

Text of Proposed Amendments to California Code of Regulations,

Title 18, Regulation 1435, *Tax Paid Twice on Diesel Fuel*

(Changes to the location of the lines for answering questions 1, 5, and 8 in the model First Taxpayer's Report are not illustrated in strikeout and underline)

1435. Tax Paid Twice on the Amount of Diesel Fuel Removed from an Approved Terminal.

(a) Definitions.

(1) Above the Rack. The term "above the rack" refers to diesel fuel in the bulk transfer/terminal system that is supplied by pipeline or vessel.

(2) Below the Rack. The term "below the rack" refers to diesel fuel outside of the bulk transfer/terminal system.

(3) Biodiesel Fuel. "Biodiesel fuel" is a fuel made fully or partially from vegetable oils or animal fats. It is produced by combining a vegetable oil or animal fat with an alcohol, such as methanol or ethanol, in the presence of a chemical catalyst to produce mono-alkyl esters and glycerin using a process called transesterification which introduces oxygen into the fuel. Biodiesel fuel does not contain any petroleum.

(4) Blended Biodiesel Fuel. "Blended biodiesel fuel" is a mixture of biodiesel fuel and any other type of diesel fuel.

(5) Department. "Department" means the California Department of Tax and Fee Administration.

(6) Diesel Fuel. The term "diesel fuel" is defined in Revenue and Taxation Code section 60022 and diesel fuel includes, but is not limited to, petroleum diesel fuel, biodiesel fuel, blended biodiesel fuel, and renewable diesel fuel.

(7) First Tax; First Taxpayer. A "first tax" is the diesel fuel tax imposed pursuant to Revenue and Taxation Code section 60051 or 60052 on diesel fuel a supplier placed into inventory at an approved terminal. The "first taxpayer" is the supplier that incurred the first tax, reported the diesel fuel gallons on its tax return as a taxable transaction, and paid the applicable diesel fuel tax.

(8) Rack. The term "rack" refers to a mechanism for delivering diesel fuel from a refinery or terminal into a truck, trailer, railroad car, or other means of non-bulk transfer.

(9) Renewable Diesel Fuel. Renewable diesel fuel is a hydrocarbon fuel produced from non-petroleum renewable resources. The result is chemically identical to petroleum diesel fuel. Renewable diesel fuel is not biodiesel fuel.

(10) Second Tax; Second Taxpayer. A "second tax" is the diesel fuel tax imposed pursuant to Revenue and Taxation Code section 60051 on diesel fuel removed from an approved

terminal at the rack. The “second taxpayer” is the supplier that incurred the second tax, reported the diesel fuel gallons on its tax return as a taxable transaction, and paid the applicable diesel fuel tax. A supplier may be both the first and second taxpayer.

~~(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. In General. A supplier that removes diesel fuel from an approved terminal at the rack and reports the removal as a taxable transaction may either file a claim for refund with the Department, or in lieu of a refund, take a credit on its tax return for up to the same amount of tax-paid gallons of diesel fuel it previously placed into inventory at that terminal for which it has not yet taken a credit on its return or filed a claim for refund.

The amount of refund or credit shall not exceed the amount of tax and tax reimbursement previously paid by the supplier on diesel fuel it previously placed into inventory at the approved terminal.

~~(b)~~ Conditions to Allow a Credit on a Tax Return or a Claim for Refund.

The credit or refund will be allowed only if all the following conditions are met:

(1) A tax imposed on the diesel fuel by Revenue and Taxation Code 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”); The first taxpayer bought, imported, or produced the diesel fuel on which the first tax was imposed below the rack.

(2) After imposition of the first tax, another tax was imposed on the diesel fuel by Revenue and Taxation Code Sections 60051 and 60052 and was paid to the state by reporting the gallons on a tax return (the “second tax” or “second taxpayer”); The first tax was not credited or refunded to the first taxpayer.

(3) The person that paid the second tax to the state claims a credit on a tax return filed within three months after the close of the calendar month in which the second tax was reported to the state; The second taxpayer placed the diesel fuel on which the first tax was imposed into inventory at an approved terminal, removed diesel fuel from the same approved terminal at the rack, and reported the removal of the diesel fuel on the second taxpayer’s tax return as a taxable transaction.

(4) The person that paid the first tax to the State has met the reporting requirements of paragraph (c) of this section; and The second taxpayer either takes a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was removed from the approved terminal at the rack or files a timely claim for refund that meets the conditions in subdivision (e).

