

M e m o r a n d u m

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 ANNOTATIONS 1180.020, 1180.200, & 1180.440**

I am responding to your memorandum dated February 21, 2006, regarding so-called Motor Vehicle Fuel License Tax Annotations (Annotation) 1180.020, 1180.200, and 1180.440, which pertain to the aircraft jet fuel tax. The letter on which these annotations are based was issued on 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 As of January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel (MVF) Tax Law (Pt. 2, commencing with § 7301, of Div. 2 of the Rev.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 Annotations 1180.020, 1180.200, and 1180.440 is still valid, that the annotations be amended to reflect the change in the law governing the aircraft jet fuel tax.

All three of these annotations pertain to the definition of "person" and whether sales to certain governmental agencies are subject to the aircraft jet fuel tax.

First, Annotation 1180.020, entitled "Armed Forces Only U.S. Exemption," states as follows:

Sales of jet fuel to the armed forces of the United States are exempt from tax.
Sales to other governmental agencies are subject to the jet fuel tax.

Annotation 1180.200, entitled "Foreign Governments," states as follows:

Foreign governments are not included within the definition of a "person" in the Motor Vehicle Fuel License Tax Law, therefore, sales of jet fuel to foreign governments are not subject to the jet fuel tax.

Lastly, Annotation 1180.440, entitled "Local and State Governments," states as follows:

Sales to local or state governmental agencies are subject to the jet fuel tax.

ANNOTATION 1180.020

You ask, since section 7389, subdivision (c), of the Revenue and Taxation Code¹ excludes the armed forces of the United States from the definition of an "aircraft jet fuel user," are sales of aircraft jet fuel to other agencies of the United States taxable?

Section 7329 defines "person," under the MVF Tax Law, to include, among others, "the United States." Section 7397 states that: "All of the administrative provisions of [the MVF Tax Law] not inconsistent with [the aircraft jet fuel tax provisions] shall be applicable to the administration of the tax imposed by [the aircraft jet fuel tax statute]." Therefore, the definition of "person" applies to the aircraft jet fuel provisions. Further, any "person who uses aircraft jet fuel for the propulsion of an aircraft in this state" is an "aircraft jet fuel user." (§ 7389.) Since only the armed forces of the United States are excluded from the definition of "aircraft jet fuel user" under section 7389, subdivision (c), accordingly, all other departments, agencies, and instrumentalities of "the United States" are "aircraft jet fuel users" for purposes of this tax.

Therefore, although sales of aircraft jet fuel to the armed forces of the United States are exempt from the aircraft jet fuel tax, an aircraft jet fuel dealer is liable for the tax on sales of aircraft jet fuel to other departments, agencies, and instrumentalities of the United States.

ANNOTATION 1180.200

You ask, since section 7329 does not include a foreign government in the definition of "person," are sales of aircraft jet fuel to foreign governments subject to the aircraft jet fuel tax?

Section 7329, which defines "person" under the MVF Tax Law, does not include "foreign governments" or any language that may be interpreted to mean "foreign governments" in the definition. Section 7397 states that: "All of the administrative provisions of [the MVF Tax Law] not inconsistent with [the aircraft jet fuel tax provisions] shall be applicable to the administration of the tax imposed by [the aircraft jet fuel tax statute]." Further, pursuant to section 7389, an "aircraft jet fuel user" means a "person," and, pursuant to section 7392, the aircraft jet fuel tax is only imposed on an aircraft jet fuel dealer for fuel sold to an "aircraft jet fuel user."

Since foreign governments are not included in the definition of "person" under the Motor Vehicle Fuel Tax Law, foreign governments are not "aircraft jet fuel users." Therefore, aircraft jet fuel dealers are not liable for the tax on sales of aircraft jet fuel to foreign governments.

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

ANNOTATION 1180.440

You ask whether sales of aircraft jet fuel to California state and local agencies are taxable.

Section 7329 defines "person," under the MVF Tax Law, to include, among others, "this state, any county, city and county, municipality, district, or other political subdivision of the state, or any other group or combination acting as a unit." Section 7397 states that: "All of the administrative provisions of [the MVF Tax Law] not inconsistent with [the aircraft jet fuel tax provisions] shall be applicable to the administration of the tax imposed by [the aircraft jet fuel tax statute]." Further, any "person who uses aircraft jet fuel for the propulsion of an aircraft in this state" is an "aircraft jet fuel user" (§ 7389 [emphasis added]), and, pursuant to section 7392, the aircraft jet fuel tax is imposed on an aircraft jet fuel dealer for fuel sold to "aircraft jet fuel users."

Since state and local governmental agencies are included in the definition of "person" under the Motor Vehicle Fuel Tax Law, state and local governmental agencies are "aircraft jet fuel users." Therefore, an aircraft jet fuel dealer is liable for the tax on sales of aircraft jet fuel to state and local governmental agencies.

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

cc: Lou Feletto (MIC:33)
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