TAA 87B5001

[[May 15, 1987]]

Re:Request of Technical Assistance Advisement 87(B)5-001
<<#6 Residual Fuel Oil Used by Utility Companies>>

Dear
This is in response to your request for the issuance of a Technical Assistance Advisement finding that the corporation is not engaged in activities which will subject the described transactions to payment of taxes on "special fuels" under Chapter 206, Part II, and Chapter 212, Part II, Florida Statutes.

Your letter provides:

"Facts

XXXX, is a corporation that is involved in the process of providing number 6 fuel oil to utility companies located in the State of Florida. XXXX enters into contracts with other trading corporations like XXX and manufacturers to acquire the number 6 oil with delivery to XXXX to be made at the location where delivery to the utility company occurs. XXXX has no facilities, location, or employees in the State of Florida and does not enter into contracts for sale of number 6 fuel oil to utilities located in Florida. In substantially all its cases the point of delivery and transfer of title from the company from whom it acquires title to the fuel and the point at which title is transferred to the companies that transfer to utility companies are identical in moment and location. XXXX and other like companies are involved wholly in interstate or foreign commerce as it relates to the tax jurisdiction of the State of Florida.

XXXX and other similar corporations function in the world market in substantially the fashion described in the summary and description of oil contract relationships attached to this request as Exhibit A.

XXXX requests that a technical assistance advisement be issued finding:

XXXX is not engaged in activities which would subject it to registration as a dealer under Chapter 206, Part II, or Chapter 212, Part II, Florida Statutes. The transfer of title by the corporation and the acquisition of title by the corporation are not transfers subject to tax pursuant to Part II, Chapter 206 or Part II, Chapter 212, Florida Statutes.

XXXX Position

XXXX maintains that the sequential transfers of title between various corporations resulting in the ultimate acquisition of special fuels by utility companies in the State of Florida under the circumstances described herein do not constitute sales or transfers of title within the State within the confines and contemplations of Chapter 206 and Chapter 212. The true nature of the transaction between these corporations and other similarly situated corporations, whether registered or not as dealers, does not constitute a sale or transfer of title in the State of Florida but merely a facilitation

or trading in the world oil market. This corporation and similarly situated corporations from whom and to whom they transfer title to fuels as described herein are not involved in activities which would subject them to the obligation to register and in other fashions comply with the requirements of Part II of Chapter 212 and Part II of Chapter 206 in order to avoid the imposition of tax on resale of fuels within the state. The transfers are not subject to a levy of tax as contemplated on taxable transfers under the applicable statutory provisions."

The Departments Position

Subsection (1) of Section 206.86 Defines Special Fuel as Follows:

"Special fuels' means liquid product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance, or used for the generation of power, heat, light, or energy. This term shall include, but not be limited to, all forms of fuel commonly or commercially known or sold as diesel fuel or kerosene, except such fuels that are subject to the tax imposed by Part I of this Chapter."

The same section also defines a dealer as any person who "purchases or receives in this state special fuels in bulk quantities for resale to service stations, to a user or another dealer, or to the ultimate consumer for nontaxable consumption upon which the tax has not been paid..." and who "imports and sells at wholesale or retail or otherwise within this state any of the special fuel...."

Subsection 206.89(1), reads in part:

"No person shall act as a dealer unless he holds a valid dealers license issued by the department..."

Subsection 212.61(1), reads:

"'Dealer' means any person who holds a valid license as a dealer of special fuel, issued by the department it pursuant to s. 206-89....

Subsection (1) of section 206.87, reads in part:

"An excise tax of 4 cents per gallon is hereby imposed upon every gallon of special fuel used or sold in this state for use... Unless expressly provided to the contrary in this part every sale shall be deemed to be for use in this state...."

Conclusion

This department has always, as now, taken the position that any type of petroleum product which is consumed for generation of heat and energy is in fact a special fuel just as a petroleum product, not considering gasoline, which is used for the propelling of vehicles. It is also the position that any person purchasing for resale number 6 bunker fuel, which in this case is used for generation, shall become licensed with the department and file a report, even though no tax is due. Due to the confusion as to which trading company actually is responsible for importation of the number 6 fuel, the department takes the position that the trading company which has entered into an agreement to furnish fuel to the utility company, is the one that should be licensed with the department and report.

Without ignoring the phrase in s. 206.87, "every sale shall be deemed to be for use", it is the department's realization that in your client's circumstance bunker 6 fuel is not refined for "use" and is not a taxable product as such, and no tax is due on the described transaction. However within the confines of the law, the department shall prospectively insist that your client become licensed and account to the department for the importation and sale of number 6 fuel, even though no tax is due.

This advisement is issued strictly in conjunction with this particular situation, and subject to the handling of number 6 fuel only.

This response constitutes a technical assistance advisement under s. 213.22, F.S., which is binding under the Department only under the facts and circumstances described in the request for this advisement as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or rules administrative changes or judicial interpretations of the statutes or upon which this advice is based may subject similar or future transactions to a different treatment than expressed in this response.

Be further advised that this response and your request are public records under Chapter 119, F.S., which are subject to disclosure to the public under the conditions of s. 213.22, F.S. Your name, address, and any other details which might lead to identification of the corporation must be deleted by the Department before disclosure period. In an effort to protect the confidentiality of such information, we request you notify the undersigned in writing within 15 days of any deletions you wish made to the request or this response.

Sincerely,

Glenn M. Williamson
Technical Assistant

GMW/gh