

## **810.0000 AIRCRAFT COMMON CARRIERS AND WATERBORNE VESSELS—Regulation 1825**

(Note: Reference to public utilities and common carriers, other than aircraft common carriers, are to the law in effect prior to January 1, 1974. Regulation 1824 was repealed January 1, 1974.)

**810.0014 Certificates of Public Convenience and Necessity.** Since 1978, the federal requirement that air carriers possess certificates of public convenience and necessity no longer applies. At about the same time, the California Public Utility Commission also eliminated such requirement. The requirement for air carriers to operate “under a certificate of public convenience and necessity issued pursuant to the laws of this state, the United States,” as set forth under Regulations 1805(b)(2) and 1825(b)(2) is no longer applicable. Accordingly, sales to aircraft common carriers qualify for the exemption under the above regulations if the remaining conditions of the exemption are met. 3/10/86.

**810.0020 Exemption Certificates.** Exemption certificates should be obtained for exemptions claimed with respect to the transactions (sales) and use tax even though certificates have previously been obtained under the Bradley-Burns tax from common carriers, public utilities, and operators of waterborne vessels.

Certificates should be obtained for the following reasons:

1. While it is generally true that a transaction exempt from the Bradley-Burns tax will also be exempt from the transactions (sales) and use tax, the converse is not necessarily true. In other words, some transactions may be exempt from the transactions (sales) and use tax but not be exempt under the Bradley-Burns Uniform Sales and Use Tax Law.
2. Section 6421 of the Revenue and Taxation Code which is incorporated into both the Bradley-Burns tax and the transactions (sales) and use tax ordinances, provides that if a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the transaction as being exempted from sales tax and he uses the property in some other manner or for some other purpose the purchaser shall be liable for the payment of sales tax as if he were a retailer making a retail sale of the property at the time of use. Unless an exemption certificate for transactions (sales) and use tax is obtained from purchasers, this section will not apply. If the exemption certificate is not obtained and it is found that the transaction is subject to the transaction (sales) or use tax, we would have to look to the seller for the payment of the transactions (sales) or use tax rather than to the purchaser. 3/24/70.

**810.1010 Place of Sale for Fuel Sold to Aircraft Common Carrier.** Corporation A, a wholly owned subsidiary of Corporation B, was organized for the purpose of purchasing aircraft fuel from fuel suppliers and reselling the fuel to B. Two questions were asked:

(1) Is the point of sale on a “needs” contract the same for local and state tax purposes, particularly when the seller’s only California location is in a county other than the county in which the fuel is delivered? (“Needs” or “requirements” contracts call for the furnishing of fuel to the airline at a stipulated price. The contract may provide for minimum and maximum amounts of fuel and all other details except amount of fuel to be placed in a particular aircraft and the particular time of delivery.)

It makes no difference whether or not the fuel contracts are requirements contracts. The sale for sales and use tax purposes occurs when B, not A, takes possession of the fuel. Whether there is a requirements contract or not, this occurs when the suppliers who sold the fuel to A for resale to B, actually deliver the fuel to the aircraft.

(2) If the point of sale for local tax purposes is different than for state tax, what minimum requirements must the seller meet to establish a presence in a specific county other than the county of delivery?

If there are facts which indicate that B’s employees, acting as agents on behalf of A, in B’s California office, take any part in negotiations for the sale of fuel by A to B (including, for example, taking orders for the quantities of fuel to be delivered at the airport), then those facts could be sufficient to establish that A has a place of business in California for Bradley-Burns and district tax purposes. It would not matter whether the principal negotiations for the sales occurred out of state, as long as some activity related to

sales is attributed to the California office. Since that California office would be its sole place of business in California, all sales for Bradley-Burns and district tax purposes would be considered to have occurred in that county and not in the county of delivery.

Thus A's sales of fuel to B would qualify for the 80% exemption from Bradley-Burns taxes and the full exemption from district taxes, because the fuel sold would be entirely consumed outside of the county of the place of sale. 4/14/89. (Am. 2002-2).

(Note: Subsequent statutory change July 29, 1991, regarding "exemption for fuel", subsequent statutory change January 1, 1999, regarding "place of sale of jet fuel", and see Regulation 1805. Also note statutory changes in Revenue and Taxation Code sections 7204.03 and 7205 regarding "place of sale of jet fuel", and see Regulation 1802(b)(7).)