AMENDED IN ASSEMBLY APRIL 7, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL No. 1407

Introduced by Assembly Member Oropeza

February 22, 2005

An act to add Division 29 (commencing with Section 38000) to the Public Resources Code, relating to the environment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1407, as amended, Oropeza. California Environmental Health and Air Quality Funding Act of 2005.

Under the Diesel Fuel Tax Law, a tax is imposed on the removal of diesel fuel from various storages, as specified.

This bill would enact the California *Off-Road* Environmental Health and Air Quality Funding Act of 2005. The act would require a supplier of dyed diesel ~~fee~~ *fuel* to pay an air quality fee ~~in an unspecified amount~~ *of 5¢* per gallon for the removal or sale of dyed diesel fuel or blended dyed diesel fuel, as specified. *The act would require a train operator to pay a fee of 5¢ per gallon for diesel fuel used in this state.* The act would also require an ultimate vendor to pay an air quality fee ~~in an unspecified amount~~ *of 5¢* per gallon on each gallon of undyed diesel fuel sold by the ultimate vendor ~~to~~ *to a* farmer in a specified transaction. The act would require a user of undyed diesel fuel to pay an air quality fee ~~in an unspecified amount~~ *of 5¢* per gallon on each gallon of undyed diesel fuel for which the user claims a refund of the diesel fuel tax, as specified. The bill would require the State Board of Equalization to administer the fees imposed.

The bill would establish the California *Off-Road* Environmental Health and Air Quality Fund in the State Treasury. The bill would

require the fees imposed on dyed diesel fuel and undyed diesel fuel pursuant to the bill's provisions *to* be deposited in the fund. Moneys in the fund may be expended, upon appropriation by the Legislature, for refunds~~,~~ *and* for the administrative costs of the State Board of Equalization,~~ and~~ *with* the balance *to be transferred to Air Pollution Control Fund* for~~ unspecified purposes~~ *expenditure for projects providing for the retrofitting or repowering of off-road diesel engines, as specified*.

The bill would provide that provisions of the act become operative on July 1, 2006.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: no.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Diesel exhaust is a mixture of smog-forming pollutants, particulate matter (PM), nitrogen oxides (NOx), and other toxic contaminants, such as arsenic, cadmium, dioxin, and mercury.

(b) Diesel exhaust particles can cause or exacerbate a wide variety of health problems, including asthma and other respiratory ailments, and has been linked to cancer and premature death.

(c) Studies indicate that California is the nation's largest source of pollution from PM and NOx emissions from off-highway diesel use, with Los Angeles ranking as the number one metropolitan area with the worst off-road diesel air pollution in the country.

(d) Off-road diesel engine equipment located in California ports, construction sites, agricultural areas, and rail yards are amongst the least regulated sources of diesel pollution.

(e) Many low-income residents and communities of color live in urban and rural areas directly adjacent to port, rail, agricultural, and construction activities and bear disproportionate levels of concentrated diesel-based air pollution.

(f) Air quality in the South Coast Air Basin, the San Joaquin Valley, and the Sacramento Valley violate the federal one-hour ozone standard for PM 10. Failure to meet these federal

requirements can jeopardize California's share of transportation dollars.

(g) The Carl Moyer Memorial Air Standards Attainment Program funds the incremental cost of cleaner than required engines and equipment in order to significantly reduce NOx and PM from off-road diesel equipment. The reductions provided by this program are critical and necessary for California to meet its federal clean air commitments.

(h) To clean up current diesel fuel-related pollution and to protect against further contamination, it is necessary to maintain and direct stable funding to programs that reduce air pollution from off-road diesel sources.

(i) Under the Diesel Fuel Tax Law, off-road diesel fuel is exempt from the existing eighteen cents ($0.18) state excise tax on diesel fuel.

(j) A fee of five cents ($0.05) per gallon of off-road diesel fuel imposed by this act is proportionate to the harm resulting from off-road diesel pollution within the state and is a fair and reasonable means to mitigate the past, present, and future harm to public health resulting from off-road diesel fuel in the state.

