

**Notice of Changes to the Proposed Amendments to
California Code of Regulations, Title 18, Section 1435, Tax Paid Twice on Diesel Fuel**

To Interested Parties,

Notice is hereby given that the California Department of Tax and Fee Administration (Department) made changes to the text of the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1435, *Tax Paid Twice on Diesel Fuel*.

Reason for Changes to the Text of the Proposed Amendments

The Department received written comments from Valero Energy Corporation (Valero) regarding the proposed amendments to Regulation 1435 in an email dated November 2, 2021. After considering the comments, the Department determined that it was necessary to change the new text proposed to be added to renumbered subdivision (c)(1), new subdivisions (c)(7)(A) and (B), and the report in Appendix A of the regulation, as discussed further below.

Valero commented on renumbered subdivision (c)(1) and said that, the “[f]irst tax can potentially be imposed above the rack in bulk sales. This may occur when a licensed supplier sells to an unlicensed supplier.” The Department agreed that the “first tax,” as proposed to be defined in new subdivision (a)(7), can be imposed above the rack. The Department also determined that it was necessary to change renumbered subdivision (c)(1) to remove the phrase “below the rack” because it is inconsistent with the definition of “first tax” and unnecessarily limits the types of first taxes that will satisfy the regulation’s conditions for claiming a credit or refund.

Valero commented on new subdivision (c)(7)(A), said that it “is a very confusing paragraph,” and asked the Department to “[p]lease clarify” it. The Department discussed these comments with Valero and determined that it was necessary to make changes to new subdivisions (c)(7)(A) and (B) to make them read more clearly. The Department also determined that these changes are not substantive and do not alter the meaning or effect of these subdivisions.

Valero commented on the fifth answer to question six on the form in Appendix A and said that “to an unregistered entity” should be added to the end of the answer “for clarity.” The Department generally agreed that it was necessary to make the requested change to clarify the fifth answer to question six per Valero’s request because the answer refers to tax imposed by Revenue and Taxation Code section 60052, subdivision (b)(1), when the entry of diesel fuel into this state is “by bulk transfer and the enterer is not a diesel fuel registrant.” However, the term “person” is being used instead of “entity” because “person” is a defined term in the Diesel Fuel Tax Law.

Valero commented on question seven on the form in Appendix A and asked “[w]hy is it important to the state of CA how much Federal taxes were paid.” The Department determined that it does not need to know how much federal excise tax the first taxpayer paid on diesel fuel to grant a claim for a credit or refund under Regulation 1435 and that it was necessary to delete “Federal excise tax paid and” from question seven on the form in Appendix A to avoid requesting unnecessary information in the future.

Finally, Valero commented on question eight on the form in Appendix A and asked “[w]hy is the location of the [Internal Revenue Service (IRS)] center important to the state of CA.” The Department determined that it does not need to know the location of the IRS service center where the first taxpayer reported the federal excise tax on diesel fuel to grant a claim for a credit or refund under Regulation 1435 and that it was necessary to delete question eight from the form in Appendix A because it is unnecessary for the Department’s purposes.

Text of the Changes

The Department has prepared a revised version of the text of the proposed amendments to Regulation 1435 with the changes clearly indicated in double strikeout and double underline format. The Department is also making the revised version of the text of the proposed amendments to Regulation 1435 available to the public by placing it in the rulemaking file and posting it on the Department’s website at www.cdtfa.ca.gov. If you wish to review the rulemaking file, it is available for your inspection at 450 N Street, Sacramento, California, from 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding state holidays.

Contact Persons

Questions regarding the substance of the changes should be directed to Ms. Lynn Whitaker, Supervising Tax Auditor II, by telephone at (916) 309-5220, by e-mail at Lynn.Whitaker@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Lynn Whitaker, MIC: 50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050.

Written comments regarding the changes to the text of the proposed amendments to Regulation 1435 (discussed above) and other inquiries concerning the proposed regulatory action should be directed to Ms. Kim DeArte, Regulations Coordinator, by telephone at (916) 309-5227, by fax at (916) 322-2958, by e-mail at CDTFARegulations@cdtfa.ca.gov, or by mail at California Department of Tax and Fee Administration, Attn: Kim DeArte, MIC: 50, 450 N Street, PO Box 942879, Sacramento, CA 94279-0050. Ms. DeArte is the designated backup contact person to Ms. Whitaker.

Written Comments Regarding the Changes

Any interested person may submit written comments regarding the changes to the text of the proposed amendments to Regulation 1435 (discussed above). The written comment period ends at 11:59 pm (PDT) on December 17, 2021. The Department will consider the statements, arguments, and/or contentions contained in written comments regarding the changes (discussed above) that are received by Ms. DeArte at the postal address, email address, or fax number provided above, prior to the close of the written comment period, before the Department decides whether to adopt the revised version of the text of the proposed amendments to Regulation 1435.