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## State & Local Taxes

### ¶ 23,030. Prepayment of Taxes.—

**Prepayment of tax generally.** On written notification by the SBE, any person whose estimated measure of tax liability averages \$17,000 or more per month, must make the following prepayments:

- (1) in the first, third and fourth calendar quarters, prepay not less than 90% of the state and local tax liability for each of the first two monthly periods of each quarterly period; and
- (2) in the second calendar quarter, prepay a first prepayment of 90% of the total tax for the first monthly period of each quarterly period, and a second prepayment of either (a) 90% of the amount of such liability for the second monthly period of the quarterly period plus 90% of such liability for the first 15 days of the third monthly period of the quarterly period, or (b) 90% of the amount of state and local tax liability for the second monthly period plus 50% of 90% of the liability for the second monthly period. [[Cal. Rev. & Tax. Cd. §6471\(a\).](#)]

**THRESHOLD INCREASE.** Under 1987 and 1988 legislation, the threshold of \$17,000 may increase to \$50,000 if the Attorney General certifies to the Legislature and the Executive Secretary of the SBE that [Cal. Rev. & Tax. Cd. §6203\(d\)](#) is legally enforceable under the U.S. Constitution, as determined by a final adjudication in the courts. The Department of Finance must certify to the Legislature that revenues attributable to those provisions are being remitted to the SBE. When these actions take place, the threshold will increase on the first day of second calendar quarter starting after the date of the Department of Finance certification.

The figures for the corresponding quarter of the preceding year may be used if the business or its predecessor operated during the full quarter. To find a current prepayment for the first, third and fourth calendar quarters, multiply one-third of the tax base reported on the return(s) for that quarter by the state and local tax rate in effect for the month of prepayment.

The prepayment requirements for the second calendar quarter may be satisfied by a first prepayment of an amount equal to one-third of the measure of the tax liability reported, and a second prepayment of an amount equal to one-half of measure of tax liability reported on the return(s) filed for that quarterly period of the preceding year, multiplied by the state and local tax rate in effect for the month of prepayment. [[Cal. Rev. & Tax. Cd. §6471\(b\).](#)]

*Applicability—generally:* The prepayment provisions do not apply to persons who do not file quarterly returns. The prepayment provisions apply both to the state and local sales and use taxes. [[Cal. Rev. & Tax. Cd. §6470.](#)]

*Direct payment permit holders:* Businesses holding direct payment permits (see [¶ 22,240](#)) must make prepayments of tax. [[Cal. Code Regs. 18 §1699.5\(f\).](#)]

*Credit cards:* Taxpayers may use credit cards to pay their sales and use tax due on their prepayment forms (see [¶ 23,000](#)). [[California SBE News Release No. 8-G, 02/09/1998.](#)]

**Motor vehicle fuel—prepayment by suppliers.** If more than 75% of gross receipts are from the retail sale of motor vehicle fuel, aircraft jet fuel, diesel fuel or any combination thereof, prepayment of tax must be made under the following provisions, not under the general prepayment provisions discussed above. [[Cal. Rev. & Tax. Cd. §6471.4.](#)] The sales tax on motor vehicle fuel tax, diesel fuel and aircraft jet fuel must be prepaid at the same point when the appropriate excise tax becomes payable, which in most instances is

the supplier's removal of the fuel at the terminal rack (see ¶ 45,250). The supplier must collect sales tax from the person to whom it sells the fuel after removal. If no sale takes place upon removal, the supplier must prepay the sales tax itself.

**NOTE.** The term "supplier" for purposes of the motor vehicle fuel tax or diesel fuel tax includes any person who is a blender, enterer, position holder, refiner, terminal operator or throughputter. See ¶ 45,250 and ¶ 45,820 . [[Cal. Rev. & Tax. Cd. §6480\(a\)](#); [Cal. Rev. & Tax. Cd. §6480\(c\)](#) .]

The required prepayment is a debt owed the state by the supplier, until paid. Each supplier must report and pay the prepayments in the period in which the fuel is distributed. On each later sale, each seller, other than a retailer, must collect from the purchaser a prepayment computed using the rate applicable at the time of distribution. Receipts must be given to the purchaser for collecting. Motor vehicle fuel does not include aviation gasoline. [[Cal. Rev. & Tax. Cd. §6480\(b\)](#); [Cal. Rev. & Tax. Cd. §6480.1\(a\)](#) .]

