



STATE BOARD OF EQUALIZATION

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February 29, 1996

Mr. E--- P. A---
--- & --- LLP
XXX --- ---
--- ---, California XXXXX-XXXX

RE: City of Los Angeles
Business License Tax

Dear Mr. A---:

I am responding to your letter to Assistant Chief Counsel Gary J. Jugum which we received on February 7, 1996. You are following up on your recent telephone conversation with Staff Counsel Warren Astleford who expressed the conclusion of the Legal Division that the business license tax imposed by City of Los Angeles Municipal Code Section ("MC") 63.92.1 was not a use tax within the meaning of Revenue and Taxation Code Section 7203.5. You are asking for confirmation of that opinion. You attached to your letter a copy of the pertinent portion of that ordinance which reads, in part, as follows:

“(a) Every person who stores, withdraws, handles, transports, or delivers aviation fuels, lubricants and solvents at the Los Angeles Airport shall pay to the City of Los Angeles, for the privilege of storing, handling, withdrawing, transporting or delivering aviation engine fuels, lubricant or solvent at the Los Angeles Airport, the following charges....

* * *

“(d) All funds collected under the terms of this section shall be paid into and become a part of the Airport Revenue Fund.”

The tax is set at a certain amount per gallon (aviation engine fuels and lubricants) or per pound (aviation solvents). (MC § 63.92.1(a).) The section requires a person coming within its provisions to obtain a permit to convey such products onto airport property. (MC § 623.92.1(b).)

We spoke on the phone regarding your letter today. In that conversation, you confirmed that the incidence of the tax is on the person providing the fuel products at the airport (presumably LAX).

OPINION

Section 7203.5 provides, in part, as follows:

“The State Board of Equalization shall not administer and shall terminate its contract to administer any sales or use tax ordinance of a city, county, redevelopment agency, or city and county, if such city, county, redevelopment agency, or city and county imposes a sales or use tax in addition to the sales and use taxes imposed under an ordinance conforming to the provisions of Sections 7202 and 7203. [¶¶] Nothing in this section shall be construed as prohibiting the levy or collection by a city, county, redevelopment agency, or city and county of any other substantially different tax authorized by the Constitution of California or by statute or by the charter of any chartered city.”
[Emphasis added.]

From the reference to a “permit,” we conclude that this tax is intended to be in the nature of a business license tax. There appears to be no case describing when a business license tax is considered substantially similar to a sales and use tax. One court has noted, however, that, as originally proposed, Section 7203.5 specifically provided that its provisions did not “prohibit the levy or collection of any otherwise authorized license tax upon a business” (Rivera v. City of Fresno (1971) 6 Cal.3d 132, 139-140.) The Attorney General has opined that a “transient occupation tax” on car rentals where the tax is levied on the transfer of tangible personal property, the incidence is on the transferee, the transferor collects the tax, and the money goes to city general revenues, is substantially similar to a local use tax and so violates Section 7203.5. (78 Ops. Cal. Atty. Gen. 26, 29-30 (1995); See also, 75 Ops. Cal. Atty. Gen. 96 (1991).)

In dicta, the Supreme court has distinguished the two taxes as follows:

“[T]he tax is not levied on selling, as in the case of a sales tax, but rather on the privilege of engaging in a business....”

(Carnation Co. v. City of Los Angeles (1966) 65 Cal.2d 36, 39; See also City of Los Angeles v. Moore Bus. Forms (1966) 247 Cal.App.2d 353, 358.)

Here, the incidence of the tax is not on the storing of the fuel products (which would be a use--§ 6009), but the “privilege of storing” the fuel products. You confirmed that the incidence of the tax is on the person exercising the privilege and not the user of the product. The use tax is measured by the sales price of the property (§ 6201), whereas the tax at issue is measured by the amount of product stored. The measure of the tax is not determinative of its nature but is given some weight in the analysis. (Weekes v. City of Oakland (1978) 21 Cal.3d 386, 397-398.) Finally, the revenues derived from this tax do not go into Los Angeles’ General Fund but into a special fund for the airport. We thus conclude that, under the above authority, the tax levied by MC 623.92.1 is not substantially similar to a local use tax and so does not violate Section 7203.5.

I hope the above discussion has answered your question. If you need anything further, please do not hesitate to write again.

Sincerely,

John L. Waid
Senior Staff Counsel

JLW:sr

cc: Mr. Gary J. Jugum
Mr. Warren Astleford