

M e m o r a n d u m**295.1820**

To: Out-of-State (DMA) – Auditing

Date: September 5, 1974

From: Legal Counsel (HLC) - Headquarters

Subject:

This is in response to your memorandum of August 8, 1974, in which you inquire as to whether “wharfage charges” separately stated by subject taxpayer should be included within the measure of tax.

It is our opinion that these charges are similar to “into plane fees” charged on fuel sold to owners of airplanes and which are considered to be part of the gross receipts subject to tax.

We understand that “wharfage” charges” are fees collected by the Port of Long Beach for the privilege of passing merchandise through the wharf facilities operated by the Port, and that in the case of petroleum and petroleum products the charge is measured by the volume of merchandise delivered. Taxpayer makes sales of fuel oil to steamship companies through the Port of Long Beach and makes a separate charge to its customers for reimbursement of the “wharfage charges” which the Port charges taxpayer. The basis upon which the charges made by taxpayer to its customers for reimbursement of the charges made by taxpayer to its customers for reimbursement of the “wharfage charges” are considered includable in the measure of sales tax on the sale of the fuel is described in the following paragraphs.

Section 6012 of the Revenue and Taxation Code defines “gross receipts”, which constitute the measure of sales tax. The portions of the section that bear on the question presented are as follows:

(a) “Gross receipts” mean the total amount of the sale... price... without any deduction on account of any of the following:

(2) The cost of the materials used, labor or service cost, interest paid, losses, or any other expense.

(3) The cost of transportation of the property, except as excluded by other provisions of this section.

(b) The total amount of the sale... price includes all of the following:

(1) Any services that are a part of the sale.

(2) All receipts, cash, credits and property of any kind.

(c) "Gross receipts" do not include any of the following:...

(7) Separately stated charges for transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser...

The "wharfage charge" constitutes a labor or service cost and an expense, and is made for a service that is part of the sale. The expense is incurred by taxpayer, and is passed on to its customer as a part of the "sale price" and "gross receipts" from the sale of the fuel. The fee is not excludable from the measure of tax as a charge for "transportation from the retailer's place of business or other point from which shipment is made directly to the purchaser". The movement of the fuel is entirely within the same place of business or premises, i.e., the port. The movement does not constitute a shipment within the meaning of Section 6012. The service provided is essentially the same as that provided by the operator of a service station in pumping gasoline into an automobile. The "wharfage charge" is therefore includable in the measure of tax.

HLC:rl