)
Mr. Marc Alviso (MIC 101)
Mr. Chris Lee (MIC 101)
Ms. Lauren Simpson (MIC 70)
Ms. Karina Magana (MIC 47)
Mr. Bradley Miller (MIC 92)
Mr. Bill Benson (MIC 67)
Ms. Tracy McCrite (MIC 50)
Ms. Laurel Smith (MIC 88)

Agenda – September 16, 2015 Business Taxes Committee Meeting
Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

Action 1 – Agreed Upon Items

Agenda, pages 2-7.

Alternative 1

Approve and authorize publication of the proposed amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*.

The amended regulation defines terms, provides examples of qualifying equipment, and provides safe-harbor percentages for nontaxable uses of diesel fuel.

OR

Alternative 2

Do not approve the proposed revisions to Regulation 1432.

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Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

Action 1 – Staff Recommendation

~~(a) Power Take-Off Equipment.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~
~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) DIESEL FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE HIGHWAYS OF THIS STATE.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators,

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Action 1 – Staff Recommendation

air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered “auxiliary equipment.” Equipment powered from a separate fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck ((automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck)), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>

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Action 1 – Staff Recommendation	<u>Carpet cleaning van</u>	10%
	<u>Cement mixer</u>	25%
	<u>Cement pumper</u>	40%
	<u>Distribution truck (hot asphalt)</u>	15%
	<u>Dump trailer</u>	15%
	<u>Dump truck</u>	15%
	<u>Fire truck</u>	25%
	<u>Garbage truck</u>	35%
	<u>Leaf truck</u>	15%
	<u>Lime spreader</u>	15%
	<u>Line truck with digger, derrick or aerial lift</u>	20%
	<u>Log truck with self loader</u>	20%
	<u>Mobile crane</u>	25%
	<u>Pneumatic tank truck</u>	15%
	<u>Refrigeration truck</u>	20%
	<u>Salt spreader (dump with spreader)</u>	15%
	<u>Seeder truck</u>	15%
	<u>Semi-wrecker</u>	15%
	<u>Service truck with jack hammer/drill</u>	15%
	<u>Sewer cleaning truck/jet/vactor</u>	25%
<u>Snow plow</u>	15%	
<u>Spray truck</u>	15%	

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	<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
	<u>Sweeper truck</u>	<u>20%</u>
	<u>Tank transport</u>	<u>15%</u>
	<u>Tank truck</u>	<u>15%</u>
	<u>Truck with hydraulic winch</u>	<u>15%</u>
	<u>Transfer trailer</u>	<u>20%</u>
	<u>Wrecker</u>	<u>15%</u>
	<u>Other Auxiliary Equipment</u>	<u>10%</u>
	<p><u>(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the “other” category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.</u></p>	
	<p>(b) OFF-HIGHWAY USE.</p>	
	<p><u>(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel</u></p>	

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Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) REFUNDS.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment or the diesel fuel in power take-off equipment to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) IDLE TIME.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to while idle idling a motor vehicle on the highway. If the motor

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Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

	<p>vehicle is idling on the highway while auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the power take-off auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. <u>If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.</u></p>
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Issue Paper Number 15-010



- Board Meeting
- Business Taxes Committee
- Customer Services and Administrative Efficiency Committee
- Legislative Committee
- Property Tax Committee
- Other

Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

I. Issue

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to remove ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and to provide safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel.

II. Alternative 1 - Staff Recommendation

Staff recommends approval of the proposed amendments to Regulation 1432, as provided in Exhibit 2. Staff's proposal defines terms, provides examples of qualifying equipment, and provides safe-harbor percentages for nontaxable uses of diesel fuel.

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1432.

IV. Background

Prior to July 1, 1995, all exemptions from tax for both diesel fuel and alternative fuels covered under the Use Fuel Tax Law were governed by Regulation 1316, *Exempt Uses of Fuel in a Motor Vehicle* (Regulation 1316). On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (commencing with Revenue and Taxation Code (RTC) section 8601), and placed into the newly created Diesel Fuel Tax Law (commencing with RTC section 60001). In 1998, the Board of Equalization (BOE) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

RTC section 60501, subdivision (a)(4)(A) provides that persons who paid the excise tax on diesel fuel they purchased and "[u]sed for purposes other than operating motor vehicles upon the public highways of the state" may, if other criteria are also met, be granted a refund of the tax they paid. Regulation 1432 allows a claim for refund for excise tax paid on diesel fuel used in "power take-off" (PTO) equipment and for off-highway uses. Currently, a business must substantiate the amount of fuel used off highway, usually by conducting a fuel use study. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system operate normally while being followed by a similar "shadow" truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel use would be used to calculate the amount of allowed exemption.

V. Discussion

Staff is revising Regulation 1432 to streamline the refund process for claimants, as well as provide clarifying language and examples to make the regulation easier to understand. Streamlining the process will also make it cost effective for small operators to file refund claims. While small operators may currently be eligible for refunds, many do not request refunds because the cost of conducting a test of fuel use is prohibitive. Staff's proposed revisions provide examples of equipment that qualify as auxiliary equipment, as well as safe-harbor exemption percentages for fuel consumed in auxiliary equipment. This paper addresses suggestions that were raised in interested parties meetings and the submissions received from interested parties.

Auxiliary Equipment

As explained above, a person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power equipment, accessories or amenities from the same fuel tank as the motor vehicle as well as fuel used off-highway. To help clarify the exemption, staff recommends replacing the term "Power Take-Off Equipment," which has various interpretations, with the more accurate term "auxiliary equipment." In addition to defining "auxiliary equipment," staff recommends providing examples of eligible auxiliary equipment that may qualify for the exemption, as well as equipment that does not qualify for the exemption to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment include: booms, hydraulic winches, cranes, and lifts. The proposed changes also define what constitutes off-highway use, and explain the operator's responsibility for maintaining proper records and providing supporting documentation.

Safe-Harbor Percentages (for vehicles other than garbage trucks)

Staff proposes to provide a list of various safe harbor percentages for eligible auxiliary equipment. Proposed subdivision 1432(a)(2) includes a list of equipment and a safe-harbor percentage of exempt use for each equipment type. Beginning April 1, 2016, claimants would use this percentage when claiming a refund for exempt fuel usage by looking up the safe-harbor percentage allowed for a specific type of equipment and applying that percentage to the number of gallons of diesel fuel used in that piece of equipment. Currently, to take this exemption, claimants must provide supporting documentation to verify exempt fuel use. The most common method to substantiate exempt fuel use is conducting a fuel use study for each type of equipment that uses exempt fuel. Not only is this process time consuming, it also can be expensive. If the regulation is adopted a claimant may still elect to do a study if they believe their auxiliary equipment consumes more fuel than the safeharbor allows. If a claimant has a type of equipment not assigned a safe-harbor percentage, they may elect to use the ten percent exemption allowed for "other equipment." Otherwise, the claimant may opt to conduct a study in order to claim a higher percentage. The safe-harbor percentages were determined by contacting other states as well as using data provided by the Special Taxes Department and Fees, Appeals and Data Analysis Branch.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. Staff recognizes that there may be significant differences in the volume of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, by having a broad definition of "garbage truck," companies would not have to document fuel consumption on a truck-by-truck basis, and instead track only the fleet usage. This is important because, if a greater percentage was used for some trucks and a lesser percentage for other trucks, the fuel usage of each truck would need to be tracked.

Staff also recognizes that fuel usage varies depending on the density of the truck route. Generally, trucks used in urban areas have higher auxiliary equipment fuel use than trucks used in rural areas, since stops requiring auxiliary equipment to lift garbage cans and crush garbage are more concentrated in urban areas.

With all of these factors, it is challenging for staff to determine a safe-harbor percentage for the "garbage truck" category. The percentage should be high enough that, generally, claimants will receive a reasonable refund without generating excessive refunds for some operators. Originally, staff proposed a safe-harbor percentage of 30 percent for the "garbage truck" category. Staff arrived at 30 percent by surveying exemption amounts offered by other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be 25 percent. Staff added a five percent allowance for off-highway use. Off-highway use includes fuel used in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Staff received a submission on July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management (Exhibit 3), regarding the safe-harbor percentages for garbage trucks, refund calculations, and how claiming a safe-harbor percentage in a period may impact a future claim for refund. With regard to the safe-harbor percentage for garbage trucks, staff explained how the BOE arrived at the proposed 30 percent exemption. Waste Management believed that the 30 percent exemption was too

low, and they provided BOE staff additional data supporting an increased safe-harbor exemption. Staff reviewed the data provided by Waste Management and also examined data from past BOE approved claims for other refuse companies. Based on this re-evaluation, staff has determined that a 35 percent exemption for garbage trucks is a suitable safe harbor. Waste Management supports this recommendation.

In addition, staff and Waste Management discussed the concept of having more than one rate for garbage trucks, as well as the tracking and reporting requirements that would go with this option. Waste Management does not currently have the ability to monitor consumption that this option would require; as a result staff and Waste Management agreed that a single rate for garbage trucks is the best option.

Fuel Use Studies

In the revision of Regulation 1432, staff proposes additional language regarding fuel use studies. To ensure that a study remains representative despite changing equipment and fuel composition technologies, it is recommended that a study be valid for a five-year period of time. In their submission, Waste Management recommended including examples in the regulation of how to conduct a fuel use study. Staff responded by explaining some of the potential drawbacks of providing specific testing methods in the regulation, as each piece of equipment has a unique testing methodology. In addition, it would be difficult to update a regulation since the technology used for the testing process is changing at a rapid rate. To address this concern, staff will update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the BOE website, http://www.boe.ca.gov/sptaxprog/refund/faq_users.htm, as well as work with claimants to help them devise a study that is suitable for the specific equipment they would like to test. In addition, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date for the resulting exemption. This will provide guidance to taxpayers, while still allowing flexibility for updates.

Refunds

Subsection 1432(c) has been revised to reflect the inclusion of safe-harbor percentages. If a business claims a refund using the safe-harbor percentages, they are still responsible for maintaining proper records to support their claim. In addition, it clarifies that a business still has the option of conducting a fuel use study if they believe they consume a higher amount of exempt fuel than the safeharbor allows. The safe-harbor percentages cannot be applied to periods prior to the effective date of the revision of Regulation 1432.

Idle Time

The revised language in Regulation 1432 clarifies that if the vehicle with auxiliary equipment is idling on-highway, only the fuel used to operate the auxiliary equipment will qualify for an exemption. Fuel used to idle the vehicle on-highway does not qualify for the exemption. In addition to fuel used in auxiliary equipment, the safe-harbor percentages have been calculated to include an allowance for off-highway use, which includes idling off-highway. It should also be noted that effective June 2008 the California Air Resources Board adopted a regulation prohibiting idling for more than five consecutive minutes, with few exceptions.

VI. Alternative 1 - Staff Recommendation

A. Description of Alternative 1

Staff recommends approval of the proposed amendments to Regulation 1432, as provided in Exhibit 2. Staff's proposal defines terms, provides examples of qualifying equipment, and provides safe-harbor percentages for nontaxable uses of diesel fuel.

B. Pros of Alternative 1

The proposed revisions would create a consistent exemption percentage businesses can claim when diesel fuel is used to operate auxiliary equipment. By providing a safe-harbor percentage, businesses do not have to conduct a study, which can be costly and time consuming to complete. It will also allow small businesses who previously have chosen not to complete a claim with a simpler, less time consuming method to support their exempt use. Staff will also be able to process refunds in a more expeditious manner if the safe harbor is taken; a refund will not be contingent on the completion of a study.

C. Cons of Alternative 1

Claimed fuel consumption by equipment that exceeds the safe-harbor percentages will still need to have a study conducted to support the amount requested. If equipment is not listed, the highest exemption available without a test is 10%.

D. Statutory or Regulatory Change for Alternative 1

No statutory change is required; however, Regulation 1432 will need to be revised.

E. Operational Impact of Alternative 1

The refund process will be streamlined, decreasing the amount of time needed to approve a refund. Staff will spend less time working on approving and validating studies. Staff will publish the proposed amendments to Regulation 1432 and begin the formal rulemaking process. Staff will also revise the appropriate forms and publications that contain guidance relevant to this issue. In addition, staff will contact industry representatives and previous claimants to notify them of the changes.

F. Administrative Impact of Alternative 1

1. Cost Impact

The workload associated with publishing the regulation and updating forms and publications is considered routine. Any corresponding cost would be absorbed within the BOE's existing budget.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Claimant/Customer Impact of Alternative 1

The proposed changes will provide claimants published safe-harbor percentages, which will make it easier to calculate and claim a refund. Many claimants who may have previously chosen not to perform a study and file a claim are now able to request a refund without having to perform a fuel use study or submitting similar information.

H. Critical Time Frames of Alternative 1

The changes are proposed on a prospective basis, which if approved would go into effect April 1, 2016.

VII. Alternative 2

A. Description of Alternative 2

Do not amend Regulation 1432.

B. Pros of Alternative 2

The BOE will not incur the workload associated with revising the regulation.

C. Cons of Alternative 2

Claimants and BOE staff will still have difficulty determining what does and does not qualify for exempt use. Claimants will not have access to the safe-harbor percentages when documenting their exempt use.

D. Statutory or Regulatory Changes for Alternative 2

None.

E. Operational Impact of Alternative 2

None.

F. Administrative Impact of Alternative 2

1. Cost Impact

None.

2. Revenue Impact

None. See Revenue Estimate (Exhibit 1).

G. Claimant/Customer Impact of Alternative 2

Without the regulatory amendments, Regulation 1432 will remain in effect. Claimants will not have the ease of using the safe-harbor percentages, and will still be required to conduct fuel use studies or

otherwise verify off-highway fuel use to claim a refund for diesel fuel used in an exempt manner. In addition, the language will remain ambiguous and lack clarity.

H. Critical Time Frames for Alternative 2

None.

Preparer/Reviewer Information

Prepared by: Policy and Compliance Division, Special Taxes and Fees Department

Current as of: September 2, 2015

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



BOARD OF EQUALIZATION
REVENUE ESTIMATE

Proposed Amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

I. Issue

Whether the Board should approve amending Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to remove ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and to provide safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel.

II. Alternative 1 - Staff Recommendation

Staff recommends approval of the proposed amendments to Regulation 1432. Staff's proposal defines terms, provides examples of qualifying equipment, and provides safe-harbor percentages for nontaxable uses of diesel fuel.

III. Other Alternative(s) Considered

Do not approve the proposed amendments to Regulation 1432.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the staff recommendation that would impact revenue. The proposal provides a safe-harbor exemption percentage businesses can claim when diesel fuel is used to operate auxiliary equipment. By providing a safe-harbor percentage, businesses do not have to conduct a study, which can be costly and time consuming to complete. While small operators may currently be eligible for refunds, many do not request refunds because the cost of conducting a test of fuel use is prohibitive. The revisions also include a clause that allows taxpayers to apply an exemption rate received as a result of a fuel use study to five years in the future. Staff will also be able to process refunds in a more expeditious manner if the safe harbor is taken; a refund will not be contingent on the completion of a study.

Other Alternatives Considered

There is nothing in Alternative 2 that would impact revenue. However, claimants and BOE staff will still have difficulty determining what does and does not qualify for exempt use. The refund process will remain cumbersome, and due to the costs involved in conducting a fuel use study, many who are entitled to a refund will be unable to successfully receive a refund. Claimants will not have access to the safe-harbor percentages when documenting their exempt use.

Revenue Summary

Alternative 1 – staff recommendation does not have a revenue impact.

Other alternatives considered – Alternative 2 does not have a revenue impact.

Preparation

Mr. Ronil Dwarka, Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. This estimate has been reviewed by Mr. Mark Durham, Manager, Research and Statistics Section, Legislative and Research Division, and by Ms. Susanne Buehler, Chief, Tax Policy Division, Sales and Use Tax Department. For additional information, please contact Mr. Dwarka at (916) 445-0840.

Current as of August 20, 2015.

§ 1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

(a) Power Take-Off Equipment.

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~
~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) DIESEL FUEL USED FOR PURPOSES OTHER THAN OPERATING MOTOR VEHICLES UPON THE HIGHWAYS OF THIS STATE.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered "auxiliary equipment." Equipment powered from a separate fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck ((automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck)), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
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<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
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<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>

<u>Log truck with self loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>
<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader (dump with spreader)</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet/vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment

not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) OFF-HIGHWAY USE.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) REFUNDS.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment or the diesel fuel in power take-off equipment to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use ~~any~~ method to calculate the amount of refund, including computing a percentage of the fuel used ~~for nontaxable purposes~~ the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) IDLE TIME.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to ~~while idle idling~~ a motor vehicle on the highway. If the motor vehicle is idling on the highway while auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the ~~power take-off~~ auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

SEPTEMBER 16, 2015

BUSINESS TAXES COMMITTEE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Diane L. Harkey
Chair
Jerome E. Horton
Member
Sen. George Runner (Ret.)
Member
Fiona Ma, CPA
Member
Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For the Department:

Susanne Buehler
Chief
Tax Policy Division
Kevin Smith
Tax Counsel III
Legal Department
Lisa Sherrod
Business Taxes
Administrator III
Special Taxes Department
Andrew Kwee
Tax Counsel III
Legal Department

---oOo---

Speaker:

Fran Mancía
Vice President
Government Relations
MuniServices

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 SEPTEMBER 16, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond, what is our next
6 matter?

7 MS. RICHMOND: Our next matter is the
8 Business Taxes Committee. Ms. Harkey is the Chair
9 of that committee.

10 Ms. Harkey.

11 MS. HARKEY: Thank you. We have two issues
12 before the Businesses Taxes Committee. And Ms.
13 Buehler and her staff will be presenting.

14 MS. BUEHLER: Good morning. I'm Susanne
15 Buehler with the Sales and Use Tax Department.

16 We have two agenda items for your
17 consideration today. We will take each agenda item
18 and their respective action items separately before
19 moving to the next.

