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Exemptions-Banks-Factoring

Factoring companies which pay the "in lieu" tax are financial institutions and thus exempt from the hazardous waste fees and taxes. 7/20/93.

Memorandum

CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE

To: Ms. Carol Bailey
Environmental Fees Section

Date: July 20, 1993

From: Janet Vining
Senior Tax Counsel

Subject: (Redacted)

I am writing concerning your January 29, 1993 letter to Mr. (redacted) of (redacted). You asked me to review Mr. (redacted)'s claim that (redacted) is exempt from the environmental fee because it pays the "in lieu" tax applicable to banks. I apologize for the delay in responding to your request.

Mr. (redacted) indicated in his October 14, 1992 letter that all (redacted) California taxpayers file a "California Unitary Franchise Tax Return with and under the name of" their parent, (redacted), a California corporation. Mr. (redacted) further indicated that the taxpayers pay the higher "in-lieu" tax applicable to banks.

The concept of a "unitary business" is relevant to the administration of the franchise tax program. A group of entities may be considered a unitary business for purposes of franchise tax even if they are not all involved in the same type of activity. In other words, a unitary business in which a bank is the main entity may nonetheless include entities that are not banks or financial institutions.

A unitary business follow certain guidelines to determine how much income each entity in the unitary business should report to the Franchise Tax Board. Then, each entity separately pays the appropriate tax on the income it reports. Banks pay the "in-lieu" tax and other entities pay whatever type of income tax applies to them.

I spoke with Kelly Bluth of the Franchise Tax Board concerning (redacted). (Redacted) is a "factoring" company, which purchases accounts receivable from other businesses, and then collects on the accounts and earns the interest which has accrued. Ms. Bluth indicated that the FTB considers factoring companies to be financial institutions because they earn money from interest, and, therefore, requires them to pay the "in-lieu" tax like banks and other financial institutions.

I agree with the FTB's position concerning factoring companies. A financial corporation is one that deals in money or financing in competition with the activities of national banks. Since factoring companies

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such as (redacted) take over accounts receivable and earn interest from those accounts, they are involved in financing and come within the definition of financial corporations.

Since (redacted) is a financial corporation, it pays the in-lieu tax and is not liable for the environmental fee.

(Redacted)'s letter indicates that he attached a list of the other (redacted) California taxpayers. That list was not attached to my copy of the letter. If you have questions concerning whether any of the individual companies listed in the attachment are financial corporations paying the in-lieu tax, please let me know or contact Ms. Bluth at 369-3464

Janet Vining

JV:wk

Cc: Mr. Stephen R. Rudd
Mr. David McKillip
Mr. Larry Augusta