



INTEGRATED WASTE MANAGEMENT FEE LAW

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INTEGRATED WASTE MANAGEMENT FEE LAW **

(Part 23, Division 2, Revenue and Taxation Code *)

Enacted Statutes 1987, Chapter 1319.

- Chapter 1. General Provisions and Definitions. §§ 45001-45009.
- 2. The Integrated Waste Management Fee. §§ 45051-45102.
- 3. Determinations. §§ 45151-45353.
- 4. Collection of Fee. §§ 45401-45609.5.
- 5. Overpayments and Refunds. §§ 45651-45801.
- 6. Administration. §§ 45851-45872.
- 7. Disposition of Proceeds. § 45901.
- 8. Violations. §§ 45951-45956.
- 9. Disclosure of Information. §§ 45981-45984.

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- § 45001. Title.
- § 45002. Definitions.
- § 45003. Construction.
- § 45004. Provisions; construction.
- § 45005. Actions or proceedings prior to enactment.
- § 45006. "Person."
- § 45007. "Board."
- § 45008. "In this state."
- § 45009. "Fee payer."

45001. **Title.** This part shall be known and may be cited as the Integrated Waste Management Fee Law.

History.—Stats. 1993, Ch. 656, in effect October 1, 1993, substituted "Integrated Waste Management" for "Solid Waste Disposal Site Cleanup and Maintenance" after "cited as the".

45002. **Definitions.** The collection and administration of the fee imposed pursuant to Section 48000 of the Public Resources Code shall be governed by the definitions contained in Chapter 2 (commencing with Section 40100) of Part 1 of Division 30 of the Public Resources Code, unless expressly superseded by the definitions contained in this part.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, substituted "Part 6 . . . Public Resources" for "Chapter 4 (commencing with Section 66799) of Title 7.3 of the Government". Stats. 1992, Ch. 105, in effect June 30, 1992, substituted "fees" for "fee", substituted "Sections" for "Section", and added "and 45052" following "45051". Stats. 1993, Ch. 656, in effect October 1, 1994, substituted "fee imposed pursuant to Section 48000" for "fees referred to in Sections 45051 and 45052" after "administration of the", and substituted "Chapter 2 (commencing with Section 40100 of Part 1" for "Part 6 (commencing with Section 46000)" after "contained in".

45003. **Construction.** Except where the context otherwise requires, the definitions contained in this chapter shall govern the construction of this part.

45004. **Provisions; construction.** The provisions of this part, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

* The provisions of this part, except as otherwise noted, became effective September 28, 1987.

** Heading amended by Stats. 1993, Ch. 656, in effect October 1, 1993.

45005. **Actions or proceedings prior to enactment.** Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but all procedures taken shall conform to this part as far as possible.

45006. **“Person.”** “Person” includes any individual, firm, cooperative organization, fraternal organization, corporation, limited liability company, estate, trust, business trust receiver, trustee, syndicate, this state, any county, city and county, municipality, district, public agency, or subdivision of this state or any other group or combination acting as a unit.

History.—Stats. 1994, Ch. 1200, in effect September 30, 1994, added “limited liability company”.

45007. **“Board.”** “Board” means the State Board of Equalization.

45008. **“In this state.”** “In this state” means within the exterior limits of the State of California and includes all territory within those limits owned by or ceded to the United States of America.

45009. **“Fee payer.”** “Fee payer” means any person who is liable for payment of the fee imposed pursuant to Section 48000 of the Public Resources Code.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, substituted “46801” for “66799.49” and “Public Resources” for “Government”. Stats. 1992, Ch. 105, in effect June 30, 1992, added “or Section 48000” after “Section 46801”. Stats. 1993, Ch. 656, in effect October 1, 1993, added “who is” after “any person”; deleted “the” after “liable for”; substituted “the” for “a” after “payment of”; and substituted “pursuant to” for “by Section 46801 or” after “fee imposed”.

CHAPTER 2. THE INTEGRATED WASTE MANAGEMENT FEE *

- Article 1. Imposition of Fee. §§ 45051-45052.
- 2. Registration and Security. §§ 45101-45102.

Article 1. Imposition of Fee

- § 45051. Administration and collection of fee.
- § 45052. Administration and collection of fee. [Repealed.]

45051. **Administration and collection of fee.** The fee imposed pursuant to Section 48000 of the Public Resources Code shall be administered and collected by the board in accordance with this part.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, substituted “46801” for “66799.49” and “Public Resources” for “Government”. Stats. 1993, Ch. 656, in effect October 1, 1993, substituted “48000” for “46801” after “to Section”.

45052. **Administration and collection of fee.** [Repealed by Stats. 1993, Ch. 656, in effect October 1, 1993.]

Article 2. Registration and Security

- § 45101. Registration.
- § 45102. Security.

45101. **Registration.** Every person who operates a solid waste landfill required to have a solid waste facilities permit pursuant to Chapter 3 (commencing with Section 44001) of Part 4 of the Public Resources Code shall register with the board.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, substituted “46801” for “66796.30” and “Public Resources” for “Government”. Stats. 1993, Ch. 656, in effect October 1, 1993, substituted “Chapter 3 (commencing with Section 44001) of Part 4” for “Section 46801” after “pursuant to”.

* Heading amended by Stats. 1993, Ch. 656, in effect October 1, 1993, from “The Cleanup and Maintenance Fee”.

45102. **Security.** The board, whenever it deems it necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due. Notice of the sale shall be served upon the person who placed the security personally or by mail.

If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

History.—Stats. 1991, Ch. 236, in effect July 29, 1991, added the second sentence in the first paragraph. Stats. 1994, Ch. 903, in effect January 1, 1995, deleted "Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price thereof."

CHAPTER 3. DETERMINATIONS

- Article 1. Reports and Payments. §§ 45151-45157.
 - 1.1. Payment by Electronic Funds Transfer. §§ 45160-45163.
 - 2. Deficiency Determinations. §§ 45201-45203.
 - 3. Redeterminations. §§ 45301-45307.
 - 4. Jeopardy Determinations. §§ 45351-45353.

Article 1. Reports and Payments

- § 45151. Annual report. [Repealed.]
- § 45151. Quarterly return.
- § 45151.1. Quarterly return. [Renumbered.]
- § 45152. Extensions.
- § 45153. Penalty for late payment.
- § 45154. Interest. [Repealed.]
- § 45155. Excusable delay.
- § 45156. Relief from interest; disaster.
- § 45156.5. Relief of interest.
- § 45157. Reasonable reliance on written advice; relief of tax, interest, and penalty.

45151. **Annual report.** [Repealed by Stats. 1993, Ch. 656, in effect October 1, 1993.]

45151. **Quarterly return.** (a) The fee imposed pursuant to Section 48000 of the Public Resources Code is due and payable to the board quarterly on or before the 25th day of the calendar month following the quarterly period for which the fee is due. Each fee payer shall prepare a return in the form as prescribed by the board, which may include, but not be limited to, electronic media, showing the total amount of solid waste subject to the fee,

the amount of fee for the period covered by the return, and any other information that the board determines to be necessary. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

(b) The feepayer shall deliver the return, together with a remittance of the amount of fee due, to the office of the board on or before the 25th day of the calendar month following the quarterly period for which the fee is due.

History.—Added by Stats. 1992, Ch. 105, in effect June 30, 1992. Added by renumbering former Section 45151.1 and repealing former Section 45151 by Stats. 1993, Ch. 656, in effect October 1, 1993. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, added “which may include, but not be limited to, electronic media,” after “by the board,” in the second sentence of, and added the third sentence to, subdivision (a).

45151.1. Quarterly return. [Renumbered as Section 45151 by Stats. 1993, Ch. 656, in effect October 1, 1993.]

45152. Extensions. (a) The board for good cause may extend, for not to exceed one month, the time for making any report or return or paying any amount required to be paid under this part. The extension may be granted at any time if a request therefor is filed with the board within or prior to the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5 from the date on which the fee would have been due without the extension until the date of payment.

History.—Stats. 1992, Ch. 105, in effect June 30, 1992, added subsection designations “(a)” and “(b)”, and added “or return” after “report” in the first sentence of first paragraph.

45153. Penalty for late payment. (a) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of the fee in addition to the fee or amount of the fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of the fee required to be paid became due and payable to the state until the date of payment.

(b) Any person who fails to file a return in accordance with the due date set forth in Section 45151, shall pay a penalty of 10 percent of the amount of the surcharge with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the surcharge for which the return is required for any one return.

History.—Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, added subdivision (a), (b), and (c). Stats. 2001, Ch. 159 (SB 662), added “the” after “or amount of” and “the amount of” in subdivision (a), effective January 1, 2002.

45154. Interest. [Repealed by Stats. 2000, Ch. 923, in effect January 1, 2001.]

History.—Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, section repealed.

45155. Excusable delay. (a) If the board finds that a person's failure to make a timely report or return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalty provided by Sections 45153, 45160, and 45306.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Stats. 1992, Ch. 105, in effect June 30, 1992, added the subsection designations "(a)" and "(b)" and added "or return" after "report" in the first paragraph. Stats. 1995, Ch. 630, in effect January 1, 1996, added "and 45306" after "by Section 45153" in subdivision (a). Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, substituted "Sections 45153, 45160, and 45306" for "Section 45153 and 45306" in subdivision (a), added "Except as provided in subdivision (c)" before "any person seeking" in subdivision (b), added subdivision (c).