(5) A copy of the first taxpayer’s report and any copies of statements of subsequent seller must be retained for inspection by the Board with the tax return on which the credit is claimed. The first taxpayer has met the reporting requirements of subdivision (d) and the

subsequent seller has met the requirements of subdivision (d) if the diesel fuel was bought from a person other than the first taxpayer.

(6) The second taxpayer retains invoices or other documentation showing the diesel fuel tax or tax reimbursement the second taxpayer paid on the gallons of diesel fuel the second taxpayer placed into inventory at the approved terminal.

(7) The second taxpayer prepares and retains, subject to inspection by the Department, a reconciliation by transaction of the number of tax-paid gallons of diesel fuel the second taxpayer placed into inventory at the approved terminal and had available for a credit or refund during the reporting period for the tax return on which the credit is taken or each reporting period for which a claim for refund is filed that includes:

(A) The reporting periods the first tax was reported to the state on the second taxpayer's tax return on those tax-paid gallons of diesel fuel if ~~if~~ the second taxpayer is also the first taxpayer for any tax-paid gallons of diesel fuel the second taxpayer placed into inventory at the approved terminal, ~~the reporting periods the first tax was reported to the state on the second taxpayer's tax return on those tax-paid gallons of diesel fuel.~~

(B) The purchase invoice number(s) and date(s) of purchase for those gallons of tax-paid diesel fuel if ~~if~~ the second taxpayer is not the first taxpayer for tax-paid gallons of diesel fuel the second taxpayer placed into inventory at the approved terminal, ~~the purchase invoice number(s) and date(s) of purchase for those gallons of tax-paid diesel fuel.~~

(C) Bill of lading number(s), date(s), and product code(s) for the number of gallons of tax-paid diesel fuel the second taxpayer placed into inventory at the approved terminal;

(D) The date(s), number of gallons, and document number(s) for the second taxpayer's taxable removals of diesel fuel from inventory at the approved terminal on which a second tax was reported and a credit was taken on its return for the reporting period or a claim for refund was filed for the reporting period; and

(E) A running balance of the number of gallons of tax-paid diesel fuel inventory the second taxpayer has at the approved terminal available for a credit or refund in subsequent periods.

(8) The second taxpayer retains copies of the first taxpayer's reports required or received under subdivision (d) and copies of statements of a subsequent seller required or received under subdivision (d).

(ed) Reporting Requirements.

(1) Reporting by ~~persons paying~~ the first taxpayer.

Except as provided in ~~paragraph (c)~~ subdivision (d)(2) of this section, the ~~person that paid the first tax under Revenue and Taxation Code Section 60051 and 60052 (the first taxpayer)~~ must complete ~~file~~ a first taxpayer's report that is in substantially the same form as the model report provided in ~~Exhibit~~ Appendix A. A first taxpayer's report must be retained for inspection by the ~~Board~~ Department with the tax return on which the first tax was paid or

reported pursuant to Special Taxes Administration - Miscellaneous Regulation 4901, "Records." The first taxpayer's report is not required if the first taxpayer and the second taxpayer are the same supplier.

(2) Optional reporting for certain taxable events.

~~Paragraph (e)~~ Subdivision (d)(1) does not apply with respect to a tax if the first tax is imposed under Revenue and Taxation Code ~~section~~ Section 60051 (removal at a terminal rack), Revenue and Taxation Code ~~section~~ Section 60052, subdivision (b)(2) (nonbulk entries into the state), or Revenue and Taxation Code ~~section~~ Section 60052, subdivision (d) (removals or sales by blenders). However, if the ~~first taxpayer~~ person liable for the tax expects that a ~~second~~ another tax will be imposed under Revenue and Taxation Code ~~Sections 60051 and 60052~~ with respect to the diesel fuel, that person should complete file a first taxpayer's report.

(3) Information provided to subsequent owners, etc.

(A) By ~~A First Taxpayer~~ Person Required to ~~Complete~~ File a First Taxpayer's Report.

A first taxpayer required to complete file a first taxpayer's report under ~~paragraph (e)(1) of this section~~ subdivision (d)(1) 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~~ second tax, if the first taxpayer is not the owner at that time.

(B) By ~~a First Taxpayer that Completes an~~ Person ~~Filing~~ Optional First Taxpayer's Report.

