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**STATE BOARD OF EQUALIZATION**

March 1, 1973

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Dear Begin deleted text REDACTED TEXT End deleted text:

Mr. Robert Nunes has referred your letter of January 16, 1973, to this office for reply. You state that several sales and use tax questions have come up regarding the nuclear fuel used by Begin deleted text REDACTED TEXT End deleted text and Begin deleted text REDACTED TEXT End deleted text at your jointly owned Begin deleted text REDACTED TEXT End deleted text nuclear generating station.

In order to answer the questions which you have directly addressed to us without unduly extending our analysis, we will assume that we are dealing with a nuclear fuel cycle already in continuous process. Particularly, we will begin at the point where a fuel assembly is in use at the Begin deleted text REDACTED TEXT End deleted text site, and we will assume that all appropriate California sales and use taxes have been paid (tax on materials, "conversion" labor, "manufacture" labor and materials, and "enrichment" cost, if properly due).

First, "reprocessing" charges are taxable as "fabrication" or "processing" labor under Section 6006(b) of the Revenue and Taxation Code to the extent that plutonium and unused uranium are recovered by you for later use, but such charges are exempt to the extent that neptunium, plutonium, and other by-products are sold. This will require an allocation of the "reprocessing" charge between taxable and nontaxable components.

Second, the "reconversion" charge made for converting the unused uranium into uranium hexafluoride (UF<sub>6</sub>) is taxable as "fabrication" labor.

Third, as to the enrichment step, if the enrichment is done by private industry, tax will apply to this step. The labor involved would be regarded as "fabrication" labor, not "repair" labor. The measure of tax at this juncture will be the labor charge made by the processor only, and will not include the "trade-in value" of the uranium hexafluoride furnished by you to the processor provided (1) you retain title to the uranium hexafluoride and (2) the processor receives the uranium hexafluoride for enrichment prior to the time he ships equivalent amounts of enriched uranium hexafluoride for you account. In other words, if the two conditions described are met, we take the position, in cases involving commingling of fungible goods, that for sales and use tax purposes you receive from the processor the "same" property which you furnish to the processor

even though the property may in fact not be the same physical property. If the two conditions described are not met, however, the transaction is viewed as an exchange or trade-in transaction, and the measure of tax is correspondingly increased.

If the enrichment is done by the Atomic Energy Commission, tax will not apply by virtue of the specific exemption provided by Section 6402 of the Revenue and Taxation Code.

Fourth, tax applies on the “manufacture” step.

The labor cost incurred in the enrichment step would be subject to tax in the manner described above without regard to whether the nuclear fuel were originally acquired from industry or from the AEC.

The answers given apply equally to the taxability of labor in connection with “new” fuel added during the process.

Tax would not apply on the initial enrichment of nuclear fuel if the enrichment were performed by the AEC. Material purchased from the AEC would similarly be exempt.

Tax would apply on steps subsequent to the enrichment step even though the enrichment may have been performed by the AEC.

If you have further inquiries on these matters, please feel free to correspond directly with this office.

Very truly yours,

Gary J. Jugum  
Tax Counsel

GJJ/ab