

M e m o r a n d u m

To: Edward W. King, Chief
Fuel Taxes Division (MIC:33)

Date: October 12, 2006

From : Carolee D. Johnstone 
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Subject: **AIRCRAFT JET FUEL TAX EXCLUSIONS
AMENDMENT TO ANNOTATION 1180.170**

I am responding to your memorandum dated February 21, 2006, regarding so-called Motor Vehicle Fuel License Tax Annotation (Annotation) 1180.170, which pertains to the aircraft jet fuel tax. The memorandum on which this annotation is based was issued on October 21, 1971. At that time, the provisions of the aircraft jet fuel tax were included in the Motor Vehicle Fuel License Tax Law. As of January 1, 2002, the Motor Vehicle Fuel License Tax Law was repealed and replaced by the Motor Vehicle Fuel (MVF) Tax Law (Pt. 2, commencing with § 7301, of Div. 2 of the Rev. & Tax. Code), where provisions pertaining to the aircraft jet fuel tax (Ch. 2.5, commencing with § 7385) now reside. You have requested, on the assumption that the substantive content of Annotation 1180.170 is still valid, that this annotation be amended to reflect the change in the law governing the aircraft jet fuel tax.

Annotation 1180.170, entitled "Engine Overhaulers," states as follows:

A company which is engaged in the job of overhauling and repairing aircraft is excluded from the definition of "aircraft jet fuel user" even though it does the repairing and overhauling only on part of the aircraft – the engine. The exclusion will apply whether the company does its repairing and overhauling while the engine is affixed to the airplane or while it is detached from the airplane.

Specifically, you have asked, with regard to a company that overhauls and repairs aircraft jet engines:

1. Does the exclusion contained in Revenue and Taxation Code¹ section 7389, subdivision (b), of the MVF Tax Law apply, whether the engine that is being overhauled or repaired is attached to the aircraft or not?
2. Does the exclusion contained in section 7389, subdivision (b), apply even if the overhaul or repair work is being done on the engine only and not on the aircraft?

¹ All future statutory references will be to the Revenue and Taxation Code unless stated otherwise.

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DISCUSSION

Subject to certain exceptions, an "aircraft jet fuel user" is defined to mean "any person who uses aircraft jet fuel for the propulsion of an aircraft in this state." (§ 7389.) The aircraft jet fuel tax is imposed on each gallon of fuel that an aircraft jet fuel dealer sells "to an aircraft jet fuel user or use[s] . . . as an aircraft jet fuel user." (§ 7392.) Section 7389, subdivision (b), provides that: "A person engaged in the business of constructing or reconstructing by manufacture or assembly of completed aircraft, or modifying, overhauling, repairing, maintaining, or servicing of aircraft" is not an "aircraft jet fuel user" for purposes of the aircraft jet fuel tax.

As indicated by the definition of "aircraft jet fuel user," the purpose of the jet fuel tax is to tax sales of fuel used in this state for the propulsion of jet aircraft. It is reasonable to conclude that a company that uses jet fuel to test the jet engines it overhauls and repairs is not using the fuel for the purpose of propelling jet aircraft but is using the fuel instead for the purpose of testing the engine and is, therefore, excluded from the definition of "aircraft jet fuel user," pursuant to section 7389, subdivision (b). This conclusion is even more obvious when it is applied to situations where the engine is not attached to an aircraft.

Accordingly, pursuant to section 7389, subdivision (b), a company that is engaged in the overhaul and repair of jet aircraft engines is excluded from the definition of "aircraft jet fuel user," even though the overhaul and repair work is performed on only a part of the aircraft, such as the engine. Further, the exclusion applies whether the engine that is being overhauled or repaired is attached to an aircraft or not.

Please let me know if you have any questions regarding this information.

cc: Lou Feletto (MIC:33)
Doug Shepherd (MIC:65)
Arlo Gilbert (MIC:33)
Todd Keefe (MIC:56)
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