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July 3, 1996

E. L. Sorensen, Jr.  
*Executive Director*

Mr. B--- W. K---  
B--- A--- Consulting  
XXXX --- Drive  
--- ---, --- XXXXX

Re: Measure of Tax on the Sale of Aviation Fuel

Dear Mr. K---:

This is in response to your letters dated March 20, 1996, regarding the measure of tax on the sale of aviation fuel to your clients. You state that you represent several airlines which fly in and out of various cities located in California and that these airlines are paying California sales tax reimbursement on their fuel purchases. You ask whether into-plane fees, airport fees and the federal aviation fuel deficit reduction tax of 4.3 cents per gallon, each of which are separately stated on invoices from the fuel retailers, are included in the measure of tax.

DISCUSSION

Retail sales of tangible personal property in California are subject to sales tax, measured by the gross receipts, unless the sale is specifically exempt from taxation by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6012(a) defines "gross receipts" as the total amount of the sale price of retail sales of retailers, valued in money, whether received in money or otherwise, without any deduction unless specifically provided by statute.

Into-Plane Fees

Transportation charges which satisfy the requirements of Revenue and Taxation Code section 6012(c)(7), as explained in Sales and Use Tax Regulation 1628 (copy enclosed), are excluded from the measure of tax. Regulation 1628 provides, in part:

"(a) ... [T]ax does not apply to 'separately stated' charges for transportation of property from the retailer's place of business or other point from which shipment is made 'directly to the purchaser,' provided the transportation is by other than facilities of the retailer, i.e., by United States mail, independent contract or

common carrier. The place where the sale occurs ... is immaterial, except when the property is sold for a delivered price or the transportation is by facilities of the retailer, as explained in (b) below. The amount of transportation charges excluded from the measure of tax shall not exceed the cost of the transportation to the retailer.

“....

“(b)(1) ... ‘Delivered Price.’ Property is sold for a delivered price when the price agreed upon in the contract for sale includes whatever cost or charge may be made for transportation of the property directly to the purchaser. A sale for a ‘guaranteed price’ including a separately stated amount for transportation is a sale for a ‘delivered price.’ Property is not sold for a delivered price when the price is agreed upon and to this price is added a separately stated amount representing the cost or charge for transportation of the property directly to the purchaser and any increase or decrease in the actual cost of transportation is borne by or credited to the purchaser.”

Our understanding is that the separately stated into-plane fees represent a charge to a retailer by an airport agent to deliver or cause fuel to be delivered directly into a purchaser’s aircraft from a storage facility at the airport. Thus, we assume that the transportation of the fuel is not by facilities of the retailer of the fuel. We further assume that the retailer is not selling fuel at a “delivered price,” as defined in Regulation 1628(b)(1). Rather, the price for the fuel is agreed upon and the separately stated amount representing the charge for the transportation of the fuel directly to the purchaser is added to that price, with any increase or decrease in the actual cost of transportation being borne by or credited to the purchaser. Under these facts, if the retailer of the fuel separately states such transportation charges in an amount that does not exceed the amount charged by the airport, the fees are for transportation which is excludable from the retailer’s taxable gross receipts.

#### Airport Fees

Our understanding is that airport fees are charged by the airport to aviation fuel retailers for the right to conduct business at the airport. Because airport fees represent another cost of doing business, they are included in the measure of tax. (See BTLG Annot. 295.1820 (9/5/74).) The fact that the retailer may subsequently pass such fees on to the purchasing air carriers and separately state such fees on its invoices has no effect on the application of tax.

#### Federal Deficit Reduction Tax

You ask whether the federal aviation fuel deficit reduction tax of 4.3 cents per gallon is included in taxable gross receipts. Revenue and Taxation Code section 6012(c)(4), as explained in Regulation 1617, excludes certain federal taxes from taxable gross receipts. Regulation 1617, provides in relevant part:

“(a) RETAILERS’ EXCISE TAXES. Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales whether imposed upon the retailer or upon the consumer and regardless of whether the amount of federal tax is stated to the consumer as a separate charge....

“(b) MANUFACTURERS’ OR IMPORTERS’ EXCISE TAXES.

(1) Except as stated in (b)(2) below gross receipts subject to sales tax and the sales price subject to use tax include the amount of any manufacturers’ or importers’ excise tax included in the prices of the property sold, even though the manufacturer or importer is also the retailer thereof, and it is immaterial whether or not the amount of such tax is stated as a separate charge.

“(2) Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of manufacturers’ or importers’ excise tax imposed pursuant to Section 4091 of the Internal Revenue Code with respect to diesel fuel and jet fuel for which the purchaser certifies that he or she is entitled to either a direct refund or credit against his or her income tax for the federal excise tax paid

...”

For purposes of this opinion, we assume that the federal aviation fuel deficit reduction tax of 4.3 cents per gallon is the tax imposed on the sale of aviation fuel by the producer or the importer under Internal Revenue Code section 4091. Under these facts, if the purchaser certifies that it is entitled to either a direct refund or credit against its income tax for the federal excise tax paid, such tax is not included in taxable gross receipts.

If you have any further questions, please write again.

Sincerely,

Sophia H. Chung  
Tax Counsel

SHC:rz

Enclosure: Regulation 1628

cc: --- District Administrator (--)