



## STATE BOARD OF EQUALIZATION

From: Jarvis, Sharon  
 Monday, April 4, 2005  
 To: Rosenthal, Dave  
 Subject: Annotations 500.0080 (11/15/90) and 500.0123 (1/27/97)

Both of these annotations deal with section 6385 and Reg. 1621. Because the statute and the regulation have changed considerably since the underlying letters to the annotations were written, there should probably be a note added following each annotation noting that. There are probably other annotations that should also have this note added when you have time to review them.

November 15, 1990

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\_\_\_\_\_ has filed claims for refund under section 6385 on behalf of air carriers. Some of the air carriers provided exemption certificates to \_\_\_\_\_ but did not hold a seller's permit or a fuel exemption registration number within 45 days after purchasing the subject fuel. You ask whether this is sufficient to deny \_\_\_\_\_ claims for refund.

The subject exemption is provided by subdivision (c) of Revenue and Taxation Code section 6385. That provision required the purchasing carrier to provide the fuel vendor with an exemption certificate that bears the purchaser's valid seller's permit number or valid fuel exemption registration number. Subdivision (b)(3) of Regulation 1621 states further that to qualify for the exemption, a common carrier who is not otherwise required to hold a seller's permit shall be required to register with the Board and obtain a fuel exemption registration number. That number is considered timely if the purchasing carrier receives it from the Board no later than 45 days after taking the fuel on board.

Note  
 changes to  
 § 6385  
 since this  
 letter SPJ  
 4/3/05

Subdivision (d)(3) of Regulation 1621 states the effect of the exemption documents with respect to purchases of fuel. That provision allows the fuel vendor to prove its right to an exemption even when it does not take a timely exemption certificate. Nevertheless, the seller must still prove compliance with the requirement that the purchaser held a valid seller's permit at the time of the sale or a fuel exemption registration number with the Board at the time of the sale or within 45 days after taking the fuel on board.

Note  
 changes to  
 Reg 1621  
 since this  
 letter. SPJ  
 4/3/05

The statute requires the purchaser to have a valid seller's permit number or valid fuel exemption registration number in order to obtain the exemption. The regulation allows the

purchaser 45 days after purchasing the fuel in order to obtain a fuel exemption registration number. If the purchaser does not have a valid seller's permit at the time of its purchase, and does not obtain a valid fuel exemption registration number within 45 days after purchasing the fuel, the exemption does not apply. Therefore, when \_\_\_\_\_ sold fuel to a carrier who did not hold a valid seller's permit and did not obtain a valid fuel exemption registration number within 45 days after the purchase, \_\_\_\_\_ sale is not entitled to the section 6385(c) exemption. Claims for refund with respect to such nonqualifying sales should be denied.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine