M e m o r a n d u m

435.1363

To: Out-of-State Principal Auditor (JEW) Date: July 17, 1985

From: Legal (DJH)

Subject: X----------

This is in response to your memo to me of May 17, 1985 pointing out an apparent conflict between John H. Murray's memo of March 7, 1980, concerning X---------- and Legal Counsel James A. Davis' April 26, 1985 opinion letter to X---------- .

My research shows that Mr. Davis' letter opinion followed the conclusions reached in Hearing Officer Jim Mahler's Decision and Recommendation (copy enclosed) of February 21, 1985 on the petition of X----------. I am attaching a copy of a July 10, 1985 memo from Assistant Chief Counsel Gary Jugum to me. Mr. Jugum's memo agrees with you that there is a conflict, states our conclusion that Mr. Mahler's hearing report on X---------- is correct, points out that the X----------'s petition is still in reaudit status, and anticipates that a Board hearing will eventually be held on X----------'s petition.

As recommended by Mr. Jugum, the Out-of-State District should place the X---------- letter on a six or nine month follow up and then proceed according to the final resolution of the X----------'s petition.

Your memo also questions the April 26, 1985 X---------- opinion as to the processing charges conclusion. On further review, we believe that the letter opinion makes an unlikely assumption of fact in finding that X---------- will be processing its own crude oil and that, therefore, the processing is not a sale. The submitted facts state that the crude oil will be transported to a refinery in California for processing. We now believe it likely, as we assume you do, that the processing will be done by an independent third party refinery and that, therefore, the charge for the processing of the jet fuel that
will be used by X---------- is subject to sales tax as a Section 6006(b) processing, and only the charge for processing the products other than jet fuel will not be subject to sales tax as a Section 6006(b) processing because such other products are for resale by X----------. We will write X---------- stating this re-evaluation of the facts and modify our result as to the processing and send you a copy.

DJH:rar