

M e m o r a n d u m

To : David McKillip
Environmental Fees Division

Date: May 24, 1994

From : Janet Vining
Legal Division

Subject:

On April 21, 1994, I wrote you a memorandum regarding this matter in which I concluded that the Board lost its jurisdiction to consider [redacted]'s claim for refund 90 days after it denied the original claims. Subsequently, I obtained information from the Sales and Use Tax Department indicating that, under such circumstances, that Department would rescind an earlier denial and consider the new claim for refund. I believe that, in the interests of applying similar statutory provisions in a consistent manner, Special Taxes should handle [redacted]'s new claim in the same manner that Sales and Use Tax would.

If a taxpayer discovers a new basis for filing a claim for refund (for example, newly-enacted legislation or a recently-decided court case), and files a claim on that basis within 90 days from the date the Board rejected the taxpayer's original claim, the Sales and Use Tax Department will rescind the earlier denial and consider the new claim.

[redacted] filed a new claim for refund, based on SB 922, within 90 days of the Board's rejection of its original claims for refund. I recommend that you rescind the Board's earlier denial of [redacted]'s claims for refund, and give full consideration to the arguments raised in [redacted]'s new claim. As I discussed with Debbie Kalfsbeek, if the Board has not yet heard any cases involving the meaning of a "decision of the Board of Equalization" in Health and Safety Code Section 25205.2(f), it may be necessary to set the claim for an appeals conference.

David McKillip
May 24, 1994
Page 2

Please contact me if you have any questions.

JV:wk

cc: Stephen R. Rudd - MIC:57
Lou Feletto - MIC:57
Debra Kalfsbeek - MIC:57
Larry Augusta - MIC:82
Dennis Mahoney, Dept. of Toxic Substances Control

Memorandum

To : David McKillip - MIC:57
Environmental Fees Division

Date: April 21, 1994

From : Janet Vining
Legal Division

Subject:

You sent me a copy of your March 16, 1994 letter to [redacted], attorney for [redacted]) and asked me to review Mr [redacted] December 21, 1993 letter to determine if the letter can be accepted as a claim for refund, and, if so, if it is timely. For the reasons stated below, I conclude that the letter, if a claim for refund, is untimely.

[redacted] paid the facility fee for a small storage facility for fiscal years 1988/89, 1989/90 and 1990/91 pursuant to notices of determination issued in early 1992. [redacted] also self-reported and paid the facility fee for a small storage facility for July-December 1991 and calendar year 1992. Timely claims for refund filed for these periods were denied by the Board on July 26, 1993 and October 12, 1993.

On December 21, 1993, [redacted]'s attorney wrote the Board a letter which he described as a "de novo claim" pursuant to Health and Safety Code Section 25205.2(f) for a refund of the facility fees [redacted] had paid. [redacted] asserts that its claim comes within Section 25205.2(f) because it paid facility fees for reporting periods after July 1, 1986 pursuant to a decision of the Board of Equalization, and it has already filed a claim for refund of those fees.

Revenue and Taxation Code Section 43473 provides

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.

David McKillip
April 21, 1994
Page 2

In addition, Section 43475 provides that failure to bring an action within the 90 days constitutes a waiver of all demands against the state on account of any alleged overpayments.

It has long been the Board's interpretation of related language in the Sales and Use Tax Law that, once the Board has denied a claim for refund and 90 days has elapsed from the mailing of the notice of the denial, the Board is without jurisdiction to entertain a second claim for the same tax upon a separate ground.

Since 90 days has passed since the Board mailed notices of the denial of [redacted]'s claims for refunds (on July 26, 1993 and October 12, 1993), the Board is without jurisdiction to consider [redacted]'s new claim for refund.

Janet Vining

JV:wk

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