

# **INITIAL DISCUSSION PAPER**

## **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

### **Issue**

Should the Board adopt Regulations 1101, 1105, 1120, 1123, 1124, 1132, 1134, 1161, 1178, 1422, 1435, and 1436 to explain, interpret, and clarify the application of the Motor Vehicle Fuel Tax Law and the Diesel Fuel Tax Law in light of recent amendments to the law?

### **Background**

Recently passed legislation, (Assembly Bill 2114, Statutes. of 2000, Chapter 1053, operative January 1, 2002) revised the Motor Vehicle Fuel Tax Law to mirror the state Diesel Fuel Tax Law and Federal Fuel Tax Law with respect to definitions, imposition of tax and exemptions. The legislation moved the point of collection of the Motor Vehicle Fuel Tax from the first distribution to the terminal rack.

The Fuel Taxes Division's staff proposes to amend Regulations 1101, 1105, 1120, 1132, 1134, and 1422 and to add new Regulations 1123, 1124, 1161, 1178, 1435, and 1436. The regulations will explain, interpret and clarify the law changes that will become effective on January 1, 2002, in Chapter 1053, Statutes of 2000, (AB 2114). Also, staff proposes to repeal twenty-five Motor Vehicle Fuel Tax Regulations that are obsolete. The proposed regulations are attached as **Exhibit 1**.

### **Discussion of Proposed Regulation 1101, Motor Vehicle Fuel.**

The existing Regulation 1101 is repealed because under the Motor Vehicle Fuel Tax Law that will take effect on January 1, 2002, the definition of motor vehicle fuel is changed. The new definition of motor vehicle fuel is found in part in several sections of the Revenue and Taxation Code. The proposed regulation places the various components of the definition in one place. Also, the proposed regulation identifies what is not motor vehicle fuel. For example, the law identifies gasoline blendstocks as a petroleum product component of gasoline and includes them in the definition of motor vehicle fuel. The proposed regulation at 1101(f)(1) lists the products that are gasoline blendstocks and, like the Internal Revenue Service Regulation 48.4081-1, at 1101(f)(2) clarifies what is not a gasoline blendstock.

Under the proposed regulation, "racing fuel" is excluded from the definitions of motor vehicle fuel at 1101(a) and blended motor vehicle fuel at 1101(g). Racing fuel is defined at 1101(h) to mean fuel that (1) has an octane rating of 100 or higher, and (2) contains between 1.0 gram of lead to 6.0 grams of lead per gallon, and (3) does not have detergent additives, and (4) does not conform to the Reid Vapor Pressure standards of reformulated or oxygenated gasoline, and (5) does not meet ASTM specification for gasoline, and (6) is not diesel fuel, kerosene or gasoline blendstock, and (7) generally is used in vehicles not eligible to be registered for highway use.

## **INITIAL DISCUSSION FOR ISSUE PAPER**

### **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

#### **Discussion of Proposed Regulation 1105, Tax-Paid and Ex-Tax Fuel.**

Existing 1105(a) defines "tax-paid fuel" and "ex-tax fuel" and existing 1105(b) provides that a distributor or broker who acquires tax-paid fuel from a licensed motor vehicle fuel distributor or broker is not liable for tax on the tax-paid gallons, that a distributor who fails to invoice or collect tax on a taxable distribution remains liable for the tax, and that a distributor who distributes ex-tax fuel to a qualified distributor and indicates that the fuel is tax-paid remains liable for tax on that fuel. Because under the Motor Vehicle Fuel Tax Law that will take effect on January 1, 2002, tax is imposed on a supplier upon removal, entry, or sale of motor vehicle fuel instead of on the distribution by a distributor or broker, it is no longer necessary to explain the continuing tax liability of a distributor upon distribution of fuel. Therefore, the existing 1105(b) is proposed to be repealed. The terms "tax-paid fuel" and "ex-tax fuel" are proposed to be defined at 1105(a) and 1105(b) respectively and other minor clarifying changes are proposed to be made to those definitions. Among the changes is the addition at 1105(a)(2) of documentation to support a claim that fuel is tax-paid to include a purchase receipt showing the amount paid for the motor vehicle fuel included motor vehicle fuel tax paid. The proposed regulation is nearly identical to existing Board Regulation 1413, which pertains to the Diesel Fuel Tax Law.

#### **Discussion of Proposed Regulations 1120 and 1436, Returned Sales and Invoice Corrections.**

Regulation 1120 is amended in subdivision (a) to refer to a supplier instead of a distributor and to clarify how a supplier is to handle motor vehicle fuel returned by a customer. The regulation explains that when motor vehicle fuel is returned to an approved terminal by the supplier, the supplier may either file a claim for refund with the State Controller or take a credit on the supplier's tax return. The regulation presumes (i) that the supplier purchased the motor vehicle fuel tax-paid if the credit memorandum includes motor vehicle fuel tax and (ii) that the supplier subsequently removed the motor vehicle fuel from the terminal rack in the same month that the motor vehicle fuel was returned.

The credit will be allowed on the supplier's tax return only if the following conditions are met: (i) the returned fuel is delivered into an approved terminal, (ii) the credit is taken on the tax return on which the second tax is reported, (iii) the supplier prepares a First Taxpayer's Report on the returned fuel, and (iv) a copy of the First Taxpayer's Report and credit memorandum are filed with the tax return.

If a supplier fails to claim a credit in the specified manner, it may only file a claim for refund with the State Controller to recover the tax. The regulation lists the information and documentation that is required to be included in the claim for refund.

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### **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

In subdivision (b) reference to "distributor" was replaced with "supplier" and the terms "consignee" and "consigned" were deleted because of the law change. In addition, the regulation provides that when a supplier has filed its tax return electronically, the credit memorandum that corrects an invoice must be mailed to the Board within ten days of the due date of the tax return.

The diesel fuel Regulation 1436 is a new regulation, which provides that when diesel fuel is removed from a terminal rack on which a prior tax was paid; the supplier may either file a claim for refund of the tax with the Board or take a credit on the supplier's tax return. The regulation explains when and how the credit may be taken and when a refund must be filed. The regulation is identical to Regulation 1120 except that the regulation explains that the claim for refund of the diesel fuel tax must be filed with the Board, rather than with the State Controller.

#### **Discussion of Proposed Regulation 1123, Supplier.**

Effective January 1, 2002, Section 7338 of the Revenue and Taxation Code defines the term "supplier" to include blenders, enterers, position holders, refiners, terminal operators, and throughputters. The proposed regulation identifies the various types of motor vehicle fuel suppliers and describes the imposition of the motor vehicle fuel tax and the reporting requirements of each. The proposed regulation also describes the circumstances in which the terminal operator is jointly liable with a supplier for the removal of motor vehicle fuel from the terminal rack. The proposed regulation is nearly identical to the Board's existing Diesel Fuel Tax Regulation 1420.

#### **Discussion of Proposed Regulations 1124 and 1422, Relief From Liability.**

Effective January 1, the Motor Vehicle Fuel Tax Law, Section 7657.1, of the Revenue and Taxation Code, provides that a taxpayer may be relieved of liability from the Motor Vehicle Fuel Tax, including penalty and interest, if the Board finds that the person's failure to make a timely return or payment was due to the person's reasonable reliance on written advice from the Board. Regulation 1124 is proposed to clarify the circumstances under which relief may be granted for reliance on written advice of the Board. The proposed regulation is nearly identical to the Board Regulation 1705, which pertains to the Sales and Use Tax Law.

Existing Diesel Fuel Tax Law Regulation 1422 is being revised to conform to Sales and Use Tax Regulation 1705 and to proposed motor Vehicle Fuel Tax Regulation 1122. The proposed changes include written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in new subdivision (d). Also, new subdivision (e) adds that a trade or industry association requesting advice for its members must identify the member for whom the advice is requested in order for the relief from liability to apply. These revisions make Regulation 1422 nearly identical to the other Board regulations on relief from liability.