45156. Relief from interest; disaster. If the board finds that a person's failure to make a timely return or payment was due to disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of interest provided for by Sections 45152, 45153, 45160, and 45201. Any person seeking to be relieved of interest shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Stats. 1989, Ch. 14, First Extraordinary Session, in effect November 7, 1989. Stats. 2000, Ch. 923 (AB 2898), effective January 1, 2001, substituted "45153, 45160" for "45154" in first sentence.

45156.5. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the fee payer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 923 (AB 2894), effective January 1, 2001, deleted "or" after "not made timely" in subdivision (a). Stats. 2001, Ch. 251 (AB 1123), substituted "this part" for "Section 45154 and . . . not made timely," in subdivision (a), effective January 1, 2002.

45157. Reasonable reliance on written advice; relief of tax, interest, and penalty. (a) If the board finds that a person's failure to make a timely report or payment is due to the person's reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person's failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

Article 1.1. Payment by Electronic Funds Transfer

- § 45160. Electronic funds transfer payments.
- § 45161. Relief of penalty.
- § 45162. Definitions.
- § 45163. Electronic filing.

45160. Electronic funds transfer payments. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 45151). Payment is deemed complete on the date the electronic funds transfer is initiated if settlement to the state's demand account occurs on or before the banking day following the date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 45201), within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 45153.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001. Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

45161. Relief of penalty. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 45160. Any person seeking to

be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

45162. **Definitions.** (a) “Electronic funds transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 45160 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

History.—Added by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

45163. **Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer

using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

History.—Added by Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003.

Article 2. Deficiency Determinations

- § 45201. Deficiency determination; notice of determination.
- § 45202. Limitations; deficiency determinations.
- § 45203. Waiver.

45201. Deficiency determination; notice of determination. (a) If the board is dissatisfied with the report or return filed or the amount of fee paid to the state by any fee payer, or if no report or return has been filed or no payment or payments of the fees have been made to the state by a fee payer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of fee due for one, or for more than one, period. The amount of fee so determined shall bear interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted by the board pursuant to this part, a penalty of 10 percent of the amount of that determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or authorized regulations, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the fee payer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the fee payer at his or her address as it appears in the records of the board. The giving of the notice shall be deemed complete at the time of the deposit of the notice in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, a notice may be served personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. Personal service to a corporation may be made by

delivery of a notice to any person designated in the Code of Civil Procedure to be served for the corporation with summons and complaint in a civil action.

History.—Stats. 1992, Ch. 105, in effect June 30, 1992, added “or return” after “report” in both references in the first sentence of the first paragraph.

45202. Limitations; deficiency determinations. Except in the case of fraud, intent to evade this part or rules and regulations adopted under this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the return or report was due.

History.—Stats. 1992, Ch. 105, in effect June 30, 1992, added “or return” after “report” in both references. Stats. 1993, Ch. 1113, in effect January 1, 1994, added “or the report . . . expires later” after “been paid” in the first sentence and substituted “the return or report” for “the amount of the fee” after “the date” in the second sentence.

45203. Waiver. If, before the expiration of the time prescribed in Section 45202 for the mailing of a notice of deficiency determination, the fee payer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 3. Redeterminations

- § 45301. Petition for redetermination.
- § 45302. Form and content of petition.
- § 45303. Oral hearing.
- § 45304. Decrease or increase of determination.
- § 45305. Finality date of order or decision.
- § 45306. Due date of determination; penalty.
- § 45307. Service of notice.

45301. Petition for redetermination. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 45201), or any person directly interested, may petition for a redetermination thereof within 30 days after service upon him or her of notice of the determination. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration thereof.

45302. Form and content of petition. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision on the petition for redetermination.

45303. Oral hearing. If a petition for redetermination is filed within the 30-day period, the board shall reconsider the amount determined to be due, and, if the person has so requested in his or her petition, the board shall

grant him or her an oral hearing and shall give him or her 10 days' notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

45304. **Decrease or increase of determination.** The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing. Unless the 25-percent penalty imposed by subdivision (c) of Section 45201 applies to the amount of the determination as originally made or as increased, the claim for increase shall be asserted within eight years after the date the amount of fee for the period for which the increase is asserted was due.

History.—Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, added hyphen after “25” and before “percent” in last sentence.

45305. **Finality date of order or decision.** The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of notice thereof.

45306. **Due date of determination; penalty.** All amounts determined to be due by the board under Article 2 (commencing with Section 45201) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

45307. **Service of notice.** Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 43201.

Article 4. Jeopardy Determinations

- § 45351. Jeopardy determinations.
- § 45352. Petition for redetermination; security.
- § 45353. Administrative hearing.

45351. **Jeopardy determinations.** If the board finds and determines that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the taxpayer of notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 451543 shall attach to the amount of fee specified therein.

History.—Stats. 2004, Ch. 527 (SB 1881), in effect January 1, 2005, substituted “Section 45153” for “Sections 45153 and 45154” in last sentence.

45352. **Petition for redetermination; security.** The fee payer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 3 (commencing with Section 45301), with the board within 10 days after the service upon the fee payer of

notice of the determination, and he or she shall, within the 10-day period, deposit with the board that security which the board deems necessary to insure compliance with this part. The security may be sold by the board at public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by Section 45201. After that sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

45353. Administrative hearing. In accordance with rules and regulations which the board may adopt, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(a) To establish that the determination is excessive.

(b) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(c) To request the release of all or part of the property to the person.

(d) To request a stay of collection activities.

The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 45352, that security which the board deems necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except for sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section does not affect Section 45351, relating to the finality date of the determination or to penalty or interest.

CHAPTER 4. COLLECTION OF FEE

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| Article 1. | Suit for Fee. | §§ 45401-45402. |
| 2. | Judgment for Fee. | §§ 45451-45452. |
| 3. | Warrant for Collection. | §§ 45501-45503. |
| 4. | Seizure and Sale. | §§ 45551-45554. |
| 5. | Miscellaneous. | §§ 45601-45609.5. |

Article 1. Suit for Fee

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| § 45401. | Legal actions; Attorney General. |
| § 45402. | Attachment. |

45401. Legal actions; Attorney General. The board may bring any legal action necessary to collect any deficiency in the fee required to be paid, and, upon the board's request, the Attorney General shall bring the action.

45402. **Attachment.** In any action brought to enforce the rights of the state with respect to any fee, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the fee, of the delinquency of the amount of fee, interest, and penalty set forth therein, and of compliance by the board with this part in relation to the computation and levy of the fee. In that action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

Article 2. Judgment for Fee

- § 45451. State tax lien.
- § 45452. Release of liens.

45451. **State tax lien.** (a) If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount thereof, including penalties and interest, together with any costs in addition thereto, shall thereupon be a perfected and enforceable state tax lien. A lien is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For the purpose of this section, amounts are due and payable on the following dates:

(1) For amounts disclosed on a report received by the board before the date the return is delinquent, the date the amount would have been due and payable.

(2) For amounts disclosed on a report filed on or after the date the return is delinquent, the date the return is received by the board or the year following the fee due date pursuant to Section 45151, whichever is later.

(3) For amounts determined under Section 45351, pertaining to jeopardy assessments, the date the notice of the board's finding is mailed or issued.

(4) For all other amounts, the date the assessment is final.

History.—Stats. 1993, Ch. 656, in effect October 1, 1993, deleted “)” after “7150” in subdivision (a); deleted “July 1 of” after “board or” and substituted “fee due date . . . 45151” for “calendar year period of the report” in paragraph (2) of subdivision (b); added a comma after “45351” and deleted parentheses around “pertaining to jeopardy assessments” in paragraph (3) of subdivision (b). Stats. 2006, Ch. 538 (SB 1852), added parenthesis after “commencing with Section 7150” in subdivision (a).

45452. **Release of liens.** (a) If the board determines that the amount of any fee, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee, interest, and penalties, the board may at any time release all or any portion of the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds that the liability represented by the lien imposed under this article, including any interest accrued thereon, is legally unenforceable, the board may release the lien.

(c) A certificate by the board to the effect that any property has been released from a lien or that the lien has been subordinated to other liens and

encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

Article 3. Warrant for Collection

- § 45501. Warrant; time of issuing.
- § 45502. Fees and expenses.
- § 45503. Collection of fees.

45501. Warrant; time of issuing. At any time within three years after any person is delinquent in the payment of any amount required to be paid under this part, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any lien and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

45502. Fees and expenses. The board may pay or advance to the sheriff or marshal, the same fees, commissions, or expenses for services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

45503. Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from him or her by virtue of the warrant or in any other manner provided in this part for the collection of the fee.

Article 4. Seizure and Sale

- § 45551. Seizure and sale.
- § 45552. Notice of sale.
- § 45553. Bill of sale; deed.
- § 45554. Disposition of proceeds.

45551. Seizure and sale. Whenever any fee payer is delinquent in the payment of the fee, the board, or its authorized representative, may seize any property, real or personal, of the fee payer, and sell at public auction the property seized, or a sufficient portion thereof, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

45552. Notice of sale. Notice of the sale, and the time and place thereof, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or

her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is situated if any part thereof is situated in a city or, if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount due, including fees, interest, penalties, and costs, the name of the fee payer, and the further statement that unless the amount due is paid on or before the time fixed in the notice of the sale, the property, or so much thereof as may be necessary, will be sold in accordance with law and the notice.

