

**STATE BOARD OF EQUALIZATION**

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August 3, 1992

P. G. D---
Tax Assistant
S--- Company
P.O. Box XXXX
---, TX XXXXX

Re: S- -- XX-XXXXXX

P. G. D---:

Your letter to Mr. Jose Arcadio dated June 11, 1992 was referred on July 3, 1992 to the Legal Division for response. You ask confirmation of your understanding of exemptions from the requirement to prepay sales tax (which you refer to as PPST). You state:

“Our understanding is PPST follow[s] the same regulations as Sales and Use Tax including but not limited to the following exemptions:

- “1) Product loaded onto a common carrier for immediate export regardless of nominee.
 - “a) Common carrier can be owned by same as purchasing company if they are separate entities and common carrier is registered with the ICC Authority.
- “2) Airlines whose first destination is foreign or Alaska or Hawaii.
- “3) Product when title passes in California but, is directly loaded onto a vessel for immediate export.”

Discussion

Quoted above are three scenarios under which you believe that sales of fuel would be exempt. The first is unclear, the second is misstated, and the third is misstated as well as repealed as of July 15, 1991. Thus, before addressing your specific question regarding whether transactions which are exempt from sales tax are also exempt from the requirement to prepay sales tax, it will be helpful to your understanding of exemptions from sales tax to discuss the application of sales tax to your three scenarios.

Exemptions from sales tax

Your first scenario appears to relate to the exemption for sales in interstate and foreign commerce. This exemption is for a sale of tangible personal property which, as required by the contract of sale, is shipped outside California by a common carrier or by facilities of the seller. (Rev. & Tax. Code § 6396, Reg. 1620.) I do not understand what you mean by “regardless of nominee” and therefore make no comment with respect to that statement.

Regarding the scenario where the carrier and the purchaser are related, the person performing the carriage must be “engaged in the business of transporting for compensation tangible personal property owned by other persons” (Rev. & Tax. Code § 6396.) Since you state that the person in question is a common carrier, I assume that it is engaged in the business of transporting for compensation tangible personal property owned by other persons. However, since the carrier is related to the purchaser and you have not stated whether that person is being compensated a fair consideration for the transportation in question, we are unable to determine whether we would regard the purchaser as taking possession of the property in California (meaning that the sale would not be exempt under section 6396).

Your second scenario appears to relate to the exemption provided by Revenue and Taxation Code section 6357.5. That provision exempts from sales tax sales of fuel to an air common carrier for immediate shipment or consumption in its business as an air common carrier, on a flight whose first destination is a *foreign destination*. Neither Alaska nor Hawaii are foreign destinations. A sale of fuel for consumption on a flight to either Alaska or Hawaii would not qualify for the section 6357.5 exemption. Rather, that sale would be subject to sales tax.

Your third scenario appears to relate to the exemption that had been provided by Revenue and Taxation Code section 6385 with respect to sales of fuel to a water, air, or rail common carrier for immediate shipment outside California. This provision did not exempt the fuel that would be consumed by the purchaser to reach its first out-of-state destination. Rather, if the transaction qualified for the exemption, only the sale of that portion of the fuel consumed by the purchaser after reaching its first out-of-state destination was exempt from tax. This exemption is no longer relevant since it was repealed as of July 15, 1991.

Prepayment of sales tax

The requirement to prepay sales tax on sales of fuel is set forth in Revenue and Taxation Code section 6480 et seq. or in section 6480.10 et seq. The former covers motor vehicle fuel distributions (essentially sales of gasoline) while the latter covers sales of diesel and aircraft jet fuel. When a person is required to prepay sales tax on its sales of fuel in California, it must prepay sales tax with respect to all such sales: there are no exemptions from the requirement to prepay sales tax.

Even if that person makes a retail sale of fuel that is exempt from sales tax, it nevertheless must prepay sales tax with respect to that sale. Revenue and Taxation Code sections 6480.6 (motor vehicle fuel distributions) and 6480.21 (sales of diesel and aircraft jet fuel) apply to such situations. Section 6480.6 is substantially the same as section 6480.21, which states:

“(a) The following persons who have paid prepayment amounts, either directly to the board or to the person from whom it was purchased, shall be refunded those amounts:

“....

“(2) Any person who sells the fuel that is exempt from the sales or use tax pursuant to Sections 6352, 6357, 6381, and 6396.

“....

“(b) In lieu of a refund, the board may authorize a credit to be taken by the person to whom the refund is due upon his or her prepayment form or sales and use tax return.”

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

Sincerely,

David H. Levine
Senior Tax Counsel

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