

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-311
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of	:	<u>JANUARY 14, 1981</u>
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The Honorable Kenneth Cory, State Controller has requested an opinion on a question which we have phrased as follows:

Do the refund provisions of Revenue and Taxation Code section 8101.6, subdivision (a)(2), apply to: (1) an agreement between the city and a taxi cab company wherein the company agrees to provide “dial-a-ride” services to the elderly and infirm on a demand basis; (2) an agreement between a county and an ambulance operator wherein the operator agrees to provide emergency ambulance services; (3) an agreement between a county and an ambulance operator wherein the operator agrees to provide transportation of patients between county-owned hospitals, between private and county-owned hospitals and between county-owned health facilities and other governmental health facilities?

CONCLUSION

The refund provisions of Revenue and Taxation Code section 81016, subdivision (a)(2), do not apply to fuel used in vehicles operated pursuant to: (1) an

agreement between a city and a taxi cab company wherein the company agrees to provide “dial-a-ride” services to the elderly and infirm on a demand basis; (2) an agreement between a county and an ambulance operator wherein the operator agrees to provide emergency ambulance services; (3) or an agreement between a county and an ambulance operator wherein the operator agrees to provide transportation of patients between county-owned hospitals, between private and county-owned hospitals and between county-owned health facilities and other governmental health facilities.

ANALYSIS

We are asked whether certain operators of motor vehicles, under specified conditions, qualify for the refund of taxes paid under the Motor Vehicle Fuel License Tax Law. (Rev. & Tax. Code, § 8301 *et seq.*) Section 7351¹ imposes a license tax (“gas tax”) upon distributors for the privilege of distributing motor vehicle fuel (gasoline) at the rate of seven cents per gallon on the *first* distribution in this state. (§§ 7304, 7354.) Generally, the distributor is a refiner. (§ 7305.) This tax is included in the total price the consumer pays when purchasing gasoline at a local service station. Section 8101.6 provides for refund of six cents of the gas tax under certain specified conditions:

“(a) No refund of any tax shall be granted on motor vehicle fuel used ‘in propelling passenger carrying vehicles, except six cents (\$006) of the tax imposed upon each gallon of motor vehicle fuel used in propelling passenger carrying vehicles used for the transportation of persons for hire, compensation, or profit of the following:

“(1) Any transit district, transit authority, or city owning and operating a local transit system itself or through a wholly owned nonprofit corporation.

(2) Any private entity providing transportation services under contract or agreement, except general franchise agreements, with a public agency authorized to provide public transportation services, only for fuels consumed while providing services under such contracts or agreements entered into subsequent to the effective date of this act.

“(3) Any passenger stage corporation subject to the jurisdiction of the Public Utilities Commission when the motor vehicles of such passenger stage corporation are exclusively operated in urban or suburban areas or between

¹ All unidentified section references are to the Revenue and Taxation Code operating a local transit system itself or through a wholly owned nonprofit corporation.

cities in close proximity; provided, however, that the exemption is not extended to any line or lines operated by such passenger stage corporation which shall exceed 50 miles of one-way route mileage.

“(4) Any common carrier of passengers operating exclusively on any line or lines within the limits of a single city between fixed termini or over a regular route, 98 percent of whose operations, as measured by total route mileage operated, are exclusively within the limits of a single city, and who by reason thereof is not a passenger stage corporation subject to the jurisdiction of the Public Utilities Commission.

“(b) The exemption provided for in subdivision (a) shall not be applicable to motor vehicle fuel used by a charter-party carrier of passengers. The term ‘charter-party carrier of passengers’ has the same meaning as that specified in Section 5360 of the Public Utilities Code and shall further include those transportation services described in subdivisions (a) and (e) of Section 5353 of the Public Utilities Code, if such transportation service is rendered as contract carriage and not as common carriage of passengers.