*Wholesalers:* Each wholesaler must collect prepayment of the retail sales tax from each person to whom it sells motor vehicle fuel, aircraft jet fuel, or diesel fuel. The wholesaler must provide that person with an invoice or other evidence of prepayment, and file reports with the SBE. If the prepayments which the wholesaler collects are greater than the prepayments it has made, the excess is a debt owed by the wholesaler to the state until paid or until there is satisfactory proof that the fuel's retailer has paid the tax to the SBE. [[Cal. Rev. & Tax. Cd. §6480.1\(b\)](#).] A "wholesaler" is any person dealing in motor vehicle fuel, aircraft jet fuel or diesel fuel other than a supplier, a person operating a service station, or an aircraft jet fuel dealer. [[Cal. Rev. & Tax. Cd. §6480\(d\)](#).]

*Credit to supplier or wholesaler:* A supplier or wholesaler who pays the prepayment and issues a resale certificate to the seller, but later uses the fuel itself, can get a credit against its sales and use tax liability so long as it paid use tax upon its consumption of the fuel. [[Cal. Rev. & Tax. Cd. §6480.1\(c\)](#).]

*Credit to retailer:* The amount of prepayment paid by a retailer to the seller from whom it acquired the fuel is a credit against the retailer's sales and use tax liability for the period in which the sale was made. The retailer must have receipts or other documents establishing the prepayment amounts, but will not lose its right to a credit if the person from whom it acquired the fuel did not comply with reporting or other requirements. [[Cal. Rev. & Tax. Cd. §6480.1\(d\)](#).]

*Exemptions from prepayment provisions:* There is an exemption from prepayment requirements for any motor vehicle fuel sold by a supplier or wholesaler to a qualified purchaser, for subsequent resale to the state of California or its instrumentalities, if the following conditions are met: (1) the qualified purchaser does not take possession of the fuel at any time; and (2) the fuel is delivered into storage tanks owned or leased by the state of California or its instrumentalities via the supplier's or wholesaler's facilities or by common or contract carriers. A "qualified purchaser" is a broker that does not maintain a storage facility for selling motor vehicle fuel. [[Cal. Rev. & Tax. Cd. §6480.1\(i\)](#).]

An exemption from prepayment of sales tax on diesel fuel applies to diesel fuel purchased for resale to persons engaged in farming activities or food processing. [[Cal. Rev. & Tax. Cd. §6480.9](#).] [Cal. Code Regs.18 §1598.1](#) requires the retailer to issue a diesel fuel prepayment exemption certificate (set forth in the regulation's Appendix) to the seller or a blanket prepayment exemption certificate. For purposes of the prepayment exemption, "qualified persons" are retailers that: (1) sell more than 25% of their total sales of diesel fuel for exempt agricultural use and food processing; and, (2) make bulk deliveries (transfers of fuel into storage tanks of at least 50 gallons) or sell through use of an unattended system. The qualified person must report and pay tax on fuel purchased without tax prepayment if that fuel is later sold for nonexempt use. [[Cal. Rev. & Tax. Cd. §6480.9](#).]

*Bond or security:* Security may be required. [[Cal. Rev. & Tax. Cd. §6480.7](#).]

*Prepayment rates:* For the period April 1, 2012 through June 30, 2014, the prepayment rate for the gasoline tax is 7¢ per gallon and the aircraft jet fuel rate is 18¢ per gallon. The diesel fuel tax prepayment rate is 28¢ per gallon for the period July 1, 2013 through June 30, 2014. [[SBE - Sales Tax Prepayment Rates for Fuels, 04/01/2013](#); [California SBE Special Tax Notice No. L-347, 02/01/2013](#); [California SBE Special Tax Notice No. L-274, 05/01/2011](#); [California SBE Special Tax Notice No. L-294, 12/01/2011](#) .]

