

Memorandum

To: Allan K. Stuckey, Deputy Director
Special Taxes and Operations Department (MIC:31)

Date: March 4, 1996

From: Gary J. Jugum
Acting Chief Counsel

Subject: Claim for Refund by Interested Party -

This will supplement Chief Counsel Les Sorensen's December 13, 1995 memorandum to you concerning whether a third party may file a consolidated claim for refund on behalf of a group, with the refund being made directly to the third party. Specifically, the _____ seeks to act as a clearinghouse for claims made for exempt uses of fuel purchased by its membership, who would then donate the tax refunds to the _____. After further discussion and analysis, we have concluded that, while the _____ may file a consolidated claim for refund on behalf of its members, the refund checks must be made payable to the individual members, rather than the _____.

The Diesel Fuel Tax Law provides for several types of refunds. Revenue and Taxation Code Section 60521 requires the Board to refund any overpayment of diesel fuel tax and instructs the Board to make the refund to the taxpayer or the taxpayer's successor, administrator, executor, or assign (or assignee). Thus, a refund made pursuant to Section 60521 can be made to the taxpayer's assignee.

The type of refund which applies to the _____ members is set forth in Revenue and Taxation Code Section 60501. Pursuant to that section, "[P]ersons who have paid a tax for diesel fuel used in a nontaxable use, other than on a farm for farming purposes or in an exempt bus operation, shall... be reimbursed and repaid the amount of the tax." Therefore, _____ members who purchase tax-paid diesel fuel, and then use the fuel in a boat, are entitled to a refund of the tax. Section 60501 instructs the Board to make the refund to the person who paid the tax, and, unlike Section 60521, does not authorize the Board to pay the refund to the taxpayer's successors, administrators, executors, or assigns. Lacking such authorization, the Board cannot issue refund checks made payable to the _____.

In addition, sound tax administration policy argues against interpreting Section 60521 to permit the Board to issue refund checks to assignees. If a member contested the

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validity of an assignment after the Board issued the refund check to the [redacted], the Board would be placed squarely in the center of the controversy, and would have to defend the assignment.

Although the Board cannot make the refund checks payable to the [redacted], and Board can, with the permission of the individual members, accept a consolidated claim for refund on behalf of the members and send the refund checks, made payable to the members, to the Foundation.

If you have any questions, please contact Janet Vining at 322-6083.



GJJ/JV:es

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