

**STATE OF CALIFORNIA****STATE BOARD OF EQUALIZATION**

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July 22, 2008

Mr. Reed Sellers  
Sellers Petroleum  
350 W. Aten Road  
Imperial, CA 92251

SY FHA 100-792779

Dear Mr. Sellers:

This is in response to your June 6, 2008 letter in which you request the proper application of the California Sales and Use Tax Law with respect to collection of pre-paid sales tax on sales of fuel to an Indian retailer on a reservation.

As a preliminary matter, section 6596, "Excusable Delay-Reliance on Advice," of the California Sales and Use Tax Law grants taxpayers relief from future liabilities if the underreported tax is based on incorrect written advice provided by a Board representative. However, without specific details regarding the transactions in question, I cannot provide you with a specific opinion. The answer given is intended to provide general information regarding the application of tax based on the information you have provided and will not serve for relief of liability under section 6596.

For your general information, the Revenue and Taxation Code provides that sales tax is imposed on the gross receipts from the retail sales of tangible personal property in this state. The sales tax is imposed upon the retailer for the privilege of selling tangible personal property at retail in California. The use tax is complementary (and mutually exclusive) to the sales tax and is imposed upon the storage, use, or other consumption in this state of tangible personal property, not subject to the sales tax. The obligation to pay the use tax is on the consumer.

In your letter, you state that your company, Sellers Petroleum (Sellers), was asked to deliver gasoline and diesel to the Torrez Martinez Indians (T-M Indians) on their reservation. The actual purchasing entity is Selnek-is-Tem-Al Corporation (Selnek), owned by the T-M Indians, and is operated solely by tribal members for the benefit of the tribe. Transfer of ownership of the fuel will occur on the reservation. You ask if Sellers Petroleum is required to charge or pre-collect tax on its fuel sales to Selnek.

Mr. Reed Sellers

-2-

July 22, 2008

Regulation 1616, Federal Areas, states, with regards to Indian Reservations:

***Sales by Indians.***

1. *Sales by Indians to Indians who reside on a reservation. Sales tax does not apply to sales of tangible personal property made to Indians by Indian retailers negotiated at places of business located on Indian reservations if the purchaser resides on a reservation and if the property is delivered to the purchaser on a reservation. The purchaser is required to pay use tax only if, within the first 12 months following delivery, the property is used off a reservation more than it is used on a reservation.*
2. *Sales by Indians to non-Indians and Indians who do not reside on a reservation. Sales tax does not apply to sales of tangible personal property by Indian retailers made to non-Indians and Indians who do not reside on a reservation when the sales are negotiated at places of business located on Indian reservations if the property is delivered to the purchaser on the reservation. Except as exempted below, Indian retailers are required to collect use tax from such purchasers and must register with the Board for that purpose.*

*Indian retailers selling meals, food or beverages at eating and drinking establishments are not required to collect use tax on the sale of meals, food or beverages that are sold for consumption on an Indian reservation.*

As such, Selnek is not required to collect sales tax on its sales. However, when making sales to non-Indians or Indians that do not reside on a reservation, Selnek is required to collect and remit use tax on its transactions.

With regards to a sale of fuel delivered to the reservation by Sellers, since Selnek will sell fuel to both Indians and non-Indian customers, Sellers must pre-collect sales tax from Selnek in accordance with Revenue & Taxation Code section 6480.1. If Selnek subsequently sells the fuel to an on-reservation Indian whose purchase is exempt from tax, it may seek from the Board a refund of the pre-collected sales tax paid to Sellers. If the fuel is sold to a person who is not exempt from state taxation (i.e. a non-Indian or an Indian who does not reside on a reservation), and who owes California use tax, the pre-collected sales tax may be offset against Selnek's use tax obligation.

Regarding diesel fuel tax and motor vehicle fuel tax, these taxes are deemed to be imposed on the supplier of the fuel at the point that the fuel is removed from the refinery or terminal rack or imported into this state. When Selnek purchases this fuel, no diesel or motor vehicle fuel taxes are imposed on it because the taxes have already been imposed on the supplier further up the chain of distribution. The fuel taxes are included in the cost of the fuel, in the same way as are other expenses of the supplier. Selnek is not due a credit for these taxes when it purchases fuel from Sellers.

I hope this information is helpful. If you have any further questions regarding this or any other issue, please write us again or call our Information Center at (800) 400-7115. You may also visit

AUG. 24, 2008 8:02AM SELLERS PETROLEUM

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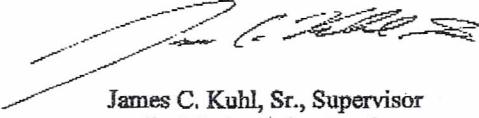
Mr. Reed Sellers

-3-

July 22, 2008

our website at [www.boe.ca.gov](http://www.boe.ca.gov).

Sincerely,

  
James C. Kuhl, Sr., Supervisor  
Audit & Information Section

916/3242916

JCK:kbs:jc

cc: Ms. Freda Orendt (MIC 47)  
Mr. Stephen Rudd (MIC 46)  
Mr. Craig Clauson, (FH), with copy of incoming letter  
Ms. Kelly Reilly (MIC 47)  
Ms. Erin Little (MIC 46)  
Ms. Mary Ann Hay (MIC 47)  
Mr. Michael Loretta (MIC 46)  
Ms. Trista Gonzalez (MIC 44)  
Mr. Todd MacMurray (MIC 44)  
Kirsten Stark (MIC 44)