

**M e m o r a n d u m****435.1227**

To: X-----

Date: April 7, 1971

From: Gary J. Jugum

Subject: Platinum Catalyst – X-----

This is in response to your memorandum of October 21, 1970, which is a supplement to your memorandum of September 4, 1969, to X----- re “Platinum Used by Oil Refiners” and in which you raise a question, in effect, as to the application of the principles laid down in X-----’s letter of November 5, 1970 to X-----, X-----, and X-----, to the corporate pool practice of taxpayer, X-----. We will also consider the application of these principles to the practice of X-----, as discussed at our meeting of October 14, 1970.

We understand that X----- has entered into a pooling arrangement with its various corporate subsidiaries in regard to the platinum held by the platinum catalyst manufacturer, X-----. Taxpayer owns all platinum maintained in stock with X----- Taxpayer’s subsidiaries draw on this pool, exchanging platinum in their spent catalyst stocks for platinum in the fresh catalyst. Title to the platinum in the spent catalyst passes to taxpayer when the platinum enters the pool. Title to the platinum in the fresh catalyst is in the subsidiary when the fresh catalyst is in the subsidiaries’ refining units.

We further understand, from your memorandum of October 21, 1970, that:

“1. Whenever there is a transaction involving Platinum Catalyst between X----- and its out-of-state subsidiaries, X----- charges the subsidiary a fee of \$250.

“2. If X----- has to lease any platinum in order to fulfill the needs of a subsidiary, X----- charges the subsidiary the amount of the lease payment.

“3. Records are maintained on all borrowing transactions involving X----- and the subsidiaries during the turn around period of catalyst replacement.

“4. All platinum which is in the refining system of a subsidiary belongs to the subsidiary (except during the borrowing – turn around period). The subsidiaries take depreciation for income tax purposes on the platinum catalyst which is in their refinery.

“5. When a subsidiary replaces the borrowed platinum through the recovery (by X-----) of platinum from the spent catalyst, the amount of platinum so replaced may be more or less than the platinum in the fresh catalyst received by the subsidiary and from X----- (from X-----). If it is more than was borrowed, X----- will buy the surplus from the subsidiary. If the amount recovered is less than was borrowed, X----- bills the subsidiary for the difference. Sometimes the subsidiaries buy platinum on the open market to make up the difference and deliver it to X----- for the account of X-----.”

The questions are – is taxpayer the purchaser of all platinum acquired from its subsidiaries and added to its corporate pool and does tax apply, as measured by the purchase price of the property, with respect to all platinum purchased by taxpayer from its subsidiaries and subsequently brought into this state for use here as a component of fresh catalyst?

In our opinion the acquisition of the platinum from the subsidiaries is just as much a “purchase” as would be the acquisition of platinum directly from X----- or some other party.

If the platinum is then brought into this state for use here, the tax would apply [Western Contracting Corp. v. State Board of Equalization, 265 Cal.App.2d 568.] Where a portion of the commingled pool is California tax paid and a portion is held ex tax, then we think taxpayer should be able to bring to this state for use here, without payment of additional use tax, an amount of platinum equivalent to the amount of tax-paid platinum maintained in the hands of X----- at the time the platinum is shipped from X----- to California.

\* \* \* \* \*

At our conference of October 14, 1970, further question was raised as to platinum catalyst arrangement maintained by X-----.

We understand that X----- uses its fresh platinum catalyst at three out-of-state refineries before the catalyst is used in its California refinery. Two of the refineries are owned by X----- however, one is owned by a related but separate entity, X----- . The platinum in the catalyst in the refinery of X----- appears to be owned by X----- , at least while at the refinery. The partially spent catalyst is shipped from X----- to X----- for use in a California refinery.

As we advised you by memorandum dated December 16, 1969, “Platinum Used by Oil Refiners,” we think that tax applies to the use in this state, by X----- of the platinum purchased from X----- . The transaction is merely a sale of used property.

GJJ/ab

Cc: Mr. Robert Nunes