

380.0000 MOTOR VEHICLE AND AIRCRAFT FUELS—Regulation 1598

[380.0026](#) **Gasoline Sales on Wet Rentals of Mobile Transportation Equipment.** A company manufactures and rents mobile transportation equipment to motion picture studios. Included in the receipts was a charge listed as “Mobile Crane Gas/Oil per mile.” The company believes this item was a charge for rental of the mobile transportation equipment and not representative of a sale of gas. The company presented a number of letters from its customers which allege that due to the course of dealing, it was implicitly understood that the mileage charge was not for fuel but represented a charge made for the use of the vehicles similar to those mileage charges made by car rental agencies.

The fact that the company chose to charge for its fuel based upon mileage is its choice. The sales price of the fuel is separately stated from the rental charge. The customers agreed with those mileage charges and paid for gasoline and oil on a per-mile basis. The company is selling fuel, and it is the retailer of the fuel that it sold. 5/30/91.

380.0035 **Impact of MVF Tax Refunds on Sales and Use Tax.** Motor Vehicle Fuel is purchased with MVF tax and sales and use tax paid in a county that does not impose district tax and is used off-highway in a county that does impose a district tax. The MVF tax is found to be subject to refund. Since MVF tax is includable in the measure of sales and use tax, its refund results in an over-payment of the State and Local sales tax. However, the use of the fuel in the district that imposes a tax results in a liability for district use tax.

In the past, the Controller’s office has made the refunds of the MVF tax and the sales tax thereon, while withholding from the refund any district use tax that might be due on the use of the fuel.

The passage of 1989 AB 2143 removed from the Controller, the authority to make such district use tax collections and sales tax refunds. Since most refunds of MVF tax result in a reduction of the measure of the sales tax (rather than the use tax) the Board is not authorized to make refunds of sales tax directly to the purchasers. Such purchasers should contact their vendors to claim their refund. 1/29/91.

[380.0040](#) **Use Fuel Tax,** imposition of, does not prevent sales tax from applying to retail sales of diesel fuel. 1/4/50.