

TEXT OF PROPOSED CHANGES

Title 18. Public Revenues

Regulation 1621. Sales to Common Carriers.

(a) ... (unchanged)

(b) Application of Tax.

(1) ... (unchanged)

(2) ... (unchanged)

(3) Fuel and Petroleum Products.

(A) ... (unchanged)

(B) Operative January 1, 1989, the sale, storage, use, or other consumption of, fuel or petroleum products is exempt from sales and use tax pursuant to section 6357.5 of the Revenue and Taxation Code when such property is:

1. sold to an air common carrier which holds a valid seller's permit or which has timely obtained a fuel exemption registration number,
2. for immediate consumption or shipment, and
3. shipped or consumed by the carrier in the conduct of its business as an air common carrier on a flight whose first destination is a foreign destination. Effective January 1, 1993, a flight which has an intermediate stop within the United States will qualify for the exemption if the final destination of that flight is a foreign destination.

For the period January 1, 1989 through December 31, 1992, the tax will not apply to the sale or use of fuel or petroleum products which are shipped or consumed on a flight to a foreign destination even though there is an intermediate stop at a point within the United States, provided no cargo, including mail, or passengers are loaded or discharged at such intermediate stop. The tax will not apply if crew members are loaded or discharged at such intermediate stop; however, the tax will apply if other airline personnel flying without charge (deadhead) are loaded or discharged. The tax also will not apply to fuel used on flights which are aborted for emergency purposes if such flights otherwise would have qualified for the exemption.

To qualify for the exemption, the sale of the fuel or other petroleum products must be for "immediate consumption or shipment".

A "sale" occurs when the purchaser takes either title to or possession of the fuel. "Immediate consumption or shipment" occurs when the delivery of fuel by the seller is directly to an aircraft for consumption in propulsion to a foreign destination or for transportation to a foreign destination and not for storage. Fuel is sold for storage, and not for immediate consumption or shipment, if title to the fuel passes to the purchaser while the fuel remains in

storage facilities owned or leased by the seller. Fuel is sold for storage, and not for immediate consumption or shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale providing that the seller shall retain title to the fuel until the fuel is loaded onto the aircraft. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

To qualify for the exemption, a common carrier which is not otherwise required to hold a valid seller's permit shall be required to register with the ~~Board~~Department and obtain a fuel exemption registration number. The fuel exemption registration number will be considered obtained timely if the purchasing carrier receives such registration number from the ~~Board~~Department no later than 45 days after taking the fuel on board.

In the event that the federal exemption provided in Section 1309 of Title 19 of the United States Code, relating to supplies for certain vessels and aircraft, is repealed, this exemption also is repealed as of that date.

(C) For the period January 1, 1993 through December 31, 2002, and for the period April 1, 2004 through December 31, ~~2023~~2028, the sale of fuel and petroleum products is exempt from sales tax pursuant to subdivision (c) of section 6385(e) of the Revenue and Taxation Code when such property is:

1. Sold to a water common carrier who holds a valid seller's permit or who has timely obtained a fuel exemption registration number,
2. For immediate shipment outside this state,
3. Consumed by the water carrier in the conduct of its business as a common carrier after the first out-of-state destination.

The sales tax applies with respect to sales of fuel and petroleum products which will be consumed in a voyage from the California point where the fuel is taken on to the first destination outside of California.

For purposes of this subdivision (b)(3)(C), the term "first destination outside of California" means the first point reached outside this state by a water common carrier in the conduct of its business as a common carrier at which cargo or passengers are loaded or discharged, cargo containers are added or removed, fuel is transferred, or docking fees are charged. The term also includes the entry point of the Panama Canal when the carrier is only transiting the canal in the conduct of its business as a common carrier.

To qualify for the exemption, the "sale" of the fuel (or other petroleum product) must be for "immediate shipment". A "sale" occurs when the purchaser takes either title to or possession of the fuel. An "immediate shipment" occurs when the delivery of fuel by the seller is directly to a vessel for transportation outside this state and not for storage.

Fuel is sold for storage and not for immediate shipment, if title to the fuel passes to the purchaser while the fuel remains in storage facilities owned or leased by the seller.

Fuel is sold for storage, and not for immediate shipment, if the fuel is transferred by the seller into a storage facility controlled by or leased to the purchaser or to any third party who takes delivery for the purchaser. Tax applies notwithstanding the contract of sale provides that the seller shall retain title to the fuel until the fuel is loaded onto the vessel. In such cases, any attempt by the seller to retain title is limited in effect to the reservation of a security interest.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller into storage facilities maintained by a third party, the seller has contracted with the third party to store the fuel, and title does not pass to the purchaser until the fuel is loaded onto the vessel.