~~SECTION 1.~~

SEC. 2. Division 29 (commencing with Section 38000) is added to the Public Resources Code, to read:

DIVISION 29. THE CALIFORNIA *OFF-ROAD* ENVIRONMENTAL HEALTH AND AIR QUALITY FUNDING ACT OF 2005

Chapter 1. General Provisions and Definitions

38000. This division shall be known, and may be cited, as the California *Off-Road* Environmental Health and Air Quality Funding Act of 2005.

38001. For purposes of this division, the following terms apply:

(a) "Air quality fee" means the fee imposed pursuant to Section *38021,* 38022, 38023, or 38024.

(b) "Blended dyed diesel fuel" means a mixture of dyed diesel fuel with respect to which an air quality fee has been imposed and any other liquid on which an air quality fee has not been

imposed. Blended dyed diesel fuel also means a conversion of a liquid into dyed diesel fuel. Conversion of a liquid into dyed diesel fuel occurs when a liquid that is not included in the definition of dyed diesel fuel and that is outside the bulk transfer/terminal system is sold as dyed diesel fuel, delivered as dyed diesel fuel, or represented to be dyed diesel fuel.

(c) "Entry" means the importing of dyed diesel fuel into this state. Dyed diesel fuel brought into this state in the fuel tank of a motor vehicle shall not be deemed to be an entry.

(d) "Farmer" means a person who uses undyed diesel fuel on a farm for farming purposes and has given his or her supplier a certificate described in Section 60503 of the Revenue and Taxation Code to purchase the undyed diesel fuel without the diesel fuel tax.

(e) "Fund" means the California *Off-Road* Environmental Health and Air Quality Fund established pursuant to Section 38020.

(f) "Supplier" includes a person who does ~~all~~ *any* of the following:

(1) Holds the inventory position in the diesel fuel, as reflected on the records of the terminal operator. A person holds the inventory position in diesel fuel when that person has a contractual agreement with the terminal operator for the use of storage facilities and terminaling services at a terminal with respect to the diesel fuel.

(2) Owns, operates, or otherwise controls a refinery used to produce diesel fuel from crude oil, unfinished oils, natural gas liquids, or other hydrocarbons, and from which diesel fuel may be removed by pipeline, by vessel, or at a rack.

(3) Enters or imports dyed diesel fuel into this state.

(4) Produces dyed diesel fuel by adding dye to diesel fuel at the rack or in the terminal yard or refinery yard in connection with the sale and delivery of the dyed diesel fuel.

(5) Produces or converts blended dyed diesel fuel outside the bulk transfer/terminal system.

(g) "Train operator" includes any person that owns, operates, or controls a diesel-powered train and is licensed as a railroad by a state or federal agency.

(h) "Vendor" means any person who sells dyed diesel fuel to a train operator and at the time of sale collects the air quality fee from the train operator.

38002. For the purposes of this division, the terms ~~"bulk transfer,"~~ "bulk transfer/terminal system," "carrier," "diesel ~~fuel," "dyed diesel fuel," "forwarding agent," "gallon," "highway," "in this state," "motor vehicle," "rack," "refinery,"~~ *fuel," "diesel-powered train," "dyed diesel fuel," "exempt bus operator," "forwarding agent," "gallon," "government entity," "highway," "in this state," "motor vehicle," "qualified highway vehicle operator," "rack," "refinery,"* "removal," "sale," "terminal" and "terminal operator," "ultimate vendor," and "undyed diesel fuel" are defined pursuant to Part 31 (commencing with Section 60001) of Division 2 of the Revenue and Taxation Code.

Chapter 2. The California *Off-Road* Environmental Health and Air Quality Fund

38020. The California *Off-Road* Environmental Health and Air Quality Fund is hereby created in the State Treasury. The money in the fund shall be expended for purposes of this division, upon appropriation by the Legislature for that purpose.

