

Memorandum

295.1160

To : Mr. Steve Guest
Return Review Section (MIC:35)

Date: June 6, 1994

From : Pat Hildebrand
Staff Counsel

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Subject: S--- C--- Co.
SR -- XX-XXXXXX

This is in response to your memorandum dated April 20, 1994. You ask whether the taxpayer's deduction of \$1,515.00 for a California Pest Tax is a valid deduction.

Taxpayer replied to a letter from the Board dated December 16, 1993, with a note stating that this tax is imposed on the manufacturer of chlorine gas by the California Department of Agriculture because chlorine gas is considered a pesticide.

Sales tax is imposed on all retailers measured by their gross receipts from retail sales of tangible personal property in this state, unless the sale is specifically exempt from sales tax by statute. (Rev. & Tax. Code § 6051.) Revenue and Taxation Code section 6012 provides that:

"(a) 'Gross receipts' means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise." (Rev. & Tax. Code § 6012(a).)

Charges for the cost of materials used, labor or service cost, and any other expense which is a part of the sale are not deductible from gross receipts unless specifically excluded by statute. (Rev. & Tax. Code §§ 6012(a)(2) and (b)(1).) Therefore, unless there is a statute which excludes a California Pest tax, the amount of the tax cannot be deducted from the taxable gross receipts.

The only deductible taxes excluded from gross receipts are certain manufacturers' or importers' excise taxes imposed by the United States on retail sales; manufacturers' or importers' excise tax imposed by Internal Revenue Code section 4091; sales and use taxes imposed by cities, counties, cities and counties, or rapid transit districts; and the amount of certain motor vehicle, mobilehome, or commercial coach fees or taxes imposed by and paid to the State of

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California. (Rev. & Tax. Code § 6012(c).) None of these exclusions from gross receipts applies to a California Pest Tax imposed on the manufacturer of chlorine gas. There is no basis for exclusion from gross receipts for the California Pest Tax and, accordingly, no basis for a deduction on the tax return.

If you have further questions, feel free to write again.

PH:cl

cc: --- --- District Administrator