

Memorandum

To : Edward King, Chief
Fuel Taxes Division (MIC:33)

Date: August 14, 1996

From : M. Judith Nelson
Tax Counsel *MJ Nelson*

Subject: Diesel Fuel Tax Law--Advice re Application of Tax to

I. **Introduction.** This is in response to your memo dated May 3, 1996 in which you requested advice as to whether the [redacted] would qualify for an exemption from Diesel Fuel Tax either as an exempt bus operator or as an instrumentality of the federal government.

I have reviewed the information provided by [redacted], and for the reasons set forth below, I conclude that [redacted] does not qualify for an exemption from tax under either exemption.

II. **Background.** [redacted] provides a comprehensive program for children which includes education, health services, social services, parent involvement and transportation. [redacted] operates a transportation unit which consists of 24 vehicles--17 of the vehicles are school buses used to transport children from home to school and back. [redacted] seeks an exemption from Diesel Fuel Tax for the operation of the 17 school buses either as an exempt bus operation under Revenue and Taxation Code Section ("Rev. & Tax.") 60039 or as an agency or instrumentality of the United States under Rev. & Tax. 60100(a)(5)(D).

III. **Statutory Construction of Exemptions.** The rule of construction which applies to exemptions from tax is that tax exemptions are strictly construed against the taxpayer. (*Cypress Lawn Cemetery Association v. San Francisco* (1931) 211 C. 387) In *Cedars of Lebanon Hospital v. County of Los Angeles*, (1959) 35 C. 2d 729, the California Supreme Court stated at page 734:

Constitutional provisions and statutes granting exemption from taxation are strictly construed to the end that such concession will be neither enlarged nor extended beyond the plain meaning of the language employed. (Citations omitted.) In this regard, it is immaterial that the institutions in question may contribute to the public welfare and serve the interests of the state, for they, like other private owners of property, have the burden of showing that they clearly come within the terms of the exemption.

has asked whether the Board would consider their operations to qualify for either of the statutory exemptions from the Diesel Fuel Tax described below. I conclude that the exemptions do not apply.

A. Exempt Bus Operation Exemption. Rev. & Tax. 60039(a)(6) provides in pertinent part that an "exempt buss operation" consists of the following:

(6) Any private entity providing transportation services for the [transporting of pupils to and from school...] under contract or agreement with a school district, community college district, or county superintendent of schools, only for diesel fuel consumed while providing services under those contracts or agreements...

Your memo indicated that your unit had determined that since did not have a contract with a school district, the exempt bus operation exemption did not apply. I concur with your view.

B. Federal Agency Exemption. Rev. & Tax. 60100(a)(5)(D) provides in pertinent part that the requirement to pay diesel taxes does not apply as to diesel for:

(5)(D) Use by the United States and its agencies and instrumentalities.

If could be categorized as an agency or instrumentality of the United States, then it would qualify for an exemption from tax.

1. Designation as a Head Start Agency. While has been designated as a Head Start Agency pursuant to 42 U.S.C. 9836 and therefore qualifies for significant amounts of federal funding, under federal law it is not deemed to be an agency or instrumentality of the federal government. In fact, the power and functions of head start agencies under federal law must include the authority to receive and administer funds and contributions from private or local public sources and funds under federal and state assistance programs. Thus, while there is significant federal backing for the programs, each agency has a fair amount of autonomy in establishing its programs and in obtaining funding from various sources to carry out those programs.

2. Approval of Governor Required. Another indication that is not a federal agency is the fact that at 42 U.S.C. 9838, any contract, agreement, grant or other assistance made for the purpose of carrying out a program may not be entered into unless the plan has been submitted to the state's governor and has not been disapproved.

Edward King
August 14, 1996
Page 3

3. Head Start Deemed a State or Local Agency. Finally, the federal law at 42 U.S.C. 9851 provides that for purposes of another provision of federal law, any head start agency that receives assistance under federal law "shall be deemed to be a State or local agency."

Based on the foregoing, I conclude that _____ is not a federal agency or instrumentality.

IV. Conclusion. Because the rule of construction is that exemptions are to be narrowly construed against the taxpayer, and because neither of the exemptions cited fits the situation, I conclude that _____ is not entitled to an exemption from Diesel Fuel Tax under California law.

MJN:es

cc: Janet Vining
Mary Armstrong