

M e m o r a n d u m**802.0310**

To : Mr. Larry Micheli
Local Revenue Allocation Section - MIC:27

Date: October 13, 1995

From : John L. Waid
Senior Staff Counsel

Subject: [No Permit Number]
--- --- --- (X)
Termination of District Tax

I am answering your memorandum to me dated August 21, 1995. You requested the opinion of the Legal Division on several issues relating to the expiration of the [X] district tax on --- XX, 19XX, and the pending termination of the district itself on --- XX, 19XY. (See, Publ. Util. Code § 140006.)

1. Money not Distributed. You state that the Board withheld \$599,888.00 from the June 23, 1995 warrant to be applied to pending and potential refunds, such as non-settlement [A] and other refunds and pending litigation cases. You ask if the moneys should be placed in an account separate from the Retail Sales Tax Fund and if the Board is obligated to pay interest on the funds withheld.

As you know, the Board does not impose district taxes. Rather, it administers them pursuant to contracts with the districts under section 7270. As such, any district revenues under the control of the Board belong to the district, and not the Board. We are of the opinion that such moneys should be placed in a special deposit account in which the interest will remain in the account rather than being swept into the General Fund. That is the kind of account in which the SDJF funds were placed pending disposition under SB 263. Interest would be owed on any money so withheld, and the interest rates applicable to such an account would be the proper rate.

2. Future Tax Revenues. You note that, even though the [X] tax has terminated by its own terms, the Board will continue to receive revenues derived from it, based on accounts receivable, audits in progress, and other unpaid accounts which are difficult to estimate for the purpose of making advances. The Board may thus be required to make distributions of [X] tax well into the future. You ask if (1) the Board is required to make periodic advance transmittals under section 7271 and, if so, do the advances have to equal our normal 90%, (2) whether the district must appoint a successor and, if so, would that successor be liable for repayments arising from reversal of fund transfers, taxpayer refunds, etc., and (3) should the district be charged administrative fees for periods after the tax expiration date since the Board will continue to perform audit and compliance functions for the district.

a. Advance Payments.

Section 7271 provides as follows:

“All transactions and use taxes collected by the board pursuant to contract with the district shall be transmitted by the board to the district periodically as promptly as feasible. The transmittals shall be made at least twice in each calendar quarter.”

The contract which the Board executed with [X] contains the same language in Article II, Paragraph C.

Nothing in either the statute or the contract requires that tax revenues be transmitted in advance of actual receipt. The Board has a policy of making advances of 90 percent of the actual revenues based on prepayments. Such advances begin in the last month of the current quarter. Where there are no prepayments, such as in the situation at hand where the tax has terminated but some payments are still being made through audits, etc., there can be no advances. Actual revenues should be transmitted “as promptly as feasible,” however, and “at least twice in each calendar quarter” if possible.

b. Successor. You ask whether the Board has the authority to appoint a successor agency if [X] does not do so. You attached a copy of Dan Cady’s letter to Ms. --- [G], [X]’s Executive Director, dated June 21, 1995, requesting that the district appoint a successor.

The Board’s general duties do not include the appointment of a successor to a terminated district. (Govt. Code §§ 15600-15626.) Neither is such authority granted by the District Tax Law. Even if we were to assume that the Board had such authority under its power to make regulations for the administration of the sales tax (§ 7053), the Code provides no guidelines for the Board to make such a determination. The rules regarding successor agencies set forth in Government Code section 57451 only apply when a district formed as a result of proceedings by the County Local Agency Formation Commission is dissolved by that agency. (See, Govt. Code §§ 56000 et. seq.) We thus conclude that the Board does not have the authority to appoint a successor to a termination transactions and use tax district. That would take legislation and perhaps should be part of the Board’s legislative recommendations for next year.

In his letter, Mr. Cady referred to legislation which would resolve the succession problem. That is apparently a reference to then-SB 710, the provisions of which were finally enacted as SB 612. (Stats. 1995, Ch. 495.) The provisions regarding succession only apply to the payment of refunds when the district’s tax has been declared invalid. (See, new § 7267(c).)

We conclude that the moneys should be placed in a special deposit (or similar) account wherein the interest is retained in the account until this issue is resolved. If a successor is

appointed, it would succeed to the powers and duties of the district, including the power to compromise and settle claims of any kind and to sue and be sued in the place and stead of the district. (Govt. Code § 57453.) Therefore we conclude that any district that is appointed would be liable for repayments.

c. Administrative Fees. Finally, you ask if the district should continue to be charged administrative fees under section 7273. In Article IV of the Agreement, [X] agreed to compensate the Board for its administrative services at the rate provided for by law, and in Paragraph II.C. agrees that the Board may withdraw its fees from the revenues collected. Neither the contract nor the statute is keyed to whether or not the tax is currently being levied at the time the money comes in. Therefore, we conclude that as long as the Board is collecting and transmitting tax, it is entitled both under the contract and the statute to take its administrative fees out of the revenues due to the district. The opposite conclusion would put the state in the position of subsidizing the district which is the situation that the 1993 amendments to the section sought to eliminate. (See § 7273(a)(1).)

JLW:sr

cc: Mr. Jeff Reynolds - MIC:67
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