

Date of Hearing: June 23, 2025

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION

Mike Gipson, Chair

SB 359 (Niello) – As Amended April 8, 2025

Majority vote. Tax levy. Fiscal committee.

SENATE VOTE: 38-0

SUBJECT: Use Fuel Tax Law: Diesel Fuel Tax Law: exempt bus operation

SUMMARY: Modifies the definition of "exempt bus operator" for purposes of the Diesel Fuel Tax Law and Use Fuel Tax Law to include counties, as specified. Specifically, **this bill:**

- 1) Adds a county that owns and operates a local transit system to the list of local government entities considered to be an "exempt bus operator" for purposes of the Diesel Fuel Tax Law and Use Fuel Tax Law.
- 2) Takes immediate effect as a tax levy, however, the changes made by this bill would become operative on the first day of the first calendar quarter commencing more than 90 days after the effective date, if enacted.

EXISTING LAW:

- 1) Imposes, as part of the Diesel Fuel Tax Law, an excise tax at a rate of \$0.454 on each gallon of diesel fuel when any of the following occurs:
 - a) Diesel fuel is removed from any refinery in this state, as specified;
 - b) Diesel fuel enters into the state for sale, consumption, use, or warehousing, as specified;
 - c) Diesel fuel is sold or removed in this state to an unlicensed person, as specified; or,
 - d) Blended diesel fuel is sold or removed in this state by the blender. (Revenue and Taxation Code (R&TC) Sections 60051 and 60052.)
- 2) Provides a partial (\$0.444 per gallon) exemption to the Diesel Fuel Tax Law to an "exempt bus operation", which includes all of the following:
 - a) A transit district, transit authority, or local city transit system;
 - b) A private company transporting people under contract or agreement with a public agency authorized to provide public transportation services, but only for diesel fuel consumed when operating under the agreement or contract;
 - c) A passenger stage corporation licensed by the Public Utilities Commission (PUC) to operate exclusively in urban or suburban areas or between cities in close proximity for

transportation of people for hire, compensation, or profit. The exemption does not apply to one-way routes that exceed 50 miles;

- d) A common carrier of passengers operating within the limits of a single city over a regular route, 98% of whose operations are exclusively within the limits of a single city, who does not qualify as a passenger stage corporation due to the 98% operation limitation;
 - e) A school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including field trips and athletic contests; and,
 - f) A private entity providing transportation services under contract or agreement for the purposes of transporting pupils to and from school and for other school or college activities involving pupils, including field trips and athletic contests, but only for diesel fuel consumed while operating under that contract or agreement. (R&TC Sections 60039 and 60502.2.)
- 3) Imposes, as part of the Use Fuel Tax Law, an excise tax on the use of specified alternative fuels¹ when either of the following occur:
- a) Specified alternative fuel is placed into any receptacle on a motor vehicle from which fuel is supplied for the propulsion of the vehicle; or,
 - b) Specified alternative fuel that is brought into this state in any such receptacle is consumed in this state. (R&TC Section 8607.)
- 4) Provides a partial exemption to the Use Fuel Tax Law for bus operations that would be exempt under the Diesel Fuel Tax Law. (R&TC Section 8655.)
- 5) Provides that the Use Fuel Tax is not imposed on fuel subject to the Motor Vehicle Fuel Tax or the Diesel Fuel Tax. (R&TC Section 7301.)
- 6) Requires those seeking to operate as exempt bus operators to apply for a license with the California Department of Tax and Fee Administration (CDTFA) and present an exemption certificate to purchase untaxed fuel from an ultimate vendor. (R&TC Sections 60036, 60040, 60141, and 60503.)
- 7) Requires exempt bus operators to file quarterly returns with the CDTFA and pay one cent (\$0.01) per gallon of diesel fuel tax on exempt diesel fuel purchases and one cent (\$0.01) per gallon (or equivalent) of alternative exempt fuel used. (R&TC Sections 8655 and 60502.2.)

FISCAL EFFECT: The CDTFA estimates that this bill would result in a \$461,582 reduction in diesel fuel tax, a \$93,430 reduction in use fuel tax from CNG buses, and a \$17,176 reduction in use fuel tax from LPG buses, for a combined revenue loss of \$572,188.