~~38022.~~

38021. The supplier of dyed diesel fuel in each of the following activities shall pay an air quality fee in the amount of ~~__ cents ($____)~~ *five cents ($0.05)* per gallon:

(a) The removal or sale of dyed diesel fuel in this state from a terminal rack.

(b) The removal or sale of dyed diesel fuel in this state from a refinery rack.

(c) The entry of dyed diesel fuel into this state for sale, consumption, use, or warehousing~~, if the entry is not by bulk transfer~~.

(d) The removal or sale of blended dyed diesel fuel in this state by the blender of that blended dyed diesel fuel. The number of gallons of blended dyed diesel fuel subject to the air quality fee is the difference between the total number of gallons of blended dyed diesel fuel removed or sold and the number of

gallons of diesel fuel used to produce the blended dyed diesel fuel on which the air quality fee was previously paid.

38022. A train operator shall pay an air quality fee of five cents ($0.05) per gallon on each gallon of diesel fuel used in this state.

38023. An ultimate vendor shall pay an air quality fee of ~~___ cents ($____)~~ *five cents ($0.05)* per gallon on each gallon of undyed diesel fuel sold by the ultimate vendor to a farmer in a transaction in which the ultimate vendor is eligible for a refund of diesel fuel tax under Section 60502 of the Revenue and Taxation Code or a credit of diesel fuel tax under Section 60508.2 of the Revenue and Taxation Code.

38024. A user of undyed diesel fuel shall pay an air quality fee of ~~___ cents ($____)~~ *five cents ($0.05)* per gallon on each gallon of undyed diesel fuel for which the user claims a refund of the diesel fuel tax under subparagraph (A), (C), (D), or (E) of paragraph (4) of subdivision (a) of Section 60501 of the Revenue and Taxation Code. The State Board of Equalization shall collect the amount owing under this section by offsetting the amount of the fee against any refund of diesel fuel tax allowed under subparagraph (A), (C), (D), or (E) of paragraph (4) of subdivision (a) of Section 60501 of the Revenue and Taxation Code.

Chapter 3. Exemptions

38030. The fee imposed pursuant to ~~Sections 38022~~ *Section 38021* does not apply to ~~dyed~~ *any of the following:*

(a) Dyed diesel fuel that is required to be shipped and is shipped to a point outside of this state by a supplier pursuant to the contract of sale by either of the following means:

~~(a)~~

(1) Facilities operated by the supplier.

~~(b)~~

(2) Delivery by the supplier to a carrier, customs broker, or forwarding agent, whether hired by the purchaser or not, for shipment to the out-of-state point.

~~38033. (a) Persons who have paid the fee on dyed diesel fuel pursuant to Section 38022 that is subsequently exported for use outside of this state shall be reimbursed and repaid the amount of the fee. The person may file a claim for refund with the State~~

~~Board of Equalization. Dyed diesel fuel that is carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state.~~

~~(b) The claim for refund shall be filed within three years from the date of purchase of the dyed diesel fuel. Each claim for refund shall be made on a form prescribed by the State Board of Equalization and contain a statement that the claimant has proof of exportation. The claimant shall retain and provide upon request copies of documents supporting the export.~~

(b) Dyed diesel fuel that is sold by a supplier to the United States and its agencies and instrumentalities.

Chapter 4. Refunds and Credits

38035. (a) Except as otherwise provided in this chapter, the following persons who have paid the fee on dyed diesel fuel shall be reimbursed and repaid the amount of the fee:

(1) Any person who exports the dyed diesel fuel for use outside of this state. Dyed diesel fuel that is carried from this state in the fuel tank of a motor vehicle is not deemed to be exported from this state.

(2) Any person who sells dyed diesel fuel to the United States and its agencies and instrumentalities.

(3) Any government entity that uses the dyed diesel fuel on the highways in this state and pays the diesel fuel tax under Section 60108 of the Revenue and Taxation Code.

(4) Any exempt bus operator that uses the dyed diesel fuel on the highways in this state and pays the diesel fuel tax under Section 60502.2 of the Revenue and Taxation Code.

