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Reg 1137 Fueling Aircraft Does Not Exempt

Activities that involve merely the sale and delivery of aircraft jet fuel into the fuel tanks of aircraft are not considered to be the "servicing of aircraft" for purposes of the aircraft jet fuel tax. Otherwise, the fundamental basis for the imposition of the tax would be defeated. To avoid this absurdity, sections 7389 and 7392 cannot reasonably be interpreted to mean that an aircraft jet fuel dealer is excluded from the definition of "aircraft jet fuel user," and is not liable for tax because the dealer delivers that aircraft jet fuel into the fuel tanks of the subject aircraft. 10/12/06.

Memorandum

To: Edward W. King, Chief
Fuel Taxes Division (MIC: 33)

Date: October 12, 2006

From: Carolee D. Johnstone
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Subject: **AIRCRAFT JET FUEL TAX EXCLUSIONS
AMENDMENT TO ANNOTATION 1180.220**

I am responding to your memorandum dated February 21, 2006, regarding so-called Motor Vehicle Fuel License Tax Annotation (Annotation) 1180.220, which pertains to the aircraft jet fuel tax. The memorandum on which this annotation is based was issued on November 25, 1969. 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 As of January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel (MVF) Tax Law (Pt. 2, commencing with § 7301, of Div. 2 of the Rev.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 1180.220 is still valid, that this annotation be amended to reflect the change in the law governing the aircraft jet fuel tax.

Annotation 1180.220, entitled “Fueling Aircraft Does Not Exempt,” states as follows:

A person who merely fuels aircraft is not engaged in the business of . . . servicing of aircraft, within the meaning of Section 7374 of the Revenue and Taxation Code. To consider a dealer as a “non-user” would be inconsistent with the provisions of Section 7380 of the Revenue and Taxation Code which imposes the tax on fuel used by a dealer.

You have asked, with respect to Annotation 1180.220, whether an aircraft jet fuel dealer who sells aircraft jet fuel to aircraft jet fuel users and delivers the aircraft jet fuel into the fuel tanks of aircraft, and who is engaged in no other activity involving aircraft, is a person who is engaged in the business of servicing of aircraft within the meaning of section 7389, subdivision (b), of the Revenue and Taxation Code.¹

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

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A person who is “engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft, or modifying, overhauling, repairing, maintaining, or servicing of aircraft” is excluded from the definition of “aircraft jet fuel user.” (§ 7389, subd. (b) [emphasis added].) Unless an exclusion applies, section 7389 (which is comparable to section 7374 under the prior law) generally defines “aircraft jet fuel user” to mean “any person who uses aircraft jet fuel for the propulsion of an aircraft in this state.” An “aircraft jet fuel dealer” is, for purposes of this discussion, a “person who sells to an aircraft jet fuel user, aircraft jet fuel delivered . . . into the fuel tanks of aircraft.” (§ 7388.) The aircraft jet fuel tax is imposed on an aircraft jet fuel dealer for each gallon of fuel that the aircraft jet fuel dealer sells “to an aircraft jet fuel user.” (§ 7392.) Since persons who are engaged in the servicing of aircraft are excluded from the definition of “aircraft jet fuel users,” sales of aircraft jet fuel to such persons are not subject to the tax.

However, activities that involve merely the sale and delivery of aircraft jet fuel into the fuel tanks of aircraft are not considered to be the “servicing of aircraft” for purposes of this tax. Otherwise, the fundamental basis for the imposition of the tax would be defeated. To avoid this absurdity, sections 7389 and 7392 cannot reasonably be interpreted to mean that an aircraft jet fuel dealer is excluded from the definition of “aircraft jet fuel user,” and is not liable for tax because the dealer delivers that aircraft jet fuel into the fuel tanks of the subject aircraft.

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

cc: Lou Feletto (MIC: 33)
Doug Shepherd (MIC: 65)
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