

Memorandum

To : Mr. Edward W. King, Supervisor
Excise Taxes Section

Date : June 5, 1992

From : Janet Vining
Tax Counsel

Subject :
PETITION FOR CREDIT INTEREST

Larry Augusta asked me to respond to your May 19, 1992 memorandum concerning your proposed response to Larry Augusta's request for credit interest on the recent oil spill response fee refunds.

For the reasons set forth below, we conclude that there is no statutory authority for the payment of credit interest concerning refunds made pursuant to Government Code Section 8670.48(i) or Revenue and Taxation Code Section 46653, and, therefore, the State cannot pay such interest.

Government Code Section 8670.48(i) requires the administrator of the Oil Spill Prevention and Administration Fund (the "Fund") to authorize refunds of any fees in excess of \$50 million collected for reporting periods after January 31, 1991. The refunds are to be made by the Board, as directed by the administrator and in accordance with Revenue and Taxation Code Section 46653. Section 46653 specifies that the excess moneys shall be refunded to each person who paid the fee to the state in proportion to the amount that person paid into the Fund during the preceding 12 months prior to the Fund exceeding \$50 million.

Government Code Section 8670.48 also sets forth the manner in which fees collected in excess of \$50 million for periods prior to February 1, 1991, are to be refunded. The significant difference is that fee payers who paid oil spill response fees for crude oil transported out of the state are first refunded all such fees. The remainder of the excess over \$50 million is then refunded to each fee payer in proportion to the amount each fee payer paid into the Fund for the period from September 24, 1990 to January 31, 1991. The imposition of the oil spill response fee on exported oil was eliminated in the

version of the fee bill which was adopted as Chapter 10 of the Statutes of 1991 (SB 7).

Neither Government Code Section 8670.48(i) nor Revenue and Taxation Code Section 46653 mentions the payment of credit interest on the amounts to be refunded.

Article 1, Chapter 5 of Part 24 of the Revenue and Taxation Code, beginning with Section 46501, sets forth the Board's authority to refund any amount of fee, penalty or interest which "has been paid more than once or has been erroneously or illegally collected or computed." The Board may not approve a refund unless a claim therefor is filed within three years from the due date of the payment for the period for which the overpayment was made, within six months after a determination becomes final, or within six months from the date of overpayment, whichever period expires later (§ 46502). A claim for refund must be in writing and state the specific grounds upon which the claim is founded (§ 46503). Failure to file a claim within the prescribed time period constitutes a waiver of all demands against the state on account of the overpayment (§ 46504). Section 46506 provides that interest shall be paid upon any overpayment of any amount of the fee.

The refunds the Board made of moneys in the Fund in excess of \$50 million were authorized by Government Code Section 8670.48(i) rather than Article 1, Chapter 5 of Part 24 of the Revenue and Taxation Code. No written claims for refund were submitted by the feepayers, and there could be no argument that the refunded fees were paid more than once, or erroneously or illegally collected or computed, since they were properly paid in accordance with Government Code Section 8670.48.

While Revenue and Taxation Code Section 46506 provides for the payment of credit interest on "overpayments", the Board has not refunded any "overpayments". Instead, the feepayers paid the amounts required to be paid by Section 8670.48, and the Board was mandated by that same section to refund moneys in the Fund in excess of the statutory cap.

It is well established that there is no right to interest as payment for the use of money unless the right has been created by statute or contract. Ball v. County of Los Angeles (1978) 82 Cal.App.3d 312. Furthermore, there is no implied contract of any kind that the state will pay interest on its indebtedness in the absence of a statute. Jones-Hamilton Co. v. Franchise Tax Board (1968) 268 Cal.App.2d 343; Gibbons & Reed Co. v. Dept. of Motor Vehicles (1963) 220 Cal.App.2d 277. Since there is no statutory authority for the payment of credit

interest concerning refunds mandated by Government Code Section 8670.48, the Board is not empowered to pay such interest.

While refunds of the oil spill response fee for periods after January 31, 1991 are also authorized by Revenue and Taxation Code Section 46653, there is no provision for the payment of credit in that section, either. Therefore, there is no statutory basis for the Board to pay credit interest on refunds made pursuant to Section 8670.48 or Section 46653 for periods after January 31, 1991. Of course, credit interest will be paid concerning claims for refund submitted and approved pursuant to Article 1, Chapter 5 of Part 22 of the Revenue and Taxation Code, unless such interest is disallowed for the reasons stated in Section 46507.

Your proposed response to the _____ Company concerning _____ suggests that credit interest might be paid on refunds for periods following the effective date of SB 1409. Based on the conclusions reached in this memorandum, I suggest that you make it clear that no credit interest will be paid on refunds made pursuant to Section 8670.48 or Section 46653 until and unless the Legislature provides for the payment of such interest.

Although a copy of the incoming feepayer request was not attached to your May 19 memorandum, I have a comment concerning a portion of that request which was quoted in your draft response. The feepayer stated that the "fee overpayment resulted from a change in the Board's position on fees related to exports, not from intentional overpayments or carelessness on feepayer's part...." As noted above, I take issue with the use of the term "overpayment", since the feepayer paid the amount required by law to be paid. More importantly, however, the Board did not "change" its position on whether the fee was due concerning exported crude oil. The imposition of the fee on such oil was eliminated when the Legislature adopted Chapter 11 of Statutes of 1991 (SB 7).

Please let me know if you have any questions concerning this matter or wish to discuss it.

Janet King

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cc: Mr. E. V. Anderson
Mr. Monte Williams
Mr. James Black
Mr. Larry Augusta