

Subject: RE: 08254363 Texas Housing Association
From: "David Reed" <David.Reed@cpa.state.tx.us>
Date: Thu, 11 Sep 2008 16:05:54 -0500
To: <txtha@texas.net>

September 11, 2008

Dear Ms. Bryant:

Thank you for your clarification of your question.

There are several instances when the members are exempt but the association is not.

If the housing authority in Texas was created under Chapter 392 of the Local Government Code, it is exempt from state motor fuels tax. Texas Tax Code Section 392.005 exempts city and county housing authorities that are created under Chapter 392, Local Government Code, from all taxes and special assessments of a municipality, county, another political subdivision, or the state. If the housing authority was not created under Chapter 392 of the Local Government Code, the motor fuel is taxable.

However, even if the housing authority is exempt, it is not mandatory that their motor fuel vendor sell the housing authority tax-free motor fuel.

There is nothing in the Texas Tax Code that mandates licensed distributors sell motor fuel tax-free to any exempt entity. Licensed distributors have the option to sell motor fuel to exempt entities with the tax included and the exempt entity can request the refund directly from the Comptroller's office or the distributor may sell the motor fuel tax-free and the distributor can request a refund or credit on their monthly motor fuels tax return. Selling motor fuel with tax included simply reimburses the seller for the state motor fuel tax paid when he purchased the motor fuel.

Some retailers, such as service stations or convenience stores, do not qualify as a licensed supplier or distributor and therefore, have no option and must sell motor fuel with tax included. An exempted housing authority would pay the state motor fuels tax and request a refund from the Comptroller's office by filing the Texas Claim for Refund of Gasoline or Diesel Fuel Taxes, Form 06-106. The number of gallons of tax paid diesel fuel or gasoline purchased by the exempted housing authority for its exclusive use, is reported on line #10.

The Texas Claim for Refund of Gasoline or Diesel Fuel Taxes (form 06-106) is available on our Internet web site at <http://www.window.state.tx.us/taxinfo/taxforms/06-106.pdf>.

This opinion is based on the facts presented and current law. If there are additional or different facts, the opinion could change.