(5) Any qualified highway vehicle operator that uses the dyed diesel fuel on the highways in this state and pays the diesel fuel tax under Section 60058 of the Revenue and Taxation Code.

(b) Any person eligible under subdivision (a) shall file a claim for refund with the State Board of Equalization and the claim shall be supported by the original invoice showing the purchase. The claim for refund shall be filed within three years from the date of purchase of the dyed diesel fuel. The claim for refund shall be made on a form prescribed by the State Board of Equalization and contain the following information:

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

(2) The use made of the dyed diesel fuel by the claimant.

(3) If the dyed diesel fuel covered by the claim was exported, a statement that the claimant has proof of exportation. The claimant shall retain and provide upon request copies of documents supporting the statement concerning the exportation.

(c) In lieu of the refund of the fee on dyed diesel fuel exported by the supplier or ultimate vendor for use outside the state in the manner as would entitle a supplier or ultimate vendor to claim a refund under subdivision (a), credit may be given the supplier upon the supplier's fee return and the ultimate vendor upon the ultimate vendor's fee return.

(d) In lieu of the refund of the fee on dyed diesel fuel sold to the United States and its agencies and instrumentalities by the supplier or ultimate vendor pursuant to subdivision (a) in the manner as would entitle a supplier or ultimate vendor to claim a refund under subdivision (b), a credit may be given to the supplier upon the supplier's fee return or to the ultimate vendor upon the ultimate vendor's fee return.

38036. A train operator subject to the fee imposed by Section 38022 shall be allowed a credit against the amount of fee due on his or her return for an amount equal to the fee imposed by Section 38022 on dyed diesel fuel purchased in this state in the same return period as purchased. No credit shall be allowed unless the fee imposed by Section 38022 has been paid upon the purchase of the dyed diesel fuel by the train operator to a vendor in this state. When the amount of the credit for any return period exceeds the amount of fee due for the return period, the excess shall be allowed as a credit against the amount of fee due for succeeding reporting periods or shall be refunded.

Chapter 5. Administration

~~38035.~~

38040. The State Board of Equalization shall administer the fees imposed pursuant to Sections *38021,* 38022, 38023, and 38024 in accordance with the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

~~38036.~~

38041. The fees imposed pursuant to Sections ~~38022, 38023, and 38024~~ *38021, 38022, and 38023* are due and payable to the State Board of Equalization quarterly on or before the last day of the calendar month following the close of the quarterly period to which it relates. A return for the preceding quarterly period, in the form prescribed by the State Board of Equalization, shall be filed with the payment of the fee.

~~38037.~~

38042. All fees imposed pursuant to Sections *38021,* 38022, 38023, and 38024 shall be paid in the form of remittances payable to the State Board of Equalization. The State Board of Equalization shall deposit in the fund all amounts collected. All interest earned on the moneys deposited in the fund shall be deposited in the fund.

Chapter 6. Financial Provisions

~~38040.~~

38045. The money deposited to the credit of the fund may be expended for the following purposes:

(a) To pay, upon order of the State Controller, for refunds pursuant to Section 38033 and the Fee Collection Procedures Law (Part 30 (commencing with Section 55001) of Division 2 of the Revenue and Taxation Code).

(b) To pay for the administrative costs of the State Board of Equalization of collection, auditing, and making refunds associated with the fund.

(c) The balance shall be expended ~~for _____~~. *as provided in Section 38046.*

38046. (a) The balance of the moneys in the fund not expended for the purposes specified in subdivisions (a) and (b) of Section 38045 shall be transferred by the Controller to the Air Pollution Control Fund for expenditure by the State Air Resources Board for purposes of financing those eligible projects under the Carl Moyer Memorial Air Quality Standards Attainment Program that provide for the retrofitting and repowering of off-road diesel engines.

(b) Eligibility for funding under subdivision (a) shall be restricted exclusively to those persons who paid off-road diesel air quality fees under this part.

1 ~~SEC. 2.~~
2 *SEC. 3.* The provisions of this act shall become operative on
3 July 1, 2006.

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