

September 11, 2007

Mr. Glenn Shankle  
Executive Director  
Texas Commission on Environmental Quality  
MC-109  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: Pollution Control Tax Exemption Determinations made by TCEQ under Section 11.31 of the Tax Code as Modified by HB 3732

Dear Mr. Shankle:

It has come to our attention that there are concerns regarding the interpretation of language used in Section 4 of HB 3732, which requires TCEQ to establish a nonexclusive list of pollution control equipment. It is important that the TCEQ make every effort to give full effect to all of the provisions in the amended statute rather than accepting an interpretation that would favor industry to the detriment of the local tax base.

This issue was raised at a recent meeting of the Texas Conference of Urban Counties and we are concerned that the TCEQ may be leaning toward an overly aggressive interpretation of the requirement, which would severely restrict its authority in making or denying pollution control determinations and significantly increase the scope of the pollution control exemption program. Because industrial property is such a significant part of the Texas tax base, any overly broad or incorrect decisions regarding pollution control determinations would severely harm Texas by shifting the tax burden onto residential taxpayers.

While we feel that the impact of this decision would not be as pronounced in Travis County as in other parts of Texas we feel that it is prudent to stand in solidarity to express our concern over continued efforts, by the state, to tie the hands and restrict the ability of counties to exercise the limited powers endowed to them by the Legislature.

It is vitally important to Texas and to the success of the Prop 2 program that TCEQ diligently exercise discretion over the designation of property as pollution control equipment to prevent the exemption of property used for the production of goods or services. Accepting industry suggestions

that HB 3732 mandates expansive new designations of productive value as pollution control equipment and exempting that value from property taxes would be a failure in TCEQ's responsibility to the State. TCEQ's role in Prop 2 is unlike any other role the agency has to fulfill. Property tax payers should be expected to aggressively seek every method to reduce their tax burden. It is up to tax administrators, in this case TCEQ, to exercise proper discretion to prevent an inappropriate tax shift.

Although new subsection (k) provides a list of equipment to be included on the nonexclusive list, this should not be interpreted to require the TCEQ to approve the equipment if it fails to meet the pollution control standards established by the agency. TCEQ retains the final discretion to determine the items that are eligible for an exemption under section 11.31. This authority was reinforced by the inclusion of new subsection (l), which specifies that an item may be removed from the nonexclusive list if the commission finds that it does not provide pollution control benefits.

It must also be pointed out that the legislature did not repeal an existing provision (Subsection 11.31(h)) that clearly prohibits the TCEQ from making a determination that property is pollution control property unless it meets the standards established by TCEQ. To interpret subsection (k) as requiring TCEQ to make a positive pollution control determination on all the items listed by the legislature regardless of whether they meet the standards would render subsection (h) meaningless.

Concerns have also been raised that TCEQ may be leaning toward giving full exemptions for all of the items listed by HB 3732. This interpretation would be difficult to understand, since the legislation contained no language that would override TCEQ's technical expertise in making its determinations. TCEQ has an obligation under section 11.31 to allow for partial determinations that distinguish between pollution control and productive use.

It is important to remember that the purpose of creating the pollution control property tax exemption program was to provide relief to industry for mandated pollution control measures while also ensuring that productive value remains on the tax roll. When there is a conflict between those goals, TCEQ should seek to side with its governmental partners to minimize any harm to the local tax base.

Sincerely,

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Samuel T. Biscoe, Travis County Judge

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Ron Davis  
Commissioner Precinct 1

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Sarah Eckhardt  
Commissioner Precinct 2

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Gerald Daugherty  
Commissioner Precinct 3

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Margaret Gómez  
Commissioner Precinct 4