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Reg-1137-Refund of Aircraft Jet Fuel Tax from Dealer

None of the aircraft jet fuel tax provisions or the Motor Vehicle Fuel Tax Law in general permit a purchaser of aircraft jet fuel who is excluded from the definition of "aircraft jet fuel user" pursuant to section 7389(a), (b), or (c), to claim directly a refund from either the Controller or the Board for excess tax reimbursement that the purchaser erroneously paid when it purchased fuel. However, if a purchaser erroneously pays aircraft jet fuel tax reimbursement on fuel sales that are not taxable due to an exemption, the purchaser may obtain a refund of the excess tax reimbursement paid from the aircraft jet fuel dealer to whom the excess tax reimbursement was paid. Upon a showing that the excess tax reimbursement has or will be refunded to the purchaser, the aircraft jet fuel dealer may obtain a refund from the state of excess tax reimbursement that was remitted to the state in error. 10/12/06.

Memorandum

To: Edward W. King, Chief
Fuel Taxes Division (MIC: 33) Date: October 12, 2006

From: Carolee D. Johnstone Telephone: (916) 323-7713
Tax Counsel CalNet: 8-473-7713

Subject: **AIRCRAFT JET FUEL TAX EXCLUSIONS**
AMENDMENT TO ANNOTATION 1180.660

I am responding to your memorandum dated February 21, 2006, regarding so-called Motor Vehicle Fuel License Tax Annotation (Annotation) 1180.660, which pertains to the aircraft jet fuel tax. The letter on which this annotation is based was issued on October 2, 1970. At that time, the provisions of the aircraft jet fuel tax were included in the Motor Vehicle Fuel License Tax Law. As of January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel (MVF) Tax Law (Pt. 2, commencing with § 7301, of Div. 2 of the Rev. & Tax. Code), where provisions pertaining to the aircraft jet fuel tax (Ch. 2.5, commencing with § 7385) now reside. You have requested, on the assumption that the substantive content of Annotation 1180.660 is still valid, that this annotation be amended to reflect the change in the law governing the aircraft jet fuel tax.

Annotation 1180.660, entitled "Refund of Jet Fuel Tax Through Supplier," states as follows:

There is no provision in the law for refunds to the purchaser for the tax paid on jet fuel. However, if a person can qualify as an exempt purchaser under Section 7374 of the Revenue and Taxation Code and Regulation 1137, he may purchase jet fuel tax free.

If a person is an exempt purchaser of jet fuel and has paid the tax, he should notify his suppliers and furnish them with exemption certificates as indicated in Regulation 1137. The suppliers can then claim refunds with the Board of Equalization. The suppliers will then be in a position to reimburse purchaser for the tax that was inadvertently collected.

Specifically, with regard to a company that submitted a claim for refund to the State Controller (see Rev. & Tax. Code, § 8101 et seq.) based on its assertion that it is exempt from paying the aircraft jet fuel tax, you have asked:

1. If a person purchases aircraft jet fuel from an aircraft jet fuel dealer and pays the aircraft jet fuel tax to the dealer, as shown on the invoice, may the person obtain a refund directly from the State if the person is not an "aircraft jet fuel user," as defined in

Revenue and Taxation Code ¹ section 7389 of the MVF Tax Law?

2. Who may obtain a refund of aircraft jet fuel tax from the State if an aircraft jet fuel dealer charges the tax in error?

DISCUSSION

Provisions pertaining to the imposition and administration of the aircraft jet fuel tax are contained in Chapter 2.5, commencing with section 7385, of the MVF Tax Law (hereafter Chapter 2.5). None of these provisions addresses claims for refund of the aircraft jet fuel tax. However, section 7397 states: "All of the administrative provisions of [the MVF Tax Law] not inconsistent with [Chapter 2.5] shall be applicable to the administration of the [aircraft jet fuel tax]." Therefore, sections of the MVF Tax Law dealing with claims for refund of the MVF tax may also apply to claims for refund of the aircraft jet fuel tax, as long as they are not inconsistent with the provisions contained in Chapter 2.5.

