

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

August 28, 1990

Mr. W. J--- L---
President
U--- E---
XXXX East --- Road
---, -- XXXXX-XXXX

Re: S--- A--- Inc.
SJ – XX-XXXXXX

Dear Mr. L---:

This is in response to your letter which we received on August 14, 1990 regarding the measure of sales tax on your purchases of fuel.

At the current time, you operated out of --- as a non-signatory airline, that is, as a scheduled itinerant. Until you become a signatory airline at ---, the airport imposes two fuel fees which are usually described as flow fees. One fee is three cents per gallon as a fuel delivery charge. The other fee is apparently one cent per gallon and is an into-plane fueling charge. These fees appear as a single item on the vendor's invoice. The vendor would then pay the airport weekly.

After reviewing my letter to you dated December 6, 1989 and upon reading Business Taxes Law Guide Annotation 295.1820 99/5/74), you suspect the flow fees are subject to state, local, and district taxes. You ask whether your suspicion is correct.

Annotation 295.1820 provides that fees collected by a port which are passed on to the customer as part of the sale are includable in the seller's gross receipts. That is, the port charged the seller certain fees and, rather than simply including that cost in a single sales price as with its other overhead costs, the seller separately stated that cost on its invoice to the purchaser.

The transaction about which you inquire appears similar to the one involved in the annotation. It appears that the airport is charging your vendor certain fees, and your vendor separately states the overhead cost on its invoice to you. If this is the case, the airport fees are part of your vendor's costs of business recovered as part of its sales price of fuel to you and are includable in your vendor's taxable gross receipts.

Our conclusion that the fees are includable in the seller's taxable gross receipts is based on the understanding that the airport is charging your vendor the flow fees, and your vendor reimburses itself by separately stating these fees to you. If our understanding is incorrect, you may wish to write us again with further information.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wak
2413C

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1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 445-5550

October 25, 1990

Mr. J--- E. M---
Assistant Controller
U--- E---
XXXX East --- Road
---, -- XXXXX-XXXX

Re: S--- A---, Inc.
SJ – XX-XXXXXX

Dear Mr. M---:

This is in response to your letter dated September 27, 1990 and a letter dated September 24, 1990 from your Fuel and Tax Manager J--- B---.

Your president, W. J--- L---, wrote us a letter dated July 26, 1990 asking whether certain fees imposed by the L--- A--- D--- of A--- (L---) were included in the measure of tax with respect to your purchases of fuel. Mr. L--- believed that these fees were subject to tax but asked for confirmation. In my letter dated August 28, 1990, I stated that this transaction appeared similar to the transaction involved in Annotation 295.1820, which was cited by Mr. L-. Thus, I concluded that the fees were includable in the seller's taxable gross receipts, but I noted that this was based on the understanding that L--- charged your vendor these fees and your vendor reimbursed itself by separately stating the fees to you. You state that you are absolutely positively convinced that both fees are subject to sales tax. Nevertheless, you ask for a more certain decision than set forth in my previous letter. To this end, you have enclosed copies of L--- Resolutions 15146, 15147, and 15715.

Initially, I note that Resolution 15147 does not involve flow fees and does not appear to relate to the sale of fuel. It therefore does not appear relevant to this discussion.

Resolution 15146 establishes license requirements and fees to airlines and other companies providing contract and/or into-plane fueling services. A licensee must pay one cent per gallon for all fuel placed into any aircraft. In addition, if a licensee elects to provide into-plane fueling services as an agent for an oil company that does not have a valid fuel delivery permit, the licensee pays five cents per gallon for all aviation gasoline delivered and input into aircraft at the airport. These fees do not apply when the services are provided to signatory air carriers whose operating agreements with the airport provide that no such fees shall be imposed. The fees imposed by Resolution 15146 with respect to fuel delivered into aircraft appeared to be charges for use of the

airport's fuel delivery facilities. As such, when the fuel vendor separately states these charges in an amount that does not exceed the cost to the vendor, these amounts are excludable from the vendor's measure of sales tax. (Rev. & Tax. Code § 6012(c)(7).)

Resolution 15715 provides for the issuance of permits to conduct business at the airport to oil companies and others supplying petroleum products to tenants and users of the airport. Permittees pay three cents per gallon for all fuel delivered to the airport and fifteen cents per gallon for all lubricants delivered to the airport. Fuel and lubricants supplied to a signatory air carrier are excluded from these charges. These fees are not for transportation to the purchaser, but rather are charges for the right to conduct business at the airport. These charges are costs of doing business by the permittees and is therefore not excludable from the measure of tax. The fact that the vendors may choose to separately state such charges on their billings has no effect on the application of tax.

Mr. B---'s letter refers to a letter written to us by Mr. L--- dated October 25, 1989. Mr. L--- had indicated that C--- included the amount of into-plane fees in the measure of tax. (Since Mr. L--- did not inquire about this statement, my letter did not address this specific issue.) Mr. B--- now believes that Mr. L---'s statement was wrong. He has reviewed a C--- invoice and concluded that C--- did not charge tax on the into-plane fees which were separately stated. Mr. B--- included a copy of a memorandum from Senior Tax Counsel Donald Hennessy dated November 18, 1986, in which Mr. Hennessy concluded that separately stated into-plane fees are not subject to sales tax. You ask us what our position is now.

Our position has not changed. When the into-plane charge satisfies the requirements of subdivision (c)(7) of Revenue and Taxation Code section 6012, the into-plane charges are excludable from the measure of tax. For example, as mentioned above, my understanding of Resolution 15146 is that the fees are for use of the airport's facilities in making final delivery of fuel. When the vendor separately states that charge in an amount not exceeding the amount charged by the airport, the charge is for transportation which is excludable from the vendor's measure of tax. On the other hand, if the charge by C--- had been for delivery in its own facilities, it would not be excludable unless it was a reasonable charge for delivery after the sale.

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

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:wk
2545C

cc: Mr. J--- B---