

M e m o r a n d u m**710.0010.250**

To: Mr. Clay Cowan
Local Tax Unit

September 28, 1990

From: John Abbott
Senior Tax Counsel

Subject: --- --- --- -- Allocation of Bradley-Burns Taxes

In your August 17, 1990 memorandum to Mr. Ron Dick, Senior Tax Counsel, you requested an opinion regarding the place of sale for local (Bradley-Burns) tax purposes on sales made by members of the --- --- --- [X]. As you are aware, Mr. Dick discussed the application of sales and use tax to the sales made by both in-state and out-of-state members of the [X] at their unattended card-operated fuel stations in his July 3, 1989 letter to Mr. G--- A. H--- (copy attached).

You describe these transactions in your memo as follows:

“As we understand the situation, [X] consists of 114 member companies, both outside California and in this State, that operate card lock fuel stations. Each member issues cards to their customers to unlock the fuel pumps. The cards may be used to obtain fuel at any of the [X] member stations. Coding on the cards identifies both the customers and the originating [X] member. Prices are not posted at the pumps, nor are the customers given a receipt at the time of delivery. The card coding, the delivering station, and the amount of fuel delivered is instead recorded and relayed to the [X] headquarters. There the fuel deliveries are priced according to prevailing wholesale rates at that geographic location, sorted according to the member codes on the customer’s cards, and transmitted to the respective members. Each member then either adds a mark-up to the wholesale price calculated by the headquarters, or calculates a charged based on a pre-negotiated price, and bills their customers accordingly. Each member bills for deliveries made to their customers at their own stations, and for deliveries made to their customers at other member stations. They do not bill for deliveries made at their own stations to other members’ customers.”

Your questions relate to the proper allocation of Bradley-Burns taxes to sales made by [X] members located in California. Your questions are as follows:

Question:

“1) Where an in-state member bills their customer for fuel delivered at another member’s in-state location, is the place of sale for the purposes of the Bradley-Burns Uniform Local Sales and Use Tax Law the place of delivery, the place at which the price is negotiated (billing location), or some other location?”

Answer. Assuming that a [X] member has one or more sales offices in California, our opinion is that the [X] member is not required to hold a subpermit for each of its unattended card-operated fuel stations. Regulation 1699(a) provides that permits are not required for warehouses or other places at which merchandise is merely stored, and which customers do not customarily visit for the purpose of making purchases. Although customers do in fact take delivery of the fuel at the unattended fuel stations, our view is that these fuel stations are similar to warehouse operations which do not require permits.

Therefore, the [X] member must hold a permit for each sales office located in California which participates in negotiating the sales of the fuel to its customers. These sales offices, not the fuel stations, are the places of sale of the fuel for Bradley-Burns tax allocation purposes. Under Regulation 1802(a)(3), in determining the place of sale, it does not matter that the property sold is never within the local taxing jurisdiction in which the retailer’s place of business is located. The tax should be allocated to the [X] member’s business location where the fuel prices are negotiated with its customers.

Question:

“2) If the answer to #1 above is the billing location, is the place of sale different for deliveries made at the member’s own stations?”

Answer. No, the place of sale is the same regardless of whether deliveries are made at the member’s own stations or at fuel stations operated by other participating members of the [X].

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cc: Ms. Joan Albu
Mr. Larry Micheli
Mr. John Waid