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January 22, 1998

RE: Claim for Refund by Equipment Rental Center

Dear Mr. . . .

This is in response to your letter . . . sent to Senior Tax Counsel Judy Nelson. We apologize for the delay in responding to you. In your letter you requested a legal opinion that would allow your client, an equipment rental center, to file a claim for refund for diesel fuel tax as a consumer during use of the equipment your client rents to customers. You stated that occasionally your client sells diesel fuel to its customers who have returned equipment that needs refueling. Your client would like to file a claim for refund since it would not be practicable for your client's customers to file a claim for the diesel fuel tax on one or two gallons of diesel fuel. The Diesel Fuel Tax Law (Revenue and Taxation Code § 560001 et seq.) has no provision which would allow your client to file a claim for refund.

Revenue and Taxation Code Section 60501 provides that "Persons who have paid a tax for diesel fuel used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall . . . be reimbursed and repaid the amount of the tax." However, pursuant to subdivision (a)(2) of Section 60501, the claimant cannot have sold or resold the diesel fuel. Therefore, since your client purchases the diesel fuel and resells the fuel to its customers, your client is not permitted to file the claim for refund.

We hope this information is of assistance to you.

Sincerely,

Susan Y. Bennett
Susan Y. Bennett
Tax Counsel

SYB:es

cc: Mr. Ed King (MIC:33)

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bcc: Ms. Mary C. Armstrong
Ms. Janet Vining
Ms. Judy Nelson