Specifically, we are asked whether the refund provisions of Section 8101.6, subdivision (a)(2), apply to certain taxi and ambulance services rendered by private companies pursuant to contracts with local governments to render such services. Our task is to ascertain the legislative purpose in authorizing the section 8101.6, subdivision (a)(2), refunds and, thus, to determine whether the Legislature intended these services to fall within the section.

To determine the meaning of the refund section, we must first apply rules of statutory construction which have been summarized by the California Supreme Court in *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230 as follows:

“We begin with the fundamental rule that a court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent the court turns first to the words themselves for the answer. We are required to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose and a construction making some words surplusage is to be avoided. When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. Moreover, the various parts of a statutory enactment must be harmonized by considering the particular clause or

section in the context of the statutory framework as a whole.” (Citations and quotations omitted; emphasis added.)

Section 8101.6 was added to the Revenue and Taxation Code by Section 1 of chapter 1140, Statutes of 1978. In section 2 of the same chapter, the Legislature amended section 8655, a part of the Use Fuel Tax Law.² In order to discern the purpose behind chapter 1140 as a whole, a comparison between the gas tax and the use fuel tax, both of which were dealt with in the chapter, is in order.

Under the Use Fuel Tax Law, a seven cent per gallon excise tax is imposed upon the use of *diesel* fuels.³ (§§ 7304, 8604.) Under section 8655, subdivision (b)(2), of this law, however, private entities providing transportation services under contract or agreement with a public agency authorized to provide public transportation services are *exempt* from paying six cents of the tax on such fuels, primarily *diesel* fuel. This section is worded identically to section 8101.6, subdivision (a)(2), which section provides for the six cent *refund* of taxes paid on *gasoline*. Under the Motor Vehicle Fuel License Tax Law, a license tax is imposed on the distribution of gasoline. Under the Use Fuel Tax Law, an excise tax is imposed on the use of diesel and other fuels. The taxes on diesel fuel and gasoline are, then, identical as to amount. Both taxes, although owed by the distributor or vendor as the case may be, are passed along to the ultimate consumer as reflected in higher prices at the pump. The section 8101.6, subdivision (a)(2), refunds reach the same entities as the section 8655, subdivision (b)(2), exemptions. Each of these sections, one by refunding six cents per gallon and the other by exempting the six cents before it is actually paid, results in “taxing” the same entities at the rate of one cent per gallon. Thus, the two taxes are comparable in that they result in taxing the same entities at the same rate. The Legislative Counsel’s Digest of Senate Bill 1234,⁴ which bill both amended section 8655 (use fuel tax) and added section 8101.6 (gas tax), clearly sets forth the legislative purpose behind both the refund and the exemption sections with which we are here dealing.

The Legislative Counsel’s Digest of Senate Bill 1234 reads:

“(1) Under the Use Fuel Tax Law, a tax is imposed on *diesel fuel* at the rate of 7¢ per gallon.

“However, under the Mills-Hayes Act [§ 8655], a tax is imposed at the rate of only 1¢ per gallon on diesel fuel used by public transit entities, by

² Sections 8601–9355.

³ Natural gas and other compressed gases are also included (See §§ 8651, 8651.4, 8651.5, 8651.6, 8651.7.)

⁴ Statutes of 1978, chapter 1140.

passenger stage corporations subject to the jurisdiction of the Public Utilities Commission with respect to their motor vehicles exclusively operated in urban or suburban areas or between cities in close proximity for the transportation of persons for hire if the route line does not exceed 50 miles one-way, and by other common carriers operating between fixed termini or over regular routes with at least 98% of their total mileage operated within a single city, except when the diesel fuel is used in chartered services.

“This bill would include, in the Mills-Hayes act, with specified exceptions, any private entity providing transportation services under contract or agreement with a public agency authorized to provide public transportation services so that such an entity would pay a tax of 1¢, and not 7¢, per gallon of diesel fuel.

“(2) Under the Motor Vehicle Fuel License Tax Law, a tax is imposed on gasoline at the rate of 7¢ per gallon.

