

STATE OF CALIFORNIA
BOARD OF EQUALIZATION

BUSINESS TAXES APPEALS REVIEW SECTION

In the Matter of the Petitions)
for Redetermination and Claims for)
Refund Under the Hazardous) DECISION AND RECOMMENDATION
Substances Tax Law of:)
)
) Nos.)
)
)
Petitioner/Claimant)

The Appeals conference in the above-referenced matters was held by telephone before Staff Counsel Lucian Khan on _____ in Sacramento, California.

Appearing for Petitioner/Claimant by telephone (hereinafter Petitioner):

Appearing for the Department of Toxic Substances Control (DTSC):

Dennis Mahoney
Senior Staff Counsel

Appearing for the Special Taxes Division (STD) of the Board:

Jeffrey George
Supervising Tax Auditor

Protested Items

1 - Hazardous waste facility fee for the period July 1, 1988 to June 30, 1989 based on the rate established for a small storage facility.

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- Hazardous waste facility fee for the period July 1, 1989 to June 30, 1990 based on the rate established for a small storage facility.

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_____ - Hazardous waste facility fee for the period July 1, 1990 to June 30, 1991 based on the rate established for a small storage facility \$,

_____ - Hazardous waste facility fee for the period July 1, 1991 to December 31, 1991 based on the rate established for a small storage facility \$,

_____ - Hazardous waste facility fee for the period July 1, 1986 to June 30, 1988 based on the rate established for a small storage facility \$,

Contentions

1. The facility is operating in the same manner as other facilities which are not paying the facility fees.

2. Initial discussions with DTSC indicated that tank-cleaning facilities were going to qualify for permit by rule. Subsequently, it was discovered petitioner did not qualify for permit by rule.

3. As of November 8, 1992, all ISDs have been cancelled by EPA.

4. Norman Reilly and other DTSC department heads are working on bringing petitioner and other tank-cleaning facilities into the PBR program.

Summary

This appeal concerns the annual facility fee which most operators of hazardous waste facilities are obligated to pay under Health and Safety Code Section 25205.2. Petitioner operates a transport tank-cleaning facility. A rotary vacuum drum using volcanic ash is used for filtering wash water. In the opinion of DTSC, this process constitutes treatment of hazardous waste. Petitioner has been authorized to operate under interim status which is a form of authorization under Health and Safety Code Section 25200.5. DTSC granted this status on December 12, 1981.

In 1993, the Legislature enacted numerous legislation some of which had impact on the Hazardous Substance Tax Law. Certain amendments to Health and Safety Code Sections 25205.2 and 25205.12 which became effective on January 1, 1994 have application to this case.

DTSC concedes that Health and Safety Code Section 25205.12(d) now provides the relief petitioner seeks, for any periods prior to January 1, 1993 where the facility fee has not been paid. For periods in which petitioner has paid the fee, Health and Safety Code Section 25205.2(i) now provides for partial relief. Under this section, it provides for exemption from the facility fee for a period of time equal to the number of years that the facility lawfully operated prior to the 1993-94 session of the Legislature. However, this exemption is perspective; therefore, petitioner would not be entitled to a refund, but rather a credit toward future fees imposed. The credit is based on a year-for-year basis rather than the amount of fees previously paid. Therefore, since petitioner has previously paid the facility fee for three of the prior periods (1986/87, 1987/88, 1988/89), he would be entitled to credit for three years of future fees. If the amounts which otherwise would have been assessed in the three future years exceed the amounts paid in the three prior years, petitioner would not be obligated to pay the difference. Conversely, if the future amounts are exceeded by the amounts previously paid, petitioner would not be entitled to a refund. Therefore, this credit is based on the number of years for which the fees were paid rather than the amounts paid. Petitioner agrees with this argument and concurs with DTSC's conclusion.

Analysis and Conclusions

Health and Safety Code Section 25205.2(a) provides that in addition to the fees imposed by Section 25174.1, each operator of a facility shall pay a facility fee for each reporting period or any portion thereof, based on the size and type of facility as specified in Section 25205.4.

Subdivision (i) of this section (effective January 1, 1994) provides that notwithstanding subdivision (a), a facility operating pursuant to a standardized permit as specified in Section 25201.6 is exempt from the annual facility fee imposed by this section for a period of time equal to the number of years that the facility lawfully operated prior to the operative date of Senate Bill 27 of the 1993-94 regular session of the Legislature, pursuant to a hazardous waste facility permit or

other grant of authorization, and paid facility fees for the operation of the facility.

Health and Safety Code Section 25205.12(d) (effective January 1, 1994) provides that an operator of a hazardous waste facility eligible to operate pursuant to a standardized permit as specified in Section 25201.6 is exempt from the fee imposed in Section 25205.2 for any year prior to January 1, 1993 during which the facility operated if the activity was conducted prior to January 1, 1993 and the owner or operator was in compliance with the notification and application requirements of Section 25201.6 as amended in the 1993-94 regular session of the Legislature and the owner or operator did not pay the facility fee as specified in Section 25205.2 for that year or reporting period prior to July 1, 1993, for the facility that is the subject of the standardized permit.

Based on my review of the above authority, I agree with DTSC's interpretation and its impact on petitioner for the periods in question. For those periods in which the fee has not been paid (1989/90, 1990/91, July 1991/December 1991), petitioner is entitled to a granting of the petitions. For those periods in which payment has been made (1986/87, 1987/88, 1988/89), petitioner is not entitled to a refund; but rather a credit against three future years in which the fees would be imposed. I agree with DTSC this future credit would not be based on the amounts previously paid. Furthermore, if petitioner is not subject to the fee in future years, the three-year credit would be of no use, since a refund cannot be granted.

Recommendation

- _____ - Deny the claim.
- _____ - Deny the claim.
- _____ - Grant the petition.
- _____ - Grant the petition.
- _____ - Grant the petition.

Lucian Khan
Lucian Khan, Staff Counsel *Smw*

Date