

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 1180.180**

I am responding to your memorandum dated February 21, 2006, regarding so-called Motor Vehicle Fuel License Tax Annotation (Annotation) 1180.180, which pertains to the aircraft jet fuel tax. The memorandum on which this annotation is based was issued July 6, 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 As of January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel (MVF) Tax Law (Pt. 2, commencing with § 7301, of Div. 2 of the Rev.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 1180.180 is still valid, that this annotation be amended to reflect the change in the law governing the aircraft jet fuel tax.

Annotation 1180.180, entitled "Exemption Certificates," states as follows:

If the "aircraft jet fuel dealer" has accepted the exemption certificate in good faith, he will not be held responsible for the tax. Any tax due will be assessed by the Board against the "aircraft jet fuel user."

If the "aircraft jet fuel dealer" has reason to believe that the exemption certificate is not valid, he should charge tax on his sales.

You ask whether an aircraft jet fuel dealer who accepts an exemption certificate from an aircraft jet fuel purchaser in good faith is still responsible for the aircraft jet fuel tax on fuel sold to that purchaser. Further, if the aircraft jet fuel dealer has reason to believe that the exemption certificate presented by a purchaser is not valid, should the dealer charge reimbursement for the aircraft jet fuel tax on fuel sold to that purchaser?

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DISCUSSION

Section 7394 of the Revenue and Taxation Code¹ provides that, if a person certifies in writing to an aircraft jet fuel dealer that the sale or use of the fuel he or she is purchasing is not subject to the aircraft jet fuel tax "and the person uses the fuel as an aircraft jet fuel user, the person shall be liable for payment of the tax . . . as if he or she were an aircraft jet fuel dealer." The clear implication of Regulation 1137, subdivision (c), which interprets section 7394, is that dealers who take exemption certificates in good faith are shielded from liability for aircraft jet fuel tax that may otherwise be due. Moreover, this reading of the regulation is consistent with how the Board treats exemption certificates under the Sales and Use Tax Law. (See, e.g., § 6421, subd. (a).)

Accordingly, if an aircraft jet fuel dealer accepts an exemption certificate from a purchaser in good faith, it is reasonable to conclude that the dealer is relieved from liability for the tax due on that sale. If the purchaser subsequently uses the fuel as an "aircraft jet fuel user," the purchaser "is liable for the tax" on such fuel "at the time of such use" and "shall report and pay the tax to the board as though he were an aircraft jet fuel dealer." (Reg. 1137, subd. (c).)

However, if the aircraft jet fuel dealer accepts an exemption certificate from a purchaser who, based on the dealer's experience or knowledge, would likely use the fuel in a nonexempt activity, the dealer's good faith acceptance may be questioned. In such a situation, the dealer should not accept the exemption certificate and may collect tax reimbursement on that sale from the purchaser.

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

cc: Lou Feletto (MIC:33)
Doug Shepherd (MIC:65)
Arlo Gilbert (MIC:33)
Todd Keefe (MIC:56)
Randy Ferris (MIC:82)

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