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### **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

#### **Discussion of Regulation 1132, Shipments Out of the State.**

As a result of the statutory changes that will become effective January 1, 2002, this regulation is proposed to be amended to replace references to "distributor" with references to "supplier". The existing regulation provides that stock transfers of ex-tax fuel to a point outside California are not distributions and therefore are not subject to tax. With the changes in point of imposition of tax that will take effect January 1, 2002, this instruction is no longer relevant. Therefore the language pertaining to stock transfers is proposed to be deleted from subdivision (c) and (d). In addition, in subdivision (d), the time for taking a credit on a tax return has been changed from "within three months after the close of the calendar month in which the tax-pid fuel is exported" to a requirement that "the credit be claimed on the return filed for the month in which tax-paid fuel was exported." The proposed regulation is nearly identical to the existing Board Regulation 1430, which pertains to the Diesel Fuel Tax Law.

#### **Discussion of Regulation 1134, Sales to the United States**

The first two paragraphs of the existing regulation were designed as subdivision (a) and references to "distribution" and "distributor" were replaced with "sales" and "seller" to conform to the definitions in the new law which will be effective on January 1, 2002.

Subdivision (b) was added to clarify that a supplier making a sale of ex-tax fuel to the United States armed forces may claim an exemption on the supplier's tax return. Subdivision (c) was added to clarify that any person making a sale of tax-paid fuel to the United States armed forces shall file a claim for refund of the tax with the State Controller.

The remainder of the existing regulation is proposed to be repealed as no longer necessary since Revenue and Taxation Code Sections 7401, 7486 and 7487 (relating to exemptions for distributors and brokers and to bond requirements of distributors and brokers) are repealed effective January 1, 2002.

#### **Discussion of Regulations 1161, Tax Paid Twice on Motor Vehicle Fuel, and 1435, Tax Paid Twice on Diesel Fuel**

When motor vehicle fuel is removed from a terminal rack on which a prior tax was paid, the supplier may either file a claim for refund of the tax with the State Controller or take a credit on the supplier's tax return. The regulation explains when and how the credit may be taken and when and how a refund claim must be filed. The regulation defines a first taxpayer as the person paying to the State the first tax on the fuel and defines a second taxpayer as the person paying to the State the second tax on the fuel.

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### **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

A credit may be taken on a supplier's tax return. The regulation explains that the second taxpayer must take the credit on the same tax return on which the second taxpayer pays the second tax by reporting the gallons on its tax return. The first taxpayer must have paid the first tax by reporting the gallons on its tax return and filed a First Taxpayer's Report with the tax return. Also, the first taxpayer must not have received a credit or refund of the first tax.

The regulation explains when a First Taxpayer's Report must be filed and to whom a copy of the report must be given. The regulation explains that when a person receives a First Taxpayer's Report and subsequently sells the fuel, the person must give a copy of the First Taxpayer's Report and a Statement of Subsequent Seller to the buyer. The regulation contains a model of the First Taxpayer's Report and the Statement of Subsequent Seller that outlines the information required.

A claim for refund must be filed with the State Controller when the credit is not taken on the supplier's tax return on which the second tax gallons was reported. The regulation explains the information to be included in the claim for refund and that a copy of the First Taxpayer's Report and Statement of Subsequent Seller must be attached.

When diesel fuel is removed from a terminal rack on which a prior tax was paid, the supplier may either file a claim for refund of the tax with the Board or take a credit on the supplier's tax return. Regulation 1435 explains when and how the credit may be taken and when a refund must be filed. The regulation is identical to Regulation 1161 except that the regulation explains that the claim for refund of the diesel fuel tax is to be filed with the Board.

#### **Discussion of Regulation 1178, Records.**

Effective January 1, 2002, the Motor Vehicle Fuel Tax Law, Sections 8253, 8301, 8302 and 8303, of the Revenue and Taxation Code, provides that a taxpayer must maintain and make available records and source documentation in such form as the Board may require. The proposed regulation specifies the records and documentation that are necessary and the form in which they should be maintained in order to support reported amounts. Since many businesses use automated data processing systems and reproductions from microfilm and microfiche, the proposed regulation stipulates the required form and content for automated records and reproductions from microfilm and microfiche. The proposed regulation informs taxpayers how long records must be retained and provides that records must be made available for the Board's examination during that time. Since failure to maintain and keep complete and accurate records may be considered evidence of negligence or intent to evade the tax, the proposed regulation informs taxpayers that such failure may result in penalties or other administrative action. The proposed regulation is nearly identical to the existing Board Regulation 1698, which pertains to the Sales and Use Tax Law.

## **INITIAL DISCUSSION FOR ISSUE PAPER**

### **Proposed New and Revised Regulations to the Motor Vehicle Fuel Tax Law and Diesel Fuel Tax Law to Explain Provisions of AB 2114**

#### **Discussion of Motor Vehicle Fuel Tax Regulations to be Repeal.**

Effective January 1, 2002, Chapter 1053, Statutes of 2000, (AB 2114) changed the definitions, imposition of tax and exemptions in the Motor Vehicle Fuel Tax Law. Also, the sections of the Motor Vehicle Fuel Tax Law dealing with returns and records were repealed or amended. As a result of these statutory changes the twenty-five Motor Vehicle Fuel Tax regulations listed on page 38 of Exhibit 1 are obsolete. The staff is recommending that these regulations be repealed.

#### **Summary**

Staff intends to recommend that the Board authorize publication of proposed Regulations 1101, 1105, 1120, 1123, 1124, 1132, 1134, 1161, 1178, 1422, 1435, and 1436. Also, staff recommends that the listed obsolete Motor Vehicle Fuel regulations be repealed. This matter is scheduled for discussion at the November 28, 2001 Business Taxes Committee meeting. However, staff is seeking comments on these proposed changes to regulations from interested parties to ensure that all issues and concerns relating to these regulations are considered in advance of the November 28, 2001, meeting.

Prepared by the Fuel Taxes Division, Special Taxes Department.

Current as of July 2, 2001.

## **Regulation 1101. Motor Vehicle Fuel**

~~“Motor vehicle fuel” means any product commonly or commercially known or sold as gasoline, natural gasoline, casing head gasoline, straight run gasoline, aviation gasoline, straight run naphtha, gasoline blending stock exclusive of chemical additives, and any other inflammable liquid which is practically and economically usable for propelling motor vehicles operated by the explosion type of engine. On and after January 1, 1982, “motor vehicle fuel” includes blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline by volume measured at 60 degrees Fahrenheit.~~

~~“Motor vehicle fuel” does not include kerosene, aircraft jet fuel, diesel or stove oil, liquefied petroleum gas, natural gas, paint thinner, cleaning and rubber solvents, or chemical additives such as tetraethyllead. The blending of such products or any other product or chemical with gasoline or any other inflammable liquid and the sale or use of the resultant product for the propulsion of motor vehicles constitutes a distribution of motor vehicle fuel to which the motor vehicle fuel tax applies. On and after January 1, 1982, “motor vehicle fuel” does not include ethanol (ethyl alcohol), methanol (methyl alcohol), or blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline by volume measured at 60 degrees Fahrenheit. On and after January 1, 1986 “motor vehicle fuel” does not include inflammable liquids which do not contain gasoline or natural gasoline and are specifically manufactured, distributed and used for racing motor vehicles at a racetrack.~~

(a) "Motor vehicle fuel" includes aviation gasoline, gasohol, finished gasoline, gasoline, gasoline blendstocks, and blended motor vehicle fuel.

"Motor vehicle fuel" does not include diesel fuel, jet fuel, kerosene, liquefied petroleum gas, natural gas in liquid or gaseous form, or racing fuel. "Motor vehicle fuel" does not include ethanol (ethyl alcohol), methanol (methyl alcohol), or blends of gasoline and alcohol (including any denaturant) containing 15 percent, or less, gasoline.

(b) "Aviation gasoline" means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL-G-5572.

(c) "Finished gasoline" means all products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel, other than products that have an ASTM octane number of less than 75 as determined by the motor method.

(d) "Gasohol" means all blends of gasoline and alcohol (including any denaturant) containing more than 15 percent gasoline.

(e) "Gasoline" means finished gasoline and gasoline blendstocks.

