

**STATE BOARD OF EQUALIZATION**

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

May 14, 1992

Re: ---

Dear Ms. ---:

This is in response to your letter dated March 27, 1992, regarding the application of sales tax to your sales of bunker fuel. You explain:

"First of all, let me explain how our bunker business is operated. We are a trading company and all of our business transactions are strictly paperwork. We never use any fuel oil or marine diesel for our own use. The vessel owner inquires to a broker and since most vessel owners do not have credit with the suppliers the broker will use a trading house, like ourselves, to buy the fuel from the supplier on our account and we in turn sell it to the vessel owner. See attached for the LA Supplier Title & Risk Clauses, for your reference.

"Secondly, I took a survey from the major oil companies and asked them what was their interpretation of this new tax law. Believe it or not, the interpretations were different. One supplier said the sales tax will be based on the oil costs only and will not include barging, overtime or any other additionally levied charge. Another supplier said that the sales tax will be charged on all fuel costs and taxes there-on (ie. barging, wharfage, etc.). We buy from the supplier resale, so I have to charge my customers the sales tax. Based on the interpretations from the major oil companies, I have been charging the sales tax on the fuel costs, wharfage, superfund tax, and CA oil spill tax."

DISCUSSION

Sales tax applies to a retailer's gross receipts from the retail sale of tangible personal property in California unless that sale is specifically exempt by statute. (Rev. & Tax. Code § 6051.) As you know, the exemption from sales tax provided by Revenue and Taxation Code section 6385 for certain sales of fuel to common carriers was repealed effective July 15, 1991. Thus, effective July 15, 1991, all your retail sales of fuel in California are subject to sales tax, measured by gross receipts, without regard to whether the purchaser will be using the fuel in its business as a common carrier to an out-of-state point and beyond.

As you acknowledge, you are the retailer of the fuel in question even though you characterize your business transactions as strictly paperwork. As the retailer of tangible personal property, you are liable for the applicable sales tax on those sales measured by the gross receipts. You may collect reimbursement for your sales tax liability from your purchaser if pursuant to contract. (Civ. Code § 1656.1.) This is the amount you itemize to your customers as "sales tax," which is actually sales tax reimbursement.

Your taxable gross receipts include the total amount of your sales price, with no deduction on account of labor or service cost, interest paid, losses or any other expense. (Rev. & Tax. Code § 6012(a).) The taxable gross receipts do not include the amount of any tax imposed by the United States upon or with respect to retail sales, with the exception of any manufacturers' or importers' excise tax (unless that manufacturers' or importers' excise tax is imposed under IRC § 4091.) (Rev. & Tax. Code § 6012(c)(4).) The other taxes which are excluded from the retailer's taxable gross receipts are taxes imposed by any city, county, city and county, or rapid transit district within the State of California upon or with respect to retail sales of tangible personal property or with respect to the use of that tangible personal property. (Rev. & Tax. Code § 6012(c)(5) & (c)(6).)

The only other deduction from a retailers taxable gross receipts that appears possibly relevant here relates to transportation charges. This is set forth in subdivision (c)(7) of section 6012 and is explained in Regulation 1628, a copy of which is enclosed. As explained in those provisions, tax does not apply to separately stated charges for transportation of property from the retailer's place of business or other point from which shipment is made directly to the purchaser, provided the transportation is by other than facilities of the retailer, such as by common carrier. If, however, transportation is by facilities of the retailer, only those separately stated charges for transportation occurring after this sale may be deducted from the taxable gross receipts.

Thus, the supplier who advised you that tax is measured only on the cost of the oil is incorrect. Your charges for overtime and any other additionally levied charge related to the sale of the fuel is included in the measure of tax. With respect to the charge for barging, that charge would also be subject to tax unless it meets the requirements of separately stated charges for transportation as explained in Regulation 1628. Additionally, the taxes about which you inquire are not excludable from the measure of tax because they are not federal taxes imposed with respect to the retail sale of the fuel nor are they taxes imposed by a city, county, city and county, or rapid transit district within the State of California. This means that your entire charge is subject to sales tax with the possible exception of your charges for transportation if those charges meet the requirements for exclusion as set forth in Regulation 1628.

You also ask, if a Japanese shipowner's vessel bunkers in California and the first destination is a foreign country, are your sales of fuel to that shipowner exempt from sales and use tax. Prior to July 15, 1991, there was an exemption for certain sales of fuel to common carriers with respect to the fuel not used to reach the first out-of-state destination. (The sale of fuel necessary to reach the first out-of-state destination was fully taxable. Thus, if a Japanese common carrier purchased only enough fuel to reach Japan and Japan was the first out-of-state destination, your sale of such fuel would have been fully taxable.) As mentioned above, this exemption was repealed effective July 15, 1991. There is no longer an exemption for such sales of fuel and your sales of fuel in California to such foreign common carriers are now fully taxable.

Ms. ---

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May 14, 1992
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If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Senior Tax Counsel

DHL:cl
4058E
Enclosure

bc: Torrance District Administrator