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Environmental (Corporation) Fee Banks

Under the California Constitution, banks are subject to a tax on net income in lieu of all other taxes. Since the environmental fee (Health and Safety Code section 25205.6) is regarded as a tax, banks are exempt from it. However, nonfinancial subsidiaries of banks are not exempt. 7/30/91.

Mr. Dave McKillip
Environmental Fees

July 30, 1991

Janet Vining
Tax Counsel

APPLICABILITY OF HAZARDOUS WASTE FEES TO
BUSINESS ACTIVITIES OF BANKS

This is in response to your memorandum of May 29, 1991 concerning the application of the hazardous waste fees to banks and to non-banking activities conducted by banks.

Article XIII, Section 27, of the California Constitution (codified in Rev. & Tax Code § 23182) provides that banks shall be taxed according to their net income and that such tax is in lieu of all other taxes and license fees. We have already determined that the environmental fee imposed in Health and Safety Code Section 25205.6 is a tax or license fee paid for the privilege of engaging in activities related to hazardous waste and to fund the regulation of such activities. Therefore, banks are not subject to the environmental fee.

The case of Western States Bankcard Association v. City and County of San Francisco (1977) 19 Cal.3d 208, discusses the application of taxes and license fees to an entity which is associated with, but independent of, a bank. Western States was a nonprofit California corporation organized by several national and state banks to administer their Mastercharge accounts by performing data processing and promotional functions for the member banks. The court found that Western States was a separate entity, organized by the banks, but independent of them. Therefore, the Revenue and Taxation Code's special treatment of banks did not apply to Western States.

In Mutual Life Insurance Company of New York v. City of Los Angeles (1990) 50 Cal.3d 402, the California Supreme Court considered whether certain city taxes applied to the operation of an office building and parking lot by an insurance company. The California Constitution provides that insurance companies pay a tax on their gross premiums in lieu of other taxes and license fees. The Court found that the "in lieu" provision applied to the insurance company's investments, such as the office building and parking lot.

Although banks and insurance companies are covered by separate provisions of the California Constitution we believe that the Court's reasoning in Mutual Life is also relevant concerning banks, and that the "in lieu" provision for banks applies to not only the bank's banking activities, but other activities as well. For example, if a bank owned and operated a parking lot, that activity would be exempt from

parking lot fee taxes imposed by a city. Such fees and revenues would instead be subject to the "in lieu" tax paid by banks.

In summary, if a bank engages in operations not normally associated with banking, but is nonetheless the bank itself, or one of its divisions or departments, that conducts these operations, then the activity comes within the constitutional "in-lieu" provision. However, if the activities are conducted by a separate entity, even one wholly-owned by the bank, these activities are not covered by the "in lieu" provision.

In a letter accompanying Great Western Financial Corporation's environmental fee return, a Great Western Assistant Vice President stated that the return represented only Great Western's "non-financial companies", since Section 23182 of the Revenue and Taxation Code provides that banks pay a tax on net income in lieu of other taxes and licenses. Great Western correctly paid the environmental fee concerning the non-financial companies. Only corporations are subject to the environmental fee. Since the non-financial companies listed in the return are corporations, they are clearly separate entities from Great Western, and therefore cannot take advantage of Great Western's payment of the "in lieu" tax. As non-financial companies, they cannot on their own claim to come within the Revenue and Taxation Code's provisions concerning banks.

Finally, I note that Great Western has requested a full refund of the fee paid with the return, based on its argument that the Department of Toxic Substances Control incorrectly classified service corporations as subject to the fee.

Please let me know if you have any questions.

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