

**ASSEMBLY BILL**

**No. 53**

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**Introduced by Assembly Members Vince Fong, Alanis, and Hoover  
(Coauthors: Assembly Members Chen, Megan Dahle, Mathis,  
Joe Patterson, Sanchez, and Waldron)**

December 5, 2022

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An act to amend Sections 7360, 7362, 7363, and 7364 of, and to add Section 7374 to, the Revenue and Taxation Code, relating to taxation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 53, as introduced, Vince Fong. Motor Vehicle Fuel Tax Law: suspension of tax.

Existing law, the Motor Vehicle Fuel Tax Law, imposes a tax upon each gallon of motor vehicle fuel removed from a refinery or terminal rack in this state, entered into this state, or sold in this state, at a specified rate per gallon.

Existing unfair competition laws establish a statutory cause of action for unfair competition, including any unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue, or misleading advertising and acts prohibited by false advertisement laws.

This bill would suspend the imposition of the tax on motor vehicle fuels for one year. The bill would require that all savings realized based on the suspension of the motor vehicle fuels tax by a person other than an end consumer, as defined, be passed on to the end consumer, and would make the violation of this requirement an unfair business practice, in violation of unfair competition laws, as provided. The bill would require a seller of motor vehicle fuels to provide a receipt to a purchaser

that indicates the amount of tax that would have otherwise applied to the transaction.

This bill would also direct the Controller to transfer a specified amount from the General Fund to the Motor Vehicle Fuel Account in the Transportation Tax Fund. By transferring General Fund moneys to a continuously appropriated account, this bill would make an appropriation.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: no.

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

1 SECTION 1. Section 7360 of the Revenue and Taxation Code  
2 is amended to read:

3 7360. (a) (1) ~~A~~Except as provided in Section 7374, a tax of  
4 eighteen cents (\$0.18) is hereby imposed upon each gallon of fuel  
5 subject to the tax in Sections 7362, 7363, and 7364.

6 (2) If the federal fuel tax is reduced below the rate of nine cents  
7 (\$0.09) per gallon and federal financial allocations to this state for  
8 highway and exclusive public mass transit guideway purposes are  
9 reduced or eliminated correspondingly, the tax rate imposed by  
10 paragraph (1), on and after the date of the reduction, shall be  
11 recalculated by an amount so that the combined state rate under  
12 paragraph (1) and the federal tax rate per gallon equal twenty-seven  
13 cents (\$0.27).

14 (3) If any person or entity is exempt or partially exempt from  
15 the federal fuel tax at the time of a reduction, the person or entity  
16 shall continue to be so exempt under this section.

17 (b) (1) ~~On~~Except as provided in Section 7374, on and after  
18 July 1, 2010, in addition to the tax imposed by subdivision (a), a  
19 tax is hereby imposed upon each gallon of motor vehicle fuel,  
20 other than aviation gasoline, subject to the tax in Sections 7362,  
21 7363, and 7364 in an amount equal to seventeen and three-tenths  
22 cents (\$0.173) per gallon.

23 (2) For the 2011–12 fiscal year and each fiscal year thereafter,  
24 the board shall, on or before March 1 of the fiscal year immediately  
25 preceding the applicable fiscal year, adjust the rate in paragraph  
26 (1) in that manner as to generate an amount of revenue that will

1 equal the amount of revenue loss attributable to the exemption  
2 provided by Section 6357.7, based on estimates made by the board,  
3 and that rate shall be effective during the state's next fiscal year.

4 (3) In order to maintain revenue neutrality for each year,  
5 beginning with the rate adjustment on or before March 1, 2012,  
6 the adjustment under paragraph (2) shall also take into account the  
7 extent to which the actual amount of revenues derived pursuant to  
8 this subdivision and, as applicable, Section 7361.1, the revenue  
9 loss attributable to the exemption provided by Section 6357.7  
10 resulted in a net revenue gain or loss for the fiscal year ending  
11 prior to the rate adjustment date on or before March 1.

