

**STATE BOARD OF EQUALIZATION**

(916) 445-3237

January 5, 1984

Re: \_\_\_\_\_  
Credit for New Mexico sales and use tax

Dear \_\_\_\_\_,

This is in reply to your November 18 letter to the Board's legal section. You stated:

\_\_\_\_\_ purchases coal for use in the manufacture of cement in California. One vendor is located within the State of New Mexico. Will you please confirm that then New Mexico Gross Receipts and Compensating Tax qualifies, under Section 6406, for credit against California Use Tax as a retail sales tax imposed by another state.

In your follow-up letter dated December 19, you stated that you needed the information urgently, so I am answering your request as promptly as possible.

Revenue and Taxation Code section 6406 grants a full credit against California use tax:

to the extent that the person has paid a retail sales or use tax, or reimbursement therefore, imposed with respect to that property by any other state...prior to the storage, use, or other consumption of that property in this state.

The statute therefore requires that the taxpayer has actually paid the other state's tax, or reimbursement therefore, and that the taxpayer's liability for the other state's tax must arise before the taxpayer's liability for the California use tax arises. Business Taxes Law Guide Annotation 570.1625.

Assuming this is the case with \_\_\_\_\_ transactions in New Mexico, the New Mexico Gross Receipts and Compensating Tax Act qualifies as a state sales and use tax for which California will grant credit under section 6406. New Mexico Statutes Annotates 1978, section 7-9-3 (F) includes within the definition of gross receipts "the total amount of money...received from selling property in New Mexico." Section 7-9-4 imposes the gross receipts tax on persons engaged in business in New Mexico. If the seller collected the gross receipts tax from the purchaser in a transaction subject to the tax, then the amount collected is excluded from the seller's gross receipts. Section 7-9-3 (F). The compensating tax is defined in section 7-9-7 as a tax on the privilege of using property in New Mexico, acquired in a transaction not subject to the gross receipts tax.

Please fee free to contact me if you have any questions or comments about this letter.

Very truly yours,

John Abbott  
Tax Counsel

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