History.—Stats. 1990, Ch. 1528, in effect January 1, 1991, deleted “Written” before “Notice”, “intended” before “sale, and”, substituted “who” for “appearing of record to”, added “of record” after “interest”, substituted “20” for “10” and “in the following manner: The” for “by enclosing the”, added “shall be personally served or enclosed” after “: The notice”, and “or other person” after “addressed to the fee payer” in the first sentence; deleted “also” after “The notice shall”, substituted “6063” for “6062”, added in a newspaper of general circulation published” after “Government Code”, substituted “city” for “county” and “or a part thereof is situated . . . or a part thereof is located” for “seized is to be sold” in the second in the second sentence; deleted the former third sentence which provided, “If there is no newspaper of general circulation in the county, the notice shall be posted in three public places in the county for the 10-day period.” and added the third sentence, including subdivisions (a) and (b); created a new paragraph with the former last sentence and added “due, including” after “amount” and “interest,” before “penalties”, and substituted “amount due is” for “fees, penalties, and costs are”.

45553. Bill of sale; deed. At the sale the property shall be sold by the board, or by its authorized agent, in accordance with law and the notice, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the fee payer.

History.—Stats. 1988, Ch. 652, in effect January 1, 1989 deleted “subject to a right of redemption as prescribed in the Code of Civil Procedure upon sales of real property on execution” in second sentence.

45554. Disposition of proceeds. If, after the sale, the money received exceeds the amount of all fees, penalties, and costs due the state from the fee payer, the board shall return the excess to him or her and obtain his or her receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of his or her interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If the receipt of the fee payer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the fee payer, his or her heirs, successors, or assigns.

History.—Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “to the excess moneys” for “thereto” after “the respective parties” in the second sentence and substituted “Controller” for “Treasurer” after “moneys with the” in the last sentence.

Article 5. Miscellaneous

- § 45601. Notice to creditors.
- § 45602. Credits; prohibition against transfer or disposal.
- § 45603. Credits; bank.
- § 45604. Credits; liability.
- § 45605. Notice of levy.
- § 45605.5. Employer withheld earnings.
- § 45606. Remedies; cumulative.
- § 45607. Remedies.
- § 45608. Furnishing of partnership agreement.
- § 45609. Installment payment agreement.
- § 45609.5. Installment payment agreement; annual statement.

45601. **Notice to creditors.** If any fee payer is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a fee payer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision or agency of the state, having in their possession or under their control any credits or other personal property belonging to the fee payer, or owing any debts to the fee payer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent fee payer to the Controller.

45602. **Credits; prohibition against transfer or disposal.** After receiving the notice, the persons so notified shall not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days after the receipt of the notice, whichever occurs first.

45603. **Credits; bank.** All persons so notified shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or mailed to the branch office of the bank at which the deposit is carried or at which the credits or personal property are held. Notwithstanding any other provision of law, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

45604. **Credits; liability.** If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the

property or the amount of the debts thus transferred or paid, he or she shall be liable to the state for any indebtedness due under this part from the person with respect to whose obligation the notice was given, if solely by reason of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Text of section operative through June 30, 2001

45605. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)"; deleted a comma after "notice of levy" in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

Text of section operative July 1, 2001

45605. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

- (1) The amount due stated on the notice.
- (2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1993, Ch. 1113, in effect January 1, 1994, added "(a)"; deleted a comma after "notice of levy" in the first paragraph; added "(b)"; and added subdivision (c). Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)," as the second sentence of subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (c) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

45605.5. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 45605 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first date that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

45606. Remedies; cumulative. The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or by the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

45607. Remedies. The amounts required to be paid by any person under this part together with interest and penalties shall be satisfied first in any of the following cases:

(a) Whenever the person is insolvent.

(b) Whenever the person makes a voluntary assignment of his or her assets.

(c) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(d) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien, as provided in Section 7171 of the Government Code.

The preference given to the state by this section is subordinate to the preferences given to claims for personal services by Sections 1204 and 1206 of the Code of Civil Procedure.

45608. Furnishing of partnership agreement. The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

45609. Installment payment agreement. (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the

agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fee, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 45306.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, added subdivision (e).

45609.5. Installment payment agreement; annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 45609 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 5. OVERPAYMENTS AND REFUNDS

- Article 1. Claim for Refund. §§ 45651–45656.
- 2. Suit for Refund. §§ 45701–45708.
- 3. Recovery of Erroneous Refunds. §§ 45751–45753.
- 4. Cancellations. § 45801.

Article 1. Claim for Refund

- § 45651. Credits and refunds.
- § 45651.5. Excess fee reimbursement.
- § 45652. Claim; limitation period.
- § 45652.1. Claim limitation period; financially disabled.
- § 45652.2. Claim limitation period; overpayments from levies or liens.
- § 45653. Failure to file claim.
- § 45654. Notice of action on claim.
- § 45655. Interest.
- § 45656. Disallowance of interest.

45651. Credits and refunds. If the board determines that any amount of fee, penalty, or interest has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom paid, and

credit the excess amount collected or paid on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or his or her successors, administrators, or executors. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1994, Ch. 726, in effect September 22, 1994, substituted “, certify” for “and shall certify to the State Board of Control” after “records of the board”; substituted “, and credit the excess amount collected or paid” for “. If approved by the State Board of Control the excess amount collected or paid shall be credited” after “by whom paid”; added “Any proposed determination . . . of that determination.” in the first paragraph; and deleted the second paragraph which read: “However, in the case of a determination by the board that an amount not to exceed fifteen thousand dollars (\$15,000) was not required to be paid under this part, the board, without obtaining the approval of the State Board of Control, may credit the amount on any amounts then due and payable under this part from the person by whom the amount was paid and may refund the balance to the person or his or her successors, administrators, or executors.” Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “its records and” for “the records of the board,” after “that fact in” in the first sentence. Stats. 1996, Ch. 1087, in effect January 1, 1997, substituted “fifty thousand dollars (\$50,000)” for “fifteen thousand dollars (\$15,000)” after “in excess of” in the second sentence.

45651.5. Excess fee reimbursement. Except as provided in Section 48008 of the Public Resources Code, when an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to the State Board of Equalization. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same solid waste from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1993, Ch. 656, in effect October 1, 1993. Stats. 1994, Ch. 1223, in effect January 1, 1995, substituted “Except as provided . . . Code, when” for “When” at the beginning of the section. Stats. 1996, Ch. 1087, in effect January 1, 1997, added “who is a feepayer under this part” after “by a person” in the first sentence and added “Those amounts remitted . . . to this state.” as the last sentence.

45652. Claim; limitation period. (a) Except as provided in subdivision (b), no refund shall be approved by the board after three years from the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 45201) of Chapter 3, after six months from the date the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. No credit shall be approved by the board after the expiration of that period, unless a claim for credit is filed with the board within that period or unless the credit relates to a period for which a waiver is given pursuant to Section 45204.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 45204 if a claim therefor is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

History.—Stats. 1992, Ch. 852, in effect September 21, 1992, added “or after six . . . overpayment,” after “become final,” in the first sentence of subsection (a). Stats. 2001, Ch. 543 (SB 1185), substituted “after” for “within” and “from the date” for “after” in subdivision (a), effective January 1, 2002.

45652.1. Claim; limitation period; financially disabled. (a) The limitation period specified in Section 45652 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person’s spouse or any other person is authorized to act on behalf of the person in financial matters. (c) This section applies to periods of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including res judicata, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

45652.2. Claim; limitation period; overpayments from levies or liens. Notwithstanding Section 45652, a refund of an overpayment of any fee, penalty, or interest collected by the board by means of levy, through the use of liens, or by other enforcement procedures, shall be approved if a claim for a refund is filed within three years of the date of an overpayment.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

45653. Failure to file claim. Failure to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

45654. Notice of action on claim. Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant pursuant to Section 45201.

45655. Interest. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the first day of the monthly period following the period during which the overpayment was made. For purposes of this section, “monthly period” means the month commencing on the day after the due date of the payment through the same date as the due date in each successive month. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the last day of the monthly period following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

History.—Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted “first day . . . addition, a” for “due date of the return for the period for which the overpayment was made, but no” after “from the” in the first paragraph. Stats. 1996, Ch. 1087, in effect January 1, 1997, deleted “during the period” after “following the period” in the first sentence of the first paragraph, and substituted “last day of the monthly period” for “15th day of the calendar month” after “refund, to the” and deleted “or the date upon which the claim is certified to the State Board of Control, whichever date is earlier” after “may be filed” in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, substituted “during” for “for” after “following the period” in the first sentence of the first paragraph, and added “, if he or she has not already filed a claim,” after “which the claimant” and added “or the date . . . date is earlier” after “may be filed” in subdivision (a).

45656. Disallowance of interest. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999, added subdivision designation “(a)” and added subdivision (b).

Article 2. Suit for Refund

- § 45701. Enjoining collection forbidden.
- § 45702. Necessity of refund claim.
- § 45703. Action for refund.
- § 45704. When refund claim not acted upon.
- § 45705. Action for refund; limitation.
- § 45706. Disposition of amount of judgment.
- § 45707. Interest.
- § 45708. Judgment for assignee forbidden.

45701. Enjoining collection forbidden. No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any fee sought to be collected.

45702. Necessity of refund claim. No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been duly filed.

45703. Action for refund. Within 90 days after the mailing of the notice of the board’s action upon a claim for refund or credit, the claimant may bring an action against the board on the grounds set forth in the claim in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole or any part of the amount with respect to which the claim has been disallowed.

45704. **When refund claim not acted upon.** If the board fails to mail notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and bring an action against the board on the grounds set forth in the claim for the recovery of the whole or any part of the amount claimed as an overpayment.