20 With me for Agenda Item 1 is Mr. Kevin
21 Smith from our Legal Department and Ms. Lisa Sherrod
22 from our Special Taxes and Fees Department.

23 Staff requests your approval and
24 authorization to publish proposed amendments to
25 Special Taxes and Fees Regulation 1432, Other
26 Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

27 The proposed amendments define terms,
28 provide examples of qualifying equipment, and

1 provide safe-harbor percentages for nontaxable uses
2 of diesel fuel.

3 A person still has the option to claim a
4 refund using percentages other than the safe-harbor
5 percentage by submitting a study and obtaining Board
6 approval.

7 We would be happy to answer any questions
8 you may have on this topic.

9 MS. HARKEY: Are there any questions from
10 Members?

11 MR. RUNNER: Move staff recommendation.

12 MS. STOWERS: Second.

13 MS. HARKEY: Have a motion and a second.

14 Do we have any opposition?

15 Okay. So moved.

16 MS. BUEHLER: Thank you.

17 Joining me for Agenda Item 2 is Mr. Andrew
18 Kwee from our Legal Department.

19 Staff requests your approval and
20 authorization to publish proposed Prepaid Mobile
21 Telephony Services Regulations 2460, 2461 and 2462
22 and proposed amendments to Emergency Telephone User
23 Surcharge Regulations 2401, 2422 and 2413.

24 The proposed and amended regulations
25 interpret, clarify, and make specific the statutes
26 regarding the application of prepaid mobile
27 telephony services surcharge and the local charges
28 to the purchase of prepaid mobile telephony

1 services.

2 We do have speakers on this agenda item and
3 we'd be happy to answer any questions you may have
4 after their presentations.

5 MS. HARKEY: Thank you.

6 Do we have anyone from the public that
7 wishes to speak?

8 ---oOo---

9 FRAN MANCIA

10 ---oOo---

11 MR. MANCIA: Good morning.

12 MS. HARKEY: State your name and --

13 MR. MANCIA: Yes, thank you.

14 Good morning, Madam Chair and Members. My
15 name is Fran Mancía. I'm with MuniServices, and
16 we're here today on behalf of our company and our 60
17 California public agency utility tax compliance
18 service clients.

19 In total, our clients represent 70 percent
20 of the annual local utility user tax revenue
21 generated in the State of California. MuniServices
22 and public agencies are keenly interested in the
23 proper, timely and cost effective implementation of
24 these proposed regulations related to prepaid
25 telephony services which are before you for your
26 consideration.

27 For the past several years, we've worked
28 closely with Members, staff, the public, industry

1 and others to work the bills and the process
2 through, in a very collaborative and positive
3 manner. And we're very appreciative of everybody's
4 effort in that -- to that regard.

5 We've been especially focused recently on
6 the contracting process between locals and the BOE,
7 and we're confident the collaborative effort of all
8 those involved will result in a positive outcome for
9 the state and local representatives.

10 So we strongly support the Alternative A
11 and urge the Business Tax Committee to approve and
12 authorize publication of the proposed prepaid mobile
13 telephony service regulations, as well as the
14 regulations related to emergency telephone user
15 surcharge.

16 Thank you for your consideration.

17 MS. HARKEY: Thank you very much.

18 Any other from the public?

19 Members, any comment?

20 MR. HORTON: Um, Madam Chair.

21 MS. HARKEY: Yes.

22 MR. HORTON: I -- I just wanted to
23 encourage all those involved to continue the work
24 that they're doing. I think it's, uh -- it's been a
25 yeoman's effort over the last year to get the word
26 out, get the legislation passed and so forth.

27 On the recommendation side is, there are a
28 number of cities that did not make the first

1 deadline. I'm pleased that a significant number of
2 'em did. But those that didn't, and they have a
3 second bite at the apple in December, let's do what
4 we can to -- to, uh -- to make sure that they are
5 aware and they're engaging. And those who didn't,
6 let's disclose to the direct carriers, as well as
7 the retailers, those potential cities that may not
8 be -- may not have qualified for the first quarter,
9 so that they can avoid a potential 17200 issue.

10 MS. HARKEY: Thank you very much.

11 Any other comments?

12 No.

13 Thank you very much for your work; it's
14 greatly appreciated. This has been going on for
15 quite a while and trying to get this together with
16 all the parties. So I -- I really appreciate the
17 effort. It seems like we've got everyone on board
18 and I know that staff is working diligently to be
19 sure that everything comes in, in a timely fashion.

20 Thank you very much.

21 MR. RUNNER: Move staff recommendation.

22 MR. HORTON: Second, approval of proposed
23 regulation and amendments thereto.

24 MS. HARKEY: We have a first and a second
25 and -- or a motion and a second.

26 Any opposition?

27 Okay. So passed.

28 Thank you very much very, very much.

1 MS. BUEHLER: Thank you.

2 MS. HARKEY: That ends the session of the
3 Business Taxes Committee.

4 ---oOo---

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on September 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 8 constitute a complete and accurate transcription of the shorthand writing.

Dated: September 24, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL
Hearing Reporter



**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel
in a Motor Vehicle***

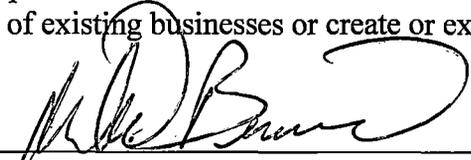
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

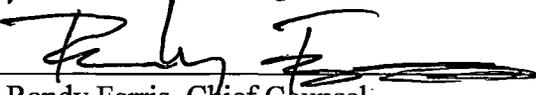
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 12/21/15
Richard Bennion, Regulations Coordinator

Approved by  Date 12/21/15
Randy Ferris, Chief Counsel

**If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and
Chief, Board Proceedings Division, are Required**

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|----------------------------------------------------------------|---------------------------------------------------------------------------|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

Please see the attached .

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The _____ estimates that the economic impact of this regulation (which includes the fiscal impact) is:
(Agency/Department)

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO
 If YES, enter the annual dollar cost per housing unit: \$ _____
 Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?
 Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS Include calculations and assumptions in the rulemaking record.

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

*If YES, complete E2. and E3
If NO, skip to E4*

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- 3. Annual Savings. (approximate)

\$ _____

- 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

FISCAL EFFECT ON STATE GOVERNMENT *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS *Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE



DATE

October 19, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

October 19, 2015

Agency approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

 Exempt under SAM section 6615

DATE

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 1432,
Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

As explained in more detail in the initial statement of reasons, Revenue and Taxation Code (RTC) section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax imposed by the Diesel Fuel Tax Law (RTC, § 60001 et seq.) on diesel fuel they purchased and “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, in 1998, to implement, interpret, and make specific RTC section 60501 by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for filing statutorily required claims for refunds of diesel fuel tax paid on such fuel.

Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment.

Also, currently, under Regulation 1432, a business must substantiate the amount of diesel fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel use by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

The Board has determined that there are issues with Regulation 1432 because it has not been updated since it was adopted in 1998. The Board has determined that there are ambiguities in the regulation’s definition of the term PTO equipment and the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment. Therefore, the proposed amendments to Regulation 1432 address these issues by deleting the ambiguous language regarding PTO equipment and providing clear guidance about refunds of tax paid on diesel fuel used to “power auxiliary equipment,” including defining “equipment used to operate a motor vehicle on a highway” and “auxiliary equipment,” which is not equipment used to operate a motor vehicle on a highway.

The Board also determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary

equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. The proposed amendments to Regulation 1432 address this issue by providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which are based on data regarding diesel fuel used to power auxiliary equipment. The proposed amendments also clarify that claimants still have the “option” to conduct fuel use studies to substantiate that they consume more diesel fuel in a nontaxable manner than the safe-harbor percentages provide. The proposed amendments do not mandate that anyone claim a refund, or mandate that anyone use the safe-harbor percentages, as opposed to performing and using a fuel use study, when claiming a refund, or mandate that claimants use specific methods to perform fuel use studies, and the proposed amendments are fully consistent with and do not expand the scope of the refund provisions in RTC section 60501, subdivision (a)(4)(A). As a result, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Diesel Fuel Tax law or Regulation 1432, 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.

Furthermore, the Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, 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 regulatory action, and the Board has determined that the proposed amendments to Regulation 1432:

- 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;
- 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;
- Will not have a significant effect on housing costs;
- 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; and

- 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.

The Board has also determined that the proposed amendments to Regulation 1432 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.

Finally, Regulation 1432 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 1432 will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-2013)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2015-1019-01	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE

OCT 19 '15 OCT 30 '15

Office of Administrative Law

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY
State Board of Equalization

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Other Nontaxable Uses of Diesel Fuel in a Motor		TITLE(S) 18	FIRST SECTION AFFECTED 1432	2. REQUESTED PUBLICATION DATE October 30, 2015
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other		4. AGENCY CONTACT PERSON Richard E. Bennion	TELEPHONE NUMBER (916) 445-2130	FAX NUMBER (Optional) (916) 324-3984
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S)	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
	AMEND
	REPEAL
TITLE(S)	

3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____
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6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

For use by Office of Administrative Law (OAL) only

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
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TYPED NAME AND TITLE OF SIGNATORY

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

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 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 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 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 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 1432.

AUTHORITY

RTC section 60601.

REFERENCE

RTC sections 60016, 60019, 60026, 60501 and 60502.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is

generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation’s definition of the term PTO equipment, the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation’s provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle’s diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor

percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund

for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent

of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term “incidental off-highway use” to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term “incidental off-highway use” in BTC staff’s draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase “[o]ff-highway use, as defined in subdivision (b)” in BTC staff’s revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled “Off-Highway Use,” were added back to staff’s revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of “off highway” and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of “auxiliary equipment” as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term “auxiliary equipment.” For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as “auxiliary equipment”: automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the “garbage truck” safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after “super sucker” in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to “block boom” trucks after the references to “boom trucks,” in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add “transfer trailers,” which are trailers with a walking floor, to subdivision (a)(1)(B)

and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the

future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable

- manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1432 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 1432 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 1432 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 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. Mr. Bennion is the designated backup contact person to Mr. Smith.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 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 1432. 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 1432 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 1432, 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 1432 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 1432, 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.

Bennion, Richard

From: BOE-Board Meeting Material
Sent: Friday, October 30, 2015 7:30 AM
To: Alonzo, Mary Ann (Legal); Angeja, Jeff (Legal); Armenta, Christopher; Asprey, Kathryn E; Bartolo, Lynn; Bennion, Richard; Benson, Bill; Bisauta, Christine (Legal); Blake, Sue; Block, Susan; BOE-Board Meeting Material; Bridges, Cynthia; Brown, Michele C; Buck, Alfred; Chung, Sophia (Legal); Cruz, Giovan; Davis, Toya P.; Dixon, Camille; Duran, David; Durham, Mark; Epolite, Anthony (Legal); Ferris, Randy (Legal); Folchi, Gino; Ford, Ladeena L; Garcia, Laura; Gau, David; Gilman, Todd; Grant, Micah; Hamilton, Tabitha; Harrison, Michelle; Harvill, Mai; Heller, Bradley (Legal); Hellmuth, Leila; Herrera, Cristina; Hite, Jay; Holmes, Dana; Hughes, Shellie L; Huxsoll, Cary; Jacobson, Andrew; Kinkle, Sherrie L; Kinst, Lynne; Kuhl, James; Lambert, Gary; Lambert, Robert (Legal); Lee, Chris; Levine, David H. (Legal); Lopez, Claudia; Lowery, Russell; Matsumoto, Sid; Matthies, Ted; McElhinney, Andrew; McGuire, Jeff; Miller, Brad; Moon, Richard (Legal); Nienow, Trecia (Legal); Oakes, Clifford; Pielsticker, Michele; Ralston Ratcliff, Natasha; Renati, Lisa; Richmond, Joann; Riley, Denise (Legal); Romano, Dario; Salazar, Ramon; Sarcos, Eric; Schultz, Glenna; Silva, Monica (Legal); Singh, Sam; Smith, Kevin (Legal); Smith, Rose; Stowers, Yvette; Tran, Mai (Legal); Treichelt, Tim; Tucker, Robert (Legal); Vandrick, Tanya; Vena, Emily (Legal); Wallentine, Sean; Whitaker, Lynn; White, Sharon; Wiggins, Brian; Williams, Lee; Wilson, David; Zivkovich, Robert; Zumaeta, Jaclyn
Subject: State Board of Equalization - Announcement of Regulatory Change to Regulation 1432

The State Board of Equalization proposes to adopt amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on December 16-17, 2015.

The proposed amendments update the regulation, including defining "auxiliary equipment" and providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for diesel fuel used to power auxiliary equipment.

To view the notice of hearing, initial statement of reasons, proposed text, and history click on the following link:
http://www.boe.ca.gov/regs/reg_1432_2015.htm.

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

Please do not reply to this message.

Board Proceedings Division, MIC:80
Rick Bennion
Regulations Coordinator
Phone (916) 445-2130
Fax (916) 324-3984
Richard.Bennion@boe.ca.gov



Wilson, David

From: State Board of Equalization - Announcement of Regulatory Change
<Legal.Regulations@BOE.CA.GOV>
Sent: Friday, October 30, 2015 8:28 AM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1432

The State Board of Equalization proposes to adopt amendments to Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. A public hearing regarding the proposed amendments will be held in Room 121, 450 N Street, Sacramento, California on December 16-17, 2015.

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

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SPECIAL ACCOMMODATION REQUEST

PUBLIC HEARING

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

TITLE 18. BOARD OF EQUALIZATION

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

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 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 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 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 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 1432.

AUTHORITY

RTC section 60601.

REFERENCE

RTC sections 60016, 60019, 60026, 60501 and 60502.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to an unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058). In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)–(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in

fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation’s definition of the term PTO equipment, the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation’s provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle’s diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles’ diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the

safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment, companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentages were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still

be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in sub-

division (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment,

as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its draft amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a re-

fund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll-off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods; however, all of the methods presented were based on aggregate fuel purchased, not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that far more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to

operate auxiliary equipment while off the highway or while idling;

4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has

determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1432 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 1432 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 1432 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 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. Mr. Bennion is the designated backup contact person to Mr. Smith.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 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 1432. 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 strikethrough version of the text of Regulation 1432 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 1432, 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 1432 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 1432, 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.

TITLE 18. FRANCHISE TAX BOARD

**NOTICE OF INTENTION TO AMEND THE
CONFLICT-OF-INTEREST CODE OF THE
FRANCHISE TAX BOARD**

NOTICE IS HEREBY GIVEN that the Franchise Tax Board, pursuant to the authority vested in it by section 87306 of the Government Code, proposes amendment to its Conflict-of-Interest Code. All inquiries should be directed to the contact listed below.

The Franchise Tax Board proposes to amend its Conflict-of-Interest Code to include employee positions that involve the making or participation in the making of decisions that may foreseeably have a material effect on any financial interest, as set forth in subdivision (a) of section 87302 of the Government Code. The amendment carries out the purposes of the law and no other alternative would do so and be less burdensome to affected persons.

Changes to the Conflict-of-Interest Code include: Some positions previously designated in the Conflict-of-Interest Code have been removed, and other new positions have been added. The disclosure categories have also been modified and there are other technical changes.

Information on the code amendment is available on the Franchise Tax Board's intranet site.

Any interested person may submit written comments relating to the proposed amendment by submitting them no later than December 14, 2015, or at the conclusion of

the public hearing, if requested, whichever comes later. At this time, no public hearing is scheduled. A person may request a hearing no later than November 27, 2015.

The Franchise Tax Board has determined that the proposed amendments:

1. Impose no mandate on local agencies or school districts.
2. Impose no costs or savings on any state agency.
3. Impose no costs on any local agency or school district that are required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.
4. Will not result in any nondiscretionary costs or savings to local agencies.
5. Will not result in any costs or savings in federal funding to the state.
6. Will not have any potential cost impact on private persons, businesses or small businesses.

All inquiries concerning this proposed amendment and any communication required by this notice should be directed to: Dennis Haase, Tax Counsel IV, (916) 845-3187, dennis.haase@ftb.ca.gov.

**TITLE 22. DEPARTMENT OF CHILD
SUPPORT SERVICES**

**NOTICE OF PROPOSED RULEMAKING TO
AMEND THE
CONFLICT-OF-INTEREST CODE OF THE
DEPARTMENT OF CHILD SUPPORT
SERVICES**

NOTICE IS HEREBY GIVEN that the Department of Child Support Services (DCSS) proposes to amend its Conflict-of-Interest Code. The amendment is to update the Conflict-of-Interest Code due to position reclassifications and changes to duties that have occurred since the last amendment in 2013. The provisions of the DCSS Conflict-of-Interest Code that will be amended include Appendix A which lists the positions with reporting requirements and the reporting requirement categories.

**AVAILABILITY OF DOCUMENTS ON
THE INTERNET**

The DCSS Conflict-of-Interest Code including proposed amended text of the appendices for this rulemaking are posted to the DCSS public website at:

<http://www.childsup.ca.gov/Resources/ChildSupportRegulations.aspx>



STATE BOARD OF EQUALIZATION

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DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

October 30, 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 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

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 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 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 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 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 1432.

AUTHORITY

RTC section 60601.

REFERENCE

RTC sections 60016, 60019, 60026, 60501 and 60502.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
 - Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
 - Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
 - Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined

that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However,

Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle

specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe

harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage

trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;

3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1432 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 1432 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 1432 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 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. Mr. Bennion is the designated backup contact person to Mr. Smith.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 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 1432. 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 strikethrough version of the text of Regulation 1432 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 1432, 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.