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**(f) "Gasoline Blendstocks"**

(1) "Gasoline blendstocks" includes:

- (A) Alkylate;
- (B) Butane;
- (C) Butene;
- (D) Catalytically cracked gasoline;
- (E) Coker gasoline;
- (F) Ethyl tertiary butyl ether (ETBE);
- (G) Hexane;
- (H) Hydrocrackate;
- (I) Isomerase;
- (J) Light naphtha;
- (K) Methyl tertiary butyl ether (MTBE);
- (L) Mixed xylene (not including any separated isomer of xylene);
- (M) Naphtha;
- (N) Natural gasoline;
- (O) Pentane;
- (P) Pentane mixture;
- (Q) Polymer gasoline;
- (R) Raffinate;
- (S) Reformate;
- (T) Straight-run gasoline;
- (U) Straight-run naphtha;
- (V) Tertiary amyl methyl ether (TAME);
- (W) Tertiary butyl alcohol (gasoline grade) (TBA);
- (X) Thermally cracked gasoline;
- (Y) Toluene; and
- (Z) Transmix.

(2) "Gasoline blendstocks" does not include any product that cannot, without further processing, be used in the production of finished gasoline. For example, a mixed hydrocarbon stream that is produced in a natural gas processing plant is not a gasoline blendstock if the stream cannot be used to produce finished gasoline without further processing.

(g) "Blended motor vehicle fuel" means any mixture of motor vehicle fuel with respect to which tax has been imposed and any other liquid on which tax has not been imposed. "Blended motor vehicle fuel" also means any conversion of a liquid into motor vehicle fuel. "Conversion of a liquid into motor vehicle fuel" occurs when any liquid that is not included in the definition of motor vehicle fuel and that is outside the bulk transfer/terminal system is sold as motor vehicle fuel, delivered as motor vehicle fuel, or represented to be motor vehicle fuel. "Blended motor vehicle fuel" does not include racing fuel.

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**(h)** "Racing fuel" means a fuel that meets all of the following criteria:

- (1) Generally is used in vehicles not eligible to be registered for highway use in any state;
- (2) Is not diesel fuel, kerosene, or gasoline blendstock;
- (3) Has an octane rating of 100 or higher;
- (4) Contains between 1.0 gram of lead per gallon to 6.0 grams of lead per gallon;
- (5) Does not have detergent additives that the United States Environmental Protection Agency requires for gasoline;
- (6) Does not conform to the Reid Vapor Pressure standards for either reformulated or oxygenated gasoline; and
- (7) Does not meet the ASTM specification (D 4814) for gasoline.

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections 7304, 7306, 7307, 7313, 7316, 7317, 7318, and 7326 Revenue and Taxation Code

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**Regulation 1105. TAX-PAID AND EX-TAX FUEL.**

**~~(a) DEFINITIONS.~~**

~~(1 a)~~ “Tax-paid fuel” is the gallonage of motor vehicle fuel acquired ~~on either a temperature corrected or volumetric basis~~ with the California motor vehicle fuel license tax paid. An acquisition of motor vehicle fuel will be considered tax-paid only if it can be supported by one of the following:

~~(A 1)~~ Vendor A sales invoice or a contract which clearly states that the motor vehicle fuel tax is included in the invoiced or contracted amount, and proof that the amount representing motor vehicle fuel tax has been paid, or

~~(B 2)~~ A motor vehicle fuel purchase receipt showing that the amount paid for the fuel included the motor vehicle fuel tax, or

~~(3)~~ Other Documentation showing that the motor vehicle fuel tax has been paid to the state.

~~(2 b)~~ “Ex-tax fuel” is the gallonage of motor vehicle fuel acquired without the California motor vehicle fuel license tax paid.

**~~(b) GENERAL.~~**

~~(1) Any distributor or broker acquiring tax paid fuel from a licensed motor vehicle fuel distributor or broker is relieved of any further liability for the number of gallons upon which the motor vehicle fuel license tax has been paid.~~

~~(2) Any distributor who fails to invoice or collect the tax on a taxable distribution is not relieved of its liability to report and pay the tax on that distribution.~~

~~(3) Any distributor who distributes ex-tax fuel to a qualified distributor and indicates by invoicing or collecting the tax that the fuel is taxpaid is liable to the state for the tax on that fuel.~~

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections ~~7305, 7306, 7308, 7356, 7356.5,~~ 7345, 7401, 7653, 8101, and 8106.8 Revenue and Taxation Code

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**Regulation 1120. RETURNED SALES ~~OR CONSIGNMENTS~~ AND INVOICE CORRECTIONS.**

**(a 1) Return Sale ~~or Consignments.~~**

(1) When motor vehicle fuel included in a distributor's supplier's taxable removals, entries or sales distribution is returned to the distributor supplier by the customer or consignee to whom it was distributed sold and is delivered into an approved terminal's storage tank, the distributor supplier may either file a claim for refund with the State Controller or in lieu of the refund take a credit on its tax return in his Distributor Motor Vehicle Fuel Tax Return for the month in which the gallonage is returned. The credit memorandum covering the return of the motor vehicle fuel shall identify if the fuel was invoiced on the temperature corrected gallonage, and the tax paid on that measure, the gallonage returned for which credit may be taken shall be as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the motor vehicle fuel tax. identically as invoiced. If the original invoice (or invoices) used by the distributor for the sale of the fuel which is returned is not obtained by the distributor, or the invoice is not imprinted "Not Valid for Tax Refund," a copy of the credit memorandum covering the return shall be filed together with the Distributor Motor Vehicle Fuel Tax Return in which credit is taken.

If a broker delivers to a contract customer of a distributor pursuant to a sale by the distributor to the contract customer, motor vehicle fuel acquired by the broker from the distributor under a taxable distribution, the transaction may be treated as a return sale as between the broker and the distributor if the sale to the contract customer is reported as a distribution by the distributor and the broker is given book account credit for the gallons delivered, the credit is based on the same price and gallonage measurement, whether volumetric or temperature corrected, as invoiced to the broker and when such a delivery is made from the broker's bulk storage inventory, the credit is related to the invoice or invoices for that gallonage last received into storage from the distributor, which is sufficient to equal the gallons of fuel delivered by the broker to the distributor's customer.

(2) It shall be presumed that the supplier purchased the motor vehicle fuel that was returned as tax-paid motor vehicle fuel if the credit memorandum includes motor vehicle fuel tax. It also shall be presumed that the subsequent removal of the motor vehicle fuel from the terminal rack by the supplier that received the returned motor vehicle fuel is made in the month that the motor vehicle fuel was returned.

(3) Conditions to allow a credit on a tax return.

The credit will be allowed only if:

(A) The returned motor vehicle fuel was delivered into an approved terminal storage tank.

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(B) The credit is taken on the tax return on which the second tax is reported.

(C) The supplier prepares a first taxpayer's report (as identified in Regulation 1161) when the motor vehicle fuel is returned.

(D) A copy of the first taxpayer's report and the credit memorandum must be filed with the tax return on which the credit is claimed. If the tax return is filed electronically, the first taxpayer's report and the credit memorandum must be mailed within ten days of the due date of the tax return.

(4) If the supplier fails to take credit on the tax return for the month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax.

Each claim for a refund must contain the following information with respect to the motor vehicle fuel covered by the claim:

(A) The information required in Section 8102.

(B) Volume and type of motor vehicle fuel.

(C) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(D) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(E) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(F) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.

(G) A copy of the credit memorandum that returned the motor vehicle fuel.

**(b 2) Invoice Correction.**

(1 a) When a billing correction is made resulting in the invoicing to a customer or consignee of a greater or lesser gallonage than the gallonage originally invoiced and the supplier distributor makes the correction by issuing a credit canceling the original invoice and reissuing a second invoice for the correct gallonage sold or consigned, the credit memorandum shall show the date and serial number of the invoice being canceled. The

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second and correct invoice shall show the date and serial number of the original invoice and that the second invoice is in replacement thereof.

(~~2~~ b) When a billing correction is made resulting in the invoicing to a customer or consignee of a lesser gallonage than the gallonage originally invoiced and the supplier distributor makes the correction by issuing a net credit adjustment, the credit memorandum shall show the date and serial number of the original invoice which it corrects.

(3) The supplier distributor shall file together with his ~~Distributor~~ the Supplier Motor Vehicle Fuel Tax Return, in which the billing correction is reflected, a copy of the credit memorandum issued under the circumstances described in either (a) or (b) above, ~~unless the distributor obtains the initial invoice or uses a distinctive invoice imprinted "Not Valid for Tax Refund."~~ If the tax return is filed electronically, the credit memorandum must be mailed within ten days of the due date of the tax return.

