STATE BOARD OF EQUALIZATION
HAZARDOUS SUBSTANCES TAX APPEAL

CALIFORNIA STATE BOARD OF EQUALIZATION

APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Claim for Refund Under the Hazardous Substances Tax Law of: COASTAL STAFFING, INC.,[1] dba Your People Professionals Claimant	Account Number EF STF 42-113608 Case ID 523057 Santa Maria, Santa Barbara County

Type of Business: Employee leasing

Claim period: 01/01/06 – 12/31/07

Item	Claimed Refund
Environmental fee	$1,802

This matter was scheduled for Board hearing in October 2013, but was postponed at claimant's request to allow additional time to prepare.

UNRESOLVED ISSUES

Issue: Whether claimant is liable for the environmental fee for 2006 and 2007. We conclude claimant is liable.

Claimant is a professional employer organization (PEO) that contracts with client companies to provide various administrative and human resource services to those businesses and to provide certain benefits to the employees. The employees are referred to as "co-employees" since both claimant and the client company retains some type of control over the employee. Specifically, claimant, as a PEO, handles the payroll, benefit, and human resource functions for each co-employee. Although the client company supplies the funds for payroll and payroll taxes, claimant is responsible for the payment of wages, taxes, and benefits even if the client company does not supply the necessary funds. Claimant also provides the co-employees with health insurance, workers compensation insurance, and retirement programs. Claimant reports the co-employees to the Employment Development Department (EDD) when it files quarterly payroll reports.

[1] Coastal Staffing, Inc. is now part of Your People Professionals, Inc.

Claimant reported and paid environmental fees in the amount of $1,802 for the years 2006 and 2007 and has filed a claim for refund for the entire amount, contending that it was not responsible for reporting and paying the fee. The Environmental Fees Division of the Property and Special Taxes Department[2] determined that claimant was responsible for reporting and paying the environmental fee and has recommended that the claim for refund be denied.

Claimant contends that it should not be responsible for the environmental fee because the employees in question should be attributed to the client businesses that actually receive the benefit of the employees' services. Claimant does not dispute that it is a PEO, that it is an employer, or that it reports the employees to EDD. Claimant argues that it is a co-employer of the employees, and, relying on California Code of Regulations, title, 22, section (Regulation) 66269.1, subdivision (a)(1), asserts that the client business should be the enterprise that reports and pays the environmental fee because it receives the employees' services.

In addition, claimant contends that public policy suggests the client company should bear the burden of the environmental fee, asserting that there is no connection between its hazardous waste footprint and that of the co-employees because the co-employees use and consume hazardous materials and generate hazardous waste in fulfilling their duties for the client company. Claimant argues that the legislature intended that the environmental fee be imposed only on large companies, which claimant is not. Claimant also describes various issues that it finds inequitable, related to the fee structure and related to the possibility that the PEO would pass along the cost to its client companies.

There is no dispute as to the basic facts (i.e., that claimant is a PEO, that claimant reports the employees to EDD, that claimant is a co-employer of the employees, and the basic structure of the PEO-client company working relationship). Because claimant is the employer that reports the employees to EDD (see Cal. Unemp. Ins. Code § 13020), claimant is responsible for the environmental fee, pursuant to Regulation 66269.1, unless claimant can show that it meets the exception of common ownership or management.

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[2] Since the Property and Special Taxes Department was reorganized in December 2012, the Appeals and Determinations Group has been responsible for processing claims for refund. However, at the time this claim for refund was filed, the Environmental Fees Division was responsible.

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Claimant's contention that it meets the exception of common management because the client company and claimant have co-employees misconstrues the concept of common management. Regulation 66269.1 is clear that the exception applies to two or more businesses that are united by common ownership or management, that is, when the *businesses* are owned or managed by the same people. Claimant has not argued that this is the case here, and it clearly is not. There is no provision that allows for a shifting of the responsibility for the environmental fee when two businesses are co-employers. Consequently, we find claimant does not qualify for the exception and is responsible for the environmental fee as the employer that reports the employees to EDD. Accordingly, we recommend that the claim for refund be denied.

Claimant's public policy contentions are immaterial to the foregoing analysis. We can only apply the law that has been enacted to the specific facts presented in this appeal. Claimant's public policy concerns are more properly addressed to the legislature.

OTHER MATTERS

None.

Summary prepared by Deborah A. Cumins, Business Taxes Specialist III