

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 1533.2 *Diesel Fuel Used in Farming Activities or Food Processing*, and
Regulation 1598, *Motor Vehicle and Aircraft Fuel*

OAL Approval
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**State of California
Office of Administrative Law**

In re:
Board of Equalization

**NOTICE OF APPROVAL OF REGULATORY
ACTION**

Regulatory Action:

Government Code Section 11349.3

Title 18, California Code of Regulations

OAL File No. 2011-0817-03 S

Adopt sections:

Amend sections: 1533.2, 1598

Repeal sections:

This regulatory action by the Board of Equalization amends sections 1533.2 and 1598 of title 18 of the California Code of Regulations. The amendments reflect additional sales and use tax on diesel fuel imposed by recent legislation, incorporate various new exemptions from the tax, and prescribe the content of required exemption certificates that must be completed at the time of the sale of diesel fuel to exempt parties.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 10/26/2011.

Date: 9/26/2011



Eric Partington
Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/
Acting Director

Original: Kristine Cazadd
Copy: Richard Bennion

RECEIVED
SEP 28 2011
Board Proceedings

OFFICE OF ADMINISTRATIVE LAW

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DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

MEMORANDUM

TO: Richard Bennion ↘
FROM: OAL Front Desk ✓
DATE: 9/29/2011
RE: Return of Approved Rulemaking Materials
OAL File No. 2011-0817-03S

OAL hereby returns this file your agency submitted for our review (OAL File No. 2011-0817-03S regarding Diesel Fuel Used in Farming Activities or Food Processing).

If this is an approved file, it contains a copy of the regulation(s) stamped "ENDORSED APPROVED" by the Office of Administrative Law and "ENDORSED FILED" by the Secretary of State. The effective date of an approved file is specified on the Form 400 (see item B.5). (Please Note: The 30th Day after filing with the Secretary of State is calculated from the date the Form 400 was stamped "ENDORSED FILED" by the Secretary of State.)

DO NOT DISCARD OR DESTROY THIS FILE

Due to its legal significance, you are required by law to preserve this rulemaking record. Government Code section 11347.3(d) requires that this record be available to the public and to the courts for possible later review. Government Code section 11347.3(e) further provides that "...no item contained in the file shall be removed, altered, or destroyed or otherwise disposed of." See also the Records Management Act (Government Code section 14740 et seq.) and the State Administrative Manual (SAM) section 1600 et seq.) regarding retention of your records.

If you decide not to keep the rulemaking records at your agency/office or at the State Records Center, you may transmit it to the State Archives with instructions that the Secretary of State shall not remove, alter, or destroy or otherwise dispose of any item contained in the file. See Government Code section 11347.3(f).

Enclosures

NOTICE PUBLICATION/REGULATORY SUBMISSION (See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2011-031503	REGULATORY ACTION NUMBER 2011-0817-035	EMERGENCY NUMBER
For use by Office of Administrative Law (OAL) only			
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	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 2011 #12-E	PUBLICATION DATE 3-25-2011

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Diesel Fuel Used in Farming Activities or Food Processing	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	ADOPT
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	AMEND 1533.2, 1598
TITLE(S) 18	REPEAL

3. TYPE OF FILING

<input checked="" 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 §511349.3, 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)
6/8/11 - 7/26/11 Added per agency request 9/26/11 - RP

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

<input checked="" type="checkbox"/> Effective 30th day after filing with Secretary of State	<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 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>Diane G. Olson</i>	DATE August 17, 2011
TYPED NAME AND TITLE OF SIGNATORY Diane G. Olson, Chief, Board Proceedings Division	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

SEP 26 2011

Office of Administrative Law

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code, but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates of the

taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

- (1) 7.12 percent for the period July 1, 2011, through June 30, 2012;
- (2) 7.42 percent for the period July 1, 2012, through June 30, 2013;
- (3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and
- (4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Final Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ij) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ij) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (jk).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional state sales and use tax is imposed on the sale and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3) Exemptions and Exemption Certificates.

(A) An exemption from the additional state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the Additional State Sales and Use
Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

_____ ,

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional state sales and use tax because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108.

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional state sales and use tax because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the additional state sales and use tax, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972

Sales tax reimbursement computed at 2 1/4% of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599

Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the “fair rental value” of the mobile transportation equipment leased, the “fair rental value” does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (hi)(2). If a sales invoice is used, it must show the purchaser's name and address, the

aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ij)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (jk)(1) may issue a certificate in substantially the form set forth in subdivision (jk)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (jk) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that

purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the

Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

M e m o r a n d u m

To : Eric Partington
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Date: September 22, 2011

From : Richard Bennion
Regulations Coordinator
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2011-0817-03S*
Regulations 1533.2, Diesel Fuel Used in Farming Activities or Food Processing, and 1598, Motor Vehicle and Aircraft Fuels

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. At the beginning of the file, OAL is authorized to replace page three of the rulemaking file index, which is the Verification.
2. Insert the following statement to box B4 on the form 400: "The beginning date was June 8, 2011, and ended on July 26, 2011."
3. Please replace the final text for regulations 1533.2 and 1598 with the files I sent to you this morning.
4. Please replace the Statement of Compliance behind tab 17 with the attached copy.

If you have any questions or comments, please notify me at (916) 445-2130 or email at Richard.Bennion@boe.ca.gov.

REB

Memorandum

To : Anne Starr
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814

Date: August 15, 2011

From : Richard Bennion
Regulations Coordinator
Board Proceedings Division, MIC: 80

Subject : *OAL File No. 2011-0817-03S*
Regulations 1533.2, Diesel Fuel Used in Farming Activities or Food Processing, and 1598, Motor Vehicle and Aircraft Fuels

The Office of Administrative Law (OAL) is authorized to make the following substitutions and corrections in connection with the above-referenced rulemaking file:

1. At the beginning of the file, OAL is authorized to replace page two of the rulemaking file index.

If you have any questions or comments, please notify me at (916) 445-2130 or email at Richard.Bennion@boe.ca.gov.

REB

- Wistuba II, Gazdar AF (2006). Lung cancer preneoplasia. *Annu Rev Pathol* **1**:331-48.
- Witschi HP, Tryka AF, Mauderly JL, Haschek WM, Satterfield LC, Bowles ND, *et al.* (1985). Long-term effects of repeated exposure to 3-methylfuran in hamsters and mice. *J Toxicol Environ Health* **16**(3-4):581-92.
- Yuan B, Cao H, Jiang Y, Hong H, Wang Y (2008). Efficient and accurate bypass of N2-(1-carboxyethyl)-2'-deoxyguanosine by DinB DNA polymerase in vitro and in vivo. *Proc Natl Acad Sci USA* **105**(25):8679-84.
- Yuan JH, Burka LT (1995). Toxicokinetics of 4-methylimidazole in the male F344 rat. *Xenobiotica* **25**(8):885-94.

STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Notice of Extension of Public Comment Period

Interested Parties:

The California Regulatory Notice Register 2011, No. 30-Z, dated July 29, 2011 indicated that the State Superintendent of Public Instruction is proposing a regulation that would amend California Code of Regulations, Title 5 regarding TrustLine registration for applicable license-exempt providers of subsidized child care and development services.

The State Superintendent of Public Instruction will extend the public comment period for this proposed regulation for an additional 45 days. California Department of Education (CDE) staff, on behalf of the SSPI, will hold a public hearing at 9:00 a.m. on November 21, 2011, at 1430 N Street, Room 1801, Sacramento, California. This extended comment period will close at 5:00 p.m. on November 21, 2011. The original Notice of Proposed Regulatory Action specified a 45-day comment period.

All written comments must be received at the CDE by 5:00 p.m. on November 21, 2011. Written comments should be submitted to:

Debra Thacker, Regulations Coordinator
 Administrative Support and Regulations
 Adoption Unit
 California Department of Education
 1430 N Street, Room 5319
 Sacramento, CA 95814

Comments may also be submitted by facsimile (FAX) at 916-319-0155 or by e-mail to regcomments@cde.ca.gov.

Materials regarding the proposed rulemaking can be found at:
<http://www.cde.ca.gov/re/lr/rr/trustline.asp>.

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# 2011-0817-03
 BOARD OF EQUALIZATION
 Diesel Fuel Used in Farming Activities or Food Processing

This regulatory action by the Board of Equalization amends sections 1533.2 and 1598 of title 18 of the California Code of Regulations. The amendments reflect additional sales and use tax on diesel fuel imposed by recent legislation, incorporate various new exemptions from the tax, and prescribe the content of required exemption certificates that must be completed at the time of the sale of diesel fuel to exempt parties.

Title 18
 California Code of Regulations
 AMEND: 1533.2, 1598
 Filed 09/26/2011
 Effective 10/26/2011
 Agency Contact:
 Richard E. Bennion (916) 445-2130

File# 2011-0819-01
 BUREAU OF AUTOMOTIVE REPAIR
 Administrative Citations and Fines for Unlicensed Activity

The Director of Consumer Affairs adopted sections 3394.40, 3394.41, 3394.42, 3394.43, 3394.44, 3394.45, and 3394.46 of title 16 of the California Code of Regulations establishing for the Bureau of Automotive Repair provisions for administrative citations and fines for unlicensed practice.

Rulemaking File Index
Title 18. Public Revenue
Sales and Use Tax
Regulation 1533.2 *Diesel Fuel Used in Farming Activities or Food Processing*, and
Regulation 1598, *Motor Vehicle and Aircraft Fuel*

1. [Final Statement of Reasons](#)
2. [Updated Informative Digest](#)
3. [Business Tax Committee Minutes, February 23, 2011](#)
 - Minutes
 - BTC Agenda
 - Formal Issue Paper Number 11-002
 - Text of Proposed regulation
 - Regulation History
4. [Reporter's Transcript Business Taxes Committee, February 23, 2011](#)
5. [Estimate of Cost or Savings, March 22, 2011](#)
6. [Economic and Fiscal Impact Statements, March 15, 2011](#)
7. [Assembly Bill 105, approved on March 24, 2011](#)
8. [Notice of Publications](#)
 - Form 400 and notice, Publication Date March 25, 2011
 - Proposed Text of Regulations 1533.2 and 1598
 - Email sent to Interested Parties, March 25, 2011
 - CA Regulatory Notice Register 2011, Volume No. 12-Z
9. [Notice to Interested Parties, March 25, 2011](#)

The following items are exhibited:

 - Notice of Hearing
 - Initial Statement of Reasons
 - Proposed Text of Regulations 1533.2 and 1598
 - Regulation History
10. [Statement of Compliance](#)
11. [Chief Counsel Memo Date May 5, 2011, Item F2 May 25, 2011](#)
12. [Reporter's Transcript, Item F2, May 25, 2011](#)

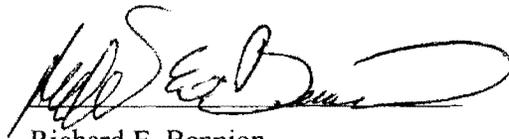
13. [Minutes, May 25, 2011, and Exhibits](#)
The following items are exhibited:
 - Chief Counsel Memo Dated May 5, 2011
 - Notice of Proposed Regulatory Action
 - Initial Statement of Reasons
 - Proposed Text of Regulations 1533.2 and 1598
 - Regulation History
14. [Revised Estimate of Cost/Savings, approved on June 24, 2011](#)
15. [Revised Economic and Fiscal Impact Statement, STD 399, June 24, 2011](#)
16. [15-Day letter sent to Interested Parties, June 8, 2011](#)
17. [Statement of Compliance](#)
18. [Modified text of Regulation 1533.2 and 1598 mailed to interested parties](#)
19. [Draft Minutes, Chief Counsel Matters, July 26, 2011, Item J1. The following items are exhibited:](#)
 - 15 Day Notice to interested parties, June 8, 2011
 - Proposed revised text of Regulations 1533.2 and 1598
20. [Reporter's Transcript Chief Counsel Matters, Rulemaking, July 26, 2011, Item J1](#)

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 August 17, 2011. The file was reopened on September 22, 2011 for changes requested by OAL and the file was closed on September 22, 2011, 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.

September 22, 2011

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
Adoption of Proposed Amendments to
California Code of Regulations,
Title 18, Sections:**

**1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*; and
1598, *Motor Vehicle and Aircraft Fuels***

Update of Information in the Initial Statement of Reasons

Current Law Prior to March 24, 2011

As explained in the Initial Statement of Reasons, Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) was enacted on March 22, 2010, and added sections 6051.8 and 6201.8 to the Revenue and Taxation Code (RTC) to impose an additional 1.75 percent sales and use tax on diesel fuel and amended RTC section 60050 to lower the diesel fuel excise tax rate to 13.6 cents (\$0.136) per gallon, beginning July 1, 2011. The additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6 that was enacted on March 23, 2010. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent sales and use tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law (RTC § 60001 et seq.) and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law; and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2 of the Diesel Fuel Tax Law.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent sales and use tax on the sale and purchase of tangible personal property effective April 1, 2009, would cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes

imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 would apply to the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

Original Proposed Amendments

As explained in the Initial Statement of Reasons, the original proposed amendments to California Code of Regulations, title 18, section (Regulation) 1598, *Motor Vehicle and Aircraft Fuels*, reflected the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, and the expiration of the additional one percent sales and use tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporated the two exemptions from the additional 1.75 percent sales and use tax on diesel fuel provided by RTC section 6357.3; and prescribed the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The original proposed amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, clarified that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

During its February 23, 2011, meeting, the Board determined that it was reasonably necessary to amend Regulation 1533.2 for the specific purposes of ensuring that the regulation reflects that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011. The Board also determined that it was reasonably necessary to amend Regulation 1598 for the specific purposes of ensuring that the regulation reflects the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that would be effective July 1, 2011, and prescribes the content of the exemption certificate required by RTC section 6357.3. As a result, the Board authorized Board staff to begin the formal rulemaking process for the Board to adopt the proposed amendments to both regulations.

Proposition 26

Also, as explained in the Initial Statement of Reasons, the California voters passed Proposition 26 on November 2, 2010. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010,

twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, could have been affected by Proposition 26; however, the Legislature had until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 was uncertain when the Board authorized staff to begin the formal rulemaking process and the Board proposed to adopt the original amendments to Regulations 1533.2 and 1598 to reflect the provisions of the Sales and Use Tax Law, as the law read on February 23, 2011.

Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of AB 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax was reduced to 13 cents (\$0.13) per gallon, effective July 1, 2011.

Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and

recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the “storage, use, or other consumption” of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board determined that the changes recommended in the Chief Counsel Memorandum were reasonably necessary for the specific purposes of: (A) ensuring that the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes; (B) ensuring that the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; (C) ensuring that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105; (D) clarifying the provisions of Regulation 1598 so that they specify that the additional use tax imposed by RTC section 6201.8 applies to the “storage, use, or other consumption” of diesel fuel; (E) further conforming the text of the exemption certificate being added to Regulation 1598 for use in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c); and (E) incorporating the foregoing changes into the original text of the proposed amendments to Regulation 1598, deleting unnecessary language from the proposed amendments to Regulation 1598, and correcting the

spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k). Therefore, the Board unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 recommended in the Chief Counsel Memorandum. The Board also directed staff to make the full text of proposed amendments to Regulations 1533.2 and 1598, with the changes clearly indicated, available to the public for additional comment in accordance with Government Code section 11346.8, subdivision (c).

Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

In addition, the original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions’ internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word “diesel” in the first sentence of Regulation 1598, subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board also included these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

15-Day Notice

Board staff prepared a 15-day Notice, dated June 8, 2011, and attached the revised text of the proposed amendments to Regulations 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes clearly indicated, to the notice. Then, Board staff made the notice and revised text available to the public in accordance with Government Code section 11346.8, subdivision (c), transmitted the documents to those interested parties specified in Government Code section 11346.4, subdivision (a), and posted the documents on the Board’s website at www.boe.ca.gov. The 15-day Notice contained an update of the Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the original proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register on March 25, 2011, and the update described the Chief Counsel Memorandum dated May 5, 2011, and all of the sufficiently related, nonsubstantial, and solely grammatical changes to the text of the original proposed amendments to Regulations 1533.2 and 1598. The 15-day Notice also advised the interested parties regarding the deadline to submit their comments regarding the changes to the text of the original proposed amendments to Regulations 1533.2 and 1598.

July 26, 2011, Board Meeting

On July 26, 2011, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes. The Board determined that the amendments to Regulation 1533.2 were necessary to revise the text of the regulation to reflect the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies after the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 ceases to be operative on July 1, 2011, and as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes. The Board determined that the amendments to Regulation 1598 were necessary for the specific purpose of conforming the text of the regulation to the current provisions of RTC sections 6051.8, 6201.8, and 60050, prescribing the exemption certificate for use with the exemption from the additional sales and use taxes imposed by RTC sections 6051.8 and 6201.8 provided by RTC section 6357.3, and to make other nonsubstantial and solely grammatical changes to the regulation.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Documents Relied Upon

Formal Issue Paper 11-002, which contained staff's recommendation that the Board begin the formal rulemaking process to adopt the original proposed amendments to Regulations 1533.2 and 1598, was submitted to the Board for consideration at its February 23, 2011, Board meeting, posted on the Board's website at www.boe.ca.gov, and made available to the public. A Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105, was submitted to the Board for consideration at the May 25, 2011, public hearing, posted on the Board's website, and made available to the public.

The Board relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, and comments made by Board staff and the Board Members during the February 23, 2011, discussion of the issue paper when it decided to propose the original amendments to Regulations 1533.2 and 1598. The Board relied upon the May 5, 2011, Chief Counsel Memorandum and the attachments to the Chief Counsel Memorandum when it decided to make sufficiently related changes to Regulations 1533.2 and 1598, and make nonsubstantial and solely grammatical changes to Regulation 1598. The Board also relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, the May 5, 2011, Chief Counsel Memorandum, and the attachments to the Chief Counsel Memorandum when the Board decided to adopt the proposed amendments to Regulations 1533.2 and 1598 with the changes.

The Board did not rely upon any data or any technical, theoretical or empirical study, report, or similar document in proposing and adopting the amendments to Regulations 1533.2 and 1598 that was not identified in the Initial Statement of Reasons, or which was

otherwise not identified or made available for public review and comment at least 15 days prior to the adoption of the amendments.

No Mandate on Local Agencies or School Districts

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 does not impose a mandate on local agencies or school districts.

Public Comments

No interested parties submitted written comments to the Board or appeared at the May 25, 2011, public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum. Furthermore, no interested parties appeared on July 26, 2011, to comment on the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes, and no interested parties submitted written comments regarding the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes.

Alternatives

On February 23, 2011, the Board considered whether to propose the original amendments to Regulations 1533.2 and 1598 or, alternatively, whether to take no action at that time due to the uncertainty created by Proposition 26. However, the Board decided to propose the original amendments to Regulations 1533.2 and 1598 because they were consistent with current law and it is important for the regulations to accurately reflect the current provisions of the RTC.

On May 25, 2011, the Board considered sufficiently related changes to the original proposed amendments to Regulations 1533.2 and 1598 to incorporate changes made to RTC sections 6051.8, 6201.8, and 60050 made by AB 105. The Board also considered nonsubstantial and solely grammatical changes to Regulation 1598. The Board determined that the changes were necessary to ensure that Regulations 1533.2 and 1598 reflect the current provisions of the RTC and that Regulation 1598 is grammatically correct and does not contain any spelling errors.

By its motion on February 23, 2011, proposing the adoption of the original amendments to Regulations 1533.2 and 1598, its motion on May 25, 2011, which authorized sufficiently related changes to Regulations 1533.2 and 1598 and also nonsubstantial and solely grammatical changes to Regulation 1598, and its motion on July 26, 2011, adopting the proposed amendments to Regulations 1533.2 and 1598 with the changes authorized on May 25, 2011, the Board determined that no alternative to the adopted text of the proposed amendments to Regulations 1533.2 and 1598 would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective

and less burdensome to affected private persons than the adopted regulation or would lessen the adverse economic impact on small businesses.

No Significant Adverse Economic Impact on Business

Furthermore, the adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that were effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made a determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant adverse economic impact on business.

No Federal Mandate

The adoption of the proposed amendments to Regulations 1533.2 and 1598 was not mandated by federal statutes or regulations and there is no federal regulation that is identical to Regulation 1533.2 or 1598.

**Updated Informative Digest for
Adoption of Proposed Amendments to
California Code of Regulations,
Title 18, Sections:**

**1533.2, Diesel Fuel Used in Farming Activities or Food Processing; and
1598, Motor Vehicle and Aircraft Fuels**

Current Law Prior to March 24, 2011

As explained in the Notice of Proposed Regulatory Action published in the California Notice Register on March 25, 2011 (Cal. Reg. Notice Register 2011, No. 12-Z), Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) was enacted on March 22, 2010, and added sections 6051.8 and 6201.8 to the Revenue and Taxation Code (RTC) to impose an additional 1.75 percent sales and use tax on diesel fuel and amended RTC section 60050 to lower the diesel fuel excise tax rate to 13.6 cents (\$0.136) per gallon, beginning July 1, 2011. The additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6 that was enacted on March 23, 2010. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent sales and use tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law (RTC § 60001 et seq.) and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law; and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2 of the Diesel Fuel Tax Law.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent sales and use tax on the sale and use of tangible personal property effective April 1, 2009, would cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 would apply to the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and would no longer apply to the one percent sales and use tax

imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

Original Proposed Amendments

The Board authorized staff to begin the formal rulemaking process to adopt the original proposed amendments to California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuels*, on February 23, 2011. As explained in the Notice of Proposed Regulatory Action published in the California Notice Register on March 25, 2011, the original proposed amendments to Regulation 1598 reflected the additional 1.75 percent sales and use tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent sales and use tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporated the two exemptions from the additional 1.75 percent sales and use tax on diesel fuel provided by RTC section 6357.3; and prescribed the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The original proposed amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, clarified that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011.

The objective of the original proposed amendments was to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011. The objective of the original proposed amendments was also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that would be effective July 1, 2011, and to prescribe the content of the exemption certificate required by RTC section 6357.3.

Proposition 26

Also, as explained in the Notice of Proposed Regulatory Action published in the California Notice Register on March 25, 2011, the California voters passed Proposition 26 on November 2, 2010. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, could have been affected by Proposition 26; however, the Legislature had until November 2011 to reenact any

nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 was uncertain when the Board authorized staff to begin the formal rulemaking process and the Board proposed to adopt the original amendments to Regulations 1533.2 and 1598 to reflect the provisions of the Sales and Use Tax Law, as the law read on February 23, 2011.

Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of AB 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax was reduced to 13 cents (\$0.13) per gallon, effective July 1, 2011.

Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website at www.boe.ca.gov, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the "storage, use, or

other consumption” of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulation 1533.2 and 1598 recommended in the Chief Counsel Memorandum. The Board also directed staff to make the full text of proposed amendments to Regulations 1533.2 and 1598, with the changes clearly indicated, available to the public for additional comment in accordance with Government Code section 11346.8, subdivision (c). No interested parties submitted written comments to the Board or appeared at the public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum.

After the Board authorized the changes to the original text of the proposed amendments to Regulation 1533.2 recommended in the Chief Counsel Memorandum, the objective of the proposed amendments to Regulation 1533.2 was still to revise the text of the regulation to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption would no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceased to be operative on July 1, 2011. After the Board authorized the changes to the original text of the proposed amendments to Regulation 1598 recommended in the Chief Counsel Memorandum, the objective of the proposed amendments to Regulation 1598 was still to revise the text of the regulation to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that would be effective July 1, 2011, and to prescribe the content of the exemption certificate required by RTC section 6357.3.

Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

In addition, the original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions' internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word "diesel" in the first sentence of Regulation 1598, subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board also included these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

15-Day Notice

Board staff prepared a 15-day Notice, dated June 8, 2011, and attached the revised text of the proposed amendments to Regulations 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes clearly indicated, to the notice. Then, Board staff made the notice and revised text available to the public in accordance with Government Code section 11346.8, subdivision (c), transmitted the documents to those interested parties specified in Government Code section 11346.4, subdivision (a), and posted the documents on the Board's website at www.boe.ca.gov. The 15-day Notice contained an update of the Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the original proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register on March 25, 2011, and the update described the Chief Counsel Memorandum dated May 5, 2011, and all of the sufficiently related, nonsubstantial, and solely grammatical changes to the text of the original proposed amendments to Regulations 1533.2 and 1598. The 15-day Notice also advised the interested parties regarding the deadline to submit their comments regarding the changes to the text of the original proposed amendments to Regulations 1533.2 and 1598.

July 26, 2011, Board Meeting

On July 26, 2011, the Board, pursuant to the authority granted to it pursuant to RTC section 7051, unanimously voted to adopt the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes. The Board determined that the amendments to Regulation 1533.2 were necessary to revise the text of the regulation to reflect the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies after the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 ceases to be operative on July 1, 2011, and as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes. The Board determined that the amendments to Regulation 1598 were necessary to conform the text of the regulation to the

current provisions of RTC sections 6051.8, 6201.8, and 60050, prescribe the exemption certificate for use with the exemption from the additional sales and use taxes imposed by RTC sections 6051.8 and 6201.8 provided by RTC section 6357.3, and to make other nonsubstantial and solely grammatical changes to the regulation. No interested parties appeared on July 26, 2011, to comment on the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes, and no interested parties submitted written comments regarding the revised text of the proposed amendments to Regulation 1533.2 and 1598, with the changes authorized on May 25, 2011, and the previously omitted changes.

There have not been any changes to the applicable laws or the effect of the adoption of the proposed amendments to Regulations 1533.2 and 1598 set forth in the 15-Day Notice, which updated the Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the original proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register on March 25, 2011 by describing the sufficiently related changes to the proposed amendments to both regulations and the nonsubstantial and solely grammatical changes to the proposed amendments to Regulation 1598, including the previously omitted changes.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.



BOARD OF EQUALIZATION

BUSINESS TAXES COMMITTEE MEETING MINUTES

HONORABLE BETTY T. YEE, COMMITTEE CHAIR

450 N STREET, SACRAMENTO

MEETING DATE: FEBRUARY 23, 2011, TIME: 9:30 A.M.

ACTION ITEMS & STATUS REPORT ITEMS**Agenda Item No: 1**

Title: *Proposed amendments to Regulations 1598, Motor Vehicle and Aircraft Fuels, and 1533.2, Diesel Fuel Used in Farming Activities or Food Processing*

Issue/Topic:**Action 1:**

Request approval and authorization to publish proposed amendments to Regulation 1598 to incorporate the provisions of Revenue and Taxation Code sections 6051.8, 6201.8, and 6357.3 related to the 1.75 percent tax increase to sales of diesel fuel beginning July 1, 2011.

Action 2:

Request approval and authorization to publish proposed amendments to Regulation 1533.2 to provide that the partial exemption from tax includes an exemption from the additional tax imposed on sales of diesel fuel.

Committee Discussion:**Action 1:**

Staff presented the amendments to Regulation 1598. Ms. Steel asked how Proposition 26 impacts the regulation. Staff explained that the full impact of the proposition is unknown at this time but that staff is moving forward with the regulation based on current law. Staff also stated that the Legal Department is looking into the effect of the proposition. Ms. Yee stated staff should look at all areas that may be affected by the proposition.

Action 2:

None.

Committee Action:**Action 1:**

Upon motion by Ms. Mandel, seconded by Mr. Horton, the Committee unanimously approved and authorized for publication amendments to regulation 1598. The amendments would be operative July 1, 2011. A copy of the proposed amendments is attached.

Action 2:

Upon motion by Ms. Mandel, seconded by Mr. Horton, the Committee unanimously approved and authorized for publication amendments to regulation 1533.2. The amendments would be operative July 1, 2011. A copy of the proposed amendments is attached.

Agenda Item No: 2

Title: Proposed Regulation 2558.1, *Wine*

Issue/Topic:

Request approval and authorization to publish proposed Regulation 2558.1 to clarify the application of tax to wine-based products that contain distilled spirits.

Committee Discussion:

Mr. Richard Grey of E&J Gallo, addressed the Committee stating that although his previously submitted language is preferred, he recognized the simplicity and clarity of staff’s proposed regulation and therefore supported staff’s language.

Ms. Steel expressed opposition to any proposed regulation because of its business costs to industry and to the Board. In addition, Ms. Steel believes that the regulation represents an expansion of taxes imposed on wineries.

Staff and Mr. Grey responded to Board member questions and comments regarding the impact of not approving a regulation and the operative date of January 1, 2012, as recommended by staff. Staff and Mr. Grey explained that without a regulation clarifying the Board’s interpretation for “wine as defined by Business and Professions Code section 23007” the current ambiguity and inconsistencies would continue. In regard to the operative date, staff clarified that January 1, 2012 was based on input from interested parties and provides ample time for wineries to comply with the provisions of the regulation.

Committee Action/Recommendation/Direction:

Upon motion by Ms. Mandel, seconded by Mr. Horton, the Committee approved and authorized for publication the proposed regulation. A copy of the proposed Regulation 2558.1 is attached.

The vote was as follows:

MEMBER	Horton	Steel	Yee	Runner	Mandel
VOTE	Y	N	Y	Y	Y

/s/ Betty T. Yee

Honorable Betty T. Yee, Committee Chair

/s/ Kristine Cazadd

Kristine Cazadd, Interim Executive Director

BOARD APPROVED

at the February 23, 2011 Board Meeting

/s/ Diane Olson

Diane Olson, Chief
Board Proceedings Division

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Action 1 — Proposed Revisions to Regulation 1598, <i>Motor Vehicle and Aircraft Fuels</i></p> <p>Issue Paper Alternative 1 – Staff Recommendation See Agenda, pages 2 – 4, and Issue Paper Exhibit 2</p> <p>Issue Paper Alternative 2 – Do not amend Regulation 1598</p>	<p>Approve one of the following alternatives:</p> <p>Alternative 1 Approve and authorize publication of staff’s proposed revisions to Regulation 1598 which incorporate the additional tax imposed on sales of diesel fuel and the corresponding exemption certificate for sales exempt from the additional tax.</p> <p align="center">OR</p> <p>Alternative 2 Do not approve proposed revisions.</p>
<p>Action 2 — Proposed Revisions to Regulation 1533.2, <i>Diesel Fuel Used in Farming Activities or Food Processing</i></p> <p>Issue Paper Alternative 1 - Staff Recommendation See Agenda, page 5, and Issue Paper Exhibit 3</p> <p>Issue Paper Alternative 2 – Do not amend Regulation 1533.2</p>	<p>Approve one of the following alternatives:</p> <p>Alternative 1 Approve and authorize publication of proposed revisions to Regulation 1533.2 which provide that the partial exemption from tax includes an exemption from the additional tax imposed on sales of diesel fuel.</p> <p align="center">OR</p> <p>Alternative 2 Do not approve proposed revisions.</p>

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, Motor Vehicle and Aircraft Fuels, and Regulation 1533.2, Diesel Fuel Used in Farming Activities or Food Processing

Action 1 — Staff Recommendation

Proposed Revisions to subdivision (e) of Regulation 1598

(e) ADDITIONAL TAX ON SALES OF DIESEL FUEL.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2)(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for Exemption from the 1.75 Percent Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from _____

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, Motor Vehicle and Aircraft Fuels, and Regulation 1533.2, Diesel Fuel
Used in Farming Activities or Food Processing

is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use.)