Fuel is sold for immediate shipment, and not for storage, if the fuel is transferred by the seller to storage facilities maintained by a third party, even though the purchaser may have contracted with the third party to store the fuel, if the sale occurs when the fuel is loaded onto the vessel and the seller has the legal obligation to deliver the fuel to the purchaser's vessel. If the obligation of the seller to deliver the fuel is complete upon transfer of the fuel to the third party, then any retention or reservation of title to the fuel after such transfer is limited in effect to a reservation of a security interest, and the fuel will be regarded as having been delivered to the purchaser for storage and not for immediate shipment outside this state. A mere recital in the contract of sale that the delivery will occur at the vessel, or that the seller will retain title to the fuel until delivery at the vessel, is insufficient of itself to establish that delivery of the fuel by the seller is directly into the vessel.

In determining whether the delivery occurs at the vessel, and not upon transfer of the fuel to the third party, the ~~board~~Department shall consider the following factors: whether the losses during storage are for the account of the seller; whether the seller has the right to remove the fuel from the storage facilities; whether the seller has the duty to remove the fuel from the storage facilities at the seller's expense should the seller's deliveries into the storage facilities exceed specified quantities, and whether the contract between the seller and purchaser is a requirements contract. The presence or absence of one or more factors is not conclusive.

A sale of fuel, otherwise qualifying as a sale for immediate shipment under the above rules, will qualify for the exemption even though the fuel is delivered to a fuel truck or barge from which the fuel is delivered directly into the vessel.

(c) Proof of Exemption.

(1) ... (unchanged)

(2) Foreign Air Carrier. Any seller claiming a transaction as exempt from sales tax pursuant to section 6385(b) of the Revenue and Taxation Code must receive from the purchaser a certificate in writing that the property shall be transported and used in the manner described in section (b)(2) of this regulation. The certificate shall be in substantially the same form as Certificate C, appearing in the appendix to this regulation. Effective January 1, 1990, if a seller does not have a certificate on hand at the time the ~~board~~Department requests it be made available for verification of a transaction claimed to be exempt from sales tax, the seller will have 45 calendar days from the date of the ~~board's~~Department's written request to obtain the certificate from the purchasing foreign air carrier. A "blanket" certificate, i.e., one issued to cover future transactions, may be

issued by a foreign air carrier and included as part of a transaction by reference to the certificate on the purchase order or other appropriate documentation for each transaction.

The provisions of (c)(3) and (d)(3) of this regulation shall apply with respect to sales of aircraft fuel and petroleum products to foreign air carriers.

(3) ... (unchanged)

(d) Effect of Exemption Documents.

(1) ... (unchanged)

(2) ... (unchanged)

(3) Fuel and Petroleum Products. A copy of the exemption certificate described in subdivision (c)(3) of this regulation, accepted timely in good faith, shall relieve the seller from liability for the sales tax on fuel and petroleum products delivered by the seller directly into a ship or an aircraft. If the seller does not obtain an exemption certificate, or does not obtain an exemption certificate within the time specified by paragraph (c)(3) of this regulation, the seller will be relieved of liability for the tax only if the seller presents satisfactory evidence that the sale met the requirements of Sections 6357.5 or 6385(c) of the Revenue and Taxation Code, including the requirement that the purchaser held a valid seller's permit at the time of the sale or a fuel exemption number with the ~~Board~~Department at the time of sale or within 45 days after taking the fuel on board.

(e) Liability of Purchaser. A purchasing common carrier or foreign air carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempted from sales tax under section 6357.5 or 6385 of the Revenue and Taxation Code, but uses the property in some other manner or for some other purpose, or fails to document the transportation of the property to the first out of state destination, is liable for sales tax under section 6357.5(h) or 6385(k) of the Revenue and Taxation Code.

A common carrier or a foreign air carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under section 6357.5 of the Revenue and Taxation Code shall make available to the ~~Board~~Department, upon request, records, including, but not limited to, a copy of a log abstract, an air waybill, or a cargo manifest, documenting its consumption or transportation of the fuel or petroleum product to a foreign destination and the amount claimed as exempt.

A foreign air carrier, who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from tax under section 6385(b) of the Revenue and Taxation Code must maintain records in this state, such as a copy of a bill of lading, an airway bill or cargo manifest, documenting its transportation of the tangible personal property to a foreign destination and the amount claimed as exempt.

A common carrier who gives a certificate of exemption which entitles the seller to regard the gross receipts from the sale as exempt from sales tax under Section 6385(c) of the Revenue and Taxation Code shall make available to the ~~Board~~Department, upon request, records, including, but not limited to, a copy of a log abstract or a cargo manifest, documenting its transportation of the fuel or petroleum product to an out-of-state destination and the amount claimed as exempt.