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections ~~7354~~ 7315, 8101, and 8106.8 Revenue and Taxation Code

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**Regulation 1123. SUPPLIER.**

**(a) RETURNS.** All suppliers must prepare and file returns with the Board to report tax on motor vehicle fuel. Returns are due at the end of the month following the calendar month in which the motor vehicle fuel was removed, entered, or sold, unless the Board requires that a return be filed for a different period. A supplier acting in more than one capacity as a supplier (for example, as a blender and enterer, or throughputter and position holder) may be required to file more than one return or report. A terminal operator who also is a position holder in motor vehicle fuel within the terminal or is jointly and severally liable for the tax is required to file both the terminal operator report and the supplier return.

**(b) IMPOSITION OF TAX.** Tax applies to each supplier as follows:

**(1) Blender.** A blender is required to pay the tax on the removal or sale of motor vehicle fuel blended outside the bulk transfer/terminal system. The number of gallons of blended motor vehicle fuel subject to the tax is the difference between the total number of gallons of blended motor vehicle fuel removed or sold and the number of gallons of tax-paid motor vehicle fuel used to produce the blended motor vehicle fuel.

**(2) Enterer.** An enterer is required to pay the tax when the enterer imports motor vehicle fuel into the state by means outside of the bulk transfer/terminal system. (Motor vehicle fuel which enters the state by means of a vessel is considered to be within the bulk transfer/terminal system.) If there is no importer of record under federal customs law when the motor vehicle fuel enters the state, the owner of the motor vehicle fuel at the time it is brought into the state is the enterer and is liable for the tax.

**(3) Position Holder.** A position holder that holds an inventory position in the motor vehicle fuel as reflected on the records of the terminal operator is required to pay the tax when the motor vehicle fuel is removed from the terminal rack.

**(4) Refiner.**

**(A)** A refiner is required to pay the tax when the motor vehicle fuel is removed at the refinery rack.

**(B)** A refiner is also required to pay the tax when the removal of motor vehicle fuel is by bulk transfer (e.g., transfer by pipeline or vessel) and the refiner or the owner of the motor vehicle fuel immediately before the removal is not a licensed supplier.

**(5) Terminal Operator.** A terminal operator is jointly and severally liable for and may be required to pay the tax when the motor vehicle fuel is removed at the rack if both subsections (A) and (B) below apply:

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(A) The position holder with respect to the motor vehicle fuel is a person other than the terminal operator and is not a licensed supplier.

(B) The terminal operator is not a licensed supplier and either (i) does not have an unexpired notification certificate from the position holder as required by the Internal Revenue Service or (ii) has an unexpired notification certificate from the position holder, but has reason to believe or knows that any information in the certificate is false.

(6) Throughputter. A throughputter is required to pay the tax when the throughputter transfers or sells motor vehicle fuel within the bulk transfer/terminal system to a person who is not a licensed supplier.

Authority: Section 8251 Revenue and Taxation Code

Reference: Sections 7307, 7308, 7309, 7310, 7311, 7312, 7324, 7326, 7329, 7332, 7333, 7334, 7335, 7336, 7338, 7339, 7340, 7341, 7360, 7362, 7363, 7365, 7366, 7368, 7369, 7370, 7371, 7372, 7451, 7651, and 7652.5 Revenue and Taxation Code

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**Regulation 1124. RELIEF FROM LIABILITY.**

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of the motor vehicle fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) Written advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) Written advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.** Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

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**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

Authority: Section 8251 Revenue and Taxation Code

Reference: Section 7657.1 Revenue and Taxation Code

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**Regulation 1132. SHIPMENTS OUT OF THE STATE.**

**(a) DEFINITIONS.**

(1) EXPORT. An export of motor vehicle fuel is the delivery or shipment of fuel by the ~~distributor~~ supplier from a point in this state to a point outside of this state. The fuel is not exported if it is diverted in transit or for any reason is not actually delivered out of this state, regardless of documentary evidence held by the ~~distributor~~ supplier respecting delivery of the fuel to a carrier for out-of-state shipment or to a vessel clearing for an out-of-state port.

(2) CARRIER. A carrier means a person or firm who is regularly engaged in the business of transporting for compensation property owned by other persons and includes both common and contract carriers. The carrier may be hired by either the purchaser or the supplier ~~distributor~~.

**(b) REQUIREMENTS.** A ~~distributor~~ supplier may not claim an export exemption from motor vehicle fuel ~~license~~ tax under Revenue and Taxation Code Section 7401(a)( 3 ~~2~~) unless the motor vehicle fuel is in fact exported and the export is accomplished in the manner specified in either (1) or (2) below:

(1) The ~~distributor~~ supplier claiming the exemption from tax shows that it delivered the motor vehicle fuel to any vessel clearing from a port of this state for a port outside of this state and the fuel was actually exported from this state in the vessel; or

(2) The ~~distributor~~ supplier claiming the exemption from tax shows that it exported the motor vehicle fuel from this state pursuant to a written contract requiring delivery by the ~~distributor~~ supplier of the fuel to:

- (A) the out-of-state point by facilities operated by the supplier ~~distributor~~,
- (B) a carrier for shipment to a consignee at the out-of-state point, or
- (C) a customs broker or forwarding agent for shipment to a location outside of this state.

**(c) EXPORTS OF EX-TAX FUEL.** The tax does not apply to the ~~distribution~~ export of ex-tax motor vehicle fuel actually exported. ~~Stock transfers of ex-tax fuel to a point outside the state are not distributions and are not subject to the tax.~~

A ~~distributor~~ supplier must claim the exemption for the export of ex-tax fuel on the return filed for the period in which the export was made. If a ~~distributor~~ supplier fails to claim the exemption on the return and tax is erroneously paid on the ex-tax exports of fuel, a timely claim for refund must be filed with the Board pursuant to Section 8128 of the Motor Vehicle Fuel ~~License~~ Tax Law in order to obtain a refund of the amount of taxes so overpaid.

**(d) EXPORTS OF TAX-PAID FUEL.** In lieu of claiming a refund of tax for exports of tax-paid fuel with the State Controller as provided by Section 8101(b) of the Revenue and Taxation

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Code, a ~~distributor~~ supplier may take a credit on its return for tax-paid fuel when the fuel is exported to a point outside the state ~~or when stock is transferred to a point outside the state~~. The credit must be claimed on a the return filed ~~within three months after the close of the calendar for the month in which the tax-paid fuel is exported~~. If the credit exceeds the taxable ~~distributions~~ gallons of motor vehicle fuel for the period in which the credit may be taken, refund of the tax on the excess gallonage can only be obtained by filing a claim for refund with the State Controller.

Failure to take credit on a return filed ~~within three months after the close of the calendar for the month in which the tax-paid fuel is exported~~ does not give rise to a right to file a claim for refund with the Board pursuant to Section 8126 of the Revenue and Taxation Code. Instead, claims for refund for tax-paid fuel exported must be filed with the State Controller within three years from the date of purchase of the fuel.

**(e) DOCUMENTATION REQUIRED FOR SUPPORT.** All shipments of motor vehicle fuel to points outside of the state for which tax exemption or credit is claimed on a tax return shall be reported on a schedule accompanying the return for the period for which the exemption or credit is claimed.

The ~~distributor~~ supplier must retain documentation to support the delivery of the fuel by the ~~distributor~~ supplier at an out-of-state location for all exemptions or credits. Documentation may include, but is not limited to, contracts, bills of lading, delivery tickets, or meter readings. The ~~distributor~~ supplier has the burden of providing the proper substantiation and documentation to support the exemption or credit.

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections 7338 7401, 7651, 8101, 8102, 8105, 8106.5, 8126, 8128, 8129, 8301 and ~~8305~~ 8303 Revenue and Taxation Code.

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**Regulation 1134. ~~DISTRIBUTIONS~~ SALES TO THE UNITED STATES.**

**(a) IN GENERAL.**

~~Distributions~~ Sales of motor vehicle fuel to the United States, its agencies and instrumentalities are taxable, except when the motor vehicle fuel is sold to the United States armed forces for use in ships or aircraft, or for use outside this State. “Armed forces” include the Army, Navy, Air Force, Marines, and Coast Guard.

To establish that a ~~distribution~~ sale to the armed forces is exempt the ~~distributor~~ seller must obtain a certificate from the agency of the armed forces purchasing the fuel that it is acquired for use (a) in ships, (b) in aircraft or (c) outside the State. This certificate may be incorporated in the purchase order or contract relating to the acquisition of the fuel by the governmental agency. All such certificates should be retained by the ~~distributor~~ seller for audit purposes.