“The bill would make a refund of 6¢ per gallon of gasoline used in propelling passenger carrying vehicles to those entitles required to pay only a tax rate of 1¢ per gallon on diesel fuel under the Mills-Hayes Act, including, with specified exceptions, those private entitles providing transportation services under contracts or agreements with public agencies authorized to provide public transportation services, when such vehicles are used for the transportation of persons for hire, compensation, or profit.

“ (Emphases added.)

As stated by the California Supreme Court in *People v. Superior Court (Douglass)* (1979)24 Cal. 3d 428, 434:

“It is reasonable to presume that the Legislature amended those sections [Bus. & Prof. Code, §§ 2399.5, 2361] with the intent and meaning expressed in the Legislative Counsel’s Digest. (See *Maben v. Superior Court* (1967) 255 Cal. App. 2d 708, 713.)”

As stated in the above quoted digest, section 8101.6 was added to the Revenue and Taxation Code ‘to make a refund of 6¢ per gallon used in propelling passenger carrying vehicles *to those entitles* required to pay only a tax rate of 1¢ per gallon on diesel fuel under the Mills-Hayes Act [§ 8655].’ (Emphasis added.) It is clear that the legislative purpose in enacting section 8101.6 was to bring the tax on gasoline in line with the tax on diesel fuel. Another important item included in the Senate bill was the amendment to section 8655 which added

subdivision (b)(2) thereof. This section is, as we have seen, identical to section 8101.6, subdivision (a)(2). Thus, from these factors we can logically assume that the purposes behind both the tax refund provisions of the gas tax and the tax exemption provisions of the use fuel tax are identical. The discernable difference between the two is the mechanics of how the tax is equalized.

We now turn to the following expressions of purpose contained in section 8655, subdivision (b)(4)(e):

“(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 and to aid in providing better *transit service to and from places of employment.*” (Emphasis added.)

We note again that the tax exemptions under section 8655(b)(1), (2), (3) and (4) apply to exactly the same transportation entities as are authorized refunds under section 8101.6(a)(1), (2), (3) and (4). Since both sections 8655 and 8101.6 accomplish the same end, eliminating a major portion of tax for the same entities, albeit by different means, we may reasonably and logically assume that the legislative purpose expressed in one of the sections is applicable to the other as well. This is especially valid when we remember that one of the stated purposes of Senate bill 1234 was to bring the gas tax refund provisions into line with the use fuel exemptions. Thus, we conclude that the legislative purpose of the section 8601.6 refunds is to provide relief from the gas tax for “local bus transit operators” who “are performing essential public transit service” to permit such operators to use the savings “for the improvement of their transit operations and to aid in providing better transit service to and from places of employment.” While this expression of legislative purpose does not limit the types of vehicles for which gas tax refunds may be claimed, it does provide a limitation in terms of the type of service which must be provided by the vehicles. The vehicles must be used by operators “performing essential public transit service.” The refunds were intended by the Legislature to be used: (1) for the improvement of local bus transit operations and (2) to aid in providing better transit service to and from places of employment. We do not believe that the taxi and ambulance services which are the subject of this opinion were the kind of transit services contemplated by the legislature when it spoke of “public transit service” and “local transit operators” in section 8655, subdivision (b)(4)(e).

Accordingly, we conclude that the refund provisions of Revenue and Taxation Code section 8101.6, subdivision (a)(2), do not apply to fuel used in vehicles operated pursuant to: (1) an agreement between a city and a taxi cab company wherein the company agrees to provide “dial-a-ride” services to the elderly and infirm on a demand basis; (2) an agreement between a county and an ambulance operator wherein the operator agrees to provide emergency ambulance services; (3) or an agreement between a county and an ambulance operator wherein the operator agrees to provide transportation of patients between county-owned hospitals, between private and county-owned hospitals and between county-owned health facilities and other governmental health facilities.
