

710.0030

**M e m o r a n d u m**

To: San Diego – Principal Auditor

Date: April 13, 1977

From: Tax Counsel (JHM) – Headquarters

Subject: [P]

S- -- XX-XXXXXX

Your memorandum of March 25 states that you are currently auditing [P]. It appears that [P] purchased jet fuel from [C], [S], and [H]. In a letter to you dated March 22, 1977, Mr. [R] of [M] states that the contract with respect to [C], was negotiated in San Francisco while the [S] and [H] contracts were negotiated at the supplier's offices in [City], Texas.

A similar problem to this arose in 1967 with respect to [O]. After discussions with the Attorney General it was decided that under then Ruling 2202 and Revenue and Taxation Code Section 7205 the place of sale was the retailer's place of business at which the principal negotiations were carried on. Accordingly, the place of sale for the sales made by [O] was San Francisco, and only the portion of the fuel consumed in the City and County of San Francisco was subject to tax.

I find an interesting problem with [C]. The Secretary of State's office tells me that this is a Delaware corporation that qualified to do business in California November 9, 1965. This company was issued permit No. S- -- XX-XXXXXX with a starting date of August 1, 1975. Item 18, registration with the Department of Benefit Payments shows on line F March 1975 with 75 employees and line G shows January/1975. Question 4 on the Application for Seller's Permit shows that this permit was applied for as a result of a reorganization. Apparently, the [C] to which the permit was issued, is a different one than that which executed the contract with [P]. Presumably, the earlier [C] had a seller's permit and reported and paid tax.

In any event, if Mr. [R] is correct in stating that the agreement with [C] was negotiated at its offices in San Francisco, then deliveries to [P] at locations where there was no use of the fuel in the City and County of San Francisco would be exempt from local tax.

The [S] and [H] contracts were negotiated at the suppliers' out-of-state office. Under Regulation 1802 the sale occurs at the place of business in this state where the principal negotiations take place. This would appear to be the place where the order for delivery was given and the fuel was delivered to [P]. This is consistent with the position that we took in the [F], S- -- XX XXXXXX.

For your information we received an inquiry concerning this from Gene Bush of our Out-of-State office. We attach a copy of his inquiry. We suggest that you coordinate your audit with the action by Gene Bush on the [S] claims for refund.

JMT/at  
Attachment

cc: Out-of-State – Auditing (Gene Bush)  
Mr. Philip R. Dougherty  
Mr. P. M. Fiorino  
Mr. Glenn L. Rigby