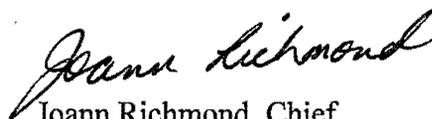
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulation 1432 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 1432, 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

STATE BOARD OF EQUALIZATION

BOARD APPROVED

At the December 16, 2015 Board Meeting



Joann Richmond, Chief
Board Proceedings Division

JR:reb



**Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor
Vehicle.***

**SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND
ANTICIPATED BENEFITS**

Current Law

On July 1, 1995, the authority to impose an excise tax on diesel fuel was removed from the Use Fuel Tax Law (Rev. & Tax. Code (RTC), § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law (RTC, § 60001 et seq.) (Stats. 1994, ch. 912). Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432,

subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate "power take-off" (PTO) equipment or used "off-highway." Regulation 1432, subdivision (a), currently provides that PTO equipment "is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline" and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that "[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling" and "no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway."

Also, currently, under Regulation 1432, a business must substantiate the amount of nontaxable diesel fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and, it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar "shadow" truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business's refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Proposed Amendments

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff determined that there were issues (or problems within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied

to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to

the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to

include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the

regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board propose to adopt BTC staff's revised draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary for the specific purpose of addressing the issues (or problems) referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for

nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

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 1432 or the proposed amendments to Regulation 1432.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-010, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, BTC meeting in deciding to propose the amendments to Regulation 1432 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1432 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 amendments to Regulation 1432 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 1432 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)

As discussed in more detail above, the proposed amendments to Regulation 1432 address current issues (or problems) with the regulation by removing ambiguous language, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, including defining "equipment used to operate a motor vehicle on a highway" and "auxiliary equipment," and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which are based on data regarding diesel fuel used to power auxiliary equipment. As a result, the proposed amendments more clearly implement the provisions in RTC section 60501, subdivision

(a)(4)(A), providing for refunds of tax paid on diesel fuel “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” and the proposed amendments give claimants the “option” to use safe-harbor percentages when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which reflect the percentages of vehicles’ diesel fuel actually used to power auxiliary equipment.

In addition, RTC section 60501 already mandates that claims for refund be filed to obtain refunds of tax paid on diesel fuel used for nontaxable purposes. Regulation 1432 currently requires claimants to substantiate the amount of the tax paid on diesel fuel used in a nontaxable manner in order to obtain a refund of that tax and this currently requires claimants to perform fuel use studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner. The proposed amendments do not mandate that anyone claim a refund, or mandate that anyone use the safe-harbor percentages, as opposed to performing and using a fuel use study, when claiming a refund, or mandate that claimants use specific methods to perform fuel use studies, and the proposed amendments are fully consistent with and do not expand the scope of the refund provisions in RTC section 60501, subdivision (a)(4)(A). As a result, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Diesel Fuel Tax Law or Regulation 1432, 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1432 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1432**

1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

~~(a) Power Take-Off Equipment.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~

~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) Diesel Fuel Used for Purposes Other Than Operating Motor Vehicles Upon the Highways of This State.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered "auxiliary equipment." Equipment powered from a separate

fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck (automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self-loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self-loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>

<u>Pneumatic tank truck</u>	15%
<u>Refrigeration truck</u>	20%
<u>Salt spreader (dump with spreader)</u>	15%
<u>Seeder truck</u>	15%
<u>Semi-wrecker</u>	15%
<u>Service truck with jack hammer/drill</u>	15%
<u>Sewer cleaning truck/jet/vactor</u>	25%
<u>Snow plow</u>	15%
<u>Spray truck</u>	15%
<u>Super sucker (port-o-let trucks)</u>	25%
<u>Sweeper truck</u>	20%
<u>Tank transport</u>	15%
<u>Tank truck</u>	15%
<u>Truck with hydraulic winch</u>	15%
<u>Transfer trailer</u>	20%
<u>Wrecker</u>	15%
<u>Other Auxiliary Equipment</u>	10%

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) Off-Highway Use.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) Refunds.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment in power take-off equipment or to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes. The percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) Idle Time.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to idle while idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while power take-off auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the power take-off auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60016, 60019, 60026, 60501 and 60502, Revenue and Taxation Code.

Regulation History

Type of Regulation: Diesel Fuel Tax

Regulation: 1432

Title: *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

Preparation: Kevin Smith

Legal Contact: Kevin Smith

The State Board of Equalization proposes to update the regulation, including defining "auxiliary equipment" and providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for diesel fuel used to power auxiliary equipment.

History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 30, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 20, 2015	Notice to OAL
September 16, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

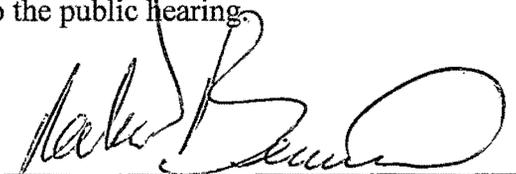
Support: NA

Oppose: NA

Statement of Compliance

The State Board of Equalization, in process of adopting Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on October 30, 2015, 47 days prior to the public hearing.

December 21, 2015

A handwritten signature in black ink, appearing to read "Richard Bennion", written over a horizontal line.

Richard Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 16, 2015

ITEM F

PUBLIC HEARINGS

F3

PROPOSED AMENDMENTS TO
DIESEL FUEL TAX REGULATION 1432

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Staff:

Kevin Smith
Legal Department

Bradley Heller
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 16, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next matter's Item F3
7 Proposed Amendments to Diesel Fuel Tax Regulation
8 1432, Other Nontaxable Uses of Diesel Fuel in a
9 Motor Vehicle.

10 MR. HORTON: Welcome to the Board. Please
11 introduce yourself for the record.

12 MR. SMITH: Good afternoon, Chairman Horton
13 and Members of the Board. I'm Kevin Smith. With me
14 today as Bradley Heller. We are from the Board's
15 Legal Department.

16 We are here today to ask you to vote to
17 adopt the proposed amendments to Diesel Fuel Tax
18 Regulation 1432, Other Nontaxable Uses of Diesel
19 Fuel in a Motor Vehicle.

20 The changes, among other things, define the
21 term "auxiliary equipment" and provide safe harbor
22 percentages that can be used beginning April 1st,
23 2016 when claiming a refund for diesel fuel used to
24 power auxiliary equipment.

25 Thank you.

26 MR. HORTON: Thank you very much.

27 Discussion, Members?

28 Hearing none, Member Runner moves to adopt

1 staff recommendation. Second by Member Ma.

2 Without objection, Members, such will be
3 the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on December 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: December 18, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039
Hearing Reporter



BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

DECEMBER 16, 2015

ITEM F

PUBLIC HEARINGS

F4

PROPOSED AMENDMENTS TO RULES FOR TAX APPEALS

REGULATIONS 5218, 5235, 5237 AND 5267

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Jerome E. Horton
Chairman

Sen. George Runner (Ret.)
Vice Chair

Fiona Ma, CPA
Member

Diane L. Harkey
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Staff:

Bradley Heller
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 DECEMBER 16, 2015

4 ---oOo---

5 MR. HORTON: Ms. Richmond.

6 MS. RICHMOND: Our next matter is Item F4,
7 Proposed Amendments to Rules for Tax Appeals
8 Regulations 5218, Review of the Petition by the
9 Assigned Section, 5235, Action on the Claim for
10 Refund, 5237, Board Approval Required for Refunds
11 Over \$100,000, and 5267, Issuance of Post Appeals
12 Conference Notices. And this is for Board
13 approval.

14 MR. HORTON: Members, we might remember
15 that this is pursuant to the request of the Members.

16 MR. HELLER: That's right.

17 MR. HORTON: Mr. Heller, please introduce
18 yourself for the record.

19 MR. HELLER: Thank you. Good afternoon,
20 Chairman Horton and Members of the Board. I'm
21 Bradley Heller from the Board's Legal Department,
22 and I'm here to ask the Board to vote to adopt the
23 proposed amendments to Regulations 5218, 5235, 5237
24 and 5267.

25 The proposed amendments make the
26 regulations consistent with the Board's prior
27 delegation of authority to staff to refund credit or
28 cancel amounts in excess of \$100,000 without the

1 Board's approval.

2 MR. HORTON: Thank you.

3 Discussion, Members?

4 Member Stowers moves adoption of staff
5 recommendation. Second by Member Harkey.

6 Without objection, Members, such will be
7 the order.

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, KATHLEEN SKIDGEL, Hearing Reporter for the California State Board of Equalization certify that on December 16, 2015 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: December 18, 2015

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



2015 MINUTES OF THE STATE BOARD OF EQUALIZATION**Wednesday, December 16, 2015****PUBLIC HEARINGS****F1 2016 Timber Yield Tax Rate**

Mark Durham, Chief, Research and Statistics Section, Legislative and Research Division, made introductory remarks regarding section 38202 of the Revenue and Taxation Code, which requires an annual adjustment of the timber yield tax rate (Exhibit 12.4).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the timber yield tax rate of 2.9 percent for 2016 as recommended by staff.

F2 Timber Harvest Values and Modified Harvest Values

Mike Harris, Manager, County-Assessed Properties Division, Property Tax Department, made introductory remarks regarding the timber harvest values and modified harvest values. On or before December 31, 2015, the Board shall estimate the immediate harvest values of and adopt schedules for timber harvested between January 1, 2016, and June 30, 2016. Additionally, the Board may modify immediate harvest values to reflect material changes in timber values that result from fire or other catastrophic cause for any area or part thereof in which damaged timber is located (Rev. & Tax. Code, § 38204) (Exhibit 12.5).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Ma, seconded by Ms. Stowers and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the timber harvest values and modified harvest values as recommended by staff.

F3 Proposed Amendments to Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

Kevin Smith, Tax Counsel, Tax & Fee Programs Division, Legal Department, made introductory remarks regarding proposed amendments to update the regulation, including defining "auxiliary equipment" and providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for diesel fuel used to power auxiliary equipment (Exhibit 12.6).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Mr. Runner, seconded by Ms. Ma and unanimously carried, Mr. Horton, Mr. Runner, Ms. Ma, Ms. Harkey and Ms. Stowers voting yes, the Board adopted the amendments to Regulation 1432 as published.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

CYNTHIA BRIDGES
Executive Director

October 30, 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 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

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 60601, proposes to adopt amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*. In 1998, the Board adopted Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, to implement, interpret, and make specific the Diesel Fuel Tax Law (RTC, § 60001 et seq.) by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds, under RTC section 60501, subdivision (a)(4), of diesel fuel tax paid on such fuel. The proposed amendments update the regulation by deleting ambiguous language, defining “equipment used to operate a motor vehicle upon a highway” and “auxiliary equipment,” providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, and specifying that approved fuel use studies are valid for five years after the date of approval and must be updated upon expiration.

PUBLIC HEARING

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on December 16-17, 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.

Item F3
12-16-15

A public hearing regarding the proposed regulatory action will be held at 10:00 a.m. or as soon thereafter as the matter may be heard on December 16-17, 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 1432.

AUTHORITY

RTC section 60601.

REFERENCE

RTC sections 60016, 60019, 60026, 60501 and 60502.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
 - Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
 - Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
 - Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle* (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board’s Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined

that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However,

Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle

specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amending adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe

harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage

trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;

3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulation 1432 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 1432 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 1432 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 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. Mr. Bennion is the designated backup contact person to Mr. Smith.

WRITTEN COMMENT PERIOD

The written comment period ends at 10:00 a.m. on December 16, 2015, or as soon thereafter as the Board begins the public hearing regarding the adoption of the proposed amendments to Regulation 1432 during the December 16-17, 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 1432. 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 strikethrough version of the text of Regulation 1432 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 1432, 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.

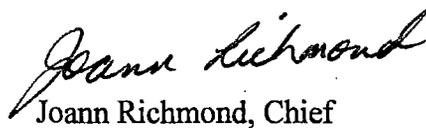
**SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE
SECTION 11346.8**

The Board may adopt the proposed amendments to Regulation 1432 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 1432, 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

Initial Statement of Reasons for
Proposed Amendments to California Code of Regulations,
Title 18, Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor*
Vehicle.

SPECIFIC PURPOSE, PROBLEMS INTENDED TO BE ADDRESSED, NECESSITY, AND ANTICIPATED BENEFITS

Current Law

On July 1, 1995, the authority to impose an excise tax on diesel fuel was removed from the Use Fuel Tax Law (Rev. & Tax. Code (RTC), § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law (RTC, § 60001 et seq.) (Stats. 1994, ch. 912). Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;
- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058).

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432,

subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate "power take-off" (PTO) equipment or used "off-highway." Regulation 1432, subdivision (a), currently provides that PTO equipment "is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline" and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that "[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling" and "no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway."

Also, currently, under Regulation 1432, a business must substantiate the amount of nontaxable diesel fuel used to operate PTO equipment or used off highway (Reg. 1432, subs. (b)-(d)), and, it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar "shadow" truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business's refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Proposed Amendments

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff determined that there were issues (or problems within the meaning of Gov. Code, § 11346.2, subd. (b)(1)) with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied

to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments, and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to

the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to

include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b), entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the

regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board propose to adopt BTC staff's revised draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;
4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary for the specific purpose of addressing the issues (or problems) referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for

nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

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 1432 or the proposed amendments to Regulation 1432.

DOCUMENTS RELIED UPON

The Board relied upon Formal Issue Paper 15-010, the exhibits to the issue paper, and the comments made during the Board's discussion of the issue paper during its September 16, 2015, BTC meeting in deciding to propose the amendments to Regulation 1432 described above.

ALTERNATIVES CONSIDERED

The Board considered whether to begin the formal rulemaking process to adopt the proposed amendments to Regulation 1432 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 amendments to Regulation 1432 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 1432 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)

As discussed in more detail above, the proposed amendments to Regulation 1432 address current issues (or problems) with the regulation by removing ambiguous language, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, including defining "equipment used to operate a motor vehicle on a highway" and "auxiliary equipment," and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which are based on data regarding diesel fuel used to power auxiliary equipment. As a result, the proposed amendments more clearly implement the provisions in RTC section 60501, subdivision

(a)(4)(A), providing for refunds of tax paid on diesel fuel “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” and the proposed amendments give claimants the “option” to use safe-harbor percentages when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which reflect the percentages of vehicles’ diesel fuel actually used to power auxiliary equipment.

In addition, RTC section 60501 already mandates that claims for refund be filed to obtain refunds of tax paid on diesel fuel used for nontaxable purposes. Regulation 1432 currently requires claimants to substantiate the amount of the tax paid on diesel fuel used in a nontaxable manner in order to obtain a refund of that tax and this currently requires claimants to perform fuel use studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner. The proposed amendments do not mandate that anyone claim a refund, or mandate that anyone use the safe-harbor percentages, as opposed to performing and using a fuel use study, when claiming a refund, or mandate that claimants use specific methods to perform fuel use studies, and the proposed amendments are fully consistent with and do not expand the scope of the refund provisions in RTC section 60501, subdivision (a)(4)(A). As a result, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Diesel Fuel Tax Law or Regulation 1432, 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 1432 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 1432 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 1432 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 1432 will not affect the benefits of Regulation 1432 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 1432 will not have a significant adverse economic impact on business.

The proposed amendments to Regulation 1432 may affect small businesses.

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1432**

1432. Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.

~~(a) Power Take-Off Equipment.~~

~~(1) A person may claim a refund for tax paid on diesel fuel used to operate power take-off equipment. Power take-off equipment is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline. The accessory is usually either a small gearbox with an external shaft, or a short shaft with a driveline yoke assembly for attaching an external driveline. The vehicle's transmission must be specially designed for a power take-off.~~

~~(2) Power take-off equipment may be found, for example, on boom trucks (block boom), bulk feed trucks, car carriers or trucks with hydraulic winches, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, leaf trucks, lime spreaders, line trucks (digger/derrick), aerial lift trucks, milk tank trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, salt spreaders (dump with spreader), sanitation trucks, seeder trucks, semi-wreckers, service trucks with jackhammers, pneumatic drills, sewer cleaning trucks (sewer jet, sewer vactor), snow plows, spray trucks, sweeper trucks, tank trucks, tank transports and wreckers.~~

(a) Diesel Fuel Used for Purposes Other Than Operating Motor Vehicles Upon the Highways of This State.

(1) A person may claim a refund for tax paid on diesel fuel that is not used to operate a motor vehicle upon a highway in California.

(A) For purposes of this regulation, equipment used to operate a motor vehicle upon a highway in California is defined as and includes equipment used in the propulsion of a motor vehicle and, in addition, any equipment, accessories, or amenities used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, such as global positioning systems, heating systems, air-conditioning systems, windshield wipers, power windows and locks, heated seats, radios, Bluetooth equipment, cell phones, media players, and other similar equipment, accessories, or amenities.

Additional examples of equipment, accessories, or amenities that are used to operate a motor vehicle upon a highway in California include, but are not limited to, alternators, generators, air-conditioner compressors, hydraulic pumps for power steering and brakes, fuel-injection pumps, superchargers, power steering, power brakes, automatic transmissions, diesel particulate filter generation systems, and other similar equipment.

(B) Equipment, accessories, or amenities other than equipment used to operate a motor vehicle upon a highway in California, which is operated from the same fuel tank as the motor vehicle, is considered "auxiliary equipment." Equipment powered from a separate

fuel source or tank than is used to operate the motor vehicle would not be considered auxiliary equipment.

“Auxiliary equipment” includes, but is not limited to, equipment found on a boom truck (block boom), bulk feed truck, car carrier with a hydraulic winch, carpet cleaning van, cement mixer, cement pumper, distribution truck (hot asphalt), dump trailer, dump truck, fire truck, garbage truck (automated side loader, manual side loader, single drive front end loader, dual drive front end loader, single drive rear end loader, dual drive rear end loader, roll-off truck, lugger truck, recycling truck (compaction and non-compaction), one-pass truck, and container delivery truck), leaf truck, lime spreader, line trucks with digger, derrick or aerial lift, log trucks with self-loader, mobile crane, pneumatic tank truck, refrigeration truck, salt spreader (dump with spreader), seeder truck, semi-wrecker, service trucks with a jackhammer or pneumatic drill, sewer cleaning truck (sewer jet, sewer vactor), snow plow, spray truck, super suckers (port-o-let trucks), sweeper truck, tank transport, tank truck, truck with a hydraulic winch, transfer trailer, and wrecker.

