

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

June 6, 1989

Re: Section 6385(c) Exemption

Deleted as to
air common
carriers stats
1991, Chap. 85
see now §
6357.5 as to air
common
carriers on
international
flights. SPJ
8/5/02

This is in response to your letters dated April 29, 1989 to Assistant Chief Counsel Gary Jugum. You ask whether the Section 6385(c) exemption for certain sales of fuel applies to two sets of facts.

Refueler Trucks

_____ would like to purchase fuel at certain airports as the fuel enters into aircraft refueler trucks owned by _____. These trucks will hold between 8,000 and 10,000 gallons of fuels. The trucks will dispense between 4,000 and 10,000 gallons of fuel into each aircraft. Since the trucks will be filled on each visit to the fuel storage tanks, each truck might refuel from one to three aircraft. The trucks generally unload all their fuel within four hours; however, the period may be longer at night when airport operations are curtailed.

As you know, a critical requirement to qualify for the exemption is that the fuel is sold for immediate shipment. Fuel sold for storage would not qualify for the exemption. The penultimate paragraph of subdivision (b) of Regulation 1621 states: "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 conveyance."

This paragraph was added to the regulation as the Board's recognition that refueler trucks are utilized at certain airports as substitutes for underground hydrant systems. Thus, the otherwise applicable exemption remains applicable to sales into refueler trucks when those trucks are used merely to transport the fuel and not to store it.

Based on the facts set forth above and in your letter, we conclude that the sale of fuel into the refueler trucks is a sale for immediate shipment under Section 6385(c) and subdivision (b) of Regulation 1621.

Intermediate Piping

_____ purchases its fuel supply at the Los Angeles International Airport (LAX) into plane from its fuel subsidiary. The fuel subsidiary owns the day storage facility from which its fuel is delivered into _____ aircraft. The storage facility will be removed, and the fuel will then be piped directly from the LAX fuel bulk storage facility to the terminal hydrant systems.

The pipe to the terminal hydrant systems will be approximately 12 inches in diameter and 6,000 feet in length. An isolation valve (cutoff valve) will be placed in the pipe approximately half way along its length. The approximately 3,000 feet of pipe between the isolation valve and the hydrant system would continuously have approximately 7,500 gallons of fuel in it. Approximately 300,000 gallons of fuel would move through the pipe daily. The direction of fuel will always be from the isolation valve toward the hydrants, which are the only fueling outlets after the isolation valve. There will be no intermediate storage facilities between the isolation valve and the aircraft.

LAX _____ will own the pipe and the fuel in the pipe between its storage tanks and the isolation valve. You ask whether the fuel will be considered as fuel purchased for immediate shipment and not for storage if _____, rather than its fuel subsidiary, were to own the pipe from the isolation valve to the hydrants and were to accept delivery, title, and risk of loss of the fuel at the isolation valve. That is, you ask whether, assuming all other conditions have been met, sales of fuel under these facts will qualify for the Section 6385(c) exemption.

We assume that the pipe between the isolation valve and the hydrant systems will be laid out in the most direct route that is commercially reasonable. That is, we assume that the length of pipe between the isolation valve and the hydrant systems will not be made longer than necessary in order that the pipe may contain more fuel than it otherwise would. Similarly, we assume that the diameter of the pipe has been determined based on the amount and speed at which fuel can be delivered at the hydrant system rather than the amount of fuel that remains in the pipe when the fuel is not flowing. Finally, as we understand your description, the diameter of the pipe will be the same along its entire length. That is, there will be no “bulge” that may be construed as a type of storage.

Under the facts and assumptions set forth above, we would regard the pipe between the isolation valve and the hydrant systems as a delivery system for the fuel and not a storage facility. Therefore, we would regard the sale of fuel at the isolation valve as a sale of fuel for immediate shipment and not for storage. Assuming all other conditions have been met, such sales of fuel would qualify for the Section 6385(c) exemption.

If you have further questions, feel free to write again.

Sincerely,

David B. Levine
Tax Counsel