



STATE BOARD OF EQUALIZATION

To : Mr. Glenn Bystrom

May 20, 1996

From : Gary Jugum

Subject : Non-Attorney Opinions

I have reviewed Robert Nunes' memorandum of November 5, 1970 to X-----.

We are in agreement with his conclusion as follows:

Platinum Catalyst. The following covers the application of sales and use taxes to transactions involving platinum catalyst.

(1) A California oil refiner orders one "load" of fresh platinum catalyst, for use in California, from a catalyst manufacturer located out-of-state. Title to the platinum catalyst passes upon shipment.

Use tax applies and the measure of tax includes the total amount for which the catalyst is sold, including the cost of the platinum component of catalyst.

(2) Same as (1), above. The refiner has paid tax upon one load of platinum catalyst. The catalyst is used in the refining process and after a period of time has become contaminated and thus becomes spent catalyst. The oil refiner returns it to the catalyst manufacturer who salvages the platinum component from the spent catalyst and manufactures fresh platinum catalyst from the salvaged platinum component. The oil refiner retains title to the platinum in the spent platinum catalyst. The platinum manufacturer then ships the fresh platinum catalyst to the California oil refiner.

This constitutes a fabrication of customer owned property under section 6010(b) and the measure of tax included in the total amount for which the catalyst is sold, including any "salvage" or "recovery" charges made and any other charge made to the oil refiner. The measure of tax does not include the value of the platinum component of the spent catalyst furnished to the catalyst manufacturer. It is immaterial that the catalyst manufacturer might commingle the spent catalyst with spent catalyst owned by it or by another oil refiner .or with other fresh platinum on hand.

(3) Same as (2), above, except that the catalyst manufacturer ships fresh catalyst to the refiner prior the time the catalyst manufacturer receives, at its plant, spent catalyst owned by the refiner. Upon shipment of the fresh catalyst, the platinum manufacturer retains title to the platinum catalyst furnished and charges rent until the spent catalyst is received from the refiner. If the spent catalyst received by the catalyst manufacturer balance the "platinum account" of the refiner, a catalyst manufacturer buys, on the open market, sufficient platinum to balance the account. When the account is balanced, title to the platinum component in the fresh catalyst passes to the refiner (and the rental obligation ceases), and title to the platinum component in the spent catalyst, or title to the platinum purchased from outside sources for the account of the refiner, passes to the manufacturer.

The transaction is subject to sales tax at the time title to fresh platinum passes to the refiner. The measure of tax includes the total amount for which the catalyst is sold, including the value of the platinum of the spent catalyst subsequently salvaged by the catalyst manufacturer

Use tax also applies to the rental charge made for the fresh catalyst prior to the time of the sale of the fresh catalyst to the refiner.

(4) Same as (3), above, except upon shipment of the fresh catalyst to the refiner, the platinum manufacturer makes no "platinum account" entry and title to the second "load" of fresh platinum catalyst passes to the refiner upon shipment. The refiner returns the first "load" of spent catalyst to the catalyst manufacturer who salvages the platinum component of the spent catalyst and credits a "platinum account" it maintains in the name of the refiner. The refiner retains title to the platinum in the spent catalyst furnished by it to the manufacturer.

The application of tax is the same as in (1), above.

(5) Same as in (4), above. The oil refiner has paid use tax on the platinum component of the two "loads" of the platinum catalyst. The refiner maintains a "credit" balance of refiner owned platinum with the catalyst manufacturer. The refiner then orders a third "load" of fresh platinum catalyst. The catalyst manufacturer ships a fresh "load" to the refiner, depleting the refiner's credit balance. The refiner replenishes its platinum account by shipping the second "load" of platinum catalyst, which is now spent catalyst, to the catalyst manufacturer and refiner's "platinum account" is credited.

The application of the tax is the same as (2), above, assuming no intervening sale, purchase or trade of the refiner's platinum pool maintained in the hands of the catalyst manufacturer. Tax applies only to the "fabrication" and "salvage" charges and does not include any "trade-in" value of the platinum in the spent catalyst returned to the catalyst manufacturer. 11/5/70

November 5, 1970

Dear X-----:

As you probably know, the Board's staff has had the problem of the proper application of tax to transactions involving platinum catalyst under consideration for some time. We know that several companies are interested in this matter, and we are forwarding copies of this letter to their representatives as in indicated at the close of this letter. However, there may be other interested parties. Since you are the current X----- of the X-----, I would appreciate it if you would forward copies of this letter to any other parties who you believe may be interested.

Outlined below are the general principles which we believe should be followed in determining the application of the sales tax to transactions involving platinum catalyst. At this point, our views are tentative and we would be pleased to discuss them with any individual or with a group representing the interested parties.

Example (1)

Facts:

A California oil refiner orders one "load" of fresh platinum catalyst, for use in this state, from a catalyst manufacturer located outside this state. Title to the platinum catalyst passes upon shipment.

Application of Tax:

Use tax applies (Rev. & Tax. Code Sections 6009, 6010 and 6201). The measure of tax includes the total amount for which the catalyst is sold, including the cost of the platinum component of the catalyst, but does not include transportation charges, if the charges are separately stated (Section 6011). The tax must be collected by the catalyst manufacturer if the catalyst manufacturer qualifies as a "retailer engaged in business in this state" (Section 6203); otherwise the tax must be paid to this state directly by the oil refiner (Section 6202).

