

M e m o r a n d u m

To : Mr. Ed King, Chief
Fuel Taxes Division (MIC:33)

Date: September 8, 1997

From : Monica Gonzalez Brisbane *MGB*
Tax Counsel

Subject: **Diesel Fuel Tax Law - Contractor of the United States Postal Service**

This memorandum responds to the questions raised in the letter dated May 21, 1997 from [redacted]. A copy of the letter is attached for your convenience.

QUESTIONS PRESENTED & BRIEF ANSWERS:

1. Is an entity having a contract with the U.S. Postal Service for transporting U.S. Mail by truck exempt from the state excise tax for diesel fuel (Rev. & Tax. Code § 60001, et.seq.¹) for the fuel used in the performance of the contracts?

- No since the entity is not the federal government or one of its instrumentalities and is actually utilizing the diesel fuel in the operation of a vehicle on the state's highway.

2. Is an entity contracting with the U.S. Postal Service to transport U.S. Mail exempt from the diesel fuel tax if the diesel fuel needed to fulfill the contract is furnished by the U.S. Postal Service?

- No, the entity would be liable for the "backup tax".

DISCUSSION:

Except for certain specifically enumerated exemptions (see Section 60100 et.seq.), the diesel fuel tax applies to every gallon of diesel fuel used to operate a vehicle on the state's highways and the incidence of the tax is 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. Therefore, the tax on diesel is generally included in the cost of the fuel as it changes hands. However, when a

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

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supplier removes diesel fuel for sale to the United States and/or its agencies and instrumentalities, no tax is incurred. Section 60100(a)(5)(E) specifically provides for an exemption from the diesel fuel tax for fuel purchased by the United States and its agencies and instrumentalities.

The U.S. Postal Service is recognized as an unincorporated instrumentality of the United States Government (see Diesel Fuel Annotation U.S. Postal Service 3/7/96 and Sales and Use Tax Annotation No. 505.0305). This exemption, however, does not extend to entities contracting with the United States and/or its instrumentalities since, as the issue is posed, it is those contracting entities, and not the United States and/or its instrumentalities, actually utilizing the diesel fuel in the operation of a vehicle on the state's highways.

Further, having the U.S. Postal Service provide the fuel to the entity it has contracted with to transport mail does not relieve that entity's obligation to pay the diesel fuel tax. The Revenue and Taxation Code provides that if a "Highway Vehicle Operator" (defined in Section 60027) obtains diesel fuel that has not previously been taxed, or on which a refund has been allowed, and uses the fuel to operate a vehicle on the highway, the highway vehicle operator is liable for a "backup tax" (Section 60058) on the fuel. The foregoing would be the result if the U.S. Postal Service provided the fuel to an entity it contracted with; not otherwise entitled to an exemption from the diesel fuel tax. The tax would be owed as a "backup tax" by the contracting entity.

If you have any further questions, please contact me at 322-0438.

MGB:es
Attach.

cc: Mr. Robert Frank (MIC:30)
Ms. Janet Vining
Ms. Judy Nelson