**(b) SALES OF EX-TAX MOTOR VEHICLE FUEL.**

A supplier licensed under the Motor Vehicle Fuel Tax Law that makes sales of ex-tax motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may claim an exemption on its motor vehicle fuel tax return.

**(c) SALES OF TAX-PAID MOTOR VEHICLE FUEL.**

Any person who makes sales of tax-paid motor vehicle fuel to the United States armed forces for use in ships or aircraft, or for use outside this State, may file a claim for refund of the tax with the State Controller.

~~A distributor may also distribute motor vehicle fuel exempt from tax to any licensed distributor not otherwise qualified to acquire motor vehicle fuel tax exempt, or to any licensed broker who has furnished bond or other security in the form and amount required of distributors or brokers under Sections 7486 and 7487 of the Revenue and Taxation Code, for sale to the United States armed forces for use in ships or air craft or use outside this State.~~

~~Fuel so distributed under the exemption provided in Subdivision (a)(5) of Section 7401 shall be reported in the Return of Distributor and separately stated as exempt distributions to distributors or brokers for resale to the armed forces. The return shall be accompanied by a statement showing the names of brokers and distributors [not including distributors qualified under Subdivision (a)(3) of Section 7401] receiving motor vehicle fuel under this exemption, and the gallons distributed to each.~~

~~No distribution of motor vehicle fuel to any licensed broker or licensed distributor (not qualified) may be made exempt from tax under Subdivision (a)(5) of Section 7401 unless the vendee distributor or broker furnishes the vendor distributor prior to delivery a copy~~

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~~of the authorization of the Board acknowledging that the vendee distributor or broker has complied with the bond or security requirement and is qualified to purchase tax exempt from the distributor named in the authorization that quantity of fuel necessary to fulfill the terms of the contract of sale to a designated agency of the armed forces.~~

~~The vendee distributor or broker shall also furnish the distributor from whom the fuel is acquired, an exemption certificate executed by the purchasing agency of the armed forces for the gallonage of fuel delivered or to be delivered to that agency by the vendee distributor or broker. The certificate and its retention by the distributor shall conform to the provisions of paragraph two of this regulation.~~

~~The exemption certificate if taken in good faith shall relieve the distributor from any liability for the tax which may arise subsequently to the distribution of the fuel to the vendee distributor or broker who shall be liable for the tax on any diversion of the fuel as provided in Section 7409.~~

~~Any broker or distributor not qualified to acquire motor vehicle fuel ex tax, who enters a contract with the United States Government to sell motor vehicle fuel to any agency of the armed forces of the United States for use in ships or aircraft or use outside the State may apply to the Board for authorization to acquire the fuel tax exempt from a distributor in this State.~~

~~The application for the authorization shall state the name of the agency of the armed forces, place of delivery, and the date, gallonage, and identifying number of the armed forces purchase contract or order, and the purpose for which the fuel is to be used. The application shall also state the name of the purchasing distributor or broker and the name of the distributor from whom the fuel will be obtained.~~

~~Upon furnishing a surety bond or security in lieu thereof in such amount as the Board may require under Sections 7486 and 7487, the Board will grant the authorization acknowledging that the distributor or broker has complied with the requirements of Subdivision (a)(5) of Section 7401 and is entitled to purchase exempt from tax from the distributor named in the authorization the gallonage of fuel stated in the contract of sale with the armed forces.~~

*Authority:* Section 8251 Revenue and Taxation Code

*Reference:* Sections 7401, and 8101 ~~7408, 7409~~ Revenue and Taxation Code

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**Regulation 1161. Tax Paid Twice On Motor Vehicle Fuel**

(a) A supplier who removes motor vehicle fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the State Controller or in lieu of a refund take a credit on its tax return.

**(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.**

The credit will be allowed only if:

(1) A tax imposed on the motor vehicle fuel by Sections 7362 and 7363 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the "first tax" or "first taxpayer");

(2) After imposition of the first tax, another tax was imposed on the motor vehicle fuel by Sections 7362 and 7363 and was paid to the state by reporting the gallons on a tax return (the "second tax" or "second taxpayer");

(3) The person that paid the second tax to the state claims a credit on the tax return for the month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be filed with the tax return on which the credit is claimed. If the tax return is filed electronically, the first taxpayer's report and any statements of subsequent seller must be mailed within ten days of the due date of the tax return.

**(c) REPORTING REQUIREMENTS.**

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 7362 and 7363 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be filed with the tax return where the first tax was paid or reported. If the tax return is filed electronically, the first taxpayer's report must be mailed within ten days of the due date of the tax return.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Section 7362 (removal at a terminal rack), Section 7363(b)(2) (nonbulk entries into the state), or

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Section 7363(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 7362 and 7363 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

**(A) BY PERSON REQUIRED TO FILE FIRST TAXPAYER'S REPORT.**

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

(1) The person to whom the first taxpayer sells the motor vehicle fuel within the bulk transfer/terminal system; or

(2) The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

**(B) BY PERSON FILING OPTIONAL FIRST TAXPAYER'S REPORT.**

A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should give a copy of the report to:

(1) The person to whom the first taxpayer sells the motor vehicle fuel; or

(2) The owner of the motor vehicle fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

**(C) BY PERSON RECEIVING FIRST TAXPAYER'S REPORT.**

(1) Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

(2) Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the motor vehicle fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 7362 and 7363 with respect to the motor vehicle fuel.

**(D) FORM OF STATEMENT.**

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A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

**(E) SALE TO MULTIPLE BUYERS.**

If the first taxpayer's report relates to motor vehicle fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the motor vehicle fuel is divided and each buyer must be given a copy of the report.

**(d) Claim For Refund.**

If the supplier fails to take a credit on the tax return for the month in which the second tax was imposed, the supplier may only file a claim for refund with the State Controller to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

- (1) The information required in Section 8102.
- (2) Volume and type of motor vehicle fuel.
- (3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).
- (4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.
- (5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the motor vehicle fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.
- (6) A copy of the first taxpayer's report that relates to the motor vehicle fuel covered by the claim.
- (7) If the motor vehicle fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that motor vehicle fuel.

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EXHIBIT A

FIRST TAXPAYER'S REPORT

1. \_\_\_\_\_  
First Taxpayer's Board of Equalization supplier account number
2. \_\_\_\_\_  
First Taxpayer's name, address, and employer identification number
3. \_\_\_\_\_  
Name, address, and employer identification number of the buyer of the motor vehicle fuel subject to tax
4. \_\_\_\_\_  
Date and location of removal, entry, or sale  
and document number
5. \_\_\_\_\_  
Volume and type of motor vehicle fuel removed, entered, or sold
6. Check type of taxable event:  
\_\_\_\_\_Removal from refinery  
\_\_\_\_\_Entry into state  
\_\_\_\_\_Bulk transfer from terminal by unregistered position holder  
\_\_\_\_\_Bulk transfer not received at an approved terminal  
\_\_\_\_\_Sale within the bulk transfer/terminal system  
\_\_\_\_\_Removal at the terminal rack  
\_\_\_\_\_Removal or sale by the blender
7. \_\_\_\_\_  
Amount of state motor vehicle fuel tax paid on account of the removal, entry, or sale  
and reporting period of payment

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the motor vehicle fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

\_\_\_\_\_  
Signature and date signed

\_\_\_\_\_  
Printed or typed name of person signing this report

\_\_\_\_\_  
Title

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EXHIBIT B

STATEMENT OF SUBSEQUENT SELLER

1. \_\_\_\_\_  
Board of Equalization supplier account number or prepaid sales tax account number
2. \_\_\_\_\_  
Name, address, and employer identification number of seller in subsequent sale
3. \_\_\_\_\_  
Name, address, and employer identification number of buyer in subsequent sale
4. \_\_\_\_\_  
Date and location of subsequent sale  
and document number \_\_\_\_\_
5. \_\_\_\_\_  
Volume and type of motor vehicle fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the motor vehicle fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

\_\_\_\_\_  
Signature and date signed

\_\_\_\_\_  
Printed or typed name of person signing this statement

\_\_\_\_\_  
Title

Authority: Section 8251 Revenue and Taxation Code

Reference: Sections 7362, 7363, 8101, 8102, 8105, 8106.8, and 8127.5 Revenue and Taxation Code

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**Regulation 1178. RECORDS.**

**(a) DEFINITIONS.**

(1) "Database Management System" means a software system that controls, relates, retrieves, and provides accessibility to data stored in a database.

