

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
(P.O. BOX 942879, SACRAMENTO, CALIFORNIA 94279-0001)
(916) 323-7977

June 25, 1991

Mr. P--- K. L---
Tax Attorney
S--- O--- Company
Post Office Box XXXX
---, Texas XXXXX

Dear Mr. L---:

Re: SZ -- XX-XXXXXXX-002

I have reviewed your letter dated March 6, 1991, and Principal Tax Auditor Glenn A. Bystrom's memorandum of April 26, 1991, relative to the remaining items for the refund claim for the tax years 19XX to 19XX. In summary, our conclusions are as follows:

1. The transfer of fuel oil to acquire steam and electricity is an exchange sale of the fuel oil. The measure of the sale cannot be less than the amount of credit allowed by P--- for the refinery fuel provided.
2. The fact that the product received in exchange from P--- was steam exempt under the provisions of Revenue and Taxation Code Section 6353 is of no consequence. This exemption does not extend to the sale of fuel oil.
3. The product exchanged for the steam is not exempt under the provisions of 6358.1 or the court's ruling in Union Oil Company v. State Board of Equalization, 224 CA 3d 665.

As we understand it, the fuel in question is not pitch but rather a blended product consisting of 55 percent pitch and 45 percent cutter oil. According to the information provided, this blend would be equivalent in value to bunker fuel. It, therefore, would not qualify as a waste by-product within the meaning of 6358.1 and the cited case. The fact that pitch may have qualified if separately provided is of no consequence to our decision in this case.

4. Your letter also discusses a claimed additional credit for overpayment of taxes in the amount of \$133,905. These taxes were paid on the third quarter 19XX tax return of this taxpayer. Tax on the subject transactions

was also paid by S--- C--- P---, Inc. (SCPI) on its second quarter 19XX tax return. A self-help credit taken by S--- has previously been denied by the Board.

The department agrees that credit should be granted if it is determined that taxes have been paid both by S--- and SCPI. In light of this conclusion, we agree that the credit should be allowed upon verification of the fact that payment was made by both companies.

We are hopeful that this is the end of the trail for this very lengthy tax proceeding. In the event that you desire to discuss any aspect of our ruling, please feel free to contact me by telephone at (916) 323-7977.

Very truly yours,

W. E. Burkett
Hearing Officer

WEB:af

cc: Mr. Glenn A. Bystrom
Principal Tax Auditor