

800.0958

Memorandum

To : Mr. Brian D. Rogers
Special Enforcement Section (MIC:86)

Date: January 29, 1996

From : John L. Waid
Senior Staff Counsel

Subject: [No Permit Number]
Sales by Fueling Networks

I am responding to your memorandum to Assistant Chief Counsel Gary J. Jugum dated November 9, 1995. You attached to your letter copies of a letter to you dated November 9, 1995, from Ms. C--- C---, Vice President of the taxpayer, and of a letter dated December 7, 1994, from Assistant Principal Tax Auditor William D. Dunn to Mr. J--- F---, Director of --- --- Network, in which Mr. Dunn discussed the state sales tax consequences of the taxpayer's operations. You ask about the local and district tax consequences when the person contracting with a consumer to provide cardlock fuel is in one county but the entity delivering the fuel is in another.

Ms. C--- describes the taxpayer's operation as follows:

“[The taxpayer] is a franchiser of [a commercial fueling system]. The system is made up of independent petroleum marketers operating fueling sites which they own and operate independently. Common access cards are issued to customers and these cards allow access to any [of the taxpayer's sites].”

Mr. Dunn described his understanding of how the fueling networks operate as follows:

“As we understand it, the network has primarily three parties involved in each network transaction: the ‘host participant’; the ‘foreign participant’; and the trucker. The host participant is the person who physically provides the fuel. The foreign participant is the party who contracts with the trucker for the sale of the

fuel to the trucker. Finally, the trucker is the party who receives physical delivery of the fuel from the host participant.

“The financial aspects of each network sale is as follows. Each participant has its own truckers to whom it issues network cards. These two parties enter into an agreement for the sale of fuel as a specified price. This price is confidential; whenever a sale is made within the network, the host participant is never apprised of the retail selling price of the fuel. For participation in the sale of fuel through the network, the host participant is reimbursed for its cost of the fuel, as determined by the --- price at the time of the sale, plus actual freight charges and a previously agreed upon network allowance for the host’s participation in the sale.”

Mr. Dunn concluded that, where the out-of-state foreign participant had an in-state location, the host participant was considered a seller making a sale for resale to the foreign participant who was designated as the retailer making the sale to the trucker. Where the out-of-state foreign participant had no in-state location, the second paragraph of section 6007 operated to designate the host participant as the retailer of the gasoline to the trucker.

Ms. C--- phrased her question as follows:

“Given that the foreign participant may be domiciled in one sales tax jurisdiction and the fuel may be dispensed in another sales tax jurisdiction, what is the appropriate sales tax rate which should be used to calculate the appropriate sales tax remittance to the state?”

You ask, in addition, about the local and district tax consequences of such sales where the foreign participant is located out of state.

OPINION

As noted above, in the case where the foreign participant is engaged in business in this state, the host participant is designated as a seller making a sale for resale to the foreign participant. Thus, the retail sale is made by the foreign participant directly to the consumer-- here, the trucker. We have previously determined that, as the negotiations leading up to the sale are entirely with the foreign participant, the location of the place of business of the foreign participant is the place of sale of the fuel for local tax purposes under Regulation 1802(a)(2). The same holds true for district taxes. (Reg. 1822(a)(2).) The local and district tax consequences differ, however. The local sales tax would be allocated to the location of the foreign participant’s place of business (Reg. 1802(a)(2)), but the district sales tax ordinance of the taxing district (if any) there would not apply. (Reg. 1823(a)(2)(B).) Rather, the sale would be subject to the district use tax, if any, of the location in which the host participant delivered the

fuel. For the purposes of collecting the tax, the foreign participant would be considered engaged in business in the district under Regulation 1827(c)(2) and so required to collect its use tax. (Reg. 1827(a).) As a result, the tax rate in effect at the host participant's location would apply to the sale.

When the foreign participant's place of business is located out of state, the local and district tax consequences are the same. Where the foreign participant is not engaged in business in this state, by virtue of the second paragraph of section 6007 the sale is deemed to be a retail sale by the host participant within California. The applicable local tax is that of the location of the host participant's place of business. (Reg. 1802(a)(1).) If the host participant is located in a taxing district, the transactions tax of that district (or districts) applies to the sale. As a result, the tax rate in effect at the host participant's location would also apply to the sale. (Reg. 1823(a)(1).)

JLW:sr