

**M e m o r a n d u m****325.1732**

To: Mr. Robert Nunes

Date: November 8, 1972

From: Gary J. Jugum

Subject:

This is in further response to your memorandum of July 10, 1972, in which you raised a question encountered in the current audit of ---. We initially responded to you on July 21, 1972. As you are aware, on November 2, 1972, Don Hennessy and I met with --- and --- to discuss this problem.

The audit staff was represented by Mr. Norman J. Colombo.

The catalyst manufacturing process in question has been further described by ---s representatives. Roughly, the process is this: Aluminum phosphide is mixed with water to liberate phosphine gas. Following this reaction, aluminum trioxide is left over as waste. The phosphine gas is combined with Cycloctadein (RC O8). This produces RC 78H, the desired product, and RC 716, a waste item. The RC 716 is burned off. Portions of the phosphine gas and of RC OS which have not reacted are also burned off. Eicosene-1 (RC 020) is combined with the RC 78H to form the final product, the catalyst RM 17. Those portions of the raw materials which do not react during processing are burned off as waste.

We are of the opinion that use tax does not apply to that portion of the materials burned or buried as waste in the production of RM 17. We think the exemption of Section 6009.1 applies since the valuable and desired element of the raw materials will be transported outside this state and will thereafter be used solely outside this state.

We note that it has been determined, upon field examination by Mr. Colombo, that the waste materials burned were burned for no purpose other than mere disposal. Thus their burning results in no use tax liability on that basis. Mr. Colombo raised one additional issue at our meeting of November 2. He pointed out that for a period of time the RC 716, one of the waste products, was actually shipped to, and used by, the --- Texas, plant of taxpayer. Later it was decided to discontinue this use, at which time there was on hand at the CA plant an inventory of approximately 123,880 pounds of this substance. --- advises us that this amount has now been burned off as waste. Mr. Colombo raised the question as to whether the holding-for-use in this

state of the RC 716 might give rise to a use tax liability. We are of the opinion that no tax liability was incurred as a result of this fact. Section 6009.1 provides that "storage" does not include the keeping, retaining, or exercising any right or power over tangible personal property for the purpose of subsequently transporting it outside the state for use thereafter solely outside the state. Tax would not have applied to the RC 716 if it had been shipped to taxpayer's --- Texas, plant, and we do not think that tax applies merely because taxpayer subsequently determined that this substance was a waste substance. (Compare Cal. Tax Sere Anno. 570.1380, October 23, 1964.)

GJJ/ab