(2) "Electronic data interchange" or "EDI technology" means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) "Hardcopy" means any document, record, report or other data maintained in a paper format.

(4) "Machine-sensible record" means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by a storage-only imaging system such as microfilm or microfiche.

(5) "Taxpayer" means every highway vehicle operator/fueler, industrial user, pipeline operator, supplier, train operator, vessel operator and every person dealing in, removing, transporting, or storing motor vehicle fuel in this state. "Taxpayer" also means an aircraft jet fuel dealer.

**(b) GENERAL.**

(1) A taxpayer shall maintain and make available for examination on request by the Board or its authorized representative, all records necessary to determine the correct motor vehicle fuel tax or jet fuel tax liability and all records necessary for the proper completion of motor vehicle tax or jet fuel tax returns and reports. Such records include but are not limited to:

(A) Normal books of account ordinarily maintained by the average prudent businessperson engaged in the activity in question.

(B) Bills, receipts, invoices, cash register tapes, or other documents of original entry supporting the entries in the books of account.

(C) Schedules or working papers used in connection with the preparation of tax returns and reports.

(2) Machine-sensible records are considered records under Revenue and Taxation Code Sections 8253, 8301, 8302, and 8303.

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**(c) MACHINE-SENSIBLE RECORDS.**

**(1) GENERAL.**

**(A)** Machine-sensible records used to establish tax compliance shall contain sufficient source document (transaction-level) information so that the details underlying the machine-sensible records can be identified and made available to the Board upon request. A taxpayer has discretion to discard duplicated records and redundant information provided the integrity of the audit trail is preserved and the responsibilities under this regulation are met.

**(B)** At the time of an examination, the retained records must be capable of being retrieved and converted to a standard magnetic record format e.g., Extended Binary Coded Decimal Interchange Code (EBCDIC) or American Standard Code for Information Interchange (ASCII) flat file.

**(C)** Taxpayers are not required to construct machine-sensible records other than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document in the ordinary course of business is not required to construct such a record for tax purposes.

**(2) Electronic Data Interchange Requirements.**

**(A)** Where a taxpayer uses electronic data interchange (EDI) processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status (e.g., for resale), and shipping detail. Codes may be used to identify some or all of the data elements, provided the taxpayer maintains a method which allows the Board to interpret the coded information.

**(B)** The taxpayer may capture the information necessary to satisfy subdivision (c)(2)(A) at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity, and integrity of the retained records can be established. For example, a taxpayer using EDI technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer must also retain other records, such as its vendor master file and product code description lists, and make them available to the Board. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

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(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing (EDP) accounting system should be similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of this regulation.

(4) Business Process Information.

(A) Upon request of the Board, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(B) The taxpayer shall be capable of demonstrating:

1. the functions being performed as they relate to the flow of data through the system;

2. the internal controls used to ensure accurate and reliable processing and;

3. the internal controls used to prevent unauthorized addition, alteration, or deletion of retained records.

(C) The following specific documentation is required for machine sensible records retained pursuant to this regulation:

1. record formats or layouts;

2. field definitions (including the meaning of all codes used to represent information);

3. file descriptions (e.g., data set name); and

4. detailed charts of accounts and account descriptions.

**(d) MACHINE-SENSIBLE RECORDS MAINTENANCE REQUIREMENTS.**

(1) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records to a standard magnetic record format as provided in subdivision (c)(1)(B).

(2) The Board recommends but does not require that taxpayers refer to the National Archives and Record Administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records.

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**(e) ACCESS TO MACHINE-SENSIBLE RECORDS.**

(1) The manner in which the Board is provided access to machine-sensible records may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(A) The taxpayer may arrange to provide the Board with the hardware, software, and personnel resources to access the machine-sensible records.

(B) The taxpayer may arrange for a third party to provide the hardware, software, and personnel resources necessary to access the machine-sensible records.

(C) The taxpayer may convert the machine-sensible records to a standard record format specified by the Board, including copies of files, on a magnetic medium that is agreed to by the Board.

(D) The taxpayer and the Board may agree on other means of providing access to the machine-sensible records.

**(f) TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY.**

(1) In conjunction with meeting the requirements of subdivision (c), a taxpayer may create files solely for the use of the Board. For example, if a data base management system is used, it is consistent with this regulation for the taxpayer to create and retain a file that contains the transaction-level detail from the data base management system and that meets the requirements of subdivision (c). The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under this regulation.

**(g) HARDCOPY RECORDS.**

(1) Except as specifically provided, taxpayers are not relieved of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a record keeping medium as provided in subdivision (h).

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(2) If hardcopy transaction level documents are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with the regulation. Such details include those listed in subdivision (c)(2)(A).

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

**(h) ALTERNATIVE STORAGE MEDIA.**

(1) For purposes of storage and retention, taxpayer may convert hardcopy documents received or produced in the normal course of business and required to be retained under this regulation to storage-only imaging media such as microfilm or microfiche and may discard the original hardcopy documents, provide the conditions of this subdivision are met. Documents which may be stored on these media include, but are not limited to, general books of account, journals, voucher registers, general and subsidiary ledgers, and supporting records of detail such as sales invoices, purchase invoices, exemption certificates, and credit memoranda.

(2) Storage-only imaging media such as microfilm and microfiche systems shall meet the following requirements.

(A) Documentation establishing the procedures for converting the hardcopy documents to the storage-only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(B) Procedures must be established for the effective identification, processing, storage, and preservation of the stored documents and for making them available for the period they are required to be retained under subdivision (i).

(C) Upon request by the Board, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on storage-only imaging media.

(D) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is

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defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(E) All data on storage-only imaging media must be maintained and arranged in a manner that permits the location of any particular record.

(F) There is no substantial evidence that the storage-only imaging medium lacks authenticity or integrity.

(i) RECORD RETENTION—TIME PERIOD. All records required to be retained under this regulation must be preserved for a period of not less than four years unless the State Board of Equalization authorizes in writing their destruction within a lesser period.

**(i) RECORD RETENTION LIMITATION AGREEMENTS.**

(1) The Board has the authority to enter into or revoke a record retention limitation agreement with the taxpayer to modify or waive any of the specific requirements in this regulation. A taxpayer's request for an agreement must specify which records (if any) the taxpayer proposes not to retain and provide the reasons for not retaining such records, as well as proposing any other terms of the requested agreement. The taxpayer shall remain subject to all requirements of this regulation that are not modified, waived, or superseded by a duly approved record retention limitation agreement.

(A) If a taxpayer seeks to limit its retention of machine-sensible records, the taxpayer may request a record retention limitation agreement which shall:

1. document understandings reached with the Board, which may include, but are not limited to, any one or more of the following issues:

- a. the conversion of files created on an obsolete computer system;
- b. restoration of lost or damaged files and the actions to be taken;
- c. use of taxpayer computer resources, and

2. specifically identify which of the taxpayer's records the Board determines are not necessary for retention and which the taxpayer may discard, and

3. authorize variances, if any, from the normal provisions of this regulation.

(B) The Board shall consider a taxpayer's request for a record retention limitation agreement and notify the taxpayer of the actions to be taken.

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(C) The Board's decision to enter or not to enter into a record retention limitation agreement shall not relieve the taxpayer of the responsibility to keep adequate and complete records supporting entries shown on any tax or information return.

(2) A taxpayer's record retention practices shall be subject to evaluation by the Board when a record retention limitation agreement exists. The evaluation may include a review of the taxpayer's relevant data processing and accounting systems with respect to EDP systems, including systems using EDI technology.

(A) The Board shall notify the taxpayer of the results of any evaluation, including acceptance or disapproval of any proposals made by the taxpayer (e.g., to discard certain records) or any changes considered necessary to bring the taxpayer's practices into compliance with this regulation.

(B) Since the evaluation of a taxpayer's record retention practices is not directly related to the determination of tax reporting accuracy for a particular period or return, an evaluation made under this regulation is not an "examination of records" pursuant to Revenue and Taxation Code Section 8253 and 8303.