(2) Safe-Harbor Percentages. For transactions occurring on and after April 1, 2016, the following are presumed amounts of diesel fuel used to operate auxiliary equipment. Safe-harbor percentages must be applied to diesel fuel consumption by auxiliary equipment type. Off-highway use, as defined in subdivision (b), is included in these percentages:

<u>Boom truck/block boom</u>	<u>15%</u>
<u>Bulk feed truck</u>	<u>15%</u>
<u>Car carrier with hydraulic winch</u>	<u>10%</u>
<u>Carpet cleaning van</u>	<u>10%</u>
<u>Cement mixer</u>	<u>25%</u>
<u>Cement pumper</u>	<u>40%</u>
<u>Distribution truck (hot asphalt)</u>	<u>15%</u>
<u>Dump trailer</u>	<u>15%</u>
<u>Dump truck</u>	<u>15%</u>
<u>Fire truck</u>	<u>25%</u>
<u>Garbage truck</u>	<u>35%</u>
<u>Leaf truck</u>	<u>15%</u>
<u>Lime spreader</u>	<u>15%</u>
<u>Line truck with digger, derrick or aerial lift</u>	<u>20%</u>
<u>Log truck with self-loader</u>	<u>20%</u>
<u>Mobile crane</u>	<u>25%</u>

<u>Pneumatic tank truck</u>	<u>15%</u>
<u>Refrigeration truck</u>	<u>20%</u>
<u>Salt spreader (dump with spreader)</u>	<u>15%</u>
<u>Seeder truck</u>	<u>15%</u>
<u>Semi-wrecker</u>	<u>15%</u>
<u>Service truck with jack hammer/drill</u>	<u>15%</u>
<u>Sewer cleaning truck/jet/vactor</u>	<u>25%</u>
<u>Snow plow</u>	<u>15%</u>
<u>Spray truck</u>	<u>15%</u>
<u>Super sucker (port-o-let trucks)</u>	<u>25%</u>
<u>Sweeper truck</u>	<u>20%</u>
<u>Tank transport</u>	<u>15%</u>
<u>Tank truck</u>	<u>15%</u>
<u>Truck with hydraulic winch</u>	<u>15%</u>
<u>Transfer trailer</u>	<u>20%</u>
<u>Wrecker</u>	<u>15%</u>
<u>Other Auxiliary Equipment</u>	<u>10%</u>

(3) For transactions occurring on and after April 1, 2016, prior to submitting a claim for refund for exempt diesel fuel consumption greater than the percentages provided in subdivision (a)(2), a person must submit a specific study conducted by them and approved by the Board. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. A person may claim exempt diesel fuel consumption in the percentages indicated above without conducting a study. In order to claim an exemption for diesel fuel used in auxiliary equipment not listed in subdivision (a)(2), the "other" category may be utilized or, if the percentage of use claimed will be greater, a specific study must be conducted in accordance with this subdivision.

(b) Off-Highway Use.

(1) A person may claim a refund for tax paid on diesel fuel used off the highway. "Off the highway" includes private property, a way or place permanently or temporarily closed to public use for the purpose of vehicular travel, or any way or place used for vehicular travel which is not a highway as defined in Regulation 1411. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling as described in subdivision (d).

(2) If the diesel fuel is used in the operation of construction equipment which is exempt from registration under the Vehicle Code, the user must establish to the satisfaction of the Board that the diesel fuel is used in the operation of the construction equipment while operated within the confines or limits of a construction project and only incidentally operated on the highway within such confines or limits.

(3) As used in subdivision (2), "incidentally operated" does not include the use of special construction equipment for the transportation of persons or property upon the highways in an operation which requires registration of the motor vehicle under the Vehicle Code.

(c) Refunds.

Persons who acquire diesel fuel tax paid and subsequently use the diesel fuel to operate auxiliary equipment in power take-off equipment or to operate a motor vehicle off the highway are entitled to a refund of the diesel fuel tax paid for that fuel. Persons claiming a refund for nontaxable use of diesel fuel in auxiliary equipment may use any method to calculate the amount of refund, including computing a percentage of the fuel used for nontaxable purposes; the percentages listed in subdivision (a)(2), or prior to submission of the claim, submit a specific study conducted by them following Board-approved test methods, demonstrating the amount of diesel fuel used in a nontaxable manner in excess of the safe-harbor percentages. Approved studies shall be valid for 5 years after the date of approval and must be updated upon expiration. It is the responsibility of the person claiming the refund to document and support the amount claimed. The safe-harbor percentages cannot be claimed for periods prior to April 1, 2016.

(d) Idle Time.

Diesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling, and no refunds will be allowed for the diesel fuel tax paid on diesel fuel which is used to idle while idling a motor vehicle on the highway. If the motor vehicle is idling on the highway while power take-off auxiliary equipment is in use, a refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used to operate the power take-off auxiliary equipment; however, no refund will be allowed for the diesel fuel tax paid on that portion of the diesel fuel which is used for idling. If the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

Note: Authority cited: Section 60601, Revenue and Taxation Code. Reference: Sections 60016, 60019, 60026, 60501 and 60502, Revenue and Taxation Code.

Regulation History

Type of Regulation: Diesel Fuel Tax

Regulation: 1432

Title: *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*

Preparation: Kevin Smith

Legal Contact: Kevin Smith

The State Board of Equalization proposes to update the regulation, including defining "auxiliary equipment" and providing safe-harbor percentages that can be used, beginning April 1, 2016, when claiming a refund for diesel fuel used to power auxiliary equipment.

History of Proposed Regulation:

December 16-17, 2015	Public Hearing
October 30, 2015	OAL publication date; 45-day public comment period begins; Interested Parties mailing
October 20, 2015	Notice to OAL
September 16, 2015	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA

Bennion, Richard

From: Heller, Bradley (Legal)
Sent: Wednesday, February 24, 2016 11:54 AM
To: Storm, Mark@OAL
Cc: Tucker, Robert (Legal); Buehler, Susanne; Smith, Kevin (Legal); Smith, Stephen (Legal); Bennion, Richard
Subject: RE: 2016-0112-03S - BOE - Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

Mr. Storm,

Thank you for your email below. Please withdraw the rulemaking file for the amendments to Regulation 1432.

Bradley M. Heller, Tax Counsel IV
Board of Equalization Legal Department
Tax and Fee Programs Division
916-323-3091

CONFIDENTIAL: This message and any attachments are not subject to public disclosure as they contain information that is subject to the attorney-client, work-product, and/or other privileges.

From: Storm, Mark@OAL [<mailto:Mark.Storm@oal.ca.gov>]
Sent: Tuesday, February 23, 2016 12:45 PM
To: Smith, Kevin (Legal)
Cc: Heller, Bradley (Legal); Bennion, Richard
Subject: 2016-0112-03S - BOE - Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

Hi Kevin,

Following up on our conversation, I note the following issues with this action:

1. **Necessity**: The necessity for each regulation (i.e., each safe harbor percentage) needs to include the facts or studies supporting it. This can be done by amending the Initial Statement of Reasons (ISOR) with an addendum or by adding a document relied upon to the rulemaking file. Doing so will require a 15-day public notice. The current ISOR and document relied upon in the file vaguely describe general efforts to conduct studies by looking at other states' and at internal data. The facts provided are insufficient to support the safe harbor percentages. Please explain the process and math in sufficient detail to demonstrate by substantial evidence the conclusion that each specific number used for each safe harbor percentage is necessary. (GC 11349(a); 1 CCR 10.) For example, what was the data from the other states? What was your internal data? How did that data lead you to the specific safe harbor percentages for each class of vehicle? BOE apparently relied upon data provided by Waste Management, which should be included as a document relied upon.
2. **Necessity, Consistency, and Clarity**: The ISOR must state the benefits of the regulation to the welfare of California residents. (GC 11346.3(b)(3).) The ISOR states not only (1) the benefits of the proposed regulation; but also (2) "Regulation 1432 does not regulate the ... welfare of California residents..." (ISOR p. 11.) These two statements are inconsistent and unclear. A proposed regulation that does not have a benefit to the welfare of California residents lacks necessity. You may amend the ISOR via 15-day notice to reconcile the statements.
3. **Underground Form**: RTC 60501(d) requires refund claims to be made on a form prescribed by the Board. Section 60501(c) lists 5 classes of information required for a refund. Your website has the form *Diesel Fuel Claim*

for Refund on Nontaxable Uses (BOE-770-DU (S1F) Rev. 7 (9-12)) posted as the form to use for refunds. The form appears to require more things from refund claimants than does RTC 60501(c). Unless some other law requires them, those additional requirements in the form are regulatory and would need to be adopted pursuant to the APA. You may want to add the form adoption to this 15-day notice, but adopting the form would also require Board approval, which would add another step to your process. However, adopting the form now may be easier for you than adopting the form by a separate full regulatory action starting from scratch. That is up to you. If you decide not to adopt the form now, that decision will not influence this action.

You may elect to withdraw this action by reply email asking for withdrawal. You may then fix the action via 15-day notice and resubmit the additional rulemaking materials to OAL as a new action with reference to the prior action rather than submitting the entire rulemaking action all over again. In the alternative, OAL will issue a disapproval on Thursday February 25, 2016.

If you have any questions or concerns, please feel free to contact me.

Thanks,
-Mark

Mark Storm
Senior Attorney

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**ESTIMATE OF COST OR SAVINGS RESULTING
FROM PROPOSED REGULATORY ACTION**

**Proposed Amendment of Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel
in a Motor Vehicle***

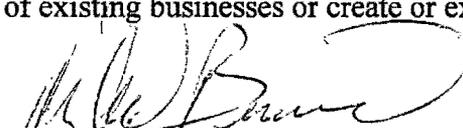
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

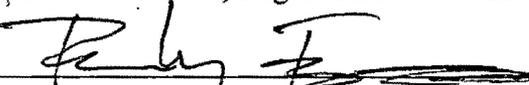
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code or other non-discretionary cost or savings imposed on local agencies, or cost or savings in Federal funding to the State of California.

The cost impact on private persons or businesses will be insignificant. This proposal will not have a significant adverse economic impact on businesses.

This proposal will not be detrimental to California businesses in competing with businesses in other states.

This proposal will neither create nor eliminate jobs in the State of California nor result in the elimination of existing businesses or create or expand business in the State of California.

Statement
Prepared by  Date 12/21/15
Richard Bennion, Regulations Coordinator

Approved by  Date 12/21/15
Randy Ferris, Chief Counsel

If Costs or Savings are Identified, Signatures of Chief, Fiscal Management Division, and Chief, Board Proceedings Division, are Required

Approved by _____ Date _____
Chief, Financial Management Division

Approved by _____ Date _____
Chief, Board Proceedings Division

NOTE: SAM Section 6615 requires that estimates resulting in cost or savings be submitted for Department of Finance concurrence before the notice of proposed regulatory action is released.

Board Proceedings Division
01/22/14

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT

AGENCY NAME Board of Equalization	CONTACT PERSON Richard E. Bennion	EMAIL ADDRESS rbennion@boe.ca.gov	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle			NOTICE FILE NUMBER Z

A. ESTIMATED PRIVATE SECTOR COST IMPACTS *Include calculations and assumptions in the rulemaking record.*

1. Check the appropriate box(es) below to indicate whether this regulation:

- | | |
|----------------------------------------------------------------|---------------------------------------------------------------------------|
| <input type="checkbox"/> a. Impacts business and/or employees | <input type="checkbox"/> e. Imposes reporting requirements |
| <input type="checkbox"/> b. Impacts small businesses | <input type="checkbox"/> f. Imposes prescriptive instead of performance |
| <input type="checkbox"/> c. Impacts jobs or occupations | <input type="checkbox"/> g. Impacts individuals |
| <input type="checkbox"/> d. Impacts California competitiveness | <input checked="" type="checkbox"/> h. None of the above (Explain below): |

Please see the attached.

***If any box in Items 1 a through g is checked, complete this Economic Impact Statement.
If box in Item 1.h. is checked, complete the Fiscal Impact Statement as appropriate.***

2. The _____ (Agency/Department) estimates that the economic impact of this regulation (which includes the fiscal impact) is:

- Below \$10 million
- Between \$10 and \$25 million
- Between \$25 and \$50 million
- Over \$50 million *[If the economic impact is over \$50 million, agencies are required to submit a Standardized Regulatory Impact Assessment as specified in Government Code Section 11346.3(c)]*

3. Enter the total number of businesses impacted: _____

Describe the types of businesses (Include nonprofits): _____

Enter the number or percentage of total businesses impacted that are small businesses: _____

4. Enter the number of businesses that will be created: _____ eliminated: _____

Explain: _____

5. Indicate the geographic extent of impacts: Statewide
 Local or regional (List areas): _____

6. Enter the number of jobs created: _____ and eliminated: _____

Describe the types of jobs or occupations impacted: _____

7. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services here? YES NO

If YES, explain briefly: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

B. ESTIMATED COSTS *Include calculations and assumptions in the rulemaking record.*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ _____
 - a. Initial costs for a small business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - b. Initial costs for a typical business: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - c. Initial costs for an individual: \$ _____ Annual ongoing costs: \$ _____ Years: _____
 - d. Describe other economic costs that may occur: _____

2. If multiple industries are impacted, enter the share of total costs for each industry: _____

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. *Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.* \$ _____

4. Will this regulation directly impact housing costs? YES NO

If YES, enter the annual dollar cost per housing unit: \$ _____

Number of units: _____

5. Are there comparable Federal regulations? YES NO

Explain the need for State regulation given the existence or absence of Federal regulations: _____

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ _____

C. ESTIMATED BENEFITS *Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

1. Briefly summarize the benefits of the regulation, which may include among others, the health and welfare of California residents, worker safety and the State's environment: _____

2. Are the benefits the result of: specific statutory requirements, or goals developed by the agency based on broad statutory authority?

Explain: _____

3. What are the total statewide benefits from this regulation over its lifetime? \$ _____

4. Briefly describe any expansion of businesses currently doing business within the State of California that would result from this regulation: _____

D. ALTERNATIVES TO THE REGULATION *Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but encouraged.*

List alternatives considered and describe them below. If no alternatives were considered, explain why not: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

ECONOMIC IMPACT STATEMENT (CONTINUED)

Summarize the total statewide costs and benefits from this regulation and each alternative considered:

Regulation: Benefit: \$ _____ Cost: \$ _____

Alternative 1: Benefit: \$ _____ Cost: \$ _____

Alternative 2: Benefit: \$ _____ Cost: \$ _____

3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: _____

4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? YES NO

Explain: _____

E. MAJOR REGULATIONS *Include calculations and assumptions in the rulemaking record.*

California Environmental Protection Agency (Cal/EPA) boards, offices and departments are required to submit the following (per Health and Safety Code section 57005). Otherwise, skip to E4.

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? YES NO

*If YES, complete E2. and E3
If NO, skip to E4*

Briefly describe each alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

(Attach additional pages for other alternatives)

3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:

Regulation: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 1: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

Alternative 2: Total Cost \$ _____ Cost-effectiveness ratio: \$ _____

4. Will the regulation subject to OAL review have an estimated economic impact to business enterprises and individuals located in or doing business in California exceeding \$50 million in any 12-month period between the date the major regulation is estimated to be filed with the Secretary of State through 12 months after the major regulation is estimated to be fully implemented?

YES NO

If YES, agencies are required to submit a Standardized Regulatory Impact Assessment (SRIA) as specified in Government Code Section 11346.3(c) and to include the SRIA in the Initial Statement of Reasons.

5. Briefly describe the following:

The increase or decrease of investment in the State: _____

The incentive for innovation in products, materials or processes: _____

The benefits of the regulations, including, but not limited to, benefits to the health, safety, and welfare of California residents, worker safety, and the state's environment and quality of life, among any other benefits identified by the agency: _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD 359 (REV 12/2013)

FISCAL IMPACT STATEMENT

A. FISCAL EFFECT ON LOCAL GOVERNMENT *Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.*

- 1. Additional expenditures in the current State Fiscal Year which are reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

- a. Funding provided in _____

Budget Act of _____ or Chapter _____, Statutes of _____

- b. Funding will be requested in the Governor's Budget Act of _____

Fiscal Year: _____

- 2. Additional expenditures in the current State Fiscal Year which are NOT reimbursable by the State. (Approximate)
(Pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code).

\$ _____

Check reason(s) this regulation is not reimbursable and provide the appropriate information:

- a. Implements the Federal mandate contained in _____

- b. Implements the court mandate set forth by the _____ Court.

Case of: _____ vs. _____

- c. Implements a mandate of the people of this State expressed in their approval of Proposition No. _____

Date of Election: _____

- d. Issued only in response to a specific request from affected local entity(s).

Local entity(s) affected: _____

- e. Will be fully financed from the fees, revenue, etc. from: _____

Authorized by Section: _____ of the _____ Code;

- f. Provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each;

- g. Creates, eliminates, or changes the penalty for a new crime or infraction contained in _____

- 3. Annual Savings. (approximate)

\$ _____

- 4. No additional costs or savings. This regulation makes only technical, non-substantive or clarifying changes to current law regulations.

- 5. No fiscal impact exists. This regulation does not affect any local entity or program.

- 6. Other. Explain _____

**ECONOMIC AND FISCAL IMPACT STATEMENT
(REGULATIONS AND ORDERS)**

STD. 399 (REV. 12/2013)

FISCAL IMPACT STATEMENT (CONTINUED)

B. FISCAL EFFECT ON STATE GOVERNMENT Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

It is anticipated that State agencies will:

a. Absorb these additional costs within their existing budgets and resources.

b. Increase the currently authorized budget level for the _____ Fiscal Year

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any State agency or program.

4. Other. Explain _____

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.

