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D. Brady

November 18, 1970

Santa Rosa - District Administrator
Attention: Mr. A. R. Dragoo

2176.580

Tax Counsel (JHM) - Headquarters

FR JHF 27 608082

Your memorandum of October 30, 1970, to Don Brady has been referred to me.

The above taxpayer has filed a claim for refund of tax paid with respect to diesel fuel. The portion of the claim on which you have requested our opinion concerns use fuel taxes paid by [redacted] in connection with operations covering through bus transportation service confined to passengers originating at [redacted] destined for San Francisco and points beyond, or originating at San Francisco and points beyond and destined for [redacted].

[redacted] has common carrier rights between San Francisco and Fairfield, and [redacted] has common carrier rights as a passenger stage corporation between Fairfield and [redacted]. The operations in question are accomplished by a through-service agreement entered into between [redacted] and [redacted] and approved by the Public Utilities Commission. The agreement provides that [redacted] agrees to lease the equipment to [redacted] required to be used in the segment of the route over which [redacted] has common carrier rights, that is, between Fairfield and [redacted]. A division of fare agreement provides for compensation to be retained by each carrier.

In my opinion the transportation in question is a transportation of passengers from San Francisco to Travis Air Force Base or from Travis Air Force Base to San Francisco and must be considered as transportation between those points. Accordingly, it appears to me that the transportation in question was not in accordance with operations of vehicles exclusively in urban or suburban areas as defined in section 9651.5 of the Revenue and Taxation Code and, accordingly, the exemption under 8655 is not available to [redacted] with respect to this service.

11-8-70

Santa Rosa - District Administrator -2-

November 18, 1970

Attention: Mr. A. R. Drago
(FR JHF 27 608082)

In any event, it would appear that the tax in question is paid by _____ and not by _____ and, accordingly, any refund, if any were appropriate, would have to be made to _____. However, as indicated above, it is my opinion that no refund is in order with respect to fuel used in this service. As requested, we are returning the documents sent with your memorandum of October 30.

JHM:ab

cc: Mr. Donald F. Brady