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

is purchased by an exempt bus operator

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code section 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

<p>Renumbering of subdivision (f) through subdivision (j) of Regulation 1598</p>	<p align="center"><u>(Owner, Partner, Purchasing Agent, etc.)</u></p>
	<p align="center">License/permit # (if any): _____ <u>(Exempt bus operator, train operator, fuel registration)</u></p> <p>(ef) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. ...</p> <p>(fg) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. ...</p> <p>(gh) REFUNDS OF EXCISE TAX ...</p> <p>(hj) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. ...</p> <p>(ij) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. ...</p> <p>(jk) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. ...</p>

AGENDA —February 23, 2011 Business Taxes Committee Meeting
Proposed Revisions to Regulation 1598, Motor Vehicle and Aircraft Fuels, and Regulation 1533.2, Diesel Fuel
Used in Farming Activities or Food Processing

<p>Action 2 — Staff Recommendation</p> <p>Proposed Revisions to subdivision (a) of Regulation 1533.2</p>	<p>(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.</p> <p>For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.</p> <p>For the period commencing on April 1, 2009, and ending on June 30, 2011 and ending when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</p> <p><u>For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.</u></p>
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Issue Paper Number 11-002

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



Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

I. Issue

Should Regulation 1598, *Motor Vehicle and Aircraft Fuels*, be amended to incorporate the provisions related to a sales and use tax rate increase on the sale of diesel fuel found in sections 6051.8, 6201.8, and 6357.3 of the Revenue and Taxation Code (RTC), including prescribing an exemption certificate?

In addition, should Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, be amended at the same time as Regulation 1598 to reflect that the tax rate increase provided in RTC sections 6051.8 and 6201.8 does not apply to diesel fuel used in farming activities or food processing?

II. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*. Staff recommends adding subdivision (e) to reflect the additional 1.75 percent tax increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law, or subject to the payment requirement specified in RTC section 60502.2. Staff's proposed amendments are attached as Exhibit 2.

Staff also recommends the Board approve and authorize publication of proposed revisions to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. Staff recommends amending subdivision (a) to show that the partial exemption from sales or use tax includes the additional 1.75 percent tax on sales or purchases of diesel fuel. Staff's proposed amendments are attached as Exhibit 3.

III. Other Alternative(s) Considered

Do not amend Regulation 1598 or 1533.2.

Issue Paper Number 11-002

IV. Background

Assembly Bill (AB) X8 6 (stats. 2010, Ch. 11) created a “fuel tax swap,” which lowered the sales tax rate and simultaneously raised the excise tax rate on sales of motor vehicle fuel (MVF) operative July 1, 2010. These provisions were recently incorporated in Regulation 1598. In addition, the legislation added RTC sections 6051.8 and 6201.8 to impose an additional 1.75 percent tax rate on the sales and use of diesel fuel and amended RTC section 60050 to lower the diesel fuel tax rate beginning July 1, 2011. The additional tax rate is specific to sales and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use tax imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5. The legislation requires the Board of Equalization to annually adjust the MVF (gasoline) and diesel excise tax rates so that the amount of revenue generated is equal to what would have been generated had the sales and use tax rates remained unchanged.

The companion Senate Bill (SB) 70 (stats. 2010, Ch. 9) excluded aviation gasoline from the increase in the MVF excise taxes. It also added RTC section 6357.3 to provide an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by section 60058 or the payment requirement imposed by section 60108 of the Diesel Fuel Tax Law. Additionally, section 6357.3 provides an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2. No exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.

Recent Developments

On November 2, 2010, California voters passed Propositions 22 and 26. Briefly, Proposition 22 prohibits the State from borrowing or taking funds used for transportation, redevelopment, or local government projects and services. It does not appear that Proposition 22 impacts the BOE’s administration of the taxes and fees as enacted in (AB) X8 6.

Proposition 26 requires that certain state and local fees be approved by two-thirds vote. Proposition 26 voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless reenacted by a two-thirds vote of each house of the Legislature. The provisions of (AB) X8 6 are likely impacted by Proposition 26; however, the long term impact is not clear at this time. Staff is moving forward with the proposed revisions to the regulations because they are consistent with the current law.

Staff held meetings with interested parties on November 3, 2010 and December 28, 2010, to discuss the proposed revisions to Regulations 1598 and 1533.2. No written comments were received to date. The Business Taxes Committee is scheduled to discuss this matter on February 23, 2011.

V. Discussion

Regulation 1598 – Exhibit 2.

Subdivision (e). Add subdivision (e), *Additional Tax on Sales of Diesel Fuel*, to reflect the additional 1.75 percent tax rate increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law.

The exemption also applies to the use of diesel fuel that is subject to the payment requirement specified in RTC section 60502.2.

To claim the exemption from the additional sales tax, the purchaser must furnish the seller with an exemption certificate and certify in writing that the fuel will be used in a manner exempt from the tax. If, after issuing an exemption certificate, the purchaser uses the fuel in a manner that is not exempt from the tax, the purchaser is liable for the additional tax. Subdivision (e) includes a sample exemption certificate. To be valid, the exemption certificate must be taken by the seller timely and in good faith. The certificate requires the name, address, phone number, and signature of the purchaser, in addition to any applicable BOE-issued license, certificate or permit number for purchasers exempt from the excise tax under the Diesel Fuel Tax Law, and for exempt bus operators subject to the payment requirement specified in RTC section 60502.2. The certificate also requires the purchaser to state the reason why its purchase or use of the diesel fuel is exempt from the additional tax.

Reference section. Remove RTC section 6385, since Regulation 1598 does not include any exemptions provided by this statute.

Regulation 1533.2 – Exhibit 3.

Regulation 1533.2 explains the application of RTC section 6357.1, which provides a partial exemption from the state portion of the sales and use tax rate for sales of diesel fuel used in farming or food processing. The proposed revisions would incorporate the exemption from the additional 1.75 percent tax rate increase on the sales of diesel used in farming activities or food processing. In other words, the sales and use tax rate that applies to sales of diesel fuel used in farming activities or food processing will not change on July 1, 2011, as a result of the new 1.75 percent tax rate increase on the sales of diesel.

VI. Alternative 1 - Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*, and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, as proposed in Exhibits 2 and 3.

A. Description of Alternative 1

Proposed revisions to Regulation 1598 include:

- A provision for imposition of the additional tax due on sales of diesel fuel, operative July 1, 2011,
- An exemption from the additional tax for sales exempt from the diesel fuel tax and not subject to the diesel fuel back up tax or the payment requirement under RTC section 60108,
- An exemption from the additional tax for purchases used in an exempt bus operation,
- An explanation of the responsibilities of the seller who claims a sale is exempt from the additional tax,
- An explanation of the responsibilities of the buyer who issues an exemption certificate,
- A sample exemption certificate which the seller may obtain timely and in good faith from the purchaser to relieve the seller from the requirement to collect the additional tax,

FORMAL ISSUE PAPER

- A renumbering of the subsequent subdivisions, and
- An update of the references section.

The proposed revision to Regulation 1533.2 includes:

- An amendment to subdivision (a) to indicate that the additional 1.75 percent tax imposed on sales or purchases of diesel fuel is included in the partial exemption from tax, and
- A clarification that the taxes imposed by RTC sections 6051.7 and 6201.7 cease to be operative by their own terms on July 1, 2011.

B. Pros of Alternative 1

- Reflects the proper tax rates in the regulation,
- Reflects the exemptions from the tax rate increase provided in the statute, and
- Provides an exemption certificate that sellers and purchasers may use to support the exemption from the additional tax.

C. Cons of Alternative 1

As discussed earlier, the proposed revisions are potentially impacted by Propositions 22 and 26. The regulations may require further amendment depending on the actual effect of these propositions.

D. Statutory or Regulatory Change for Alternative 1

None.

E. Operational Impact of Alternative 1

Staff will notify taxpayers of the revised regulations through outreach efforts.

F. Administrative Impact of Alternative 1**1. Cost Impact**

The workload associated with publishing the regulation and outreach efforts are considered routine. Any corresponding cost would be absorbed within the Board's existing budget.

2. Revenue Impact

None. See Exhibit 1.

G. Taxpayer/Customer Impact of Alternative 1

Staff believes the proposed revisions to the regulations are necessary to keep the taxpayer informed of current law and provide the taxpayer with a certificate for claiming the exemption.

H. Critical Time Frames of Alternative 1

Implementation will begin 30 days following approval of the regulation by the State Office of Administrative Law.

VII. Alternative 2

A. Description of Alternative 2

Do not revise Regulation 1598 or 1533.2.

B. Pros of Alternative 2

The regulations will only be revised once, at the time it becomes clear whether or not the statutes will be reenacted.

C. Cons of Alternative 2

Taxpayers will not be aware of the additional tax imposed on the sales of diesel fuel or whether the additional tax is included in the partial exemption provided by Regulation 1533.2. In addition, sellers and purchasers will not have a sample exemption certificate for use in support of sales of diesel fuel exempt from the additional tax.

D. Statutory or Regulatory Change for Alternative 2

None.

E. Operational Impact of Alternative 2

If the regulations are not amended, the regulations will not reflect the proper tax rates or exemptions.

F. Administrative Impact of Alternative 2

1. Cost Impact

None

2. Revenue Impact

None. See Exhibit 1.

G. Taxpayer/Customer Impact of Alternative 2

If the regulations are not amended, taxpayers may not be aware of the statutory change because the regulation will not reflect the proper tax rates or exemptions. In addition, the taxpayer will not have a sample exemption certificate specific to the exemption.

H. Critical Time Frames of Alternative 2

None.

FORMAL ISSUE PAPER

Prepared by: Tax Policy Division, Sales and Use Tax Division

Current as of: January 24, 2011

REVENUE ESTIMATE

STATE OF CALIFORNIA
BOARD OF EQUALIZATION



Proposed Revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*

Alternative 1 – Staff Recommendation

Staff recommends the Board approve and authorize publication of proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels*. Staff recommends adding subdivision (e) to reflect the additional 1.75 percent tax increase on the sales of diesel fuel and the exemption provided for diesel fuel purchased for use or used in a manner exempt under the Diesel Fuel Tax Law, or subject to the payment requirement specified in RTC section 60502.2.

Staff also recommends the Board approve and authorize publication of proposed revisions to Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*. Staff recommends amending subdivision (a) to show that the partial exemption from sales or use tax includes the additional 1.75 percent tax on sales or purchases of diesel fuel.

Alternative 2 - Other Alternative Considered

Do not amend Regulations 1598 or 1533.2.

Background, Methodology, and Assumptions

Alternative 1 – Staff Recommendation

There is nothing in the proposed revisions to Regulation 1598, *Motor Vehicle and Aircraft Fuels* and Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, which would impact revenue. Both of these proposed revisions will provide for the full implementation of Assembly Bill (AB) X8 6 (stats. 2010, Ch. 11), the "fuel tax swap," and its companion statute Senate Bill (SB) 70 (stats. 2010, Ch. 9) which excluded aviation gasoline from the increase in the MVF taxes and added RTC section 6357.3 to provide an exemption from the 1.75 percent increase in the sales and use tax rate when the diesel fuel is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law. Additionally, section 6357.3 provides an exemption from the

Revenue Estimate

1.75 percent increase in the sales and use tax rate when the diesel fuel is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2. Since these two proposed revisions provide for the full implementation of current law, and nothing else, there is nothing in the staff recommendation that would have an impact on revenue.

Alternative 2 - Other Alternative – do not revise Regulation 1598 or 1533.2

There is nothing in the alternative 2 that would impact sales and use tax revenue.

Revenue Summary

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

Alternative 2 – alternative 2 does not have a revenue impact.

Preparation

Mr. Bill Benson, Jr., Research and Statistics Section, Legislative and Research Division, prepared this revenue estimate. Mr. Robert Ingenito, Chief, Research and Statistics Section, Legislative and Research Division and Ms. Susanne Buehler, Acting Tax Policy Manager, Sales and Use Tax Department, reviewed this revenue estimate. For additional information, please contact Mr. Benson at 916-445-0840.

Current as of February 1, 2011.

Regulation 1598. Motor Vehicle and Aircraft Fuels.

Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~,
and 6423, Revenue and Taxation Code.

(a) IN GENERAL. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) EXCEPTIONS.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) MEASURE OF TAX.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.
4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.
5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.
2. Jet fuel used as a fuel in noncommercial aircraft.
3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Sections 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ij) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (jk).

(d) PARTIAL EXEMPTION FOR MOTOR VEHICLE FUEL. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, diesel fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) ADDITIONAL TAX ON SALES OF DIESEL FUEL.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2)(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for Exemption from the 1.75 Percent Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from _____
_____ ,

is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use.)

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

is purchased by an exempt bus operator

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code section 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) SALES OF MOTOR VEHICLE FUEL ON SALES TAX-INCLUDED BASIS. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

"The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill."

Following are examples of prices computed on a tax-included basis:

(A)	Sales price per gallon of gasoline net of all taxes.....	\$2.435
	Federal excise tax *.....	.184
	State excise tax*.....	<u>.353</u>
	Total	\$2.972
	* Sales tax reimbursement computed at 2 1/4%* of \$2.972....	<u>.067</u>
	Total tax-included price per gallon.....	\$3.039
(B)	Sales price per gallon of diesel fuel net of all taxes.....	\$2.355
	Federal excise tax*.....	<u>.244</u>
	Total	\$2.599
	* Sales tax reimbursement computed at 9%* of \$2.599..	.234
	State excise tax *.....	<u>.136</u>
	Total tax-included price per gallon.....	\$2.969

* The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) APPLICATION OF SALES OR USE TAX TO FUEL FURNISHED WITH LEASED VEHICLES OR AIRCRAFT. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) REFUNDS OF EXCISE TAX

(1) FEDERAL EXCISE TAXES.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) SALES OR USE TAX REFUNDS. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) SUPPORTING DATA FOR AIRCRAFT FUEL EXEMPTIONS. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (hi)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____,

will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____

(ij) CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX.

Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ij)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) ALTERNATE CERTIFICATE FOR EXCLUSION OF FEDERAL EXCISE TAXES FROM MEASURE OF TAX. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (jk)(1) may issue a certificate in substantially the form set forth in subdivision (jk)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (jk) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

**Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales
and Use Tax on Federal Excise Taxes**

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period in which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Phone Number: _____

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No.: _____

Regulation 1533.2. DIESEL FUEL USED IN FARMING ACTIVITIES OR FOOD PROCESSING.

Reference: Section 6357.1, Revenue and Taxation Code

(a) GENERAL. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms "farming activities" and "food processing" are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011~~and ending when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) DEFINITIONS. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In

determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery

stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) PARTIAL EXEMPTION CERTIFICATES.

(1) IN GENERAL. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) BLANKET PARTIAL EXEMPTION CERTIFICATES. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **FORM OF PARTIAL EXEMPTION CERTIFICATE.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **RETENTION AND AVAILABILITY OF PARTIAL EXEMPTION CERTIFICATES.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **GOOD FAITH.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) PARTIAL EXEMPTION CERTIFICATE FOR USE TAX. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) REFUND OF PARTIAL EXEMPTION.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) IMPROPER USE OF PARTIAL EXEMPTION. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) PURCHASER'S LIABILITY FOR THE PAYMENT OF SALES TAX.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) RECORDS. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) OPERATIVE DATE. This regulation is operative as of September 1, 2001.

Appendix A

PARTIAL EXEMPTION CERTIFICATE

STATE BOARD OF EQUALIZATION

Qualified Sales and Purchases of Diesel and Farm Equipment and Machinery

NOTE: This is an exemption only from the state general fund portion of the sales and use tax rate. You are not relieved from your obligations for the local and district taxes on this transaction. This partial exemption also does not apply to any tax levied pursuant to Section 6051.2 and 6201.2 of the Revenue and Taxation Code, or pursuant to Section 35 of article XIII of the California Constitution. This partial exemption also applies to lease payments made on or after September 1, 2001, for tangible personal property even if the lease agreement was entered into prior to September 1, 2001.

SELLER'S/LESSOR'S NAME
SELLER'S/LESSOR'S ADDRESS (Street, City, State, Zip Code)

Diesel Fuel Used in Farming Activities or Food Processing* - I as the undersigned purchaser, hereby certify that of the diesel purchased, _____ % will be used in qualified farming activities or food processing in accordance with Revenue and Taxation Code Section 6357.1.

Farm Equipment and Machinery (or parts¹ thereof)* - I as the undersigned purchaser, hereby certify I am engaged in an agricultural business described in Codes 0111 to 0291 of the Standard Industrial Classification (SIC) Manual, or I perform an agricultural service described in Codes 0711 to 0783 of the SIC Manual for such classified persons. The property purchased or leased will be used primarily in producing and harvesting agricultural products in accordance with Revenue & Taxation Code Section 6356.5.²

Type of Farm Equipment and Machinery (or parts thereof) _____

*If you also want this certificate to be used as a blanket certificate for future purchases, describe generally the type of property you will be purchasing and ask your vendor to keep this certificate on file. If this is a specific partial exemption certificate, provide the purchase order or sales invoice number and a precise description of the property being purchased.

I understand that if such property is not used in the manner qualifying for the partial exemption, or if I am not a qualified person, as applicable, that I am required by the Sales and Use Tax Law to report and pay the state tax measured by the sales price/rentals payable of the property to/by me. I also understand that this partial exemption certificate is in effect as of the date shown below and will remain in effect until revoked in writing.

PURCHASER'S NAME OR COMPANY NAME (if applicable)		DATE
SIGNATURE (signature of the purchaser, purchaser's employee, or authorized representative of the purchaser)		TELEPHONE NUMBER
TITLE		PERMIT NUMBER (if applicable) ³
ADDRESS	CITY	STATE, ZIP

¹ If you are purchasing oil, grease, or lubricating or other qualifying fluids, indicate what percentage will be used in farm equipment and machinery performing qualified producing and harvesting activities.
² Vehicles that qualify as farm equipment and machinery, as defined in Regulation 1533.1(b)(1)(B), must be used exclusively in producing and harvesting agricultural products.
³ If you are not required to hold a seller's permit, please enter "Not Applicable."

REGULATION HISTORY

TYPE OF REGULATION: Sales and Use Tax
REGULATION: 1598 & 1533.2
TITLE: *Motor Vehicle and Aircraft Fuels and Diesel Fuel Used in Farming Activities and Food Processing*
PREPARATION: Judi Pierce/Lynn Whitaker
LEGAL CONTACT: Robert Tucker/Cary Huxsoll/Scott Claremon

The proposed amendment to Regulation 1598 incorporates the provisions related to a sales and use tax rate increase on the sale of diesel fuel and prescribe an exemption certificate. The proposed amendment to Regulation 1533.2 clarifies that the additional tax is included in the partial exemption provided in the regulation.

HISTORY OF AMENDMENTS:

February 23, 2011: Business Taxes Committee (BTC) Meeting
December 28, 2010: 2nd Interested Parties Meeting
November 3, 2010: 1st Interested Parties Meeting
October 8, 2010: Topic Placed on BTC Calendar
July 1, 2011: Effective date

Sponsor: Board Staff

Support: None

Oppose: None

Regulation History.doc rev. 3-06-06

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

FEBRUARY 23, 2011

BUSINESS TAXES COMMITTEE

Reported by: Beverly D. Toms

No. CSR 1662

P R E S E N T

For the Committee:

Betty T. Yee
Chair

Michelle Steel
Member

Jerome E. Horton
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John Chiang
State Controller
(per Government Code
Section 7.9)

Diane Olson, Chief
Board Proceedings Division

Board of Equalization
Staff:

Susanne Buehler
Sales and Use Tax Department

Cary Huxsoll
Legal Department

Randy Ferris
Legal Administration

Phil Bishop
Special Taxes and Fees
Division

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1 AGENDA ITEM 1

2 Sacramento, California

3 February 23, 2011

4 ---oOO---

5 MS. OLSON: Our next item is the Business Taxes
6 Committee. Ms. Yee is the Chair of that committee. Ms.
7 Yee.

8 MS. YEE: Thank you very much, Ms. Olson.
9 Members, we have two items before the Business Taxes
10 Committee this morning. The first item relates to
11 proposed amendments to Regulation 1598 relating to motor
12 vehicle and aircraft fuels; and 1533.2, diesel fuel used
13 in farming activities or food processing.

14 Let me have staff introduce the issue. Good
15 morning.

16 MS. BUEHLER: Good morning. I am Susanne
17 Buehler with the Sales and Use Tax Department, and with
18 me right now is Cary Huxsoll from our Legal Department.

19 We do have two agenda items for your
20 consideration this morning. Agenda item 1 requires two
21 actions and votes on your part. In Action 1 /we're
22 asking that you approve and authorize for publication
23 staff's proposed amendments to Regulation 1598, motor
24 vehicle and aircraft fuels, or alternatively do not
25 approve amendments to the regulation.

26 The proposed amendments incorporate the
27 provisions of the Revenue and Taxation Code that relate
28 to the 1.75 tax rate increase on sales of diesel fuel

1 beginning July 1, 2011. And the corresponding exemption
2 certificate for sales that are exempt from additional
3 tax.

4 MS. YEE: Okay. Thank you very much.

5 Discussion, Members?

6 MS. STEEL: Just a question. Proposition 26,
7 how it's going to affect this?

8 MR. HUXSOLL: We don't know the full impact of
9 Proposition 26 at this time. So we recommend moving
10 forward with the amendments because this is consistent
11 with law as it is -- the law as it is now. But we do
12 not know what will happen with regards to Proposition
13 26.

14 MS. STEEL: So after Proposition 26 outcome
15 then it's going to be changed or it doesn't really
16 affect anything?

17 MS. YEE: I think, Ms. Steel, you raise a
18 really good point. My own belief about Prop. 26 and its
19 effect on this is that it probably is not going to
20 affect this particular area, but you raise a point with
21 respect to perhaps really being proactive and maybe
22 asking our Legal Department to look at where we are
23 going to have some impacts relative to taxes and fees
24 that will be affected by the provisions of the
25 proposition. I know we've done that in the income tax
26 area but I think it would be proper to look at that with
27 respect to this.

28 But I'm speculating, I'm not an attorney, but

1 that's my gut sense with respect to this regulation.

2 Any other thoughts on that, Mr. Huxsoll?

3 MR. HUXSOLL: We will look into that. We
4 can --

5 MR. RUNNER: I think we have another item come
6 up later, too --

7 MS. YEE: Yes.

8 MR. RUNNER: -- which we can --

9 MS. YEE: Yeah. But it would be, I think,
10 appropriate to perhaps inventory our tax and fee areas
11 just to see where there will be some potential impacts,
12 and I think that would be information the Legislature
13 would be interested in, as well.

14 Okay. So we have before us the proposed
15 amendments. Other discussion, Members?

16 Hearing none, is there a motion?

17 MS. MANDEL: Move authorization and
18 publication. It's a formal rulemaking process.

19 MS. YEE: Okay.

20 MR. HORTON: Second.

21 MS. YEE: I have a motion by Ms. Mandel to
22 authorize and publish the proposed amendments. Second
23 by Mr. Horton.

24 Without objection, motion carries. Thank you
25 very much.

26 MS. BUEHLER: In Action 2 we're asking that you
27 either approve and authorize for publication staff's
28 proposed amendments to Regulation 1533.2, diesel fuel

1 used in farming activities or food processing; or
2 alternatively do not approve amendments to the
3 regulation.

4 The proposed amendments provide that the
5 partial exemption from tax includes an exemption from
6 the additional tax imposed on the sales of diesel fuel.

7 MS. YEE: Thank you, Ms. Buehler. Any
8 discussion?

9 Okay, can we apply the same motion?

10 MS. MANDEL: Same motion.

11 MS. YEE: Same second? Same outcome?

12 Without objection, such will be the order.

13 Thank you.

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1 AGENDA ITEM 2.

2 MS. BUEHLER: In the Agenda Item 2 we're
3 seeking your approval and authorization to publish
4 proposed Regulation 2558.1, Wine, to clarify the
5 application of tax to wine-based products that contain
6 distilled alcohol.

7 I believe we have one speaker on this, Mr.
8 Richard Grey from E & J Gallo Winery.

9 MS. YEE: Okay, let me have Mr. Grey come
10 forward.

11 Please. Yes, right there, that would be great.
12 Thanks. If you'll introduce yourself formally for the
13 record, you have three minutes.

14 MR. GREY: Certainly. Thank you. Good
15 morning, Ladies and Gentlemen. Thank you for the
16 opportunity to speak. I'm Richard Grey. I'm a
17 Vice-President and the General Counsel of the E & J
18 Gallo Winery.

19 The -- the winery has previously suggested an
20 alternative to the Board to clarify the Board's
21 exemption of wine from the special distilled spirits tax
22 on flavored malt beverages. The -- although we believe
23 that our alternative was preferable to the staff
24 proposal here, we recognize that the staff proposal has
25 the virtue of simplicity and would clarify the existing
26 regulation, which is the most important thing to us.

27 As a result, in my letter to you of February 18
28 we withdrew our -- our alternative and now we urge the

1 Board to support the staff alternative. It is easy to
2 understand and is simple. It regulates only the
3 addition of non-conforming spirits and it avoids debate
4 over the other parts of the wine definition.

5 We think it would have minimal impact on the
6 wine industry. We believe that industry members can
7 easily substitute conforming spirits for non-conforming
8 spirits, and it also appears to be consistent with the
9 Board's overall approach for flavored malt beverages,
10 which focuses on the addition of distilled spirits
11 rather than on other aspects of the way these products
12 are made.

13 It's important, we think, that the Board
14 clarify the existing regulation. Otherwise,
15 manufacturers of these products will not be able to
16 determine whether their products are or are not subject
17 to the special tax.

18 For many reasons it's important that all
19 manufacturers have a clear understanding of the Board's
20 tax rules. Consequently, the winery would request that
21 the Board proceed as expeditiously as possible to
22 rulemaking with the staff proposal.

23 MS. YEE: Thank you very much, Mr. Grey. Thank
24 you.

25 Members, this was the effort that -- and I want
26 to thank the staff for its diligence and really terrific
27 work on a very, very complex issue that really required
28 understanding of the manufacturing of wine pretty

1 extensively. But this -- the purpose of this regulation
2 is really to try to ensure equitable treatment between
3 alcoholic beverage -- beverage products that contain
4 distilled spirit-based flavorings regardless of whether
5 they're labeled as wine or beer. And this is an issue
6 that came up after the original regulation was enacted
7 and I believe that the staff recommendation is, as Mr.
8 Grey has alluded to, a simple way for wine manufacturers
9 to now understand what products they produce may be
10 subject to the special tax that was authorized by the
11 original regulation.

12 Discussion?

13 MS. STEEL: Question.

14 MS. YEE: Ms. Steel.

15 MS. STEEL: Like when FMB came up to the Board
16 that you had revenue projection for -- for this time
17 that I didn't see any numbers there. So can you explain
18 or -- did you study and how much we going to get?

19 MR. BISHOP: We -- we expect that there will be
20 reformulation, given -- this is Phil Bishop with the
21 Special Taxes and Fees Division. If industry is given
22 enough time to reformulate, the flavorings that they use
23 they can alter the source for the distilled spirit and
24 avoid the tax treatment for -- as a distilled spirit.

25 So, we think that there won't be any revenue
26 associated with this, or if there is it will be
27 diminimus. We did not --

28 MS. STEEL: That --

1 MR. BISHOP: We did not see much revenue with
2 respect to the FMBs, as you know, and --

3 MS. STEEL: Because when FMB came up to the
4 Board to vote your income projection was \$41 million and
5 so far we received what, quarter million, 250,000?
6 So --

7 MR. BISHOP: Just a little over 200,000.

8 MS. STEEL: -- I'm just -- I'm just really
9 worried that we might gonna have more expenses than
10 revenue. That's first.

11 And second thing is that the business cost is
12 going to be really rising for these wineries, for
13 winemake -- makers because they try to reformulate.
14 And it's not really helping that underage alcohol
15 consumption, that they were worried, you know, for under
16 FMB that we were going through and even Girl Scout came
17 out that, you know, I was against -- actually I was for
18 teenage drinkers drinking, but that was not really true.

19 And this is kind of expansion for another tax
20 increase for the businesses in California. Under the
21 recession like this we keep making tougher regulations
22 for the businesses. I don't think it's going to be
23 right because I thought we learned our lessons from FMB
24 regulations that it was not really helping much for
25 income, but -- the revenue for the State at the same
26 time that we are just making everything really tougher
27 for the businesses. I don't think that's the right
28 direction that we are, you know, putting these

1 regulations on for the businesses.

2 So I really cannot go for it. Thank you.

3 MS. YEE: Thank you very much.

4 Mr. Runner.

5 MR. RUNNER: Yeah, I have a question, just
6 following up on a couple of those issues. One is -- and
7 I actually may have the gentleman from Gallo step back
8 up again. Just to clarify -- because, again, I'm --
9 I'm -- I'm struck between this issue in regards to
10 creating clarity in regulation versus keeping the
11 current regulation that's in place in place.

12 You know, there's some argument I think on --
13 on either side of those. It sounds to me like we
14 have -- have a business -- wine business folks on either
15 side of that discussion.

16 So, the issue of cost -- additional cost in
17 regards to moving forward or not moving forward,
18 let's -- since -- since you're the only -- since you're
19 the only winemaker who has come forth to testify --

20 MR. GREY: I'm just a lawyer.

21 MR. RUNNER: -- representing a winemaker --

22 MR. GREY: Right.

23 MR. RUNNER: -- let me just ask, what are
24 the -- what -- as you look in terms of the alternatives,
25 either Alternative 1 or doing nothing, what are the
26 business risks either way for -- for -- for you -- I
27 don't know if -- you probably can't speak for other
28 wineries.

1 MR. GREY: Correct. Let me just first say that
2 we -- we certainly do support the principles that Ms.
3 Steel just expressed. We opposed the adoption of this
4 tax when it was adopted. But the tax has been adopted
5 and to us as long as it's there it's important that the
6 tax be clarified.

7 While it will cost us probably something in
8 comparison to had the tax never been adopted, it's not
9 a -- not a substantial cost and to us it's most
10 important that the rule be clear, because we --

11 MR. RUNNER: And if it is not clear what
12 happens?

13 MR. GREY: Well, if it's not clear we probably
14 adopt a conservative interpretation of it and spend
15 additional money complying with it, whereas other people
16 who adopt a less conservative interpretation, who aren't
17 quite as visible publicly as the Gallo Winery is, might
18 choose to be -- adopt a more aggressive interpretation
19 and -- and in our view cut corners.

20 And we want to make sure that the playing field
21 is level among those who are competing for this
22 business. And so we want the rule to be clear so that
23 everybody understands what it is.

24 MR. RUNNER: Okay, thank you. Let me just go
25 quick to -- to Legal then. And if indeed we have
26 ambiguity in the -- in the regulation and there is an
27 interpretation clarifying that ambiguity say some time
28 in the future, what exposure do those -- do those --

1 those winemakers have that have not gone through the
2 re -- a reformulation process in terms of exposure to
3 tax?

4 MR. FERRIS: Yeah. In part that's the -- the
5 reason why staff recommended a January 1, 2012 effective
6 date for this regulatory change, so that there would
7 be -- based on our conversations with the interested
8 parties that would be more than sufficient time for
9 the -- the winemakers to make whatever formulation
10 adjustments they need to make.