1. Additional expenditures in the current State Fiscal Year. (Approximate)

\$ _____

2. Savings in the current State Fiscal Year. (Approximate)

\$ _____

3. No fiscal impact exists. This regulation does not affect any federally funded State agency or program.

4. Other. Explain _____

FISCAL OFFICER SIGNATURE

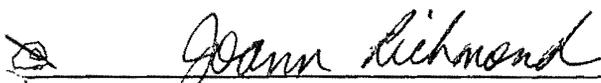


DATE

October 19, 2015

The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6601-6616, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.

AGENCY SECRETARY



DATE

October 19, 2015

Finance approval and signature is required when SAM sections 6601-6616 require completion of Fiscal Impact Statement in the STD. 399.

DEPARTMENT OF FINANCE PROGRAM BUDGET MANAGER

Exempt under SAM section 6615

DATE

Attachment to Economic and Fiscal Impact
Statement (STD. 399 (Rev. 12/2013)) for the Proposed Amendments to
California Code of Regulations, Title 18, Section 1432,
Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle

As explained in more detail in the initial statement of reasons, Revenue and Taxation Code (RTC) section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax imposed by the Diesel Fuel Tax Law (RTC, § 60001 et seq.) on diesel fuel they purchased and “[u]sed for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The State Board of Equalization (Board) adopted California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, in 1998, to implement, interpret, and make specific RTC section 60501 by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for filing statutorily required claims for refunds of diesel fuel tax paid on such fuel.

Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment.

Also, currently, under Regulation 1432, a business must substantiate the amount of diesel fuel used to operate PTO equipment or used off highway (Reg. 1432, subds. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar “shadow” truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel use by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business’s refund for diesel fuel tax paid on that fuel.

The Board has determined that there are issues with Regulation 1432 because it has not been updated since it was adopted in 1998. The Board has determined that there are ambiguities in the regulation’s definition of the term PTO equipment and the application of the regulation’s provisions regarding the use of diesel fuel to operate PTO equipment. Therefore, the proposed amendments to Regulation 1432 address these issues by deleting the ambiguous language regarding PTO equipment and providing clear guidance about refunds of tax paid on diesel fuel used to “power auxiliary equipment,” including defining “equipment used to operate a motor vehicle on a highway” and “auxiliary equipment,” which is not equipment used to operate a motor vehicle on a highway.

The Board also determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles’ auxiliary

equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. The proposed amendments to Regulation 1432 address this issue by providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study, which are based on data regarding diesel fuel used to power auxiliary equipment. The proposed amendments also clarify that claimants still have the "option" to conduct fuel use studies to substantiate that they consume more diesel fuel in a nontaxable manner than the safe-harbor percentages provide. The proposed amendments do not mandate that anyone claim a refund, or mandate that anyone use the safe-harbor percentages, as opposed to performing and using a fuel use study, when claiming a refund, or mandate that claimants use specific methods to perform fuel use studies, and the proposed amendments are fully consistent with and do not expand the scope of the refund provisions in RTC section 60501, subdivision (a)(4)(A). As a result, the proposed amendments do not mandate that individuals or businesses do anything that is not already required by the Diesel Fuel Tax law or Regulation 1432, 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.

Furthermore, the Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

Therefore, based upon the foregoing information and all of the information in the rulemaking file, 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 regulatory action, and the Board has determined that the proposed amendments to Regulation 1432:

- 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;
- 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;
- Will not have a significant effect on housing costs;
- 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; and

- 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.

The Board has also determined that the proposed amendments to Regulation 1432 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.

Finally, Regulation 1432 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 1432 will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Fourth District, Orange County

BETTY T. YEE
State Controller

DAVID J. GAU
Executive Director

May 2, 2016

To Interested Parties:

**Notice of Documents Being Added to the Rulemaking File
for the State Board of Equalization's Proposed Adoption of
Amendments to California Code of Regulations, Title 18, Section 1432,
*Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.***

NOTICE IS HEREBY GIVEN, in accordance with Government Code section 11347.1, that the State Board of Equalization (Board) is adding the documents described below to the rulemaking file for the proposed amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.*

Office of Administrative Law's Issue

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the amendments "define and clarify the meaning of 'equipment used to operate a motor vehicle upon a highway' and 'auxiliary equipment,' provide examples of auxiliary equipment, [and] provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study . . ." (Initial statement of reasons, p. 9.) The initial statement of reasons also explains that the Board's Business Taxes Committee (BTC) "staff examined *data from other states*, as well as the Board's *internal data*, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment" and that the safe-harbor percentages in the proposed amendments are "based on that data." (Initial statement of reasons, p. 3, italics added.)

The Board conducted a public hearing regarding the adoption of the proposed amendments to Regulation 1432 on December 16, 2015, and during the hearing the Board unanimously voted to adopt the proposed amendments to Regulation 1432 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

The Board subsequently prepared the updated informative digest and final statement of reasons for the Board's adoption of the amendments to Regulation 1432 and submitted the rulemaking file for the adoption of the amendments to the Office of Administrative Law (OAL) for review. During their review of the rulemaking file, OAL staff concluded that there was an issue because, in OAL staff's opinion, the Board's references to "data from other states" and "internal data" in the initial statement of reasons did not provide a sufficient factual basis to support the safe-harbor percentages contained in the proposed amendments to the regulation.

The Board's staff discussed this issue with OAL's staff. The Board's staff agreed to address the issue by:

- Withdrawing the rulemaking file from OAL's review;
- Adding the data from other states and internal data to the rulemaking file to provide an additional factual basis for the safe-harbor percentages in the proposed amendments to Regulation 1432; and
- Making the data from other states and internal data available to the public and accepting public comments regarding the data from other states and internal data for at least 15 calendar days prior to the date the Board considers whether to readopt the proposed amendments to Regulation 1432, in accordance with Government Code section 11347.1.

Documents Being Added to the Rulemaking File

As a result, the Board has added a copy of a chart prepared by the Nevada Department of Motor Vehicles (DMV chart) and a copy of Washington State Department of Licensing Form FT-441-244 (R/10/14) WRA, *Washington Power Take-Off (PTO) Schedule* (Washington schedule), to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "data from other states" referred to above and in the initial statement of reasons. The Board has also added a document showing the results of a fuel use study conducted on transfer trailers (transfer trailer data) and a document showing the results of a fuel use study conducted on cement pumpers (cement pumper data) to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "internal data" referred to above and in the initial statement of reasons. The Board has also attached the DMV chart as Exhibit 1, the Washington schedule as Exhibits 2, the transfer trailer data as Exhibit 3, and the cement pumper data as Exhibit 4 to this notice.

The DMV chart includes data from Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Nevada regarding their power take off (or PTO) exemption allowances for fuel

used to power vehicles with PTO equipment.¹ The DMV chart shows that several states provide a PTO exemption allowance for the use of diesel fuel to power all of the vehicles with auxiliary equipment and all of the items of auxiliary equipment for which the Board is proposing to added safe-harbor percentage to Regulation 1432, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (which are not included in the DMV chart). The DMV chart also shows that at least one of the states provides a percentage PTO exemption allowance for each of the vehicles with auxiliary equipment and each of the items of auxiliary equipment that is the same as the Board's proposed safe-harbor percentage for the same vehicle or item, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (mentioned above). For example, the DMV chart shows that Washington provides the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for boom trucks, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, line trucks with diggers, derricks, or aerial lifts, log (or timber) trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, semi-wreckers, services trucks with jack hammers or drills, sewer cleaning trucks, snow plows, super suckers, sweeper trucks, tank trucks and tank transports, and trucks with hydraulic winches.

In addition, page 2 of the Washington schedule shows that Washington allows the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for bulk feed trucks, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, and wreckers (which are not included in the DMV chart). The transfer trailer data shows that the vehicles tested used 11.96 to 36.36 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' transfer trailers and that, on average, more than 19 percent of the vehicles' fuel was used for exempt purposes. The cement pumper data shows that the vehicles tested used more than 40 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' cement pumpers. And, the Board's proposed 20 percent safe-harbor percentage for transfer trailers and 40 percent safe-harbor percentage for cement pumpers are based upon the transfer trailer data and cement pumper data.

Additional Comments

The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being mailed to interested parties who testified or submitted written comments regarding the amendments at the public hearing, interested parties whose comments regarding the amendments were received during the original comment period, and interested parties who requested notification from the Board of changes to the text of the amendments. The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being posted on the Board's website at www.boe.ca.gov. And, the rulemaking file for the amendments to Regulation 1432, including the additional documents, is available for public inspection at the

¹ "Regulation 1432, subdivision (a), currently provides that [power take-off or] PTO equipment 'is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline' and provides examples of PTO equipment." (Initial statement of reasons, p. 2.)

Board's headquarters located at 450 N Street, Sacramento, CA 95814, from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding state holidays.

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on May 24-26, 2016, and 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. The Board will consider whether to readopt the amendments to Regulation 1432 at 9:00 a.m. or as soon thereafter as the matter may be heard on May 24, 25, or 26, 2016.

Any interested person may submit written comments and any interested person may appear at the May 24-26, 2016, Board meeting to present or submit oral or written statements, arguments, or contentions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432. The written comment period ends at 9:00 a.m. on May 24, 2016, or as soon thereafter as the Board considers the readoption of the amendments to Regulation 1432 during its May 24-26, meeting. Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to readopt the amendments to Regulation 1432. Furthermore, if the Board readopts the proposed amendments, any written comments received prior to the end of the written comment period and any oral comments made during the Board's consideration of the amendments to Regulation 1432 during the May 24-26, 2016, meeting will be summarized and responded to in a revised final statement of reasons, as required by Government Code section 11347.1.

Questions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432 should be directed to Mr. Kevin B. Smith, Tax Counsel III (Specialist), 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 May 24-26, 2016, Board meeting, 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:81 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Smith.

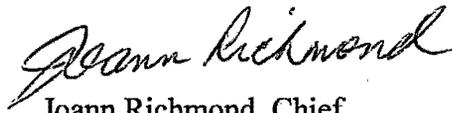
Effective Date

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the express language of the amendments provides for claimants to be able to utilize the safe-harbor percentages being added to Regulation 1432 beginning April 1, 2016. (Initial statement of reasons, p. 9.) Also, the Board originally anticipated that the proposed amendments would be

May 2, 2016

approved by OAL and filed with the Secretary of State prior to March 1, 2016, and would become effective on April 1, 2016, under Government Code section 11343.4, subdivision (a)(2). However, the need to address the issue discussed above has prevented the proposed amendments from becoming effective on April 1, 2016, as anticipated. Therefore, the Board has determined that the delay establishes good cause to request an early effective date for the proposed amendments to ensure that they are effective as soon as possible after April 1, 2016, and the Board may request an early effective date pursuant to Government Code section 11343.4, subdivision (b)(3).

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb

STATE BOARD OF EQUALIZATION		
BOARD APPROVED		
At the	<u>May 25, 2016</u>	Board Meeting
	<u>Joann Richmond</u>	
Joann Richmond, Chief Board Proceedings Division		

Exhibit 1



MOTOR CARRIER DIVISION POWER TAKE OFF (PTO) EXEMPTION ALLOWANCE WESTERN REGION JURISDICTIONAL COMPARISON

JURISDICTION	PTO EXEMPTION ALLOWANCES	Boom Truck	Car Carrier	Dump Truck	Garbage Truck	Line Truck with Digger/Derrick	Mobile Crane	Refrigeration Truck	Sanitation Truck
1 ARIZONA	Restricted - See comments								
2 CALIFORNIA	Restricted - See comments								
3 COLORADO*	Restricted - See comments				35%			7%	35%
4 IDAHO	Restricted - See comments				25%				25%
5 MONTANA	Yes	20%	10%	20%	30%	25%	30%	25%	30%
6 NEW MEXICO	Yes	15%	10%	15%	20%	20%	15%	15%	20%
7 OREGON	Restricted - See comments				25%				25%
8 TEXAS	No								
9 UTAH	Restricted - See comments				20%				20%
10 WASHINGTON	Yes	15%	0%	15%	25%	20%	25%	20%	25%
11 WYOMING	No								
AVERAGE (Excluding Nevada)	N/A	5%	2%	5%	16%	6%	6%	6%	16%
NEVADA	Yes	10%	10%	23%	20%	20%	42%	15%	15%
% Inc/Dec compared with western US jurisdictions	N/A	55%	82%	80%	18%	70%	85%	59%	-9%

Exhibit 1

Semi-Wrecker	Service Truck with a jack hammer or pneumatic drill	Snow Plow	Sweeper Truck	Tank truck other than a truck with a milk or pneumatic tank	Truck for distributing hot asphalt	Truck with Cement Mixer	Truck with a Dump Trailer	Truck with a milk tank	Truck with a pneumatic tank
						39%			
						30%			
20%	20%	20%	25%	20%	20%	30%	20%	20%	20%
15%	15%	0%	0%	15%	10%	20%	15%	15%	15%
						25%			
						25%			
15%	15%	15%	20%	15%	15%	25%	15%	15%	15%
5%	5%	3%	4%	5%	4%	18%	5%	5%	5%
35%	15%	10%	20%	24%	10%	30%	15%	30%	15%
87%	70%	68%	80%	81%	59%	41%	70%	85%	70%

Exhibit 1

Truck with a pump for cleaning a sewer or cesspool	Truck with an aerial lift	equipment to move a dumpster or cargo container	Carpet Cleaning	Concrete Pumpers	Document Shredders	Fire Trucks	Super Suckers	Timber Trucks	Truck with Hydraulic Winch
		35%							
		25%							
30%	25%	30%	10%	0%	0%	30%	30%	20%	20%
15%	20%	20%	0%	0%	0%	0%	15%	0%	15%
		25%							
		20%							
25%	20%	25%	10%	0%	0%	25%	25%	20%	15%
6%	6%	16%	2%	0%	0%	5%	6%	4%	5%
90%	20%	23%	0%	0%	0%	0%	0%	0%	0%
93%	70%	29%	0%	0%	0%	0%	0%	0%	0%

Exhibit 2



Washington Power Take-Off (PTO) Schedule

Use this schedule when claiming a PTO credit on your dyed diesel tax return or Washington fuel tax refund claim. We will accept computer generated schedules as long as the format is identical to ours. You must keep daily mileage records for each vehicle. See next page for instructions and credit percentage factor.

Company name _____ License number _____ Reporting period _____

A License plate number	B PTO type	C Total miles	D Total fuel used in vehicle	E Average miles per gallon (column C divided by column D)*	F Washington taxable miles	G Taxable gallons (column F divided by column E)	H Credit factor % (see instructions)	I Creditable gallons (column G times column H)	
Total								Total	

*Use two decimal points for column E only, all other columns round to whole numbers.

Signature required

Name of person signing		Contact name (if different from person signing)	
(Area code) Contact phone number	(Area code) Contact fax number	Contact email address	

I certify under penalty of perjury under the laws of the state of Washington that the foregoing and any supporting documents and information is true and correct.

Date and place

X

Signature

Exhibit 2

Instructions

- Column A: Enter the vehicle license plate number.
 Column B: Describe the PTO unit, see chart below. Leave section blank for vehicles without PTO units.
 Column C: Enter the total miles operated for each vehicle.
 Column D: Enter the total fuel used in each vehicle.
 Column E: For each line, divide column C by column D to get your average miles per gallon (AMG).
 Column F: Enter the total miles operated on Washington public roadways during the reporting period.
 Column G: For each line, divide column F by column E to get Washington taxable gallons.
 Column H: Enter the credit percentage factor from the chart below that matches the vehicle indicated in column B.
 Column I: For each line, multiply column G by column H.

Total columns C, D, F, G, and I. If using multiple pages, subtotal each page.

Enter the total of column I on line 12 of your Fuel Tax Refund Claim form.

PTO type and credit percentage factor

25%	20%	15%	10%	7.5%
<ul style="list-style-type: none"> • Cement mixer • Fire trucks (private) • Mobile cranes • Garbage trucks w/load compactor • Sewer cleaning truck/jet vactor • Super suckers 	<ul style="list-style-type: none"> • Line truck w/digger/derrick/aerial lift • Log truck w/self-loader • Refrigeration trucks • Sweeper trucks (must be motor vehicle) 	<ul style="list-style-type: none"> • Boom truck/block boom • Bulk feed truck • Dump trailers • Dump trucks • Hot asphalt distribution truck • Leaf truck • Lime spreader • Wrecker • Pneumatic tank truck • Salt spreader on dump truck 	<ul style="list-style-type: none"> • Seeder truck • Semi wrecker • Service truck w/jackhammer/drill • Snow plow • Spray truck • Tank transport • Tank trucks • Truck w/PTO hydraulic winch 	<ul style="list-style-type: none"> • Car carrier w/hydraulic winch • Carpet cleaning van <p style="text-align: center;">Others</p>

As defined in WAC 308-72-905, 308-77-112

If payment is enclosed, send this completed form and supporting documents to:
 Prorate and Fuel Tax, Department of Licensing, PO Box 3777, Seattle, WA 98124-3777

If payment is not enclosed, send this completed form and supporting documents to:
 Fuel Tax Unit, Department of Licensing, PO Box 9228, Olympia, WA 98507-9228 or fax to (360) 570-7842

Questions: Contact us at (360) 664-1838.

