

M e m o r a n d u m**185.0141**

To: Mr. E. J. Snortland

September 19, 1990

From: Ronald L. Dick
Senior Tax CounselSubject: J---, Inc.
N--- N. A---No Permit
SR -- XX-XXXXXX

This is in reply to your August 6, 1990 memorandum regarding the application of sales tax to sales of fuel from the E--- Mini Mart, operated by N--- N. A---. You noted the following facts:

“J---, Inc. does not have a seller’s permit. J--- uses E--- Mini Mart’s account number to buy the gas from the distributor. The distributor invoices J--- (sic) and E--- does not even get a copy of the invoice.

“The consignee, E--- Mini Mart, supposedly reports the net of the tax collected less the 4 or 4.5 cents paid by the consigner to his vendor.”

You asked for our opinion as to how these transactions should be handled.

We believe that Mr. A--- is the retailer who should report and pay sales tax on the fuel sales. Mr. A--- is not an employee of J---, Inc.; he is an independent contractor taking possession of fuel owned by J---, Inc., to sell on consignment. In this regard, Sales and Use Tax Regulation 1569, Consignees and Lienors of Tangible Personal Property for Sale, provides in relevant part:

“A person who has possession of property owned by another, and also the power to cause title to that property to be transferred to a third person without any further action on the part of its owner, and who exercises such power, is a retailer when the party to whom title is transferred is a consumer. Tax applies to his gross receipts from such a sale....”

Your memorandum notes that there is a break in the audit trail between the distributor and the entity that sells the gasoline to the consumer. I assume that you are referring to the fact

that J--- does not hold a seller's permit. We believe that it is clear the J--- should hold a seller's permit. In fact, the first paragraph of the recitals in the agreement between J--- and Mr. A--- notes that, "Consignor (J---, Inc.) is engaged in the distribution and sale of gasoline and other petroleum products...."

If you have any further questions regarding this, feel free to contact me.

RLD:sr