2176.200

(916) 445-6450

January 24, 1990

4.7. Tax

Dear :

This is in reply to your November 3, 1989 letter regarding the application of use fuel tax to fuel used while vehicles are stationary.

You note that represents several trucking concerns which are either based in or travel through this state. Drivers employed by some of your clients leave their truck's engine running while the truck's trailer is being loaded, unloaded, or while the driver sleeps. Your clients have asked your opinion as to whether fuel used during such stationary periods is subject to use fuel tax. Given this information, you asked the following:

> "1. What is the position of the California State Board of Equalization regarding Sec. 8652(c) and does the State consider fuel consumed by a User on the highway during periods of idling as exempt fuel?"

Except for fuel used to run power take-off equipment, we believe that tax applies to the use of fuel in a vehicle during periods the vehicle is idling on the highway. (See Use Fuel Annot. "Power Takeoff Equipment," BTLG p. 5513, copy attached.)

> "2. Does the State consider fuel consumed off-highway during stationary periods as exempt fuel?"

Yes, it is our opinion that, under Revenue and Taxation Code section 8653, tax would not apply to the use of such fuel.

> "3. If proper records were maintained, would the State consider fuel consumed while a truck is being loaded, unloaded or used as a stationary sleeping quarter as exempt fuel?"

Yes, only if the truck is loaded, unloaded, or used as stationary sleeping quarters off the highway, we believe that tax does not apply to the use of the fuel used in the truck during such time. (Rev. & Tax. Code § 8653.)

You then asked two questions concerning the nature of records a user must maintain to document the exempt use of fuel. We are sending a copy of your letter to Mr. E. V. Anderson, the Board's Excise Tax Administrator, for a response to those questions. However, if you need further information as to the application of tax, feel free to write again.

Very truly yours,

Ronald L. Dick
Tax Counsel

RLD:sr

Enc.

bc: Mr. E. V. Anderson
(Please assign someone to respond to Mr. last two questions.)

Mr. Mark Walker
Audit Evaluation and Planning

Mr. E. L. Sorensen, Jr.