

M e m o r a n d u m**295.1200**

To: Mr. R. Nunes

Date: April 22, 1981

From: John H. Murray

Subject: Public Law 96-510

Public Law 96-510 (Statutes 1980) adds "Chapter 38. Environmental Taxes" (commencing with Section 4611) to Subtitle D of the Internal Revenue Code of 1954. These environmental taxes are (1) a tax on crude oil received at a United States refinery and on petroleum products entering into the United States for consumption, use, or warehousing (Section 4611). The tax provides that it shall not be imposed if the person liable for the tax establishes that a prior tax imposed under this act has been imposed with respect to the product (Section 4612 (b)); and (2) a tax on some 42 listed chemicals when sold by the manufacturer, producer, or importer thereof (Section 4661).

In your memorandum of April 15, 1981, you state that the taxes imposed by Public Law 96-510 are includable in the measure of the sales tax, and you ask that if I agree that I confirm this in writing. I agree with your conclusions.

Section 6012 (a) includes in "gross receipts" the cost of property sold; the cost of materials used; labor or service cost; interest paid; losses; and any other expense. These taxes are an expense of the taxpayer and are included in his "gross receipts" unless expressly excluded by other provisions of the law. Section 6012 (c) excludes from "gross receipts" "the amount of any tax (not including, however, any manufacturers' or importers' excise tax) imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer." The taxes in question are manufacturers' or importers' excise taxes within the meaning of subparagraph (c) (4) of Section 6012 and, accordingly, are not excluded from the measure of the sales tax. Furthermore, it should be noted that these taxes are not taxes "imposed by the United States upon or with respect to retail sales whether imposed upon the retailer or the consumer."

Senate Bill 788 imposes taxes on the same commodities and at the same rates as does Public Law 96-510. These taxes are imposed upon crude oil received at a refinery in this state and upon petroleum products imported or brought into this state for sale, storage, use, or other consumption in this state and also upon the listed chemicals produced, used, or sold in this state by any person. Again, there is no basis for the exclusion of these items from the measure of the sales tax under Section 6012.

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cc: Mr. Ronald L. Dick