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Credit Card Company

A credit card company contracts with a fuel distributor and independent dealers that sell the distributor's products to allow the credit card company's fleet customers to purchase fuel at the distributor's and independent dealers' retail locations. The contracts specifically state that title to the fuel will pass from the distributor and independent dealers to the credit card company when the fuel is delivered into the vehicle of the fleet customer. Since title to the fuel passes to the credit card company, the distributor or independent dealer is selling the fuel for resale and the credit card company is the retail seller of the fuel to the fleet customers. Therefore the credit card company is the ultimate vendor, as defined under Revenue Taxation Code section 60036, when the fuel is sold using the credit card for use in a farm for farming purposes or in an exempt bus operation; and the credit card company may file claims for refund as provided in section 60502. 6/30/98. (M99-1).

Memorandum

To: Mr. Ed King, Chief
Fuel Taxes Division MIC: 33 Date: June 30, 1998

From: Janet Vining
Legal Division

Subject: **Credit Card Sales**

I am writing in response to your June 26, 1998 memorandum to Mary Armstrong concerning the sale of diesel fuel using the (redacted) credit card. For the reasons set forth below, we conclude that (redacted) is the ultimate vendor of diesel fuel sold using the (redacted) credit card for use in a farm for farming purposes or in an exempt bus operation, and may file a claim for refund of the diesel fuel tax paid on such fuel.

As described in the documents attached to your memorandum, (redacted) has entered into a contract with (redacted) whereby (redacted) will, among other things, accept the (redacted) credit card for purchases at (redacted)-operated service stations. Paragraph 5 of the Company Operated Marketing Agreement between (redacted) and (redacted) (Exhibit G to the Proprietary Fleetcard Network Associate Agreement) states:

(Redacted) will purchase motor fuels from (redacted) and title to such fuel shall pass to (redacted) as such fuels pass the nozzle of the retail fuel pump into the (redacted) customer's vehicle at (redacted) location

(Redacted) also contracts for its credit card to be accepted at the service stations of independent dealers that sell (redacted) products. (Redacted) enters into an agreement with each individual service station owner which contains a similar clause indicating that (redacted) will purchase motor fuels from the service station operator, and title to the fuel will pass to (redacted) as the fuel passes the nozzle of the retail fuel pump in the customer's vehicle at the service station location.

July 1, 1998

Pursuant to the contracts described above, either (redacted) or the service station operator handling (redacted) products sells diesel fuel to (redacted), and (redacted) then sells the fuel to the user of the fuel. Therefore, (redacted) is the "ultimate" vendor of such fuel, as that term is defined in Revenue and Taxation Code Section 60036, when the fuel is sold for use on a farm for farming purposes or for use in an exempt bus operation (redacted) is entitled to the ultimate vendor refund provided for in Revenue and Taxation Code Section 60502, and must register with the Board as an ultimate vendor. Each claim for refund must be supported by documentation showing that tax was paid on the diesel fuel.

If you have further questions concerning this matter we will be happy to discuss them with you.

JV:lm

Cc: Mr. Bob Frank MIC: 30
 Mr. Doug Shepherd MIC: 30
 Mr. Lou Feletto MIC: 30
 Ms. Mary Armstrong
 Ms. Judy Nelson