STATE OF CALIFORNIA **435.1223**

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 April 22, 1971 to X----------.

We are in agreement with his conclusion as follows:

Platinum Catalyst. A refiner of petroleum products with refineries located in and outside of California sends platinum catalyst used outside of California to a processor in California for recovery and shipment of the new platinum catalyst to its California refinery.

If the platinum catalyst is received by the processor prior to the shipment of the new platinum catalyst to the California refinery, the principal contained in sections 6095 and 6245 apply. In other words, no use tax is due on the value of the platinum recovered as long as the refinery has sufficient tax paid recovered platinum inventory on hand with the platinum manufacturer to cover the amount of platinum used in the new catalyst. Only the processing charge is subject to sales tax. If there is not a sufficient amount of recovered platinum on hand, the value of any platinum added would also be subject to the sales tax. 4/22/71

April 22, 1971

X----------

Dear X----------:

This is in response to your letter of April 12 concerning the application of sales tax to platinum catalyst.

You indicated that the position expressed in my letter of November 5, 1970, constitutes a reversal of a 1965 ruling. You are referring to a letter opinion dated March 11, 1965, from Tax Counsel (PRD) to Out-of-State – Auditing (DMA). This letter opinion apparently has been interpreted to mean that Ruling 26 is applicable to all exchange transactions involving the recovery and processing of noble metals. In order that you may have a complete understanding of the circumstances surrounding this letter, I am enclosing the following copies of correspondence:

(1) Inquiry from our Out-of-State office dated September 11, 1964.

(2) The response to this inquiry which is the letter dated March 11, 1965.

A review of these two letter will demonstrate that [1] the transaction under discussion is the same as example (2) in my letter of November 5, 1970. The response by our legal staff on March 11, 1965, is consistent with the opinion expressed in my November 5, 1970 letter; [2] the question of the application of tax to the "deficit memo" type transaction discussed in example (3) of my November 5, 1970, letter was not raised.

While someone reading the March 11, 1965, response without the inquiry might be led to conclude that the principles of Ruling 26 would be applicable to the "deficit memo" type transaction, such a conclusion, we believe, is erroneous.

The "deficit memo" situation was considered as early as 1958. The proper application of the tax is shown in the enclosed copy of a letter dated January 2, 1958, from a representative of a major oil company to the Board of Equalization. The opinions expressed in this letter were confirmed as correct by a telephone call as indicated in an interoffice memo dated January 20, 1958, copy enclosed.

Incidentally, the opinion expressed in the January 20, 1958, letter with respect to the application of tax to recovery charges was later changed as the result of the 1959 amendments to section 6010. This is explained in the previously mentioned letter dated March 11, 1965, from Tax Counsel to Out-of-State Auditing.

I have had all of the above letters, with the exception of the March 11, 1965, letter, retyped on plain paper. The only changes made were those which might reveal the identity or the taxpayers involved.

My purpose in discussing this matter is not to preclude an argument on the part of a taxpayer that he was misinformed by a member of our staff. Rather, it is to demonstrate that the opinions expressed in my letter or November 5, 1910, are not necessarily a reversal of prior opinions.

As indicated in ray January 17, 1971, letter to X----------, we will give serious consideration to any claim by a taxpayer that he has been misled by a previous letter opinion.

The second question in your letter deals with the application of tax with regard to platinum used outside of California for periods of 18 to 24 months; sent to a processor for recovery, used in manufacturing new cata1yst; and shipped into California.

To the extent that the platinum is specifically identified and not commingled with other platinum of the refiner, your assumption that no use tax is due on the platinum value or the catalyst is correct.

However, if the recovered platinum is commingled with other platinum of a refiner, the following would result:

Example 1

Refiner's Account in Processor's Records

	2,000 oz. (1-10-71) Cr. (1) 2,000 oz. (1-15-71) Cr. (2)
2,000 oz. (1-20-71) Dr. (3)	

(1) Recovery of platinum from catalyst returned from out-of-state refinery.

(2) Tax-paid platinum recovered from catalyst returned from California refinery.

(3) Shipment of platinum in new catalyst to California refinery.

Analysis

The shipment on 1-20-71 to the California refinery would be deemed to be the tax-paid platinum recovered from the California refinery catalyst by applying the principle contained in sections 6095 and 6245 of the Revenue and Taxation Code.

Example 2

	2,000 oz. (1-10-71) Cr. (1) 2,000 oz. (1-15-71) Cr. (2)
2,000 oz. (1-20-71) Dr. (3)	

(1) Platinum recovered from catalyst returned from out-of-state refinery

(2) Platinum purchased ex tax.

(3) Shipment to California refinery.

Analysis

If the refiner sells as well as uses platinum, the withdrawal on 1-20-71 would be deemed to be the goods which are not held for resale, (i.e., platinum recovered from out-of-state refinery) pursuant to sections 6095 and 6245.

If the refiner does not sell platinum, the withdrawal of the goods on 1-20-71 would be deemed to be a pro rata withdrawal of the commingled goods, (i.e., 1,000 oz. of platinum from out-of-state refinery and 1,000 oz. of platinum from out-of-state refinery and 1,000 oz. of platinum from ex-tax purchases). Thus, tax would apply to the 1,000 oz. of platinum purchased ex tax and not previously used outside the state. Sections 6095 and 6245 would not be applicable to this situation since none of the goods are being held for resale nor are they purchased tax paid for use in California.

The answers given above are based on the presumption that the platinum is purchased and processed outside of California.

If you need any additional information, please let me know.

Very truly yours,

Robert Nunes
Principal Tax Auditor

RN:iw
Attach.

Bc: Los Angeles – District Administrator
Hollywood – Subdistrict Administrator

A summary of the questions asked by the staff regarding the platinum catalyst problem and the legal staff's response will be forwarded to you within the next week. The second question asked by X---------- is a part of that package.