12 (4) The intent of paragraphs (2) and (3) is to ensure that the act  
13 adding this subdivision and Section 6357.7 does not produce a net  
14 revenue gain in state taxes.

15 (5) Commencing July 1, 2019, the adjustments in paragraphs  
16 (2) and (3) shall cease, and the rate imposed by this subdivision  
17 shall be the rate in paragraph (1).

18 (c) ~~On~~ *Except as provided in Section 7374, on and after*  
19 November 1, 2017, in addition to the taxes imposed by subdivisions  
20 (a) and (b), a tax is hereby imposed upon each gallon of motor  
21 vehicle fuel, other than aviation gasoline, subject to the tax in  
22 Sections 7362, 7363, and 7364, in an amount equal to twelve cents  
23 (\$0.12) per gallon.

24 (d) On July 1, 2020, and every July 1 thereafter, the board shall  
25 adjust the taxes imposed by subdivisions (a), (b), and (c), with the  
26 adjustment to apply to both to the base tax rates specified in those  
27 provisions and to any previous adjustment in rates made pursuant  
28 to this subdivision, by increasing the taxes by a percentage amount  
29 equal to the increase in the California Consumer Price Index, as  
30 calculated by the Department of Finance with the resulting taxes  
31 rounded to the nearest one-tenth of one cent (\$0.01). The first  
32 adjustment pursuant to this subdivision shall be a percentage  
33 amount equal to the increase in the California Consumer Price  
34 Index from November 1, 2017, to November 1, 2019. Subsequent  
35 annual adjustments shall cover subsequent 12 month periods. The  
36 incremental change shall be added to the associated rate for that  
37 year.

38 (e) Any increases to the taxes imposed under subdivisions (a),  
39 (b), and (c) that are enacted by legislation subsequent to July 1,  
40 2017, shall be deemed to be changes to the base tax rates for

1 purposes of the California Consumer Price Index calculation and  
2 adjustment performed pursuant to subdivision (d).

3 SEC. 2. Section 7362 of the Revenue and Taxation Code is  
4 amended to read:

5 7362. ~~The~~*Except as provided in Section 7374, the* tax specified  
6 in Section 7360 is imposed on the removal of motor vehicle fuel  
7 in this state from a terminal if the motor vehicle fuel is removed  
8 at the rack.

9 SEC. 3. Section 7363 of the Revenue and Taxation Code is  
10 amended to read:

11 7363. ~~The~~*Except as provided in Section 7374, the* tax specified  
12 in Section 7360 is also imposed on all of the following:

13 (a) The removal of motor vehicle fuel in this state from any  
14 refinery if either of the following applies:

15 (1) The removal is by bulk transfer and the refiner or the owner  
16 of the motor vehicle fuel immediately before the removal is not a  
17 licensed supplier.

18 (2) The removal is at the refinery rack.

19 (b) The entry of motor vehicle fuel into this state for sale,  
20 consumption, use, or warehousing if either of the following applies:

21 (1) The entry is by bulk transfer and the enterer is not a licensed  
22 supplier.

23 (2) The entry is not by bulk transfer.

24 (c) The removal or sale of motor vehicle fuel in this state to an  
25 unlicensed person unless there was a prior taxable removal, entry,  
26 or sale of the motor vehicle fuel.

27 (d) The removal or sale of blended motor vehicle fuel in this  
28 state by the blender thereof. The number of gallons of blended  
29 motor vehicle fuel subject to tax is the difference between the total  
30 number of gallons of blended motor vehicle fuel removed or sold  
31 and the number of gallons of previously taxed motor vehicle fuel  
32 used to produce the blended motor vehicle fuel.