Chapter 7 (commencing with section 8101) of the MVF Tax Law includes provisions for two types of refunds. First, Article 1, commencing with section 8101, provides for refunds of tax paid directly or indirectly to vendors on certain sales of MVF that are exempt from payment of MVF taxes. (See §§ 8101, 8101.1 & 8101.6 [permitting certain persons to claim refunds of taxes paid with respect to certain sales of MVF].) Section 8102 specifies that the person claiming a refund in such circumstances must submit the claim directly to the Controller.

Alternatively, Article 2 of Chapter 7, commencing with section 8126, provides for refund of "any [tax] not required to be paid under the [MVF Tax Law that] has been paid by any person to the state." (§ 8126.) Pursuant to Article 2, the person who paid the tax to the state ² may submit a claim for refund of such excess tax payments to the Board of Equalization (Board), which then certifies the excess amount to the Controller for credit or refund. (See §§ 8126 & 8128.)

With regard to refunds permitted under Article 1, section 7397, which pertains to the administration of the aircraft jet fuel tax (including refund claims), only applies if the MVF Tax Law provision(s) in question is (are) not inconsistent with the Chapter 2.5 provisions. Section 8102 only applies to claims for refund pertaining to certain sales of MVF that are specified in sections 8101, 8101.1 and 8101.6. The types of sales listed in these refund sections do not involve the types of persons listed as excluded from the definition of "aircraft jet fuel user" in the Chapter 2.5 provision of section 7389, subdivisions (a), (b), and (c). Thus, these refund sections are inconsistent with section 7389. Therefore, the refund provisions

¹ All future statutory references will be to the Revenue and Taxation Code unless stated otherwise.

² Persons who pay the tax to the state are: (1) aircraft jet fuel dealers; and (2) purchasers who buy jet fuel ex tax under an exemption certificate but who use such fuel as an aircraft jet fuel user.

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contained in Chapter 7, Article 1, are not applicable to persons that are excluded from the aircraft jet fuel tax under section 7389. Accordingly, such persons may not file claims for refund with the Controller, but must make their claims indirectly through the relevant aircraft jet fuel dealers who are authorized to make such claims pursuant to Article 2, (as discussed below).

In contrast to the Article 1 provisions, the Article 2 provisions are not inconsistent with the aircraft jet fuel tax provisions under Chapter 2.5. Section 7392 provides that the aircraft jet fuel tax is "imposed upon every aircraft jet fuel dealer . . . for . . . fuel sold to an aircraft jet fuel user. (§ 7392.) The aircraft jet fuel dealer is required to file a return with the Board, along with a remittance made payable to the Controller for the amount of tax due (see §§ 7393 & 7651), and is, therefore, the person who made payment to the state, including any amount in excess of the tax due under section 7392.

Further, California Code of Regulations, title 18, section (Regulation or Reg.) 1137 clarifies that sales of aircraft jet fuel to certain persons are exempt from the aircraft jet fuel tax. The timely taking, in good faith, of a valid exemption certificate will shield an aircraft jet fuel dealer from the imposition of tax. (Reg. 1137, subds. (a) & (b).) However, when an aircraft jet fuel dealer mistakenly collects tax reimbursement on an exempt sale, the aircraft jet fuel dealer may, on behalf of a purchaser, file with the Board a claim for refund for excess aircraft jet fuel tax reimbursement erroneously collected and remitted when the purchaser is not an "aircraft jet fuel user" pursuant to section 7389, subdivisions (a), (b), and (c), as permitted in Chapter 7, Article 2.

In sum, apart from the specific Article 1 provisions discussed above, there are no provisions in Chapter 2.5 or the MVF Tax Law in general that permit a purchaser of aircraft jet fuel who is excluded from the definition of "aircraft jet fuel user" pursuant to section 7389, subdivisions (a), (b), or (c), to claim directly a refund from either the Controller or the Board for excess tax reimbursement that the purchaser erroneously paid when it purchased fuel. However, if a purchaser erroneously pays aircraft jet fuel tax reimbursement on fuel sales that are not taxable due to an exemption, the purchaser may obtain a refund of the excess tax reimbursement paid from the aircraft jet fuel dealer to whom the excess tax reimbursement was paid. Upon a showing that the excess tax reimbursement has or will be refunded to the purchaser, the aircraft jet fuel dealer may obtain a refund from the state of excess tax reimbursement that was remitted to the state in error.

Please let me know if you have any questions regarding this information.

cc: Lou Feletto (MIC: 33)
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Todd Keefe (MIC: 56)
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