(C) Unless otherwise specified, an agreement shall not apply to accounting and tax systems added subsequent to the completion of the record evaluation. All machine-sensible records produced by a subsequently added accounting or tax system shall be retained by the taxpayer in accordance with this regulation until a new evaluation is conducted by the Board.

(D) Unless otherwise specified, an agreement made under this subdivision shall not apply to any person, company, corporation, or organization that, subsequent to the taxpayer's signing of a record retention limitation agreement, acquires or is acquired by the taxpayer. All machine-sensible records produced by the acquired or the acquiring person, company, corporation, or organization, shall be retained pursuant to this regulation.

(3) In addition to the record retention evaluation under subdivision (j)(2), the Board may conduct tests to establish the authenticity, readability, completeness, and integrity of the machine-sensible records retained under a record retention limitation agreement. The Board shall notify the taxpayer of the results of such tests. These tests may include the testing of EDI and other procedures and a review of the internal controls and security procedures associated with the creation and storage of the records.

**(k) FAILURE TO MAINTAIN RECORDS.** Failure to maintain and keep complete and accurate records will be considered evidence of negligence or intent to evade the tax and may result in penalties or other appropriate administrative action.

Authority: Section 8251 Revenue and Taxation Code

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Reference: Sections 7388, 7393, 7403.2, 7651, 7652.5, 7652.7, 8253, 8301, 8302, and 8303 Revenue and Taxation Code.

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**Regulation 1422. RELIEF FROM LIABILITY.**

**(a) IN GENERAL.** A person may be relieved from the liability for the payment of the diesel fuel tax, including any penalties and interest added to those taxes, when that liability resulted from the failure to make a timely return or a payment and such failure was found by the Board to be due to reasonable reliance on:

(1) ~~W~~ritten advice given by the Board under the conditions set forth in subdivision (b) below, or

(2) Written advice in the form of an annotation or legal ruling of counsel under the conditions set forth in subdivision (d) below; or

(3) ~~W~~ritten advice given by the Board in a prior audit of that person under the conditions set forth in subdivision (c) below. As used in this regulation, the term “prior audit” means any audit conducted prior to the current examination where the issue in question was examined.

Written advice from the Board may only be relied upon by the person to whom it was originally issued or a legal or statutory successor to that person. Written advice from the Board which was received during a prior audit of the person under the conditions set forth in subdivision (c) below, may be relied upon by the person audited or by a legal or statutory successor to that person.

The term “written advice” includes advice that was incorrect at the time it was issued as well as advice that was correct at the time it was issued, but, subsequent to issuance, was invalidated by a change in statutory or constitutional law, by a change in Board regulations, or by a final decision of a court of competent jurisdiction. Prior written advice may not be relied upon subsequent to: (1) the effective date of a change in statutory or constitutional law and Board regulations or the date of a final decision of a court of competent jurisdiction regardless that the Board did not provide notice of such action; or (2) the person receiving a subsequent writing notifying the person that the advice was not valid at the time it was issued or was subsequently rendered invalid. As generally used in this regulation, the term “written advice” includes both written advice provided in a written communication under subdivision (b) below and written advice provided in a prior audit of the person under subdivision (c) below.

**(b) ADVICE PROVIDED IN A WRITTEN COMMUNICATION.** Advice from the Board provided to the person in a written communication must have been in response to a specific written inquiry from the person seeking relief from liability, or from his or her representative. To be considered a specific written inquiry for purposes of this regulation, representatives must identify the specific person for whom the advice is requested. Such inquiry must have set forth and fully described the facts and circumstances of the activity or transactions for which the advice was requested.

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**(c) WRITTEN ADVICE PROVIDED IN A PRIOR AUDIT.** Presentation of the person's books and records for examination by an auditor shall be deemed to be a written request for the audit report. If a prior audit report of the person requesting relief contains written evidence which demonstrates that the issue in question was examined, either in a sample or census (actual) review, such evidence will be considered "written advice from the Board" for purposes of this regulation. A census (actual) review, as opposed to a sample review, involves examination of 100% of the person's transactions pertaining to the issue in question. For written advice contained in a prior audit of the person to apply to the person's activity or transaction in question, the facts and conditions relating to the activity or transaction must not have changed from those which occurred during the period of operation in the prior audit. Audit comments, schedules, and other writings prepared by the Board that become part of the audit work papers which reflect that the activity or transaction in question was properly reported and no amount was due are sufficient for a finding for relief from liability, unless it can be shown that the person seeking relief knew such advice was erroneous.

**(d) ANNOTATIONS AND LEGAL RULINGS OF COUNSEL.** Advice from the Board provided to the person in the form of an annotation or legal ruling of counsel shall constitute written advice only if:

(1) The underlying legal ruling of counsel involving the fact pattern at issue is addressed to the person or to his or her representative under the conditions set forth in subdivision (b) above; or

(2) The annotation or legal ruling of counsel is provided to the person or his or her representative by the Board within the body of a written communication and involves the same fact pattern as that presented in the subject annotation or legal ruling of counsel.

**(e) TRADE OR INDUSTRY ASSOCIATIONS.** A trade or industry association requesting advice on behalf of its member(s) must identify and include the specific member name(s) for whom the advice is requested for relief from liability under this regulation.

*Authority:* Section 60601 Revenue and Taxation Code

*Reference:* Sections ~~60208, 60209, 60210, 60211, 60304, 60310, 60311, and 60601~~  
Revenue and Taxation Code

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**Regulation 1435. Tax Paid Twice On Diesel Fuel.**

(a) A supplier who removes diesel fuel from a terminal rack on which a prior tax was paid to the state may either file a claim for refund with the Board or in lieu of a refund take a credit on its tax return.

**(b) CONDITIONS TO ALLOW A CREDIT ON A TAX RETURN.**

The credit will be allowed only if:

(1) A tax imposed on the diesel fuel by Sections 60051 and 60052 was paid to the state by reporting the gallons on a tax return and was not credited or refunded (the "first tax" or "first taxpayer");

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the "second tax" or "second taxpayer");

(3) The person that paid the second tax to the state claims a credit on the tax return for the month in which the second tax was reported to the state;

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and

(5) A copy of the first taxpayer's report and any copies of statements of subsequent seller must be filed with the tax return on which the credit is claimed. If the tax return is filed electronically, the first taxpayer's report and any statements of subsequent seller must be mailed within ten days of the due date of the tax return.

**(c) REPORTING REQUIREMENTS.**

(1) Reporting by persons paying the first tax.

Except as provided in paragraph (c)(2) of this section, the person that paid the first tax under Section 60051 and 60052 (the first taxpayer) must file a report that is in substantially the same form as the model report provided in Exhibit A and contains all information necessary to complete such model report (the first taxpayer's report). A first taxpayer's report must be filed with the tax return where the first tax was paid or reported. If the tax return is filed electronically, the first taxpayer's report must be mailed within ten days of the due date of the tax return.

(2) Optional reporting for certain taxable events.

Paragraph (c)(1) does not apply with respect to a tax imposed under Section 60051 (removal at a terminal rack), Section 60052(b)(2) (nonbulk entries into the state), or

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Section 60052(d) (removals or sales by blenders). However, if the person liable for the tax expects that another tax will be imposed under Sections 60051 and 60052 with respect to the fuel, that person should file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

**(A) By PERSON REQUIRED TO FILE FIRST TAXPAYER'S REPORT.**

A first taxpayer required to file a first taxpayer's report under paragraph (c)(1) of this section must give a copy of the report to:

(1) The person to whom the first taxpayer sells the diesel fuel within the bulk transfer/terminal system; or

(2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

**(B) BY PERSON FILING OPTIONAL FIRST TAXPAYER'S REPORT.**

A first taxpayer filing a first taxpayer's report under paragraph (c)(3) of this section should give a copy of the report to:

(1) The person to whom the first taxpayer sells the diesel fuel; or

(2) The owner of the diesel fuel immediately before the imposition of the first tax, if the first taxpayer is not the owner at that time.

**(C) BY PERSON RECEIVING FIRST TAXPAYER'S REPORT.**

(1) Bulk Transfer/Terminal System Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel within the bulk transfer/terminal system must give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer.

(2) Rack and Below Rack Transaction

A person that receives a copy of the first taxpayer's report and subsequently sells the diesel fuel outside the bulk transfer/terminal system should give the copy and a statement that satisfies the requirements of paragraph (c)(3)(D) of this section to the buyer, if that person expects that another tax will be imposed under Sections 60051 and 60052 with respect to the diesel fuel.

