

Memorandum

440.1045

To : Mr. Rick Kinoshita
Audit Review and Refunds

Date: November 24, 1992

From : Elizabeth Abreu
Tax Counsel

ATSS 454-8208
(916) 324-8208

Subject: B--- P--- C---, Inc.
SY -- XX-XXXXXX

This is in response to your memorandum dated October 1, 1992, concerning the chemical E-4161. In essence, you are asking whether the chemical E-4161 is a manufacturing aid, in which case it may not be purchased for resale, or whether it becomes a component part of crude oil, in which case it may be purchased for resale.

A chemist for B--- P--- describes E-4161 as follows:

“In response to your request for information: E-4161 is a blend of oil soluble active ingredients dissolved in a hydrocarbon solvent. In use, E-4161 is added to crude oil where it functions as an emulsion breaker, i.e. it facilitates the separation of crude oil from contaminating water or brine. E-4161 remains with the crude oil component when the water is removed.”

To determine whether an item should be treated as a manufacturing aid, the courts look at the primary purpose of the purchase of the item. If the item is purchased as an aid in the manufacturing process, it is taxable despite the fact that some portion remains in the finished product or that an incidental waste or by-product results. On the other hand, if the item is purchased for incorporation as a component part of the finished product, it is not taxable despite the fact that some portion may be lost or otherwise dissipated in the manufacturing process. Kaiser v. State Board of Equalization (1979) 24 Cal. 3d 188.

Even if all or part of the item remains in the finished product, the item is a manufacturing aid if it was used to aid in the manufacturing process and if it serves no further beneficial purpose to the finished product. For example, fuser agent, which is used in high volume photocopy machines, remains on the paper of the finished copies. It is a manufacturing aid, however, because its purpose is to prevent the paper from jamming during copying and because it serves no further beneficial purpose to the paper after copying is complete.

The chemical E-4161 appears to be a manufacturing aid because it is used to remove contaminating water or brine. We assume that this removal occurs during the processing of the crude oil. Unless this chemical serves a specific, beneficial purpose to the crude oil after manufacturing is complete, it is a manufacturing aid and may not be purchased for resale.

EA:cl

cc: Out-of-State District Administrator