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Environmental (Corporation) Fee City-Owned Corporations

City-owned corporations which are within a Standard Industry Classification Code which has been found by the Department of Toxic Substances Control to be involved with hazardous materials are subject to the fee. 12/20/91.

Mr. Robert M. Frank
Environmental Fees Unit

December 20, 1991

Janet Vining
Tax Counsel

Re: (Redacted)

This is in response to your October 18, 1991 memorandum concerning the (redacted), a corporation wholly-owned by the (redacted), has requested a refund of the environmental fee it paid pursuant to Health and Safety Code Section 25205.6, arguing that it is exempt from the fee since it is part of the City of (redacted).

For the following reasons, I conclude that the (redacted) is not exempt from the environmental fee.

Section 25205.6 of the Health and Safety Code imposes the environmental fee on every corporation identifies in a list of SIC codes the Department of Toxic Substances Control provided to the Board. Since the list containing all SIC codes except the code for households, the Board sent a return to every corporation authorized to do business in California. We have previously determined that cities are not "corporations" for purposes of imposition of the environmental fee.

(Redacted) states that it is a wholly-owned instrumentality of the City of (redacted), and, therefore, should not be subject to the environmental fee. In support of its argument, (redacted) submitted two documents.

First, (redacted) provided a copy of an Internal Revenue Service Opinion which concluded that (redacted) is a wholly-owned instrumentality of the City of (redacted) under Section 3121(b) (7) of the Internal Revenue Code, which exempts from the definition of "employment" services performed in the employ of a state or any political subdivision of a state or any instrumentality that is wholly-owned by a state or a political subdivision of a state. by its own terms, the IRS opinion may not be used or cited as precedent, and expresses no opinion as to the federal income tax consequences to (redacted) under any other provisions of the Internal Revenue Code.

Second, (redacted) submitted a copy of AB 852 (Stats. 1987, ch. 1412), in which the Legislature created a specific property tax exemption for (redacted).

Neither of the above documents provides a basis for exempting (redacted) from the environmental fee. The IRS opinion is specifically limited to an interpretation of one section of the Internal Revenue Code, and AB 852 represents the creation of a special exemption from property tax.

While (redacted) may be a corporation that is wholly-owned by the (redacted), it is nonetheless a separate and distinct entity, and subject to the duties and responsibilities of any other California corporation, including payment of the environmental fee.

Please let me know if you have any further questions concerning this matter.

JV:wk
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cc: Mr. E. V. Anderson
Mr. David McKillip
Mr. Lou Feletto
Mr. Lawrence A. Augusta
Mr. Gordon Adelman
Mr. Dennis Mahoney, Dept. of Toxic Substances Control