

M e m o r a n d u m

275.0175.500

To : Mr. Robert Nunes
Chief, Annotations Project

Date: February 6, 1997

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Subject: Propane Annotations

We recently received a call from someone who was confused about the meaning of Annotation 275.0173. The actual wording seems to indicate that as long as the seller owns the tank, the sale of the propane may be exempt, which could include situations where the seller owns the tank but leases it to the customer. Of course, the sale would NOT be exempt if the tank is leased to the customer because the tank would be in the control of the purchaser and the sale of the propane would therefore occur when it is placed in the tank in liquid form. Annotation 275.0176 is subject to the same loose-wording infirmity. Rather than try to reword these annotations, please delete both of them.

I note that this is as good as a time as any to correct a problem we have in the area of propane annotations. We have multiple annotations on the same subject that cover the exact same circumstances with slightly different wording when we should have a single annotation. The multiple annotations simply cause confusion because it is not clear if they cover the same subject (if so, why include them) or if they cover different subjects. In many cases, when an interpretation is clarified or refined, it is often best to amend the existing annotation than to add a new one. This is also true when an interpretation covers a slightly different situation. In the present matter, in addition to the annotations to be deleted mentioned above, Annotations 275.0177, 275.0178, and 275.0179 all cover the exact same circumstances. They state the rule, and there are a couple minor variations. All these annotations should be deleted and combined into a single annotation that covers the subject. Therefore, please delete all the propane annotations cited herein and replace with the following:

A sale of propane delivered to the customer through a tank at the customer's location qualifies for the exemption provided by section 6353 only if the seller retains title to and possession of the propane until the propane is

delivered in vapor form to the customer's premises through mains or pipes. This occurs only where the seller controls the tank, as discussed below, and where the contract contains an explicit provision whereby the seller retains title to the propane until it is delivered into the customer's premise in a gaseous form. When the sale satisfies these conditions, it is exempt from tax.

Where a customer leases the tank from either the seller or some other person, or where the customer owns the tank (and does not lease it to the seller as discussed below), the sale of propane is subject to tax because the sale of the propane occurs upon delivery into the tank, while in liquid form. A seller controls the tank only where it owns the tank (and does not lease it to the customer or a third party) or it leases the tank from the customer. If the seller leases the tank from the customer, it must be a bona fide lease, and the seller cannot increase its charge for the propane to recover its cost of leasing the customer's tank. If it does so, the "lease" will be disregarded and the sale will be regarded as having occurred no later than when the propane is placed in the tank in liquid form, regardless of any title provision in the contract to the contrary.

If the sale satisfies the conditions for exemption discussed above, pre-billing the customer for the amount of liquid propane delivered into the tank, with a credit upon termination of the contract for any propane remaining in the tank, will not affect that exemption, nor will calculating the charge for the propane by converting the amount of liquid gallons delivered into the tank to cubic feet for purposes of billing.

I believe this includes all the variations covered in the existing annotations, and effectively incorporates into a single annotation our recent discussions on this subject.

DHL/cmm

cc: Ms. Leila Khabbaz (MIC:40)
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