Exhibit 3

Transfer Traller Fuel Test Results									
Company Name	DU Account No.	Route Gallons	Shadow/Mimic Gallons	PTO/Off-Hwy Gallons	Combined PTO/Off-Hwy %	Route Miles	Shadow/Mimic Miles	Off-Hwy Miles	Total Loads
		11.00	7.00	4.00	36.36%	37.50	26.80	10.70	2
		62.50	52.50	10.00	16.00%	259.90	244.30	15.60	3
		27.00	20.00	7.00	25.93%	104.60	94.90	9.70	2
		79.96	70.40	9.56	11.96%	322.60	311.80	10.80	3
		63.00	48.00	15.00	23.81%	247.30	233.10	14.20	4
		38.21	32.11	6.10	15.96%	200.20	179.20	21.00	4
		42.10	32.00	10.10	23.99%	207.00	181.00	26.00	4
		39.50	31.50	8.00	20.25%	202.30	179.00	23.30	4
		363.27	293.51	69.76	19.20%	1,581.40	1,450.10	131.30	26

Exhibit 4 -

Cemet Pumper Fuel Test Results		
Company Name	DU Account No.	Combined PTO/ Off-Hwy %
		46.10
		51.13
		51.13
		53.00
		49.80

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, did comply with the provision of Government Code section 11346.8(c) and section 44 of Title 1, California Code of Regulations. The 15-day letter and the additional Adding the data from other states and internal data to the rulemaking file to provide an additional factual basis for the safe-harbor percentages in the proposed amendments to Regulation 1432 were mailed on May 2, 2016, to interested parties who commented orally or in writing or that requested such information and were made available for public comment from May 2 to May 25, 2016, a period of 23 days prior to the public hearing.

May 4, 2016



Richard E. Bennion
Regulations Coordinator
State Board of Equalization

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

MAY 25, 2016

CHIEF COUNSEL MATTERS

J RULEMAKING

J1 READOPTION OF PROPOSED AMENDMENT TO
DIESEL FUEL TAX REGULATION 1432, OTHER NONTAXABLE
USES OF DIESEL FUEL IN A MOTOR VEHICLE

REPORTED BY: Kathleen Skidgel

CSR NO. 9039

P R E S E N T

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For the Board
of Equalization:

Fiona Ma, CPA
Chairwoman

Diane L. Harkey
Vice Chair

Jerome E. Horton
Member

Sen. George Runner (Ret.)
Member

Yvette Stowers
Appearing for Betty T.
Yee, State Controller
(per Government Code
Section 7.9)

Joann Richmond
Chief
Board Proceedings
Division

For Board of
Equalization Staff:

Kevin Smith
Tax Counsel III
Legal Department

Bradley Heller
Tax Counsel IV
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 MAY 25, 2016

4 ---oOo---

5 MS. MA: Ms. Richmond, please introduce our
6 next item.

7 MS. RICHMOND: Our next item this morning
8 are our Chief Counsel matters. Item J Rulemaking.
9 J1 Readoption of Proposed Amendment to Diesel Fuel
10 Tax Regulation 1432, Other Nontaxable Uses of Diesel
11 Fuel in a Motor Vehicle.

12 MS. MA: Okay, welcome. To the Department,
13 please introduce yourselves and begin your
14 presentation.

15 MR. SMITH: Good morning, Chairwoman Ma and
16 Members of the Board. I'm Kevin Smith from the
17 Board's Legal Department. With me today is Bradley
18 Heller, also from the Board's Legal Department.

19 We are here today to request that the Board
20 vote to readopt the proposed amendments to Diesel
21 Fuel Tax Regulation 1432, Other Nontaxable Uses of
22 Diesel Fuel in a Motor Vehicle.

23 In December 2015, the Board adopted the
24 amendments and submitted the rulemaking file to the
25 Office of Administrative Law. However, during OAL's
26 review of the rulemaking file, OAL staff concluded
27 that Board staff's reference to data from other
28 states and internal data in the initial statement of

1 reasons did not provide a sufficient factual basis
2 to support the safe-harbor percentages contained in
3 the proposed amendments.

4 Therefore, staff has addressed OAL's
5 concerns by adding documents containing the data
6 from other states and internal data to the
7 rulemaking file and providing interested parties
8 with an additional opportunity to comment on the new
9 documents.

10 Staff has not received any comments
11 regarding the new documents and staff has not made
12 any changes to the amendments the Board adopted in
13 December 2015.

14 Thank you.

15 MS. MA: Okay. Thank you.

16 Members, any comments? Questions?

17 MR. RUNNER: Move adoption. We'll try it
18 again.

19 MS. HARKEY: Second.

20 MS. MA: Okay. Mr. Runner moves, Ms.
21 Harkey seconds, to adopt staff recommendation.

22 Without objection, motion carries.

23 MR. SMITH: Thank you.

24 ----oOo----

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, Kathleen Skidgel, Hearing Reporter for the California State Board of Equalization certify that on May 25, 2016 I recorded verbatim, in shorthand, to the best of my ability, the proceedings in the above-entitled hearing; that I transcribed the shorthand writing into typewriting; and that the preceding pages 1 through 4 constitute a complete and accurate transcription of the shorthand writing.

Dated: May 31, 2016

Kathleen Skidgel

KATHLEEN SKIDGEL, CSR #9039

Hearing Reporter



2016 MINUTES OF THE STATE BOARD OF EQUALIZATION**Wednesday, May 25, 2016**

The Board met at its offices at 450 N Street, Sacramento, at 9:09 a.m., with Ms. Ma, Chairwoman, Ms. Harkey, Vice Chair, Mr. Runner and Mr. Horton present, Ms. Stowers present on behalf of Ms. Yee in accordance with Government Code section 7.9.

[C] SALES AND USE TAX APPEALS HEARINGS

C1 Morrison Auto Corporation, 765464 (KH)

07/01/09 to 12/31/11, \$37,020.54 Tax

For Petitioner:

Svetlana Dolyna, Representative

Inna Tobys, Representative

For Business Tax and Fee Department:

Scott Lambert, Hearing Representative

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether additional adjustments to the amount of unreported taxable sales are warranted.

Action: Upon motion of Ms. Harkey, seconded by Mr. Horton and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division

SPECIAL PRESENTATIONS

Ms. Ma made introductory remarks regarding the Board of Equalization's *Employee Recognition Award Program*. On behalf of the Board, she thanked the recipients for their dedication and commitment to the organization. David Gau, Executive Director, presented the awards for cycle 2015-16. Robert McPherson, Associate Management Analyst, Executive Projects & Services Section, External Affairs Department, read the names of the award recipients and their achievements into the record. Each Member of the Board gave a special thanks to the awardees for their hard work and efficiency.

CHIEF COUNSEL MATTERS [J-M]**[J] RULEMAKING****J1 Readoption of Proposed Amendment to Diesel Fuel Tax Regulation 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***

Kevin Smith, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding proposed readoption of amendments to Regulation 1432 after adding documents to the rulemaking file to provide an additional factual basis for the amendments' safe-harbor percentages (Exhibit 5.12).

Action: Upon motion of Mr. Runner, seconded by Ms. Harkey and unanimously carried, Ms. Ma, Ms. Harkey, Mr. Runner, Mr. Horton and Ms. Stowers voting yes, the Board readopted the amendments to Regulation 1432 as recommended by staff.

Note: These minutes are not final until Board approved.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

150 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-80
916-445-2130 • FAX 916-324-3984
www.boe.ca.gov

SEN. GEORGE RUNNER (RET.)
First District, Lancaster

FIONA MA, CPA
Second District, San Francisco

JEROME E. HORTON
Third District, Los Angeles County

DIANE L. HARKEY
Fourth District, Orange County

BETTY T. YEE
State Controller

DAVID J. GAU
Executive Director

May 2, 2016

To Interested Parties:

**Notice of Documents Being Added to the Rulemaking File
for the State Board of Equalization’s Proposed Adoption of
Amendments to California Code of Regulations, Title 18, Section 1432,
*Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.***

NOTICE IS HEREBY GIVEN, in accordance with Government Code section 11347.1, that the State Board of Equalization (Board) is adding the documents described below to the rulemaking file for the proposed amendments to California Code of Regulations, title 18, section (Regulation or Reg.) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.*

Office of Administrative Law’s Issue

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the amendments “define and clarify the meaning of ‘equipment used to operate a motor vehicle upon a highway’ and ‘auxiliary equipment,’ provide examples of auxiliary equipment, [and] provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study” (Initial statement of reasons, p. 9.) The initial statement of reasons also explains that the Board’s Business Taxes Committee (BTC) “staff examined *data from other states*, as well as the Board’s *internal data*, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment” and that the safe-harbor percentages in the proposed amendments are “based on that data.” (Initial statement of reasons, p. 3, italics added.)

The Board conducted a public hearing regarding the adoption of the proposed amendments to Regulation 1432 on December 16, 2015, and during the hearing the Board unanimously voted to adopt the proposed amendments to Regulation 1432 without making any changes. The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, to comment on the proposed regulatory action.

Item J1
05-25-16

The Board subsequently prepared the updated informative digest and final statement of reasons for the Board's adoption of the amendments to Regulation 1432 and submitted the rulemaking file for the adoption of the amendments to the Office of Administrative Law (OAL) for review. During their review of the rulemaking file, OAL staff concluded that there was an issue because, in OAL staff's opinion, the Board's references to "data from other states" and "internal data" in the initial statement of reasons did not provide a sufficient factual basis to support the safe-harbor percentages contained in the proposed amendments to the regulation.

The Board's staff discussed this issue with OAL's staff. The Board's staff agreed to address the issue by:

- Withdrawing the rulemaking file from OAL's review;
- Adding the data from other states and internal data to the rulemaking file to provide an additional factual basis for the safe-harbor percentages in the proposed amendments to Regulation 1432; and
- Making the data from other states and internal data available to the public and accepting public comments regarding the data from other states and internal data for at least 15 calendar days prior to the date the Board considers whether to readopt the proposed amendments to Regulation 1432, in accordance with Government Code section 11347.1.

Documents Being Added to the Rulemaking File

As a result, the Board has added a copy of a chart prepared by the Nevada Department of Motor Vehicles (DMV chart) and a copy of Washington State Department of Licensing Form FT-441-244 (R/10/14) WRA, *Washington Power Take-Off (PTO) Schedule* (Washington schedule), to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "data from other states" referred to above and in the initial statement of reasons. The Board has also added a document showing the results of a fuel use study conducted on transfer trailers (transfer trailer data) and a document showing the results of a fuel use study conducted on cement pumpers (cement pumper data) to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "internal data" referred to above and in the initial statement of reasons. The Board has also attached the DMV chart as Exhibit 1, the Washington schedule as Exhibits 2, the transfer trailer data as Exhibit 3, and the cement pumper data as Exhibit 4 to this notice.

The DMV chart includes data from Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Nevada regarding their power take off (or PTO) exemption allowances for fuel

used to power vehicles with PTO equipment.¹ The DMV chart shows that several states provide a PTO exemption allowance for the use of diesel fuel to power all of the vehicles with auxiliary equipment and all of the items of auxiliary equipment for which the Board is proposing to added safe-harbor percentage to Regulation 1432, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (which are not included in the DMV chart). The DMV chart also shows that at least one of the states provides a percentage PTO exemption allowance for each of the vehicles with auxiliary equipment and each of the items of auxiliary equipment that is the same as the Board's proposed safe-harbor percentage for the same vehicle or item, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (mentioned above). For example, the DMV chart shows that Washington provides the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for boom trucks, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, line trucks with diggers, derricks, or aerial lifts, log (or timber) trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, semi-wreckers, services trucks with jack hammers or drills, sewer cleaning trucks, snow plows, super suckers, sweeper trucks, tank trucks and tank transports, and trucks with hydraulic winches.

In addition, page 2 of the Washington schedule shows that Washington allows the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for bulk feed trucks, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, and wreckers (which are not included in the DMV chart). The transfer trailer data shows that the vehicles tested used 11.96 to 36.36 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' transfer trailers and that, on average, more than 19 percent of the vehicles' fuel was used for exempt purposes. The cement pumper data shows that the vehicles tested used more than 40 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' cement pumpers. And, the Board's proposed 20 percent safe-harbor percentage for transfer trailers and 40 percent safe-harbor percentage for cement pumpers are based upon the transfer trailer data and cement pumper data.

Additional Comments

The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being mailed to interested parties who testified or submitted written comments regarding the amendments at the public hearing, interested parties whose comments regarding the amendments were received during the original comment period, and interested parties who requested notification from the Board of changes to the text of the amendments. The additional documents being added to the rulemaking file for the amendments to Regulation 1432 are being posted on the Board's website at www.boe.ca.gov. And, the rulemaking file for the amendments to Regulation 1432, including the additional documents, is available for public inspection at the

¹ "Regulation 1432, subdivision (a), currently provides that [power take-off or] PTO equipment 'is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline' and provides examples of PTO equipment." (Initial statement of reasons, p. 2.)

Board's headquarters located at 450 N Street, Sacramento, CA 95814, from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding state holidays.

The Board will conduct a meeting in Room 121 at 450 N Street, Sacramento, California on May 24-26, 2016, and 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. The Board will consider whether to readopt the amendments to Regulation 1432 at 9:00 a.m. or as soon thereafter as the matter may be heard on May 24, 25, or 26, 2016.

Any interested person may submit written comments and any interested person may appear at the May 24-26, 2016, Board meeting to present or submit oral or written statements, arguments, or contentions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432. The written comment period ends at 9:00 a.m. on May 24, 2016, or as soon thereafter as the Board considers the readoption of the amendments to Regulation 1432 during its May 24-26, meeting. Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to readopt the amendments to Regulation 1432. Furthermore, if the Board readopts the proposed amendments, any written comments received prior to the end of the written comment period and any oral comments made during the Board's consideration of the amendments to Regulation 1432 during the May 24-26, 2016, meeting will be summarized and responded to in a revised final statement of reasons, as required by Government Code section 11347.1.

Questions regarding the additional documents being added to the rulemaking file for the amendments to Regulation 1432 should be directed to Mr. Kevin B. Smith, Tax Counsel III (Specialist), 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 May 24-26, 2016, Board meeting, 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:81 I 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080. Mr. Bennion is the designated backup contact person to Mr. Smith.

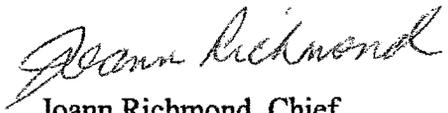
Effective Date

The initial statement of reasons for the proposed amendments to Regulation 1432 explains that the express language of the amendments provides for claimants to be able to utilize the safe-harbor percentages being added to Regulation 1432 beginning April 1, 2016. (Initial statement of reasons, p. 9.) Also, the Board originally anticipated that the proposed amendments would be

May 2, 2016

approved by OAL and filed with the Secretary of State prior to March 1, 2016, and would become effective on April 1, 2016, under Government Code section 11343.4, subdivision (a)(2). However, the need to address the issue discussed above has prevented the proposed amendments from becoming effective on April 1, 2016, as anticipated. Therefore, the Board has determined that the delay establishes good cause to request an early effective date for the proposed amendments to ensure that they are effective as soon as possible after April 1, 2016, and the Board may request an early effective date pursuant to Government Code section 11343.4, subdivision (b)(3).

Sincerely,



Joann Richmond, Chief
Board Proceedings Division

JR:reb



**MOTOR CARRIER DIVISION
POWER TAKE OFF (PTO) EXEMPTION ALLOWANCE
WESTERN REGION JURISDICTIONAL COMPARISON**

JURISDICTION	PTO EXEMPTION ALLOWANCES	Boom Truck	Car Carrier	Dump Truck	Garbage Truck	Line Truck with Digger/Derrick	Mobile Crane	Refrigeration Truck	Sa
1 ARIZONA	Restricted - See comments								
2 CALIFORNIA	Restricted - See comments								
3 COLORADO*	Restricted - See comments				35%			7%	
4 IDAHO	Restricted - See comments				25%				
5 MONTANA	Yes	20%	10%	20%	30%	25%	30%	25%	
6 NEW MEXICO	Yes	15%	10%	15%	20%	20%	15%	15%	
7 OREGON	Restricted - See comments				25%				
8 TEXAS	No								
9 UTAH	Restricted - See comments				20%				
10 WASHINGTON	Yes	15%	0%	15%	25%	20%	25%	20%	
11 WYOMING	No								
AVERAGE (Excluding Nevada)	N/A	5%	2%	5%	16%	6%	6%	6%	
NEVADA	Yes	10%	10%	23%	20%	20%	42%	15%	

Exhibit 1

Semi-Wrecker	Service Truck with a jack hammer or pneumatic drill	Snow Plow	Sweeper Truck	Tank truck other than a truck with a milk or pneumatic tank	Truck for distributing hot asphalt	Truck with Cement Mixer	Truck with a Dump Trailer	Truck with a milk tank	Truc pneur
						39%			
						30%			
20%	20%	20%	25%	20%	20%	30%	20%	20%	
15%	15%	0%	0%	15%	10%	20%	15%	15%	
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15%	15%	15%	20%	15%	15%	25%	15%	15%	
5%	5%	3%	4%	5%	4%	18%	5%	5%	
35%	15%	10%	20%	24%	10%	30%	15%	30%	

Exhibit 1

Truck with a pump for cleaning a sewer or cesspool	Truck with an aerial lift	equipment to move a dumpster or cargo container	Carpet Cleaning	Concrete Pumpers	Document Shredders	Fire Trucks	Super Suckers	Timber Trucks	Truck with Hydraulic Winch
		35%							
		25%							
30%	25%	30%	10%	0%	0%	30%	30%	20%	20%
15%	20%	20%	0%	0%	0%	0%	15%	0%	15%
		25%							
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25%	20%	25%	10%	0%	0%	25%	25%	20%	15%
6%	6%	16%	2%	0%	0%	5%	6%	4%	5%
90%	20%	23%	0%	0%	0%	0%	0%	0%	0%

Washington Power Take-Off (PTO) Schedule

Use this schedule when claiming a PTO credit on your dyed diesel tax return or Washington fuel tax refund claim. We will accept computer generated schedules as long as the format is identical to ours. You must keep daily mileage records for each vehicle. See next page for instructions and credit percentage factor.

Company name _____ License number _____ Reporting period _____

A License plate number	B PTO type	C Total miles	D Total fuel used in vehicle	E Average miles per gallon (column C divided by column D)*	F Washington taxable miles	G Taxable gallons (column F divided by column E)	H Credit factor % (see instructions)	I Creditable gallons (column G times column H)	
Total								Total	

*Use two decimal points for column E only, all other columns round to whole numbers.