11 So that -- so, part of our -- we had kind of
12 dual concerns. We wanted to provide clarity and we also
13 wanted to make sure that -- that the affected parties
14 would have --

15 MR. RUNNER: If we didn't provide clarity?

16 MR. FERRIS: Huh?

17 MR. RUNNER: If we didn't provide clarity --

18 MR. FERRIS: Oh.

19 MR. RUNNER: -- and we -- and we -- and we
20 moved forward with -- with -- with what is currently the
21 rule at that point, what does that do if in the
22 future -- is there a future exposure then if indeed
23 later on somebody decides to enforce the rule in a
24 different manner because the rule is ambiguous right
25 now?

26 MR. FERRIS: Oh, if the Board were to deny?

27 MR. RUNNER: Yeah.

28 MR. FERRIS: Yes, there would be a potential

1 exposure.

2 MR. RUNNER: And what -- and --

3 MR. FERRIS: It -- for example, if a -- a
4 future Board were to decide that it was proper for the
5 Board to get into the issue of what is a blending agent
6 and get into the manufacturing processes -- processes of
7 winemakers, you could potentially be looking at tens to
8 hundreds of millions of dollars in tax liabilities.

9 MR. RUNNER: If we don't clarify?

10 MR. FERRIS: A future Board could take --

11 MR. RUNNER: Could change that?

12 MR. FERRIS: -- could change that and take
13 actions that could have a very substantial impact on --

14 MR. RUNNER: And those could be done
15 retroactively back to the rule?

16 MR. FERRIS: Yes.

17 MR. RUNNER: Okay, thank you.

18 MS. YEE: Okay, thank you, Mr. Runner. Other
19 discussion, Members?

20 MR. HORTON: Yeah.

21 MS. YEE: Mr. Horton.

22 MR. HORTON: I mean, currently there's an
23 imbalance in the industry where different entities are
24 treating this differently and that the blends are -- you
25 know, process -- the wine, itself, is processed
26 differently in the products themselves there is no
27 delineation as to which product is really classified as
28 wine.

1 And so, another inherent danger is that our
2 Audit Department could very well take the position that
3 they're going to take the existing regulation, combine
4 that with the interpretations that do exist and then
5 thereby say or conclude that a certain segment of this
6 market should be paying \$3.20 as opposed to the lesser
7 amount.

8 And so -- and then if those -- if that -- if
9 that comes before the Board then we're forced to act --
10 and then we're forced to act in the presence of a
11 statute, itself, that has no clarity, whatsoever, and
12 then you expose the taxpayer to potential subsequent
13 litigation if the Board in fact rules against them and
14 not necessarily in their favor.

15 So I think it's incumbent upon us to level the
16 playing field, provide clarity so everyone knows what
17 the rules are and so that everyone can play by the
18 rules, and provide the industry adequate enough time to
19 adjust in such a way that it minimizes the burden on
20 them that they're able to adjust in the natural scheme
21 of things as far as how they process their product.

22 MS. STEEL: Madam Chair.

23 MS. YEE: Yes, Ms. Steel.

24 MS. STEEL: Two wrongs don't make a right. The
25 Federal government regulations are much more simple
26 because by the alcohol level that you decide that, you
27 know, what's hard liquor and what's not. So, I think we
28 really should not go forward with wine regulations but

1 we have to repeal that FMB regulations that we passed
2 because it was not doing what it's supposed to do. And
3 I think we -- if it's bad then I think we should repeal
4 it and then, you know, we have to change the law because
5 this regulations we are kind -- this is another
6 expansion of taxes. And I don't think this is right for
7 businesses.

8 And especially wine industry that we are the
9 Number One in the whole world. That's the way I think.
10 And they been going up, and they are making very good
11 wine.

12 I think more regulations is going to hurt
13 businesses in California and I don't think that's the
14 right direction. Thank you.

15 MS. YEE: Thank you, Ms. Steel.

16 Mr. Horton.

17 MR. HORTON: I mean -- let me share with the --
18 with the body that -- I chaired the Government
19 Organization Committee when this came through and the
20 author and the force behind the regula -- or the law was
21 actually to raise the tax on a large segment of this
22 industry. And it was the intent, I would argue, of the
23 Legislature that there would be a tax increase.

24 It wasn't until with some caveat that would
25 allow them to sort of reformulate, if you will -- but it
26 wasn't until the Board promulgated the legislation that
27 the Legislature realized that there wasn't going to be a
28 significant amount of tax revenue.

1 The projections are much larger than the
2 reality and that was because of the regulation by the
3 Board. If you take away that regulation you go back to
4 the intent of the Legislature or the legislators who
5 authored the bill, it was clearly their intent to have
6 an increase of -- a significant increase, somewhere
7 around 3,000 percent, on the industry, despite the Fact
8 that a number of us opposed the law for the mere reason
9 that Ms. Steel has articulated, but it wasn't sufficient
10 to stop the law from passing because the larger concern
11 about this product being in the hands of children and
12 the method of controlling it, which I certainly disagree
13 with, was to raise the taxes on the product and
14 therefore make it so expensive that no one could buy it.

15 Well, that's not necessarily how you control
16 behavior. You just shift it to the underground economy
17 or you shift it to the parents or you shift it to them
18 taking it out of the ice box or a number -- in fact, I
19 share the -- in the -- in the discussion I share that
20 sit -- personal situation where we had -- here in
21 Sacramento we had purchased some wine coolers, and my
22 son was visiting with me and I came home and they were
23 all gone. He was sitting on the couch out of it.

24 And so I saw all these bottles down there and
25 he says, well, he said, "They said lemonade," you know,
26 and so I shared that example in support that we need to
27 do something about it. There has to be tighter controls
28 over it.

1 But raising taxes on an industry -- or taxing
2 an industry out of business is not the way to go about
3 correcting a behavior -- a behavior modification.

4 So one would argue if I was the author of the
5 bill and those who supported the bill and the Governor
6 who signed the bill, I would argue in the absence of the
7 regulation that was passed by the Board of Equalization
8 that the taxes that we projected as a Legislature should
9 have been collected and the taxes should be higher on
10 the industry instead of lower.

11 But there was a caveat in the -- in the bill
12 that -- that allowed this notion of reformulating and
13 the industry, thank God from my perspective, was able to
14 reformulate and adjust accordingly.

15 But now we've got this -- this unclarity that
16 exists and -- and I'm just -- I'm personally concerned
17 that without taking some action ultimately you're going
18 to end up with a -- with a -- you know, an enormous
19 amount of tax on this industry.

20 So, the reverse of the intent is going to
21 happen because the original legislative intent was to
22 have a \$3.20 tax on a segment of this industry that they
23 wanted to control, they wanted to isolate and segregate
24 as wine as not being wine at all, but being a distilled
25 spirit.

26 And it didn't happen because of the regulation
27 of the Board from many of our perspectives. But --

28 MS. YEE: Thank you, Mr. Horton. Let me just

1 make a couple of comments.

2 The original regulation in focusing on flavored
3 malt beverages really arose out of the necessity to
4 really look at how we were going to classify these
5 products, since they really didn't get under the
6 definition of beer or wine.

7 And as we proceeded to have that regulation
8 promulgated it became clear that how we had treated wine
9 really was without consideration as to some of the
10 manufacturing processes that go into making of wine.

11 I think this -- this particular clarification
12 is needed. Frankly, the clarification has been
13 requested by the wine industry. They want the
14 clarification going forward.

15 There are processes that many of them are
16 sitting on, waiting to see how this Board will act in
17 this regard and which then prompts me to look at the
18 effective date of this regulation that staff is
19 proposing.

20 I know that there is a desire to be sure the
21 wine industry is properly notified with respect to the
22 enactment of this regulation. On the other hand, I also
23 know that probably every winemaker in California has
24 eyes on this regulation right now. So I think we
25 continue to do our outreach to the industry, that is
26 there a reason why the effective date couldn't be any
27 time sooner, say October? Just so -- the original input
28 that we had gotten from the industry was that they

1 really were sitting on some decisions about how to
2 proceed with certain products, and so I want to be sure
3 we're sensitive to that, as well.

4 MR. FERRIS: During the interested parties
5 meeting that we had in December I did ask the various
6 winemakers that were there how long it would take them
7 to reformulate and none of them were able or perhaps
8 willing to give specifics about that. And so the only
9 date that was given by any of the interested parties
10 that they thought would be a fair date was the January
11 1, 2012 date. So staff went with that.

12 In support of -- of the Board's desire to
13 expedite getting to resolution on this we -- we -- we
14 felt that if we started getting into discussions with
15 them about -- that they weren't willing to -- really to
16 tell us how long it would take them to -- to do these
17 reformulations and we just picked another date it
18 potentially could drag this thing out if we picked a
19 date that one of them said, "Ooh, that -- that's a
20 problem for me because my suppliers that are going to
21 provide certain ingredients are going to be necessary
22 for this reformulation, I've got contracts a particular
23 way." I think the one interested party that did bring
24 up the January 1, 2012 date did it on the basis of
25 contracts they had in place for certain ingredients.
26 So --

27 MS. YEE: Okay. Mr. Grey, would you mind
28 coming up and speaking on this issue. I'm -- I'm

1 hearing different scenarios and I just wanted to be
2 clear in understanding how the effective date may affect
3 decisions that --

4 MR. GREY: We -- we would support the earliest
5 date possible, from the effective date of it. We can't
6 speak for other wineries, of course, but the issue has
7 been in the -- in the radar -- on the radar of the wine
8 industry for some time. And a date of October 1, which
9 coincidentally was the effective date of the original
10 tax seems to me would -- ought to give people plenty of
11 time to make their plans

12 MS. YEE: All right.

13 MS. MANDEL: Can I ask a question?

14 MS. YEE: Ms. Mandel, please.

15 MS. MANDEL: From here to final adoption -- I
16 guess it's two questions, to final -- to anticipated
17 final adoption and effectiveness through OAL it's not
18 instantaneous, it's going to take a few months.

19 MS. YEE: Right.

20 MR. BISHOP: Right. We have a tentative date
21 of July 27th that the regulation promulgated today would
22 be approved. And then it's 30 days later it's
23 effective.

24 So, an October 1st date can fit --

25 MS. MANDEL: So --

26 MR. BISHOP: -- in that time frame.

27 MS. MANDEL: Well, --

28 MR. FERRIS: But that would assume --

1 MS. MANDEL: -- because October --

2 MR. FERRIS: That would assume that it goes
3 without a hitch.

4 MS. MANDEL: Right, that --

5 MR. FERRIS: The first time we did this we got
6 it bounced back --

7 MS. MANDEL: We got it -- yes.

8 MR. FERRIS: -- back from OAL and --

9 MS. MANDEL: -- right. Right, and that --
10 and -- and is this a -- is this a tax that's quarterly
11 or --

12 MR. BISHOP: Most of the taxpayers are
13 monthly.

14 MS. MANDEL: Monthly returns, monthly payments?

15 MR. BISHOP: Uh-huh.

16 MS. MANDEL: Okay. But July, that takes you to
17 the end of August, then you have to maybe still do the
18 outreach. Yeah.

19 MR. BISHOP: We prefer the beginning of a
20 quarter, because most --

21 MS. YEE: Right.

22 MS. MANDEL: Because most of our systems --

23 MS. YEE: Right.

24 MS. MANDEL: -- are --

25 MS. YEE: Right.

26 MS. MANDEL: Yeah.

27 MR. RUNNER: Madam Chair.

28 MS. YEE: Yes, Mr. Runner.

1 MR. RUNNER: A quick question. I guess I'm
2 becoming uneasy right now trying to come up with a new
3 date in light of the fact that the date that has -- that
4 we've already established a date to which comments have
5 already been made, people have already written their
6 letters on, and so I'm a bit uncomfortable I think than
7 by way of trying to find three months one place or
8 another.

9 MS. MANDEL: Yeah, October sounds potentially
10 tight from what I'm hearing. So -- and the only
11 interested party comment was the January 1st in light
12 of --

13 MR. BISHOP: Right, they mentioned their
14 growing season and the main production time period,
15 which tends to occur after the summer, after the
16 picking.

17 MR. RUNNER: Yeah, I -- I think I don't see a
18 compelling reason to go back up those months.

19 MS. YEE: Okay. Let me ask then, how are we
20 going to treat wine producers that perhaps are using
21 non-compliant formulas, either before or after the
22 enactment of this regulation?

23 MR. BISHOP: Well, that -- subsequent to the
24 effective date or operative date we would assess it at a
25 distilled spirits rate if they were greater than a half
26 percent non-conforming --

27 MS. YEE: Okay. And what about --

28 MR. BISHOP: -- alcohol spirit.

1 MS. YEE: -- while the regulation is pending?

2 MR. BISHOP: While the regulation is pending --

3 MR. FERRIS: Reasonable notice on its abeyance.

4 MR. BISHOP: We would -- yeah.

5 MS. MANDEL: Because it's an operative date.

6 MS. YEE: Okay.

7 MR. BISHOP: Is it the current -- 23007 in the
8 Business and Professions Code does contemplate grape
9 spirits and, you know, rectified wine products and it --
10 it doesn't state that you can -- you know, the
11 non-conforming alcohol cannot be considered at a later
12 stage in the production process. So there is -- I mean,
13 we presume that there is that inconsistency or confusion
14 in the industry. So this would clarify that for Board
15 purposes and for tax purposes that non-conforming
16 distilled spirits cannot be used from this point
17 forward.

18 MS. YEE: Okay. I'm sorry, so in terms of the
19 audits that are being held in abeyance that's currently
20 happening pending the outcome of this regulation?

21 MR. BISHOP: Yes.

22 MS. YEE: Okay.

23 MR. HORTON: Madam -- Madam Chair?

24 MS. YEE: Mr. Horton.

25 MR. HORTON: The audit's held in abeyance. Can
26 you tell us a little more about that.

27 MR. BISHOP: Actually, they are -- there was
28 some investigations as a result of the FMBs. Formulas

1 come in and they would review the formulas and they took
2 a look at some of the manufacturers, most with regard to
3 the beer manufacturers, but there were some wineries
4 looked at. And so the -- the formulas were examined and
5 they realized there was -- there was some inconsistency
6 and staff really didn't know how to proceed, so in terms
7 of do we have a development on it in-house, no, we
8 don't. We have some ideas of potential products that
9 may have run afoul and depending on the effective date
10 of any regulation and the direction of the Board's, that
11 would be our staff's direction, also.

12 MS. MANDEL: And it was my understanding that
13 part of what the genesis for this issue coming forward
14 was the discovery of differences that were out there and
15 confusion and not -- not clarity in the regulations.
16 And that's kind of part of how it percolated up.

17 MR. FERRIS: That's correct.

18 MS. YEE: Okay. Other comments, Members?
19 Hearing none, is there a motion, please?

20 MS. MANDEL: I'll -- I'll move the staff
21 recommendation.

22 MR. HORTON: Second.

23 MS. YEE: Motion by Ms. Mandel to adopt the
24 staff recommendation. Second by Mr. Horton. Please
25 call the roll.

26 MS. OLSON: Madam Chair?

27 MS. YEE: Aye.

28 MS. OLSON: Mr. Horton.

1 MR. HORTON: Aye.

2 MS. OLSON: Ms. Steel.

3 MS. STEEL: No.

4 MS. OLSON: Mr. Runner.

5 MR. RUNNER: Aye.

6 MS. OLSON: Ms. Mandel.

7 MS. MANDEL: Aye.

8 MS. OLSON: Motion carries.

9 MS. YEE: Okay. Thank you very much.

10 Thank you, staff, for your great work on this.

11 ---oOo---

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REPORTER'S CERTIFICATE

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State of California)
) ss
County of Sacramento)

I, BEVERLY D. TOMS, Hearing Reporter for the California State Board of Equalization certify that on February 23, 2011 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 27 pages constitute a complete and accurate transcription of the shorthand writing.

Dated: March 14, 2011.



Beverly D Toms

BEVERLY D. TOMS
Hearing Reporter

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

Proposed Amendment of Sales and Use Tax Regulations 1533.2, Diesel Fuel Used in Farming Activities or Food Processing, and 1598, Motor Vehicle and Aircraft Fuels

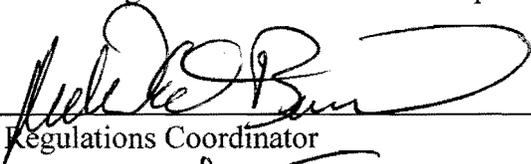
STATEMENT OF COST OR SAVINGS FOR NOTICE OF PUBLIC HEARING

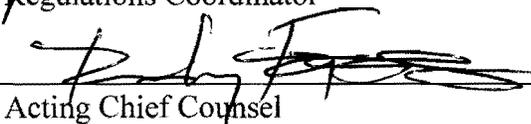
The State Board of Equalization has determined that the proposed action does not impose a mandate on local agencies or school districts. Further, the Board has determined that the action will result in no direct or indirect cost or savings to any State agency, any local agency or school district that 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 3/22/11
Regulations Coordinator

Approved by  Date 3/22/11
Acting 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 6660 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. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1533.2, Diesel Fuel Used in Farming Activities, 1598, Motor Vehicle & Aircraft Fuels		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

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 businesses 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. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. 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: _____

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

Explain: _____

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

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. 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: _____

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: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

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: _____ and the 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 that may result from this regulation and who will benefit: _____

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? \$ _____

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: _____

2. 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.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section.)

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

Alternative 1: _____

Alternative 2: _____

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

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

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 of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____,
_____ , which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ 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 such unit;

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

3. Savings of approximately \$ _____ annually.

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

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

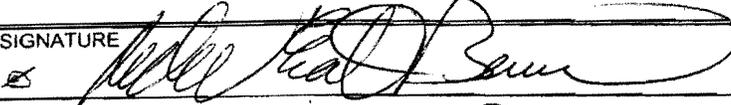
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

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 of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the _____ fiscal year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

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 of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE 	TITLE Regulations Coordinator
AGENCY SECRETARY ¹ APPROVAL/CONCURRENCE 	DATE 3/15/2011
DEPARTMENT OF FINANCE ² APPROVAL/CONCURRENCE  Exempt under SAM section 6660	DATE

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, 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.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.

Assembly Bill No. 105

CHAPTER 6

An act to amend Sections 8879.52, 8879.61, 8879.65, 14556.7, and 16965 of the Government Code, to amend Sections 99312, 99315, and 185024 of, and to add Sections 99312.1 and 99312.2 to, the Public Utilities Code, to repeal Section 7102.1 of, and to repeal and add Sections 6051.8, 6201.8, 6357.3, 6357.7, 6480.1, 7360, 7361.1, 7653.1, and 60050 of, the Revenue and Taxation Code, to amend Sections 167, 183.1, and 2103 of, and to add Section 183.2 to, the Streets and Highways Code, and to amend Section 12811 of, and to add Section 9400.4 to, the Vehicle Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor March 24, 2011. Filed with
Secretary of State March 24, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 105, Committee on Budget. Transportation.

(1) Existing law provides for payment of current general obligation bond debt service for specified voter-approved transportation bonds from gasoline excise tax revenue in the Highway Users Tax Account and revenue in the Public Transportation Account, and requires the Controller to make specified transfers of revenues in that regard to the Transportation Debt Service Fund. Existing law, pursuant to the Budget Act of 2010, provides for a loan of \$761,639,000 from gasoline excise tax revenue in the Highway Users Tax Account to the General Fund, to be repaid with interest by June 30, 2013.

Proposition 22, approved by the voters on November 2, 2010, amends the California Constitution to, among other things, impose new restrictions on the use of fuel excise tax revenues allocated to the state and revenues deposited in the Public Transportation Account.

This bill, in fiscal years 2010–11 and 2011–12, would require the Controller to transfer specified amounts of revenues deposited in the State Highway Account from vehicle weight fees to the Transportation Debt Service Fund to be used for reimbursement of the General Fund for payment of current general obligation bond debt service for specified voter-approved transportation bonds, in lieu of the previously authorized gasoline excise tax revenues and Public Transportation Account revenues. In subsequent years, the bill would require all vehicle weight fee revenues to be transferred for this purpose. The bill would make appropriations in this regard. The bill would require the Department of Finance to notify the Controller of the amount of debt service relating to expenditures for eligible mass transit guideway projects that may be paid from revenues restricted by Article XIX of the California Constitution.

This bill, in fiscal year 2010–11, would require the Controller to transfer specified amounts of revenues deposited in the State Highway Account from vehicle weight fees to the General Fund as a loan, in lieu of the previously authorized loan of gasoline excise tax revenues. The loan amount for 2010–11 would be repaid over 3 years beginning on June 30, 2014. The bill would also authorize an additional loan in fiscal year 2011–12 of specified vehicle weight fee revenues, to be repaid by June 30, 2015. The bill would make appropriations in this regard.

This bill would require the Controller to take various other conforming actions as of November 2, 2010, due to voter approval of Proposition 22 and to the extent the Controller has previously taken actions inconsistent with the requirements imposed by this bill.

(2) Existing law, in the 2011–12 fiscal year, requires certain revenues deposited in the State Highway Account that are not restricted as to expenditure by Article XIX of the California Constitution to be transferred to the Transportation Debt Service Fund for payment of current year debt service on certain mass transportation bonds. Thereafter, these revenues are to be transferred to the Public Transportation Account.

This bill would, instead, transfer these revenues to the Transportation Debt Service Fund for payment of current year debt service on certain mass transportation bonds in the 2011–12 and 2012–13 fiscal years. Beginning in 2013–14, these revenues would be retained in the State Highway Account until appropriated by the Legislature.

(3) Proposition 26, approved by the voters on November 2, 2010, amends the California Constitution to, among other things, require a $\frac{2}{3}$ vote of both houses of the Legislature for any change in statute that results in any taxpayer paying a higher tax. Proposition 26 also provides that any tax adopted after January 1, 2010, but prior to November 3, 2010, that was not adopted in compliance with the $\frac{2}{3}$ vote requirement shall be void on November 3, 2011, unless the tax is reenacted by the Legislature with a $\frac{2}{3}$ vote.

Existing law, as of July 1, 2010, eliminates the state sales and use tax on motor vehicle fuel (gasoline) and increases the excise tax. Existing law, as of July 1, 2011, increases the sales and use tax on diesel and decreases the excise tax. Existing law requires the State Board of Equalization to annually modify both the gasoline and diesel excise tax rates on a going-forward basis so that the various changes in the taxes imposed on gasoline and diesel, as described above, are revenue neutral. Existing law enacts other provisions related to the implementation of these provisions.

This bill would repeal all of these provisions. The bill would enact new, similar replacement provisions, and state the intent of the Legislature that the changes are being made in order to comply with Proposition 26. The bill would also increase the new diesel sales and use tax rates to be applicable in fiscal years 2011–12, 2012–13, and 2013–14 above the rates currently in effect that the bill would repeal. These increases in the diesel sales and use tax rates would be offset by a reduction in the diesel excise tax rate as of July 1, 2011, and a requirement for the State Board of Equalization to

adjust diesel excise tax rates on a going-forward basis to ensure that the overall changes in these diesel fuel taxes are revenue neutral.

(4) Existing statutory law provides that 75% of diesel sales tax revenues at the 4 $\frac{3}{4}$ % rate are to be allocated by the Controller from the Public Transportation Account to local agencies for public transportation purposes pursuant to the State Transit Assistance Program, with the remaining 25% of revenues to be made available for mass transit programs at the state level. Proposition 22, approved by the voters on November 2, 2010, amends the California Constitution to require these Public Transportation Account revenues to be divided equally between the State Transit Assistance Program and the state-level programs.

This bill would conform the statutory provisions to the requirements of Proposition 22. The bill would appropriate \$23,000,000 to the Controller from the Public Transportation Account in the 2011–12 fiscal year for allocation to the State Transit Assistance Program. The bill would also continuously appropriate all of the diesel sales revenues above the 4 $\frac{3}{4}$ % rate to the Controller for allocation to that program.

(5) Existing law provides for a loan of \$135,000,000 from the State Highway Account to the General Fund that is to be repaid by June 30, 2012.

This bill would instead require that loan to be repaid by June 30, 2013.

(6) Existing law, until July 1, 2011, authorizes the Department of Transportation to transfer funds as short-term loans between various transportation accounts.

This bill would extend the operation of these provisions until July 1, 2014. The bill would also eliminate the authority of the department to transfer funds as short-term loans to and from the Transportation Investment Fund, the Transportation Deferred Investment Fund, and the Public Transportation Account.

(7) Existing law creates the California Transportation Commission, with various duties and responsibilities relative to the programming and allocation of funds for transportation capital projects. Existing law requires the commission to submit, by December 15 of each year, an annual report to the Legislature summarizing the commission's prior-year decisions in allocating transportation capital funds and identifying timely and relevant transportation issues facing the state. Existing law, the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, authorizes the issuance of \$19.25 billion of general obligation bonds for specified purposes, including \$2 billion to be transferred to the Trade Corridors Improvement Fund to be available, upon appropriation in the annual Budget Act by the Legislature and subject to such conditions and criteria as the Legislature may provide by statute, for allocation by the commission. Existing law requires the Department of Transportation to, on or before February 18, 2009, report to specified committees of the Legislature a summary of any memorandum of understanding or any other agreement executed between a railroad company and any state or local transportation agency relative to any project funded with moneys allocated from the Trade Corridors Improvement Fund.

This bill would instead require the commission to provide that report to specified committees of the Legislature within 30 days of receiving such a memorandum of understanding or executed agreement. The bill would also, commencing January 1, 2012, require the commission to provide semiannual reports to those committees on the status of all railroad projects programmed in the Trade Corridors Improvement Fund program. The bill would make these reporting requirements inoperative on January 1, 2015.

(8) The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 also requires that \$1 billion of bond funds be deposited in the Transit System Safety, Security, and Disaster Response Account, administered by the California Emergency Management Agency (Cal EMA), for capital projects that provide increased protection against a security and safety threat, and for capital expenditures to increase the capacity of transit operators to develop disaster response transportation systems, as specified. Existing law requires 25% of available funds to be allocated to certain regional public waterborne transit agencies. Existing law requires entities receiving funds from that account to expend those funds within 3 fiscal years of the fiscal year in which the funds were allocated and requires that funds remaining unexpended after those 3 years revert to Cal EMA for reallocation in subsequent fiscal years.

This bill, notwithstanding these provisions, would provide that entities receiving an allocation of the funds set aside for regional public waterborne transit agencies, relative to allocations of funds made prior to June 30, 2011, shall have 4 fiscal years from the last day of the fiscal year in which the funds were received by that entity to expend those funds.

(9) Existing law requires funds from the Local Street and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006 to be made available to the Controller for allocation to cities, counties, and a city and county, for purposes of the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006, as specified. Upon receipt of funds, a city, county, or city and county is required to expend those funds within 3 fiscal years from the date that the funds are allocated to it by the Controller, and any funds not expended within that period are required to be returned to the Controller and reallocated to other cities, counties, or a city and county, as specified.

Existing law establishes the Highway Users Tax Account in the Transportation Tax Fund with revenues in the account restricted to expenditure on various purposes, including public street and highway purposes and certain mass transit guideway purposes.

This bill would authorize a city, county, or city and county that receives these funds in a fiscal year in which funds from the Highway Users Tax Account are deferred, suspended, borrowed, or shifted, to expend those funds within 4 fiscal years from the last date of the fiscal year in which the funds are allocated to it by the Controller.

(10) Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail system in the state, with specified powers and duties. Existing law provides

for appointment of an executive director by the authority, who is exempt from civil service and serves at the pleasure of the authority. Existing law requires the executive director to be paid a salary established by the authority and approved by the Department of Personnel Administration.

This bill, for purposes of managing and administering the ongoing work of the authority in implementing the high-speed train project, would authorize the Governor, upon the recommendation of the executive director, to appoint up to 6 additional individuals, exempt from civil service, who would serve in specified positions at the pleasure of the executive director. The bill would require a salary survey to be conducted to determine the compensation for the executive director and additional exempt persons, and would require the salaries to be established by the authority and approved by the Department of Personnel Administration.

This bill would impose certain reporting requirements on the authority with respect to a portion of funds appropriated to the authority in the 2010 and 2011 Budget Acts, to be submitted to the Joint Legislative Budget Committee.

(11) Existing law provides that the Department of Transportation has full possession and control of the state highway system. Existing law creates various programs to fund transportation capital improvement programs and provides for allocation of those funds. Existing law requires the department to prepare an annual budget, as specified, for submission to the Governor.

This bill would require the department to submit specified supplemental information by May 1 of each year to the Legislative Analyst and to the Senate Committee on Appropriations and the Assembly Committee on Appropriations to substantiate the department's proposed capital outlay support budget.

(12) Existing law provides for apportionment by the Controller of a specified amount of gasoline excise tax revenues in the Highway Users Tax Account to cities and counties for local street and road purposes, including revenues from the increase in the gasoline excise tax, pursuant to Chapters 11 and 12 of the 8th Extraordinary Session of the Statutes of 2010. These revenues, including the revenues from the increase in the gasoline excise tax, are not subject to expenditure requirements and restrictions that were applicable to revenues from the gasoline sales tax that was repealed by the above-referenced legislation.

This bill would clarify that the revenues apportioned to cities and counties from the increase in the gasoline excise tax may be used for any local street and road purpose and are not subject to the requirements and restrictions applicable to the former gasoline sales tax revenues.

(13) Under existing law, when the Department of Motor Vehicles determines that an applicant is lawfully entitled to a driver's license, the department is required to issue that license to the applicant. Existing law specifies the contents of a driver's license. Existing law requires that the front of an application for an original or renewal of a driver's license or identification card contain a space for an applicant to give his or her consent to be an organ and tissue donor upon death.

This bill would also require the application for a driver's license or identification card to contain a space for an applicant to indicate whether he or she has served in the Armed Forces of the United States and to give his or her consent to be contacted regarding eligibility to receive state or federal veterans benefits. The bill would require the Department of Motor Vehicles to electronically transmit to the Department of Veterans Affairs specified information on an applicant who has identified on his or her application for a driver's license or identification card that he or she has served in the Armed Forces of the United States and consents to being contacted about veterans benefits.

(14) The bill would enact other related provisions.

(15) The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

(16) This bill would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to reenact the "fuel tax swap," as originally enacted by Assembly Bill 6 of the 2009–10 Eighth Extraordinary Session and subsequently modified by Senate Bill 70 of the 2009–10 Regular Session, and as further modified herein, with a two-thirds vote of each house of the Legislature pursuant to the requirements of Proposition 26, as approved by the voters at the November 2, 2010, statewide General Election.

SEC. 2. Section 8879.52 of the Government Code is amended to read:

8879.52. (a) The commission shall evaluate, consistent with the commission's Trade Corridors Improvement Fund (TCIF) Guidelines, adopted November 27, 2007, as part of the 2010 TCIF review, the total potential costs and total potential economic and noneconomic benefits of the program to California's economy, environment, and public health. The commission shall consult with the State Air Resources Board in order to utilize the appropriate models, techniques, and methods to develop the evaluation required by this subdivision.

(b) With respect to the two billion dollars (\$2,000,000,000) appropriated from the TCIF, as described in paragraph (1) of subdivision (c) of Section

8879.23, and the five hundred million dollars (\$500,000,000) to be made available from the State Highway Account, the following programming schedule shall apply:

(1) The Los Angeles/Inland Empire Corridor shall receive a minimum of one billion five hundred million dollars (\$1,500,000,000).

(2) The San Diego/International Border Corridor shall receive a minimum of two hundred fifty million dollars (\$250,000,000).

(3) The San Francisco Bay/Central Valley Corridor shall receive a minimum of six hundred forty million dollars (\$640,000,000).

(4) Other corridors, as determined by the commission, shall receive a minimum of sixty million dollars (\$60,000,000).

