

M e m o r a n d u m

To : Ms. Mary Armstrong
Legal Division
MIC: 82

Date : May 20, 1997

From : Mr. Ed King, Chief
Fuel Taxes Division
MIC: 33

Subject : Request For Legal Opinion

We have received a letter from [redacted], accounting technician with the [redacted] County [redacted]. This organization has contracted with the [redacted] County GAIN Program to provide transportation for AFDC recipients. These recipients are either attending an adult school or a job club. Four vans operating on CNG are used to transport the recipients to and from the GAIN site, adult school or job club. Each vehicle weighs 8700 lbs. The vehicles are owned by the [redacted] County GAIN program, but maintained by [redacted].

We have registered this organization under our Use Fuel Tax Program with account number [redacted]. Ms. [redacted] has been reporting a portion of the gallons used as exempt from the \$.07 per unit imposed on CNG. She believes the organization is exempt under Section 8655(b) (5) and (6) of the Use Fuel Tax Law and has been paying \$.01 per gallon for the transit use on her returns.

[redacted] does have a contract with the [redacted] County Superintendent of Schools and is providing transportation for adults (pupils?) attending adult school.

If adults can be considered pupils and adult school is "school", it appears [redacted] should be allowed to take the exemption as outlined in Section 8655(b) (6) of the Use Fuel Tax Law.

Based on the above information, please provide a legal opinion as to whether [redacted] may claim the exemption as provided in Section 8655(b) (6) of the Use Fuel Tax Law.

Attached is a copy of the letter from Ms. [redacted] and the agreement between [redacted] and the [redacted] County Superintendent of Schools.

RMF:EWK:lmb

Attachments

DISCUSSION:

In relevant part, Revenue and Taxation Code Section 8655 provides as follows:

“(b) No tax shall be imposed upon fuel used by:

* * *

(5) Any school district, community college district, or county superintendent of schools owning, . . . or operating buses for the purpose of transporting pupils to and from school and for other school or college activities involving pupils, including, but not limited to, field trips and athletic contests.

(6) Any private entity providing transportation services for the purposes specified in paragraph (5) under contract or agreement with a school district, . . . or county superintendent of schools, only for fuels consumed while providing services under those contact or agreements entered into subsequent to the effective date of the act adding this paragraph. . . .”

Further, the legislature included “intent” language which reads in part as follows:

“. . . (e) There are in the State of California many local bus transit operators in need of financial assistance from sources other than the local property tax. These operators are performing essential public transit service as a vital counterpart of the streets and highways. It is the purpose of this section to provide relief from the payment of use fuel tax for local transit operators and it is the intent of the Legislature that the funds accruing to such operators shall be used for the improvement of their transit operations.
. . .”¹

The only exception to the exemptions provided in § 8655 is found at subsection (d) which states that charter-party carriers of passengers are not entitled to the subject exemption. However, since _____ is not a charter-party carrier, as defined by 8655(d), this exception does not apply.

Therefore, under the statutory scheme outline above, as long as _____ contracts with a superintendent of schools and transports “pupils” to “school”, it will be entitled to the exemption. According to the facts presented, _____ is under contract with the _____ County Superintendent of Schools. That element is clearly satisfied. Therefore, it remains to determine whether or not transporting adults to educational training is the same as transporting “pupils”

¹ The intent language does go on to add that the operators are to be aided in “providing better transit service to and from places of employment”. However, we do not read this language as intending to limit the benefits of the use fuel tax exemption to transit services that take people just to and from work; but rather to give an example of one of the many benefits to be gained by encouraging public transportation.

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to "school". While the contract may not specifically utilize the terms "pupils" and "school", there is no limitation provided for in the section that would indicate that adults do not qualify as pupils and is contracted with a superintendent of schools who is providing educational services. Therefore, I conclude that is transporting adult students to educational programs which is the equivalent of transporting "pupils" to "school" and should fall within the exemption provided at § 8655(b)(6).

MGB:es

cc: Ms. Janet Vining
Ms. M. Judith Nelson



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State Board Equalization
Jaime Diaz
P.O. Box 942879
Sacramento, CA 94279-6167

Dear Mr. Diaz:

As per our conversation on April 29, 1997, enclosed is a copy of our contract with the County GAIN Program and other information that you requested.

We are contracted through the County GAIN (Greater Avenues for Independence) to provide transportation for AFDC (Aid to Families with Dependent Children) recipients, who are mainly adults. These recipients are either attending an adult school or a job club where they receive continuing education or job training. They are picked up at a designated bus stop and transported to the GAIN site, adult school or job club. At the designated time they are transported back to their drop-off stop.

Four vans are used to provide transportation. The gross vehicle weight is 8700 lbs (one ton) per vehicle. These vehicles are owned by the County GAIN Program, however, provides all the maintenance and upkeep on the vehicles.

We fuel the vans at the fueling station on our facility. This fuel is actually taken directly from our utility gas line and from the fuel station a meter measures the amount of fuel taken. That amount of fuel is what is reported on our fuel tax return. has two CNG sedan vehicles that also run off CNG. Looking at the 1996 return I charged 90% of the total usage to the transporting of GAIN clients based on .01 cent per unit, and 10% to the sedan vehicle usage based on the normal .07 cents per unit.

I made several calls to State Board Equalization for direction on completing the fuel tax return. I did speak with you and as I can recall you did say when transporting students the rate was .01 cent per unit. Given that information, I based the GAIN usage to on the .01 cent rate.

Please contact me if modifications are needed. I will be expecting a phone call or correspondence from you as which direction to take. If you have any further questions please do not hesitate to call me at,

Sincerely,

ers

/lb
enclosure

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