Signature required

Name of person signing		Contact name (if different from person signing)	
(Area code) Contact phone number	(Area code) Contact fax number	Contact email address	

I certify under penalty of perjury under the laws of the state of Washington that the foregoing and any supporting documents and information is true and correct.

_____ **X**
 Date and place Signature

Instructions

- Column A: Enter the vehicle license plate number.
 Column B: Describe the PTO unit, see chart below. Leave section blank for vehicles without PTO units.
 Column C: Enter the total miles operated for each vehicle.
 Column D: Enter the total fuel used in each vehicle.
 Column E: For each line, divide column C by column D to get your average miles per gallon (AMG).
 Column F: Enter the total miles operated on Washington public roadways during the reporting period.
 Column G: For each line, divide column F by column E to get Washington taxable gallons.
 Column H: Enter the credit percentage factor from the chart below that matches the vehicle indicated in column B.
 Column I: For each line, multiply column G by column H.

Total columns C, D, F, G, and I. If using multiple pages, subtotal each page.

Enter the total of column I on line 12 of your Fuel Tax Refund Claim form.

PTO type and credit percentage factor

25%	20%	15%		10%	7.5%
<ul style="list-style-type: none"> • Cement mixer • Fire trucks (private) • Mobile cranes • Garbage trucks w/load compactor • Sewer cleaning truck/jet vactor • Super suckers 	<ul style="list-style-type: none"> • Line truck w/digger/derrick/aerial lift • Log truck w/self-loader • Refrigeration trucks • Sweeper trucks (must be motor vehicle) 	<ul style="list-style-type: none"> • Boom truck/block boom • Bulk feed truck • Dump trailers • Dump trucks • Hot asphalt distribution truck • Leaf truck • Lime spreader • Wrecker • Pneumatic tank truck • Salt spreader on dump truck 	<ul style="list-style-type: none"> • Seeder truck • Semi wrecker • Service truck w/jackhammer/drill • Snow plow • Spray truck • Tank transport • Tank trucks • Truck w/PTO hydraulic winch 	<ul style="list-style-type: none"> • Car carrier w/hydraulic winch • Carpet cleaning van 	Others

As defined in WAC 308-72-905, 308-77-112

If payment is enclosed, send this completed form and supporting documents to:

Prorate and Fuel Tax, Department of Licensing, PO Box 3777, Seattle, WA 98124-3777

If payment is not enclosed, send this completed form and supporting documents to:

Fuel Tax Unit, Department of Licensing, PO Box 9228, Olympia, WA 98507-9228 or fax to (360) 570-7842

Questions: Contact us at (360) 664-1838.

Exhibit 3

Transfer Traller Fuel Test Results									
Company Name	DU Account No.	Route Gallons	Shadow/Mimic Gallons	PTO/Off-Hwy Gallons	Combined PTO/Off-Hwy %	Route Miles	Shadow/Mimic Miles	Off-Hwy Miles	Total Loads
		11.00	7.00	4.00	36.36%	37.50	26.80	10.70	2
		62.50	52.50	10.00	16.00%	259.90	244.30	15.60	3
		27.00	20.00	7.00	25.93%	104.60	94.90	9.70	2
		79.96	70.40	9.56	11.96%	322.60	311.80	10.80	3
		63.00	48.00	15.00	23.81%	247.30	233.10	14.20	4
		38.21	32.11	6.10	15.96%	200.20	179.20	21.00	4
		42.10	32.00	10.10	23.99%	207.00	181.00	26.00	4
		39.50	31.50	8.00	20.25%	202.30	179.00	23.30	4
		363.27	293.51	69.76	19.20%	1,581.40	1,450.10	131.30	26

Exhibit 4 -

Cemet Pumper Fuel Test Results		
Company Name	DU Account No.	Combined PTO/ Off-Hwy %
[REDACTED]		46.10
		51.13
		51.13
		53.00
		49.80

**Revised Final Statement of Reasons for the Readoption of
Proposed Amendments to California Code of Regulations, Title 18,
Section 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle.***

Update of Information in the Initial and Final Statement of Reasons

The State Board of Equalization (Board) notified interested parties that it added the documents described below to the rulemaking file for the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, on May 2, 2016, and provided interested parties with an opportunity to comment on the additional documents for a period of at least 15 days, in accordance with Government Code section 11347.1. On May 25, 2016, the Board unanimously voted to readopt the proposed amendments to Regulation 1432 without making any changes to the text the Board unanimously voted to adopt at the conclusion of the December 16, 2015, public hearing. The Board did not receive any written comments regarding the proposed regulatory action or the documents described below and no interested parties appeared at the Board's meeting on May 25, 2016, to comment on the proposed regulatory action or the documents described below.

The Board added the documents described below to the rulemaking file and then readopted the proposed amendments because after the Board adopted the proposed amendments to Regulation 1432 on December 16, 2015, and submitted the rulemaking file for the adoption of the amendments to the Office of Administrative Law (OAL) for review, OAL staff concluded that there was an issue because, in OAL staff's opinion, the Board's references to "data from other states" and "internal data" in the initial statement of reasons did not provide a sufficient factual basis to support the safe-harbor percentages contained in the proposed amendments to the regulation.

The Board's staff discussed this issue with OAL's staff. The Board's staff agreed to address the issue by:

- Withdrawing the rulemaking file from OAL's review;
- Adding the data from other states and internal data to the rulemaking file to provide an additional factual basis for the safe-harbor percentages in the proposed amendments to Regulation 1432; and
- Making the data from other states and internal data available to the public and accepting public comments regarding the data from other states and internal data for at least 15 calendar days prior to the date the Board considers whether to readopt the proposed amendments to Regulation 1432, in accordance with Government Code section 11347.1.

Except for the addition of the documents described below, the factual basis, specific purpose, and necessity for, the problems to be addressed by, and the anticipated benefits from the adoption of the proposed amendments to Regulation 1432 are the same as provided in the initial statement of reasons. The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax

on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The adoption of the proposed amendments to Regulation 1432 is not mandated by federal law or regulations. There is no previously adopted or amended federal regulation that is identical to Regulation 1432 or the proposed amendments to Regulation 1432.

The Board did not rely on any data or any technical, theoretical, or empirical study, report, or similar document in proposing or adopting the proposed amendments to Regulation 1432 that was not identified in the initial statement of reasons and made available for public review prior to the Board's initial adoption of the proposed amendments, except for the documents described below which the Board added to the rulemaking file in compliance with Government Code section 11347.1.

In addition, except for the documents described below, the factual basis has not changed for the Board's initial determination that the proposed regulatory action will not have a significant adverse economic impact on business, the Board's determination that the proposed regulatory action is not a major regulation, as defined in Government Code section 11342.548 and California Code of Regulations, title 1, section 2000, and the Board's economic impact assessment, which determined that the Board's proposed regulatory action:

- 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; and
- Will not affect the benefits of Regulation 1432 to the health and welfare of California residents, worker safety, or the state's environment.

The proposed amendments to Regulation 1432 may affect small business.

Documents Added to the Rulemaking File

The Board has added a copy of a chart prepared by the Nevada Department of Motor Vehicles (DMV chart) and a copy of Washington State Department of Licensing Form FT-441-244 (R/10/14) WRA, *Washington Power Take-Off (PTO) Schedule* (Washington schedule), to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "data from other states" referred to above and in the initial statement of reasons. The Board has also added a document showing the results of a fuel use study conducted on transfer trailers (transfer trailer data) and a document showing the results of a fuel use study conducted on cement pumpers (cement pumper data) to the rulemaking file for the amendments to Regulation 1432 because these two documents contain the "internal data" referred to above and in the initial statement of reasons.

The DMV chart includes data from Colorado, Idaho, Montana, New Mexico, Oregon, Utah, Washington, and Nevada regarding their power take off (or PTO) exemption allowances for fuel used to power vehicles with PTO equipment.¹ The DMV chart shows that several states provide a PTO exemption allowance for the use of diesel fuel to power all of the vehicles with auxiliary equipment and all of the items of auxiliary equipment for which the Board is proposing to added safe-harbor percentage to Regulation 1432, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (which are not included in the DMV chart). The DMV chart also shows that at least one of the states provides a percentage PTO exemption allowance for each of the vehicles with auxiliary equipment and each of the items of auxiliary equipment that is the same as the Board's proposed safe-harbor percentage for the same vehicle or item, except for bulk feed trucks, cement pumpers, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, transfer trailers, and wreckers (mentioned above). For example, the DMV chart shows that Washington provides the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for boom trucks, carpet cleaning vans, cement mixers, distribution trucks (hot asphalt), dump trailers, dump trucks, fire trucks, line trucks with diggers, derricks, or aerial lifts, log (or timber) trucks, mobile cranes, pneumatic tank trucks, refrigeration trucks, semi-wreckers, services trucks with jack hammers or drills, sewer cleaning trucks, snow plows, super suckers, sweeper trucks, tank trucks and tank transports, and trucks with hydraulic winches.

In addition, page 2 of the Washington schedule shows that Washington allows the same percentage PTO exemption allowances as the Board's proposed safe-harbor percentages for bulk feed trucks, leaf trucks, lime spreaders, salt spreaders, seeder trucks, spray trucks, and wreckers (which are not included in the DMV chart). The transfer trailer data shows that the vehicles tested used 11.96 to 36.36 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' transfer trailers and that, on average, more than 19 percent of the vehicles' fuel was used for exempt purposes. The cement pumper data shows that the vehicles tested used more than 40 percent of their fuel for the exempt purposes of powering the vehicles off highway and powering the vehicles' cement pumpers. And, the Board's proposed 20 percent safe-harbor percentage for transfer trailers and 40 percent safe-harbor percentage for cement pumpers are based upon the transfer trailer data and cement pumper data.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulation 1432 does not impose a mandate on local agencies or school districts.

No Public Comments

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on December 16, 2015, or the Board meeting on May 25, 2016, to comment on the proposed regulatory action or the documents described above.

¹ "Regulation 1432, subdivision (a), currently provides that [power take-off or] PTO equipment 'is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline' and provides examples of PTO equipment." (Initial statement of reasons, p. 2.)

Determinations Regarding Alternatives

By its motion on May 25, 2016, the Board determined that no alternative to the proposed amendments to Regulation 1432 would be more effective in carrying out the purpose for which the amendments are proposed, would be as effective and less burdensome to affected private persons than the adopted amendments, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

The Board did not reject any reasonable alternatives to the proposed amendments to Regulation 1432 that would lessen any adverse impact the proposed amendments may have on small business.

No reasonable alternatives have 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.

Expedited Review Pursuant to Government Code section 11349.4

Pursuant to Government Code section 11349.4, subdivision (d), the Board is requesting expedited review of the proposed amendments to Regulation 1432 because the amendments are being resubmitted without any "significant substantive changes."

**Revised Updated Informative Digest for the
State Board of Equalization's Readoption of Proposed Amendments
to California Code of Regulations, Title 18, Section 1432,
*Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle***

The State Board of Equalization (Board) notified interested parties that it added the documents described in the revised final statement of reasons to the rulemaking file for the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1432, *Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle*, on May 2, 2016, and provided interested parties with an opportunity to comment on the additional documents for a period of at least 15 days, in accordance with Government Code section 11347.1. On May 25, 2016, the Board unanimously voted to readopt the proposed amendments to Regulation 1432 without making any changes to the text the Board unanimously voted to adopt at the conclusion of the December 16, 2015, public hearing.

The Board did not receive any written comments regarding the proposed regulatory action or the documents described in the revised final statement of reasons and no interested parties appeared at the public hearing on December 16, 2015, or the Board meeting on May 25, 2016, to comment on the proposed regulatory action or the documents described in the revised final statement of reasons. There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1432 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

On July 1, 1995, the authority to tax diesel fuel was removed from the Use Fuel Tax Law (RTC, § 8601 et seq.), and placed into the recently enacted Diesel Fuel Tax Law. (Stats. 1994, ch. 912)

Under the Diesel Fuel Tax Law, the diesel fuel tax is owed by the person who owns the diesel fuel when a taxable event occurs (the tax is assessed). (RTC, §§ 60053, 60054, 60055, 60056, 60057.) The tax is imposed on each gallon of diesel fuel entered (imported) into the state, or removed (physically transferred) from a refinery or terminal rack in this state, and the tax is assessed upon each gallon of diesel fuel when it is:

- Removed from the terminal rack;
- Removed from the refinery rack;
- Included in a bulk removal from the refinery when the owner is not a diesel fuel registrant;

- Entered into this state if the entry is by bulk transfer and the enterer is not a diesel fuel registrant or the entry is not by bulk transfer;
- Removed or sold to a unregistered person; or
- Removed or sold if the fuel is blended fuel and a portion of the diesel fuel used to produce the blended fuel was not previously taxed. (RTC, §§ 60050, 60051, 60052.)

There is also a backup tax, which is an assessment of tax on diesel fuel when the above tax was not previously paid at the rack or has been refunded. The backup tax is assessed on the sale or delivery of diesel fuel into the tank of a diesel-powered highway vehicle that contains dye or any other liquid on which tax has not been imposed, or on the sale of diesel fuel for which a claim for refund has been allowed. (RTC, §§ 60050, 60058). In 1998, the State Board of Equalization (Board) adopted Diesel Fuel Tax Regulation 1432, Other Nontaxable Uses of Diesel Fuel in a Motor Vehicle (Regulation 1432) to implement, interpret and make specific these provisions of the Diesel Fuel Tax Law.

As relevant here, RTC section 60501, subdivision (a)(4)(A), provides that persons who paid the excise tax on diesel fuel they purchased and “[u]sed [the diesel fuel] for purposes other than operating motor vehicles upon the public highways of the state” may, if other criteria are also met, be granted a refund of the tax they paid. The Board adopted Regulation 1432, in 1998, to implement, interpret and make specific the provisions of RTC section 60501, subdivision (a)(4), by clarifying when diesel fuel used in a motor vehicle is used for a purpose other than operating a motor vehicle on the highway and providing provisions for claiming refunds of diesel fuel tax paid on such fuel. Regulation 1432, subdivision (c), currently allows a claim for refund for excise tax paid on nontaxable diesel fuel used to operate “power take-off” (PTO) equipment or used “off-highway.” Regulation 1432, subdivision (a), currently provides that PTO equipment “is generally defined to be an accessory which is mounted onto a transmission allowing power to be transferred outside the transmission to a shaft or driveline” and provides examples of PTO equipment. Regulation 1432, subdivision (d), also currently provides that “[d]iesel fuel consumed in motor vehicles on the highway is subject to the diesel fuel tax whether the motor vehicle is moving or idling” and “no refund will be allowed for diesel fuel tax paid on diesel fuel which is used to idle a vehicle on the highway.”

Also, currently, under Regulation 1432, a business must substantiate the amount of fuel used to operate PTO equipment or used off highway (Reg. 1432, subds. (b)-(d)), and it is usually necessary for a business to conduct a fuel use study to provide such substantiation because PTO equipment is powered by an engine that is consuming taxable diesel fuel to power a

motor vehicle and nontaxable diesel fuel to power the PTO equipment that is coming from the same fuel tank. An example of a fuel use study would be having a garbage truck which uses a hydraulic arm and a compaction system, which are both PTO equipment, operate normally while being followed by a similar "shadow" truck. The shadow truck would drive the same route, without operating a hydraulic arm or compaction system. The difference in fuel used by the two garbage trucks would be used to calculate the amount of fuel used to operate the PTO equipment and calculate the business's refund for diesel fuel tax paid on that fuel.

Conducting a fuel use study is normally time-consuming, and it can be expensive. Therefore, the Board currently works with businesses and provides businesses with the flexibility to design suitable test methods for their studies that meet their unique needs, and the Board currently accepts studies performed using test methods that are reasonably designed to determine and that do in fact reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1432

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff determined that there were issues with Regulation 1432 because it has not been updated since it was adopted in 1998. Staff determined that there are ambiguities in the regulation's definition of the term PTO equipment, the application of the regulation's provisions regarding the use of diesel fuel to operate PTO equipment, and the regulation's provisions regarding diesel fuel used for idling. Staff determined that it is no longer necessary for the Board to require fuel use studies to document the percentages of the fuel consumed by: (A) common diesel-powered vehicles with auxiliary equipment, such as garbage trucks, that is used to power the vehicles' auxiliary equipment; or (B) other diesel-fuel powered vehicles that is used to power common auxiliary equipment, such as trailers. Staff also determined that when fuel use studies are still needed to document the percentage of a vehicle's diesel fuel used to power auxiliary equipment, the studies need to be updated from time-to-time. Therefore, BTC staff prepared draft amendments to Regulation 1432 to remove the ambiguous language, clarify the refund provisions, distinguish equipment used to operate a motor vehicle on the highway from auxiliary equipment, and provide safe-harbor percentages that can be applied to the diesel fuel used by common vehicles with auxiliary equipment and other vehicles used to power common auxiliary equipment when claiming a refund for the portion of the vehicles' diesel fuel used to power the auxiliary equipment. BTC staff also prepared an initial discussion paper regarding the draft amendments,

and provided the initial discussion paper and draft amendments to the interested parties. The initial draft amendments to the regulation are described below.

PTO Equipment & Auxiliary Equipment

A person may claim a refund for the excise tax paid on diesel fuel that is used for purposes other than to operate a motor vehicle on a highway in California. This includes fuel used to power a motor vehicle's equipment, accessories or amenities from the same fuel tank as the motor vehicle, while the vehicle is being operated upon the highway, unless the equipment, accessories, or amenities are being used to operate the motor vehicle, itself, upon the highway, as well as fuel used off-highway. BTC staff determined that, as a result, Regulation 1432's current provisions regarding PTO equipment do not adequately explain when fuel used to power equipment, accessories, and amenities is used for purposes other than to operate a motor vehicle on a highway.

