



STATE BOARD OF EQUALIZATION

LEGAL DIVISION (MIC: 82)
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June 9, 1994

Mr.

BURTON W. OLIVER
Executive Director

Re:

Dear Mr.

I am writing at the request of Mr. Lou Feletto of the Board's Environmental Fees Division. He forwarded to me a copy of your letter, in which you assert that hazardous residues removed from barges should be exempt from the hazardous waste generator fee. For the reasons set forth below, I agree with Mr. Feletto's conclusion that such hazardous residues are not exempt.

Article 13 of the Chapter 6.5 of the Health and Safety Code (beginning with Section 25250.1) deals with the management of used oil. Section 25250.24 provides an exemption from the hazardous waste generator fee for "used oil which is removed from a motor vehicle" and which is subsequently recycled by a permitted recycler. While "used oil" is defined in Section 25250.1(a), neither the Health and Safety Code nor the Department of Toxic Substances Control's regulations contains a definition of a "motor vehicle".

As Mr. Feletto explained in his August 18, 1993 letter to you, the Board has looked to the definition of a "motor vehicle" in Section 415 of the Vehicle Code for guidance in applying the exemption. You argue that this reliance is unwarranted, since Section 66260.10 of Title 22 of the California Code of Regulations defines "vehicle" and "vessel", for purposes of hazardous waste management. In addition, you assert that maritime law, which views a tugboat and barge as a single unit, should be followed. We disagree.

The definition of a "vehicle" that appears in the Department's regulations (Section 66260.10), is identical to the definition of a "vehicle" in Vehicle Code Section 670. Absent a specific definition of a "motor vehicle" in the Health and Safety Code, we believe that it is reasonable to look to the Vehicle

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Code definition of that term for guidance. The Board needs to apply the hazardous waste fees in a consistent manner, and to interpret statutory terms in a manner that can apply to all fee payers. The Vehicle Code definition is easily understood and applied, and is consistent with the definitions in other tax programs administered by the Board. Reference to maritime law is not appropriate, as it is relevant to a small segment of the population that generates used oil, and offers little insight into the Legislature's intent in limiting the exemption to used oil removed from a motor vehicle.

We agree with your statement that one purpose of the exemption is to encourage the recycling of used oil. However, the Legislature was quite explicit in Section 25250.24 in limiting the exemption to used oil removed from a motor vehicle. Had the Legislature intended to exempt used oil obtained from any source, it could have done so easily. Statutes which grant exemption from taxation are to be strictly construed. Framingham Acceptance Corp. v. State Board of Equalization (1987) 191 Cal.App.3d 461.

In your letter, you analogize the tugboat-and-barge combination to tractor-and-trailer combinations that deliver gasoline to a service station, and ask whether the residues removed from such trailers would be subject to the generator fee. We agree with Mr. Feletto's statement that residues from a tank trailer would be treated in the same manner as the residues removed from tank barges. In both instances, the residues would be subject to the generator fee.

Please feel free to contact me if you have additional questions.

Very truly yours,

Janet Vining

Janet Vining
Supervising Staff Counsel

TV:wk

cc: