

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION BOARD HEARING SUMMARY

In the Matter of the Administrative Protest and)
 Claims for Refund under the)
 Hazardous Substances Tax Law of:) Account Number EF STF 42-120512
 ESGMANAGEMENT, INC., dba) Case ID's 481182, 510896, 574007
 Employer Services Group)
 Claimant) Ventura, Ventura County

Type of Business: Employee leasing

Claim periods: 01/01/05 – 12/31/07 (Case ID 481182)

01/01/05 – 12/31/08 (Case ID 574007)

Liability period: 01/01/05 – 12/31/08 (Case ID 510896)

<u>Item</u>	<u>Claimed Refunds</u>
Environmental fee	\$ 2,189 (Case ID 481182)
Environmental fee, interest, and penalties	\$15,844 (Case ID 574007)
	<u>Disputed Determined Amounts (Case ID 510896)¹</u>
Environmental fee	\$11,233
Negligence penalty	\$ 1,123
Fee as determined and protested	\$11,233.00
Interest	2,364.03
Negligence penalty	1,123.30
Finality penalty	<u>1,123.30</u>
Total tax, interest, and penalty	\$15,843.63
Payments	<u>- 15,843.63</u>
Balance Due	<u>\$ 00.00</u>

UNRESOLVED ISSUES

Issue: Whether claimant is liable for the environmental fee for the years 2005 through 2008.

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

¹ The D&R shows the disputed amount related to the determination as \$14,570.55, which is greater than the total of the fee and penalty because it includes the interest that was included in the determination, \$2,214.25.

1 the client company retain some type of control over the employee. Specifically, claimant, as a PEO,
2 handles the payroll, benefit, and human resource functions for each co-employee. Although the client
3 company supplies the funds for payroll and payroll taxes, claimant is responsible for the payment of
4 wages, taxes, and benefits even if the client company does not supply the necessary funds. Claimant
5 also provides the co-employees with health insurance, workers compensation insurance, and retirement
6 programs. Claimant reports the co-employees to the Employment Development Department (EDD)
7 when it files quarterly payroll reports.

8 Claimant reported and paid environmental fees of \$2,189.00 for the years 2005 through 2007
9 and has filed a claim for refund for the entire amount, contending that it was not responsible for
10 reporting and paying the fee.² Based on an examination of claimant's business, the Environmental
11 Fees Division of the Property and Special Taxes Department (Department)³ concluded that claimant
12 had underreported its environmental fee for the years 2005 through 2008. Accordingly, the
13 Department issued a Notice of Determination for fees of \$11,233.00 and a negligence penalty of
14 \$1,123.30. A finality penalty of \$1,123.30 was subsequently added. Claimant filed an untimely
15 petition for redetermination, which the Department accepted as an administrative protest. The
16 Department determined that claimant was responsible for reporting and paying the environmental fee
17 for the years 2005 through 2008 and it recommends no adjustment to the determination. The
18 Department also has recommended that the claims for refund be denied.

19 Claimant contends that it should not be responsible for the environmental fee because the
20 employees in question should be attributed to the client businesses that actually receive the benefit of
21 the employees' services. Claimant does not dispute that it is a PEO, that it is an employer, or that it
22 reports the employees to EDD. Claimant argues that it is a co-employer of the employees, and, relying
23 on California Code of Regulations, title, 22, section (Regulation) 66269.1, subdivision (a)(1), asserts
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25

26 ² Claimant also reported and paid fees of \$1,016 for 2008, but it has not filed a claim for refund of those fees.

27 ³ Since the Property and Special Taxes Department was reorganized in December 2012, the Appeals and Determinations
28 Group has been responsible for issuing Notices of Determination and processing claims for refund. However, at the time
this determination was issued, the Environmental Fees Division was responsible.

1 that the client business should be the enterprise that reports and pays the environmental fee because it
2 receives the employees' services.

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

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

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

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

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OTHER MATTERS

None.

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