*Prior years—prepayment rates:* The diesel fuel prepayment rate was 29¢ for the period April 1, 2012 through June 30, 2013. [[SBE - Sales Tax Prepayment Rates for Fuels, 04/01/2013](#).] The diesel fuel prepayment rate was 18¢ per gallon for the period April 1, 2011 through June 30, 2011. [[California SBE Special Tax Notice No. L-274, 05/01/2011](#).] For the period April 1, 2010 through March 31, 2011, the prepayment rate was 12¢ per gallon for aircraft jet fuel and 16¢ per gallon for diesel fuel. [[California SBE Special Tax Notice No. L-238, 12/01/2009](#).] The prepayment rate was 18.5¢ per gallon for the period April 1, 2010 through June 30,

2010. [California SBE Special Tax Notice No. L-255, 05/01/2010.] The prepayment rate for the period January 1, 2009 through March 31, 2010 for motor vehicle fuel (gasoline) tax was 12¢ per gallon; the aircraft jet fuel rate was 10.5¢ per gallon; and the diesel fuel rate was 13.5¢ per gallon. [California SBE Special Tax Notice No. L-238, 12/01/2009.] The prepayment rate for the period April 1, 2007 through March 31, 2008 for motor vehicle fuel (gasoline) tax was 17¢ per gallon; the aircraft jet fuel rate is 12.5¢ per gallon; and the diesel fuel rate was 16¢ per gallon. [California SBE Special Tax Notice No. BOE-500-F, 12/01/2006.] Effective April 1, 2008 through March 31, 2009, the sales tax prepayments rate for motor vehicle fuel (gasoline) tax was 16.5¢ per gallon; the aircraft jet fuel rate was 12.5¢ per gallon; and the diesel fuel rate was 15.5¢ per gallon. [California SBE News Release No. 62-G, 10/19/2007.] The prepayment rate for the period April 1, 2006 through March 31, 2007 was 14.5¢ per gallon of motor fuel (gasoline), 11¢ per gallon for aircraft jet fuel, and 14.5¢ per gallon for diesel fuel. [California SBE Special Tax Notice No. BOE-500-F, 12/01/2005.] The prepayment rate for the period April 1, 2005 through March 31, 2006 was 11.5¢ per gallon of motor fuel (gasoline), 7.5¢ per gallon for aircraft jet fuel, and 10.5¢ per gallon for diesel fuel. [California SBE Special Tax Notice No. BOE-500-F, 12/01/2004.]

By July 1 of each year, the SBE is required to establish the prepayment rates for the fuels shown above. The prepayment rate is based on 80% of the combined state and local sales tax on the average selling price of the fuel, excluding sales tax, as determined by industry publications. [Cal. Rev. & Tax. Cd. §6480.1(f); Cal. Rev. & Tax. Cd. §6480.1(g); Cal. Rev. & Tax. Cd. §6480.1(h) .]

A listing of purchasers may be required; also, additional report may be required. The failure to submit a required list or report is a misdemeanor. [Cal. Rev. & Tax. Cd. §6480.2.]

*Refunds—credits:* Refunds may be given to the following persons making a direct prepayment to the SBE or to the person from whom the motor vehicle fuel, aircraft jet fuel or diesel fuel was purchased:

- (1) any person exporting the fuel for later sale out-of-state;
- (2) any person selling the fuel exempt under a constitutional or statutory prohibition, sales to the U.S., agencies, instrumentalities and the Red Cross, and under exemption for tangible personal property shipped out-of-state;
- (3) any person who has lost fuel through fire, theft, flood, leakage, evaporation, shrinkage, spillage or accident before any retail sale;
- (4) any supplier who has removed the fuel from an approved terminal at the terminal rack, but only to the extent it can show that it has paid the tax more than once on the same amount of fuel; and
- (4) any person who is unable to collect the prepayment from the buyer insofar as the sales are represented by accounts that are worthless and have been charged off for income tax purposes or, if the person is not required to file federal income tax returns, charged off in accordance with generally accepted accounting principles (if partial payments were made, prorate between amount due for fuel and amount due for prepayment). [Cal. Rev. & Tax. Cd. §6480.6(a).]

In lieu of refunds, the SBE may allow a credit to the person to whom a refund is due. [Cal. Rev. & Tax. Cd. §6480.6(b).]

*Related material:* Prepaid Tax Declaration and Payment Due Dates, ¶ 23,040. Penalties related to prepayment, ¶ 23,060.