45705. **Action for refund; limitation.** Failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

45706. **Disposition of amount of judgment.** If judgment is rendered for the plaintiff, the amount of the judgment shall first be credited on any fees due from the plaintiff, and the balance shall be refunded to the plaintiff.

45707. **Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

45708. **Judgment for assignee forbidden.** A judgment shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the fee payer paying the tax or by any person other than the person who has paid the fee.

As used in this section, “assignee” does not include a person who has acquired the business of the fee payer which gave rise to the fees and who is thereby a successor in interest to the fee payer.

Article 3. Recovery of Erroneous Refunds

- § 45751. Recovery of erroneous refunds.
- § 45752. Place of trial.
- § 45752. Interest on erroneous refunds.
- § 45753. Rules of procedure, etc.

45751. **Recovery of erroneous refunds.** (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 45201) or Article 4 (commencing with Section 45351) of Chapter 3. Except in the case of fraud, the deficiency

determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "that" for "which" after "or part thereof", deleted ", and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings" after "State of California" in subdivision (a), and added subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

45752. Place of trial. In any action brought pursuant to subdivision (a) of Section 45751, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Added by Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999.

45752. Interest on erroneous refunds. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fee nor any party related to that person has in any way caused an erroneous refund for which an action for recovery is provided under Section 45751, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 45751 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

45753. Rules of procedures, etc. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 45751, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

History.—Added by Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999.

Article 4. Cancellations

§ 45801. Cancellation of determination.

45801. Cancellation of determination. If any amount has been illegally determined, either by the person filing the return or by the board, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made, and authorize the cancellation of the amount upon the records of the board. Any proposed determination by the board pursuant to this section with respect to an amount in excess of fifteen thousand dollars (\$15,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1994, Ch. 726, in effect September 22, 1994, deleted "in excess of fifteen thousand dollars (\$15,000)" after "If any amount"; deleted "to the State Board of Control" after "board shall certify"; substituted ", and" for ". If the State Board of Control approves, it shall" after "determination was made"; and substituted "Any proposed determination . . . of that determination." for "If an amount not exceeding fifteen thousand dollars (\$15,000) has been illegally determined, either by the person filing a return or by the board, the board without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board."

CHAPTER 6. ADMINISTRATION

- Article 1. Administration. §§ 45851-45855.5.
2. The California Taxpayers' Bill of Rights. §§ 45856-45872.

Article 1. Administration

- § 45851. Enforcement by board; rules and regulations.
§ 45852. Examination of records.
§ 45853. Employees and representatives of board.
§ 45854. Certificate of notice.
§ 45855. Disclosure of information.
§ 45855.5. Information confidential; tax preparer.

45851. Enforcement by board; rules and regulations. The board shall enforce this part and may prescribe, adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

45852. Examination of records. The board may make such examinations of the books and records of any fee payer as it may deem necessary in carrying out this part.

45853. Employees and representatives of board. The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

45854. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service shall be prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

45855. Disclosure of information. Any information regarding solid wastes which is available to the board shall be made available to the California Integrated Waste Management Board.

History.—Stats 1989, Ch. 1095, in effect January 1, 1990, added "Integrated" after "California."

45855.5. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 45151), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. The California Taxpayers' Bill of Rights

- § 45856. Administration.
- § 45857. Taxpayers' Rights Advocate.
- § 45858. Education and information program.
- § 45859. Annual hearing for taxpayer proposals.
- § 45860. Preparation of statements by board.
- § 45861. Limit on revenue collected or assessed.
- § 45862. Evaluation of employee's contact with taxpayers.
- § 45863. Plan to timely resolve claims and petitions.
- § 45864. Procedures relating to review conferences.
- § 45865. Reimbursement to taxpayers.
- § 45866. Investigations for nontax administrative purposes.
- § 45867. Settlement of disputed tax liabilities. [Repealed.]
- § 45867. Settlement authority.
- § 45867.5. Offers in compromise.
- § 45868. Release of levy.
- § 45868.5. Return of property.
- § 45869. Exemptions from levy.
- § 45870. Claim for reimbursement of bank charges by taxpayers.
- § 45871. Preliminary notice to taxpayer prior to lien.
- § 45872. Disregard by board employee or officer.

45856. **Administration.** The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

45857. **Taxpayers' Rights Advocate.** (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of fee payer complaints and problems, including any fee payer complaints regarding unsatisfactory treatment of fee payers by board employees, and staying actions where fee payers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

45858. **Education and information program.** (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Fee payers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

- (1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program for audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used pursuant to this section shall not represent the voice, picture, or name of members of the board or of the Controller.

History.—Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “and compliance” after “program for audit” in paragraph (4) of subdivision (b).

45859. Annual hearing for taxpayer proposals. The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their proposals on changes to the Integrated Waste Management Fee Law which may further improve voluntary compliance and the relationship between fee payers and the government.

History.—Stats. 1993, Ch. 656, in effect October 1, 1993, substituted “Integrated Waste Management” for “Solid Waste Disposal Site Cleanup and Maintenance” after “changes to the”.

45860. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to taxpayers.

45861. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

45862. Evaluation of employee’s contact with taxpayers. The board shall develop and implement a program that will evaluate an individual employee’s or officer’s performance with respect to his or her contact with

fee payers. The development and implementation of the program shall be coordinate with the Taxpayers' Rights Advocate.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted "that" for "what" after "a program".

45863. Plan to timely resolve claims and petitions. The board shall, in cooperation with the California Integrated Waste Management Board, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include the determination of standard timeframes and special review of cases which take more time than the appropriate standard timeframe.

History.—Stats. 1993, Ch. 656, in effect October 1, 1993, added "California" before "Integrated" in the first sentence and added "the" after "shall include" in the second sentence.

45864. Procedures relating to review conferences. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the taxpayer.

(b) The conference may be recorded only if prior notice is given to the fee payer and the fee payer is entitled to receive a copy of the recording.

(c) The fee payer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

45865. Reimbursement to taxpayers. (a) Every feepayer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refund.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “feepayer” for “fee payer” in all references throughout the section; substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “feepayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), effective January 1, 2001, substituted “the notice of . . . claim for refund” for “filing petitions for redetermination and claims for refund” in paragraph (1) of subdivision (c).

45866. Investigations for nontax administrative purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations which include integrated waste management fee violations.

(e) For the purposes of this section:

(1) “Investigation” means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) “Surveillance” means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

History.—Stats. 1993, Ch. 656, in effect October 1, 1993, substituted “integrated waste management” for “solid waste disposal site cleanup and maintenance” after “which include”.

45867. Settlement of disputed tax liabilities. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

45867. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Except as provided in paragraph (3) and subject to paragraph (2), the executive director or chief counsel, if authorized by the executive

director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board, itself, unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, itself, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(3) A settlement of any civil fee matter in dispute involving a reduction of fee or penalties in settlement, the total of which reduction of fee and penalties in settlement does not exceed five thousand dollars (\$5,000), may be approved by the executive director and chief counsel, jointly. The executive director shall notify the board, itself, of any settlement approved pursuant to this paragraph.

(c) Whenever a reduction of fees, or penalties, or total fees and penalties in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) For any settlement approved by the board, itself, the Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board, itself, within 45 days of the submission of that recommendation shall be deemed approved. Upon

approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions. Except as provided in subdivision (c), any settlement considered or entered into pursuant to this section shall constitute confidential information for purposes of Section 45982.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

History.—Added by Stats. 1995, Ch. 497, in effect January 1, 1996. Stats. 2003, Ch. 605 (SB 1060), in effect January 1, 2004, added “, for at least one year,” after “placed on file” to subdivision (c). Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007, substituted “Except as provided in paragraph (3) and subject” for “Subject” before “to paragraph (2)” in paragraph (1) of, added “, itself,” after “submitted to the board” in the first and third sentences of paragraph (2) of, and added paragraph (3) to subdivision (b); added “, or penalties, or total fees and penalties” after “a reduction of fees” in the first paragraph of, and substituted “For any settlement approved by the board, itself, the” for “The” before “Attorney General’s conclusion” in the first sentence of paragraph (5) of subdivision (c); added “, itself,” after “disapproved by the board” in the second sentence of paragraph (1) of subdivision (e); and added “considered or” after “any settlement” in the second sentence of subdivision (g).

45867.5. Offers in compromise. (a) (1) Beginning on January 1, 2007, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability where the reduction of fees is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in fees in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee

liability in which the reduction of fees is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, "a final fee liability" means any final fee liability arising under Part 23 (commencing with Section 45001), or related interest, additions to fees, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the fee payer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) Offers in compromise shall not be considered where the fee payer has been convicted of felony tax evasion under this part during the liability period.

(e) For amounts to be compromised under this section, the following conditions shall exist:

(1) The fee payer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the fee payer's present assets or income.

(B) The fee payer does not have reasonable prospects of acquiring increased income or assets that would enable the fee payer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(f) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(g) (1) Offers for liabilities with a fraud or evasion penalty shall require a minimum offer of the unpaid fee and fraud or evasion penalty.

(2) The minimum offer may be waived if it can be shown that the fee payer making the offer was not the person responsible for perpetrating the fraud or evasion. This authorization to waive only applies to partnership accounts where the intent to commit fraud or evasion can be clearly attributed to a partner of the fee payer.

(h) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the fee payer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the fee payer.

(i) When more than one fee payer is liable for the debt, such as with spouses or partnerships or other business combinations, including, but not limited to, fee payers who are liable through dual determination or

successor's liability, the acceptance of an offer in compromise from one liable fee payer shall reduce the amount of the liability of the other fee payers by the amount of the accepted offer.

(j) Whenever a compromise of fees or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for at least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

(1) The name of the fee payer.

(2) The amount of unpaid fees and related penalties, additions to fee, interest, or other amounts involved.

(3) The amount offered.

(4) A summary of the reason why the compromise is in the best interest of the state. The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the fee payer or violate the confidentiality provisions of Section 45855. No list shall be prepared and no releases distributed by the board in connection with these statements.

(k) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished, without regard to any statute of limitations that otherwise may be applicable, and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any fee payer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the fee payer or other person liable for the fee.

(2) The fee payer fails to comply with any of the terms and conditions relative to the offer.

(l) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned in the state prison, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a fee payer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the fee payer or other person liable in respect of the fee.

(m) For purposes of this section, "person" means the fee payer, any member of the fee payer's family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the fee payer, or any other corporation or entity owned or controlled by the fee payer, directly or indirectly, or that owns or controls the fee payer, directly or indirectly.

History.—Added by Stats. 2006, Ch. 364 (AB 3076), in effect January 1, 2007.

45868. **Release of levy.** (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the fee payer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added "of Division 2" after "(commencing with Section 703.010)" and added "Part 2 of" after "Title 9 of". Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "that the" for "of any of the following: (1) The" after "in the event" in subdivision (a); substituted subdivision letter (b) for paragraph number (2) and substituted "may order the . . . of moneys received," for "orders the release of the levy or notice to withhold" after "Taxpayers' Rights Advocate" in subdivision (b); and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

45868.5. **Return of property.** (a) Except in any case where the board finds collection of the tax to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the taxpayer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The taxpayer has entered into and is in compliance with an installment payment agreement pursuant to Section 45609 to satisfy the tax liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the tax liability or will be in the best interest of the state and the taxpayer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 45870.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

45869. **Exemptions from levy.** Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the

collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “(commencing with Section 703.010)” and added “Part 2 of” after “Title 9 of”.

45870. Claim for reimbursement of bank charges by taxpayers. (a) A fee payer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution’s or third party’s customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid by the fee payer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the fee payer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the fee payer’s position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the fee payer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted “complying” for “comply” after “change for” in subdivision (a). Stats. 2001, Ch. 543 (SB 1185), added “and any other . . . check charge fees” after “of bank charges” in subdivision (a), added “and third party” prior to “charges include a” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a), added “or third party” after “the financial institution” in subdivision (a), effective January 1, 2002.

45871. Preliminary notice to taxpayer prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 45351) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted “or” for “of” after “Section 7150)” and substituted “of” for “or” after “Section 7220)” in subdivision (a); substituted “be required with respect to” for “apply to” after “shall not” in subdivision (b); added “the” after “determines that” and added “of” after “filing” in subdivision (c); added “that has been” after “a lien” and substituted “release” for “fact” after “notice of that” in subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e).

45872. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party’s case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the fee payer's position in the proceeding brought under subdivision (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

History.—Stats. 2006, Ch. 538 (SB 1852), in effect January 1, 2007, substituted “that” for “which” after “of the plaintiff” in subdivision (c); and added “s” to “appear” in first sentence of subdivision (d).

CHAPTER 7. DISPOSITION OF PROCEEDS

- § 45901. Integrated Waste Management Account.
- § 45902. Integrated Waste Management Account. [Repealed.]

45901. Integrated Waste Management Account. All fees, interest, and penalties imposed and all amounts of fee required to be paid to the state pursuant to Section 45051 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, substituted “Solid Waste Management” for “General” in the last sentence. Stats. 1993, Ch. 656, in effect October 1, 1993, substituted “Integrated Waste Management” for “Solid Waste Disposal Site Cleanup and Maintenance” after “deposited in the”, and substituted “Integrated” for “Solid” after “Account in the” in the second sentence.

45902. Integrated Waste Management Account. [Repealed by Stats. 1993, Ch. 656, in effect October 1, 1993.]

CHAPTER 8. VIOLATIONS

- § 45951. Failure to file return or report.
- § 45952. Filing false return or report; refusal to permit examination; failure to keep records.
- § 45953. Evasion of tax.
- § 45954. Violation of provisions for which a penalty is not specifically provided.
- § 45955. Felony violation of provisions for which a penalty is not specifically provided.
- § 45956. Statute of limitations.

45951. Failure to file return or report. Any person who refuses to furnish any return or report required to be made, or who refuses to furnish a supplemental return or other data required by the board, is guilty of a misdemeanor and subject to a fine not to exceed five hundred dollars (\$500) for each offense.

45952. Filing false return or report; refusal to permit examination; failure to keep records. Any person who knowingly or willfully files a false return or report with the board, and any person who refuses to permit the board or any of its representatives to make any inspection or examination for which provision is made in this part, or who fails to keep any records as prescribed by the board, or who fails to preserve the records for the inspection of the board for such time as the board deems necessary, or who alters, cancels, or obliterates entries in the records for the purpose of

falsifying the records is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars (\$100) or more than one thousand dollars (\$1,000), by imprisonment in the county jail for not less than one month or more than six months, or by both.

45953. **Evasion of tax.** Any person who willfully evades or attempts in any manner to evade or defeat the payment of the fee imposed by this part is guilty of a felony.

45954. **Violation of provisions for which a penalty is not specifically provided.** Every person convicted for a violation of any provision of this part for which another penalty or punishment is not specifically provided for in this part is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500), by imprisonment in the county jail for not more than six months, or by both.

45955. **Felony violation of provisions for which a penalty is not specifically provided.** Every person convicted of a felony for a violation of any provision of this part for which another punishment is not specifically provided for in this part shall be punished by a fine of not more than five thousand dollars (\$5,000), by imprisonment in the state prison, or by both that fine and imprisonment.

History.—Stats. 2006, Ch. 347 (AB 2367), in effect January 1, 2007, adds “the” after “by imprisonment in”, adds a comma after “state prison”, deletes “for not less than one year nor more than five years” after “state prison,” and adds “that fine and imprisonment” after “or by both”.

45956. **Statute of limitations.** Any prosecution for violation of any provision of this part shall be instituted within three years after the commission of the offense.

CHAPTER 9. DISCLOSURE OF INFORMATION

- § 45981. Disclosure of information.
- § 45982. Divulging of information to unauthorized parties forbidden.
- § 45983. Information to interested parties.
- § 45984. Information collected pursuant to other laws, regulations or ordinances.

45981. **Disclosure of information.** (a) The board shall provide any information obtained under this part to the California Integrated Waste Management Board.

(b) The California Integrated Waste Management Board and the board may utilize any information obtained pursuant to this part to develop data on the generation or disposal of solid waste within the state. Notwithstanding any other provision of this chapter, the California Integrated Waste Management Board may make waste generation and disposal data available to the public.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, added “Integrated” after “California” throughout the section.

45982. **Divulging of information to unauthorized parties forbidden.** Neither the California Integrated Waste Management Board, nor any person having an administrative duty under Part 9 (commencing with Section 15600) of Division 3 of Title 2 of the Government Code shall disclose the

business affairs, operations, or any other proprietary information pertaining to a fee payer, except a fee payer which is a public agency, which was submitted to the board in a report or return required by this part, or permit any report or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person not expressly authorized by Section 45981 or this section. However, the Governor may, by general or special order, authorize examination of the records maintained by the board under this part by other state officers, by officers of another state, by the federal government if a reciprocal arrangement exists, or by any other person. The information so obtained pursuant to the order of the Governor shall not be made public except to the extent and in the manner that the order may authorize that it be made public.

History.—Stats. 1989, Ch. 1095, in effect January 1, 1990, added “Integrated” after “California” in the first sentence. Stats. 1991, Ch. 717, in effect January 1, 1992, added “proprietary” after “or any other” and “, except a fee payer which is a public agency,” after “fee payer” in the first sentence.

45983. **Information to interested parties.** Notwithstanding Section 45982, the successors, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

45984. **Information collected pursuant to other laws, regulations, or ordinances.** Nothing in this chapter limits or increases public access to information on any aspect of solid waste generation or disposal collected pursuant to other state or local laws, regulations, or ordinances.

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INTEGRATED WASTE MANAGEMENT FEE LAW
Revenue and Taxation Code

PUBLIC RESOURCES CODE PROVISIONS

Relating to the Solid Waste Disposal Site Cleanup and Maintenance Fee Law

DIVISION 30. WASTE MANAGEMENT

PART 1. INTEGRATED WASTE MANAGEMENT

CHAPTER 1. GENERAL PROVISIONS

(Note: For history of any of these sections see Public Resources Code, annotated published by Deering or West.)

Article 1. Findings and Declarations

- § 40000. Legislative intent.
- § 40001. Responsibility.
- § 40002. Local agency requirements.

40000. **Legislative intent.** The Legislature hereby finds and declares all of the following:

(a) In 1988, Californians disposed of over 38 million tons of solid waste, an amount that is expected to grow if existing solid waste policies are continued. This amounts to more than 1,500 pounds of waste per person living in the state, more than any other state in the country and over twice the per-capita rate of most other industrialized countries.

(b) Over 90 percent of California's solid waste currently is disposed of in landfills, some of which pose a threat to groundwater, air quality, and public health.

(c) While California will exhaust most of its remaining landfill space by the mid-1990s, there presently is no coherent state policy to ensure that the state's solid waste is managed in an effective and environmentally sound manner for the remainder of the 20th century and beyond.

(d) The amount of solid waste generated in the state coupled with diminishing landfill space and potential adverse environmental impacts from landfilling constitutes an urgent need for state and local agencies to enact and implement an aggressive new integrated waste management program.

(e) The reduction, recycling, or reuse of solid waste generated in the state will, in addition to preserving landfill capacity in California, serve to conserve water, energy, and other natural resources within this state, and to protect the state's environment.

40001. **Responsibility.** (a) The Legislature declares that the responsibility for solid waste management is a shared responsibility between the state and local governments. The state shall exercise its legal authority in a manner that ensures an effective and coordinated approach to the safe management of all solid waste generated within the state and shall oversee the design and implementation of local integrated waste management plans.

(b) The Legislature further declares that it is the policy of the state to assist local governments in minimizing duplication of effort, and in

minimizing the costs incurred, in implementing this division through the development of regional cooperative efforts and other mechanisms which comply with this division.

(c) The Legislature further declares that market development is the key to successful and cost-effective implementation of the 25-percent and 50-percent diversion requirements required pursuant to Section 41780, and that the state must take a leadership role, pursuant to Chapter 1 (commencing with Section 42000) of Part 3, in encouraging the expansion of markets for recycled products by working cooperatively with the public, private, and nonprofit sectors.

40002. Local agency requirements. As an essential part of the state's comprehensive program for solid waste management, and for the preservation of health and safety, and the well-being of the public, the Legislature declares that it is in the public interest for the state, as sovereign, to authorize and require local agencies, as subdivisions of the state, to make adequate provision for solid waste handling, both within their respective jurisdictions and in response to regional needs consistent with the policies, standards, and requirements of this division and all regulations adopted pursuant to this division. The provisions of this division which authorize and require local agencies to provide adequate solid waste handling and services, and the actions of local agencies taken pursuant thereto, are intended to implement this state policy.

Article 2. General Provisions

§ 40050.	Title.
§ 40051.	Implementation requirements.
§ 40052.	Purpose.

40050. Title. This division shall be known and may be cited as the California Integrated Waste Management Act of 1989.

40051. Implementation requirements. In implementing this division, the board and local agencies shall do both of the following:

(a) Promote the following waste management practices in order of priority:

(1) Source reduction.

(2) Recycling and composting.

(3) Environmentally safe transformation and environmentally safe land disposal, at the discretion of the city or county.

(b) Maximize the use of all feasible source reduction, recycling, and composting options in order to reduce the amount of solid waste that must be disposed of by transformation and land disposal. For wastes that cannot feasibly be reduced at their source, recycled, or composted, the local agency may use environmentally safe transformation or environmentally safe land disposal, or both of those practices.

40052. Purpose. The purpose of this division is to reduce, recycle, and reuse solid waste generated in the state to the maximum extent feasible in an

efficient and cost-effective manner to conserve water, energy and other natural resources, to protect the environment, to improve regulation of existing solid waste landfills, to ensure that new solid waste landfills are environmentally sound, to improve permitting procedures for solid waste management facilities, and to specify the responsibilities of local governments to develop and implement integrated waste management programs.

CHAPTER 2. DEFINITIONS

(**Note:** For history of any of these sections see Public Resources Code, annotated, published by Deering or West.)

- § 40100. Definitions; application.
- § 40105. "Authorized recycling agent."
- § 40110. "Board."
- § 40115. "City" or "county."
- § 40116. "Compost."
- § 40117. "Gasification."
- § 40120. "Designated recycling collection location."
- § 40120.1. "Disposal."
- § 40121. "Disposal facility" or "facility."
- § 40122. "Disposal site" or "site."
- § 40123. "Disposal site owner."
- § 40124. "Diversion."
- § 40130. "Enforcement agency."
- § 40131. "Enforcement program."
- § 40135. "Fund."
- § 40135.1. "Account."
- § 40140. "Hazard."
- § 40141. "Hazardous waste."
- § 40148. "Large state facility."
- § 40150. "Local governing body."
- § 40160. "Operator."
- § 40170. "Person."
- § 40171. "Pollution."
- § 40172. "Processing."
- § 40180. "Recycle" or "recycling."
- § 40181. "Regional agency."
- § 40182. "Regional water board."
- § 40190. "Segregated from other waste material."
- § 40190.5. "Sharps waste."
- § 40191. "Solid waste."
- § 40192. "Solid waste disposal" or "disposal."
- § 40193. "Solid waste enterprise."
- § 40194. "Solid waste facility."
- § 40195. "Solid waste handling" or "handling."
- § 40195.1. "Solid waste landfill."
- § 40196. "Source reduction."
- § 40196.3. "State agency."
- § 40196.5. "State board."
- § 40197. "State water board."
- § 40200. "Transfer or processing station" or "station."
- § 40201. "Transformation."

40100. Definitions; application. Unless the context otherwise requires, the definitions in this article govern the construction of this division.

40105. **“Authorized recycling agent.”** “Authorized recycling agent” means a person that a local governing body or private commercial entity authorizes or contracts with to collect its recyclable waste material. An authorized recycling agency may be a municipal collection service, private refuse hauler, private recycling enterprise, or private nonprofit corporation or association.

40110. **“Board.”** “Board” means the California Integrated Waste Management Board.

40115. **“City” or “county.”** “City” or “county” includes city and county.

40116. **“Compost.”** “Compost” means the product resulting from the controlled biological decomposition of organic wastes that are source separated from the municipal solid waste stream, or which are separated at a centralized facility. “Compost” includes vegetable, yard, and wood wastes which are not hazardous waste.

40117. **“Gasification.”** “Gasification” means a technology that uses a noncombustion thermal process to convert solid waste to a clean burning fuel for the purpose of generating electricity, and that, at minimum, meets all of the following criteria:

(a) The technology does not use air or oxygen in the conversion process, except ambient air to maintain temperature control.

(b) The technology produces no discharges of air contaminants or emissions, including greenhouse gases, as defined in subdivision (g) of Section 42801.1 of the Health and Safety Code.

(c) The technology produces no discharges to surface or groundwaters of the state.

(d) The technology produces no hazardous waste.

(e) To the maximum extent feasible, the technology removes all recyclable materials and marketable green waste compostable materials from the solid waste stream prior to the conversion process and the owner or operator of the facility certifies that those materials will be recycled or composted.

(f) The facility where the technology is used is in compliance with all applicable laws, regulations, and ordinances.

(g) The facility certifies to the board that any local agency sending solid waste to the facility is in compliance with this division and has reduced, recycled, or composted solid waste to the maximum extent feasible, and the board makes a finding that the local agency has diverted at least 30 percent of all solid waste through source reduction, recycling, and composting.

40120. **“Designated recycling collection location.”** “Designated recycling collection location” means the place where an authorized recycling agent has contracted with either the local governing body or a private entity to pick up recyclable material segregated from other waste material.

“Designated recycling collection location” includes, but is not limited to, the curbside of a residential neighborhood or the service alley of a commercial enterprise.

40120.1. **“Disposal.”** “Disposal” has the same meaning as “solid waste disposal” as defined in Section 40192.

40121. **“Disposal facility” or “facility.”** “Disposal facility” or “facility” means any facility or location where disposal of solid waste occurs.

40122. **“Disposal site” or “site.”** “Disposal site” or “site” includes the place, location, tract of land, area, or premises in use, intended to be used, or which has been used for the landfill disposal of solid wastes. “Disposal site” includes solid waste landfill, as defined in Section 46027.

40123. **“Disposal site owner.”** “Disposal site owner” means the person who holds title to the property used as a disposal site after January 1, 1977.

40124. **“Diversion.”** “Diversion” means activities which reduce or eliminate the amount of solid waste from solid waste disposal for purposes of this division, including Article 1 (commencing with Section 41780) of Chapter 6.

40130. **“Enforcement agency.”** “Enforcement agency” means the local agency designated pursuant to Article 1 (commencing with Section 43200) of Chapter 2 of Part 4 for the purpose of carrying out this division, or the board if no designation of a local agency has been approved by the board.

40131. **“Enforcement program.”** “Enforcement program” means the regulations and procedures adopted by the board pursuant to Chapter 2 (commencing with Section 43200) of Part 4.

40135. **“Fund.”** “Fund” means the Integrated Waste Management Fund, which is hereby created in the State Treasury. Any reference in this division or any other provision of law to the Solid Waste Management Fund shall mean the Integrated Waste Management Fund.

40135.1. **“Account.”** “Account” means the Integrated Waste Management Account created in the fund pursuant to Section 48001.

40140. **“Hazard.”** “Hazard” includes any condition, practice, or procedure which is or may be dangerous, harmful, or perilous to employees, property, neighbors, or the general public.

40141. **“Hazardous waste.”** (a) “Hazardous waste” means a waste, or combination of wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may do either of the following:

(1) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) Pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed.

(b) Unless expressly provided otherwise, “hazardous waste” includes extremely hazardous waste and acutely hazardous waste.

40148. **“Large state facility.”** “Large state facility” means those campuses of the California State University and the California Community Colleges, prisons within the Department of Corrections, facilities of the State Department of Transportation, and facilities of other state agencies, that the board determines, are primary campuses, prisons, or facilities.

40150. **“Local governing body.”** “Local governing body” means the legislative body of the city, county, or special district which has authority to provide solid waste handling services.

40160. **“Operator.”** “Operator” means the person to whom the approval to operate a disposal site, transfer or processing station, or collection system is granted.

40170. **“Person.”** “Person” includes an individual, firm, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

40171. **“Pollution.”** “Pollution” means the condition caused by the presence in or on a body of water, soil, or air of any solid waste or substance derived therefrom in such quantity, of such nature and duration, or under such condition that the quality, appearance, or usefulness of the water, soil, land, or air is significantly degraded or adversely altered.

40172. **“Processing.”** “Processing” means the reduction, separation, recovery, conversion, or recycling of solid waste.

40180. **“Recycle” or “recycling.”** “Recycle” or “recycling” means the process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become solid waste, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the quality standards necessary to be used in the marketplace. “Recycling” does not include transformation, as defined in Section 40201.

40181. **“Regional agency.”** “Regional agency” means: an agency formed pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code and Article 3 (commencing with Section 40970) of Chapter 1 of Part 2.

40182. **“Regional water board.”** “Regional water board” means a California regional water quality control board.

40190. **“Segregated from other waste material.”** “Segregated from other waste material” means any of the following:

- (a) The placement of recyclable materials in separate containers.
- (b) The binding of recyclable material separately from the other waste material.
- (c) The physical separation of recyclable material from other waste material.

40190.5. **“Sharps waste.”** “Sharps waste” means waste generated by a household that includes a hypodermic needle, syringe, or lancet.

40191. **“Solid waste.”** (a) Except as provided in subdivision (b), “solid waste” means all putrescible and nonputrescible solid, semisolid, and liquid wastes, including garbage, trash, refuse, paper, rubbish, ashes, industrial wastes, demolition and construction wastes, abandoned vehicles and parts thereof, discarded home and industrial appliances, dewatered, treated, or chemically fixed sewage sludge which is not hazardous waste, manure, vegetable or animal solid and semisolid wastes, and other discarded solid and semisolid wastes.

(b) “Solid waste” does not include any of the following wastes:

- (1) Hazardous waste, as defined in Section 40141.
- (2) Radioactive waste regulated pursuant to the Radiation Control Law (Chapter 8 (commencing with Section 114960) of Part 9 of Division 104 of the Health and Safety Code).
- (3) Medical waste regulated pursuant to the Medical Waste Management Act (Part 14 (commencing with Section 117600) of Division 104 of the Health and Safety Code). Untreated medical waste shall not be disposed of in a solid waste landfill, as defined in Section 0195.1. Medical waste that has been treated and deemed to be solid waste shall be regulated pursuant to this division.

40192. **“Solid waste disposal” or “disposal.”** (a) Except as provided in subdivisions (b) and (c), “solid waste disposal” or “disposal” means the final deposition of solid wastes onto land, into the atmosphere, or into the waters of the state.

(b) Except as provided in Part 2 (commencing with Section 40900), for purposes of Part 2 (commencing with Section 40900), “disposal” means the management of solid waste through landfill disposal or transformation at a permitted solid waste facility.

(c) For purposes of Chapters 16 (commencing with Section 42800) and 19 (commencing with Section 42950) of Part 3, Part 4 (commencing with Section 43000), Part 5 (commencing with Section 45000), Part 6 (commencing with Section 45030), and Chapter 2 (commencing with Section 47900) of Part 7, “solid waste disposal” or “disposal” means the final deposition of solid wastes onto land.

40193. **“Solid waste enterprise.”** “Solid waste enterprise” means any individual, partnership, joint venture, unincorporated private organization, or private corporation, which is regularly engaged in the business of providing solid waste handling services.

40194. **“Solid waste facility.”** “Solid waste facility” includes a solid waste transfer or processing station, a composting facility, a gasification facility, a transformation facility, and a disposal facility.

40195. **“Solid waste handling” or “handling.”** “Solid waste handling” or “handling” means the collection, transportation, storage, transfer, or processing of solid wastes.

40195.1. **“Solid waste landfill.”** (a) “Solid waste landfill” means a disposal facility that accepts solid waste for land disposal, but does not include a facility which receives only wastes generated by the facility owner or operator in the extraction, beneficiation, or processing of ores and minerals, or a cemetery which disposes onsite only the grass clippings, floral wastes, or soil resulting from activities on the grounds of that cemetery.

(b) For the purposes of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2 of Part 4, “solid waste landfill” does not include a facility which receives only nonhazardous wood waste derived from timber production or wood product manufacturing. For the purposes of the fee imposed by Section 48000, facilities which receive only nonhazardous wood waste derived from timber production or wood product manufacturing shall, notwithstanding Section 48000, pay a quarterly fee to the state board on all solid waste disposed at each disposal site, which does not exceed the amount of the fee due and payable to the state board by those facilities during the 1992 calendar year.

40196. **“Source reduction.”** “Source reduction” means any action which causes a net reduction in the generation of solid waste. “Source reduction” includes, but is not limited to, reducing the use of nonrecyclable materials, replacing disposable materials and products with reusable materials and products, reducing packaging, reducing the amount of yard wastes generated, establishing garbage rate structures with incentives to reduce the amount of wastes that generators produce, and increasing the efficiency of the use of paper, cardboard, glass, metal, plastic, and other materials. “Source reduction” does not include steps taken after the material becomes solid waste or actions which would impact air or water resources in lieu of land, including, but not limited to, transformation.

40196.3. **“State agency.”** “State agency” means every state office, department, division, board, commission, or other agency of the state, including the California Community Colleges and the California State University. The Regents of the University of California are encouraged to implement this division.

40196.5. **“State board.”** “State board” means the State Board of Equalization.

40197. **“State water board.”** “State water board” means the State Water Resources Control Board.

40200. **“Transfer or processing station” or “station.”**
(a) “Transfer or processing station” or “station” includes those facilities utilized to receive solid wastes, temporarily store, separate, convert, or otherwise process the materials in the solid wastes, or to transfer the solid wastes directly from smaller to larger vehicles for transport, and those facilities utilized for transformation.

(b) “Transfer or processing station” or “station” does not include any of the following:

(1) A facility, whose principal function is to receive, store, separate, convert, or otherwise process in accordance with state minimum standards, manure.

(2) A facility, whose principal function is to receive, store, convert, or otherwise process wastes which have already been separated for reuse and are not intended for disposal.

(3) The operations premises of a duly licensed solid waste handling operator who receives, stores, transfers, or otherwise processes wastes as an activity incidental to the conduct of a refuse collection and disposal business in accordance with regulations adopted pursuant to Section 43309.

40201. **“Transformation.”** “Transformation” means incineration, pyrolysis, distillation, or biological conversion other than composting. “Transformation” does not include composting, gasification, or biomass conversion.

PART 4. SOLID WASTE FACILITIES

CHAPTER 3. PERMIT AND INSPECTION PROGRAM

Article 1. Solid Waste Facility Permits

- § 44001. Application for permit.
- § 44002. Operation of a solid waste facility.
- § 44003. Operator other than owner.
- § 44004. Change in facility design or operation.
- § 44005. Change in site ownership interest.
- § 44006. Report and application fee.

44001. **Application for permit.** Any person who proposes to become an operator of a solid waste facility shall file with the enforcement agency having jurisdiction over the facility, or the board if there is no designated and certified enforcement agency, an application for a solid waste facilities permit at least 150 days in advance of the date on which it is desired to commence operation, unless the enforcement agency issues a permit to the applicant to commence operations prior to that time.

44002. **Operation of a solid waste facility.** (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division.

(2) The prohibition specified in paragraph (1) includes, but is not limited to, the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.

(b) If the enforcement agency determines that a person is operating a solid waste facility in violation of subdivision (a), the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease all activities for which a solid waste facilities permit is required and desist from those activities until the person obtains a valid solid waste facilities permit authorizing the activities or has obtained other authorization pursuant to this division.

44003. **Operator other than owner.** When the operator of the disposal site is not the disposal site owner, the disposal site operator's application for a solid waste facilities permit shall contain any information that the enforcement agency or the board may require regarding the disposal site owner's interest in the real property utilized as the disposal site.

44004. **Change in facility design or operation.** (a) An operator of a solid waste facility may not make a significant change in the design or operation of the solid waste facility that is not authorized by the existing permit, unless the change is approved by the enforcement agency, the change conforms with this division and all regulations adopted pursuant to this division, and the terms and conditions of the solid waste facilities permit are revised to reflect the change.

(b) If the operator wishes to change the design or operation of the solid waste facility in a manner that is not authorized by the existing permit, the operator shall file an application for revision of the existing solid waste facilities permit with the enforcement agency. The application shall be filed at least 180 days in advance of the date when the proposed modification is to take place unless the 180-day time period is waived by the enforcement agency.

(c) The enforcement agency shall review the application to determine all of the following:

(1) Whether the change conforms with this division and all regulations adopted pursuant to this division.

(2) Whether the change requires review pursuant to Division 13 (commencing with Section 21000).

(d) Within 60 days from the date of the receipt of the application for a revised permit, the enforcement agency shall inform the operator, and if the enforcement agency is a local enforcement agency, also inform the board, of its determination to do any of the following:

(1) Allow the change without a revision to the permit.

(2) Disallow the change because it does not conform with the requirements of this division or the regulations adopted pursuant to this division.

(3) Require a revision of the solid waste facilities permit to allow the change.

(4) Require review under Division 13 (commencing with Section 21000) before a decision is made.

(e) The operator has 30 days within which to appeal the decision of the enforcement agency to the hearing panel, as authorized pursuant to Article 2 (commencing with Section 44305) of Chapter 4. The enforcement agency shall provide notice of a hearing held pursuant to this subdivision in the same manner as notice is provided pursuant to subdivision (h).

(f) Under circumstances that present an immediate danger to the public health and safety or to the environment, as determined by the enforcement agency, the 180-day filing period may be waived.

(g) (1) A permit revision is not required for the temporary suspension of activities at a solid waste facility if the suspension meets either of the following criteria:

(A) The suspension is for the maintenance or minor modifications to a solid waste unit or to solid waste management equipment.

(B) The suspension is for temporarily ceasing the receipt of solid waste at a solid waste management facility and the owner or operator is in compliance with all other applicable terms and conditions of the solid waste facilities permit and minimum standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

(h) (1) (A) Before making its determination pursuant to subdivision (d), the enforcement agency shall submit the proposed determination to the board for comment and hold at least one public hearing on the proposed determination. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within a distance other than 300 feet of the real property that is the subject of the hearing, if specified in the regulations adopted by the board pursuant to subdivision (i). The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.

(B) The enforcement agency shall mail or deliver the notice required pursuant to subparagraph (A) at least 10 days prior to the date of the hearing to any person who has filed a written request for the notice with a person designated by the enforcement agency to receive these requests. The enforcement agency may charge a fee to the requester in an amount that is reasonably related to the costs of providing this service and the enforcement agency may require each request to be annually renewed.

(C) The enforcement agency shall consider environmental justice issues when preparing and distributing the notice to ensure that the notice is concise and understandable for limited-English-speaking populations.

(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).

(i) (1) The board shall, to the extent resources are available, adopt regulations that implement subdivision (h) and define the term “significant change in the design or operation of the solid waste facility that is not authorized by the existing permit.”

(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider recommendations of the Working Group on Environmental Justice and the advisory group made pursuant to Sections 71113 and 71114 and the report required pursuant to Section 71115.

44005. Change in site ownership interest. (a) Any owner or operator of a solid waste facility who plans to encumber, sell, transfer, or convey the ownership or operations of a solid waste facility or disposal site to a new owner or operator, shall notify the enforcement agency and the board, 45 days prior to the date of the anticipated transfer. The notification shall be in writing and shall include information as determined by the board, including any financial assurances, if applicable.

(b) The enforcement agency and the board shall review the notification documentation and any available records of enforcement actions taken against the proposed transferee, and shall determine, within 30 days of receipt, whether the facility will be operated in compliance with the terms and conditions of an approved permit and any other applicable requirements, including, but not limited to, the requirements of Division 13 (commencing with Section 21000). If the solid waste facility will not be operated in compliance with the terms and conditions of an approved permit, or any other applicable requirements of Division 13 (commencing with Section 21000), the new owner or operator shall be required to file an application for a revised or modified solid waste facilities permit.

(c) If the enforcement agency or the board determines that the facility will be operated in compliance with the terms and conditions of the existing permit, the enforcement agency may change the name of the owner or operator on the permit.

44006. **Report and application fee.** (a) Each report or application filed under this article shall be submitted under oath or under penalty of perjury.

(b) Each report, notice, or application filed under this article shall be submitted on a form approved by the board.

(c) Each application required to be filed under this article shall be accompanied by a filing fee according to a fee schedule established by the enforcement agency to reflect the cost of processing the application and to recover costs incurred in meeting the requirements of Article 3 (commencing with Section 43500) and Article 4 (commencing with Section 43600) of Chapter 2. This fee is in addition to the fees authorized by Chapter 8 (commencing with Section 41900) of Part 2.

PART 6. SOLID WASTE DISPOSAL SITE CLEANUP AND MAINTENANCE

[Repealed by Stats. 1993, Ch. 656,
in effect October 1, 1993.]

This part contained provisions for the collection of an annual fee for deposit in the Solid Waste Disposal Site Cleanup and Maintenance Account. The money was available for loan guarantee agreements with owners and operators of solid waste landfills and for making grants to cities, counties, or other local agencies for specified local programs. These programs will now be funded through the increased quarterly fee from Section 48000.

CHAPTER 2. FINANCES

Article 2. Management of the Fund

- § 48000. Quarterly fee; rate.
- § 48001. Creation of account; deposit of money.
- § 48002. Rules and regulations.
- § 48003. Expenditure of revenues.
- § 48004. Money in account.
- § 48005. Deposit of money; specified use.
- § 48006. Exemption.
- § 48007. Recycled materials and inert waste.
- § 48007.5. Inert waste.
- § 48008. Administrative fee.

48000. **Quarterly fee; rate.** (a) Each operator of a disposal facility shall pay a fee quarterly to the State Board of Equalization which is based on the amount, by weight or volumetric equivalent, as determined by the board, of all solid waste disposed of at each disposal site.

(b) The fee for solid waste disposed of shall be one dollar and thirty-four cents (\$1.34) per ton. Commencing with the 1995-96 fiscal year, the amount of the fee shall be established by the board at an amount that is sufficient to generate revenues equivalent to the approved budget for that fiscal year, including a prudent reserve, but shall not exceed one dollar and forty cents (\$1.40) per ton.

(c) The board shall notify the State Board of Equalization on the first day of the period in which the rate shall take effect of any rate change adopted pursuant to this section.

(d) The board and the State Board of Equalization shall ensure that all the fees for solid waste imposed pursuant to this section that are collected at a transfer station are paid to the State Board of Equalization in accordance with this article.

48001. Creation of account; deposit of money. The revenue from the fees paid pursuant to Section 48000 shall, after payment of refunds and administrative costs of collection, be deposited in the Integrated Waste Management Account, which is hereby created in the fund.

48002. Rules and regulations. The state board shall adopt rules and regulations to carry out Section 48000, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

48003. Expenditure of revenues. The state board may not spend more than 1/2 percent of the total revenues deposited, or anticipated to be deposited in the account during a fiscal year for the administration of this chapter during that fiscal year.

48004. Money in account. (a) The money in the account shall be used by the board, upon appropriation by the Legislature, for the following purposes:

- (1) The administration and implementation of this division by the board.
- (2) The state water board's and regional water board's administration and implementation of Division 7 (commencing with Section 13000) of the Water Code at solid waste disposal sites.

(b) It is the intent of the Legislature that an amount which is sufficient to fund state water board and regional water board regulatory activities for solid waste landfills be appropriated from the account by the Legislature in the annual Budget Act. Those persons who are required to pay the fee imposed pursuant to Section 48000 shall not be required to pay the annual fee imposed pursuant to subdivision (d) of Section 13260 of the Water Code with regard to the same discharge.

(c) Notwithstanding subdivisions (a) and (b), if the fee established pursuant to Section 48000 does not generate revenues sufficient to fund the programs specified in this section, or if the amount appropriated by the Legislature for these purposes is reduced, those reductions shall be equally and proportionally distributed between funding for the solid waste programs of the state water board and the regional water boards and the board.

48005. Deposit of money; specified use. Unless otherwise specified, all money received by the board shall be deposited in the Integrated Waste Management Account and shall be used by the board, upon appropriation by the Legislature, for the purposes for which it was collected or, if not expressly

specified for a particular purpose, for the purposes of this division, except Part 6 (commencing with Section 46000), which shall be funded by fees pursuant to Section 46801.

48006. Exemption. The board may exempt from all fees any operator of a solid waste landfill that receives less than a monthly average of five tons per operating day of solid waste.

Text of section operative through December 31, 2001

48007. Recycled materials and inert waste. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) For purposes of this section, and only for the purpose of determining whether fees shall be imposed pursuant to Section 48000, “inert waste removed from the waste stream and not disposed of in solid waste landfills” includes the use, disposal, or placement of solely inert waste on property where surface mining operations, as defined in Section 2735, are being conducted, or have been conducted previously, as long as the use, disposal, or placement is for purposes of reclamation, as defined in Section 2733, pursuant to either of the following:

(1) A reclamation plan approved pursuant to Section 2774.

(2) For surface mining operations conducted prior to January 1, 1976, an agreement with a city or county, or a permit issued by a city or county, that provides for a fill appropriately engineered for the planned future use of the reclaimed minesite.

(c) For purposes of this section, “inert waste” means rock, concrete, brick, sand, soil, and cured asphalt only. In addition, inert waste does not include any waste that meets the definition of “designated waste” as defined in Section 13173 of the Water Code or “hazardous waste” as defined by Section 40141.

(d) This section shall remain operative until the operative date of the regulations adopted by the board pursuant to Section 48007.5 and, as of the January 1 following that operative date, this section is repealed, unless a later enacted statute deletes or extends the dates on which it becomes inoperative and is repealed.

Text of section operative January 1, 2002

48007. Recycled materials and inert waste. (a) Recycled materials and inert waste removed from the waste stream and not disposed of in a solid waste landfill shall not be included for the purpose of assessing fees imposed pursuant to Section 48000.

(b) This section shall become operative on the operative date of the regulations adopted by the board pursuant to Section 48007.5.

48007.5. **Inert waste.** (a) On or before January 1, 2004, the board shall adopt and file with the Secretary of State, pursuant to Section 11346.2 of the Government Code, regulations that establish an appropriate level of oversight of the management of construction and demolition waste, and the management of inert waste at mine reclamation sites.

(b) For purposes of this section, “inert waste” has the same meaning as defined in subdivision (c) of Section 48007, as that section read on January 1, 2002.

48008. **Administrative fee.** (a) Any operator of a solid waste landfill that pays a fee pursuant to this chapter may impose on its users an administrative fee of not more than 5 percent of the fees paid to the State Board of Equalization during the previous quarter pursuant to Section 48000.

(b) Administrative fees imposed pursuant to subdivision (a) shall reflect, to the extent feasible, the actual costs of collecting and accounting for fees paid to the State Board of Equalization.

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