¹ "Specified alternative fuels" include alcohol fuels, liquefied petroleum gas (LPG), dimethyl ether (DME), and DME-LPG Blends, liquid natural gas (LNG), compressed natural gas (CNG), and kerosene, stove oil, and other fuels.

COMMENTS:

- 1) The author has provided the following statement in support of this bill:

SB 359 establishes clear guidelines for the California Department of Tax and Fee Administration (CDTFA), confirming that the existing tax exemptions for fuels—like diesel and compressed natural gas (CNG)—used by public transit operators also apply to counties that operate their own transit services directly. Several counties in California run their own transit systems through county departments such as public works or community development. These are not independent transit authorities, but they perform the same public service. Due to a lack of clarity in current law, these counties are required to pay taxes on transit fuel that other public transit operators are exempt from.

However, CDTFA has never collected this tax from any county public transit, until recently when Placer County was ordered to pay this seemingly new tax. This is an inconsistency that results in unfair treatment of some county public transits. These counties have never budgeted for this tax because historically, they haven't had to pay it. For small, rural counties in particular, an unexpected cost can significantly affect local transit budgets and services.

SB 359 amends Sections 60039 and 8655 of the Revenue and Taxation Code to explicitly include county-run transit systems in the fuel tax exemption—aligning the law with its intent and ensuring all public transit services are treated equitably. This adjustment in the code will not result in a loss of revenue for the state because this tax has never been collected by the state. This is about fairness, clarity, and protecting essential transit services in our counties.

- 2) In support of this bill, the Placer County Board of Supervisors notes, in part:

Current law does not consider that several counties operate their own transit system that are not separate authorities or agencies, but operated by a county department such as public works. Recently, the State has indicated that because the word “County” is not included in the language of the exemption, these counties that operate their own transit systems do not qualify for the exemption, although they are a public transit operator providing public transit services. This means that counties that operate their transit system are required to pay a tax that other public transit operators are not subject to while providing the same public services.

By adding the word “County” to Revenue and Taxation Code 60039 and 8655, SB 359 will ensure that county transit districts are treated fairly and are added to the list of entities that do not pay sales and use tax on fuels (diesel and CNG). This is extremely important as the State is experiencing a transit operations funding crisis, and the pandemic's impact on changing commute patterns and the loss of fare revenue remain huge challenges. Therefore, SB 359 will help Placer County operate its transit system that continues delivering safe, frequent, and reliable transit service to the communities it serves.

- 3) Committee Staff Comments:

- a) *Diesel and alternative fuel taxes:* California imposes a number of excise taxes on motor vehicle fuels, including on diesel and specified alternative fuels – such as LNG and CNG – when they are used to propel vehicles down public roads and highways. The current diesel fuel tax rate is \$0.454 per gallon and the current use fuel tax rate is \$0.180 per gallon.

The diesel excise tax is generally collected by fuel suppliers before they deliver fuel to retail stations. The Diesel Fuel Tax Law generally applies when diesel is removed from a refinery or a terminal rack, is brought into the state, or is sold to an unlicensed person. The excise tax also applies to the sale of blended diesel fuel by the blender. Fuel suppliers must register with the CDTFA, obtain the relevant license(s), and file quarterly returns and schedules documenting their sales and paying the required amount of tax.

The Use Fuel Tax applies to any combustible gas or liquid used in an internal combustion engine for the generation of power to propel a motor vehicle on the highway, but does not include fuel that is subject to the tax imposed by the Motor Vehicle Fuel Tax Law or the Diesel Fuel Tax Law. Alternative fuels used exclusively for non-vehicular uses such as heating, lighting, or cooking are not subject to the Use Fuel Tax. Additionally, alternative fuels used exclusively for off-highway operation of a vehicle are exempt, which includes various types of agricultural and construction equipment. As an alternative to paying use fuel tax to vendors, an operator of a vehicle powered by LPG, DME, DME-LPG blends, LNG, and CNG may pay an annual flat rate through the Flat Rate Fuel Decal Program, where the tax is based on the type and weight of the vehicle.

