

**STATE BOARD OF EQUALIZATION**

(916) 445-3723

June 25, 1991

Mr. R--- S. T---
Tax Manager/Asst. Sec.
T--- R--- C---
XXXX --- ---, Suite XXXX
---, CA XXXXX

S- -- XX-XXXXXX

Dear Mr. T---:

This is in reply to your claim for refund of sales tax of April 18, 1991, which was addressed to Mr. Glenn Bystrom. Your claim was referred to this office for review.

We understand that T--- produces petroleum coke using the "Exxon Process" from a "fluid" coker. This petroleum coke is what is left over from a barrel of crude after all the light ends have been removed and constitutes a waste byproduct. Its composition is similar to sand. During 1990, four-fifths of all the petroleum coke T--- produced was exported overseas. The other one-fifth was sold domestically, primarily for use as fuel in alternative energy facilities.

T--- sold petroleum coke to G--- P--- S--- C---, Inc., for use as fuel in California alternative energy facilities. It is your position that the sales in question were exempt under Revenue and Taxation Code section 6358.1. That section provides an exemption for the sale of waste byproducts which are used in an industrial facility as a fuel source in lieu of the use of either oil, natural gas, or coal. You also cite the recently decided Court of Appeals decision, Union Oil v. State Board of Equalization (1990) 224 Cal.App.3d 665.

We agree with your analysis, and it will be our recommendation to the Board that your claim be granted, subject to audit verification as to specific transactions.

Very truly yours,

Gary J. Jugum
Assistant Chief Counsel

GJJ:sr

cc: Mr. Glenn A. Bystrom

bp: The circumstances are different from the circumstances in the P--- R--- C--- case. In that case, the product that we are seeking to tax is commercial grade propane and methane produced in the refining process and burned by the refiner as a fuel. In that case we have conceded that the tax does not apply to "dirty" propane and other contaminated still gases, of less than commercial grade.

bc: Audit Review and Refund Section