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**STATE BOARD OF EQUALIZATION**

(916) 445-5550

October 14, 1987

Dear

Your letter dated August 28, 1987 to Compliance Supervisor Patrick Farish has been referred to me for response. You ask whether certain deliveries of fuel into a common carrier pipeline are exempt from sales tax under Regulation 1620 as sales in interstate commerce.

To illustrate the subject transactions, you have provided us the following example:

--- made a sale of diesel fuel to --- at --- refinery for delivery into the --- Pipeline ---. The terms of the sale were FOB at the pipeline receiving meter, with title and risk of loss passing to the purchaser at the meter, and volumes based on meter readings.

Because --- delivers the product into the pipeline the meter ticket will show --- as the shipper; the term 'shipper' means the supplier of the product, who may or may not be the owner of the product moving in the pipeline. The pipeline receiving ticket does not show the ultimate destination, but does show to whom the batch belongs. As the supplier, --- will receive a confirmation copy of the pipeline receiving record showing volumes delivered into the pipeline....

"When title passed meter ---became the owner of the product and the actual shipper, and the movement of the product in the pipeline was a batch, subject to their control.

"...

"The --- Pipeline runs West from the --- area with transfer points at --- into lines to --- or --- and at --- to lines going to Phoenix and beyond or the --- Line to --- Terminals are located along the line between or at transfer points.

"When a tender is made into the pipeline one or more destinations are nominated. However, it is possible for the shipper --- to divert all or part

of the volumes without the knowledge of the supplier ---. This may happen due to lack of storage capacity at the intended destination and/or a change in the shipper's customers requirements.

“The --- transaction was delivered to --- and --- at their --- locations... However, the batch could have been diverted at any terminal along the line. For instance, --- could have diverted a portion of this batch to --- at -- - by notifying --- to transfer it at --- and --- have locations in California.

"This movement would be reported on the monthly pipeline statement to -- - since they are the owner and shipper of the batch moved. The transaction would not be reported on --- statement from ---. For competitive and legal reasons, data from one company's statement is not readily available to another company."

You have also included copies of four letters written by this Board's staff on this issue. Each letter stated that sales tax does not apply to sales when, pursuant to the contract of sale, the property is required to be shipped out of state, and is shipped out of state, by means of delivery by the seller to a common carrier, such as the pipeline used by ---. and ---. (See Reg. 1620(a)(3)(B).) To support the exemption for such sales, the seller must obtain and retain documentary evidence of the delivery of the property to a carrier for shipment outside this state. (Reg. 1620(a)(3)(D).)

One of the four letters, dated August 13, 1987, was from Compliance Supervisor R. o. Padilla and related to --- sales to ---through the pipeline. Mr. Padilla concluded that if the meter ticket provided by the pipeline to --- indicated to whom the fuel was shipped, it would support the exemption for the sale as one in interstate commerce. However, you believe that under the facts you have provided us, your sales to --- are taxable sales in this state. We agree.

The letters you included all accurately state the law applicable to sales in interstate commerce. However, they all assume that the facts bring the sales within the stated requirements, including that the contract requires the property be sent out of state. The letters then address the documentation required to support those facts. Based on the facts you now provide us, we conclude that the sales are not exempt as sales in interstate commerce. The contract between --- and --- apparently does not require that the fuel be shipped out of state. You have provided us one paragraph from that contract. As shown by that paragraph, the contract apparently merely provides for delivery of the fuel to a carrier or directly to --- in this state. This does not satisfy the requirements of the exemption that the property be required by the contract to be shipped out of state. Therefore, --- sales to --- in California under the facts stated above are subject to sales tax.

I note that, --- transactions could be structured to satisfy the requirements of the exemption. First, the contract would have to require that the fuel be delivered to a carrier for shipment out of state. Second, the fuel must actually be shipped out of state. As stated

in our previous letters, --- must retain documentation to establish that the fuel was delivered to the carrier and actually shipped out of state. The meter ticket --- receives does not indicate the place of delivery, but the delivery ticket received by the purchaser/shipper does so indicate. We understand that the pipeline does not provide you the delivery ticket. However, if --- obtains from its purchaser, and retains, a copy of the delivery ticket showing delivery out of state, such copy, together with the meter ticket provided to --- by the pipeline, will satisfy the documentation requirements. If the contract required the fuel be shipped out of state, --- sale will be exempt.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine  
Tax Counsel

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