- b) *Exempt bus operations:* Enacted in 1968, the Mills-Hayes Act created the exempt bus operation exemption under the Use Fuel Tax Law.² This legislation exempted the following bus operations from fuel taxes:
- A transit district, transit authority, or local city transit system;
 - A private company transporting people under contract or agreement with a public agency authorized to provide public transportation services, but only for diesel fuel consumed when operating under the agreement or contract;
 - A passenger stage corporation licensed by the PUC to operate exclusively in urban or suburban areas or between cities in close proximity for transportation of people for hire, compensation, or profit. The exemption does not apply to one-way routes that exceed 50 miles;
 - A common carrier of passengers operating within the limits of a single city over a regular route, 98% of whose operations are exclusively within the limits of a single city, who does not qualify as a passenger stage corporation due to the 98% operation limitation;
 - A school district, community college district, or county superintendent of schools owning, leasing, or operating buses for the purpose of transporting pupils to and

² Up until July 1, 1995, the excise tax on diesel fuel was imposed under the Use Fuel Tax Law.

from school and for other school or college activities involving pupils, including field trips and athletic contests; and,

- A private entity providing transportation services under contract or agreement for the purposes of transporting pupils to and from school and for other school or college activities involving pupils, including field trips and athletic contests, but only for diesel fuel consumed while operating under that contract or agreement.

To qualify for this exemption, an exempt bus operator must register for an exempt bus operator license with the CDTFA, file the Exempt Bus Operator Diesel Fuel Tax Return (*CDTFA-501-DB*), and pay a tax of one cent for each gallon of diesel fuel used in an exempt bus operation. Additionally, the exempt bus operator must provide their vendor with a Certificate of Exempt Bus Operation (*CDTFA-231-DB*) when purchasing diesel fuel for an exempt purpose.

- c) *Are county-run transit systems exempt?* In a memorandum dated September 5, 2006, the State Board of Equalization (BOE), which administered motor vehicle fuel taxes prior to the creation of the CDTFA in 2017, directly addressed whether a county-run transit system qualified as an exempt bus operator.³ The BOE memorandum cites a letter from Senator James R. Mills to Governor Ronald Reagan urging the Governor to sign the bill, where he describes the purpose of the legislation as assisting transit systems in metropolitan areas of California and providing property tax relief "to those property owners whose local property tax dollars had been tapped to subsidize metropolitan transit." Accordingly, BOE staff concluded that the Legislature intended to reduce the amount of fuel taxes paid by specified bus operators, stating:

While the attitudes toward public transportation may have changed since 1968, and, while the tax on diesel fuel and the exemption for exempt bus operations have been moved from the Use Fuel Tax Law to the Diesel Fuel Tax Law, the language of the exemption has remained substantially the same... Taxpayer does not qualify as an exempt bus operation under section 60039, subdivision (a)(1), because it is a county, not a transit district, transit authority, or a city.

It should be noted that the Mills-Hayes Act explicitly allowed the exemption for private companies transporting people under contract or agreement with a public agency, which could be a county government. Proponents of this bill may see this as evidence that the intent of the Legislature in passing the Mills-Hayes Act did in fact consider county-wide transportation systems as worthy of an exemption.

- d) *What problem is this bill trying to solve?* According to the author and sponsor, Placer County operates a bus service composed of a fleet of vehicles using both diesel and alternative fuels to travel on public highways. Recently, the County was notified by the CDTFA that they did not qualify as an exempt bus operation because the statute did not explicitly include "counties" as one of the exempt entities.

³ Johnstone, *Exempt Bus Operation Opinion Request*, State Board of Equalization Legal Department (September 5, 2006). <https://www.cdtfa.ca.gov/lawguides/annotations/local-public-transit-system-operated-by-county.pdf>.

SB 359 adds "counties" to the definition of exempt bus operator in the Diesel Fuel and Use Fuel Tax Laws. This bill provides that its provisions become operative on the first day of the first calendar quarter commencing more than 90 days after the bill's effective date.

REGISTERED SUPPORT / OPPOSITION:**Support**

California Association for Coordinated Transportation (CALACT)
California Transit Association
County of Placer
Placer County Board of Supervisors
Rural County Representatives of California (RCRC)

Opposition

None on file

Analysis Prepared by: Wesley Whitaker / REV. & TAX. / (916) 319-2098