33 SEC. 4. Section 7364 of the Revenue and Taxation Code is  
34 amended to read:

35 7364. ~~The~~*Except as provided in Section 7374, the* tax specified  
36 in Section 7360 is imposed as a backup tax as follows:

37 (a) On the delivery into the fuel tank of a motor vehicle  
38 fuel-powered highway vehicle of:

39 (1) Any motor vehicle fuel on which a claim for refund has been  
40 allowed; or

1 (2) Any liquid on which tax has not been imposed by this part,  
2 Part 3 (commencing with Section 8601), or Part 31 (commencing  
3 with Section 60001).

4 (b) On the sale of any motor vehicle fuel on which a claim for  
5 refund has been allowed.

6 (c) On the sale and delivery into the fuel tank of a motor vehicle  
7 fuel-powered highway vehicle of any liquid on which tax has not  
8 been imposed by this part, Part 3 (commencing with Section 8601),  
9 or Part 31 (commencing with Section 60001).

10 SEC. 5. Section 7374 is added to the Revenue and Taxation  
11 Code, to read:

12 7374. (a) The imposition of taxes under Sections 7360, 7362,  
13 7363, and 7364 is suspended for the period beginning on the  
14 effective date of this section and ending on the date one year after  
15 the effective date of this section.

16 (b) (1) All savings realized on the purchase of motor vehicle  
17 fuel by any party other than an end consumer due to the suspension  
18 of taxes pursuant to this section shall be passed on to the end  
19 consumer.

20 (2) Any violation of this subdivision shall constitute an unfair  
21 business practice punishable pursuant to Chapter 5 (commencing  
22 with Section 17200) of Part 2 of Division 7 of the Business and  
23 Professions Code.

24 (3) Notwithstanding any other law, a prospective plaintiff shall  
25 provide written notice of an alleged violation of this subdivision  
26 at least 60 days prior to bringing any enforcement action in order  
27 to give the defendant opportunity to remedy any deficiency.

28 (4) If a party receiving a notice pursuant to paragraph (3)  
29 responds in writing within 60 days, and the response offers an  
30 explanation for the deficiency and expresses an intent to remedy  
31 the deficiency, the opportunity to remedy a deficiency prior to  
32 initiating an enforcement action shall be extended an additional  
33 30 days.

34 (5) Any remediation of a deficiency during the waiting period  
35 described in this subdivision shall be an affirmative defense against  
36 an enforcement action.

37 (c) Upon any sale of motor vehicle fuels to which this section  
38 applies, the seller shall provide a receipt to the purchaser that  
39 clearly indicates the amount of motor vehicle fuel tax that would  
40 have applied to the sale if not for this section.

1 (d) For purposes of this section, “end consumer” means a  
2 purchaser of motor vehicle fuels for the purpose of consumption,  
3 and not for resale.

4 (e) (1) The Controller, no later than 60 days after the effective  
5 date of this section, shall transfer an amount equal to the amount  
6 collected pursuant to Sections 7360, 7362, 7363, and 7364 in the  
7 2021–22 fiscal year, adjusted for inflation, from the General Fund  
8 to the Motor Vehicle Fuel Account in the Transportation Tax Fund.  
9 This transfer amount is continuously appropriated in accordance  
10 with Section 8352.

11 (2) The Controller, no later than 60 days after the conclusion  
12 of the one-year period in subdivision (a), shall calculate the actual  
13 revenues from the imposition of taxes under Sections 7360, 7362,  
14 7363, and 7364 that would have been collected in the absence of  
15 the suspension in subdivision (a). If this amount is greater than the  
16 amount calculated in paragraph (1), the Controller shall transfer  
17 the difference from the General Fund to the Motor Vehicle Fuel  
18 Account in the Transportation Tax Fund. This transferred amount  
19 is continuously appropriated in accordance with Section 8352.

20 SEC. 6. This act is an urgency statute necessary for the  
21 immediate preservation of the public peace, health, or safety within  
22 the meaning of Article IV of the California Constitution and shall  
23 go into immediate effect. The facts constituting the necessity are:

24 In order to immediately lower gas prices and provide relief to  
25 California motorists, it is necessary for this act to take immediate  
26 effect.