A first taxpayer that completes ~~filing an optional~~ first taxpayer's report under ~~paragraph (e)(2) of this section~~ subdivision (d)(2) 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~~ second 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 complete statement that is in substantially the same form as the model statement provided in Appendix B ~~satisfies the requirements of paragraph (e)(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 complete statement that is in substantially the same form as the model statement provided in Appendix B ~~satisfies the requirements of paragraph (c)(3)(D) of this sections~~ to the buyer, if that person expects that another tax will be imposed under Revenue and Taxation Code sections 60051 and 60052 with respect to the diesel fuel.

(D) Form of Statement.

A complete statement satisfies the requirements of subdivision (d)(3)(C) ~~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), and need not be in the same format as ~~This statement must contain all information necessary to complete the model statement provided in Exhibit Appendix 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.

(de) Claim for Refund.

If the second taxpayer ~~supplier~~ fails to take a credit on a tax return filed within three months after the close of the calendar month in which the diesel fuel was removed from an approved terminal at the rack, as required by subdivision (c)(4) ~~second tax was imposed~~, the second taxpayer ~~supplier may only~~ file a timely claim for refund with the Board ~~Department~~ to recover the second tax imposed on the removal of that diesel fuel.

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

(1) The information required in Revenue and Taxation Code Section 60501. The name, address, telephone number, and permit number of the person that sold the diesel fuel to the second taxpayer and the date of the purchase.

(2) Volume and type of diesel fuel. A statement by the second taxpayer that the diesel fuel covered by the claim did not contain visible evidence of dye.

(3) A statement, which may appear on the invoice, original invoice facsimile, or similar document, by the person that sold the diesel fuel to the second taxpayer that the diesel fuel sold did not contain visible evidence of dye.

(4) The total amount of diesel fuel covered by the claim.

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

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

(7) A statement that the ~~second taxpayer~~ 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.

(8) A copy of the first taxpayer's report that relates to the diesel fuel covered by the claim if such a report is required or received under subdivision (d).

(9) If the diesel fuel covered by the claim was bought other than from the first taxpayer, a copy of the statement of subsequent seller required or received under subdivision (d) that the ~~claimant~~ received with respect to that diesel fuel.

(10) If the documents described in items (8) and (9) of this subdivision do not exist, the second taxpayer may provide a declaration made under penalty of perjury that the total gallons of diesel fuel on which the second taxpayer received diesel fuel tax reimbursement, received a credit as described in subdivision (c), or previously filed a claim for refund on, does not and will not exceed the total gallons of tax-paid diesel fuel the second taxpayer placed into inventory at the approved terminal and has available for credit or refund during each reporting period for which the claim for refund is filed. Also, if the documents described in items (8) and (9) of this subdivision do not exist, the second taxpayer is not required to retain the documents under subdivision (c)(8) to claim a refund.

(f) Examples of Tax-Paid Twice on the Amount of Diesel Fuel Removed from an Approved Terminal at the Rack.

The following examples assume that all conditions listed in subdivisions (c) and (d) are met.

(1) Example 1 – Taking a Credit for Tax-Paid Biodiesel Fuel Blended with Ex-Tax Diesel Fuel at Approved Terminal. Supplier A imports 100,000 gallons of biodiesel fuel (B100) via truck into California and remits the diesel fuel tax on its tax return. Supplier A sells the 100,000 gallons of tax-paid B100 to Supplier B invoicing them reimbursement for the diesel fuel tax. Supplier B places the 100,000 gallons of tax-paid B100 into a community blending tank at an approved terminal, which also contains ex-tax petroleum diesel fuel, creating blended biodiesel fuel (B05). Supplier B removes 10,000 gallons of the blended biodiesel

fuel (B05) from the blending tank at the approved terminal at the rack and reports the removal of the 10,000 gallons as a taxable transaction on its tax return. Supplier B may and does take a credit on its tax return for 10,000 gallons of tax-paid diesel fuel removed.

(2) Example 2 – Taking a Credit for Remaining Tax-Paid Biodiesel Fuel Inventory that was Blended with Ex-Tax Diesel Fuel at Approved Terminal. The next month, Supplier B (from Example 1) places 30,000 gallons of ex-tax petroleum diesel fuel into the community blending tank mentioned in Example 1, and then removes 98,000 gallons of blended biodiesel fuel (B05) from the blending tank at the approved terminal at the rack and reports the removal of the 98,000 gallons as a taxable transaction on its tax return. Supplier B may take a credit on its tax return for 90,000 gallons of tax-paid diesel fuel removed, the remaining tax-paid diesel fuel inventory available at the approved terminal (100,000 tax-paid gallons placed into inventory minus the credit for 10,000 tax-paid gallons removed, as described in Example 1).