(c) The corridors referenced in subdivision (b) shall receive the minimum amount of funding programmed for that corridor notwithstanding the deprogramming of any project or projects in that corridor by the commission. If a project is or projects are deprogrammed, the commission shall collaborate with the local transportation agencies in that corridor to select another project or projects for programming of those funds within the minimum amount provided to each corridor pursuant to subdivision (b).

(d) If the Colton Crossing project programmed in the commission's TCIF Program as of April 10, 2008, does not meet the requirements or delivery schedule contained in its project baseline agreement when reviewed by the commission no later than March 2010, the project shall be ineligible to receive an allocation from the TCIF. The ninety-seven million dollars (\$97,000,000) associated with the project shall then be available for programming in the Los Angeles/Inland Empire Corridor. In that event, the commission shall collaborate with the local transportation agencies in that corridor to select another project or projects for programming of those funds, and, in making that selection, shall take into consideration the Los Angeles/Inland Empire Corridor Tier One or Tier Two Project Lists and any other project identified by the local agencies. Projects currently receiving TCIF funding shall not be considered for selection.

(e) (1) The commission shall report to the Assembly Committee on Transportation, the Senate Committee on Transportation and Housing, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate Committee on Appropriations, and the Assembly Committee on Appropriations a summary of any memorandum of understanding, along with a copy of the memorandum, or any agreement executed between a railroad company and any state or local transportation agency as it relates to any project funded with moneys allocated from the TCIF within 30 days of the commission's receipt of those documents.

(2) Commencing January 1, 2012, the commission shall provide semiannual reports to the Assembly Committee on Transportation, the Senate Committee on Transportation and Housing, the Senate Committee on Budget and Fiscal Review, the Assembly Committee on Budget, the Senate Committee on Appropriations, and the Assembly Committee on Appropriations on the status of all railroad projects programmed in the TCIF program.

(3) This subdivision shall become inoperative on January 1, 2015, pursuant to Section 10231.5.

SEC. 3. Section 8879.61 of the Government Code is amended to read:

8879.61. (a) (1) Entities described in subdivisions (a), (b), and (c) of Section 8879.57 receiving an allocation of funds pursuant to this article shall expend those funds within three fiscal years of the fiscal year in which the funds were allocated. Funds remaining unexpended thereafter shall revert to the California Emergency Management Agency for reallocation under this article in subsequent fiscal years.

(2) Notwithstanding paragraph (1), for an allocation of funds made prior to June 30, 2011, to an entity described in subdivision (b) of Section 8879.57, that entity shall have four fiscal years from the last day of the fiscal year in which the funds were received by that entity to expend those funds.

(b) Entities that receive grant awards from funds allocated pursuant to subdivisions (b) or (c) of Section 8879.57 are not eligible to receive awards from the funds allocated pursuant to subdivision (a) of Section 8879.57.

(c) Funds appropriated for the program established by this article in the Budget Act of 2007 shall be allocated consistent with the allocation schedule established in Section 8879.57.

SEC. 4. Section 8879.65 of the Government Code is amended to read:

8879.65. (a) Funds appropriated from the Local Street and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006, established by subdivision (l) of Section 8879.23, shall be made available to the Controller for allocation to cities, counties, and a city and county. From bond funds appropriated in the 2007–08 fiscal year for cities, including a city and county, each city, and city and county, shall receive at least a minimum allocation of four hundred thousand dollars (\$400,000), as described in subparagraph (B) of paragraph (1) of subdivision (l) of Section 8879.23. The remainder of the funds appropriated for cities, including a city and county, shall be allocated in the proportion described in subparagraph (B) of paragraph (1) of subdivision (l) of Section 8879.23. In no case shall a city, or a city and county, receive an allocation in excess of its total share, as described in subdivision (l) of Section 8879.23, except as described in subdivision (d).

(b) Prior to receiving an allocation of funds from the Controller in a fiscal year, an eligible local agency shall submit to the Department of Finance a list of projects expected to be funded with bond funds pursuant to an adopted city, county, or city and county budget. All projects proposed to be funded with funds from the account shall be included in a city, county, or city and county budget that is adopted by the applicable city council or board of supervisors at a regular public meeting. The list of projects expected to be funded with bond funds shall include a description and the location of the proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement. The project list shall not limit the flexibility of an eligible local agency to fund projects in accordance with local needs and priorities so long as the projects are consistent with subparagraph (B) of paragraph (1) of subdivision (l) of Section 8879.23.

(1) The Department of Finance shall report monthly to the Controller the eligible local agencies that have submitted a list of projects as described in this subdivision.

(2) Upon receipt of the information described in paragraph (1), the Controller shall allocate funds to those agencies that have submitted a list of projects, as reported by the Department of Finance.

(c) Each fiscal year upon expending funds from the account, a city, county, or city and county shall submit documentation to the Department of Finance which includes a description and location of each completed project, the amount of funds expended on the project, the completion date, and the project's estimated useful life. The documentation shall be forwarded to the department, in a manner and form approved by the department, at the end of each fiscal year until the funds in the account are exhausted. The department may post the information contained in the documentation on the department's official Web site.

(d) (1) A city, county, or city and county receiving funds pursuant to this section shall have three fiscal years to expend the funds following the fiscal year in which the allocation was made by the Controller, and any funds not expended within that period shall be returned to the Controller and be reallocated to other cities, counties, or a city and county, as applicable, pursuant to the allocation formulas set forth in subparagraph (A) or (B) of paragraph (1) of subdivision (I) of Section 8879.23, but excluding the requirement for a minimum city allocation as described in subparagraph (B) of paragraph (1) of that subdivision and section.

(2) Notwithstanding paragraph (1), a city, county, or city and county receiving funds pursuant to this section, during any fiscal year in which funds from the Highway Users Tax Account are deferred, suspended, borrowed, or shifted, shall have four fiscal years from the last date of the fiscal year in which the funds are allocated to it by the Controller to expend the funds.

(e) Subject to the requirements and conditions of this section, it is the intent of the Legislature to appropriate funds from the account so that the Controller may allocate the balance of these funds to eligible local agencies over the next four years, following the 2007–08 fiscal year. Nothing in this section shall prevent the Legislature from appropriating funds on a more expedited basis based on local agency need.

(f) The sum of three hundred fifty million dollars (\$350,000,000) is hereby appropriated from funds in the Local Street and Road Improvement, Congestion Relief, and Traffic Safety Account of 2006 created pursuant to subdivision (I) of Section 8879.23, for allocation pursuant to this article, as an augmentation to the amount appropriated in Item 9350-104-6065 of the Budget Act of 2007. The total 2007–08 fiscal year appropriation of nine hundred fifty million dollars (\$950,000,000) shall be allocated as follows: four hundred million dollars (\$400,000,000) to counties and five hundred fifty million dollars (\$550,000,000) to cities.

(g) Notwithstanding the provisions of Item 9350-104-6065 of the Budget Act of 2008, a city or city and county that receives any portion of the funds

appropriated by that item shall agree to encumber the funds before July 1, 2010.

SEC. 5. Section 14556.7 of the Government Code is amended to read:

14556.7. (a) To provide adequate cash for projects, including, but not limited to, projects in the State Transportation Improvement Program, the State Highway Operation and Protection Program, and the Traffic Congestion Relief Program, and for the support of the department, the department may transfer funds as short-term loans among and between the State Highway Account in the State Transportation Fund and the Traffic Congestion Relief Fund (TCRF), subject to those terms and conditions that the Director of Finance may impose upon those transfers. When loan balances authorized in this subdivision are outstanding, the Director of Transportation shall report the amounts of loans outstanding with respect to each fund or account as of the last business day of each quarter to the commission. The commission shall monitor the cashflow loan program authorized in this section and shall provide guidance to the department to ensure that sufficient resources will be available for all projects and all other authorized expenditures from each fund or account so as to not delay any authorized expenditure.

(b) For the purposes of this section, a “short-term loan” is a transfer that is made subject to the following conditions:

(1) That any amount loaned is to be repaid in full to the fund or account from which it was loaned during the same fiscal year in which the loan was made, except that repayment may be delayed until a date not more than 30 days after the date of enactment of the annual Budget Act for the subsequent fiscal year.

(2) That loans shall be repaid whenever the funds are needed to meet cash expenditure needs in the loaning fund or account.

(c) This section shall become inoperative on July 1, 2014, and, as of January 1, 2015, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2015, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 16965 of the Government Code is amended to read:

16965. (a) The Transportation Debt Service Fund is hereby created in the State Treasury. Moneys in the fund shall, among other things, as provided in this section, be dedicated to payment of debt service on bonds including bonds issued pursuant to the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing with Section 99600) of Division 10 of the Public Utilities Code), the Passenger Rail and Clean Air Bond Act of 1990 (Chapter 17 (commencing with Section 2701) of Division 3 of the Streets and Highways Code), the Seismic Retrofit Bond Act of 1996 (Chapter 12.48 (commencing with Section 8879) of Division 1 of Title 2), the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2), and the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century (Chapter 20 (commencing with Section 2704) of Division 3 of the Streets and Highways Code). If the moneys in the fund

are insufficient to pay the balance of the debt consistent with existing obligations, the General Fund will be used to pay the balance of any debt service.

(b) From moneys transferred to the fund pursuant to an annual Budget Act or other statute from the State Highway Account in the State Transportation Fund, the Controller shall transfer as an expenditure reduction to the General Fund any amount necessary to offset the cost of current year debt service payments made from the General Fund during any fiscal year for transportation-related general obligation bond expenditures consistent with Article XIX of the California Constitution.

(c) From moneys transferred to the fund pursuant to Section 2103 of the Streets and Highways Code and subdivisions (a) and (b) of Section 9400.4 of the Vehicle Code, the Controller shall transfer as an expenditure reduction to the General Fund any amount necessary to offset the cost of current year debt service payments made from the General Fund on any bonds issued pursuant to Proposition 192 (1996) and three-quarters of the amount of current year debt service payments made from the General Fund on any bonds issued pursuant to Proposition 1B (2006).

(d) From moneys transferred to the fund pursuant to Section 183.1 of the Streets and Highways Code, the Controller shall transfer as an expenditure reduction to the General Fund any amount necessary to offset the cost of current year debt service payments made from the General Fund on any bonds issued pursuant to Proposition 116 (1990).

(e) From moneys transferred to the fund pursuant to Section 99315 of the Public Utilities Code and subdivisions (a) and (b) of Section 9400.4 of the Vehicle Code, the Controller shall transfer as an expenditure reduction to the General Fund any amount necessary to offset the cost of current year debt service payments made from the General Fund on any bonds issued pursuant to Proposition 108 (1990) and Proposition 1A (2008), and one-quarter of the amount of current year debt service payments made from the General Fund on any bonds issued pursuant to Proposition 1B (2006). The Department of Finance shall notify the Controller by July 30 of every year of the percentage of debt service that is expected to be paid in that fiscal year on bond-funded projects that qualify as eligible guideway projects consistent with the requirements applicable to the expenditure of revenues under Article XIX of the California Constitution.

(f) On or before the second business day following the date on which transfers are made to the Transportation Debt Service Fund, the Controller shall transfer those funds from the fund to the General Fund pursuant to this section.

SEC. 7. Section 99312 of the Public Utilities Code is amended to read:

99312. Except as provided in Sections 99311 and 99311.5, and Sections 6051.8 and 6201.8 of the Revenue and Taxation Code, and except as otherwise provided in subdivisions (d) and (e), the funds in the account shall be made available for the following purposes:

(a) Fifty percent for purposes of Section 99315, subject to appropriation by the Legislature.

(b) To the Controller, 25 percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314. Commencing with the 2011–12 fiscal year, these funds are hereby continuously appropriated for purposes of this subdivision.

(c) To the Controller, 25 percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313. Commencing with the 2011–12 fiscal year, these funds are hereby continuously appropriated for purposes of this subdivision.

(d) (1) For the 2009–10 fiscal year, notwithstanding any other provision of this section or any other provision of law, the sum of four hundred million dollars (\$400,000,000) is hereby appropriated from the account to the Controller for immediate allocation pursuant to paragraph (2). These funds are intended to cover the two-year period of the 2009–10 and 2010–11 fiscal years. The remaining funds in the account subject to this section shall be available for the purposes of Section 99315, subject to appropriation by the Legislature.

(2) (A) Fifty percent of the amount appropriated to the Controller pursuant to paragraph (1) shall be allocated to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(B) Fifty percent of the amount appropriated to the Controller pursuant to paragraph (1) shall be allocated to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99313.

(e) For the 2010–11 fiscal year, notwithstanding any other provision of this section or any other provision of law, the funds in the account subject to this section shall be made available only for purposes of Section 99315, subject to appropriation by the Legislature.

SEC. 8. Section 99312.1 is added to the Public Utilities Code, to read:

99312.1. Revenues transferred to the Public Transportation Account pursuant to Sections 6051.8 and 6201.8 of the Revenue and Taxation Code are hereby continuously appropriated to the Controller for allocation as follows:

(a) Fifty percent for allocation to transportation planning agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board pursuant to Section 99314.

(b) Fifty percent for allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313.

For purposes of this chapter, the revenues allocated pursuant to this section shall be subject to the same requirements as revenues allocated pursuant to subdivisions (b) and (c), as applicable, of Section 99312.

SEC. 9. Section 99312.2 is added to the Public Utilities Code, to read:

99312.2. Notwithstanding any other provision of law, twenty-three million dollars (\$23,000,000) is hereby appropriated from the Public

Transportation Account to the Controller for allocation to local agencies for the 2011–12 fiscal year, with eleven million five hundred thousand dollars (\$11,500,000) to be allocated pursuant to Section 99313 and eleven million five hundred thousand dollars (\$11,500,000) to be allocated pursuant to Section 99314. For purposes of this chapter, the revenues allocated pursuant to this section shall be subject to the same requirements as revenues allocated pursuant to subdivisions (b) and (c), as applicable, of Section 99312.

SEC. 10. Section 99315 of the Public Utilities Code is amended to read:

99315. Funds made available pursuant to subdivision (a) of Section 99312 shall be available for all of the following purposes:

(a) To the department for bus and passenger rail services pursuant to Sections 14035, 14035.5, and 14038 of the Government Code.

(b) To the department for funding of public transit capital improvement projects in the state transportation improvement program, pursuant to Section 14529 of the Government Code.

(c) To the department for its planning activities not payable from the State Highway Account in the State Transportation Fund, its mass transportation responsibilities, and its assistance in regional transportation planning.

(d) To the department for allocation by the director to the Institute of Transportation Studies of the University of California for training and research in public transportation systems engineering and management and coordination with other transportation modes.

(e) To the commission for its activities not payable from the State Highway Account.

(f) To the Public Utilities Commission for its passenger rail safety responsibilities specified in statute on commuter rail, intercity rail, and urban rail transit lines.

(g) For transfer to the Transportation Debt Service Fund created by Section 16965 of the Government Code to reimburse the General Fund for current year debt service payments on rail and transit-related general obligation bonds other than those issued pursuant to the Clean Air and Transportation Improvement Act of 1990 (Part 11.5 (commencing with Section 99600)), as follows:

(1) For the 2009–10 fiscal year, the Controller shall transfer up to one hundred forty-two million fifty-eight thousand dollars (\$142,058,000) to the fund upon order of the Director of Finance for debt service paid or payable within that fiscal year.

(2) For the 2010–11 fiscal year, the Controller shall transfer up to ninety million eight hundred eighty-six thousand dollars (\$90,886,000) in revenues collected before November 2, 2010, to the fund, as follows:

(A) By the 15th of every month, the Treasurer, in consultation with the Director of Finance, shall notify the Controller of the amount of debt service that will be paid on each transportation bond during that month.

(B) Within two business days following the 28th of every month, the Controller shall transfer from the account to the Transportation Debt Service

Fund an amount equal to monthly debt service paid by the General Fund on any bonds issued pursuant to Proposition 108 (1990) and Proposition 1A (2008), and one-quarter of the monthly debt service paid by the General Fund on any bonds issued pursuant to Proposition 1B (2006).

(C) Any transfers made from the Public Transportation Account pursuant to this subdivision for any months after October 2010 shall be reversed and repaid to the account, and shall instead be made, to the extent authorized, from weight fee revenues in the State Highway Account as provided for in Section 9400.4 of the Vehicle Code.

SEC. 11. Section 185024 of the Public Utilities Code is amended to read:

185024. (a) The authority shall appoint an executive director, exempt from civil service, who shall serve at the pleasure of the authority, to administer the affairs of the authority as directed by the authority.

(b) For purposes of managing and administering the ongoing work of the authority in implementing the high-speed train project, the Governor, upon the recommendation of the executive director, may appoint up to six additional individuals, exempt from civil service, who shall serve at the pleasure of the executive director. Pursuant to this subdivision, the Governor may appoint persons only for the following positions:

- (1) Chief program manager.
- (2) Up to three regional directors.
- (3) Chief financial officer.
- (4) Director of risk management and project controls.

(c) The compensation of the executive director and the additional persons authorized by subdivision (b) shall be established by the authority, and approved by the Department of Personnel Administration, in an amount that is reasonably necessary, in the discretion of the authority, to attract and hold a person of superior qualifications. The authority shall cause to be conducted, through the use of independent outside advisers, a salary survey to determine the compensation for the positions under this subdivision. The Department of Personnel Administration may, in its discretion, accept a previously completed salary survey that meets the requirements of this subdivision, and shall review the methodology used in the survey. The salary survey shall consider both of the following:

- (1) Other state, regional, and local transportation agencies that are most comparable to the authority and its responsibilities.
- (2) Other relevant labor pools.

The compensation set by the authority shall not exceed the highest comparable compensation for a position of that type, as determined by the salary survey. Based on the salary survey, these positions shall be paid a salary established by the authority and approved by the Department of Personnel Administration.

(d) The executive director may, as authorized by the authority, appoint necessary staff to carry out the provisions of this part.

SEC. 12. Section 6051.8 of the Revenue and Taxation Code is repealed.

SEC. 13. Section 6051.8 is added to the Revenue and Taxation Code, to read:

6051.8. (a) Except as provided by Section 6357.3, in addition to the taxes imposed by this part, for the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 1.75 percent of the gross receipts of any retailer from the sale of all diesel fuel, as defined in Section 60022, sold at retail in this state on and after the operative date of this subdivision.

(b) Notwithstanding subdivision (a), for the 2011–12 fiscal year only, the rate referenced in subdivision (a) shall be 1.87 percent.

(c) Notwithstanding subdivision (a), for the 2012–13 fiscal year only, the rate referenced in subdivision (a) shall be 2.17 percent.

(d) Notwithstanding subdivision (a), for the 2013–14 fiscal year only, the rate referenced in subdivision (a) shall be 1.94 percent.

(e) Notwithstanding subdivision (b) of Section 7102, all of the revenues, less refunds, collected pursuant to this section shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and transferred quarterly to the Public Transportation Account in the State Transportation Fund for allocation pursuant to Section 99312.1 of the Public Utilities Code.

(f) Subdivisions (a) to (e), inclusive, shall become operative on July 1, 2011.

SEC. 14. Section 6201.8 of the Revenue and Taxation Code is repealed.

SEC. 15. Section 6201.8 is added to the Revenue and Taxation Code, to read:

6201.8. (a) Except as provided by Section 6357.3, in addition to the taxes imposed by this part, an excise tax is hereby imposed on the storage, use, or other consumption in this state of diesel fuel, as defined in Section 60022, at the rate of 1.75 percent of the sales price of the diesel fuel on and after the operative date of this subdivision.

(b) Notwithstanding subdivision (a), for the 2011–12 fiscal year only, the rate referenced in subdivision (a) shall be 1.87 percent.

(c) Notwithstanding subdivision (a), for the 2012–13 fiscal year only, the rate referenced in subdivision (a) shall be 2.17 percent.

(d) Notwithstanding subdivision (a), for the 2013–14 fiscal year only, the rate referenced in subdivision (a) shall be 1.94 percent.

(e) Notwithstanding subdivision (b) of Section 7102, all of the revenues, less refunds, collected pursuant to this section shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and transferred quarterly to the Public Transportation Account in the State Transportation Fund for allocation pursuant to Section 99312.1 of the Public Utilities Code.

(f) Subdivisions (a) to (e), inclusive, shall become operative on July 1, 2011.

SEC. 16. Section 6357.3 of the Revenue and Taxation Code is repealed.

SEC. 17. Section 6357.3 is added to the Revenue and Taxation Code, to read:

6357.3. (a) On and after July 1, 2011, there are exempted from the taxes imposed by Sections 6051.8 and 6201.8, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of both of the following:

(1) Diesel fuel purchased for use or used in a manner that is exempt from the tax imposed pursuant to Part 31 (commencing with Section 60001) of Division 2 and not subject to the backup tax imposed by Section 60058 or the payment requirement specified in Section 60108.

(2) Diesel fuel subject to the payment requirement specified in Section 60502.2.

(b) No exemption from the tax imposed pursuant to Sections 6051.8 and 6201.8 shall be allowed under this section unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe.

(c) If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

SEC. 18. Section 6357.7 of the Revenue and Taxation Code is repealed.

SEC. 19. Section 6357.7 is added to the Revenue and Taxation Code, to read:

6357.7. (a) On and after July 1, 2010, there are exempted from the taxes imposed by this part, the gross receipts from the sale in this state of, and the storage, use, or other consumption in this state of, motor vehicle fuel, as defined in Section 7326.

(b) (1) Notwithstanding any provision of the Bradley-Burns Uniform Local Sales and Use Tax Law (Part 1.5 (commencing with Section 7200)) or the Transactions and Use Tax Law (Part 1.6 (commencing with Section 7251)), the exemption established by this section shall not apply with respect to any tax levied by a county, city, or district pursuant to, or in accordance with, either of those laws.

(2) The exemption established by this section shall not apply with respect to any tax levied pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant to Section 35 of Article XIII of the California Constitution.

(c) On and after July 1, 2010, the State Board of Equalization and the Department of Finance shall recognize that the state no longer receives state sales and use tax revenues from the sale of, and the storage, use, or other consumption of, motor vehicle fuel for purposes of any estimates required to be performed under paragraphs (1) and (2) of subdivision (a) of Section 7102, and Section 7104.2.

SEC. 20. Section 6480.1 of the Revenue and Taxation Code is repealed.

SEC. 21. Section 6480.1 is added to the Revenue and Taxation Code, to read:

6480.1. (a) At any time that motor vehicle fuel tax or diesel fuel tax is imposed or would be imposed, but for the dyed diesel fuel exemption in paragraph (1) of subdivision (a) of Section 60100, or the train operator exemption in paragraph (7) of subdivision (a) of Section 60100 or paragraph (11) of subdivision (a) of Section 7401, or, pursuant to subdivision (f) of Section 6480, would be deemed to be imposed, on any removal, entry, or sale in this state of motor vehicle fuel, aircraft jet fuel, or diesel fuel, the supplier shall collect prepayment of retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. However, if no sale occurs at the time of imposition of motor vehicle fuel tax or diesel fuel tax, the supplier shall prepay the retail sales tax on that motor vehicle fuel, aircraft jet fuel, or diesel fuel. The prepayment required to be collected by the supplier constitutes a debt owed by the supplier to this state until paid to the board, until satisfactory proof has been submitted to prove that the retailer of the fuel has paid the retail sales tax to the board, or until a supplier or wholesaler who has consumed the fuel has paid the use tax to the board. Each supplier shall report and pay the prepayment amounts to the board, in a form as prescribed by the board, in the period in which the fuel is sold. On each subsequent sale of that fuel, each seller, other than the retailer, shall collect from his or her purchaser a prepayment computed using the rate applicable at the time of sale. Each supplier shall provide his or her purchaser with an invoice for, or other evidence of, the collection of the prepayment amounts which shall be separately stated thereon.

(b) (1) A wholesaler shall collect prepayment of the retail sales tax from the person to whom the motor vehicle fuel, aircraft jet fuel, or diesel fuel is sold. Each wholesaler shall provide his or her purchaser with an invoice for or other evidence of the collection of the prepayment amounts, which shall be separately stated thereon.

(2) Each wholesaler shall report to the board, in a form as prescribed by the board and for the period in which the motor vehicle fuel, aircraft jet fuel, or diesel fuel was sold, all of the following:

(A) The number of gallons of fuel sold and the amount of sales tax prepayments collected by the wholesaler.

(B) The number of tax-paid gallons purchased and the amount of sales tax prepayments made by the wholesaler.

(C) In the event that the amount of sales tax prepayments collected by the wholesaler is greater than the amount of sales tax prepayments made by the wholesaler, then the excess constitutes a debt owed by the wholesaler to the state until paid to the board, or until satisfactory proof has been submitted that the retailer of the fuel has paid the tax to the board.

(c) A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but subsequently consumes the motor vehicle fuel, aircraft jet fuel, or diesel fuel, shall be entitled to a credit against his or her sales and use taxes due and payable for the period in which the prepayment

was made, provided that he or she reports and pays the use tax to the board on the consumption of that fuel.

(d) The amount of a prepayment paid by the retailer or a supplier or wholesaler who has consumed the motor vehicle fuel, aircraft jet fuel, or diesel fuel to the seller from whom he or she acquired the fuel shall constitute a credit against his or her sales and use taxes due and payable for the period in which the sale was made. Failure of the supplier or wholesaler to report prepayments or the supplier's or wholesaler's failure to comply with any other duty under this article shall not constitute grounds for denial of the credit to the retailer, supplier, or wholesaler, either on a temporary or permanent basis or otherwise. To be entitled to the credit, the retailer, supplier, or wholesaler shall retain for inspection by the board any receipts, invoices, or other documents showing the amount of sales tax prepaid to his or her supplier, together with the evidence of payment.

(e) The rate of the prepayment required to be collected during the period from July 1, 1986, through March 31, 1987, shall be four cents (\$0.04) per gallon of motor vehicle fuel distributed or transferred.

(f) On April 1 of each succeeding year, the prepayment rate per gallon for motor vehicle fuel, rounded to the nearest one-half of one cent (\$0.005), of the required prepayment shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales tax) as determined by the State Energy Resources Conservation and Development Commission, in its latest publication of the "Quarterly Oil Report," of all grades of gasoline sold through a self-service gasoline station. In the event the "Quarterly Oil Report" is delayed or discontinued, the board may base its determination on other sources of the arithmetic average selling price of gasoline. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of motor vehicle fuel. In the event the price of fuel decreases or increases or an exemption from sales tax for sales of fuel is enacted, and the established rate results in or could result in prepayments which consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(g) On April 1 of each succeeding year, the prepayment rate per gallon for aircraft jet fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for aircraft jet fuel shall be equal to 80 percent of the arithmetic

average selling price of aircraft jet fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of aircraft jet fuel. In the event the price of aircraft jet fuel decreases or increases, and the established rate results in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(h) On April 1 of each succeeding year, the prepayment rate per gallon for diesel fuel, rounded to the nearest one-half of one cent (\$0.005), shall be established by the board based upon 80 percent of the combined state and local sales tax rate established by Sections 6051, 6051.2, 6051.3, 6051.5, 7202, and 7203.1, and Section 35 of Article XIII of the California Constitution on the arithmetic average selling price (excluding sales and state excise tax) as determined by the board. The board shall make its determination of the rate no later than November 1 of the year prior to the effective date of the new rate. The rate of the prepayment required to be collected for diesel fuel shall be equal to 80 percent of the arithmetic average selling price of diesel fuel as specified by industry publications. Immediately upon making its determination and setting of the rate, the board shall each year, no later than January 1, notify by mail every supplier, wholesaler, and retailer of diesel fuel. In the event the rate of sales tax imposed on sales of diesel fuel increases or decreases or the price of diesel fuel decreases or increases, and the established rate results in or could result in prepayments that consistently exceed or are significantly lower than the retailers' sales tax liability, the board may readjust the rate.

(i) (1) Notwithstanding any other provision of this section, motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser who, pursuant to a contract with the State of California or its instrumentalities, resells that fuel to the State of California or its instrumentalities shall be exempt from the prepayment requirements.

(2) A qualified purchaser who acquires motor vehicle fuel for subsequent resale to the State of California or its instrumentalities pursuant to this subdivision shall furnish to the supplier or wholesaler from whom the fuel is acquired an exemption certificate, completed in accordance with any instructions or regulations as the board may prescribe. The supplier or wholesaler shall retain the certificate in his or her records in support of the exemption. To qualify for the prepayment exemption, both of the following conditions shall apply:

(A) The qualified purchaser does not take possession of the fuel at any time.

(B) The fuel is delivered into storage tanks owned or leased by the State of California or its instrumentalities via facilities of the supplier or wholesaler, or by common or contract carriers under contract with the supplier or wholesaler.

(3) For purposes of this subdivision, "qualified purchaser" means a wholesaler who does not have or maintain a storage facility or facilities for the purpose of selling motor vehicle fuel.

SEC. 22. Section 7102.1 of the Revenue and Taxation Code is repealed.

SEC. 23. Section 7360 of the Revenue and Taxation Code is repealed.

SEC. 24. Section 7360 is added to the Revenue and Taxation Code, to read:

7360. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel subject to the tax in Sections 7362, 7363, and 7364.

(2) If the federal fuel tax is reduced below the rate of nine cents (\$0.09) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), on and after the date of the reduction, shall be recalculated by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal twenty-seven cents (\$0.27).

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be so exempt under this section.

(b) (1) On and after July 1, 2010, in addition to the tax imposed by subdivision (a), a tax is hereby imposed upon each gallon of motor vehicle fuel, other than aviation gasoline, subject to the tax in Sections 7362, 7363, and 7364 in an amount equal to seventeen and three-tenths cents (\$0.173) per gallon.

(2) For the 2011–12 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate in paragraph (1) in that manner as to generate an amount of revenue that will equal the amount of revenue loss attributable to the exemption provided by Section 6357.7, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2012, the adjustment under paragraph (2) shall also take into account the extent to which the actual amount of revenues derived pursuant to this subdivision and, as applicable, Section 7361.1, the revenue loss attributable to the exemption provided by Section 6357.7 resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Section 6357.7 does not produce a net revenue gain in state taxes.

SEC. 25. Section 7361.1 of the Revenue and Taxation Code is repealed.

SEC. 26. Section 7361.1 is added to the Revenue and Taxation Code, to read:

7361.1. (a) For the privilege of storing, for the purpose of sale, each supplier, wholesaler, and retailer owning 1,000 or more gallons of tax-paid motor vehicle fuel, other than aviation gasoline, on July 1, 2010, shall pay a storage tax of seventeen and three-tenths cents (\$0.173) per gallon of tax-paid motor vehicle fuel, other than aviation gasoline, in storage according to the volumetric measure thereof.

(b) For purposes of this section:

(1) "Owning" means having title to the motor vehicle fuel, other than aviation gasoline.

(2) "Retailer" means any person who sells motor vehicle fuel, other than aviation gasoline, in this state to a person who subsequently uses the motor vehicle fuel, other than aviation gasoline.

(3) "Storing" includes the ownership or possession of tax-paid motor vehicle fuel, other than aviation gasoline, outside of the bulk transfer or terminal system, including the holding of tax-paid motor vehicle fuel, other than aviation gasoline, for sale at wholesale or retail locations stored in a container of any kind, including railroad tank cars and trucks or trailer cargo tanks. "Storing" also includes tax-paid motor vehicle fuel, other than aviation gasoline, purchased from and invoiced by the seller, and tax-paid motor vehicle fuel, other than aviation gasoline removed from a terminal or entered into by a supplier, prior to the date specified in subdivision (a) and in transit on that date.