Example (2)

Facts:

Same Example (1), above. The refiner has paid tax upon one "load" of platinum catalyst. The catalyst is used in the refining process for, for example, two years. Over the course of its use the fresh platinum catalyst becomes contaminated and thus becomes spent catalyst. The oil refiner then removes the spent catalyst and returns it to the catalyst manufacturer who salvages the platinum component from the spent catalyst and manufacturers fresh platinum catalyst from the salvaged platinum component. The oil refiner purports to retain title to the platinum in the spent platinum catalyst furnished by it to the catalyst manufacturer. The platinum manufacturer then ships the fresh platinum catalyst to the California oil refiner.

Application of Tax:

Use tax applies (Sections 6009, 6010 and 6201). The transaction is taxable as a "purchase" under paragraph (b) of Section 6010; that is, the transaction is taxable as "the producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing or imprinting." (Emphasis added.) The measure of tax includes the total amount for which the catalyst is sold, including any "salvage" or "recovery charge" made and any other charge made to the oil refiner, except for separately stated transportation charges. The measure of tax does not include the value of the platinum component or the spent catalyst furnished to the catalyst manufacturer. It is immaterial that the catalyst manufacturer might commingle the spent catalyst with spent catalyst owned by it or by another oil refiner or might commingle the recovered platinum component with platinum component owned by it or by a third person or might commingle the fresh platinum catalyst manufactured from the platinum component with other fresh platinum catalyst on hand. The tax must be collected by the catalyst manufacturer if the catalyst manufacturer qualifies as a "retailer engaged in business in this state" (Section 6203); otherwise the tax must be paid directly by the oil refiner (Section 6202).

Example (3)

Facts:

Same as Example (2), above, except that the catalyst manufacturer ships fresh catalyst to the refiner prior to the time the catalyst manufacturer receives, at its plant, spent catalyst owned by the refiner. As in Example (2), the refiner purports to retain title to the platinum in the spent catalyst furnished by it to the catalyst manufacturer. Upon shipment of the fresh catalyst, the platinum manufacturer "debits", by weight, a "platinum account", maintained by it in the name of the refiner. During the period of time that this "debit" remains on the books of the catalyst manufacturer, the catalyst manufacturer charges rent on the fresh platinum catalyst furnished by it to the refiner. The platinum manufacturer retains title to this platinum catalyst. Upon receipt of the spent catalyst by the catalyst manufacturer, the manufacturer "credits", by weight, the "platinum account" of the refiner, or, if the refiner does not "balance" its account in this manner within a specified time period, the catalyst manufacturer buys, on the open market, sufficient

platinum to balance the account. When the account is balanced, or to the extent it is balanced, title to the platinum component in the fresh catalyst passes to the refiner (and the rental obligation ceases), and title to the platinum component in the spent catalyst, or title to the platinum purchased from outside sources by the manufacturer for the account of the refiner, passes to the manufacturer.

Application of Tax:

When title to the fresh platinum catalyst passes to the refiner, sales tax applies (Sections 6006 and 6051). The transaction is taxable, at the time title to the platinum owned by the catalyst manufacturer passes to the refiner, as a "sale" under paragraph (a) of Section 6006; that is, the transaction is taxable as a "transfer of title or possession, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration". The measure of tax includes the total amount for which the catalyst is sold "valued in money, whether paid in money or otherwise", (Section 6012), including the value of the platinum component of the spent catalyst subsequently furnished to the catalyst manufacturer by the refiner and salvaged by the catalyst manufacturer. The sales tax must be reported and paid by the catalyst manufacturer (Sections 6051 and 6452), although the catalyst manufacturer may collect sales tax reimbursement from the oil refiner (Section 6052).

Tax also applies, as measured by the amount for which the fresh catalyst is rented, to the "purchase", by lease, of the fresh catalyst by the refiner. The tax is a use tax (Section 6401). Tax is due on the "purchase", by lease, of the fresh catalyst for the period of time that the leased property is situated in this state under lease (Section 6010.1). The tax must be collected, by the catalyst manufacturer, for remittance to this state (Section 6203).

Example (4)

Facts:

Same as Example (3). above, except upon shipment of the fresh catalyst to the refiner, the catalyst manufacturer makes no "platinum account" entry and title to the second "load" of fresh platinum catalyst passes to the refiner upon shipment. The refiner returns the first "load" of spent catalyst to the catalyst manufacturer who salvages the platinum component of the spent catalyst and credits, by weight, a "platinum account" maintained by it in the name of the refiner. The refiner purports to retain title to the platinum in the spent catalyst furnished by it to the catalyst manufacturer.

Application of Tax:

As to this additional transaction, same as in Example (1).

Example (5)

Facts:

Same as in Example (4), above. The oil refiner has paid use tax on the platinum component of two "loads" of platinum catalyst. The refiner maintains a "credit" balance of refiner-owned platinum with the catalyst manufacturer. The refiner then orders a third "load" of fresh platinum catalyst. The catalyst manufacturer ships a fresh "load" to the refiner, depleting the refiner's credit balance. The refiner replenishes his platinum account by shipping the second "load" of platinum catalyst, which is now spent catalyst, to the catalyst manufacturer and credits the refiner's "platinum account".

Application of Tax:

Assuming no intervening sale, purchase, or trade of the refiner's platinum pool maintained in the hands of the catalyst manufacturer, the application of the tax is, as to this additional transaction, the same as in Example (2). Tax applies only to the "fabrication" and "salvage" charges and does not include any "trade-in" value of the platinum in the spent catalyst returned to the catalyst manufacturer.

After you and the other members of the industry have had an opportunity to renew these conclusions, I would appreciate hearing your views. If you or any member of the industry believes that a meeting would be desirable, please let me know and we can work out suitable arrangements.

Very truly yours,

R. Nunes
Principal Auditor

RN:iw

Bc: Mr. W. T. Denny
Mr. T. P. Putnam
Mr. G. J. Jugum
Mr. D. F. Brady
Los Angeles – District Administrator
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