



---

**STATE BOARD OF EQUALIZATION**

July 31, 1984

Mr. J. G. E---  
S--- C--- E--- C---  
P.O. Box XXX  
---, CA XXXXX

SZ -- XX XXXXXX

Dear E---:

Your letter of June 15, 1984 has been referred to me for reply. Your inquiry concerns whether tax applies to oxygen gas furnished through a pipeline.

We understand that S--- C--- E--- C--- ("S---") is involved in the construction, and at present time, the start-up and operation of the C--- W--- C--- G--- Project, located at ---, California. This is the first commercial size --- --- project in California. Your inquiry concerns the taxation of oxygen when furnished and used in gaseous form as part of the project's operating process. Coal and oxygen are burned together in a gasifier which creates a fuel suitable to operate the boilers at the generating plant. The oxygen used in this process is furnished through a metered pipeline from a company which has erected oxygen generating facilities on property outside, but adjoining, the G--- Project. You contend that the furnishing and use of oxygen in gaseous form is no different than the use of natural gas, which is also used to preheat the gasifier. Therefore, it is your assumption that the sale of oxygen is exempt from sales tax under Section 6353 of the Revenue and Taxation Code.

Revenue and Taxation Code Section 6353 provides, in pertinent part, that:

"There are exempted from the taxes imposed by this part the gross receipts from the sales, furnishing, or service of and the storage, use, or other consumption in this state of gas, electricity, and water when delivered to customers through mains, lines, or pipes..."

In our view, the term "gas," as used in Section 6353, includes oxygen which is in gaseous form. Therefore, it is our opinion that the sale of oxygen is exempt from taxation pursuant to Section 6353, provided the customer is billed only on the metered supply of the gas delivered, and the oxygen is in gaseous form when delivered to the customer through the pipeline. Our

S--- C--- E--- C---  
SZ -- XX XXXXXX

-2-

July 31, 1984  
275.0175.100

opinion in this matter, however, can be affected by the conclusion reached in the pending case of the County of Sonoma, et al. v. State Board of Equalization, et al, Sonoma County Superior Court, Case Number 122141. As you may know, S--- is an interested party in this case and has joined the suit against the Board as an Intervenor.

If you have any further questions regarding this matter, please write this office.

Very truly yours,

Charles J. Graziano  
Tax Counsel

CJG:ba

bc: --- -- District Administrator