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Petroleum Products Tar

Tar is subject to the fees because it is a naturally occurring liquid hydrocarbon rather than a solid.
6/11/91.

Mr. E. W. King
Special Taxes Department
Excise Taxes Division

June 11, 1991

Janet Vining
Tax Counsel

Account No. (Redacted)

This is in response to your memorandum dated March 8, 1991, concerning the oil spill response fee returns filed by (Redacted), Inc.

(Redacted) filed oil spill response fee returns for the periods September 24 through December 31, 1990, and January 1991. Each return indicated that no amount was due. (Redacted) asserts that it processes tar, which is a naturally occurring non-liquid hydrocarbon, rather than a naturally occurring liquid hydrocarbon, produced from tar sands, and thus no oil spill response fee is due concerning the tar. In addition, (redacted) indicated that all the oil it receives at its plant is produced by independent producers and, thus, no oil spill response fee is due concerning the oil.

SB 2040, which became effective September 24, 1990, imposed an oil spill response fee on each barrel of crude oil received at a refinery in the state. While SB 2040 did not contain a definition of "crude oil", a later bill did. SB 7, which became effective December 13, 1990, added Government Code Section 8670.3(e), which defines "crude oil" to mean "any naturally occurring liquid hydrocarbon at atmospheric temperature and pressure coming from the earth, including condensate and natural gasoline." The Board included this definition in the oil spill response fee returns in order to provide guidance to feepayers.

Therefore, if tar is a naturally occurring non-liquid hydrocarbon, it is not subject to the oil spill response fee. However, we disagree with (redacted)'s assertion that tar is a solid hydrocarbon. Webster's Third New International Dictionary, Unabridged (1961), defines tar as "any of various dark brown or black bituminous usually odorous, viscous liquids or semisolids that are obtained by the destructive distillation of wood, coal, peat, shale, and other organic materials and yield pitch on distillation." Van Nostrand's Scientific Encyclopedia, 7th Ed. (1989) states that tar sands contain heavy, viscous petroleum substances called "asphaltic soil."

It is therefore our opinion that the oil spill response fee applies to the tar processed (redacted). This conclusion is consistent with the Legislature's intent in imposing the oil spill response fee, since a spill involving tar could pose a significant threat to the sensitive coastal environment.

(Redacted) also asserts that all the oil it receives at its plant is produced by independent producers and, thus, no oil spill response fee is due concerning the oil.

Both SB 2040 and SB 7 contained the following language, codified as Government Code Section 8670.48(c)(2), which addresses oil produced by independent producers:

The oil spill response fee shall not be imposed by a refiner or person or entity acting as an agent for a refiner, on crude oil produced by an independent crude oil producer as defined in paragraph (3). The State Board of Equalization shall not identify a company as exempt from the fee requirements of this section if that company has reorganized, sold, or otherwise modified with the intent of circumventing the requirements of this section.

Government Code Section 8670.48(c)(3) defines "independent crude oil producer" to mean a person or entity producing crude oil within this state who does not refine crude oil into product and who does not possess or own retail gasoline marketing facilities.

In the case of Puntway Partners, L.P., et al. v. State Board of Equalization, a group of refineries sued the Board to enjoin the collection of the oil spill administration and oil spill response fees. One of the arguments made by the petitioners is that Government Code Section 8670.48(c)(2) provides an exemption from the oil spill response fee for crude oil produced by an independent crude oil producer, as defined in Section 8670.48(c)(3). Although the language of Section 8670.48(c)(3) is awkward, we agree that the Legislature intended that section to create an exemption from the oil spill response fee for crude oil produced by independent crude oil producers.

Therefore, (redacted) is correct in its assertion that oil it receives at its plant that is produced by independent crude oil producers is not subject to the oil spill response fee.

JV:wk
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