To help clarify the regulation, BTC staff's draft amendments recommended deleting current subdivision (a) of Regulation 1432 and adding a new subdivision (a) to the regulation to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," which is not used to operate a motor vehicle upon a highway. BTC staff's draft amendments recommended replacing the term "Power Take-Off Equipment," with the more accurate term "auxiliary equipment" throughout the regulation. In addition to defining "auxiliary equipment," BTC staff's draft amendments also recommended providing examples, in subdivision (a)(1), of eligible auxiliary equipment to avoid the confusion previously encountered with the term "Power Take-Off Equipment." Examples of eligible auxiliary equipment included: booms, hydraulic winches, cranes, and lifts.

Safe-Harbor Percentages (for Vehicles other than Garbage Trucks)

BTC staff examined data from other states, as well as the Board's internal data, regarding the use of diesel fuel to power common vehicles with auxiliary equipment and common auxiliary equipment. BTC staff proposed to provide a list of various safe-harbor percentages of the common vehicles' fuel that is used to power their eligible auxiliary equipment and safe-harbor percentages of other vehicles' fuel used to power common auxiliary equipment, based on that data. BTC staff's draft amendments proposed adding new subdivision (a)(2) to Regulation 1432 to include a list of common diesel-powered vehicles with auxiliary equipment and common auxiliary equipment, and safe-harbor percentages for the nontaxable "incidental off-highway" use of each listed vehicle's fuel to power its auxiliary equipment and other vehicles' fuel to power

each listed type of auxiliary equipment. BTC staff's draft amendments adding new subdivision (a)(3) and revising current subdivision (c) also recommended that, beginning April 1, 2016, claimants would be permitted to use the safe-harbor percentages when claiming a refund for nontaxable fuel usage by looking up the safe-harbor percentage allowed for a specific type of vehicle with auxiliary equipment or type of auxiliary equipment, and applying that percentage to the number of gallons of diesel fuel used by that type of vehicle or a vehicle powering that type of auxiliary equipment. The percentages BTC staff recommended adding to new subdivision (a)(2) are referred to as "safe-harbor" percentages because they establish the minimum percentages of vehicles' fuel that is used to power auxiliary equipment without requiring claimants to conduct fuel use studies, and BTC staff's draft amendments recommended that claimants have the option to elect to do a study if they believe their auxiliary equipment consumes more fuel than the safe-harbor percentages provide.

Safe-Harbor Percentages for Garbage Trucks

The term "garbage truck" includes several different types of trucks generally used in the refuse industry including the following: side-loader trucks, front-loader trucks, rear-end loader trucks, roll-off trucks, and container delivery trucks. BTC staff recognized that there may be significant differences in the percentages of fuel used to power auxiliary equipment in garbage trucks, depending on the type of truck and its compaction process. However, BTC staff also recognized that by having one safe-harbor percentage for the portion of all garbage trucks' fuel used to power their auxiliary equipment companies would not have to document their garbage trucks' fuel consumption on a truck-by-truck basis, and, instead, the companies could track their garbage truck fleets' fuel consumption. This is important because if a greater safe-harbor percentage applied to the fuel used by some types of garbage trucks and a lesser percentage applied to the fuel used by other types of garbage trucks, the fuel usage of each garbage truck type would need to be tracked.

In addition, BTC staff recognized that the percentage of a garbage truck's fuel used to power its auxiliary equipment varies depending on the density of the truck's route. Generally, garbage trucks used on routes in urban areas use higher percentages of their fuel to power their auxiliary equipment than trucks used on routes in rural areas, since urban areas are more concentrated and have more stops requiring auxiliary equipment to lift garbage cans and crush garbage. However, Board staff recognized that there would be little value in establishing a safe-harbor percentage for garbage trucks' or safe-harbor percentages for different types of garbage trucks' fuel used to power their auxiliary equipment if that percentage or those percentage were required to be adjusted based upon the density of actual garbage truck routes, since fuel use studies would still be needed to

establish the differences in fuel used to power auxiliary equipment on different routes.

Moreover, BTC staff recognized that a single safe-harbor percentage for the portion of all garbage trucks fuel used to power their auxiliary equipment would need to be high enough that, generally, claimants would receive a reasonable refund, but claimants would not receive excessive refunds. Therefore, in the initial discussion paper, BTC staff proposed a safe-harbor percentage of 30 percent for all garbage trucks. Staff arrived at 30 percent by surveying other states and adding an allowance for off-highway use. Staff's research found the average allowance in the 11 western states to be that 25 percent of a garbage truck's fuel is used to power its auxiliary equipment. Staff added a five percent allowance for off-highway use of the garbage trucks, themselves. Off-highway use includes fuel used to power garbage trucks in privately-maintained and gated communities, landfills (not owned by a municipality), private roads, and private driveways.

Fuel Use Studies

BTC staff's draft amendments recommended adding additional clarifying language regarding the use of the safe-harbor percentages and fuel use studies to new subdivision (a)(3) and current subdivision (c) of Regulation 1432. The draft amendments explained that a claimant may use a greater percentage than the applicable safe-harbor percentage in new subdivision (a)(2) to claim a refund if the greater percentage is substantiated by a fuel use study. To ensure that businesses use their time and resources to properly conduct studies that are reasonably designed to suitably substantiate and in fact do substantiate the diesel fuel consumed to power their auxiliary equipment, staff's draft amendments recommended that, beginning April 1, 2016, a business's proposed test method for conducting a study be approved by the Board and that the business's study be approved by the Board. Also, to ensure that a study remains representative despite changing equipment and fuel composition technologies, staff's draft amendments recommended that an approved study be valid for a five-year period of time before having to be updated. However, BTC staff's draft amendments did not recommend that the Board change its current policies giving businesses the flexibility to design suitable test methods to meet their unique needs, and accepting test methods that are reasonably designed to determine and studies that reasonably substantiate the amount of diesel fuel consumed in a nontaxable manner.

Off-Highway Use

In its initial discussion paper, BTC staff proposed that Regulation 1432, subdivision (b), be deleted because an allowance for the off-highway use of vehicles was included in the safe-harbor percentages provided in subdivision (a)(2), and that current subdivisions (c) and (d) be renumbered as subdivisions (b) and (c), respectively.

Refunds & Records

BTC staff's draft amendments recommended revising renumbered subdivision (b) of Regulation 1432 to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner. In addition, staff's draft amendments recommended revising renumbered subdivision (b) to clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages. Revised and renumbered subdivision (b) continued to provide that claimants are responsible for maintaining proper records to support their claims regardless of how they establish the amount of diesel fuel used in a nontaxable manner.

Idle Time

Finally, BTC staff's draft amendments recommended revising language in renumbered subdivision (c) of Regulation 1432 to clarify that if a vehicle with auxiliary equipment is idling on-highway, a refund will only be allowed for the tax paid on the fuel used to operate the auxiliary equipment. No refunds are allowed for tax paid on fuel used to idle the vehicle on-highway. In addition, BTC staff's recommended safe-harbor percentages were calculated to include an allowance for off-highway use of diesel-powered vehicles, themselves, which includes idling the vehicles off-highway. So, BTC staff's draft amendments also clarified that when the safe-harbor percentages are used, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling. It should also be noted that idling is less of an issue now than it was when Regulation 1432 was adopted in 1998 because the California Air Resources Board has since adopted California Code of Regulations, title 13, section 2485, to prohibit idling of commercial diesel fueled motor vehicles for more than five consecutive minutes, with few exceptions.

April 10, 2015, letter from Mr. Jacob Bholat

In a letter dated April 10, 2015, Mr. Jacob Bholat suggested the inclusion of police vehicles, sheriff vehicles, and ambulances among the vehicles in new subdivision (a)(2) and providing a safe-harbor percentage for such vehicles' fuel used in a nontaxable manner. However, this suggestion was not adopted by BTC staff because most of these vehicles are not diesel

powered and because staff believes the items used in police and sheriff vehicles, and ambulances are equipment used for the safety, convenience, or comfort of drivers or passengers in conjunction with the operation of a motor vehicle on a highway, which do not qualify as auxiliary equipment, as stated in BTC staff's draft amendments adding new subdivision (a)(1) to Regulation 1432.

April 14, 2015, First Interested Parties Meeting

On April 14, 2015, BTC staff conducted an interested parties meeting to discuss the draft amendments. It was suggested during the meeting that a category be added to draft subdivision (a)(2) of the regulation for "other" auxiliary equipment that is not operated by a vehicle specifically identified in subdivision (a)(2). Staff agreed with this recommendation and proposed to add a category titled "Other Auxiliary Equipment" to draft subdivision (a)(2), at the suggested safe-harbor percentage of ten percent (10%).

It was also suggested during the first interested parties meeting that language should be added to the regulation specifying that a claimant may establish that more than 10 percent of a vehicle's fuel is used to power "other" auxiliary equipment if a Board-approved study is completed prior to claiming a refund. Staff agreed with this suggestion and added a sentence to its drafts amendments adding new subdivision (a)(3) explaining how the 10 percent safe-harbor percentage for the "Other Auxiliary Equipment" category may be utilized and permitting the use of a greater percentage than 10 percent for "other" auxiliary equipment if a specific study is conducted to substantiate that percentage.

May 6, 2015, letter from Mr. Leonard Finegold of Waste Management

In a letter dated May 6, 2015, Mr. Leonard Finegold made a number of suggestions and provided suggested language on behalf of Waste Management. The suggestions included no longer using the term "incidental off-highway use" to refer to the use of auxiliary equipment because it is ambiguous, adding a provision for equipment used wholly off highway, allowing an additional refund for idle time on the highway, expanding the list of auxiliary equipment and vehicles with auxiliary equipment, and changes to the calculations of refunds.

In response to the perceived ambiguity created by the use of the term "incidental off-highway use" in BTC staff's draft amendments adding new subdivision (a)(2) to Regulation 1432, the phrase was replaced with the phrase "[o]ff-highway use, as defined in subdivision (b)" in BTC staff's revised draft amendments to provide more clarity. In addition, the previously stricken provisions of Regulation 1432, subdivision (b),

entitled "Off-Highway Use," were added back to staff's revised draft amendments to Regulation 1432 in the same location in order to clarify the meaning of "off highway" and make it clear that claimants are allowed a refund for the excise taxes paid on the diesel fuel used off highway, and the draft amendments renumbering current subdivisions (c) and (d) were deleted from the revised draft amendments. However, the suggestion to allow a refund for idle time on the highway was not incorporated because, under Regulation 1432, subdivision (d), the Board does not currently allow refunds for tax paid on diesel fuel used while idling a vehicle on a highway.

Some of the types of vehicles that Waste Management suggested adding to new subdivision (a) were already listed there; others were specific pieces of equipment which could be included in broader categories. Therefore, to help add more clarity regarding the meaning of "auxiliary equipment" as it relates to these items, BTC staff modified draft subdivision (a)(1)(B) to provide examples of specific equipment found on different vehicles that are included within the meaning of the term "auxiliary equipment." For example, the modification clarifies that the following types of equipment found on garbage trucks would qualify as "auxiliary equipment": automated side loaders, dual drive front end loaders, single drive front end loaders, roll off trucks, etc. And, as a result, the modification also clarifies that a claimant can apply the "garbage truck" safe harbor percentage in subdivision (a)(2) of the draft amendments to the fuel consumed by a garbage truck with any of these items of auxiliary equipment.

In addition, some of the items Waste Management suggested adding to new subdivision (a) were the same as other items already listed in subdivision (a). For example, Waste Management suggested adding a port-o-let truck to subdivision (a); however, it is materially the same as a super sucker, which was already included in subdivision (a). Thus, BTC staff agreed to add a reference to port-o-let trucks in parenthesis after "super sucker" in draft subdivision (a)(1)(B) and (2) and staff similarly agreed to add references to "block boom" trucks after the references to "boom trucks," in draft subdivision (a)(1)(B) and (2) for additional clarification. Staff also adopted the recommendation to add "transfer trailers," which are trailers with a walking floor, to subdivision (a)(1)(B) and (2) and provide a safe-harbor percentage of twenty percent (20%) for the portion of a vehicle's fuel used to power a transfer trailer. Many of the remaining items were not added because staff did not agree the items were auxiliary equipment.

Waste Management also suggested that the Board simplify the refund calculation process and allow a refund for a weighted average percentage of all the diesel fuel used by an entity. Staff reviewed the proposed methods, however, all of the methods presented were based on aggregate

fuel purchased; not fuel consumed. Under RTC section 60501, subdivision (a)(4)(A), a refund is provided for fuel "used" not on fuel purchased. In order to accurately determine the refund amount for nontaxable use of diesel fuel, information must be provided about the use of diesel fuel, not simply the aggregate of fuel purchased. Therefore, none of the suggested refund calculation methods were adopted.

June 16, 2015, Second Interested Parties Meeting

On June 16, 2015, BTC staff conducted a second interested parties meeting to discuss the revised draft amendments. No comments about the revised draft amendments were made during this meeting.

July 1, 2015, letter from Mr. Leonard Finegold of Waste Management

BTC staff received a letter dated July 1, 2015, from Mr. Leonard Finegold on behalf of Waste Management, with Waste Management's comments regarding the safe-harbor percentage for garbage trucks and guidelines for conducting a fuel use study, and a question about how claiming a refund based upon a safe-harbor percentage in a period may impact a future claim for refund.

Waste Management believed that the 30 percent safe-harbor percentage for garbage trucks in the draft amendments was too low, and Waste Management provided BTC staff additional data supporting an increased safe-harbor percentage. Staff reviewed the data provided by Waste Management and also examined data from past Board-approved claims for refund from other refuse companies. Based on this re-evaluation, staff determined that 35 percent was a more suitable safe-harbor percentage for garbage trucks than 30 percent, and staff revised the draft amendments to Regulation 1432 to provide a 35 percent safe-harbor percentage for garbage trucks.

Waste Management recommended including examples in the regulation of how to conduct a fuel use study. However, BTC staff did not agree that it would be useful to prescribe the conduct of fuel use studies in the regulation because a unique testing method is often needed to determine how much fuel is used to power a specific pieces of auxiliary equipment, the Board and claimants need sufficient flexibility to work together to devise suitable studies to measure the fuel used to power specific items of auxiliary equipment when necessary, and technology is rapidly changing so it would be difficult to provide current, up to date information regarding the conduct of fuel use studies in the regulation. However, to help facilitate the development of suitable fuel use studies in the future, BTC staff agreed to update the "Frequently Asked Questions" section of the Diesel Users Fuel Tax page on the Board's website so that it explains

that Board staff will work with claimants to help them devise a study that is suitable for the specific equipment they would like to test, and, upon validation of the claimant's completed study, staff will mail the claimant an approval letter which will include an effective date. This will provide more information to taxpayers regarding fuel use studies, while still allowing sufficient flexibility.

Waste Management also requested clarification about whether a taxpayer may claim a refund using a safe harbor percentage listed in subdivision (a)(2) and subsequently conduct a study, and amend the refund claim to claim a larger refund based upon a higher percentage of fuel used in a nontaxable manner, assuming that the applicable statute of limitations to claim a refund for the applicable period has not expired. BTC staff discussed this issue and determined that, under such circumstances, a claimant would be allowed to amend a claim for refund to reflect a higher percentage of fuel used in a nontaxable manner, but staff determined that no change to the regulation was necessary because under the Diesel Fuel Tax Law a claimant is always able to obtain a refund based on the actual percentage of fuel used in a nontaxable manner, unless the statute of limitations for claiming a refund has expired.

September 16, 2015 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 15-010 and distributed it to the Board Members for consideration at the Board's September 16, 2015, BTC meeting. Formal Issue Paper 15-010 recommended that the Board proposes to adopt BTC's staff's draft amendments to Regulation 1432 (discussed above) in order to update the regulation. The revised draft amendments included:

1. Deleting current subdivision (a) and its ambiguous language regarding PTO equipment;
2. Replacing old subdivision (a) with a new subdivision (a) to define and clarify the meaning of "equipment used to operate a motor vehicle upon a highway" and "auxiliary equipment," provide examples of auxiliary equipment, provide safe-harbor percentages that can be used to calculate and claim a refund for the tax paid on the amount of diesel fuel used to power auxiliary equipment without conducting a fuel use study, and provide guidance about the use of the safe-harbor percentages and a claimant's option to conduct a fuel use study to establish that for more fuel was used to power auxiliary equipment than the safe-harbor percentages provide;
3. Adding language to subdivision (b) to clarify that when the safe-harbor percentages are used to calculate the amount of a refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while off the highway or while idling;

4. Revising subdivision (c) to explain that, beginning April 1, 2016, claimants may use the safe-harbor percentages or a study to establish the amount of diesel fuel used in a nontaxable manner, clarify that a claimant still has the option of conducting a fuel use study to demonstrate that it consumes fuel in a nontaxable manner in excess of the safe-harbor percentages, and specify that approved studies shall be valid for five years after the date of approval; and
5. Clarifying subdivision (d)'s provisions regarding fuel used while idling and specifying that when the safe-harbor percentages in subdivision (a)(2) are used to calculate the amount of refund, no additional refund will be allowed for diesel fuel used to operate auxiliary equipment while idling.

During the September 16, 2015, BTC meeting, the Board Members unanimously voted to propose the amendments to Regulation 1432 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1432 are reasonably necessary to have the effect and accomplish the objective of addressing the issues referred to above by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board anticipates that the proposed amendments to Regulation 1432 will reduce confusion, promote fairness, and benefit claimants who pay refundable diesel fuel tax on fuel used for nontaxable purposes, Board staff, and the Board by removing ambiguous language from the regulation, providing clear guidance about refunds of tax paid on diesel fuel used to power auxiliary equipment, and providing safe-harbor percentages that can be used when claiming a refund for nontaxable uses of diesel fuel to power auxiliary equipment without performing a fuel use study.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1432 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 1432 is the only state regulation that provides specific guidance about when diesel fuel is used for a purpose other than operating a motor vehicle on the highway and provides provisions for claiming refunds of diesel fuel tax paid on fuel used in such a nontaxable manner. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1432 or the proposed amendments to Regulation 1432.