**(D) FORM OF STATEMENT.**

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A statement satisfies the requirements of this paragraph (c)(3)(D) if it is provided at the bottom or on the back of the copy of the first taxpayer's report (or in an attached document). This statement must contain all information necessary to complete the model statement provided in Exhibit B but need not be in the same format.

**(E) SALE TO MULTIPLE BUYERS.**

If the first taxpayer's report relates to diesel fuel divided among more than one buyer, multiple copies of the first taxpayer's report must be made at the stage that the diesel fuel is divided and each buyer must be given a copy of the report.

**(d) CLAIM FOR REFUND.**

If the supplier fails to take a credit on the tax return for the month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the fuel covered by the claim:

(1) The information required in Section 60501.

(2) Volume and type of diesel fuel.

(3) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(4) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(5) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(6) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.

(7) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller that the claimant received with respect to that diesel fuel.

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EXHIBIT A

FIRST TAXPAYER'S REPORT

1. \_\_\_\_\_  
First Taxpayer's Board of Equalization supplier account number
2. \_\_\_\_\_  
First Taxpayer's name, address, and employer identification number
3. \_\_\_\_\_  
Name, address, and employer identification number of the buyer of the diesel fuel subject to tax
4. \_\_\_\_\_  
Date and location of removal, entry, or sale  
and document number \_\_\_\_\_
5. \_\_\_\_\_  
Volume and type of diesel fuel removed, entered, or sold
6. Check type of taxable event:  
\_\_\_\_\_Removal from refinery  
\_\_\_\_\_Entry into state  
\_\_\_\_\_Bulk transfer from terminal by unregistered position holder  
\_\_\_\_\_Bulk transfer not received at an approved terminal  
\_\_\_\_\_Sale within the bulk transfer/terminal system  
\_\_\_\_\_Removal at the terminal rack  
\_\_\_\_\_Removal or sale by the blender
7. \_\_\_\_\_  
Amount of state diesel fuel tax paid on account of the removal, entry, or sale  
and reporting period of payment \_\_\_\_\_

The undersigned taxpayer (the "Taxpayer") has not received, and will not claim, a credit with respect to, or a refund of, the tax on the diesel fuel to which this form relates.

Under penalties of perjury, the Taxpayer declares that Taxpayer has examined this statement, including any accompanying schedules and statements, and, to the best of Taxpayer's knowledge and belief, they are true, correct and complete.

\_\_\_\_\_  
Signature and date signed

\_\_\_\_\_  
Printed or typed name of person signing this report

\_\_\_\_\_  
Title

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EXHIBIT B

STATEMENT OF SUBSEQUENT SELLER

1. \_\_\_\_\_  
Board of Equalization supplier account number or prepaid sales tax account number
2. \_\_\_\_\_  
Name, address, and employer identification number of seller in subsequent sale
3. \_\_\_\_\_  
Name, address, and employer identification number of buyer in subsequent sale
4. \_\_\_\_\_  
Date and location of subsequent sale  
  
and document number \_\_\_\_\_
5. \_\_\_\_\_  
Volume and type of diesel fuel sold

The undersigned seller (the "Seller") has received the copy of the first taxpayer's report provided with this statement in connection with Seller's purchase of the diesel fuel described in this statement.

Under penalties of perjury, Seller declares that Seller has examined this statement, including any accompanying schedules and statements, and, to the best of Seller's knowledge and belief, they are true, correct and complete.

\_\_\_\_\_  
Signature and date signed

\_\_\_\_\_  
Printed or typed name of person signing this statement

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Title

Authority: Section 60601 Revenue and Taxation Code

Reference: Sections 60051, 60052, 60501, 60507, 60508.4, and 60521.5.

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**Regulation 1436. RETURNED SALES AND INVOICE CORRECTIONS.**

**(A) Return Sale.**

(1) When diesel fuel included in a supplier's taxable removals, entries or sales is returned to the supplier by the customer to whom it was sold and is delivered into an approved terminal's storage tank, the supplier may either file a claim for refund with the Board or in lieu of the refund take a credit on its tax return. The credit memorandum covering the return of the diesel fuel shall identify the gallonage returned as either volumetric gallons or temperature corrected gallons based upon how the tax was originally invoiced to the customer and shall separately state the diesel fuel tax.

(2) It shall be presumed that the supplier purchased the diesel fuel that was returned as tax-paid diesel fuel if the credit memorandum includes diesel fuel tax. It also shall be presumed that the subsequent removal of the diesel fuel from the terminal rack by the supplier that received the returned diesel fuel is made in the month that the diesel fuel was returned.

(3) Conditions to allow a credit on a tax return.

The credit will be allowed only if:

(A) The returned diesel fuel was delivered into an approved terminal storage tank.

(B) The credit is taken on the tax return on which the second tax is reported.

(C) The supplier prepares a first taxpayer's report (as identified in Regulation 1435) when the diesel fuel is returned.

(D) A copy of the first taxpayer's report and the credit memorandum must be filed with the tax return on which the credit is claimed. If the tax return is filed electronically, the first taxpayer's report and the credit memorandum must be mailed within ten days of the due date of the tax return.

(4) If the supplier fails to take a credit on the tax return for the month in which the second tax was imposed, the supplier may only file a claim for refund with the Board to recover the tax.

Each claim for a refund must contain the following information with respect to the diesel fuel covered by the claim:

(A) The information required in Section 60501.

(B) Volume and type of diesel fuel.

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(C) Date on which the claimant incurred the tax liability to which this claim relates (the second tax).

(D) Amount of second tax that claimant paid or reported to the state and the tax return on which it was paid or reported.

(E) A statement that claimant has not separately stated on the sales invoice reimbursement for both the first tax and the second tax or has not included in the sales price of the diesel fuel reimbursement for both the first tax and the second tax. The second taxpayer can only receive reimbursement for one tax from the customer.

(F) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim.

(G) A copy of the credit memorandum that returned the diesel fuel.

**(b) Invoice Correction.**

(1) When a billing correction is made resulting in the invoicing to a customer of a greater or lesser gallonage than the gallonage originally invoiced and the supplier makes the correction by issuing a credit canceling the original invoice and reissuing a second invoice for the correct gallonage sold, the credit memorandum shall show the date and serial number of the invoice being canceled. The second and correct invoice shall show the date and serial number of the original invoice and that the second invoice is in replacement thereof.

(2) When a billing correction is made resulting in the invoicing to a customer of a lesser gallonage than the gallonage originally invoiced and the supplier makes the correction by issuing a net credit adjustment, the credit memorandum shall show the date and serial number of the original invoice which it corrects.

(3) The supplier shall file together with the Supplier Diesel Fuel Tax Return, in which the billing correction is reflected, a copy of the credit memorandum issued under the circumstances described in either (a) or (b) above. If the tax return is filed electronically, the credit memorandum must be mailed within ten days of the due date of the tax return.

Authority: Section 60601 Revenue and Taxation Code

Reference: Sections 60025, 60501 and 60508.4 Revenue and Taxation Code

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The following Motor Vehicle Fuel Tax Regulations are to be repealed because they are obsolete.

1103 Blending or Compounding  
1104 Consignment for Sale  
1106 Tax-Paid Fuel Distributed  
1107 Drip Gasoline Producer  
1108 Qualified Distributor  
1114 Book Transfers, In-tank Transfers, Physical Exchanges and Settlements  
1115 Pipeline Overages and Shortages  
1116 Losses Prior to Distribution  
1117 Allowable Losses of Commission Agents  
1118 Distribution of Commingled Fuel  
1119 Tax-Paid Motor Vehicle Fuel Blended, Compounded or Redistilled  
1121 Temperature-Corrected Distributions  
1131 Natural Gasoline Sales to Licensed Distributors  
1133 Exempt Distributions to a Qualified Distributor  
1151 Monthly Return of Distributor  
1152 Weekly Return of Distributor  
1153 Processor's Return of Distribution  
1154 Owner's Return of Processing Transactions  
1155 Recipient's Return of Processing Transactions  
1171 Distributor's Inventory and Stock Record  
1172 Producer's Stock Record  
1173 Producer's Purchase Record  
1174 Producer's Sales Record  
1175 Broker's Purchase Record  
1176 Broker's Sales Record

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