(4) "Wholesaler" means any person who sells motor vehicle fuel, other than aviation gasoline, in this state for resale to a retailer or to a person who is not a retailer and subsequently uses the motor vehicle fuel, other than aviation gasoline.

SEC. 27. Section 7653.1 of the Revenue and Taxation Code is repealed.

SEC. 28. Section 7653.1 is added to the Revenue and Taxation Code, to read:

7653.1. On or before August 31, 2010, each person subject to the storage tax imposed under Section 7361.1 shall prepare and file with the board, in a form prescribed by the board, a return showing the total number of gallons of tax-paid motor vehicle fuel, other than aviation gasoline, owned by the person on July 1, 2010, the amount of the storage tax, and any other information that the board deems necessary for the proper administration of this part. The return shall be accompanied by a remittance payable to the Controller in the amount of tax due.

SEC. 29. Section 60050 of the Revenue and Taxation Code is repealed.

SEC. 30. Section 60050 is added to the Revenue and Taxation Code, to read:

60050. (a) (1) A tax of eighteen cents (\$0.18) is hereby imposed upon each gallon of diesel fuel subject to the tax in Sections 60051, 60052, and 60058.

(2) If the federal fuel tax is reduced below the rate of fifteen cents (\$0.15) per gallon and federal financial allocations to this state for highway and exclusive public mass transit guideway purposes are reduced or eliminated correspondingly, the tax rate imposed by paragraph (1), including any reduction or adjustment pursuant to subdivision (b), on and after the date of the reduction, shall be increased by an amount so that the combined state rate under paragraph (1) and the federal tax rate per gallon equal what it would have been in the absence of the federal reduction.

(3) If any person or entity is exempt or partially exempt from the federal fuel tax at the time of a reduction, the person or entity shall continue to be exempt under this section.

(b) (1) On July 1, 2011, the tax rate specified in paragraph (1) of subdivision (a) shall be reduced to thirteen cents (\$0.13) and every July 1 thereafter shall be adjusted pursuant to paragraphs (2) and (3).

(2) For the 2012–13 fiscal year and each fiscal year thereafter, the board shall, on or before March 1 of the fiscal year immediately preceding the applicable fiscal year, adjust the rate reduction in paragraph (1) in that manner as to result in a revenue loss attributable to paragraph (1) that will equal the amount of revenue gain attributable to Sections 6051.8 and 6201.8, based on estimates made by the board, and that rate shall be effective during the state's next fiscal year.

(3) In order to maintain revenue neutrality for each year, beginning with the rate adjustment on or before March 1, 2013, the adjustment under paragraph (2) shall take into account the extent to which the actual amount of revenues derived pursuant to Sections 6051.8 and 6201.8 and the revenue loss attributable to this subdivision resulted in a net revenue gain or loss for the fiscal year ending prior to the rate adjustment date on or before March 1.

(4) The intent of paragraphs (2) and (3) is to ensure that the act adding this subdivision and Sections 6051.8 and 6201.8 does not produce a net revenue gain in state taxes.

SEC. 31. Section 167 of the Streets and Highways Code is amended to read:

167. (a) Funds in the State Highway Account in the State Transportation Fund shall be programmed, budgeted subject to Section 163, and expended to maximize the use of federal funds and shall be based on the following sequence of priorities:

(1) Operation, maintenance, and rehabilitation of the state highway system.

(2) Safety improvements where physical changes, other than adding additional lanes, would reduce fatalities and the number and severity of injuries.

(3) Transportation capital improvements that expand capacity or reduce congestion, or do both.

(4) Environmental enhancement and mitigation programs.

(b) With respect to the funds in the State Highway Account, in the Public Transportation Account, and in the Passenger Rail Bond Fund, the proposed budget shall be organized on a program basis. The proposed budget shall list the proposed expenditures for the transportation program under the following program elements:

(1) Administration.

(2) Program development.

(3) Maintenance.

(4) State highway operation and protection.

(5) Local assistance.

- (6) Interregional improvements.
- (7) Regional improvements.
- (8) Environmental enhancement and mitigation programs.
- (c) State operations expenditure amounts of the department for interregional and regional transportation improvement projects shall be listed as required by subdivision (b) of Section 14529 of the Government Code, but those amounts other than those for the acquisition of rights-of-way and construction shall not be subject to allocation by the commission.
- (d) To align the annual budget with the adopted state transportation improvement program, the department may submit to the Department of Finance revised capital outlay support and capital outlay budget estimates as part of its May Revision process. Budget proposals related to these changes shall be provided to the Legislature no later than May 1.
- (e) The budget shall not include specific appropriations for specific transportation improvement projects, and the Legislature shall not enact legislation containing specific individual transportation projects.
- (f) The basis for defining major and minor capital outlay projects shall be established by the commission.
- (g) The Legislative Analyst shall prepare an analysis of the proposed expenditures for each program element as a part of the budget analysis.
- (h) The department shall submit to the Legislative Analyst, and the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget, on an annual basis, supplemental information to substantiate the department's proposed capital outlay support budget. The information shall be provided no later than May 1 of each year, and may be provided at an earlier date. The information shall include, but not be limited to, the following:
 - (1) A list of projects for which the department will perform capital outlay support work in the budget year. For each project, the department shall include:
 - (A) The planned project support budget for support of environmental, design, right-of-way, and construction phases.
 - (B) The planned capital costs, including construction capital costs and right-of-way capital costs.
 - (C) The estimated or actual construction start date.
 - (D) The name and year of the state transportation program in which the project is programmed, if applicable.
 - (E) Total prior fiscal year expenditures for capital outlay support.
 - (F) The number of full-time equivalent positions requested to perform support of environmental, design, right-of-way, and construction work in the fiscal year of the budget request.
 - (G) Milestones of project work by phases that are planned to be completed in the fiscal year of the budget request.
 - (2) The capital-to-support ratio for all projects completed in the prior fiscal year in each program in each district.
 - (3) The current total number of authorized and vacant positions in the capital outlay support program in headquarters and in each district.

(4) A five-year projection of the department's staffing needs to support the state's transportation capital programs and any workload performed by the department related to federal or local funding for highway capital projects.

(5) The average cost of a personnel-year equivalent in each district based on the department's existing contracts for capital outlay support work performed by a private company under contract with the department. For each average cost, the department shall provide a description of what factors are included in that cost.

(6) The average cost of a state staff personnel-year in the capital outlay support program in each district and in headquarters. The cost shall include the salary and wages, benefits, program overhead, administrative overhead, and other associated costs. The department shall provide a description of each component of the average cost.

SEC. 32. Section 183.1 of the Streets and Highways Code is amended to read:

183.1. (a) Notwithstanding subdivision (a) of Section 182 or any other provision of law, money deposited into the account that is not subject to Article XIX of the California Constitution, including, but not limited to, money that is derived from the sale of documents, charges for miscellaneous services to the public, condemnation deposits fund investments, rental of state property, or any other miscellaneous uses of property or money, may be used for any transportation purpose authorized by statute, upon appropriation by the Legislature or, after transfer to another fund, upon appropriation by the Legislature from that fund.

(b) In the 2010–11, 2011–12, and 2012–13 fiscal years, and not later than November 1 of each of those years, based on prior year financial statements, the Controller shall transfer the funds identified in subdivision (a) for the prior fiscal year to the Transportation Debt Service Fund in the State Transportation Fund.

(c) Commencing with the 2013–14 fiscal year, the revenues identified in subdivision (a) shall remain in the State Highway Account until appropriated by the Legislature.

SEC. 33. Section 183.2 is added to the Streets and Highways Code, to read:

183.2. Notwithstanding any other provision of law, the repayment date for the loan of one hundred thirty-five million dollars (\$135,000,000) made from the State Highway Account to the General Fund pursuant to Item 2660-011-0042 of Section 2.00 of the Budget Act of 2009 is extended from June 30, 2012, to June 30, 2013. The Legislature finds and declares that the revenues to make the loan were derived from vehicle weight fees deposited in the State Highway Account.

SEC. 34. Section 2103 of the Streets and Highways Code is amended to read:

2103. (a) Of the net revenues deposited to the credit of the Highway Users Tax Account that are derived from the increases in the rates of taxes that are imposed pursuant to subdivision (b) of Section 7360 and Section

7361.1 of the Revenue and Taxation Code, all of the following shall occur on a monthly basis:

(1) (A) By the 15th day of every month, the Treasurer's office, in consultation with the Department of Finance, shall notify the Controller of the amount of debt service that will be paid on each transportation bond during that month.

(B) Within two business days following the 28th day of each month, the Controller shall transfer to the Transportation Debt Service Fund an amount equal to the amount of monthly debt service paid by the General Fund on any bonds issued pursuant to the Seismic Retrofit Bond Act of 1996 (Chapter 12.48 (commencing with Section 8879) of Division 1 of Title 2 of the Government Code) or any other highway bonds, and three-quarters of the amount of monthly debt service paid on any bonds issued pursuant to the Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of Title 2) for reimbursement of the General Fund for these costs. If revenues available pursuant to this subdivision in any given month are insufficient to fully reimburse the General Fund for the debt service payments made, the first revenues available pursuant to this subdivision in the following month or months shall be transferred to the Transportation Debt Service Fund so that all debt service payments made on these bonds from the General Fund in a given fiscal year are fully reimbursed. However, no further transfers shall be made pursuant to this subparagraph once the transfers for the months of July to October, inclusive, in 2010 have been made. Any transfers made from the net revenues identified in this paragraph for highway bond debt service for months after October 2010 shall be reversed and shall instead be made from weight fee revenues in the State Highway Account, as described in subparagraph (D).

(C) Beginning November 2, 2010, the Controller shall transfer to the State Highway Account within two business days following the 28th day of each month all of the monthly net revenues identified in subparagraph (B) that were designated for highway bond debt service reimbursement but that have not been transferred, or that were transferred by means of a transfer that was reversed, pursuant to that subparagraph. To the extent the Controller has distributed any of those net revenues to cities and counties pursuant to subparagraph (C) of paragraph (3) between November 2, 2010, and the effective date of this subparagraph, the Controller shall subsequently reduce the amount transferred to cities and counties on a monthly basis pursuant to subparagraph (C) of paragraph (3) and shall instead transfer these funds to the State Highway Account until all of the revenues that would otherwise have been transferred to the State Highway Account on and after November 2, 2010, pursuant to this subparagraph have been so transferred.

(D) Any remaining amount of the highway bond debt service reimbursement authorized by this paragraph that has not been made pursuant to subparagraph (B) on and after November 2, 2010, shall instead be made pursuant to subdivisions (a) and (b) of Section 9400.4 of the Vehicle Code from revenues in the State Highway Account derived from weight fees

deposited in the account pursuant to subdivision (e) of Section 9400.1 and Section 42205 of the Vehicle Code.

(2) (A) In the 2010–11 fiscal year, after the monthly transfer made pursuant to paragraph (1), the sum of fifty-four million one hundred sixty-seven thousand dollars (\$54,167,000) per month shall be held in the account for future appropriation by the Legislature.

(B) Notwithstanding any other provision of law, with respect to the monthly net revenues described in subparagraph (A), no further transfers of these revenues for the purpose of loans to the General Fund shall be made pursuant to Item 2660-011-0062 of Section 2.00 of the Budget Act of 2010 once the loan transfers for the months of July to October, inclusive, in 2010 have been made. Any transfers made from the monthly net revenues in subparagraph (A) for months after October 2010 shall be reversed and shall instead be made from weight fee revenues in the State Highway Account, as described in subparagraph (D). The revenues from loan repayments shall be held in the Highway Users Tax Account for future appropriation by the Legislature.

(C) Beginning November 2, 2010, all of the monthly net revenues described in subparagraph (A) shall instead be transferred by the Controller to the State Highway Account within two business days following the 28th day of each month. To the extent that the Controller has distributed any of the revenues identified in this paragraph to cities and counties pursuant to subparagraph (C) of paragraph (3) between October 14, 2010, and the effective date of this subparagraph, the Controller shall subsequently reduce the amount transferred to cities and counties on a monthly basis pursuant to subparagraph (C) of paragraph (3) and shall instead transfer these funds to the State Highway Account until all of the revenues that would have been transferred to the General Fund as a loan pursuant to Item 2660-011-0062 of Section 2.00 of the Budget Act of 2010 on and after November 2, 2010, have instead been transferred to the State Highway Account.

(D) Any remaining amount of the loans to the General Fund authorized pursuant to Item 2660-011-0062 of Section 2.00 of the Budget Act of 2010 that has not been made pursuant to subparagraph (B) on and after November 2, 2010, shall instead be made pursuant to subdivisions (a) and (b) of Section 9400.4 of the Vehicle Code from revenues in the State Highway Account derived from weight fees deposited in the account pursuant to subdivision (e) of Section 9400.1 and Section 42205 of the Vehicle Code.

(3) The Controller shall transfer any remaining net revenues subject to this subdivision as follows:

(A) Forty-four percent shall be transferred to the State Highway Account to fund projects in the State Transportation Improvement Program that are consistent with Section 1 of Article XIX of the California Constitution, except in the 2010–11 fiscal year, 50 percent shall be transferred for purposes of this subparagraph.

(B) Twelve percent shall be transferred to the State Highway Account to fund projects in the State Highway Operation and Protection Program,

except in the 2010–11 fiscal year, no revenues shall be transferred for purposes of this subparagraph.

(C) Forty-four percent shall be apportioned by the Controller for local street and road purposes, except in the 2010–11 fiscal year, 50 percent shall be transferred for purposes of this subparagraph as follows:

(i) Fifty percent shall be apportioned by the Controller to cities, including a city and county, in the proportion that the total population of the city bears to the total population of all the cities in the state.

(ii) Fifty percent shall be apportioned by the Controller to counties, including a city and county, in accordance with the following formulas:

(I) Seventy-five percent shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bear to the number of fee-paid and exempt vehicles registered in the state.

(II) Twenty-five percent shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bear to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(b) After the transfers or other actions pursuant to subdivision (a), at least 90 percent of the balance deposited to the credit of the Highway Users Tax Account in the Transportation Tax Fund by the 28th day of each month shall be apportioned or transferred, as applicable, by the Controller by the second working day thereafter, except for June, in which case the apportionment or transfer shall be made the same day. These apportionments or transfers shall be made as provided for in Sections 2104 to 2122, inclusive. If information is not available to make the apportionment or transfer as required, the apportionment or transfer shall be made on the basis of the information of the previous month. Amounts not apportioned or transferred shall be included in the apportionment or transfer of the subsequent month.

(c) Notwithstanding any other law, the funds apportioned by the Controller to cities and counties pursuant to subparagraph (C) of paragraph (3) of subdivision (a) are not subject to Section 7104 or 7104.2 of the Revenue and Taxation Code. These funds may be expended for any street and road purpose consistent with the requirements of this chapter.

SEC. 35. Section 9400.4 is added to the Vehicle Code, to read:

9400.4. Weight fee revenue deposited into the State Highway Account pursuant to subdivision (e) of Section 9400.1 and Section 42205 shall be used as follows:

(a) For the 2010–11 fiscal year, seven hundred fifty-six million three hundred ninety-six thousand dollars (\$756,396,000) is hereby appropriated from weight fee revenues in the State Highway Account for transfer to the General Fund as transportation bond debt service reimbursement and loans as follows:

(1) The Controller shall transfer all weight fee revenues deposited into the State Highway Account in any month to the Transportation Debt Service

Fund for transfer to the General Fund as reimbursement for debt service costs until all of the debt service paid on transportation bonds for projects that the Director of Finance indicates qualify for reimbursement as provided for in Section 16965 of the Government Code have been reimbursed.

(2) After the Director of Finance has notified the Controller that all debt service costs for the 2010–11 fiscal year have been reimbursed, the Controller shall transfer any remaining monthly weight fee revenues in the State Highway Account to the General Fund as a loan until the full amount appropriated in this subdivision has been transferred to the General Fund. Of the net amount loaned in the 2010–11 fiscal year, two hundred five million eighty-one thousand dollars (\$205,081,000) shall be repaid by June 30, 2014, one hundred forty-four million four hundred forty-four thousand dollars (\$144,444,000) shall be repaid by June 30, 2015, and any remaining balance of the loan shall be repaid by June 30, 2016.

(3) By June 15, 2011, the Director of Finance in consultation with the Treasurer shall notify the Controller regarding the final amount of debt service paid from the General Fund during the 2010–11 fiscal year pursuant to Section 16965 of the Government Code and shall direct the Controller to reverse and adjust any transfers made as debt service reimbursements or loans so that a maximum amount of transfers are made for debt service reimbursements and with any loan amounts limited to the difference between this amount and the total amount appropriated in this subdivision. The total amount of weight fee revenues transferred from the State Highway Account for the 2010–11 fiscal year shall not be greater than the total amount of weight fee revenues deposited into the State Highway Account for that year.

(4) With respect to transfers or portions of transfers that cannot be made in any given month if weight fee revenues are insufficient, the first weight fee revenues available in the following month or months shall be used to complete the transfers for the previous month or months prior to making additional transfers for later months.

(b) For the 2011–12 fiscal year, eight hundred sixty-six million three hundred thousand dollars (\$866,300,000) is hereby appropriated from weight fee revenues in the State Highway Account for transfer to the General Fund as debt service reimbursement and loans as follows:

(1) The Controller shall transfer all weight fee revenues deposited into the State Highway Account in any month to the Transportation Debt Service Fund for transfer to the General Fund as reimbursement for debt service costs until all of the debt service paid on transportation bonds for projects that the Director of Finance indicates qualify for reimbursement as provided for in Section 16965 of the Government Code have been reimbursed.

(2) After the Director of Finance has notified the Controller that all debt service costs for the 2011–12 fiscal year have been reimbursed, the Controller shall transfer any remaining monthly weight fee revenues in the State Highway Account to the General Fund as a loan until the full amount appropriated in this subdivision has been transferred to the General Fund. This loan shall be repaid by June 30, 2015.

(3) By June 15, 2012, the Director of Finance in consultation with the Treasurer shall notify the Controller regarding the final amount of debt service paid from the General Fund during the 2011–12 fiscal year pursuant to Section 16965 of the Government Code and shall direct the Controller to reverse and adjust any transfers made as debt service reimbursements or loans so that a maximum amount of transfers are made for debt service reimbursements and with any loan amounts limited to the difference between this amount and the total amount appropriated in this subdivision. The total amount of weight fee revenues transferred from the State Highway Account for the 2011–12 fiscal year shall not be greater than the total amount of weight fee revenues deposited into the State Highway Account in that year.

(4) With respect to transfers or portions of transfers that cannot be made in any given month if weight fee revenues are insufficient, the first weight fee revenues available in the following month or months shall be used to complete the transfers for the previous month or months prior to making additional transfers for later months.

(c) (1) Starting with the 2012–13 fiscal year and every year thereafter, all weight fee revenues deposited into the State Highway Account in any month shall be transferred to the Transportation Debt Service Fund for transfer to the General Fund by the Controller as reimbursement for debt service costs until all of the debt service paid on transportation bonds that the Director of Finance indicates qualify for reimbursement as provided for in Section 16965 of the Government Code have been reimbursed. By June 15 of each year the Director of Finance in consultation with the Treasurer shall notify the Controller regarding the final amount of debt service paid from the General Fund during that fiscal year pursuant to Section 16965 of the Government Code and shall direct the Controller to reverse or adjust any transfers made as debt service reimbursements so that a maximum amount of transfers are made for debt service reimbursements. The total amount of weight fee revenues transferred from the State Highway Account in any fiscal year shall not be greater than the total amount of weight fee revenues deposited into the State Highway Account in that year.

(2) With respect to transfers or portions of transfers that cannot be made in any given month if weight fee revenues are insufficient, the first weight fee revenues available in the following month or months shall be used to complete the transfers for the previous month or months prior to making additional transfers for later months.

SEC. 36. Section 12811 of the Vehicle Code is amended to read:

12811. (a) (1) (A) When the department determines that the applicant is lawfully entitled to a license, it shall issue to the person a driver's license as applied for. The license shall state the class of license for which the licensee has qualified and shall contain the distinguishing number assigned to the applicant, the date of expiration, the true full name, age, and mailing address of the licensee, a brief description and engraved picture or photograph of the licensee for the purpose of identification, and space for the signature of the licensee.

(B) Each license shall also contain a space for the endorsement of a record of each suspension or revocation thereof.

(C) The department shall use whatever process or processes, in the issuance of engraved or colored licenses, that prohibit, as near as possible, the ability to alter or reproduce the license, or prohibit the ability to superimpose a picture or photograph on the license without ready detection.

(2) In addition to the requirements of paragraph (1), a license issued to a person under 18 years of age shall display the words “provisional until age 18.”

(b) (1) On and after July 1, 2011, an application for an original or renewal driver’s license or identification card shall contain a space for the applicant to enroll in the Donate Life California Organ and Tissue Donor Registry. The application shall include check boxes for an applicant to mark either (A) Yes, add my name to the donor registry or (B) I do not wish to register at this time.

(2) The department shall inquire verbally of an applicant applying in person for an original or renewal driver’s license or identification card at a department office as to whether the applicant wishes to enroll in the Donate Life California Organ and Tissue Donor Registry. Failure or refusal to answer this question or check a box on the application form shall not be a basis for the department to deny an applicant a driver’s license or identification card.

(3) The following language shall be included with the question required by paragraph (1):

“Marking ‘Yes’ adds your name to the Donate Life California Organ and Tissue Donor Registry and a pink ‘donor’ dot will appear on your license. If you wish to remove your name from the registry you must contact Donate Life California (see back); DMV can remove the pink dot from your licenses but cannot remove you from the registry.”

(4) The back of the application shall contain the following statement:

“If, on the front of this form, you marked ‘Yes’ to register as an organ and tissue donor you are legally authorizing the recovery of organs and tissues in the event of your death. Registering as a donor will not affect your medical treatment in any way. As outlined in the California Anatomical Gift Act, your authorization is legally binding and, unless the donor is under 18 years of age, your decision does not require the consent of any other person. For registered donors under 18 years of age, the legal guardian shall make the final donation decision. You may limit your donation to specific organs or tissues, place usage restrictions, for example transplantation or research, obtain more information about donation, or remove your name from the registry on the Internet Web site of Donate Life California: www.donateLIFecalifornia.org.”

(5) Notwithstanding any other provision of law, a person under 18 years of age may register as a donor. However, the legal guardian of that person shall make the final decision regarding the donation.

(6) The department shall collect donor designation information on all applications for an original or renewal driver's license or identification card.

(7) The department shall print the word "DONOR" or another appropriate designation on the face of a driver's license or identification card to a person who has indicated on the application his or her intent to enroll in the organ donation program pursuant to this section.

(8) On a weekly basis, the department shall electronically transmit to Donate Life California, a nonprofit organization established and designated as the California Organ and Tissue Donor Registrar pursuant to Section 7150.90 of the Health and Safety Code, all of the following information from every application that indicates the applicant's decision to enroll in the organ donation program:

- (A) His or her true full name.
- (B) His or her residence or mailing address.
- (C) His or her year of birth.
- (D) His or her California driver's license number or identification card number.

(9) (A) A person who applies for an original or renewal driver's license or identification card may designate a voluntary contribution of two dollars (\$2) for the purpose of promoting and supporting organ and tissue donation. This contribution shall be collected by the department, and treated as a voluntary contribution to Donate Life California and not as a fee for the issuance of a driver's license or identification card.

(B) The department may use the donations collected pursuant to this paragraph to cover its actual administrative costs incurred pursuant to paragraphs (6) to (8), inclusive. The department shall deposit all revenue derived pursuant to this paragraph and remaining after the department's deduction for administrative costs in the Donate Life California Trust Subaccount, that is hereby created in the Motor Vehicle Account in the State Transportation Fund. Notwithstanding Section 13340 of the Government Code, all revenue in this subaccount is continuously appropriated, without regard to fiscal years, to the Controller for allocation to Donate Life California and shall be expended for the purpose of increasing participation in organ donation programs.

(C) The department shall transmit to the Donate Life California Organ and Tissue Donor Registry and the appropriate policy and fiscal committees of the Legislature an annual report, and shall make available quarterly updates, detailing funds collected through voluntary contributions as well as a summary of applicants, including all of the following nonidentifiable information:

- (i) Date of application.
- (ii) Method of application (field office, online, or mail).
- (iii) Donor registration status.
- (iv) ZIP code.

- (v) Gender.
- (vi) Year of birth.

(D) (i) The annual report to be submitted to the appropriate policy and fiscal committees of the Legislature pursuant to subparagraph (C) shall be submitted in compliance with Section 9795 of the Government Code.

(ii) Pursuant to Section 10231.5 of the Government Code, the requirement for submitting the annual report to the appropriate policy and fiscal committees of the Legislature imposed under subparagraph (C) is inoperative four years after the date the first annual report is due.

(10) The enrollment form shall be posted on the Internet Web sites for the department and the California Health and Human Services Agency.

(11) The enrollment shall constitute a legal document pursuant to the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code) and shall remain binding after the donor's death despite any express desires of next of kin opposed to the donation. Except as provided in paragraph (5) of subdivision (b), the donation does not require the consent of any other person.

(12) Donate Life California shall ensure that all additions and deletions to the California Organ and Tissue Donor Registry, established pursuant to Section 7150.90 of the Health and Safety Code, shall occur within 30 days of receipt.

(13) Information obtained by Donate Life California for the purposes of this subdivision shall be used for these purposes only and shall not be disseminated further by Donate Life California.

(c) (1) All applications for a driver's license or identification card shall contain a space for an applicant to indicate whether he or she has served in the Armed Forces of the United States and to give his or her consent to be contacted regarding eligibility to receive state or federal veterans benefits. The application shall contain the following statement:

“By marking the veteran box on this application, I certify that I am a veteran of the United States Armed Forces and that I want to receive veterans benefits information from the California Department of Veterans Affairs. By marking the veteran box on this application, I also consent to DMV transmitting my name and mailing address to the California Department of Veterans Affairs for this purpose only, and I certify that I have been notified that this transmittal will occur.”

(2) The department shall collect the information obtained pursuant to paragraph (1).

(3) As mutually agreed between the department and the Department of Veterans Affairs, the department shall electronically transmit to the Department of Veterans Affairs the following information on each applicant who has identified that he or she has served in the Armed Forces of the United States since the last data transfer and has consented to be contacted about veterans benefits:

- (A) His or her true full name.

(B) His or her mailing address.

(4) Information obtained by the Department of Veterans Affairs for the purposes of this subdivision shall be used for the purpose of assisting individuals to access veterans benefits and shall not be disseminated except as needed for this purpose.

(d) A public entity or employee shall not be liable for loss, detriment, or injury resulting directly or indirectly from false or inaccurate information contained in the form provided pursuant to subdivision (b).

(e) A contract shall not be awarded to a nongovernmental entity for the processing of driver's licenses, unless the contract conforms to all applicable state contracting laws and all applicable procedures set forth in the State Contracting Manual.

SEC. 37. Of the amounts appropriated in Items 2665-004-6043, 2665-304-0890, 2665-304-6043, 2665-305-0890, and 2665-305-6043 of Section 2.00 of the Budget Act of 2010, a total of fifty-five million three hundred twenty thousand dollars (\$55,320,000) shall be available for expenditure only after the submittal of a report to the Joint Legislative Budget Committee and a 30-day review period, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may determine. The High-Speed Rail Authority shall have discretion concerning how the fifty-five million three hundred twenty thousand dollars (\$55,320,000) in restricted expenditures is allocated among the five items of appropriation listed above. The authority shall submit the report no later than February 14, 2011. The report shall include, but not necessarily be limited to, all of the following:

(a) A report on contract expenditures for community outreach, including detail by type of expenditure and activity. Detail on meetings by segment and community, and a summary of correspondence, e-mail, media, Internet Web site, and other outreach efforts shall be included in this report.

(b) A copy of the strategic plan that the authority is developing pursuant to the requirements of the State Administrative Manual.

(c) A report on the performance of the program manager contractor. The authority shall indicate all the measures it has taken to address the findings and recommendations of the Bureau of State Audits in its April 2010 report, how the authority evaluates the performance of the contractor, and what those evaluations suggest in terms of resolution to the deficiencies noted by the Bureau of State Audits.

(d) A report on how the authority has addressed other recommendations of the Bureau of State Audits not otherwise covered by this section.

SEC. 38. Of the amounts appropriated in Items 2665-004-6043, 2665-304-0890, 2665-304-6043, 2665-305-0890, and 2665-305-6043 of Section 2.00 of the Budget Act of 2011, 25 percent of the total amount shall be available for expenditure only after the submittal of a report to the Joint Legislative Budget Committee and a 60-day review period, or not sooner than whatever lesser time the Chairperson of the Joint Legislative Budget Committee, or his or her designee, may determine. The High-Speed Rail Authority shall have discretion concerning how the 25 percent in restricted

expenditures is allocated among the five items of appropriation listed above. The authority shall submit the report no later than October 14, 2011. The report shall include, but not necessarily be limited to, all of the following:

(a) A complete legal analysis of the revenue guarantee or other mechanisms to reduce the operator's risk that the authority indicates it would provide to the operator. To mitigate risk, the authority shall provide an analysis of the revenue contribution to the project from the private operator with and without a revenue guarantee or other mechanism to reduce the operator's risk. The authority shall discuss alternative financing approaches to make up for any lost revenue in the case of no revenue guarantee or other mechanisms to reduce the operator's risk.

(b) A financial plan update with alternative funding scenarios. To mitigate risk, the authority shall report on alternative funding options if no significant federal funds are received beyond the federal American Recovery and Reinvestment Act of 2009 (Public Law 111-5) and no revenue guarantee or other mechanisms to reduce the operator's risk are allowable. The plan shall also include construction alternatives for a constrained funding environment, including what investments would be made and construction completed if the nonbond resources only equal bond funding.

SEC. 39. This act addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation on January 20, 2011, pursuant to subdivision (f) of Section 10 of Article IV of the California Constitution.

SEC. 40. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet the current and near-term financial requirements of the state, it is necessary that this act take effect immediately.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-2011-0315-03	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

RECEIVED FOR FILING PUBLICATION DATE MAR 15 '11 MAR 25 '11 Office of Administrative Law NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY State Board of Equalization	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE Diesel Fuel Used in Farming Activities	TITLE(S) 18	FIRST SECTION AFFECTED 1533.2	2. REQUESTED PUBLICATION DATE March 25, 2011
3. NOTICE TYPE <input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON Rick 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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2. 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
TITLE(S)	REPEAL

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 §511346.2-11347.3 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 §511349.3, 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 30th day after filing with Secretary of State	<input 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	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
TYPED NAME AND TITLE OF SIGNATORY	

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. 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 Regulations 1533.2 and 1598.

AUTHORITY

RTC section 7051.

REFERENCES

Regulation 1533.2: RTC section 6357.1.

Regulation 1598: RTC sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the

additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 Regulations 1533.2 and 1598 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1533.2 and 1598 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel III (Specialist), by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 1533.2 and 1598. 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 underscored and strikeout versions of the text of Regulations 1533.2 and 1598 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. 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 Regulations 1533.2 and 1598 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 amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1533.2 and 1598 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.

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The

hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity.

The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) “Marketplace” means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) “Diesel fuel” means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as “federal fuel” sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. “Diesel fuel” does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) “Qualified activity” means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim

the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be

liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) Exemptions and Exemption Certificates.