A purchaser liable for tax under this paragraph (e) must report and pay the sales tax as if the purchaser were a retailer making a retail sale of the property at the time of the use or failure to

provide supporting documentation. If the purchaser does not report and pay tax, the purchaser will be subject to a deficiency determination which will include applicable penalties and interest.

NOTE: Authority: Sections 15570.22 and 15570.24, Government Code; Section 7051, Revenue and Taxation Code. Reference: Sections 6357.5 and 6385, Revenue and Taxation Code.

18 CCR § 1621 App.

Appendix

CERTIFICATE A

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE SUPPORTING BILL OF LADING

(Unchanged)

CERTIFICATE B

CALIFORNIA BLANKET SALES TAX EXEMPTION CERTIFICATE SUPPORTING BILL OF LADING

(Unchanged)

CERTIFICATE C

CALIFORNIA SALES TAX EXEMPTION CERTIFICATE

(Unchanged)

CERTIFICATE D

CALIFORNIA BLANKET SALES TAX EXEMPTION CERTIFICATE SUPPORTING EXEMPT PURCHASES UNDER SECTION 6357.5 - AIR COMMON CARRIERS

Sales of aviation fuel or petroleum products to an air common carrier (including a foreign air carrier) free of sales tax under Section 6357.5 of the California Revenue and Taxation Code.

1. Purchasing Common Carrier: _____
2. Fuel Exemption Registration No. or Seller's Permit No. of Purchaser: _____
3. Flight No.: _____
4. Final Destination: _____
5. Airport Where Loaded: _____
6. Description of Property Purchased: _____
7. Retailer: _____

The undersigned certifies that the purchaser of the tangible personal property described above is an air common carrier or foreign air carrier lawfully operating as such, and that the aviation fuel or other petroleum product described above which is purchased exempt from sales tax is to be consumed on a flight to a foreign destination or shipped to a foreign destination for use by said Company in the conduct of its business as an air common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting persons or cargo as an air common carrier or foreign air carrier operating under authority of the Federal Aviation Administration.

In the event any of such property is used for any purpose other than that specified in this certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption a common carrier who is not otherwise required to hold a valid seller's permit must register with the ~~Board~~ Department and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

This certificate will remain valid and in effect until revoked by the purchaser in writing. However, this certificate will not be valid for sales of fuel or other petroleum products loaded onto flights of which the seller is aware the final destination is not a foreign destination.

Purchaser: _____
(Company Name)

Signed By: _____
(Signature of Authorized Agent)

Date: _____

Title: _____
(Owner, Partner, Purchasing Agent, etc.)

CERTIFICATE E

EXEMPTION CERTIFICATE SUPPORTING EXEMPT FUEL PURCHASES UNDER SECTION 6385(c) - WATER CARRIERS

Sales of petroleum products free of sales tax under Section 6385(c) of the California Revenue and Taxation Code.

1. Purchasing Common Carrier: _____
 2. Fuel Exemption Registration No. or Seller's Permit No. of Purchaser: _____
 3. Vessel Name: _____
 4. Voyage No.: _____
 5. Port of Loading: _____
 6. Delivery Date: _____
 7. First Out-of-State Destination: _____
 8. Retailer of the Petroleum Product: _____
 9. *Invoice No. of Purchase: _____
- (*To be completed by retailer.)

ANALYSIS

	Fuel Oil Bunker C/ MDO/ HFO MGO (Metric Tons)	Other Petroleum Products (Gallons)
10. Quantity consumed to first out-of-state destination.		
11. Quantity used while in port.		
12. Total of Lines 10 and 11 above.		
13. Quantity on board on arrival at port.		
14. Quantity subject to sales tax. [Line 12 less Line 13. If Line 13 is more than Line 12, show zero (0).]		
15. Quantity loaded this loading.		
16. Quantity shown on Line 14 above.		
17. Quantity exempt from sales tax. (Line 15 less Line 16.)		

The undersigned certifies that it is a common carrier lawfully operating as such, and that the fuel oil or other petroleum products purchased exempt from sales tax reimbursement are to be shipped to an out-of-state destination for use by said Company in the conduct of its business as a common carrier, and that the undersigned purchasing carrier is lawfully engaged in transporting cargo as a common carrier over the route in this state by which it will transport the fuel oil or other petroleum products. In the event any of such property is used for any purpose other than that specified in the certificate, it is understood that the purchaser is required by the Sales and Use Tax Law to report and pay tax, measured by the purchase price of such property. To qualify for the exemption, a common carrier who is not otherwise required to hold a valid seller's permit must register with the ~~Board of Equalization~~ California Department of Tax and Fee Administration and obtain a fuel exemption number no later than 45 days after taking the fuel on board.

Purchaser: _____
(Company Name)

Signed By: _____
(Signature of Authorized Agent)

Date: _____

Title: _____
(Owner, Partner, Purchasing Agent, etc.)