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**STATE BOARD OF EQUALIZATION**

916-322-6083

June 28, 1991

Re: Ozone-Depleting Chemicals Taxes

Dear:

I am writing in response to your letter of April 11, 1990, concerning Ozone-Depleting Chemical Taxes imposed in Sections 4681 and 4682 of the Internal Revenue Code. You question whether such federal taxes are excluded from the taxable measure for purposes of California's Sales and Use Tax.

In California, except where sales are specifically exempted or excluded, sales tax applies to the gross receipts of retailers from all retail sales of tangible personal property. (Rev. & Tax. Code § 6051). A use tax is imposed on the storage, use, or other consumption in the state of tangible personal property. (Rev. & Tax. Code § 6201).

Business Taxes Regulation 1617 specifies that the gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any federal tax imposed upon or with respect to retail sales, whether imposed upon the retailer or upon the customer, and regardless of whether the amount of federal tax is stated to the consumer as a separate charge. However, gross receipts subject to the sales tax and the sales price subject to use tax include the amount of any manufacturers' or importers' excise tax included in the price of the property sold, even though the manufacturer or importer is also the retailer thereof. Again, it is immaterial whether or not the amount of such tax is stated as a separate charge.

The Ozone-Depleting Chemicals Tax is imposed in Sections 4681 and 4682 of the Internal Revenue Code. Section 4681 imposed a tax on any ozone-depleting chemicals sold or used by the manufacturer, producer, or importer thereof, and on any imported taxable product sold or used by the importer thereof. Section 4682 (b) imposes a tax on any ozone-depleting chemical which is held by any person, on January 1, 1990, for sale or for use in further manufacture.

The federal excise tax imposed by Section 4681 is a manufactures' tax and, pursuant Business Taxes Regulation 1617, it is included in gross receipts subject to sales tax, whether or not the manufacturer or importer is also the retailer thereof, and whether or not the amount of such tax is stated as a separate charge.

The federal excise tax imposed by Section 4682 on any ozone-depleting chemicals held on January 1, 1990, by other than a manufacturer, producer or importer thereof is not subject to California use tax. The use tax is measured by the purchase price (Rev. & Tax. Code §6201), and the federal excise tax imposed after the sale, self declared and paid directly to the United States on tangible personal property is not subject to the use tax.

Section 4681 also imposes the Ozone-Depleting Chemicals Tax on any imported taxable product sold or used by the importer thereof. The amount of the tax is the estimated value deemed to represent the cost of any ozone-depleting chemical used as material in the manufacture of the product and is paid directly to the United States. This self-declared federal excise tax is not to be included in the purchase price subject to California use tax if the product is used by the importer, as the consumer. However, if the product is sold and the federal excise tax is recovered as an expense, tax will apply whether the excise tax is recovered as an expense, tax will apply whether the excise tax is separately stated or included in the selling price.

I hope that this letter has answered your questions. If I can be of further service, please do not hesitate to call.

Very truly yours,

Janet Vining  
Tax Counsel

JV:wk

bc: San Diego District Administrator  
Ms. Lani Arena – Please Annotate per Gary Jugum