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Reg 1304 US Government

The Red Cross, as an instrumentality of the United States Government, is not required to pay the Use Fuel Tax because the United States Government (and its instrumentalities) is not included in the definition of "person" and therefore is not subject to the Use Fuel Tax. 9/04/97.



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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Controller, Sacramento

September 4, 1997

(Redacted)
(Redacted)
(Redacted)

JOHN CHANG
Acting Member
Fourth District, Los Angeles

E. L. SORENSEN, JR.
Executive Director

Dear (Redacted)

(Redacted)'s July 7, 1997 letter has been referred to me for reply. You have requested, based on the fact that the Red Cross is considered an instrumentality of the United States Government, that the Board of Equalization issue a memorandum indicating the Red Cross is exempt from motor fuel taxes. Based on the discussion below, while the Red Cross is an instrumentality of the United States Government, it is not entitled to an exemption under each of California's fuel tax laws.

Motor Vehicle Fuel License Tax. The Motor Vehicle Fuel License Tax (Rev. & Tax. Code Section 7301, et seq.¹) is imposed on each gallon of gasoline distributed or redistributed. The distributor, as a person who refines, blends or imports gasoline, is liable for the tax, which is then included in the cost of the product as it passes through the chain of distribution to the ultimate consumer. The Motor Vehicle Fuel License Tax Law requires tax to be paid on each "distribution" by a "distributor". Among other exemptions, the Motor Vehicle Fuel License Tax Law does provide for an exemption for motor vehicle fuel sold to the United States armed forces for use in ships or aircraft outside of the United States. However, there is no other specific exemption for the United States and/or its instrumentalities. Therefore, the incidence of tax is not directly on the Red Cross and there is no exemption for the use by the Red Cross unless the gasoline is utilized in a non-taxable manner, e.g., off highway usage (see § 8101 et seq.).

Diesel Fuel Tax. The Diesel Fuel Tax (Section 60001), et seq.) is imposed on the diesel fuel supplier at the point that the diesel fuel is removed from the refinery or terminal rack or imported into the state. Like

¹ Unless otherwise noted, all references are to the Revenue and Taxation Code.

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the tax on gasoline, the tax on diesel will be included in the cost of the fuel as it changes hands. However, the United States and its instrumentalities are given an exemption from the Diesel Fuel Tax and can purchase fuel tax free (see §§ 60100 (a)(5)(E) and 60501 (a)(4)(G)) and the person who sells the fuel to the Red Cross can apply for a refund of the amount of the tax.

Use Fuel Tax. The Use Fuel Tax (Section 8601), et seq.) is imposed upon the use of any "fuel". Fuel is defined to include any combustible gas or liquid used in an internal combustion engine for the generation of power, except fuel subject to tax under the Motor Vehicle Fuel License Tax Law or the Diesel Fuel Tax Law. The (redacted)'s not required to pay the Use Fuel Tax because the United States (and its instrumentalities) are not included in the definition of "person", and therefore cannot be a "user" of fuel for purposes of the Use Fuel Tax.

I hope that this letter responds to your request. If you have other questions or wish additional information, please feel free to write to me at the address above.

Sincerely,

Monica Gonzalez Brisbane
Tax Counsel

MGB:es
(Redacted)

bcc: Ms. Mary C. Armstrong
Mr. Ed King (MIC: 33)
Mr. Robert Frank (MIC: 30)
Mr. Lou Feletto (MIC: 30)
Ms. Janet Vining
Ms. Judy Nelson

Memorandum

To: Ms. Mary Armstrong
Assistant Chief Counsel,
Special Taxes and Administration Section
MIC: 82

Date: July 24, 1997

From: Ed King, Chief
Fuel Taxes Division
MIC: 33

Subject: American National Red Cross

Attached is a request for a legal opinion we received from a representative of the American National Red Cross requesting legal opinion on whether their client is exempt from California motor fuel taxes. We have confirmed that the inquiry relates to all three motor fuel tax laws administered by the Board; the Use Fuel Tax, Diesel Fuel Tax and Motor Vehicle Fuel License Tax laws.

Please respond directly to the inquiry, and provide us with a copy of your response.

EWK:LEF:lef

attachment

cc: Mr. Robert Frank
Mr. Lou Feletto

(REDACTED)
(REDACTED)
(REDACTED)

July 7, 1997

PRIVATE & CONFIDENTIAL

Mr. Louie Feletto
Board of Equalization
Fuel Taxes Division
450 N Street, MIC: 30
P.O. Box 442879
Sacramento, CA 94279-0300

Dear Mr. Feletto:

The American National Red Cross ("Red Cross") has engaged (redacted) to assist in identifying and securing motor tax fuel refunds. The Red Cross is considered an instrumentality of the United States Government, thus exempt from paying state motor fuel taxes in California.

On behalf of the Red Cross, (redacted) is requesting that the Board of Equalization issue a memorandum indicating the Red Cross is exempt from motor fuel taxes. This document will be supplied to the motor fuel vendors and suppliers for proof of exemption status.

Please issue two copies of the memorandum. The first to me at the listed (redacted) address, and the second to the following individual:

Mr. (Redacted)
(Redacted)
(Redacted)

All correspondence and questions should be directed to me at (redacted). Thank you for your prompt attention to this matter.

Very truly yours,

(Redacted)