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Exemptions-Fraternal

Fraternal benefit societies organized in accordance with Chapter 10 of the Insurance Code are exempt from hazardous waste fees and taxes. 7/9/93.

Memorandum

CONFIDENTIAL: ATTORNEY-CLIENT PRIVILEGE

To: Mr. Scott Weber
Environmental Fees Unit

Date: July 9, 1993

From: Janet Vining
Senior Tax Counsel

Subject: Fraternal Benefit Societies

I am writing in response to your memorandum dated May 12, 1993, concerning the application of the environmental fee to the (redacted).

Health and Safety Code Section 25205.6 imposes the environmental fee on all corporations identified in a schedule of SIC codes provided to the Board by the Department of Toxic Substance Control. Section 25205.6 requires that the list include all SIC codes which cover corporations that use, generate, store, or conduct activities in the state related to hazardous materials, including, but not limited to, hazardous waste. The list the Department provided to the Board contains all SIC codes except the code for individual households.

(Redacted) claims that it is exempt from the environmental fee pursuant to Insurance Code Section 10993, which states

Every fraternal benefit society organized or admitted under [Chapter 10 of the Insurance Code] is hereby declared to be a charitable and benevolent institution, and all of its funds shall be exempt from all and every state, county, district, municipal and school tax, other than taxes on real estate and office equipment.

The Board and the Department agree that the environmental fee is a "tax" rather than a "fee", because the feepayers do not receive any special benefits or services from the Department. The (redacted) is, therefore, exempt from the environmental fee based on the broad exclusion from taxes afforded fraternal benefit societies in Section 10993.

I note that Section 10993's exemption from taxes does not apply generally to fraternal organizations and societies, but only to "fraternal benefit societies" organized pursuant to Chapter 10 of the Insurance Code. The societies, which pay benefits to their members, must comply with all requirements of Chapter 10 and be certified by the Insurance Commissioner, but do not pay the "in-lieu" tax applicable to insurance companies. If you need to determine whether a particular society is a certified fraternal benefit society and thus eligible for the tax exemption, Clarence Ward in the Excise Taxes Unit has a list of such societies.

Please let me know if you have any questions or require additional information.

Janet Vining

JV:ph

Cc: Mr. Stephen Rudd
Mr. Terry Grubbs
Mr. Larry Augusta
Mr. Dennis Mahoney