(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the 1.75 Percent Sales and Use Tax
Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4%	
of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039
(B) Sales price per gallon of diesel fuel	
net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
*Sales tax reimbursement computed at	
9%* of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.969

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay

use tax measured by the “fair rental value” of the mobile transportation equipment leased, the “fair rental value” does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase

from _____, will be used in propelling aircraft:
and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle
Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject
to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling
aircraft, it is understood that I am required by the Sales and Use Tax Law to report and
pay tax measured by the purchase price of such fuel. This certificate is valid until revoked
in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

Bennion, Richard

From: Scott, Megan [Megan.Scott@BOE.CA.GOV]
Sent: Friday, March 25, 2011 2:12 PM
To: BOE_REGULATIONS@LISTSERV.STATE.CA.GOV
Subject: State Board of Equalization - Announcement of Regulatory Change 1533.2 and 1598

The State Board of Equalization proposes to amend Regulations 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. A public hearing on the proposed amendments will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on Tuesday, May 24, 2011.

The proposed amendments to Regulation 1598 incorporate the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by Revenue and Taxation Code (RTC) sections 6051.8 and 6201.8, effective July 1, 2011, and incorporate the two exemptions from the additional tax on diesel fuel provided by RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing applies to the additional 1.75 tax on diesel fuel.

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_1533.2_1598.htm.

Questions regarding the substance of the proposed amendments to Regulation 1533.2 and 1598 should be directed to: Mr. Bradley Heller, Tax Counsel, at 450 N Street, MIC:82, Sacramento, CA 94279-0082, email Bradley.Heller@boe.ca.gov, telephone (916) 323-3091, or FAX (916) 323-3387.

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 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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administrative action should be directed to Mr. Rick Bennion, Regulations Coordinator, by telephone at (916) 445-2130, by fax at (916) 324-3984, by e-mail at Richard.Bennion@boe.ca.gov, or by mail at State Board of Equalization, Attn: Rick Bennion, MIC:80, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0080.

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt proposed Regulation 2558.1. 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 Initial Statement of Reasons for and an underscored version of proposed Regulation 2558.1 illustrating its express terms. These documents and all the information on which the proposed regulation is 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 regulation 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 proposed Regulation 2558.1 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 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 proposed Regulation 2558.1 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. STATE BOARD OF EQUALIZATION

Amendments to California Code of Regulations, Title 18, Section 1533.2, Diesel Fuel Used in Farming Activities or Food Processing, and Section 1598, Motor Vehicle and Aircraft Fuels

Notice of Proposed Regulatory Action

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 121, 450 N Street,

Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. 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 Regulations 1533.2 and 1598.

AUTHORITY

RTC section 7051.

REFERENCES

Regulation 1533.2: RTC section 6357.1.

Regulation 1598: RTC sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on

the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the con-

tent of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the

regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 Regulations 1533.2 and 1598 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1533.2 and 1598 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller,

Tax Counsel III (Specialist), by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 1533.2 and 1598. 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 underscored and strikeout versions of the text of Regulations 1533.2 and 1598 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. 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 Regulations 1533.2 and 1598 with changes that are non-substantial 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 amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1533.2 and 1598 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 22. EMPLOYMENT DEVELOPMENT DEPARTMENT

Amendment of Sections 2706-1, 2706-2, and Adoption of Section 2706-8 of Title 22, California Code of Regulations

IDENTITY AND WAGE VERIFICATION FOR STATE DISABILITY INSURANCE BENEFITS

Notice of Proposed Rulemaking

The Employment Development Department (Department) proposes to amend sections 2706-1, 2706-2 and to adopt section 2706-8 of Title 22, California Code of Regulations (CCR). The proposed regulations would provide the Department the authority to request additional documentation pertaining to an employee's wages if the Department suspects the wages may have been earned by someone other than the claimant. This provides the means for the Department to be able to verify that base period wages were in fact earned by the claimant requesting the benefits.

The Department will adopt these regulations after considering all comments, objections, or recommendations regarding the proposed regulatory action.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

The State Disability Insurance (SDI) program was established in 1946 to provide a partial wage replacement



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

March 25, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**California Code of Regulations, Title 18,
Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*,
and Section 1598, *Motor Vehicle and Aircraft Fuels***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. 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 Regulations 1533.2 and 1598.

AUTHORITY

RTC section 7051.

REFERENCES

Regulation 1533.2: RTC section 6357.1.

Regulation 1598: RTC sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax

imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 Regulations 1533.2 and 1598 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1533.2 and 1598 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel III (Specialist), by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 1533.2 and 1598. 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 underscored and strikeout versions of the text of Regulations 1533.2 and 1598 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. 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.

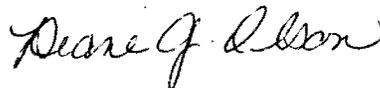
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1533.2 and 1598 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 amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1533.2 and 1598 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,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing,* and Section 1598, *Motor Vehicle and Aircraft Fuels*

SPECIFIC PURPOSE AND NECESSITY

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel

imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

During its February 23, 2011, meeting, the Board determined that it was reasonably necessary to amend Regulation 1533.2 for the specific purposes of ensuring that the regulation reflects that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The Board also determined that it was reasonably necessary to amend Regulation 1598 for the specific purposes of ensuring that the regulation reflects the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and prescribing the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any

nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

DOCUMENTS RELIED UPON

Formal Issue Paper 11-002 was submitted to the Board for consideration at its February 23, 2011, Board meeting, and contained staff's recommendation that the Board begin the formal rulemaking process to adopt the proposed amendments to Regulations 1533.2 and 1598. The Board relied upon Formal Issue Paper 11-002, the exhibits to the issue paper, and comments made by Board staff and the Board Members during the February 23, 2011, discussion of the issue paper in deciding to propose the amendments to Regulations 1533.2 and 1598.

ALTERNATIVES CONSIDERED

The Board considered whether to propose the amendments to Regulations 1533.2 and 1598 or, alternatively, whether to take no action at this time due to the uncertainty created by Proposition 26. However, the Board decided to propose the amendments to Regulations 1533.2 and 1598 because they are consistent with current law and it is important for the regulations to accurately reflect the current provisions of the RTC.

NO ADVERSE ECONOMIC IMPACT ON BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will not have a significant adverse economic impact on business.

The proposed regulation may affect small business.

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The

hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity.

The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) “Marketplace” means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) “Diesel fuel” means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as “federal fuel” sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. “Diesel fuel” does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) “Qualified activity” means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim

the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be

liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) Exemptions and Exemption Certificates.

(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the 1.75 Percent Sales and Use Tax
Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4%	
of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039
(B) Sales price per gallon of diesel fuel	
net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
*Sales tax reimbursement computed at	
9%* of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.969

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay

use tax measured by the “fair rental value” of the mobile transportation equipment leased, the “fair rental value” does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase

from _____, will be used in propelling aircraft:
and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle
Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject
to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling
aircraft, it is understood that I am required by the Sales and Use Tax Law to report and
pay tax measured by the purchase price of such fuel. This certificate is valid until revoked
in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1533.2 and 1598

Title: 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

Preparation: Brad Heller

Legal Contact: Brad Heller

Board proposes to adopt Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels* to proposed amendments to incorporate the provisions of Revenue and Taxation Code sections 6051.8, 6201.8, and 6357.3 related to the 1.75 percent tax rate increase on sales of diesel fuel beginning July 1, 2011.

History of Proposed Regulation:

May 24, 2011	Public Meeting
May 9, 2011	45-day public comment period ends
March 25, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
March 15, 2011	Notice to OAL
February 23, 2011	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 Sales and Use Tax Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuel*, did comply with the provision of Government Code section 11346.4(a)(1) through (4). A notice to interested parties was mailed on March 25, 2011, 60 days prior to the public hearing.

July 21, 2011

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

Richard Bennion
Regulations Coordinator
State Board of Equalization

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: May 5, 2011

From: Randy Ferris 
Acting Chief Counsel

Subject: **Board Meeting, May 24-25, 2011**
Item F – Public Hearing, May 24, 2011
Recommendation to Change the Proposed Amendments to Sales and Use Tax
Regulations 1533.2 and 1598 Due to the Enactment of Assembly Bill 105.

I. Introduction.

During the Business Taxes Committee meeting on February 23, 2011, the Board authorized staff to publish proposed amendments to Sales and Use Tax Regulation (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuels*. At the public hearing scheduled for May 24, 2011, Board staff will recommend that the Board authorize staff to: (1) change the proposed amendments to both regulations to incorporate changes to the rate of the additional sales and use tax on the sale and use of diesel fuel imposed under Revenue and Taxation Code (RTC) sections 6051.8 and 6201.8, as a result of the recent enactment of Assembly Bill No. (AB) 105 (Stats. 2011, ch. 6); (2) change the proposed amendments to Regulation 1598 to incorporate changes to the rate of diesel fuel excise tax imposed by RTC section 60050, subdivision (b), made by AB 105; and (3) make other nonsubstantial, solely grammatical, and sufficiently related changes to Regulation 1598. Board staff will also ask the Board to refer the revised text of the proposed amendments to both regulations to the 15-day file for additional notice and public comment, as provided for by Government Code section 11346.8, subdivision (c). Staff's recommended changes to the text of the proposed amendments to Regulations 1533.2 and 1598 are illustrated in attachments A and B, respectively. The additional text staff recommends deleting from the regulations is shown in a strikethrough font and the additional text staff recommends adding to the regulations is shown in a double-underline font.

II. Discussion.

A. Changes to Regulation 1533.2.

The proposed amendments to Regulation 1533.2 were, and still are, intended to revise the regulation to reflect that the partial exemption from sales and use tax for the sale and use of diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011. The original text of the proposed

amendments specifically incorporated the “1.75 percent” rate of the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, as enacted by ABx8 6 (Stats. 2010, ch. 11), into the cumulative sales and use tax rate subject to the partial exemption provided by RTC section 6357.1.

On March 24, 2011, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of AB 105 in order to comply with the requirements of Proposition 26 passed by the voters on November 2, 2010. However, when the Legislature re-enacted the two statutes, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

As a result, Board staff recommends that the Board approve changes to the original text of the proposed amendments to Regulation 1533.2 so that the regulation reflects the actual, cumulative sales and use tax rate to which the partial exemption provided by RTC section 6357.1 will apply. The changes are necessary for the specific purpose of ensuring that the final text of the amendments to Regulation 1533.2 reflects the current text of RTC sections 6051.8 and 6201.8.

B. Changes to Regulation 1598.

1. Changes to New Subdivision (e).

The proposed amendments adding new subdivision (e) to Regulation 1598 were, and still are, intended to incorporate the exemption provided by RTC section 6357.3 from the additional state sales and use tax on the sale and use of diesel fuel imposed by RTC sections 6051.8 and 6201.8, which was enacted as part of ABx8 6. The proposed amendments adding new subdivision (e) to Regulation 1598 were also, and still are, intended to prescribe the form of the exemption certificate required to be used in connection with the RTC section 6357.3 exemption. The original text of the proposed amendments adding subdivision (e) to Regulation 1598 specifically incorporated the “1.75 percent” rate of the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, as enacted by ABx8 6.

Board staff recommends that the Board approve changes to the original text of the proposed amendments adding new subdivision (e) to Regulation 1598 to incorporate all of the different rates of the additional state sales and use tax on the sale and use of diesel fuel imposed by RTC sections 6051.8 and 6201.8, as re-enacted by AB 105 and described above. Board staff further recommends that the Board approve changes to the original text of the proposed amendments adding new subdivision (e) to Regulation 1598 to clarify that the additional state use tax imposed by RTC section 6201.8 applies to “the storage, use, or other consumption” of diesel fuel, make minor grammatical changes to the exemption certificate used in connection with the RTC section 6357.3 exemption, and revise the text of the exemption certificate to better reflect the express language of RTC section 6357.3, subdivision (c), which provides that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

The changes are necessary for the specific purposes of ensuring that the final text of the proposed amendments adding new subdivision (e) to Regulation 1598 is clear and reflects the current text of RTC sections 6051.8, 6201.8, and 6357.3.

2. Changes to Renumbered Subdivision (f).

The proposed amendments to renumbered subdivision (f) of Regulation 1598 were, and still are, intended to incorporate the rate of diesel fuel excise tax imposed by RTC section 60050, subdivision (b) effective July 1, 2011, into the second example in renumbered subdivision (f). The original text of the proposed amendments to renumbered subdivision (f) specifically incorporated the "13.6 cents" per gallon rate of tax specified by RTC section 60050, subdivision (b), as enacted by ABx8 6. However, the Legislature also re-enacted RTC section 60050 as part of AB 105, in order to comply with the requirements of Proposition 26, and the Legislature reduced the diesel fuel excise tax rate specified in RTC section 60050, subdivision (b) to "13 cents" per gallon in AB 105. Therefore, Board staff recommends that the Board approve two changes to the original text of the proposed amendments to the second example in renumbered subdivision (f) to incorporate the rate of diesel fuel excise tax specified by RTC section 60050, subdivision (b), as amended by AB 105. The changes are necessary for the specific purpose of making sure the second example in renumbered subdivision (f) reflects the actual rate of diesel fuel excise tax effective July 1, 2011.

3. Solely Grammatical Change to Renumbered Subdivision (k).

While Board staff was revising the original text of the proposed amendments to Regulation 1598 to reflect the amendments to RTC sections 6051.8, 6201.8, and 60050 made by AB 105, Board staff also noticed a typographical error in the spelling of the word "calendar" in the current text of renumbered subdivision (k). Therefore, Board staff also recommends that the Board approve a change to renumbered subdivision (k) that would replace the misspelled word "calender" with the correctly spelled word "calendar" for the specific purpose of correcting the typographical error.

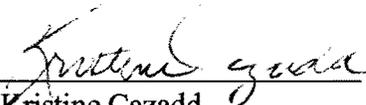
III. Conclusion.

Board staff is recommending that the Board authorize staff to make the changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 described above because Board staff believes that the changes are necessary to conform the regulations to the provisions of RTC sections 6051.8, 6201.8, 6357.3, and 60050, as re-enacted and amended by AB 105, to ensure that the regulatory language is clear, and to correct one typographical error. If the Board authorizes staff to make the changes, Board staff will make the revised text of the proposed

amendments to both regulations, with the new changes clearly indicated, available to the public for an additional 15-day comment period and then present the revised text of the proposed amendments to the Board for adoption.

If you need more information or have any questions, please contact Tax Counsel IV Bradley Heller at (916) 323-3091.

Approved:


Kristine Cazadd
Interim Executive Director

Attachments: Attachment A
Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1533.2

Attachment B
Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598

RMF:bh:yg

J:/Chief Counsel/Finals/Board Memo – Regulations 1533.2 and 1598 – 05-05-2011.doc
J:/Bus/Use/Finals/Regulations 1533.2 and 1598.Memo.doc

cc: Ms. Kristine Cazadd MIC:73
Ms. Christine Bisauta MIC:82
Mr. Robert Tucker MIC:82
Mr. Bradley Heller MIC:82
Ms. Susanne Buehler MIC:92
Mr. Bradley Miller MIC:50

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the May 25, 2011 Board Meeting


Diane G. Olson, Chief
Board Proceedings Division

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) **In General.** A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) **Blanket Partial Exemption Certificates.** In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **Form of Partial Exemption Certificate.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **Retention and Availability of Partial Exemption Certificates.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **Good Faith.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) **Improper Use of Partial Exemption.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) **Purchaser's Liability for the Payment of Sales Tax.**

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) **Records.** Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) **Operative Date.** This regulation is operative as of September 1, 2001.

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

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant

to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3) Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the 1.75-Percent Additional State Sales
and Use Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional 1.75 percent state sales and use tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108, for the following reason:

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional 1.75 percent state sales and use tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the diesel fuel additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	.353
Total	\$2.972
Sales tax reimbursement computed at 2 1/4% of \$2.972.....	.067
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	.244
Total	\$2.599
Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*.....	.136
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft: and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(i) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of

federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N Street, Room 121

Sacramento, California

REPORTER'S TRANSCRIPT

MAY 25, 2011

ITEM F2

PUBLIC HEARINGS

PROPOSED AMENDMENTS TO REGULATION 1533.2, DIESEL FUEL
USED IN FARMING ACTIVITIES OF FOOD PROCESSING; AND
REGULATION 1598, MOTOR VEHICLE AND AIRCRAFT FUELS

Reported by: Beverly D. Toms

No. CSR 1662

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P R E S E N T

For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John Chiang
State Controller
(per Government Code
Section 7.9)

Diane Olson, Chief
Board Proceedings Division

Board of Equalization
Staff:

Bradley Heller
Legal Department

---oOo---

1 Sacramento, California

2 May 25, 2011

3 ---oOO---

4 MS. OLSON: Our next item is F2, Proposed
5 Amendments to Regulation 1533.2, Diesel Fuel used in
6 Farming Activities of Food Processing; and Regulations
7 1598, Motor Vehicle and Aircraft Fuels.

8 MR. HORTON: Members, Mr. Heller is here to
9 make a presentation on this matter.

10 Mr. Heller, at your convenience, please,
11 commence with your presentation.

12 MR. HELLER: Good morning, Chairman Horton and
13 Members of the Board. As you said, I'm Bradley Heller
14 from the Board's Legal Department. And I'm here to
15 request the Board's authorization to make changes to the
16 text of the proposed amendments to Sales and Use Tax
17 Regulation 1533.2, diesel fuel used in farming
18 activities or food processing; and Regulation 1598,
19 motor vehicle and aircraft fuels.

20 The changes make the proposed amendments to
21 both regulations consistent with the provisions of
22 Assembly Bill 105, which recently reenacted the fuel tax
23 law pursuant to the provisions of Proposition 26 with
24 minor changes to the rate of the additional Sales and
25 Use Tax on diesel fuel.

26 The changes also make the proposed amendments
27 to Regulation 1598 consistent with changes to the rate
28 of the diesel fuel Excise Tax made by Assembly Bill 105.

1 And the changes also make minor non-substantial, solely
2 grammatical and sufficiently related changes to the
3 proposed text of Regulation 1598, as well.

4 If the Board authorizes the changes then staff
5 will make the text of the proposed amendments with the
6 changes clearly indicated available to the public for an
7 additional 15-day comment period and then bring the --
8 bring the changed proposed amendments to the Board for
9 adoption at the July meeting.

10 MR. HORTON: Thank you very much, Mr. Heller.
11 Members, is there a motion?

12 MS. STEEL: So moved.

13 MR. HORTON: Moved by Ms. Steel, second by Ms.
14 Yee.

15 MS. YEE: Uh-huh.

16 MR. HORTON: Without objection, such will be
17 the order.

18 ---oOo---

REPORTER'S CERTIFICATE

1
2
3 State of California)
4) ss
5 County of Sacramento)
6

7 I, BEVERLY D. TOMS, Hearing Reporter for the
8 California State Board of Equalization certify that on
9 May 25, 2011 I recorded verbatim, in shorthand, to the
10 best of my ability, the proceedings in the
11 above-entitled hearing; that I transcribed the shorthand
12 writing into typewriting; and that the preceding 4 pages
13 constitute a complete and accurate transcription of the
14 shorthand writing.

15
16 Dated: June 7, 2011.



20 *Beverly D Toms*

21 BEVERLY D. TOMS
22 Hearing Reporter
23
24
25
26
27
28

Wednesday, May 25, 2011

Whether petitioner was negligent for the periods August 1, 2002, through August 31, 2002, and June 4, 2003, to July 31, 2005.

Whether relief of the failure-to-file penalty or the finality penalty are warranted.

Action: Upon motion of Ms. Mandel, seconded by Mr. Runner and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board ordered that the petitions and administrative protest be submitted for decision and directed staff to confer with the taxpayer.

PUBLIC HEARINGS

Timber Harvest Values

Benjamin Tang, Principal Property Appraiser, Timber Tax Section, County Assessed Properties Division, Property and Special Taxes Department, made introductory remarks regarding the timber harvest values in accordance with Revenue and Taxation Code section 38204(a), which requires that the Board estimate the immediate harvest values of, and adopt schedules for each species or sub classification of timber harvested between July 1 and December 31, 2011 on or before June 30, 2011 (Exhibit 5.4).

Speakers were invited to address the Board, but there were none.

The Members joined Mr. Runner in thanking staff and the industry for their hard work and for coming together to make this a fair process in these difficult times.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board approved the timber harvest values as recommended by staff.

Exhibits to these minutes are incorporated by reference.

Proposed Amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuels*

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding the proposed amendments to Sales and Use Tax Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing* and Regulation 1598, *Motor Vehicle and Aircraft Fuels*, which would incorporate provisions of the fuel tax swap (Stats. 2010, ch. 11) (Exhibit 5.5).

Speakers were invited to address the Board, but there were none.

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board referred the revised text of the proposed amendments to both regulations to the 15-day file for additional notice and public comment as recommended by staff.

Memorandum

To: Honorable Jerome E. Horton, Chairman
Honorable Michelle Steel, Vice Chair
Honorable Betty T. Yee, First District
Senator George Runner, Second District
Honorable John Chiang, State Controller

Date: May 5, 2011

From: Randy Ferris 
Acting Chief Counsel

Subject: Board Meeting, May 24-25, 2011
Item F – Public Hearing, May 24, 2011
Recommendation to Change the Proposed Amendments to Sales and Use Tax
Regulations 1533.2 and 1598 Due to the Enactment of Assembly Bill 105.

I. Introduction.

During the Business Taxes Committee meeting on February 23, 2011, the Board authorized staff to publish proposed amendments to Sales and Use Tax Regulation (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Regulation 1598, *Motor Vehicle and Aircraft Fuels*. At the public hearing scheduled for May 24, 2011, Board staff will recommend that the Board authorize staff to: (1) change the proposed amendments to both regulations to incorporate changes to the rate of the additional sales and use tax on the sale and use of diesel fuel imposed under Revenue and Taxation Code (RTC) sections 6051.8 and 6201.8, as a result of the recent enactment of Assembly Bill No. (AB) 105 (Stats. 2011, ch. 6); (2) change the proposed amendments to Regulation 1598 to incorporate changes to the rate of diesel fuel excise tax imposed by RTC section 60050, subdivision (b), made by AB 105; and (3) make other nonsubstantial, solely grammatical, and sufficiently related changes to Regulation 1598. Board staff will also ask the Board to refer the revised text of the proposed amendments to both regulations to the 15-day file for additional notice and public comment, as provided for by Government Code section 11346.8, subdivision (c). Staff's recommended changes to the text of the proposed amendments to Regulations 1533.2 and 1598 are illustrated in attachments A and B, respectively. The additional text staff recommends deleting from the regulations is shown in a strikethrough font and the additional text staff recommends adding to the regulations is shown in a double-underline font.

II. Discussion.

A. Changes to Regulation 1533.2.

The proposed amendments to Regulation 1533.2 were, and still are, intended to revise the regulation to reflect that the partial exemption from sales and use tax for the sale and use of diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011. The original text of the proposed

amendments specifically incorporated the “1.75 percent” rate of the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, as enacted by ABx8 6 (Stats. 2010, ch. 11), into the cumulative sales and use tax rate subject to the partial exemption provided by RTC section 6357.1.

On March 24, 2011, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of AB 105 in order to comply with the requirements of Proposition 26 passed by the voters on November 2, 2010. However, when the Legislature re-enacted the two statutes, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

As a result, Board staff recommends that the Board approve changes to the original text of the proposed amendments to Regulation 1533.2 so that the regulation reflects the actual, cumulative sales and use tax rate to which the partial exemption provided by RTC section 6357.1 will apply. The changes are necessary for the specific purpose of ensuring that the final text of the amendments to Regulation 1533.2 reflects the current text of RTC sections 6051.8 and 6201.8.

B. Changes to Regulation 1598.

1. Changes to New Subdivision (e).

The proposed amendments adding new subdivision (e) to Regulation 1598 were, and still are, intended to incorporate the exemption provided by RTC section 6357.3 from the additional state sales and use tax on the sale and use of diesel fuel imposed by RTC sections 6051.8 and 6201.8, which was enacted as part of ABx8 6. The proposed amendments adding new subdivision (e) to Regulation 1598 were also, and still are, intended to prescribe the form of the exemption certificate required to be used in connection with the RTC section 6357.3 exemption. The original text of the proposed amendments adding subdivision (e) to Regulation 1598 specifically incorporated the “1.75 percent” rate of the additional state sales and use tax on the sale and use of diesel fuel imposed under RTC sections 6051.8 and 6201.8, as enacted by ABx8 6.

Board staff recommends that the Board approve changes to the original text of the proposed amendments adding new subdivision (e) to Regulation 1598 to incorporate all of the different rates of the additional state sales and use tax on the sale and use of diesel fuel imposed by RTC sections 6051.8 and 6201.8, as re-enacted by AB 105 and described above. Board staff further recommends that the Board approve changes to the original text of the proposed amendments adding new subdivision (e) to Regulation 1598 to clarify that the additional state use tax imposed by RTC section 6201.8 applies to “the storage, use, or other consumption” of diesel fuel, make minor grammatical changes to the exemption certificate used in connection with the RTC section 6357.3 exemption, and revise the text of the exemption certificate to better reflect the express language of RTC section 6357.3, subdivision (c), which provides that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

The changes are necessary for the specific purposes of ensuring that the final text of the proposed amendments adding new subdivision (e) to Regulation 1598 is clear and reflects the current text of RTC sections 6051.8, 6201.8, and 6357.3.

2. Changes to Renumbered Subdivision (f).

The proposed amendments to renumbered subdivision (f) of Regulation 1598 were, and still are, intended to incorporate the rate of diesel fuel excise tax imposed by RTC section 60050, subdivision (b) effective July 1, 2011, into the second example in renumbered subdivision (f). The original text of the proposed amendments to renumbered subdivision (f) specifically incorporated the “13.6 cents” per gallon rate of tax specified by RTC section 60050, subdivision (b), as enacted by ABx8 6. However, the Legislature also re-enacted RTC section 60050 as part of AB 105, in order to comply with the requirements of Proposition 26, and the Legislature reduced the diesel fuel excise tax rate specified in RTC section 60050, subdivision (b) to “13 cents” per gallon in AB 105. Therefore, Board staff recommends that the Board approve two changes to the original text of the proposed amendments to the second example in renumbered subdivision (f) to incorporate the rate of diesel fuel excise tax specified by RTC section 60050, subdivision (b), as amended by AB 105. The changes are necessary for the specific purpose of making sure the second example in renumbered subdivision (f) reflects the actual rate of diesel fuel excise tax effective July 1, 2011.

3. Solely Grammatical Change to Renumbered Subdivision (k).

While Board staff was revising the original text of the proposed amendments to Regulation 1598 to reflect the amendments to RTC sections 6051.8, 6201.8, and 60050 made by AB 105, Board staff also noticed a typographical error in the spelling of the word “calendar” in the current text of renumbered subdivision (k). Therefore, Board staff also recommends that the Board approve a change to renumbered subdivision (k) that would replace the misspelled word “calender” with the correctly spelled word “calendar” for the specific purpose of correcting the typographical error.

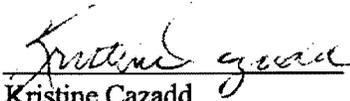
III. Conclusion.

Board staff is recommending that the Board authorize staff to make the changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 described above because Board staff believes that the changes are necessary to conform the regulations to the provisions of RTC sections 6051.8, 6201.8, 6357.3, and 60050, as re-enacted and amended by AB 105, to ensure that the regulatory language is clear, and to correct one typographical error. If the Board authorizes staff to make the changes, Board staff will make the revised text of the proposed

amendments to both regulations, with the new changes clearly indicated, available to the public for an additional 15-day comment period and then present the revised text of the proposed amendments to the Board for adoption.

If you need more information or have any questions, please contact Tax Counsel IV Bradley Heller at (916) 323-3091.

Approved:


Kristine Cazadd
Interim Executive Director

Attachments: Attachment A
Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1533.2

Attachment B
Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598

RMF:bh:yg

J:/Chief Counsel/Finals/Board Memo – Regulations 1533.2 and 1598 – 05-05-2011.doc
J:/Bus/Use/Finals/Regulations 1533.2 and 1598.Memo.doc

cc: Ms. Kristine Cazadd MIC:73
Ms. Christine Bisauta MIC:82
Mr. Robert Tucker MIC:82
Mr. Bradley Heller MIC:82
Ms. Susanne Buehler MIC:92
Mr. Bradley Miller MIC:50

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011, ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative,~~ the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) **Improper Use of Partial Exemption.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) **Purchaser's Liability for the Payment of Sales Tax.**

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) **Records.** Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) **Operative Date.** This regulation is operative as of September 1, 2001.

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

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6% sales and use tax rate), but does not apply to the taxes imposed or administered pursuant

to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(32) Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the ~~1.75 Percent~~ Additional State Sales
and Use Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108, for the following reason:

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the ~~diesel fuel~~ additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional ~~1.75 percent~~ sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4% of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.9639

***The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.**

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

(j) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of

federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~ calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.



STATE OF CALIFORNIA

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JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

March 25, 2011

To Interested Parties:

**Notice of Proposed Regulatory Action
by the
State Board of Equalization**

**California Code of Regulations, Title 18,
Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*,
and Section 1598, *Motor Vehicle and Aircraft Fuels***

NOTICE IS HEREBY GIVEN

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, proposes to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

PUBLIC HEARING

A public hearing on the adoption of the proposed regulatory action will be held in Room 121, 450 N Street, Sacramento, at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. 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 Regulations 1533.2 and 1598.

AUTHORITY

RTC section 7051.

REFERENCES

Regulation 1533.2: RTC section 6357.1.

Regulation 1598: RTC sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3, 6357.5, 6357.7, and 6423.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax

imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

NO MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 STATE AGENCIES, LOCAL AGENCIES, AND SCHOOL DISTRICTS

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 will result in no direct or indirect cost or savings to any state agency, any cost to local agencies or school districts that is required to be reimbursed under part 7 (commencing with section 17500) of division 4 of title 2 of the Government Code, other non-discretionary cost or savings imposed on local agencies, or cost or savings in federal funding to the State of California.

NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS

The adoption of the proposed amendments to Regulations 1533.2 and 1598 will merely revise the text of the regulations so that they conform to the relevant provisions of the RTC that will be effective on July 1, 2011, and prescribe the content of the exemption certificate required by RTC section 6357.3. The proposed amendments will not impose any new taxes, provide any new exemptions, or require taxpayers to comply with any procedures that are not already required by the RTC. Therefore, the Board has made an initial determination that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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 Regulations 1533.2 and 1598 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 ASSESSMENT REQUIRED BY GOVERNMENT CODE SECTION 11346.3, SUBDIVISION (b)

The Board has determined that the adoption of the proposed amendments to Regulations 1533.2 and 1598 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.

NO SIGNIFICANT EFFECT ON HOUSING COSTS

Adoption of the proposed amendments to Regulations 1533.2 and 1598 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 this action is proposed, or be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Questions regarding the substance of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel III (Specialist), by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

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

WRITTEN COMMENT PERIOD

The written comment period ends when the public hearing begins at 10:00 a.m., or as soon thereafter as the matter may be heard, on May 24, 2011. If the Board receives written comments prior to the close of the written comment period, the statements, arguments, and/or contentions contained in those comments will be presented to and considered by the Board before the Board decides whether to adopt the proposed amendments to Regulations 1533.2 and 1598. 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 underscored and strikeout versions of the text of Regulations 1533.2 and 1598 illustrating the express terms of the proposed amendments and an initial statement of reasons for the adoption of the proposed amendments. 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

March 25, 2011

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.