(3) Example 3 – Taking a Credit for Tax-Paid Diesel Fuel Inventory when only Ex-Tax Diesel Fuel was Removed. Supplier C purchases 50,000 gallons of biodiesel fuel (B100) from an in-state biodiesel production facility. Supplier C is invoiced for and pays the diesel fuel tax. Supplier C has the tax-paid B100 transported by truck and placed into a storage tank at an approved terminal where Supplier C also has ex-tax petroleum diesel fuel inventory stored in a different tank. Supplier C removes 250,000 gallons of ex-tax petroleum diesel fuel from the approved terminal at the rack and reports the removal of the 250,000 gallons as a taxable transaction on its tax return. Supplier C may take a credit on its tax return for 50,000 gallons of tax-paid diesel fuel removed.

(4) Example 4 – Taking a Credit for Tax-Paid Biodiesel Fuel Blended with Ex-Tax Diesel Fuel at Approved Terminal. In December 2019, Supplier D imports 20,000 gallons of biodiesel fuel (B100) via rail and places it into its proprietary storage tank used for blending at an approved terminal, which also contains ex-tax petroleum diesel fuel, creating blended biodiesel fuel (B05). In the same month, Supplier D removes 100,000 gallons of blended biodiesel fuel (B05) from the tank at the approved terminal at the rack. Supplier D reports the 20,000 gallons of B100 as a taxable import below the rack and the removal of the 100,000 gallons of blended biodiesel fuel (B05) as a taxable transaction on its December 2019 tax return. Supplier D may take a credit on its tax return for 20,000 gallons of tax-paid diesel fuel removed.

(5) Example 5 – Available Tax-Paid Diesel Fuel Inventory Balance to Carry Forward. Supplier E imports 1,000,000 gallons of renewable diesel fuel by rail and remits the diesel fuel tax on its May 2019 tax return. Supplier E places the renewable diesel fuel into a community blending tank at an approved terminal, which also contains ex-tax petroleum diesel fuel, creating blended renewable diesel fuel. In June 2019, Supplier E removes 100,000 gallons of blended renewable diesel fuel from the approved terminal at the rack and reports the removal of the 100,000 gallons as a taxable transaction on its June 2019 tax return. Supplier E may take a credit on its June 2019 tax return for 100,000 gallons of tax-paid diesel fuel removed and if Supplier E takes the credit it will have 900,000 gallons of tax-

paid diesel fuel inventory at the approved terminal available for a credit or refund when future taxable diesel fuel removals from the approved terminal are reported.

(6) Example 6 – Removal of Blended Biodiesel Fuel from Community Storage. Supplier F imports 1,000,000 gallons of biodiesel fuel (B100) by rail and places it into a community blending tank at an approved terminal, which also contains ex-tax petroleum diesel fuel, creating blended biodiesel fuel (B05). In the same month, Supplier F removes 700,000 gallons of blended biodiesel fuel (B05) from the community blending tank at the approved terminal at the rack. Supplier F reports the 1,000,000 gallons of B100 as a taxable import and the removal of the 700,000 gallons of blended biodiesel fuel (B05) as a taxable transaction on its tax return for that month. Supplier F may take a credit on its tax return for 700,000 gallons of tax-paid diesel fuel removed.

Note: Authority cited: Section 60601, Revenue and Taxation Code; Sections 15570.22, 15570.24 and 15570.40, Government Code. Reference: Sections 60006, 60051, 60052, 60501, 60507, 60508 and 60521.5, Revenue and Taxation Code.

EXHIBIT APPENDIX A

First Taxpayer's Report

1. First Taxpayer's ~~Board of Equalization~~ California Department of Tax and Fee Administration
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 ~~United States or state~~ California

Bulk transfer from terminal by unregistered position holder

Bulk transfer not received at an approved terminal

Sale within the bulk transfer/terminal system to an unregistered person

Removal at the terminal rack

Removal or sale by the blender

7. Amount of ~~Federal excise tax paid and~~ State diesel fuel tax paid on account of the removal, entry, or sale

~~8. Location of IRS service center where this report is filed~~

~~and State California diesel fuel tax 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

EXHIBIT APPENDIX B

Statement of Subsequent Seller

1. ~~Board of Equalization~~ California Department of Tax and Fee Administration 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 report

Title