

Mr. Robert M. Frank
Excise Tax Unit

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Janet Vining
Legal

While researching the issue of federal liability for California's hazardous and solid waste fees, I came across a packet of correspondence involving [redacted], Inc. [redacted] requested a credit for certain fees it paid based on hazardous waste the federal government submitted for disposal. This matter can be resolved separately from the larger issue of federal liability for the fees.

In September of 1987, [redacted], Inc., asked [redacted] to give it a credit for the fees [redacted] paid for federal government hazardous waste disposed at Kettleman Hills. [redacted] asserted that the federal government is exempt from state taxes but that, since the federal waste was not transported on a manifest showing a State Board of Equalization registration number, the disposal site paid the fees and passed the cost on to [redacted]. Attached to [redacted]'s letter is a memo from the Defense Logistics Agency in Ogden, Utah, stating that each Department of Defense installation should obtain a State Board of Equalization hazardous waste registration number, and use such number on manifests when any hazardous waste is shipped to a disposal facility in California.

Also in September of 1987, [redacted] requested that the Board refund \$1, [redacted], representing the hazardous waste disposal fees [redacted] paid on behalf of [redacted] for the last quarter of 1986 and first quarter of 1987.

Section 25174.1(b) of the Health and Safety Code (as included in SB 475) states that:

Each operator at any facility...at which hazardous wastes are disposed shall pay a fee

directly to the State Board of Equalization for disposal of those wastes, except that the site operator is not required to pay the fee for a hazardous waste if the person submitting the waste for disposal provides the operator with a properly completed manifest for that waste which includes that person's Hazardous Waste Tax Account number, as assigned by the State Board of Equalization, and the site operator submits a copy of the manifest to the State Board of Equalization in the time and manner as it may prescribe.

Section 25174(d), which was adopted in 1986 (Chapter 1506, Section 1) and in effect until the passage of SB 475, contained identical language.

It is clear that the incidence of the land disposal fee falls on the operator of the disposal facility, unless certain conditions are met, including the presentation of a properly completed manifest which bears the State Board of Equalization Hazardous Waste Tax Account number of the person submitting the waste for disposal. The statute provides no exceptions for situations where the disposal facility operator cannot obtain reimbursement of the fee from the person who submitted the waste for disposal. Absent such exception or exemption, the operator is clearly responsible for the fees it paid, as long as the manifests for the federal waste did not include a Board registration number.

_____ 's request for a refund should be denied.



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