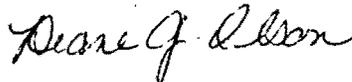
SUBSTANTIALLY RELATED CHANGES PURSUANT TO GOVERNMENT CODE SECTION 11346.8

The Board may adopt the proposed amendments to Regulations 1533.2 and 1598 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 amendments, with the change clearly indicated, available to the public for at least 15 days before adoption. The text of the resulting amendments will be mailed to those interested parties who commented on the original proposed amendments orally or in writing or who asked to be informed of such changes. The text of the resulting amendments will also be available to the public from Mr. Bennion. The Board will consider written comments on the resulting amendments that are received prior to adoption.

AVAILABILITY OF FINAL STATEMENT OF REASONS

If the Board adopts the proposed amendments to Regulations 1533.2 and 1598 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,



Diane G. Olson, Chief
Board Proceedings Division

DGO:reb

Initial Statement of Reasons

Adoption of Proposed Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing,* and Section 1598, *Motor Vehicle and Aircraft Fuels*

SPECIFIC PURPOSE AND NECESSITY

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel

imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

During its February 23, 2011, meeting, the Board determined that it was reasonably necessary to amend Regulation 1533.2 for the specific purposes of ensuring that the regulation reflects that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The Board also determined that it was reasonably necessary to amend Regulation 1598 for the specific purposes of ensuring that the regulation reflects the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and prescribing the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The

hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace. A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity.

The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim

the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be

liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (j).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional 1.75 percent state sales and use tax is imposed on sales of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) Exemptions and Exemption Certificates.

(A) An exemption from the additional 1.75 percent tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional 1.75 percent tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the 1.75 Percent Sales and Use Tax
Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional tax.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108 for the following reason:

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional 1.75 percent tax imposed by Revenue and Taxation Code sections 6051.8 and 6201.8 because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the fuel is not used in a manner which entitles me to an exemption from the diesel fuel taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional 1.75 percent tax. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4%	
of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039
(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
Sales tax reimbursement computed at 9% of \$2.599.....	
State excise tax*.....	<u>.234</u>
Total tax-included price per gallon.....	\$2.969

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay

use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision (h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase

from _____, will be used in propelling aircraft:
and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle
Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject
to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling
aircraft, it is understood that I am required by the Sales and Use Tax Law to report and
pay tax measured by the purchase price of such fuel. This certificate is valid until revoked
in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ii) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (i)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (j)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.
2. My business remains substantially the same as during the prior calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.
3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

Regulation History

Type of Regulation: Sales and Use Tax

Regulation: 1533.2 and 1598

Title: 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

Preparation: Brad Heller

Legal Contact: Brad Heller

Board proposes to adopt Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels* to proposed amendments to incorporate the provisions of Revenue and Taxation Code sections 6051.8, 6201.8, and 6357.3 related to the 1.75 percent tax rate increase on sales of diesel fuel beginning July 1, 2011.

History of Proposed Regulation:

May 24, 2011	Public Meeting
May 9, 2011	45-day public comment period ends
March 25, 2011	OAL publication date; 45-day public comment period begins; Interested Parties mailing
March 15, 2011	Notice to OAL
February 23, 2011	Business Tax Committee, Board Authorized Publication (Vote 5-0)

Sponsor: NA

Support: NA

Oppose: NA

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

Proposed Amendment of Sales and Use Tax Regulations 1533.2, Diesel Fuel Used in Farming Activities or Food Processing, and 1598, Motor Vehicle and Aircraft Fuels

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 3/22/11
Regulations Coordinator

Approved by  Date 3/22/11
Acting 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 6660 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. 12/2008)

See SAM Section 6601 - 6616 for Instructions and Code Citations

DEPARTMENT NAME State Board of Equalization	CONTACT PERSON Rick Bennion	TELEPHONE NUMBER 916-445-2130
DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400 Title 18, Section 1533.2, Diesel Fuel Used in Farming Activities, 1598, Motor Vehicle & Aircraft Fuels		NOTICE FILE NUMBER Z

ECONOMIC IMPACT STATEMENT

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 businesses 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. Complete the Fiscal Impact Statement as appropriate.) |

h. (cont.) No significant adverse economic impact on business or employees, small business, jobs or occupations.

(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)

2. 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: _____

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

Explain: _____

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

5. Enter the number of jobs created: _____ or eliminated: _____ Describe the types of jobs or occupations impacted: _____

6. 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: _____

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: _____

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

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: _____ and the 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 that may result from this regulation and who will benefit: _____

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? \$ _____

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: _____

2. 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.) Cal/EPA boards, offices, and departments are subject to the following additional requirements per Health and Safety Code section 57005.

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 12/2008)

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? Yes No (If No, skip the rest of this section.)

2. Briefly describe each equally as an effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:

Alternative 1: _____

Alternative 2: _____

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

Regulation:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 1:	\$ _____	Cost-effectiveness ratio: \$ _____
Alternative 2:	\$ _____	Cost-effectiveness ratio: \$ _____

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 of approximately \$ _____ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:

a. is provided in _____, Budget Act of _____ or Chapter _____, Statutes of _____

b. will be requested in the _____ Governor's Budget for appropriation in Budget Act of _____
(FISCAL YEAR)

2. Additional expenditures of approximately \$ _____ in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:

a. implements the Federal mandate contained in _____

b. implements the court mandate set forth by the _____
court in the case of _____ vs. _____

c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____
election; (DATE)

d. is issued only in response to a specific request from the _____
_____, which is/are the only local entity(s) affected;

e. will be fully financed from the _____ authorized by Section _____
(FEES, REVENUE, ETC.)
_____ 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 such unit;

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

3. Savings of approximately \$ _____ annually.

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

ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98)

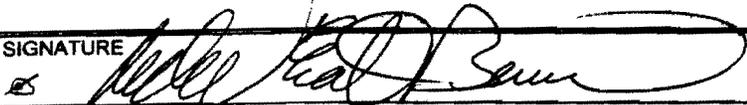
5. No fiscal impact exists because this regulation does not affect any local entity or program.
6. Other.

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 of approximately \$ _____ in the current State Fiscal Year. It is anticipated that State agencies will:
- a. be able to absorb these additional costs within their existing budgets and resources.
- b. request an increase in the currently authorized budget level for the _____ fiscal year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any State agency or program.
4. Other.

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 of approximately \$ _____ in the current State Fiscal Year.
2. Savings of approximately \$ _____ in the current State Fiscal Year.
3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.
4. Other.

SIGNATURE	TITLE
	Regulations Coordinator
AGENCY SECRETARY ¹	DATE
APPROVAL/CONCURRENCE 	3/15/2011
DEPARTMENT OF FINANCE ²	DATE
APPROVAL/CONCURRENCE  Exempt under SAM section 6660	

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, 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.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399.



STATE BOARD OF EQUALIZATION
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BETTY T. YEE
First District, San Francisco

SEN. GEORGE RUNNER (Ret.)
Second District, Lancaster

MICHELLE STEEL
Third District, Rolling Hills Estates

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

KRISTINE CAZADD
Interim Executive Director

June 8, 2011

To Interested Parties

Notice of Proposed Regulatory Action

The State Board of Equalization Proposes to Adopt Revised Amendments to California Code of Regulations, Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Section 1598, *Motor Vehicle and Aircraft Fuels*

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, has proposed to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register, on March 25, 2011 (Cal. Reg. Notice Register 2011, No. 12-Z), explained that:

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC

sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of Assembly Bill No. (AB) 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax is reduced to 13 cents per gallon, instead of 13.6 cents per gallon as provide by AB X8 6, effective July 1, 2011.

Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website at www.boc.ca.gov, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the "storage, use, or other consumption" of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete

unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board Members unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulation 1533.2 and 1598 recommended in the Chief Counsel Memorandum and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c). No interested parties submitted written comments to the Board or appeared at the public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum.

The objective of the proposed amendments to Regulation 1533.2 is still to revise the text of the regulation to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments to Regulation 1598 is still to revise the text of the regulation to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and to prescribe the content of the exemption certificate required by RTC section 6357.3.

Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

The original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions’ internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word “diesel” in the first sentence of subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board is now including these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

Additional Comments Regarding Changes

Enclosed are revised underscore and strikeout versions of the text of the proposed amendments to Regulations 1533.2 and 1598 with the additional changes authorized on May 25, 2011, and the nonsubstantial and solely grammatical changes authorized on February 23, 2011. The text originally proposed to be deleted from and added to Regulations 1533.2 and 1598 is still shown in single strikeout and single underline, respectively. The deletions from and additions to the original text of the proposed amendments to Regulations 1533.2 and 1598 are shown in double strikeout and double underline, respectively.

In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during its July 26-28, 2011, Board meeting in Sacramento, California. 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.boc.ca.gov at least 10 days in advance of the meeting.

Any interested person may appear during the Board's discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised versions of the proposed amendments to Regulations 1533.2 and 1598. The written comment period closes at 9:30 a.m. on July 26, 2011, or as soon thereafter as the Board commences its discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board meeting.

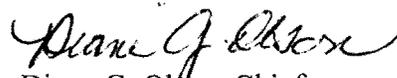
Written comments received by Mr. Rick Bennion, at the postal address, email address, or fax number provided below, prior to the close of the written comment period will be submitted to and considered by the Board before the Board decides whether to adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.

Questions regarding the substance of the revised versions of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@bec.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, 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 July 26-28, 2011, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the July 26-28, 2011, Board meeting 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.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/.

Sincerely,


Diane G. Olson, Chief
Board Proceedings Division

DGO:bmh:reb

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the July 26, 2011 Board Meeting



Diane G. Olson, Chief
Board Proceedings Division

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h)) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (i) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (k).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3~~2~~) Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the ~~1.75 Percent~~ Additional State Sales
and Use Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax ~~imposed by Revenue and Taxation Code sections 6051.8 and 6201.8~~ because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108. ~~for the following reason:~~

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax ~~imposed by Revenue and Taxation Code sections 6051.8 and 6201.8~~ because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the ~~diesel fuel~~ additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional ~~1.75 percent~~ sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	.353
Total	\$2.972
Sales tax reimbursement computed at 2 1/4% of \$2.972.....	.067
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	.244
Total	\$2.599
Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*.....	.136
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the “fair rental value” of the mobile transportation equipment leased, the “fair rental value” does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (ij)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (jk)(1) may issue a certificate in substantially the form set forth in subdivision (jk)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (jk) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's

purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~ calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the

Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

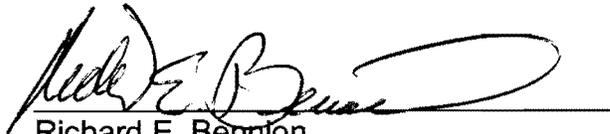
Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

Statement of Compliance

The State Board of Equalization, in process of adopting Sales and Use Tax Regulation 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and Regulation 1598, *DMotor Vehicle and Aircraft Fuel*, 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 changed version of Regulations 1533.2 and 1598 were mailed on June 8, 2011, to interested parties who commented orally or in writing or that requested such information and were made available for public comment from June 8 to July 26, 2011, a period of 48 days prior to the public hearing.

July 21, 2011

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

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) Form of Partial Exemption Certificate. Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) Retention and Availability of Partial Exemption Certificates. A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) Good Faith. A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) Improper Use of Partial Exemption. Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) Purchaser's Liability for the Payment of Sales Tax.

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) Records. Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) Operative Date. This regulation is operative as of September 1, 2001.

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

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h)) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (¶i) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (¶j) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (¶k).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

~~(3)~~ Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for Exemption from the ~~1.75 Percent~~ Additional State Sales and Use Tax Imposed Under Sections 6051.8 and 6201.8

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

_____ ,

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections ~~6051.8 and 6201.8~~ because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108. ~~for the following reason:~~

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections ~~6051.8 and 6201.8~~ because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the ~~diesel fuel~~ additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional ~~1.75 percent~~ sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____

(Exempt bus operator, train operator, fuel registration)

(e) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4%	
of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
Sales tax reimbursement computed at 9% of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called “wet rentals”). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a “sale” or “purchase” (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the “fair rental value” of the mobile transportation equipment leased, the “fair rental value” does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft: and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (j)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(jk) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (jk)(1) may issue a certificate in substantially the form set forth in subdivision (jk)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (jk) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's

purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the

Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

2011 MINUTES OF THE STATE BOARD OF EQUALIZATION

Tuesday, July 26, 2011

PUBLIC HEARINGS**F1 Proposed Adoption of Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks concerning the continuation of the June 21, 2011 public hearing regarding staff's request that the Board adopt proposed Sales and Use Tax Regulation 1685.5 to implement the new use tax table provisions of Revenue and Taxation Code section 6452.1 (Exhibit 7.5).

Speaker: Gina Rodriguez, Vice President of State Tax Policy, CalTax

Action: Upon motion of Ms. Yee, seconded by Ms. Mandel and duly carried, Mr. Horton, Ms. Yee and Ms. Mandel voting yes, Ms. Steel and Mr. Runner voting no, the Board adopted proposed Regulation 1685.5, *Calculation of Estimated Use Tax – Use Tax Table*, as recommended by staff.

CHIEF COUNSEL MATTERS**[J] RULEMAKING****J1 Proposed Amendments to Regulation 1533.2, *Diesel Fuel Used in Farming Activities of Food Processing* and Regulation 1598, *Motor Vehicle and Aircraft Fuels***

Bradley Heller, Tax Counsel, Tax and Fee Programs Division, Legal Department, made introductory remarks regarding staff's request for adoption of proposed amendments to Sales and Use Tax Regulations 1533.2 and 1598 to incorporate provisions of the fuel tax swap (Stats. 2010, ch. 11) as re-enacted by Assembly Bill No. 105 (Stats. 2011, ch. 6) on March 24, 2011 (Exhibit 7.6).

Action: Upon motion of Ms. Steel, seconded by Ms. Yee and unanimously carried, Mr. Horton, Ms. Steel, Ms. Yee, Mr. Runner and Ms. Mandel voting yes, the Board adopted the revised amendments as published in the 15-day file.

[M] OTHER CHIEF COUNSEL MATTERS**Outreach Partnerships**

M1.1 Deborah Cooke, Tax Counsel, Legal Department, and Anita Gore, Deputy Director, External Affairs Department, provided an update and discussion on the development of guidelines for outreach partnerships (Exhibit 7.7).



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State Controller

KRISTINE CAZADD
Interim Executive Director

June 8, 2011

To Interested Parties

Notice of Proposed Regulatory Action

**The State Board of Equalization Proposes to Adopt
Revised Amendments to California Code of Regulations, Title 18,
Section 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and
Section 1598, *Motor Vehicle and Aircraft Fuels***

The State Board of Equalization (Board), pursuant to the authority vested in it by Revenue and Taxation Code (RTC) section 7051, has proposed to adopt amendments to California Code of Regulations, title 18, sections (Regulations) 1533.2, *Diesel Fuel Used in Farming Activities or Food Processing*, and 1598, *Motor Vehicle and Aircraft Fuels*. The Informative Digest/Policy Statement included in the Notice of Proposed Regulatory Action for the proposed amendments to Regulations 1533.2 and 1598 published in the California Notice Register, on March 25, 2011 (Cal. Reg. Notice Register 2011, No. 12-Z), explained that:

Current Law

Assembly Bill No. (AB) X8 6 (Stats. 2010, ch. 11) added sections 6051.8 and 6201.8 to the RTC to impose an additional 1.75 percent Sales and Use Tax on diesel fuel and amended RTC section 60050 to lower the Diesel Fuel Tax rate, beginning July 1, 2011. The additional Sales and Use Tax is specific to the sale and use of diesel fuel and is in addition to the sales taxes imposed under RTC sections 6051, 6051.2, 6051.3, and 6051.5, and the use taxes imposed under RTC sections 6201, 6201.2, 6201.3, and 6201.5.

Senate Bill No. (SB) 70 (Stats. 2010, ch. 9) was a companion bill to AB X8 6. As relevant here, SB 70 added section 6357.3 to the RTC to provide an exemption from the additional 1.75 percent Sales and Use Tax on diesel fuel for:

- Diesel fuel that is purchased for use or used in a manner that is exempt under the Diesel Fuel Tax Law and not subject to the backup tax imposed by RTC section 60058 or the payment requirement imposed by RTC section 60108 of the Diesel Fuel Tax Law (RTC § 60001 et seq.); and
- Diesel fuel that is subject to the payment requirement for qualifying exempt bus operators specified in RTC section 60502.2.

However, RTC section 6357.3, subdivision (b), provides that “[n]o exemption shall be allowed unless the purchaser furnishes the seller with an exemption certificate, completed in accordance with instructions or regulations as the Board may prescribe.”

Further, RTC sections 6051.7 and 6201.7, which imposed an additional one percent Sales and Use Tax on the sale and purchase of tangible personal property effective April 1, 2009, will cease to be operative on July 1, 2011, based upon their own terms.

Furthermore, RTC section 6357.1 provides a partial exemption for diesel fuel used in farming activities or food processing. The partial exemption applies to all of the taxes imposed under the Sales and Use Tax Law (RTC § 6001 et seq.), except the taxes imposed under RTC sections 6051.2 and 6201.2, and taxes imposed under section 35 of article XIII of the California Constitution. And, the partial exemption provided by RTC section 6357.1 will apply to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8, effective July 1, 2011, and will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

Proposed Amendments

The proposed amendments to Regulation 1598 reflect the additional 1.75 percent Sales and Use Tax on diesel fuel imposed by RTC sections 6051.8 and 6201.8 and the expiration of the additional one percent Sales and Use Tax imposed by RTC sections 6051.7 and 6201.7, effective July 1, 2011; incorporate the two exemptions from the additional 1.75 percent Sales and Use Tax on diesel fuel provided by RTC section 6357.3; and prescribe the content of exemption certificate that must be used in conjunction with sales and purchases of diesel fuel that are exempt under RTC section 6357.3. The amendments to Regulation 1533.2 clarify that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011.

The objective of the proposed amendments is to revise the text of Regulation 1533.2 to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional 1.75 percent Sales and Use Tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent Sales and Use Tax imposed under RTC

sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments is also to revise the text of Regulation 1598 to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011 and to prescribe the content of the exemption certificate required by RTC section 6357.3.

There are no comparable federal regulations or statutes to Regulations 1533.2 and 1598.

Proposition 26

On November 2, 2010, California voters passed Proposition 26. Proposition 26 requires that certain state and local fees be approved by a two-thirds vote of both houses of the Legislature. Proposition 26 also voids any conflicting law adopted between January 1, 2010, and November 3, 2010, twelve months after the date the proposition was approved, unless the conflicting law is reenacted in conformance with the proposition's two-thirds vote requirement.

The provisions of AB X8 6, which were enacted in March of 2010, may be affected by Proposition 26; however, the Legislature has until November 2011 to reenact any nonconforming provisions of AB X8 6 in compliance with the provisions of Proposition 26. Therefore, the impact of Proposition 26 on AB X8 6 is uncertain and the Board is proposing to adopt the current amendments to reflect the provisions of current law.

Assembly Bill No. 105

On March 24, 2011, the day before the publication of the Board's Notice of Proposed Regulatory Action, the Legislature re-enacted RTC sections 6051.8 and 6201.8, as part of Assembly Bill No. (AB) 105 (Stats. 2011, ch. 6), in order to comply with the requirements of Proposition 26. However, when the Legislature re-enacted RTC sections 6051.8 and 6201.8, the Legislature also amended the statutes so that the rate of the additional state sales and use tax on the sale and use of diesel fuel will change as follows:

- 1.87 percent for the period July 1, 2011, through June 30, 2012;
- 2.17 percent for the period July 1, 2012, through June 30, 2013;
- 1.94 percent for the period July 1, 2013, through June 30, 2014; and
- 1.75 percent on or after July 1, 2014.

In addition, the Legislature also re-enacted RTC section 60050 as part of AB 105 and revised subdivision (b) so that the rate of the diesel fuel excise tax is reduced to 13 cents per gallon, instead of 13.6 cents per gallon as provide by AB X8 6, effective July 1, 2011.

Chief Counsel Memorandum

Board staff prepared a Chief Counsel Memorandum dated May 5, 2011, which analyzed the changes to the RTC made by AB 105. The Chief Counsel Memorandum was distributed to the Board Members for consideration at the May 25, 2011, public hearing, posted on the Board's website at www.boe.ca.gov, and made available to the public.

The Chief Counsel Memorandum explained the changes AB 105 made to RTC sections 6051.8 and 6201.8 and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulations 1533.2 and 1598 so that: (A) the text of Regulation 1598 reflects that the rate of the additional sales and use tax imposed on the sale and use of diesel fuel by RTC sections 6051.8 and 6201.8 will change; and (B) the text of Regulation 1533.2 reflects the actual, cumulative sales and use tax rate to which the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies, as the rate of the additional sales and use tax imposed by RTC sections 6051.8 and 6201.8 changes.

The Chief Counsel Memorandum explained the change that AB 105 made to the rate of the diesel fuel excise tax imposed by RTC section 60050, effective July 1, 2011, and recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 so that the second example in Regulation 1598 reflects the change to the rate of the diesel fuel excise tax imposed by RTC section 60050 made by AB 105.

The Chief Counsel Memorandum also recommended that the Board authorize staff to make sufficiently related changes to the original text of the proposed amendments to Regulation 1598 to clarify that the additional use tax imposed by RTC section 6201.8 applies to the "storage, use, or other consumption" of diesel fuel and to better conform the text of the exemption certificate to be used in conjunction with the exemption provided by RTC section 6357.3 to the express language of RTC section 6357.3, subdivision (c) providing that:

If a purchaser certifies in writing to the seller that the diesel fuel purchased without payment of the tax imposed pursuant to Section 6051.8 or 6201.8 will be used in a manner entitling the seller to regard the gross receipts or sales price from the sale as exempt from that tax, and uses the diesel fuel in a manner that subjects the diesel fuel to the tax imposed pursuant to Section 60050, the purchaser shall be liable for payment of the sales tax imposed pursuant to Section 6051.8, with applicable interest, as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the fuel is so used, and the sales price of the diesel fuel to the purchaser shall be deemed the gross receipts from that retail sale.

Finally, the Chief Counsel Memorandum recommended that the Board authorize staff to make other nonsubstantial and solely grammatical changes to the original text of the proposed amendments to Regulation 1598 in order to incorporate the sufficiently related changes, delete

unnecessary language, and correct the spelling of the word “calendar” in current subdivision (j), which the Board is proposing to renumber as subdivision (k).

May 25, 2011, Public Hearing

During the public hearing on May 25, 2011, the Board Members unanimously voted to authorize staff to make all of the changes to the original text of the proposed amendments to Regulation 1533.2 and 1598 recommended in the Chief Counsel Memorandum and directed staff to make the changes available to the public for an additional 15-day comment period as provided in Government Code section 11346.8, subdivision (c). No interested parties submitted written comments to the Board or appeared at the public hearing to make oral comments regarding the original text of the proposed amendments to Regulation 1533.2 and 1598 or the changes recommended in the Chief Counsel Memorandum.

The objective of the proposed amendments to Regulation 1533.2 is still to revise the text of the regulation to reflect that the partial exemption for diesel fuel used in farming activities or food processing provided by RTC section 6357.1 applies to the additional sales and use tax on diesel fuel imposed under RTC sections 6051.8 and 6201.8, effective July 1, 2011, and that the partial exemption will no longer apply to the one percent sales and use tax imposed under RTC sections 6051.7 and 6201.7 after that tax ceases to be operative on July 1, 2011. The objective of the proposed amendments to Regulation 1598 is still to revise the text of the regulation to reflect the provisions of RTC sections 6051.8, 6201.8, and 6357.3 that will be effective July 1, 2011, and to prescribe the content of the exemption certificate required by RTC section 6357.3.

Nonsubstantial and Solely Grammatical Changes Omitted from the Original Text

The original text of the proposed amendments to Regulation 1598 renumbered current subdivisions (e) through (i) as subdivisions (f) through (j), respectively. During its February 23, 2011, meeting, the Board authorized staff to make additional nonsubstantial changes to Regulation 1598, subdivisions (b)(1) and (c)(2)(D) through (F), which are not being renumbered, and subdivisions (h)(1), (i), (i)(2), (j), and (j)(1), which are proposed to be renumbered as subdivisions (i)(1), (j), (j)(2), (k) and (k)(1), in order to update the subdivisions’ internal cross-references to subdivisions (h), (i), and (j) to refer to renumbered subdivisions (i), (j), and (k), respectively. During its February 23, 2011, meeting, the Board also authorized staff to make a solely grammatical change adding a comma after the word “diesel” in the first sentence of subdivision (i), which is proposed to be renumbered as subdivision (j). However, these nonsubstantial and solely grammatical changes were inadvertently omitted from the original text of the proposed amendments to Regulation 1598, and the Board is now including these changes with the changes to the original text of the proposed amendments to Regulation 1598 authorized by the Board on May 25, 2011.

Additional Comments Regarding Changes

Enclosed are revised underscore and strikeout versions of the text of the proposed amendments to Regulations 1533.2 and 1598 with the additional changes authorized on May 25, 2011, and the nonsubstantial and solely grammatical changes authorized on February 23, 2011. The text originally proposed to be deleted from and added to Regulations 1533.2 and 1598 is still shown in single strikeout and single underline, respectively. The deletions from and additions to the original text of the proposed amendments to Regulations 1533.2 and 1598 are shown in double strikeout and double underline, respectively.

In accordance with Government Code section 11346.8, subdivision (c), the revised versions of the proposed amendments are being placed in the rulemaking file and mailed to interested parties who commented orally or in writing, or who asked to be informed of such revisions. If you wish to review the rulemaking file, it is available for your inspection at the State Board of Equalization, 450 N Street, Sacramento, CA 95814.

The Board will discuss and may potentially adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during its July 26-28, 2011, Board meeting in Sacramento, California. 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.

Any interested person may appear during the Board's discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board meeting and present or submit oral or written statements, arguments, or contentions regarding the adoption of the proposed amendments for the Board's consideration. In addition, any interested person may also submit written comments regarding the Board's proposed adoption of the revised versions of the proposed amendments to Regulations 1533.2 and 1598. The written comment period closes at 9:30 a.m. on July 26, 2011, or as soon thereafter as the Board commences its discussion of the revised versions of the proposed amendments to Regulations 1533.2 and 1598 during the July 26-28, 2011, Board 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 adopt the revised versions of the proposed amendments to Regulations 1533.2 and 1598. Furthermore, any written comments received prior to the end of the written comment period must be responded to in the final statement of reasons required by Government Code section 11346.9.

Questions regarding the substance of the revised versions of the proposed amendments should be directed to Bradley M. Heller, Tax Counsel IV, by telephone at (916) 323-3091, by e-mail at Bradley.Heller@boe.ca.gov, or by mail at State Board of Equalization, Attn: Bradley M. Heller, MIC:82, 450 N Street, P.O. Box 942879, Sacramento, CA 94279-0082.

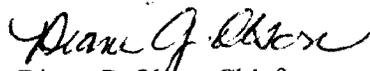
15-Day File
Regulations 1533.2 and 1598

June 8, 2011

Written comments for the Board's consideration, notice of intent to present testimony or witnesses at the July 26-28, 2011, Board meeting, inquiries concerning the proposed administrative action, and requests for notice of the July 26-28, 2011, Board meeting 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.

Interested persons may also subscribe to receive notice of all the Board's meetings via email or the United States Postal Service on the Board's website at www.boe.ca.gov/agenda/.

Sincerely,


Diane G. Olson, Chief
Board Proceedings Division

DGO:bmh:reb

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

Section 1533.2. Diesel Fuel Used in Farming Activities or Food Processing.

(a) General. Commencing on and after September 1, 2001, Section 6357.1 of the Revenue and Taxation Code partially exempts from sales and use tax the sale of, and the storage, use, or other consumption in this state, of diesel fuel used in farming activities or food processing. The terms “farming activities” and “food processing” are defined below.

For the period commencing on September 1, 2001, and ending on December 31, 2001, the partial exemption applies to the taxes imposed by Sections 6051 and 6201 of the Revenue and Taxation Code (4.75%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on January 1, 2002, and ending on June 30, 2004, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6201, and 6201.3 of the Revenue and Taxation Code (5%), but does not apply to the taxes imposed pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2004, and ending on March 31, 2009, the partial exemption applies to the taxes imposed by Sections 6051, 6051.3, 6051.5, 6201, 6201.3, and 6201.5 of the Revenue and Taxation Code (5.25%), but does not apply to the taxes imposed or administered pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or Section 35 of article XIII of the California Constitution.

For the period commencing on April 1, 2009, and ending on June 30, 2011 ~~when sections 6051.7 and 6201.7 of the Revenue and Taxation Code cease to be operative~~, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.7, 6201, 6201.3, 6201.5, and 6201.7 of the Revenue and Taxation Code (6.25%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

For the period commencing on July 1, 2011, the partial exemption applies to the taxes imposed by sections 6051, 6051.3, 6051.5, 6051.8, 6201, 6201.3, 6201.5, and 6201.8 of the Revenue and Taxation Code (7.00%), but does not apply to the taxes imposed or administered pursuant to sections 6051.2 and 6201.2 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution. Given the varying rates

of the taxes imposed by sections 6051.8 and 6201.8, the partial exemption applies to the following cumulative sales and use tax rates:

(1) 7.12 percent for the period July 1, 2011, through June 30, 2012;

(2) 7.42 percent for the period July 1, 2012, through June 30, 2013;

(3) 7.19 percent for the period July 1, 2013, through June 30, 2014; and

(4) 7.00 percent on or after July 1, 2014.

(b) Definitions. For purposes of this regulation:

(1) "Farming activities" mean a trade or business involving the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity that may be legally sold to or offered for sale to others. These include the trade or business of operating a nursery or sod farm; the raising or harvesting of trees bearing fruit or nuts, or of other crops (e.g., grains, vegetables, or cotton); the raising of ornamental trees (other than evergreen trees that are more than six years old at the time they are severed from their roots); and the raising, shearing, feeding, caring for, training, and management of animals. The raising of animals includes the delivery of feed to the animal feeding operation, whether by the owner or the supplier of the feed. Operating a garden plot, orchard, or farm for the purpose of growing plants or animals for a person's own use shall not be considered a farming activity. Harvesting involves the gathering of any agricultural or horticultural commodity and includes activities such as crop drying, cotton ginning, and fruit ripening. Harvesting an agricultural commodity also includes the washing of the agricultural commodity, the inspection and grading of the agricultural commodity or livestock, and the packaging of the agricultural commodity for shipment as well as those activities delineated in Codes 0723 and 0724 of the Standard Industrial Classification Manual published by the United States Office of Management and Budget, 1987 edition (hereafter SIC Manual). For purposes of this regulation, merely buying and reselling plants or animals grown or raised entirely by another is not raising an agricultural or horticultural commodity. A person is engaged in raising a plant or animal, rather than the mere selling of a plant or animal, if the plant or animal is held for further cultivation and development prior to sale. In determining whether a plant or animal is held for further cultivation and development prior to sale, consideration will be given to all of the facts and circumstances, including: the value added by a person to the plant or animal through agricultural or horticultural processes; the length of time between the person's acquisition of the plant or animal and the time that the person makes the plant or animal available for sale; and in the case of a plant, whether the plant is kept in the container in which purchased, replanted in the ground, or replanted in a series of larger containers as it is grown to a larger size.

