

TAA 96B5003

[[December 2, 1996]]

Re: Technical Assistance Advisement No. 96(B)-003

<<Fuel Tax on Exports>>

Chapter 206, Florida Statutes

XXXX (hereinafter referred to as Company)

Dear :

This is the second response to your request for a Technical Assistance Advisement on the imposition of fuel tax on petroleum products exported from Florida. This response is in addition to the Letter of Technical Advice on the same issue that was mailed to you on August 28, 1996, and the Technical Assistance Advisement which was faxed to you on November 7th.

FACTS AS PRESENTED

Company's intent is to purchase petroleum products from a licensed terminal supplier in Port Everglades, Florida.

The terminal supplier would cause the products to be loaded into transport trailers owned by a licensed carrier. The transport trailers would then be delivered to an export vessel located either in the Port of Miami or Port Everglades.

The transport trailers are then loaded aboard export vessels for transportation to the Bahama Islands. The terminal supplier would retain title to, and ownership of, the petroleum products until the transporting vessel has cleared U.S. waters.

DISCUSSION AND LAW

The Florida fuel tax statutes were amended, effective on July 1, 1996, to impose fuel taxes at the loading rack of terminals located within this State.

Section 206.41(6), F.S., provides in part:

(6) Unless otherwise provided for by this chapter, the taxes specified in subsection (1) are imposed on all of the following:

(a) The removal of motor fuel in this state from a terminal if the motor fuel is removed at the rack.

Section 206.87(2), F.S., states:

(1) The taxes specified in this section are imposed on all of the following:

(a) The removal of diesel fuel in this state from a terminal if the diesel fuel is removed at the rack.

Section 206.9835, F.S., provides guidance on the imposition of tax on aviation fuel sold in this State and states:

To the extent that they are not manifestly incompatible with the provisions of this part, the provisions of part I shall govern the administration and enforcement of the tax imposed by this part.

Section 206.01(20), F.S., defines export as:

any removal of taxable motor or diesel fuels from this state other than by bulk transfer.

Section 206.01(15), F.S., provides:

"Bulk transfer" means the shipment of fuel by pipeline or marine vessel between terminals or from a refinery to a terminal.

The shipment of fuel by means of tanker trailers, as described above, is not a bulk transfer because the fuel does not flow directly from the terminal through a pipeline into an exporting vessel.

Note that s. 206.20(4), F.S., provides:

Except as authorized by this chapter, it is unlawful for any person to transport or cause to be transported any taxable motor or diesel fuel, other than through bulk transfer, within this state, upon which the tax imposed by this part has not been paid, including all fuels removed from bulk storage through a loading rack.

Section 206.02(1), F.S., states:

(1) It is unlawful for any person to engage in business as a terminal supplier, importer, exporter, or wholesaler of motor fuel within this state unless such person is the holder of an unrevoked license issued by the department to engage in such business...

Section 206.01(22), F.S., states:

"Terminal supplier" means any position holder that has been licensed by the department as a terminal supplier, that has met the requirements ss. 206.05 and 206.90, and that is registered under s. 4101 of the Internal Revenue Code for transactions involving the bulk storage and transfer of taxable motor or diesel fuels.

When a terminal supplier acts as an exporter, s. 206.051(4), F.S., requires in pertinent part:

A licensed exporter shall be authorized to take a credit on its monthly fuel tax return or apply for a refund of all state fuel tax and local option fuel tax paid on fuel exported from the state in compliance with this section.

Section 206.12, F.S., provides further:

(1) Each person shall maintain and keep such record of motor fuel received, used, transferred, sold, and delivered

within this state by such person, together with invoices, bills of lading, and other pertinent records and papers, as may be required by the department for the reasonable administration of the motor fuel tax laws of this state. Records shall include all import and export documentation, all records necessary to provide evidence of exemptions claimed as a result of use, sale, or export, or through the sale, use, or storage of diesel fuels exempted for meeting dyeing requirements in part II. Each licensee or any other person who purchases, imports, exports, stores, sells, or uses motor fuel shall preserve such records as long as required by s. 213.35.

Terminal suppliers are not exempt from tax on fuel which is exported from the loading rack of a terminal. When terminal suppliers export fuel after removal from storage through the loading rack, terminal suppliers must assess themselves all taxes imposed in this State, but may take a credit for the taxes self-assessed where proper documentation indicates that the fuel was exported from Florida to a foreign country. Additionally, terminal suppliers are not required to be licensed as exporters when exporting fuel from a terminal. A terminal supplier may import to, and sell or export fuel from a terminal without a requirement to be licensed as an importer or exporter.

CONCLUSION

The purchase of petroleum products by Company from the terminal supplier, under the exclusive conditions of the facts as they are presented, is not subject to Florida taxation. However, the removal of the fuel through the loading rack, subjects the terminal supplier to all taxes imposed by ss. 206.41, 206.87, and 206.9935, F.S. However, the terminal supplier may take a credit or apply for a refund for taxes paid or accrued on all fuel exported under the facts described above, except for the pollutants tax imposed under the Coastal Protection Trust Fund (s. 206.9935(1), F.S.), which is not subject to refund under s. 206.9942(1), F.S.

The facts places the ownership of fuel being exported from Florida, and the liability of tax on the terminal supplier, if the fuel, subsequent to sale to Company, is diverted for sale in Florida.

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

You are 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 taxpayer must be deleted by the Department before disclosure. 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 the response. Please note that we already have in file some documents evincing some desired deletions.

Sincerely,

Lynwood Taylor

Senior Tax Specialist

Tax Policy and Dispute Resolution

LNT/Int

Control Number: 27035