



STATE BOARD OF EQUALIZATION



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ATSS 485-5550
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_____ has filed claims for refund under section 6385 on behalf of air carriers. Some of the air carriers provided exemption certificates to _____ but did not hold a seller's permit or a fuel exemption registration number within 45 days after purchasing the subject fuel. You ask whether this is sufficient to deny _____ claims for refund.

The subject exemption is provided by subdivision (c) of Revenue and Taxation Code section 6385. That provision required the purchasing carrier to provide the fuel vendor with an exemption certificate that bears the purchaser's valid seller's permit number or valid fuel exemption registration number. Subdivision (b)(3) of Regulation 1621 states further that to qualify for the exemption, a common carrier who is not otherwise required to hold a seller's permit shall be required to register with the Board and obtain a fuel exemption registration number. That number is considered timely if the purchasing carrier receives it from the Board no later than 45 days after taking the fuel on board.



Subdivision (d)(3) of Regulation 1621 states the effect of the exemption documents with respect to purchases of fuel. That provision allows the fuel vendor to prove its right to an exemption even when it does not take a timely exemption certificate. Nevertheless, the seller must still prove compliance with the requirement that the purchaser held a valid seller's permit at the time of the sale or a fuel exemption registration number with the Board at the time of the sale or within 45 days after taking the fuel on board.



The statute requires the purchaser to have a valid seller's permit number or valid fuel exemption registration number in order to obtain the exemption. The regulation allows the

purchaser 45 days after purchasing the fuel in order to obtain a fuel exemption registration number. If the purchaser does not have a valid seller's permit at the time of its purchase, and does not obtain a valid fuel exemption registration number within 45 days after purchasing the fuel, the exemption does not apply. Therefore, when _____ sold fuel to a carrier who did not hold a valid seller's permit and did not obtain a valid fuel exemption registration number within 45 days after the purchase, _____ sale is not entitled to the section 6385(c) exemption. Claims for refund with respect to such nonqualifying sales should be denied.

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

Sincerely,

David H. Levine