Farming activities also include the transportation and delivery of the agricultural or horticultural commodity, as described herein, from the trade or business that cultivated, raised or harvested the commodity to the marketplace, as described in subdivision (b)(5), and any empty haul related to the transportation of that agricultural or horticultural commodity.

Farming activities do not include food processing or transportation and delivery of processed food products to the marketplace.

Example A: A commercial hauler travels from its company yard to Grower A's field to pick up a load of tomatoes. The tomatoes are hauled to a processing plant. The hauler returns to the field with empty trailers. The sale of diesel fuel to the commercial hauler for use in this activity is partially exempt from tax.

Example B: A commercial hauler travels from its company yard to Grower A's field to pick up a load of fresh bell peppers. The bell peppers are sold to a grocery store and are delivered to the grocery store's distribution center. At the distribution center, the hauler picks up a load of pallets to deliver to another customer. The sale of diesel fuel to the commercial hauler for use from the yard the field and to the grocery store's distribution center is partially exempt from tax. The sale of diesel fuel to the commercial hauler for use in delivering the pallets is not partially exempt from tax.

Example C: A nursery owner transports its horticultural products to a distribution center. After delivering the product, the nursery owner makes two stops. The first stop is to pick up fertilizer for use at the nursery. The second stop is personal business unrelated to the nursery operation. The sale of diesel fuel to the nursery owner for use in this example is partially exempt from tax up to and including the first stop.

(2) "Plants" mean an agricultural or horticultural commodity produced in a farming activity which includes, but is not limited to, trees bearing fruit or nuts, other crops, an ornamental tree, a vine, a bush, or sod. Sea plants are produced in a farming activity if they are tended and cultivated as opposed to merely harvested.

(3) "Animals" mean a life form produced in a farming activity which includes, but is not limited to, any livestock, poultry or other bird, and fish or other sea life. Fish and other sea life are produced in a farming activity if they are raised on a fish farm. A fish farm is an area where fish or other sea life are grown or raised as opposed to merely caught or harvested.

(4) "Food processing" means the activities described in Industry Groups 201, 202, 203, 204, and 207, or Codes 2068 and 2084 of the SIC Manual. Food processing activities also includes transporting raw product, supplies and materials to the processing facility, transporting partially processed food products between various divisions of the same food processing entity for further processing operations, and any empty hauls related to the transportation of that product. Food processing does not include transportation and delivery of processed food products to the marketplace.

A food processor is not required to be engaged 50 percent or more of the time in such activities as described herein.

Example A: A for-hire carrier, contracted for by a cheese plant, transports unprocessed milk from a dairy farm to the cheese plant for processing and then returns to the carrier's truck yard. The diesel used in this example is eligible for the partial sales tax exemption.

Example B: A flour mill transports flour sacks from a bag manufacturer to the mill's facility, and then transports those sacks to other flour mills owned by the same entity. The diesel used to transport the sacks in this example is eligible for the partial sales tax exemption, but the transportation of flour is not.

Example C: Cannery A and Cannery B are different divisions of the same food processing entity. Cannery A processes unprocessed tomatoes into tomato paste and then transports the paste to Cannery B for further processing. Cannery B processes the paste into tomato soup which is then transported to a grocery distribution warehouse. From the distribution warehouse the processed product is transported by the buyer to individual grocery stores and other distribution warehouses. Only the movement of paste from Cannery A to Cannery B is eligible for the partial sales tax exemption. The subsequent movement of product to the first distribution center and to retail stores and other warehouses is not eligible for the exemption.

(5) "Marketplace" means the place where a commodity is sold for resale, at retail or for consumption at an animal feeding operation, notwithstanding any intervening activities to prepare the product for sale in the marketplace. Such preparation activities include, but are not limited to, cooling, sorting, inspection, grading, drying, packing, handling, washing, slaughtering and butchering (except as otherwise described in Codes 2011 and 2015 of the SIC Manual), candling, sterilizing, freezing, pasteurizing, homogenizing, and packaging. Producers of agricultural or horticultural products may prepare and market their products through a cooperative, joint venture, corporation or partnership in which they have a financial interest, or other such enterprises, and the diesel used in these enterprises to transport products to the marketplace is eligible for the sales tax exemption.

(6) "Diesel fuel" means, for purposes of this regulation only, any fuel that is commonly or commercially known, sold or represented as diesel fuel No. 1-D or No. 2-D, pursuant to the specifications in American Society for Testing and Materials Standard Specification for Diesel Fuel Oils ("ASTM") D 975-81, which is incorporated herein by reference. Diesel fuel, for purposes of this regulation only, also includes Environmental Protection Agency rated diesel fuel commonly known as "federal fuel" sold for use in locomotives, or which is used in generators, pumps, dehydrators and any other equipment used in the conduct of farming and food processing activities. "Diesel fuel" does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, aviation fuel, except diesel fuel sold for use in aircraft designed for agricultural aerial applications that

meets the specifications of ASTM D 1655, jet fuel, bunker fuel, or other like substance used as a fuel. Qualifying diesel fuel shall be identified accordingly on the invoice of sale.

(7) "Qualified activity" means farming activities as defined in subdivision (b)(1) or food processing, as defined in subdivision (b)(4).

(c) Partial Exemption Certificates.

(1) In General. A person who purchases diesel fuel for use in a qualified activity from an in-state retailer, or an out-of state retailer obligated to collect use tax, must provide the retailer with a partial exemption certificate in order for the retailer to claim the partial exemption. If the retailer takes a partial exemption certificate timely and in good faith, as defined in subdivision (c)(5), from a person who purchases diesel fuel for use in a qualified activity, the partial exemption certificate relieves the retailer from the liability for the sales tax subject to partial exemption under this regulation or the duty of collecting the use tax subject to partial exemption under this regulation. A partial exemption certificate will be considered timely if it is taken any time before the retailer bills the purchaser for the diesel fuel, any time within the retailer's normal billing or payment cycle, any time at or prior to delivery of the diesel fuel to the purchaser, or no later than 15 days after the date of purchase. A partial exemption certificate which is not taken timely will not relieve the retailer of the liability for tax excluded by the partial exemption; however the retailer may present satisfactory evidence to the Board that the retailer sold the diesel fuel to a person that used it in a qualified activity. A partial exemption from the sales and use tax under this part shall not be allowed unless the retailer claims the partial exemption on its sales and use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the retailer fails to claim the partial exemption as set forth above, the retailer may file a claim for refund as set forth in subdivision (e).

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(2) Blanket Partial Exemption Certificates. In lieu of requiring a partial exemption certificate for each transaction, a person who purchases diesel fuel for use in a qualified activity may issue a blanket partial exemption certificate. The partial exemption certificate form set forth in Appendix A may be used as a blanket partial exemption certificate. Appendix A may also be used as a specific partial exemption certificate if the purchaser provides the purchase order or sales invoice number and a precise description of the property being purchased. A person who purchases diesel fuel for use in a qualified activity must include in the partial exemption certificate how much or what percentage of the diesel fuel purchased will be used in a qualified activity. If purchasing diesel fuel not qualifying for the partial exemption, the purchaser must clearly state in documents such as a written purchase order, sales agreement, or contract that the sale or purchase is not subject to the blanket partial exemption certificate.

(3) **Form of Partial Exemption Certificate.** Any document, such as a letter or purchase order, timely provided by the purchaser to the seller will be regarded as a partial exemption certificate with respect to the sale or purchase of diesel fuel if it contains all of the following essential elements:

(A) The signature of the purchaser, purchaser's employee, or authorized representative of the purchaser.

(B) The name, address and telephone number of the purchaser.

(C) The number of the seller's permit held by the purchaser. If the purchaser is not required to hold a permit because the purchaser sells only property of a kind the retail sale of which is not taxable, e.g., food products for human consumption, or because the purchaser makes no sales in this state, the purchaser must include on the certificate a sufficient explanation as to the reason the purchaser is not required to hold a California seller's permit in lieu of a seller's permit number.

(D) A statement of how much or what percentage of the diesel fuel purchased will be used in a qualified farming or food processing activity.

(E) Date of execution of document.

(4) **Retention and Availability of Partial Exemption Certificates.** A retailer must retain each partial exemption certificate received from a person who purchases diesel fuel for use in a qualified activity for a period of not less than four years from the date on which the retailer claims a partial exemption based on the partial exemption certificate.

While the Board will not normally require the filing of the partial exemption certificate with a sales and use tax return, when necessary for the efficient administration of the Sales and Use Tax Law, the Board may, on 30 days' written notice, require a retailer to commence filing with its sales and use tax returns copies of all partial exemption certificates. The Board may also require, within 45 days of the Board's request, retailers provide the Board access to any and all partial exemption certificates, or copies thereof, accepted for the purposes of supporting the partial exemption.

(5) **Good Faith.** A seller will be presumed to have taken a partial exemption certificate in good faith in the absence of evidence to the contrary. A seller, without knowledge to the contrary, may accept a partial exemption certificate in good faith where the purchaser states that a certain percentage of the diesel fuel purchased will be used in farming activities or food processing. However, a partial exemption certificate cannot be accepted in good faith where the seller has knowledge that the diesel fuel is not subject to a partial exemption, or will not be otherwise used in a partially exempt manner.

(d) Partial Exemption Certificate for Use Tax. The partial exemption certificate must be completed by a person who purchases diesel fuel for use in a qualified activity to claim a partial exemption from use tax from an out-of-state retailer not obligated to collect the use tax. A partial exemption from the use tax shall not be allowed unless the purchaser or retailer claims the partial exemption on its individual use tax return, sales and use tax return, or consumer use tax return for the reporting period during which the transaction subject to the partial exemption occurred. Where the purchaser or retailer fails to claim the partial exemption as set forth above, the purchaser or retailer may file a claim for refund as set forth in subdivision (e).

The purchaser who files an individual use tax return must attach a completed partial exemption certificate to the return. The purchaser who is registered with the Board as a retailer or consumer and files a sales and use tax return or consumer use tax return must, within 45 days of the Board's request, provide the Board access to any and all documents that support the claimed partial exemption.

The partial exemption certificate form set forth in Appendix A may be used to claim the partial exemption.

(e) Refund of Partial Exemption.

(1) For the period commencing on September 1, 2001, and ending on April 30, 2002, a person who purchases diesel fuel for use in a qualified activity may claim the partial exemption on qualified purchases from an in-state retailer or an out-of-state retailer obligated to collect the use tax by furnishing the retailer with a partial exemption certificate on or before July 31, 2002. The retailer must refund the tax or tax reimbursement directly to a purchaser of diesel fuel for use in a qualified activity or, at the purchaser's sole option, the purchaser may be credited with such amount.

(2) A retailer who paid sales tax on a qualified sale or a person who paid use tax on a qualified purchase and who failed to claim the partial exemption as provided by this regulation may file a claim for refund equal to the amount of the partial exemption that he or she could have claimed pursuant to this regulation. The procedure for filing a claim shall be the same as for other claims for refund filed pursuant to Revenue and Taxation Code section 6901. For transactions subject to use tax, a person who purchases diesel fuel for use in a qualified activity filing a claim for refund of the partial exemption has the burden of establishing that he or she was entitled to claim the partial exemption with respect to the amount of refund claimed under this part. For transactions subject to sales tax, a person filing a claim for refund of the partial exemption has the burden of establishing that the purchaser of the diesel fuel otherwise met all the requirements of a person who purchases diesel fuel for use in a qualified activity at the time of the purchase subject to the refund claimed under this part.

(f) **Improper Use of Partial Exemption.** Notwithstanding subdivision (a), tax applies to any sale of, and the storage, use, or other consumption in this state of diesel fuel that is used in a manner not qualifying for the partial exemption under this regulation.

(g) **Purchaser's Liability for the Payment of Sales Tax.**

(1) If a purchaser timely submits a copy of a partial exemption certificate to the retailer or partial exemption certificate for use tax to the Board, and then uses the diesel fuel in a manner not qualifying for the partial exemption, the purchaser shall be liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was so removed, converted, or used.

(2) A purchaser providing a partial exemption certificate accepted in good faith by the retailer or a partial exemption certificate for use tax to the Board for diesel fuel that does not qualify for the partial exemption is liable for payment of the sales tax, with applicable interest, to the same extent as if the purchaser were a retailer making a retail sale of the diesel fuel at the time the diesel fuel was purchased.

(h) **Records.** Adequate and complete records must be maintained by the person who purchases diesel fuel for use in a qualified activity as evidence that the diesel fuel purchased was used in a qualified activity.

(i) **Operative Date.** This regulation is operative as of September 1, 2001.

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

**Revised Text of Proposed Amendments to
California Code of Regulations, Title 18, Section 1598**

Section 1598. Motor Vehicle and Aircraft Fuels.

(a) In General. Sales tax or use tax applies to the sale or use of fuel for propelling motor vehicles or aircraft or for other purposes, except as stated below.

(b) Exceptions.

(1) Neither the sales tax nor the use tax applies to the sale or use of motor vehicle fuel used in propelling aircraft, the distribution of which in this state is subject to the tax imposed by Part 2 (commencing with Section 7301) of Division 2 of the Revenue and Taxation Code. This type of fuel includes gasoline and similar fuels but does not include aircraft jet fuel. (See subdivision (h)) for requirements for supporting aircraft fuel exemptions.)

(2) Neither the sales tax nor the use tax applies to the sale or use of aircraft fuel sold to an air common carrier for immediate consumption or shipment in its business as an air common carrier on a flight whose final destination is a foreign destination (see Regulation 1621, Sales to Common Carriers).

(c) Measure of Tax.

(1) The measure of tax includes:

(A) The tax imposed by the United States upon importers or producers of gasoline, diesel, and jet fuel, except as provided in (c)(2)(D) and (c)(2)(E),

(B) The tax imposed upon distributors of gasoline and similar fuels by the State of California pursuant to Part 2 of Division 2 of the Revenue and Taxation Code, and which has not been refunded, and

(C) The tax imposed by the State of California on aircraft jet fuel pursuant to Chapter 2.5 of Part 2 of Division 2 of the Revenue and Taxation Code.

(2) The measure of tax does not include:

(A) The use fuel tax, including the annual flat rate fuel tax, imposed by the State of California pursuant to Part 3 of Division 2 of the Revenue and Taxation Code on the following fuels:

1. Compressed natural gas.
2. Liquid natural gas.
3. Liquefied petroleum gas.

4. Ethanol or methanol containing not more than 15 percent gasoline or diesel fuel.

5. All other fuels not taxed under Parts 2 or 31 of Division 2 of the Revenue and Taxation Code.

(B) The diesel fuel tax, imposed by the State of California pursuant to Part 31 of Division 2 of the Revenue and Taxation Code.

(C) The federal retailer's excise taxes on:

1. Gasoline used as a fuel in noncommercial aircraft.

2. Jet fuel used as a fuel in noncommercial aircraft.

3. Diesel fuel.

4. Special motor fuels.

(D) Prior to July 1, 1995, the federal excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ij) for requirements for supporting claimed exclusions.)

(E) Beginning July 1, 1995, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid. (See subdivision (ij) for requirements for supporting claimed exclusions.)

(F) Beginning January 1, 2001, the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code with respect to gasoline, diesel, and jet fuels for which the purchaser provides a valid certificate pursuant to subdivision (jk).

(d) Partial Exemption for Motor Vehicle Fuel. Operative July 1, 2010, section 6357.7 of the Revenue and Taxation Code provides a partial exemption from sales and use tax for the sale of, and the storage, use, or other consumption in this state of motor vehicle fuel. "Motor vehicle fuel" means gasoline and aviation gasoline and does not include jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, alcohol, or racing fuel, as defined in the Motor Vehicle Fuel Tax Law.

The partial exemption applies to the taxes imposed by section 6051, 6051.3, 6051.7, 6201, 6201.3, and 6201.7 of the Revenue and Taxation Code (cumulative statewide 6%

sales and use tax rate), but does not apply to the taxes imposed or administered pursuant to sections 6051.2, 6051.5, 6201.2, or 6201.5 of the Revenue and Taxation Code, the Bradley-Burns Uniform Local Sales and Use Tax Law, the Transactions and Use Tax Law, or section 35 of article XIII of the California Constitution.

(e) Additional Tax on Sale of Diesel Fuel.

(1) Operative July 1, 2011, an additional ~~1.75 percent~~ state sales and use tax is imposed on the sales and the storage, use, or other consumption of "diesel fuel" as defined in section 60022 of the Revenue and Taxation Code. As defined in this section, diesel fuel does not include gasoline, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or alcohol.

(2) The additional state sales and use tax is imposed at the following rates:

(A) 1.87 percent for the period July 1, 2011, through June 30, 2012;

(B) 2.17 percent for the period July 1, 2012, through June 30, 2013;

(C) 1.94 percent for the period July 1, 2013, through June 30, 2014; and

(D) 1.75 percent on or after July 1, 2014.

(3) Exemptions and Exemption Certificates.

(A) An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel purchased for use or used in a manner that is exempt from the taxes imposed pursuant to Part 31 (commencing with section 60001) of Division 2 of the Revenue and Taxation Code and not subject to the back up tax imposed by section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

(B) Exempt bus operators. An exemption from the additional ~~1.75 percent~~ state sales and use tax is provided for diesel fuel subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

(C) Sellers of diesel fuel for which the purchaser claims exemption from the measure of tax under this subdivision shall secure from the purchaser and retain a certificate in substantially the form prescribed below. The certificate shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

**Certificate for Exemption from the ~~1.75 Percent~~ Additional State Sales
and Use Tax Imposed Under Sections 6051.8 and 6201.8**

This certificate may be issued by a purchaser whose fuel purchase is exempt from the diesel fuel taxes imposed under section 60050 and not subject to the backup tax imposed under section 60058 or the payment requirement specified in section 60108 of the Revenue and Taxation Code.

This certificate may be issued by a purchaser whose fuel purchase is subject to the payment requirement specified in section 60502.2 of the Revenue and Taxation Code.

This certificate entitles the seller to exclude the sale amount from the measure of sales subject to the additional state sales and use tax imposed on sales and purchases of diesel fuel under sections 6051.8 and 6201.8 of the Revenue and Taxation Code.

I HEREBY CERTIFY: That the purchase of diesel from

- is exempt from diesel fuel taxes (e.g., exempt train operators or exempt off-highway use).

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections ~~6051.8 and 6201.8~~ because it is exempt from the diesel fuel taxes imposed under Revenue and Taxation Code section 60050 and not subject to the backup tax imposed by section 60058 or the payment requirement specified in section 60108. ~~for the following reason:~~

OR

- is purchased by an exempt bus operator.

The purchase is not subject to the additional ~~1.75 percent~~ state sales and use tax imposed by Revenue and Taxation Code sections ~~6051.8 and 6201.8~~ because it is subject to the payment requirement specified in Revenue and Taxation Code section 60502.2.

In the event the diesel fuel is not used in a manner which entitles me to an exemption from the ~~diesel fuel~~ additional state sales and use taxes, it is understood that I am required by the Sales and Use Tax Law to report and pay the additional ~~1.75 percent~~ sales tax imposed by Revenue and Taxation Code section 6051.8 on the sales price of the diesel fuel to me, with applicable interest, as if I were a retailer making a retail sale of the diesel

fuel at the time the fuel is so used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____
(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____
(Signature of Authorized Agent)

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

License/permit # (if any): _____
(Exempt bus operator, train operator, fuel registration)

(ef) Sales of Motor Vehicle Fuel on Sales Tax-Included Basis. Sales tax reimbursement will be deemed included in the total price per gallon of gasoline dispensed through an apparatus on which there is a price per gallon display including all taxes as required by Business and Professions Code Section 13470. Sales tax reimbursement will be deemed included in the total price per gallon of other motor vehicle fuel if the retailer posts on the premises a notice reading substantially as follows:

“The price per gallon of all motor vehicle fuel includes reimbursement for applicable sales taxes computed to the nearest mill.”

Following are examples of prices computed on a tax-included basis:

(A) Sales price per gallon of gasoline net of all taxes.	\$2.435
Federal excise tax*.....	.184
State excise tax*.....	<u>.353</u>
Total	\$2.972
Sales tax reimbursement computed at 2 1/4%	
of \$2.972.....	<u>.067</u>
Total tax-included price per gallon.....	\$3.039

(B) Sales price per gallon of diesel fuel	
net of all taxes*.....	\$2.355
Federal excise tax*.....	<u>.244</u>
Total	\$2.599
*Sales tax reimbursement computed at	
9%* of \$2.599.....	.234
State excise tax*.....	<u>.136</u>
Total tax-included price per gallon.....	\$2.9639

*The rates used are for purposes of this example only. The rates in effect at the time of the sale and at the place where the business is located must be used in computing the tax-included selling price of fuel.

(fg) Application of Sales or Use Tax to Fuel Furnished With Leased Vehicles or Aircraft. The lessor is the retailer of fuel furnished to a lessee of a vehicle or an aircraft if the sales price of the fuel is separately stated from the rental charge for the vehicle or aircraft. The lessor is also the retailer of fuel furnished to a lessee under a lease which is a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft (such arrangements are sometimes called "wet rentals"). The lessor may purchase such fuel for resale.

The lessor is the consumer of fuel furnished to a lessee of a vehicle or an aircraft under a lease which is not a "sale" or "purchase" (see Regulations 1660 and 1661) and under which the rental charge includes fuel for the operation of the vehicle or aircraft. If a lessor of mobile transportation equipment elects under Regulation 1661 to report and pay use tax measured by the "fair rental value" of the mobile transportation equipment leased, the "fair rental value" does not include the sale price to the lessor of fuel which is furnished under the lease to the lessee.

(gh) Refunds of Excise Tax

(1) Federal Excise Taxes.

The refund of the federal excise tax on gasoline, diesel, or jet fuel (either by direct refund or as a credit against income tax) is an adjustment to the sales price of the gasoline, diesel, or jet fuel. Accordingly, the retailer who paid the sales tax or the purchaser who paid use tax measured by the sales price of the gasoline, diesel, or jet fuel which included that federal excise tax may file with the Board a claim for refund of tax measured by the amount of the federal excise tax so refunded or credited. The claim must be supported by proof of the exempt use of the gasoline, diesel, or jet fuel and of the refund or credit of the federal excise tax to the purchaser.

(2) Sales or Use Tax Refunds. If the sales or use tax refund is made to a person other than the consumer, the person receiving the refund must pay it to the consumer.

(hi) Supporting Data for Aircraft Fuel Exemptions. Sellers of motor vehicle fuel which, at the time of sale, is exempt from sales and use tax under subdivision (b)(1), shall secure and retain documentary evidence to support their exempt sales.

(1) The exemption with respect to motor vehicle fuel sold and delivered directly into the fuel supply tank of aircraft may be supported either by a properly completed sales invoice or an aircraft fuel exemption certificate in the form prescribed in subdivision

(h)(2). If a sales invoice is used, it must show the purchaser's name and address, the aircraft identification number, the number of gallons sold, the price per gallon, the amount of sale, the date of sale, and the name and address of the seller.

(2) The exemption with respect to retail sales of motor vehicle fuel delivered into the purchaser's storage facilities or receptacles other than the fuel tanks of aircraft, for use in propelling aircraft shall be supported by an aircraft fuel exemption certificate and an invoice. An exemption certificate in substantially the following form and signed by the purchaser shall be retained by the seller as evidence to support such exempt sales. The exemption certificate will be valid until revoked in writing by the purchaser.

Exemption Certificate for Motor Vehicle Fuel for Propelling Aircraft

This certificate may be issued by a purchaser for purchases of motor vehicle fuel (other than aircraft jet fuel) for use in propelling aircraft.

I HEREBY CERTIFY: That I am the owner or operator of the aircraft identified below; that the motor vehicle fuel which I shall purchase from _____, will be used in propelling aircraft; and that the distribution of this fuel is subject to the tax imposed by the Motor Vehicle Fuel License Tax Law (Revenue and Taxation Code section 7301 et seq.) and not subject to refund.

In the event that any of this motor vehicle fuel is used for purposes other than propelling aircraft, it is understood that I am required by the Sales and Use Tax Law to report and pay tax measured by the purchase price of such fuel. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Identification Numbers of Aircraft Owned or Operated

(ij) Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. Sellers of gasoline, diesel, or jet fuel for which the purchaser claims exclusion from the measure of tax under subdivision (c)(2)(D) or (c)(2)(E) shall secure from the purchaser and retain a certificate in substantially the form prescribed in subdivision (ij)(1).

(1) The certificate prescribed below shall relieve the seller from liability for any tax due only if it is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued by a purchaser whose entire fuel purchase is entitled to a direct refund or credit for the federal excise taxes for income tax purposes. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY: That I am entitled to either a direct refund or credit against my income tax for the federal excise tax paid pursuant to Internal Revenue Code Section 4081 or 4091 for the gasoline/diesel/jet fuel I shall purchase from

_____.

In the event the fuel is not used in a manner which entitles me to a direct refund or credit against my income tax or if I do not receive such refund or credit, it is understood I am required by the Sales and Use Tax Law to report and pay tax measured by the amount of federal excise tax paid to the extent the seller has not remitted sales or use tax measured by that amount. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

(2) Any person, including any officer or employee of a corporation who gives the certificate described in subdivision (i)(1) and who knows at the time of purchase that he or she is not entitled to either a direct refund or credit against his or her income tax is liable to the state for the amount of sales or use tax that would be due had he or she not given the certificate. In addition to the tax, interest, and other penalties, the person is liable for a penalty of 10 percent of the tax or five hundred dollars (\$500), whichever is greater, for purchases made for personal gain or to evade payment of taxes.

(j) Alternate Certificate for Exclusion of Federal Excise Taxes from Measure of Tax. On and after January 1, 2001, a purchaser of gasoline, diesel, or jet fuel who is qualified under subdivision (k)(1) may issue a certificate in substantially the form set forth in subdivision (j)(3) to the seller of that fuel. A seller who takes and retains such certificate shall be relieved of liability for tax due measured by the federal excise taxes imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code on the fuel sold under the certificate, provided the certificate is timely taken in good faith. A certificate will be considered timely if it is taken at any time before the seller bills the purchaser for the property, or any time within the seller's normal billing and payment cycle, or any time at or prior to delivery of property to the purchaser. The certificate will be valid until revoked in writing by the purchaser.

(1) A purchaser is qualified and may issue a certificate under subdivision (j) if satisfying all the following requirements:

(A) The purchaser was entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of all the purchaser's purchases of gasoline, diesel, and jet fuel during the prior calendar year on an aggregate basis. A purchaser who was entitled to a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of that purchaser's

purchases of one type of fuel, e.g., diesel, but not more than 50 percent of all that purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis is not a qualified purchaser, and may not issue a certificate under this subdivision, for any of that purchaser's purchases of fuel.

(B) The purchaser's business remains substantially the same as during the prior calendar year whereby the purchaser reasonably expects to be entitled to either a direct refund or credit against his or her income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of the purchaser's purchases of gasoline, diesel, and jet fuel on an aggregate basis.

(C) The purchaser holds a valid California seller's permit.

(2) With respect to any fuel purchased under the certificate which is used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, the purchaser is liable for use tax on the amount of that federal excise tax. The purchaser must report and pay such use tax with the purchaser's return for the period in which the fuel was used. A certificate may not be issued under this subdivision when the purchaser knows that all of the fuel that would be purchased under the certificate will be used in a manner whereby the purchaser is not entitled to a direct refund or credit against his or her income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code.

(3) A certificate issued under this subdivision shall be in substantially the following form:

Revenue and Taxation Code Section 6245.5 Certificate for the Exclusion of Sales and Use Tax on Federal Excise Taxes

This certificate may be issued for purchases of gasoline, diesel, or jet fuel by a purchaser who meets all the required conditions. This certificate entitles the seller to exclude the amount of federal excise taxes imposed on such fuel purchases from the measure of sales and use tax.

I HEREBY CERTIFY that I satisfy all of the following conditions:

1. I was entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, and jet fuel on an aggregate basis during the prior calendar year.

2. My business remains substantially the same as during the prior ~~calendar~~ calendar year such that I reasonably expect to be entitled to either a direct refund or credit against my income tax for the federal excise tax imposed pursuant to Section 4081 or 4091 of the

Internal Revenue Code for more than 50 percent of my purchases of gasoline, diesel, or jet fuel on an aggregate basis.

3. I hold a valid California seller's permit, the number for which is set forth below.

With respect to any fuel that is not used in a manner which entitles me to a direct refund or credit against my income tax of the federal excise tax imposed pursuant to Section 4081 or 4091 of the Internal Revenue Code, or if I do not receive such refund or credit, I will report and pay tax, measured by the amount of the federal excise tax that had been paid in connection with that fuel, with my return for the period on which the fuel is used. This certificate is valid until revoked in writing by the purchaser.

Purchaser: _____

(Company Name)

Address: _____

Phone Number: _____

Signature: _____ Date: _____

(Signature of Authorized Agent)

Title: _____

(Owner, Partner, Purchasing Agent, etc.)

Seller's Permit No. (if any): _____

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Sections 6011, 6012, 6051.8, 6201.8, 6245.5, 6357, 6357.3 6357.5, 6357.7, ~~6385~~ and 6423, Revenue and Taxation Code.

BEFORE THE CALIFORNIA STATE BOARD OF EQUALIZATION

450 N STREET

SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT

JULY 26, 2011

ITEM J RULEMAKING

ITEM 1

REGULATION 1533.2, DIESEL FUEL USED IN FARMING

ACTIVITIES OF FOOD PROCESSING

REGULATION 1598

MOTOR VEHICLE AND AIRCRAFT FUELS

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Reported by: Juli Price Jackson

No. CSR 5214

P R E S E N T

For the Board
of Equalization:

Jerome E. Horton
Chairman

Michelle Steel
Vice-Chairwoman

Betty T. Yee
Member

George Runner
Member

Marcy Jo Mandel
Appearing for John
Chiang, State
Controller (per
Government Code
Section 7.9)

Diane G. Olson
Chief, Board
Proceedings Division

Bradley Heller
Legal Department

---oOo---

1 450 N STREET
2 SACRAMENTO, CALIFORNIA
3 JULY 26, 2011

4 ----oOo----

5 MR. HORTON: Miss Olson?

6 MS. OLSON: Our next item is J1, Regulation
7 1533.2, diesel fuel used in farming activities of food
8 processing and Regulation 1598, motor vehicle and
9 aircraft fuels

10 MR. HORTON: Okay, Mr. Heller, you're up to
11 bat.

12 MR. HELLER: Good afternoon again,
13 Chairman Horton, Members of the Board.

14 I'm Bradley Heller on behalf of the Board's
15 Legal Department and I'm here to request that the Board
16 vote to adopt amendments to Sales and Use Tax
17 Regulations 1533.2, diesel fuel used in farming
18 activities of food processing and 1598, motor vehicle
19 and aircraft fuels.

20 The text of the proposed amendments was
21 authorized for publication during the March Business
22 Taxes Committee meeting and includes the changes the
23 Board authorized during the May public hearing.

24 The proposed amendments make both regulations
25 consistent with the provisions of the fuel tax swap, as
26 reenacted by Assembly Bill 105 on March 24th, 2011.

27 MR. HORTON: Thank you very much.

28 Discussion, Members?

1 Is there a motion?

2 MS. STEEL: So moved.

3 MR. HORTON: Moved by Ms. Steel, second by

4 Ms. Yee.

5 Objection?

6 Hearing none, such will be the order.

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